

**HUMAN RIGHTS STANDARDS BEHIND FRONT LINES:  
HUNGARIAN EDUCATION IN UKRAINE**

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## Abstract

In Ukraine, several restrictive legislative acts have been adopted in the period starting with 2017, when, in the framework of strengthening the Ukrainian language's position, the previous permissive minority policy was replaced by a more restrictive policy towards national minorities. The laws passed by the Ukrainian legislature caused serious political debates internally, as well as on an international level.

In my thesis, in addition to examining the internal legal rules and international standards, I have attempted to demonstrate that, although there is an apparent contradiction between the opinions of the two sides, namely the Ukrainian government and the local Hungarian minority, there are in fact a common goal, namely the significant improvement in minority students' knowledge of the official language.

My main conclusion is that it is possible to reform the minority education in Ukraine in such a way that the system established (i) provides high quality Ukrainian language teaching in minority schools and (ii) maintains the dominance of the minority language in primary and secondary education for minorities, which helps the achievement of the common goal.

In my view, the above common goals would be most effectively achieved through a methodology that teaches Ukrainian as a foreign language. In previous analyses it has been shown that the Ukrainian reform is based on the subtractive approach, in my thesis I argue that the use of the so-called additive approach would advance language teaching for minorities.

In my thesis, I used a normative approach concentrating on the existing legal framework, and the discrepancies between the applicable international treaties and the domestic law. Moreover, adopting a multidisciplinary lens, my thesis explored the linguistic aspects of the issue.

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## **1. Introduction**

The status of the Ukrainian language has been an issue throughout the history of independent Ukraine. The language question, and in particular the role of Russian and Ukrainian in the functioning of the state, has long been at the forefront of political debate. With the deterioration of relations between independent Ukraine and Russia, language issues have also become more acute, however, not only the status of Russian language has been affected, but also the status of Hungarian language in several fields of life, including education.

In my thesis, I will review the changes in the Ukrainian legislation affecting national minority education from the period beginning with the Law on Education adopted in 2017 until the amendment law adopted due to the international pressure in December 2023, and examine the compliance of this legislation with international commitments and constitutional requirements of Ukraine. I will also examine the position of the representatives of the Hungarian minority in Ukraine and the Ukrainian government regarding the changes to minority education, and I will attempt to bridge the apparent contradiction between the two positions, and to demonstrate that the two goals of the opposing sides are not mutually exclusive and there is a way to pursue both at the same time.

## **2. The new Ukrainian legislation**

### **2.1. The background**

To highlight the significant social impact of the new Ukrainian legislation, in the following subchapter I will present data on minorities in Ukraine and minority education. Given that the largest minority in Ukraine is Russian, I will also cover data on the Russian minority to have a comparative perspective and to understand the scope of the issue.

Minority language education has accompanied the history of independent Ukraine after the fall of the Soviet Union due to the reason that persons belonging to national minorities formed a significant part of the country's population. According to the data of the last national census of

Ukraine organised in 2001, persons belonging to minorities made up approximately 22.2% of the population, a significant majority of whom and approximately 17.3% of the whole population was ethnic Russian.<sup>1</sup> Even a higher percentage of the population spoke a language as a native language other than Ukrainian: almost 30% of the population spoke Russian as a native language, and another almost 3% of the population spoke a language different from Ukrainian and Russian as a mother tongue in 2001.<sup>2</sup> According to the 2001 census, the number of Hungarians amounted to 156,566 and 161,618 spoke Hungarian as native language.<sup>3</sup> However, the number of persons belonging to the Hungarian ethnic group decreased to approximately 125,000 until 2017 according to the SUMMA 2017 - Demographic survey of the Hungarian population in Transcarpathia<sup>4</sup> and which number further decreased drastically due to the war with Russia to around 70-90 thousand, according to various estimates.<sup>5</sup> Although the language spoken as native language and the national identity of a person may differ in many cases in Ukraine (for example, in case of the Russian speaking population), native language and nationality coincided almost entirely in case of Hungarians.<sup>6</sup>

Due to the large size of the Hungarian minority in Ukraine, more specifically, in the region of Transcarpathia, according to the data of the schoolyear of 2016/2017, there were several schools in the region where the language of instruction was Hungarian: in 71 schools, Hungarian was the only language of instruction, and there were 27 schools where the education took place partially in Hungarian language as the language of instruction out of the 655 schools in the

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<sup>1</sup> Cserniczkó István, *Nyelvpolitika a háborús Ukrajnában* (Autdor-Shark, Ungvár, 2016) 75

<sup>2</sup> Ibid

<sup>3</sup> Ibid 68

<sup>4</sup> SUMMA 2017 – A kárpátaljai magyarság demográfiai felmérése, <<https://bgazrt.hu/summa-2017-a-karpataljai-magyarsag-demografiai-felmerese/>> accessed 13 May 2024

<sup>5</sup> Vörös Szabolcs, Kárpátaljai magyar geográfus: „80-90 ezren maradhattunk”, <<https://www.valaszonline.hu/2024/02/19/karpatalja-ukrajna-demografia-tarsadalom-magyarsag-kovaly-katalin-interju/>> accessed 13 May 2024

Fedinec Csilla, Ukrajna Szilícium-völgye? A magyarok száma zuhan Kárpátalján, a gazdaságot viszont beindította a háború, <<https://444.hu/2023/12/12/ukrajna-szilicium-volgye-a-magyarok-szama-zuhan-karpataljan-a-gazdasagot-viszont-beindította-a-haboru>> accessed 13 May 2024

<sup>6</sup> Cserniczkó (n 1) 68

region.<sup>7</sup> Altogether in the region, 16,725 pupils studied at least some of the subject in Hungarian as a language of instruction out of the 157,414 pupils in Transcarpathia in the schoolyear of 2016/2017.<sup>8</sup> Besides Hungarian, Russian language also played a major role in the minority language education of Ukraine. In the schoolyear of 2018, there were more than one thousand schools of general secondary education (which covers all levels of education from primary school to pre-university level) whose language of instruction was at least partially Russian and altogether 197,975 pupils studied in secondary educational institutions where Russian was a language of instruction.<sup>9</sup> To illustrate the proportion of minority schools, between 2016 and 2018 there were around 16-17 thousand general secondary education institutions in Ukraine altogether.<sup>10</sup>

However, Ukraine nation-building efforts have also been very much concerned with the language issue, in the framework of which, the government of Ukraine aimed at the reinforcement of the role of Ukrainian language<sup>11</sup>, which efforts are also reflected in the measures taken in the field of minority education before the adoption of the new legislative package which serves as the subject of this thesis. Such measures were among others, the introduction of the obligatory external independent evaluation (school leaving exam) in Ukrainian language and literature at advanced level in in separate examination centres as the prerequisite of admission to higher education and the idea of introducing compulsory bilingual

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<sup>7</sup> Fedinec Csilla, Csernicskó István, A 2017-es ukrájnai oktatási kerettörvény: a szöveg keletkezéstörténete és tartalma October 2017 REGIO 25(3):278, 292

<sup>8</sup> Ibid

<sup>9</sup> Fourth periodical report presented to the Secretary General of the Council of Europe in accordance with Article 15 of the Charter, Ukraine, 124

<sup>10</sup> Заклади загальної середньої освіти (за даними Міністерства освіти і науки України) [*General secondary education institutions (according to the Ministry of Education and Science of Ukraine)*] <[https://www.ukrstat.gov.ua/operativ/operativ2005/osv\\_rik/osv\\_u/znz\\_u.html](https://www.ukrstat.gov.ua/operativ/operativ2005/osv_rik/osv_u/znz_u.html)> accessed 3 June 2024

<sup>11</sup> Csernicskó István, Az ukrájnai többnyelvűség színe és fonákja in, Fedinec Csilla (ed) »KIJEVI CSIRKE« (*Geo*)politika a mai Ukrájnában (MTA Társadalomtudományi Kutatóközpont, Kalligram, Budapest, 2019) 178

education for minorities that was also raised first long before the adoption of the current legislative package.<sup>12</sup>

## 2.2. The new legislation

In spite of the growing significance of the Ukrainian language, before 2017, the institutional framework of minority schools and the way of teaching in minority languages has not suffered significant interference from the Ukrainian state. This status quo was overturned by the legislative package adopted by the Verkhovna Rada between 2017 and 2023 which seriously affected the status of minorities and minority education.

The Law on Education was adopted by the Ukrainian Verkhovna Rada on 5 September 2017,<sup>13</sup> and it codified the framework provisions of a fundamental reform in the Ukrainian education system, which framework provisions were specified by the Law on Complete General Secondary Education adopted on 16 January 2020.<sup>14</sup> Besides the specific rules that concerned education, the Ukrainian parliament also adopted on 25 April 2019 the Law on Protecting the Functioning of the Ukrainian Language as the State Language,<sup>15</sup> and the Law on Minorities (Communities) of Ukraine on 13 December 2022,<sup>16</sup> which also affected the status of national minorities in Ukraine. The so far last piece of the legislative package adopted by the Ukrainian parliament is the Law on Amendments to Certain Laws of Ukraine Concerning the Consideration of the Expert Opinion of the Council of Europe and its Bodies on the Rights of National Minorities (Communities) in Certain Areas (Amendment Law), which was adopted on 8 December 2023.<sup>17</sup> In the following subchapters of this chapter, I will analyse the laws that

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<sup>12</sup> Fedinec, Csernicskó (n 7) 283

<sup>13</sup> Roadmap for Implementation of the Article 7 «Language of Education» of the Law of Ukraine «On Education» <<https://mon.gov.ua/en/news/roadmap-for-implementation-of-the-article-7-language-of-education-of-the-law-of-ukraine-on-education>> accessed 19 May 2024

<sup>14</sup> <<https://zakon.rada.gov.ua/laws/show/463-20#Text>> accessed 19 May 2024

<sup>15</sup> <<https://zakon.rada.gov.ua/laws/show/2704-19#Text>> accessed 19 May 2024

<sup>16</sup> Рада ухвалила новий закон про нацменшини, <[https://lb.ua/news/2022/12/13/538969\\_rada\\_uhvalila\\_noviy\\_zakon\\_pro.html](https://lb.ua/news/2022/12/13/538969_rada_uhvalila_noviy_zakon_pro.html)> accessed 14 May 2024

<sup>17</sup> <<https://zakon.rada.gov.ua/laws/show/3504-20#Text>> accessed 19 May 2024



directly affected minority language education in Ukraine, i.e. the Law on Education, the Law on Complete General Secondary Education and the Amendment Law. When it was available, I used the official English translation of the laws, in certain cases, which I will indicate, I used machine translation or non-official translation.

## **2.2.1. The Law on Education**

### **2.2.1.1. The adoption of the law, general provisions**

The Law on Education was under debate in the Ukrainian parliament from April 2016, it was adopted on 5 September 2017 and president Poroshenko signed it on 25 September 2017.<sup>18</sup> The adoption of the legislation has sparked international opposition, several neighbouring countries strongly objected the restrictive provisions of the legislation<sup>19</sup>. The criticism of the legislation was taken to a higher level when the Parliamentary Assembly of the Council of Europe adopted a resolution on 12 October 2017, in which it stated that “*the new legislation does not appear to strike an appropriate balance between the official language and the languages of national minorities*”, and it emphasised that “*the new law entails a strong reduction in the rights previously conferred on “national minorities” concerning their own language of education.*”<sup>20</sup>

The law distinguishes between national minorities and indigenous peoples: while it is more lenient for indigenous peoples, it introduces more significant restrictions for national minorities. However, the legislation falls short of defining the above concepts. Although the Constitution of Ukraine also mentions the above terms,<sup>21</sup> it also lacks the definition thereof. As the Venice Commission in its Opinion on the Provisions of the Law on Education mentions, the Venice Commission was informed during its visit to Kyiv that the indigenous peoples „*are those*

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<sup>18</sup> Fedinec, Csernicskó (n 7) 288

<sup>19</sup> see in detail Fiala-Butora János, The Controversy Over Ukraine’s New Law on Education: Conflict Prevention and Minority Rights Protection as Divergent Objectives? February 2020, European Yearbook of Minority Issues Online 17(1):233-261

<sup>20</sup> Resolution 2189 (2017) of the Parliamentary Assembly of the Council of Europe, The new Ukrainian law on education: a major impediment to the teaching of national minorities' mother tongues <<https://assembly.coe.int/nw/xml/xref/xref-xml2html-en.asp?fileid=24218&lang=en>> accessed 19 May 2024

<sup>21</sup> Article 11, Article 92, Article 119, Constitution of Ukraine

*minorities which do not have a kin-state*”, namely Crimean Tatar, Karaim and Krimchak minorities, however, according to the Venice Commission, this category would presumably also include the Gagauz and the Roma minorities. The term was finally defined in the Law on Indigenous Peoples of Ukraine adopted by the Verkhovna Rada on 1 July 2021,<sup>22</sup> paragraph 2 of article 1 of which states that Crimean Tatars, Karaims and Krimchaks are considered indigenous peoples under Ukrainian law,<sup>23</sup> and all other ethnic groups, including Hungarians, do not enjoy the privileged status of indigenous peoples and are considered national minorities (communities) by virtue of Law on Minorities (Communities) of Ukraine.<sup>24</sup>

The article of the Law on Education that concerns the language of the education is Article 7. Subparagraph 1 of paragraph 1 of the article declares that “[t]he language of the educational process at institutions of education is the state language.” Subparagraph 2 of the same paragraph states that all levels of education and other types are guaranteed in the state language, which is solely Ukrainian.

One cannot understand the minority aspect without taking into account to context of the educational landscape, therefore, before analysing the provisions that caused the most critique in terms of the rights of national minorities, a brief description of the education system introduced by the new legislation cannot be avoided. The Law on Education distinguishes between pre-school education, general secondary education and higher education.<sup>25</sup> In the framework of general secondary education, pupils take part in primary education (grades 1-4), basic secondary education (grades 5-9) and specialised secondary (10-12) or vocational

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<sup>22</sup> <<https://zakon.rada.gov.ua/laws/show/1616-20#Text>>, accessed 19 May 2024

<sup>23</sup> Paragraph 2 of Article 1 of the Law on Indigenous Peoples of Ukraine

<sup>24</sup> Paragraph 1 of article 1 of Law on Minorities (Communities) of Ukraine: “*National minority (community) of Ukraine (hereinafter - national minority (community)) - a stable group of citizens of Ukraine who are not ethnic Ukrainians, residing on the territory of Ukraine within its internationally recognised borders, united by common ethnic, cultural, historical, linguistic and/or religious characteristics, aware of their belonging to it, and expressing a desire to preserve and develop their linguistic, cultural, religious identity.*”

<sup>25</sup> Article 10, Law on Education

education,<sup>26</sup> therefore, when the Ukrainian legislation mentions general secondary education, it includes elementary schools as well.

As mentioned above, the Law on Education creates the framework and the general rules of the education in Ukraine, and the specific rules of the use of languages in certain types and at certain levels of education shall be laid down in further laws.<sup>27</sup>

#### **2.2.1.2. Pre-school and primary education**

Subparagraph 3 of Article 7 declares that “[p]ersons belonging to national minorities of Ukraine are guaranteed the right to education in municipal educational institutions of pre-school and primary education in the language of the national minority they belong to and in the official language of the State.” The above provision is a crucial provision of the law, as it makes it clear that according to the system introduced by the new law, only pre-school and primary education is guaranteed *in* minority languages of national minorities. Moreover, the provision also states that such education shall be guaranteed in the minority language *and* in the state language, a possible interpretation of which is the introduction of a compulsory bilingual education (even within one subject) instead of previously monolingual minority language schools. In contrast to the above, indigenous peoples are treated more favourably; they are guaranteed the right to study in their own language not only pre-school and primary level as in the case of national minorities, but on the whole general secondary level as well.<sup>28</sup>

A further restriction on minority education according to the law is that the above provision guarantees education only in minority languages in municipal institutions, however, the scope of institutions was later widened in the Law on Complete General Secondary Education.<sup>29</sup>

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<sup>26</sup> Fedinec, István (n 7) 288

Education System in Ukraine <<https://emergency.mon.gov.ua/educationalsystem/>> accessed 14 May 2024

<sup>27</sup> Paragraph 7 of Article 7 of the Law on Education

<sup>28</sup> Subparagraph 4 of paragraph 1 of Article 7 of the Law on Education

<sup>29</sup> see Paragraph 5 Article 5 of the Law on Complete General Secondary Education

The law states that minority education is realized by “*creating [...] separate classes (groups) with educational process in the language of the respective national minority group along with the official language of the State [...]*”, which is difficult to understand as anything other than the abolition of the organisational autonomy of ethnic minority schools, which is also pointed out by Fedinec and Cserniczkó,<sup>30</sup> and which interpretation Fiala-Butora also finds plausible.<sup>31</sup>

### **2.2.1.3. Above primary education**

Above the primary level, the education *in* the minority language is not guaranteed for national minorities of Ukraine. The law states only, that persons belonging to national minorities “*are guaranteed the right to study the language of the respective [...] national minority*”, however, Hungarian language skills are not a problem for the Hungarian minority, as almost 100% of Hungarians speak their own language in Ukraine.<sup>32</sup>

With regard to the levels of education above primary level, the law only states that “*[o]ne or more disciplines may be delivered at institutions of education according to the educational programme in two or more languages: the state language, in English, in other official EU languages.*” Based on the above provision of the law, from 5<sup>th</sup> grade, minority language as the medium of instruction is basically abolished, and the teaching in minority languages is limited only to certain, not specified subjects. Moreover, the provision does not state that such subjects may be taught in the minority language, but that those subjects may be taught in two or more languages, which is a difficult provision to implement in practice and its exact meaning is not clear. A further restriction of the above is that such possibility is only available for the speakers of the official languages of the EU.

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<sup>30</sup> Fedinec, Cserniczkó (n 7) 293

<sup>31</sup> Fiala-Butora János, The Controversy Over Ukraine’s New Law on Education: Conflict Prevention and Minority Rights Protection as Divergent Objectives? February 2020, European Yearbook of Minority Issues Online 17(1):233-261, 254

<sup>32</sup> Ibid 281

#### 2.2.1.4. Entry into force

According to the concluding and transitional provisions of the law, the law did not become immediately applicable to every pupil. To the members of the indigenous peoples and national minorities, who started general secondary education before 1 September 2018, the law was not applicable until 1 September 2020 and they continued to obtain education in accordance with the previous system, “*with gradual increase of the number of subjects that are taught in the Ukrainian language*”,<sup>33</sup> which was subsequently amended so that the above deadline was changed to 1 September 2023 for persons belonging to members of national minorities studying in an official language of the EU.<sup>34</sup>

#### 2.2.2. Law on Complete General Secondary Education

The law which concretized the framework provisions of the Law on Education was adopted by the Verkhovna Rada on 16 January 2020 and it was signed by president Zelensky on 15 March 2020<sup>35</sup> and entered into force on 16 March 2020.<sup>36</sup> For the analysis, I used the machine translation of the law and the translation used by the Venice Commission.

In terms of the language used in secondary education, the law reiterates that „*[t]he language of the educational process in institutions of general secondary education is the state language*”<sup>37</sup>, moreover, it also ensures that “*persons belonging to [...] national minorities of Ukraine are guaranteed and ensured the right to study the language of the [...] national minority [...]*”.<sup>38</sup>

Moreover, the Law on Complete General Secondary Education ensures that minority students “*have the right to receive primary education in a state, municipal or corporate educational*

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<sup>33</sup> Point 18) of Paragraph 3 of the Concluding and Transitional Provisions of the Law on Education

<sup>34</sup> Law No. 2704-VIII of 25 April 2019, Point 19) of Paragraph 3 of the Concluding and Transitional Provisions of the Law on Education

<sup>35</sup> Zelensky signs into law secondary education bill <<https://archive.kyivpost.com/ukraine-politics/zelensky-signs-into-law-secondary-education-bill.html>> accessed 14 May 2024

<sup>36</sup> The Law on Complete Secondary Education – an expert review for hromadas <<https://decentralization.ua/en/news/12399>> accessed 19 May 2024

<sup>37</sup> Paragraph 1 Article 5 of the Law on Complete General Secondary Education

<sup>38</sup> Paragraph 3 Article 5 of the Law on Complete General Secondary Education

*institution in the language of the respective national minority along with the state language”<sup>39</sup>, which allows for a wider scope of mother tongue education than the Law on Education, as it no longer limits this possibility to municipal institutions only.*

With regard to levels of education which are higher than primary education, the law states that

*“persons belonging to national minorities of Ukraine whose languages are official languages of the European Union, and exercise the right to study in the relevant languages in state, communal, or corporate educational institutions, acquire:*

***basic secondary education [grades 5-9] in the state language in the amount of at least 20 percent of the annual amount of study time in the 5th grade with an annual increase of this amount (at least 40 percent in the 9th grade);***

***specialised secondary education [grades 10-12] in the state language in the amount of at least 60 percent of the annual amount of study time.”<sup>40</sup> [parts highlighted by the author]***

Based on the above provisions, it is clear that the objective of the Ukrainian legislation was to transform the previously basically monolingual minority education into a bilingual education and increase the percentage of the subjects taught in Ukrainian language to 60 percent in the last three grades of the curriculum. Although the above provisions contain a considerable restriction of the minority language education in Ukraine, such provisions are favourable in comparison to the rules applicable to minorities whose language is not an official language in the EU, as for those students, the annual amount of study time in state language shall not be less than 80 percent.<sup>41</sup>

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<sup>39</sup> Paragraph 5 Article 5 of the Law on Complete General Secondary Education

<sup>40</sup> Paragraph 6 of Article 5 of the Law on Complete General Secondary Education

<sup>41</sup> Paragraph 6 of Article 5 of the Law on Complete General Secondary Education

With regard to the subjects which are to be taught both in Ukrainian and in the minority language in question, the Law on Education states that their list shall be determined by the “*the educational institution's curriculum in adherence to state standards and with due consideration for the linguistic context*”,<sup>42</sup> which is also a rather broadly interpretable provision, and does not contain specifics on how this type of education will be put into practice.

### **2.2.3. Amendments passed in 2023**

As mentioned previously, the Ukrainian legislative package attracted high-level international attention, certain parts of the adopted legislation were reviewed and analysed by several international bodies, such as the Venice Commission, the Committee of Experts of the European Charter for Regional or Minority Languages and the Advisory Committee on the Framework Convention for the Protection of National Minorities. Due to the opinions published by the above bodies, which I will review in detail in Chapter 3 of the thesis, Ukraine introduced several legislative changes, which changes were incorporated in the Amendment Law.<sup>43</sup> For the analysis, I used the machine translation of the law and the translation used by the Venice Commission.

Among the amendments relating to other laws, the amendments with respect to the Law on Education and the Law on General Secondary Education are the ones which are specifically relevant in connection to the subject of my thesis.

With regard to the Law on Education, the Amendment Law introduced two main changes. It added to paragraph 1 of Article 7 the following part: “*In classes (groups) with instruction in languages of national minorities that are official languages of the European Union, the right to use the language of the respective national minority in the educational process along with*

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<sup>42</sup> Paragraph 6 of Article 5 of the Law on General Secondary Education

<sup>43</sup> Law on Amendments to Certain Laws of Ukraine Concerning the Consideration of the Expert Opinion of the Council of Europe and its Bodies on the Rights of National Minorities (Communities) in Certain Areas

*the state language is guaranteed.*”<sup>44</sup> By this additional provision, the Ukrainian parliament has inserted the missing basic provision guaranteeing the use of minority languages throughout the whole education process, however, it only applies for the official languages of the EU.

The Amendment Law also modified the concluding and transitional provisions of the law and introduced the phasing-out system with regard to pupils who started their education before 1 September 2018, i.e. such pupils are entitled obtain education under the previous rules until the completion of full general secondary education.<sup>45</sup>

The Amendment Law beyond doubt contain elements which promoted the situation of minority education; however, other restrictive elements of the Law on Education have not been rectified, e.g. the Amendment Law does not include any provision that would repeal the abolition of institutional independence of minority school, or which would specifically guarantee the right to mother tongue education on the secondary level of the educational process.

The Amendment Law also amended and supplemented certain provision of the Law on General Secondary Education. It added the same provision guaranteeing the use of official EU language minority languages in the education process to paragraph 1 of Article 5 which provision was added to paragraph 1 of Article 7 of the Law on Education by the Amendment Law.<sup>46</sup>

With regard to paragraph 6 of Article 5, the Amendment Law further eased the restrictions on languages in the privileged EU official language category and changed the previous provision on the minimum percentage of Ukrainian language study time, by adding that minority pupils “*may obtain*” basic secondary education in the relevant minority language except Ukrainian language, Ukrainian literature, and the history of Ukraine, which are taught in Ukrainian.<sup>47</sup>

With regard to specialised secondary education, the same provisions apply, except that the

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<sup>44</sup> Point 3. 1) of the Amendment Law

<sup>45</sup> Point 3. 2) of the Amendment Law

<sup>46</sup> Point 5. of the Amendment Law

<sup>47</sup> Ibid



subjects which must be taught in Ukrainian are supplemented with the subject called the Defence of Ukraine.<sup>48</sup>

The grammatical interpretation of the wording “*may obtain*” used in paragraph 6 suggests that the provisions of the paragraph does not imply a guarantee in terms of the minority language education and that the subjects taught in the minority language may be amended on a case-by-case basis, however the provision is quite vague. This interpretation is confirmed by the additional subparagraph added to paragraph 6, which states that the subjects taught in Ukrainian in minority classes “*may be expanded at the decision of the educational institution*”, which provision is particularly important due to the fact that according to the Law on Education, previously institutionally autonomous minority schools lose their institutional autonomy as discussed in point 2.2.1.2. above, therefore, the decision to increase the proportion of lessons in Ukrainian will not be in their hands. However, there is no information on whether the above provision of the law would actually be enforced, and based on my knowledge, the previously independent minority institutions continue to operate as independent institutions, which is a positive situation for minorities, but nevertheless creates legal uncertainty.

### **3. International standards on minority language education**

Ukraine is member of the Council of Europe, an international organisation whose aim is to promote human rights, democracy and the rule of law,<sup>49</sup> and which has a comprehensive framework for the protection of linguistic rights and national minorities in Europe, the paramount instruments of which framework are the European Convention of Human Rights (ECHR), and the two main international treaties regarding minority rights in Europe, the Framework Convention for the Protection of National Minorities (Framework Convention) and the European Charter for Regional or Minority Languages (Charter). The body responsible for

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<sup>48</sup> Ibid

<sup>49</sup> The Council of Europe at a glance <<https://www.coe.int/en/web/portal/the-council-of-europe-at-a-glance>> accessed 30 April 2024

the effective implementation of the ECHR is the European Court of Human Rights (ECtHR), which elaborated the relevant jurisprudence also in terms of linguistic rights, the monitoring body of the of the Framework Convention is the Advisory Committee,<sup>50</sup> and the body that monitors the implementation of the Charter is called Committee of Experts.<sup>51</sup> Ukraine signed and ratified all of the above-mentioned treaties and undertook several international obligations stemming from them, which I will review in detail in this chapter.

The Hague Recommendations regarding the Education Rights of National Minorities & Explanatory Note (Recommended by the OSCE High Commissioner on National Minorities, 1 October 1996) also tackles the issue of minority language education, which I will cover in subchapter 4.3.

In addition, a bilateral treaty between Hungary and Ukraine also includes provisions with regard to minority protection.

In the following part of the chapter, I will review in detail the provisions of the relevant international instruments which affect minority language education, starting with the most general one, the ECHR. Following that, the specific international agreements tackling the issue of national minorities and minority languages will be reviewed, and at last, I will review the bilateral treaty concluded by Ukraine and Hungary covering the above topic. At the end of the chapter, I will analyse the conformity of the relevant domestic legislation with the reviewed international treaties.

### **3.1. Applicable rules of the ECHR**

The main instrument of the human rights protection under the framework of the Council of Europe is the European Convention of Human (ECHR) rights, which, however, does not contain any reference to linguistic rights in the context of education. Article 2 of its First Additional

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<sup>50</sup> Article 26, Framework Convention for the Protection of National Minorities Strasbourg, February 1995

<sup>51</sup> Article 16-17, European Charter for Regional or Minority Languages, Strasbourg, 5.XI.1992

Protocol does contain nevertheless a general provision with regard to education, according to which “[n]o person shall be denied the right to education” and that “the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.” Further to the above provision of the First Additional Protocol, Article 14 on the prohibition of discrimination states that the rights and freedoms enshrined in the ECHR “shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

Due to the fact that the ECHR does not contain specific provisions with regard to the language in which the right to education shall be guaranteed to pupils, and the text of the ECHR is open to several different interpretations, it is not possible to evaluate the Ukrainian legislative package solely based on the text of the ECHR, therefore, I will review the relevant jurisprudence of the ECtHR in this regard and evaluate the relevant legislation in light of the present case.

### **3.1.1. Belgian Linguistic Case**

One of the early cases of the ECtHR which handled the issue of the right to education in the context of minority pupils is the Case “relating to certain aspects of the laws on the use of languages in education in Belgium” v. Belgium<sup>52</sup> (Belgian Linguistic Case). In the Belgian Linguistic Case, the applicants were parents from families of Belgian nationality, whose families were French-speaking and, although the regions where they lived were not one of the French-speaking regions of Belgium,<sup>53</sup> they wanted their children to be educated in French language which possibility was denied from them. The Court emphasised that the “*Convention lays down no specific obligations concerning the extent of these means and the manner of their organisation or subsidisation. In particular, the first sentence of Article 2 does not specify the*

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<sup>52</sup> Case “relating to certain aspects of the laws on the use of languages in education in Belgium” (“the Belgian linguistic case”) App no 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64 (ECtHR, 23 July 1968)

<sup>53</sup> Ibid § 2

language in which education must be conducted in order that the right to education should be respected.” It moreover stated that “*the right to education would be meaningless if it did not imply, in favour of its beneficiaries, the right to be educated in the national language or in one of the national languages, as the case may be*”, from which principle it can be concluded a *contrario* that if the particular language is not a national language, no right of education exists with regard to that language. National language is used by the court synonymously with the official language, which understanding was later confirmed by the Court in the case of *Valiullina and Others v Latvia*.<sup>54</sup>

The Court further emphasised in its judgement that relevant provision of the First Additional Protocol “*does not require of States that they should, in the sphere of education or teaching, respect parents' linguistic preferences, but only their religious and philosophical convictions*”. It explained furthermore that based on the preparatory works of the First Additional Protocol, “*the object of the second sentence of Article 2 (P1-2) was in no way to secure respect by the State of a right for parents to have education conducted in a language other than that of the country in question.*”<sup>55</sup> The Court further emphasised that based on the preparatory works, “*Contracting Parties do not recognise such a right to education as would require them to establish at their own expense, or to subsidise, education of any particular type or at any particular level*”<sup>56</sup>. As Medda-Windischer concluded, considering the judgement of the Belgian Linguistic Case, it can be concluded that “*there is no right to mother-tongue education*”<sup>57</sup> under the ECHR, moreover, as Wiczanowska and Szoszkiewicz raised our attention to, states enjoy a

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<sup>54</sup> *Valiullina and Others v Latvia* App no 56928/19, 7306/20 and 11937/20 (ECtHR, 14 September 2023)

<sup>55</sup> the Belgian linguistic case, I/B/6

<sup>56</sup> *Ibid* I/B/3

<sup>57</sup> Roberta Medda-Windischer, The european court of human rights and minority rights, *Journal of European Integration*, Volume 25, 2003 - Issue 3, 259

margin of appreciation in terms of organising their education system based on the decision of the Court under review.<sup>58</sup>

### 3.1.2. Cyprus v Turkey Case

The Case of Cyprus v Turkey was initiated by the government of Cyprus against Turkey, among others, due to the living conditions of Greek Cypriots in Northern Cyprus (Turkish Republic of Northern Cyprus (TRNC)) that allegedly violated the ECHR.<sup>59</sup> Among other things, the applicant referred to the fact that the Turkish-Cypriot authorities abolished secondary educational institutions teaching through the medium of the Greek language previously available to Greek Cypriot children, thus, they violated the right to education of those children which is enshrined in Article 2 of the First Additional Protocol of the ECHR.<sup>60</sup> The Court stated that in theory, Greek speaking schoolchildren would either have the opportunity to study in secondary school in the southern part of Cyprus, under Cypriot administration, or to continue their studies in the TRNC in secondary schools with Turkish or English language of instruction<sup>61</sup>, which case, according to the Court's assessment does not constitute a violation of the right to education in the strict sense, as in such case, children are not deprived of secondary education in general.<sup>62</sup> However, according to the Court,

*“the option available to Greek- Cypriot parents to continue their children's education in the north is unrealistic in view of the fact that the children in question have already received their primary education in a Greek-Cypriot school there. [...] Having assumed responsibility for the provision of Greek-language primary schooling, the failure of the “TRNC” authorities to make continuing provision for*

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<sup>58</sup> Hanna Wiczanowska, Łukasz Szoszkiewicz, The Protection of the Right to Education in Minority Language: the Council of Europe's Standards, Polish Political Science Yearbook, vol. 48(4) (2018) 745

<sup>59</sup> *Cyprus v Turkey* App no 25781/94 (ECtHR 12 May 2014)

<sup>60</sup> *Ibid* § 273-275

<sup>61</sup> *Ibid* § 277

<sup>62</sup> *Ibid*

*it at the secondary-school level must be considered in effect to be a denial of the substance of the right at issue.”*

Based on that consideration, the Court decided that Turkey has violated the rights of Greek speaking schoolchildren, when it did not provide them with the possibility of Greek-language secondary education.

The above decision of the ECtHR has significantly changed the jurisprudence of the ECtHR compared to the Belgian Linguistic Case, in particular in the sense that in the Belgian Linguistic Case, the Court argued that the violation of the right to education only materialises in such cases, if pupils are deprived from educational opportunities in one of the official languages of the state, however, in the Cyprus v Turkey Case, Greek was not the official language in the *de facto* state of TRNC.<sup>63</sup> This shift in the jurisprudence in favour of mother tongue education was not permanent, however, it seemed to break the practice that the demand for mother tongue education can only be a legitimate claim if the language is the official language of the state. Although the Court did not make any reference to the official status of the Greek language in the territory of Cyprus occupied by Turkey, the Court explained its previous judgement more than 20 years later in the Valiullina and Others v Latvia case with the fact that the case of “*Cyprus v. Turkey concerned access to secondary education in the national language of the country concerned, as Greek had been one of the official languages of the country since 1960*”, which does not seem a particularly convincing argument due to the fact that the area concerned “*was governed by the “Turkish Republic of Northern Cyprus” (the “TRNC”), over which Turkey was held to have effective control*”,<sup>64</sup> as the Court explains in the same paragraph of the same judgement.

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<sup>63</sup> Constitution of the Turkish Republic of Northern Cyprus (Turkish: Kuzey Kıbrıs Türk Cumhuriyeti Anayasası), Article 2 (2) <<https://ombudsman.gov.ct.tr/Portals/20/Constitution%20of%20TRNC.pdf>> accessed 30 April 2024

<sup>64</sup> *Valiullina* (n 54) § 131

### 3.1.3. Case of Valiullina and Others v Latvia

Contrary to the more pro minority education point of view taken by the ECtHR in the Cyprus v Turkey Case, the Court took a different standpoint in Case of Valiullina and Others v Latvia in which its emphasis was on the margin of appreciation of the states in terms of minority language education. The main facts of the case under review by the ECHR were similar to the current issue with regard to the Ukrainian legislative package, i.e. Latvia introduced an educational reform which adversely effected pupils who were pursuing their studies in a minority language (i.e. Russian). As the Court formulated in its judgement, the new Latvian legislation “*provided that the proportion of subjects to be taught in the State language, that is, Latvian, was to be increased in public schools*”,<sup>65</sup> which obviously went hand in hand with the decrease of the subjects taught in Russian. The justification of the increase of subjects taught in the official language and the decrease of the subjects taught in the minority language was, among others, the “*the need to increase the use of Latvian in society and strengthen the position of Latvian in everyday communication*” and “*the need to expand the possibilities of integration in the society by developing attractive forms of learning of the Latvian language*”<sup>66</sup>, which reasons are similar to the reasons referred to by the Ukrainian state authorities.

With regard to the application based on Article 2 of the First Additional Protocol (right to education), the Court basically reiterated the principles laid down in the Belgian Linguistic Case, and stated that the right to education “*does not include the right to access education in a particular language; it guarantees the right to education in one of the national languages or, in other words, official languages of the country concerned*”.<sup>67</sup> With regard to the application based on the alleged discrimination of Russian-speaking pupils, the Court emphasised that states have a wide margin of appreciation with regard to their education systems “*particularly*

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<sup>65</sup> Ibid § 21

<sup>66</sup> Ibid § 22

<sup>67</sup> Ibid § 135

as regards the language of instruction in public schools”,<sup>68</sup> and that Latvian state “has not overstepped its margin of appreciation, as it has maintained a possibility for Russian-speaking pupils to learn their language and preserve their culture and identity”<sup>69</sup> in spite the percentage of the subjects taught in Russian have been significantly decreased by the Latvian state.<sup>70</sup>

#### **3.1.4. Chances of the case before the ECtHR**

Based on the review of the above judgements of the ECtHR, it can be concluded that the jurisprudence of the ECtHR in terms of minority language education is “*relatively incoherent and therefore unforeseeable*”<sup>71</sup>, therefore, it would be difficult to foresee the possible outcome of a lawsuit based on the breach of the right to education in case of ethnic Hungarian pupils in Ukraine. However, in spite of the above difficulties regarding the prediction the decision of the court, one should note that according to the current jurisprudence of the court, states can rely on their wide margin of appreciation when they design their education system<sup>72</sup>, therefore, most probably, if no sudden change happens in the jurisprudence of the Court, the Court would decide that no violation of the ECHR has taken place by Ukraine with regard to the adoption of the legislation package. In light of the above, I will analyse in the next subchapters of my thesis the minority-specific instruments.

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<sup>68</sup> Ibid § 212

<sup>69</sup> Ibid

<sup>70</sup> As referred to in § 23 of the Judgement in the case of Valiullina and Others v Latvia, according to the new Latvian legislation (i) no less than 50% of the teaching should be in Latvian in classes one to six; (ii) no less than 80% of the teaching should be in Latvian in classes seven to nine; (iii) 100% of the teaching should be in Latvian in classes ten to twelve.

<sup>71</sup> Wiczanowska, Szoszkiewicz (n 59) 749

the Council of Europe’s Standards, Polish Political Science Yearbook, vol. 48(4) (2018) 749

<sup>72</sup> Ibid 750



## 3.2. The Framework Convention for the Protection of National Minorities

### 3.2.1. Applicable rules

Ukraine ratified the Framework Convention on 26 January 1998 and it entered into force in respect of Ukraine on 1 May 1998.<sup>73</sup> The relevant rules on minority language education are contained in Article 14 of the Framework Convention, which states the following:

*“1. The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language.*

*2. In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.*

*3. Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching in this language.”*

Based on the textual interpretation of the Framework Convention, the right to be taught *in* the minority language prevails “*as far as possible*” depending on the capacities of the state and “*within the framework*” of the education system of the state, or the state can also fulfil the commitment in this paragraph by ensuring that the minority language is taught, which appears to be a lower level of protection compared to the one that was guaranteed for Hungarian minority pupils in Ukraine pre-2017.

In terms of whether a given minority has the right to be taught its own language or the right to receive instructions in its own language, the Advisory Committee in its first opinion on Ukraine stated that the then effective Ukrainian legislation did “*not provide precise numerical or other*

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<sup>73</sup> Country-specific monitoring, Ukraine, <<https://www.coe.int/en/web/minorities/ukraine>> accessed 30 April 2024

*thresholds that would trigger the introduction of instruction in, or of, a minority language in a school” and that “it would be advisable to include more precision on the reach of the applicable rights also at the legislative level.”*<sup>74</sup>

With regard to the same right, the Advisory Committee stated that *“the main criteria for the introduction of minority language education should be the existence of a “sufficient demand” rather than the ethnic composition of the region at issue”* and that *“[t]here is a need to provide clearer legal guarantees for the right of persons belonging to national minorities to receive instruction in their language when certain conditions are met, in particular when there is a sufficient demand [...]. Such criteria must be applied in an equitable manner by local authorities and refusals must be subject to challenge through an effective legal remedy.”*<sup>75</sup>

Besides the specific provisions on minority language education, the Framework Convention imposes a general ban on discrimination, according to which *“any discrimination based on belonging to a national minority shall be prohibited”*<sup>76</sup>, moreover, the Framework Convention also specifically obliges states to *“refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.”*<sup>77</sup>

A further relevant provision of the Framework Convention is Article 22, which states that *“Nothing in the present framework Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any Contracting Party or under any other agreement to which it is a Party.”*<sup>78</sup> According to the Explanatory Report attached to the Framework Convention with regard to the above article,

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<sup>74</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Ukraine (adopted on 1 March 2002) § 107

<sup>75</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Ukraine adopted on 30 May 2008 § 191 and § 194

<sup>76</sup> Framework Convention, Article 4 paragraph 1

<sup>77</sup> Framework Convention, Article 5 paragraph 2

<sup>78</sup> Framework Convention, Article 22

*“[t]he aim is to ensure that persons belonging to national minorities benefit from whichever of the relevant national or international human rights legislation is most favourable to them.”*

Based on the interpretation of the Framework Convention in light of the above-mentioned opinions of the Advisory Committee, it can be stated that the provisions of the Framework Convention do not imply that the Ukraine has a discretionary right whether it guarantees the right to minorities to be taught the minority language or to provide education in the minority language as language of instruction. On the contrary, it can be concluded from the opinions of the Advisory Committee that the determination of the level of protection should take into account, among other things, the situation of the minority (e.g. demography) and sufficient demand. In view of the fact that the new Ukrainian legislative package intended to radically change the previous system against the will of minority organisations, sought to radically transform a long-established school system, in large part in an area where the minority concerned is in absolute majority, it can be concluded that the legislative package was in conflict with the provisions of the Framework Convention, as it only sought to ensure the rights of the Hungarian minority at the lowest level of protection, not to mention that the legal distinction between national minorities also raises the issue of discrimination. Although the Amendment Law has significantly improved the situation, the legal uncertainty surrounding the autonomy of minority schools and the further expansion of Ukrainian-language subjects without consulting minority representatives still leaves the situation problematic.

### **3.2.2. Evaluation by the Advisory Committee**

The Advisory Committee has not yet examined the legislative package in detail including the Law on Education, the last published opinion was adopted and published in March 2017, before the adoption of the Law on Education, as part of the fourth monitoring cycle.<sup>79</sup> The mentioned

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<sup>79</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth Opinion on Ukraine - adopted on 10 March 2017 Published on 5 March 2018, <<https://rm.coe.int/fourth-opinion-on-ukraine-adopted-on-10-march-2017-published-on-5-marc/16807930cf>> accessed 5 June 2024

document, however, refers to the draft law on education and its amendment proposals in the course of parliamentary procedure, about which drafts the Advisory Committee expresses its concerns and criticisms.<sup>80</sup> Based on the opinion of the Advisory Committee, the Committee of Ministers adopted certain recommendations addressed to Ukraine with regard to protection of minorities, such as the implementation of the recommendations contained in the Venice Commission Opinion with regard to the Law on Education.<sup>81</sup> The report of Ukraine in the fifth monitoring cycle has been submitted, however, the Advisory Committee has not published its opinion yet.

### **3.3. The European Charter for Regional or Minority Languages**

#### **3.3.1. Applicable rules**

The Charter's structure is different from the Framework Convention, as it allows the ratifying states a considerable degree of discretion as to the applicable provisions.

Article 8 of the Charter contains the undertakings of the contracting states with regard to minority language education, each subparagraph tackling the issue of a certain level of education. Among each subparagraph, there are certain points each with a different level of protection with regard to a regional or minority language, and the contracting states can choose which level of protection they would like to guarantee for the minority languages in question.

Ukraine signed the Charter on 2 May 1996, it was only ratified in 19 September 2006 and it entered into force on 1 January 2006.<sup>82</sup> According to the declaration made by Ukraine in connection with the ratification of the Charter, "*to the languages of the following ethnic*

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<sup>80</sup> Ibid §§ 152-161

<sup>81</sup> Resolution CM/ResCMN(2020)13 on the implementation of the Framework Convention for the Protection of National Minorities by Ukraine (Adopted by the Committee of Ministers on 8 December 2020 at the 1391st meeting of the Ministers' Deputies) 2

<sup>82</sup> Chart of signatures and ratifications of Treaty 148 <<https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treaty=148>> accessed 24 April 2024

*minorities of Ukraine: Belarusian, Bulgarian, Gagauz, Greek, Jewish, Crimean Tatar, Moldovan, German, Polish, Russian, Romanian, Slovak and Hungarian.*”<sup>83</sup>

Ukraine attached the following declaration to the instrument of ratification of the Charter: “[...] *in application of the provisions of the Charter, the measures aimed at the establishment of the Ukrainian language as the official language, its development and functioning in all spheres of social life in the whole territory of Ukraine shall not be construed as preventing or threatening the preservation or development of the languages to which the provisions of the Charter shall apply [...]*”<sup>84</sup>, by which declaration Ukraine explicitly undertook to that strengthening the role of the state language must not be at the expense of the use of minority languages.

With regard to Article 8 of the Charter, Ukraine undertook the following obligations in its instrument of ratification:

Subparagraph a (pre-school education) iii	<p><i>“To make available pre-school education in the relevant regional or minority languages” or</i></p> <p><i>“to make available a substantial part of pre-school education in the relevant regional or minority languages” at least “to those pupils whose families so request and whose number is considered sufficient”.</i></p>
Subparagraph b (primary education) iv	<p><i>“To make available primary education in the relevant regional or minority languages”,</i></p> <p><i>“to make available a substantial part of primary education in the relevant regional or minority languages”, or</i></p>

<sup>83</sup> Reservations and Declarations for Treaty No.148 - European Charter for Regional or Minority Languages (ETS No. 148) <<https://www.coe.int/en/web/Conventions/full-list?module=declarations-by-treaty&numSte=148&codeNature=10&codePays=U>> accessed 24 April 2024

<sup>84</sup> Ibid

	<i>“to provide, within primary education, for the teaching of the relevant regional or minority languages as an integral part of the curriculum” at least “to those pupils whose families so request and whose number is considered sufficient”.</i>
Subparagraph c (secondary education) iv	<i>“to make available secondary education in the relevant regional or minority languages”, “to make available a substantial part of secondary education in the relevant regional or minority languages” or “to provide, within secondary education, for the teaching of the relevant regional or minority languages as an integral part of the curriculum” at least “to those pupils who, or where appropriate whose families, so wish in a number considered sufficient”.</i>
Subparagraph d (technical or vocational education) iv	To provide education to minority pupils in the same manner as it did in case of secondary education.

Besides the above, Ukraine declared in the instrument of ratification that subparagraphs e (university or higher education) iii, f (adult and continuing education) iii, g (teaching of history and culture), h, i (training of teachers) of paragraph 1, and paragraph 2 (teaching in or of the minority language at all appropriate stages of education) of Article 8 shall be applied to the minority languages listed by Ukraine, which I mentioned above. As can be seen, Ukraine's commitments under Article 8 did not set the highest level of protection, and in making these commitments, Ukraine gave itself greater leeway in the application of the Charter's subparagraphs above.

As Fiala-Butora raises our attention to<sup>85</sup>, the Committee of Experts in its second report on the application of the Charter expressly stated that although the level of protection undertaken by Ukraine with regard to the different subparagraphs of paragraph 1 of Article 8 is not the highest, it does not mean that the same level of protection will apply to all national minorities living in Ukraine. The report states that the “*undertakings leave it open which educational models will be implemented in the various places where there exists a sufficient number of minority language speakers*” and that the “*choice of the educational model in a given place will depend on the situation of the minority language in question and the preferences of the parents or students*”. The report also states that “*the fact that the educational models have not been specified in the ratification instrument must not mean that the implementation of the Charter is confined to a lower or the lowest of the options.*” The report also emphasises that if Ukraine does not specify the educational model applicable to each minority language “*teaching in minority languages and teaching of minority languages should be available on the basis of an individual “model mix” reflecting the situation of the given language and the wishes expressed by its speakers.*”<sup>86</sup>

It should be emphasised moreover that the above undertakings were made with regard to “*the territory in which such languages are used, according to the situation of each of these languages, and without prejudice to the teaching of the official language(s) of the State.*”<sup>87</sup> It is easy to determine the territory where Hungarian is used, since most of the Hungarian population in Transcarpathia lives in one block<sup>88</sup>, and the area where Hungarian language is widely used

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<sup>85</sup> Fiala-Butora (n 32) 252

<sup>86</sup> Application of the Charter in Ukraine, 2nd monitoring cycle A. Report of the Committee of Experts on the Charter B. Recommendation of the Committee of Ministers of the Council of Europe on the application of the Charter by Ukraine, Strasbourg, 15 January 2014, §§ 108-110

<sup>87</sup> Charter, Article 8, Paragraph 1

<sup>88</sup> Beregszászi Anikó, *A magyar nyelv Ukrajna oktatási rendszerében: oktatásának elméleti és gyakorlati kihívásai kisebbségi helyzetben (Kárpátalja példája): Habilitációs tézisek* (Pannon Egyetem Veszprém, 2020) 27

can also be easily determined if we look at the geographical location of Hungarian-language schools.

Besides the specific obligations applicable to Ukraine from Part III, the provisions of Part II are also applicable to Ukraine, which includes a provision on general the general ban of discrimination<sup>89</sup>, and a provision according to which Ukraine is obliged to provide the “*appropriate forms and means for the teaching and study of regional or minority languages at all appropriate stages*”<sup>90</sup>

Moreover, Article 4 of the Charter provides for the status of the existing regimes of protection when interpreting the Charter, according to which “[t]he provisions of this Charter shall not affect any more favourable provisions concerning the status of regional or minority languages, or the legal regime of persons belonging to minorities which may exist in a Party or are provided for by relevant bilateral or multilateral international agreements.”<sup>91</sup> The purpose of this provision is similar to the one contained in Article 22 of the Framework Convention. As the Explanatory Report to the European Charter for Regional or Minority Languages states, “*where competing provisions exist on the same subject the most favourable provisions should be applied to the minorities or languages concerned.*”<sup>92</sup>

Article 22 of the Framework Convention and Article 4 of the Charter is particularly relevant, as both provisions refer to possible other international agreements besides the ones in question which include provisions with regards to linguistic and minority rights. Such bilateral international agreement is the Basic Treaty on Foundations of Neighbourhood and

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<sup>89</sup> Charter, Article 7, Paragraph 2

<sup>90</sup> Charter, Article 7, Paragraph 1, Subparagraph f

<sup>91</sup> Charter, Article 4, Paragraph 2

<sup>92</sup> Explanatory Report to the European Charter for Regional or Minority Languages, Strasbourg, 5.XI.1992, <<https://rm.coe.int/16800cb5e5>> accessed 25 April 2024



Cooperation<sup>93</sup> (Basic Treaty) concluded by Hungary and Ukraine, which I will review later in this chapter.

With regard to the Framework Convention, the findings made in point 3.2. are also relevant in this context, the position that Ukraine complies with the Charter by providing the lowest level of protection with regard to a minority that previously had an extensive Hungarian-language school network, thus radically reducing the level of protection, is certainly not in line with the provisions of the Charter as interpreted by the Committee of Experts.

### 3.3.2. Evaluation by the Committee of Experts

In the context of the fourth periodical report submitted by Ukraine in 2019, the Committee of Experts published a statement in 2023 in which it criticised legislative package adopted by Ukraine. The monitoring body stated that the Law on Education reduced “*the scope of education in minority languages especially at secondary school level*”<sup>94</sup>. The Committee of Experts further stated that the provisions of the Law on Education “*represents a setback*” for the languages that have been used traditionally “*as the medium of instruction throughout education*”.<sup>95</sup> The Committee of Experts also referred to the duty of the state to maintain the existing level of protection when it stated that “*new legislation should not have a negative impact on the existing protection of minority languages in education.*”<sup>96</sup> Furthermore, the monitoring body emphasises the “*emblematic value*” of traditional minority language schools for minorities, and notes that the provisions of the Law on Education when referring to separate

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<sup>93</sup> Szerződés a jószomszédság és az együttműködés alapjairól a Magyar Köztársaság és Ukrajna között / Договір про основи добросусідства та співробітництва між Україною і Угорською Республікою

<sup>94</sup> Statement by the Committee of Experts on the legal framework for the implementation of the European Charter for Regional or Minority Languages in Ukraine unanimously adopted by the Committee of Experts at its 76th plenary meeting, Strasbourg, 12-16 June 2023, 2

<sup>95</sup> Ibid 3

<sup>96</sup> Ibid 3

classes (groups) providing minority language education imply that minority language schools “*will no longer function*”<sup>97</sup>, i.e. they will lose their institutional autonomy.

### 3.4. Ukraine’s bilateral international commitments

The Basic Treaty was signed by the representatives of Hungary and Ukraine on 6 December 1991 and came into effect on 16 June 1993. The Basic Treaty includes general provisions with regard to minority protection, it states that ethnic, cultural, linguistic and religious identities of national minorities shall be protected.<sup>98</sup>

A Declaration and a Protocol is attached to the Basic Treaty; however, their legal status is not so clear-cut, there is a controversy as to their legal binding effect.<sup>99</sup>

The Declaration attached to the Basic Treaty contains more concrete obligations applicable to the contracting parties in the field of ensuring the rights of national minorities. Point 3 of the Declaration states that contracting parties are obliged “*to take into account in their policies the legitimate interests of national minorities and take the necessary political, legal and administrative measures to promote the creation of conditions favourable to the preservation and development of their ethnic, cultural, linguistic and religious identity.*”<sup>100</sup>

Point 10 of the Declaration – based on the official Hungarian version – states that “[*t*]he Parties agree to provide the necessary facilities for national minorities to learn their mother tongue and to study in their mother tongue at all levels of education.”<sup>101</sup> However, there is a difference between the Hungarian and the Ukrainian wording of the Declaration. While the Hungarian text clearly states that signatory countries are obliged to ensure both the teaching of the mother tongue *and* studying in the mother tongue, the Ukrainian text states that national minorities can

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<sup>97</sup> Ibid 4

<sup>98</sup> Basic Treaty, Article 17

<sup>99</sup> Fedinec Csilla, Tóth Norbert, *Romantikus jog – fapados gyakorlat: a magyar-ukrán szerződéses viszony* (TK Kisebbségkutató Intézet – L’Harmattan Budapest, 2022) 63

<sup>100</sup> Declaration on the Principles of Cooperation between the Republic of Hungary and the Ukrainian Soviet Socialist Republic in the Field of Ensuring the Rights of National Minorities, Point 3

<sup>101</sup> Ibid Point 17

learn their mother tongue *or* they can learn in their mother tongue on the all levels of education<sup>102</sup>, as Fedinec and Cserniczkó draw our attention to,<sup>103</sup> which caused a disagreement between the two states from 2017.<sup>104</sup> The Declaration states among its closing provisions that it was drawn up in Hungarian and Ukrainian languages, and both language versions are authentic. In the context of this thesis, I do not wish to take a position on the correct interpretation of the relevant provision of the Declaration attached to the Basic Treaty, but I would like to note that the above contradiction between the two versions has not been resolved in a manner agreed by both parties.

Due to the above contradictions, two alternative conclusions shall be made when evaluating the level of protection provided for by the Basic Treaty. If we assume that the process of interpretation will lead to a conclusion that that signatory countries are obliged to ensure both the teaching of the mother tongue and studying *in* the mother tongue, then the Basic Treaty obliges the signatory states to treat national minorities more favourable than the lowest level of protection undertaken by Ukraine stated in the Framework Convention and the Charter. However, if we assume that the wording of the Ukrainian version is in line with the correct interpretation of the Basic Treaty, then one need to conclude that the Basic Treaty does not provide for a more favourable treatment for national minorities than the one stipulated in the Framework Convention and the Charter.

As one can see, there are several ambiguities with regard to the exact obligations stemming from the Basic Treaty due to the fact that even the legally binding nature of the Declaration is questionable, and even if the accept that its provisions became part of the Basic Treaty, there is a material discrepancy between the text of the two language versions, which makes it difficult

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<sup>102</sup> “Сторони погодилися забезпечити належні можливості національним меншостям для навчання своїй рідній мові чи своєю рідною мовою на всіх рівнях навчання.”, <[https://zakon.rada.gov.ua/laws/show/348\\_322#Text](https://zakon.rada.gov.ua/laws/show/348_322#Text)> accessed 25 April 2024

<sup>103</sup> Fedinec, Cserniczkó (n 7) 286

<sup>104</sup> Fedinec, Tóth (n 100) 65

to delineate the specific obligations arising from the Declaration. Therefore, it cannot be concluded whether Ukraine violated the Basic Treaty by adopting the legislative package.

### 3.5. The opinion of the Venice Commission

The Venice Commission published its opinion on Article 7 of the Law on Education in December 2017 based on the request of the Ministry of Foreign Affairs of Ukraine and pointed out several provisions of the legislation which are not in compliance with Ukraine's international commitments and constitutional provisions. In this subchapter, I will focus on the aspects of the opinion which are relevant for my thesis. The opinion raises our attention to issues of legal precision and clarity in the law in question and the questions about the position of the Law on Education in the hierarchy of norms.<sup>105</sup> The Venice Commission acknowledges the legitimate aim of Ukraine as to strengthen the position of the state language and improve the Ukrainian knowledge of minority pupils,<sup>106</sup> however, according to the Commission, the legislation in place is not the appropriate means to realise that aim. The Commission also notes that it has “*serious doubts as to whether the Ukrainian authorities will be able [...] to solve [...] the important problem of the lack of qualified teachers in the Ukrainian language, which will become even more acute under the framework.*”<sup>107</sup>

The Commission also criticises the fact that the adopted legislation diminishes the achieved level of protection. In that regard, the Commission refers to the constitutional provisions of Ukraine, in particular, to Article 53 of the Constitution, which states 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”. With regard to the level of protection of

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<sup>105</sup> European Commission for Democracy Through Law (Venice Commission), Opinion on the Provisions of the Law on Education Which Concern the Use of the State Language and Minority and Other Languages in Education, Adopted by the Venice Commission at its 113th Plenary Session (8-9 December 2017) §§ 51-70

<sup>106</sup> Ibid §§ 71-77

<sup>107</sup> Ibid § 82

constitutional rights and freedoms, Article 22 of the Constitution states that “[t]he content and scope of the existing rights and freedoms shall not be diminished by adopting new laws or introducing amendments to the effective laws.” The above provisions seem to be an absolute limit to reducing the level of protection of human rights which not only guarantees the existing level of protection of human and citizens’ rights enshrined in the Constitution, but it also serves as protection of the rights and freedoms which are stipulated in other laws of Ukraine. Although the meaning of the provision is ambiguous, and the Venice Commission did not “take a firm stance” on the interpretation of the above-mentioned provision,<sup>108</sup> the Opinion in my view, implicitly suggests that the right interpretation of the provision is that it also “refers to the rights and freedoms as guaranteed in the laws implementing the Constitution”<sup>109</sup> and not only the Constitution.

Further to the constitutional provisions, the Venice Commission expressly refers to the opinion of the Committee of Experts<sup>110</sup> in the first monitoring report on Ukraine published in 2010, in which it stated that “a higher level previously achieved should not be lowered because of the ratification of the Charter.”<sup>111</sup> The Venice Commission also expressed its concerns whether there are less restrictive means than the applied measures to reach the goal of the state. In that regard, the Commission emphasises that “it is not clear what other options were considered in trying to address the problem of abilities in Ukrainian [...], such as improving the quality of teaching the Ukrainian language in the minority schools” e.g. “through quality and better-adapted methodology, textbooks and pedagogical material, as well as by improved teacher

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<sup>108</sup> Ibid § 93

<sup>109</sup> Ibid § 89

<sup>110</sup> Ibid § 94

<sup>111</sup> Application of the Charter in Ukraine, Initial monitoring cycle A. Report of the Committee of Experts on the Charter B. Recommendation of the Committee of Ministers of the Council of Europe on the application of the Charter by Ukraine, § 154

*training*".<sup>112</sup> The Commission states that the abolition of the possibility of teaching certain subjects in minority languages in the secondary level is not completely justified.<sup>113</sup>

The Venice Commission further points out that the century-old minority schools system is part of the minorities' cultural heritage and has "*contributed substantially [...] to the preservation and development of their specific (including linguistic) identity.*"<sup>114</sup> In this regard, the Commission refers to the Thematic commentary on the language rights of persons belonging to national minorities, in which the Advisory Committee referred to the importance of the preservation of minority schools, which "*should be guaranteed*".<sup>115</sup> The abolition of minority schools, in the Commission's opinion, "*raises concern in the light of Ukraine's obligations under the Framework Convention (Article 5) and the Language Charter (Preamble)*" and the Ukrainian Constitution (Article 11) "*in terms of protection of minorities' national identities and cultures.*"<sup>116</sup>

The Venice Commission also criticised the Law on Education with regard to its non-compliance with the principle of non-discrimination. The opinion states that the differential treatment of Ukraine's minorities whether their language is categorised as language of indigenous peoples, official language of the EU or not, "*raises questions in the light of the principle of non-discrimination*"<sup>117</sup> and expressly states that the "*less favourable treatment of the Russian language [...] is not justifiable*" considering the principle of non-discrimination.<sup>118</sup>

The Venice Commission concluded that the reformed educational system "*could result in a substantial diminution in the opportunities available to persons belonging to national minorities to be taught in their languages, which would amount to a disproportionate*

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<sup>112</sup> Opinion of the Venice Commission (n 106) § 98

<sup>113</sup> Ibid § 99

<sup>114</sup> Ibid § 100

<sup>115</sup> Ibid

<sup>116</sup> Ibid § 101

<sup>117</sup> Ibid § 109

<sup>118</sup> Ibid § 114

*interference with the existing rights of persons belonging to national minorities*”<sup>119</sup> and adopted several recommendations with regard to Ukraine to correct the problems identified, among others, to ensure “*a sufficient proportion of education in minority languages*”, to “*improve the quality of teaching of the state language*” “*to provide more time for a gradual reform*”, “*to enter [...] into a new dialogue with representatives of national minorities*” and to “*ensure that the implementation of the Law does not endanger the preservation of the minorities’ cultural heritage and the continuity of the minority language education in traditional schools*”.<sup>120</sup>

### **3.6. Conclusion**

Based on the analysis of the international and Ukrainian national standards applicable to the minority language education, it can be concluded that Ukraine is in breach of its obligations stemming from the Framework Convention and the Charter as well. The key question in both the former and the latter treaty is the exact content of state obligations when the text states that a contracting party is obliged to allow students to learn a minority language or to study *in* a minority language. The bodies responsible for the interpretation of the two conventions referred to, the Advisory Committee and the Committee of Experts have both concluded in their opinions and reports on Ukraine that the above provisions of the conventions do not imply that the state parties of the treaties have a discretionary right to decide which level of minority language education they choose, even if the text of the convention is flexible, the level of protection applicable to a given minority must be determined individually in each case, taking into account the specific circumstances.

Nevertheless, it should be stressed that the provisions of the Amendment Law have to a large extent remedied the violation of rights caused by the previous legislation, but the uncertainty

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<sup>119</sup> Ibid § 120

<sup>120</sup> Ibid § 126

surrounding the institutional autonomy of schools and the expansion of the range of subjects taught in Ukrainian may cause further violations of rights for the Hungarian minority in the future.

In order to ensure that the linguistic rights of minorities are not violated in the future, it is important to make the representatives of the two opposing sides aware that, although at first sight the differences between the opinions seem to be significant and deep-rooted in relation to minority education, such differences in reality are not as significant as it first appears and that the goals of the two sides are not incompatible with each other. In the next chapter, I will explore whether the two goals are indeed incompatible.

#### **4. Apparent contradictions between the standpoints: How to reconcile the positions of the two sides?**

##### **4.1. The legitimate aim of the Ukrainian government**

In this chapter of my thesis, I will argue that the contradiction between the positions of the local Hungarian society and the official position of the state is only a *prima facie* contradiction, if one takes a closer look to the genuine interests of the parties of the debate, he or she should take note that those could be reconciled.

Nation-building processes are always difficult, especially in cases like the case of Ukraine, where there are deep-rooted ethnic and language differences between different groups of the society. It makes the situation of the post-Maidan Ukraine even more difficult that the neighbouring Russia used the protection of Russian minorities in Ukraine as a pretext for intervention in the internal affairs of Ukraine and later for military invasion.<sup>121</sup>

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<sup>121</sup> 'Smells of genocide': How Putin justifies Russia's war in Ukraine, <<https://www.aljazeera.com/news/2022/3/9/smells-of-genocide-how-putin-justifies-russias-war-in-ukraine>> accessed 30 March 2024



Due to the above reasons, the scepticism towards and the anxiety caused by some genuine minority-protection efforts of Ukraine's neighbouring countries can be understood, however, cautiousness of the Ukrainian side should not turn into paranoia.<sup>122</sup> It should be stated that it is a legitimate aim of a state to require from its citizens to have a good command of the official state language. Such legitimate state aim, as Fiala-Butora notes,<sup>123</sup> is expressly stated in the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities: the rights of minorities with regard to minority-language education shall prevail *without prejudice to the learning / teaching of the official language of the state*<sup>124</sup>. Therefore, the goal that the Ukrainian government wants to promote the better knowledge of Ukrainian language among the citizens is a legitimate goal, moreover, there is a factual basis which justifies this aim, namely that the knowledge of Ukrainian language is not satisfactory among the Hungarian minority of Transcarpathia.

#### **4.2. The facts serving as the basis of the Ukrainian aim**

The aim determined by the Ukrainian government is based on the real fact that the Ukrainian language skills of minorities in Ukraine, such as Hungarians, are not satisfactory. To support this claim, I will examine the available data on the language proficiency of Hungarians in Transcarpathia and the circumstances that may have caused this situation. In independent Ukraine, the first and so far, the last national census took place in 2001.<sup>125</sup> According to the data gathered in the framework of the national census of 2001, which data is cited by Beregszászi,<sup>126</sup> 41.3% of the persons belonging to the Hungarian nationality in the

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<sup>122</sup> An example for that is for instance the comment of member of parliament Maksym Buzhanskyi, when he warned about the danger that "*the Hungarian authorities are going to save one hundred and fifty thousand Ukrainian Hungarians on Ukrainian territory*", which situation reminds him of 17 September 1939, when the Soviet Union invaded Poland in the Second World War, <<https://t.me/MaxBuzhanskiy/11397>> accessed 30 March 2024

<sup>123</sup> Fiala-Butora (n 32) 254

<sup>124</sup> Framework Convention for the Protection of National Minorities, Article 14 (3), European Charter for Regional or Minority Languages, Article 8 (1)

<sup>125</sup> Fedinec, Cserniczkó (n 7) 279

<sup>126</sup> Beregszászi (n 89) 172

Transcarpathia region do not “*speak freely*” (in Ukrainian: “*вільно володіє*”)<sup>127</sup> any other language besides their native language, and only 46.7% of the Hungarians declared that they “*speak freely*” Ukrainian language. Beregszászi further refers to a representative survey, Tandem 2016, conducted in the year 2016<sup>128</sup>, in the framework of which researchers gathered information on the language knowledge of Hungarians in Transcarpathia on a self-declaration basis. According to the study, 5.3% of the respondents do not understand and do not speak Ukrainian, 12.9% of the respondents understand but do not speak the state language and 27.1% speaks the language with difficulties of expression. The rest, i.e. approximately 55% of the respondents either speak it well, with minor mistakes, speak it well in general, or speak it as a native language<sup>129</sup>. Therefore, based on the data referred to by Beregszászi, it can be concluded that in 2016, before the adoption of the Law on Education and the Law on the State Language, the language knowledge of ethnic Hungarians in Transcarpathia was not satisfactory, as only approximately 55% of the Hungarians belonged to the group whose self-declared knowledge of Ukrainian was good or very good, which is only a slight improvement compared to the data of 2001 which was 46.7% as mentioned above.

Several reasons could be mentioned which can explain the above phenomenon. Most ethnic Hungarians live in a contiguous area close to the Ukrainian-Hungarian border<sup>130</sup>, in the former Berehove Raion (in Hungarian: *Beregszászi járás*), where, according to the 2001 national

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<sup>127</sup> As Csernicskó refers to it in on page 98 of “Nyelvpolitika a háborús Ukrajnában”, according to the practice of the Ukrainian census, “speaking freely” a language means reading, writing and speaking fluently, or speaking fluently in a certain language.

<sup>128</sup> Tandem 2016, <<https://hodinkaintezet.uz.ua/kutatasi-programok/tandem-2016/>> accessed 3 June 2024

“*The questionnaire survey was carried out jointly by the Institute for National Policy Research [Nemzetpolitikai Kutatóintézet], the Momentum Doctorandus social organisation, the Hodinka Antal Centre for Linguistic Research of the Ferenc Rákóczi II Transcarpathian Hungarian College and the Tivadar Lehoczky Institute for Social Research, while the fieldwork among the Ukrainian population was carried out by the Department of Sociology and Social Work of the Uzhhorod National University and the Carpathian Public Opinion Research Centre. [...] The research project was funded by the Bethlen Gábor Fund, with budgetary support from the Hungarian Prime Minister's Office.*”

<sup>129</sup> Beregszászi (n 89) 174

<sup>130</sup> Ibid 27

census, 76.1% of the residents were ethnic Hungarians<sup>131</sup>, and there were 44 settlements in Transcarpathia, where the percentage of native Hungarian speakers were above 90%.<sup>132</sup> The above data shows that Hungarians lived basically in a block where, given the extensive Hungarian-language infrastructure and the majority of Hungarian-speaking population, it was possible to get by only with speaking Hungarian or, in certain cases, Russian, without Ukrainian language skills<sup>133</sup>. According to the Tandem 2016 representative study referred to above and analysed by Cserniczkó and Márku, there were only three life situations when the majority of ethnic Hungarians in Transcarpathia used the Ukrainian language, which are shopping, visiting the doctor and during administrative procedures. Only approximately 27% of Hungarians used Ukrainian when speaking with friends, 28% when speaking with neighbours and 46% in the workplace. The use of Ukrainian, however, does not mean that Hungarian is used significantly less as a result of the above; both languages are used in the above-mentioned situations, and there are only two life situations when the percentage of Hungarians who use Hungarian language is below 80%, which is at the doctor's office and during administrative procedures.<sup>134</sup>

A further important factor mentioned by Beregszászi is that during Soviet times, Ukrainian language was not taught in minority-language in schools, pupils were obliged to learn Russian in such schools,<sup>135</sup> and Russian language, although it was not formally designated as official language of the Soviet Union, enjoyed a privileged role and served as the main language of official communication.<sup>136</sup> Moreover, Russian language served as a *de facto* second state language without an official status until 2013.<sup>137</sup> Given this historical background, it is not

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<sup>131</sup> Dupka György, Demográfia, 2003 <<https://kmmi.org.ua/konyvtar/demografia/reszletes/demografia>> accessed 30 March 2024

<sup>132</sup> Beregszászi (n 89) 184

<sup>133</sup> Ibid 172

<sup>134</sup> Cserniczkó István and Hires-László Kornélia, Nyelvhasználat Kárpátalján a Tandem 2016 adatai alapján in Cserniczkó István és Márku Anita (eds), *A nyelvészet műhelyeiből, Tanulmányok a Hodinka Antal Nyelvészeti Kutatóközpont kutatásaiból* (V. Ungvár: Autdor Shark, 2019) 69

<sup>135</sup> Beregszászi (n 89) 158

<sup>136</sup> Cserniczkó, István (2001) Az ukrán nyelv oktatásának problémái Kárpátalja magyar iskoláiban, *Nyelvünk és Kultúránk*, XXXI. évfolyam 114. szám (2001/2) 15

<sup>137</sup> Fedinec, Cserniczkó (n 7) 282

surprising that the proportion of those Hungarians from Transcarpathia who, according to the Tandem 2016 survey, speak Russian with minor errors at most is 47.4%.<sup>138</sup>

A further, and rather obvious reason why the Ukrainian language skills of ethnic Hungarian in Transcarpathia is not satisfactory is the lack of adequate language teaching. The suboptimal language skills of ethnic Hungarian pupils in the region have a tangible effect on the study results and school-leaving exam results of local Hungarian children. Beregszászi, in the previously cited study refers to data according to which the percentage of pupils in Hungarian schools in Transcarpathia who do not have the points necessary for higher education in the subject of Ukrainian language and literature was around 60% in the years 2015-2018, however, the national average of such value was between 8% and 14% in the years 2015-2018<sup>139</sup>, which means that the percentage of pupils attending to Hungarian minority schools who are excluded from higher education due to their not satisfactory school-leaving exam in Ukrainian language and literature was several times higher than the national average. However, the author argues that the results of Hungarian pupils in Ukrainian language and literature do not clearly correlate with the language skills of such students due to the fact that Ukrainian language is a subject which deals mostly with theoretical grammar rules and it is not a subject in the framework of which the actual language skills of pupils are measured.<sup>140</sup> Regardless of whether we agree with Beregszászi's conclusion, it is clear that there are problems with the teaching of Ukrainian language in minority schools.

A further problem with the teaching of the official language is that although there are some methodological differences between the teaching of the subject of Ukrainian language in majority language and minority-language schools,<sup>141</sup> such differences do not reflect the

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<sup>138</sup> Csernicskó, Hires-László (n 135) 47

<sup>139</sup> Beregszászi (n 89) 160

<sup>140</sup> Ibid 170-171

<sup>141</sup> Ibid 166

fundamental differences between pupils whose mother tongue is not Ukrainian and whose mother tongue is Ukrainian or who use Ukrainian frequently. It should be noted that the Hungarian language is fundamentally different from Ukrainian language, the language family where it belongs and their vocabulary are dissimilar, therefore, it creates additional difficulties for monolingual Hungarian children to perform well during such exams, compared to for example the case of Belorussian and Russian, which languages are linguistically closer to each other.<sup>142</sup> A possible solution to overcome the difficulties that ethnic Hungarian pupils face in relation to Ukrainian language would be the increased number of Ukrainian language classes and the teaching of the state language as a foreign language to minority children, as Tove Skutnabb-Kangas recommends,<sup>143</sup> however, currently this is not the case. Hungarian minority schools face discrimination in terms of the number of Ukrainian language classes, there are less Ukrainian classes in Hungarian schools in Transcarpathia than in schools where the only teaching language is Ukrainian, as Beregszászi draws our attention to.<sup>144</sup> According to Beregszászi, the total number of classes of the subject “*Ukrainian language*” is 1,627 hours for pupils attending to majority schools the during 11 grades, however, pupils studying in Hungarian minority schools spend only 1,050 hours with studying Ukrainian languages, so 577 hours less. She also points out that the difference is the biggest in the lower grades (grades 1-4), nevertheless, pupils are obliged to solve the same tasks in the school leaving exam irrespective of the language of instruction in the school.<sup>145</sup> Besides the absence of the necessary number of teaching hours, inadequate language teaching, according to Csernicskó, is caused by the lack of properly trained teachers (e.g. in the schoolyear of 2008/2009, 40% of the Ukrainian language teachers in minority-language schools in Transcarpathia did not have Ukrainian

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<sup>142</sup> Teaching the Mother Tongue in a Multilingual Europe., Tulasiewicz, Witold, Ed.; Adams, Anthony, Ed., London; New York: Continuum, 1998, 185

<sup>143</sup> Tove Skutnabb-Kangas, Mother-Tongue-Medium Education in Carol A. Chapelle (ed) *The Encyclopedia of Applied Linguistics* (Wiley-Blackwell 2013) 1

<sup>144</sup> Beregszászi (n 89) 167

<sup>145</sup> Ibid

language teaching qualifications<sup>146</sup>), the lack of appropriate language books, the lack of an appropriate approach and methodology (i.e. not teaching the state language as second or foreign language) etc.<sup>147</sup>. As the American linguists, John Baugh, cited by Csernicskó, formulated, the teaching of the state language (second language) according to mother tongue methodology is a pedagogical error,<sup>148</sup> which “*pedagogical errors*” clearly prevailed and prevail in post-soviet Ukraine, as opposed to for example contemporary Slovakia, where special methodology is applied with regard to the teaching of the state language for pupils with a minority-language mother tongue.<sup>149</sup>

The Educational Concept of the Hungarian Pedagogical Association of Transcarpathia mentions further problems: “[...] *there are no precise, explicit requirements: no one knows what level of Ukrainian a native Hungarian speaker who enters school without speaking the state language should have by the end of the different levels of education [...]*” and that practically, the system expects children to speak Ukrainian on “*the level of the mother tongue, which is professionally unacceptable, unrealistic and unachievable, an impossible expectation.*”<sup>150</sup>

The shadow report by Hungarian Researchers and NGOs in Transcarpathia regarding the third periodic report of Ukraine on the implementation of the Charter from 2016 also highlighted the inadequate teaching of Ukrainian in minority language schools and named the (i) lack of adequately qualified teachers, (ii) the lack of appropriate textbooks, (iii) the homogenisation

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<sup>146</sup> Ibid 12

<sup>147</sup> Csernicskó István, Az ukrán mint államnyelv oktatása Kárpátalján: helyzetkép, problémák, feladatok in Vančo Ildikó and Kozmács István (eds): *Nyelvtanulás – nyelvtanítás Fókuszban az államnyelv oktatása kisebbségek számára* (Univerzita Konštantina Filozofa v Nitre Filozofická Fakulta, Nitra, 2015) 12-22

<sup>148</sup> Ibid 14

<sup>149</sup> Mária Alabánová, A szlovák nyelv és a szlovák irodalom a Magyar tanítási nyelvű iskolákban 1991-től napjainkig in Vančo Ildikó and Kozmács István (eds): *Nyelvtanulás – nyelvtanítás Fókuszban az államnyelv oktatása kisebbségek számára* (Univerzita Konštantina Filozofa v Nitre Filozofická Fakulta, Nitra, 2015) 59-68

<sup>150</sup> Célok és Feladatok az ukrán mint államnyelv oktatásának javítása területén (*Goals and Tasks to improve the teaching of Ukrainian as a state language*), accepted on 26<sup>th</sup> General Assembly by the Hungarian Pedagogical Association of Transcarpathia, 1

(i.e. universal curricula, textbooks and methods) and (iv) the different number of hours teaching Ukrainian as the reasons for the low quality of teaching.<sup>151</sup>

Therefore, it can be concluded that although it is, and it was, under the previous system, mandatory to learn Ukrainian language and literature in Ukrainian language, the Ukrainian school system does not provide minority children with the opportunity to adequately learn the state language as a foreign language, which is reflected by the language speaking qualities of ethnic Hungarian pupils, and it is merely an expectation of the state from minority children to know the state language, the conditions for which the state does not actually create, even though it should. This situation obviously required a solution, which was also recognised by Ukrainian government officials. In 2017, Liliya Hrynevych, the minister for education at that time, emphasised that there is a “*threatening trend*” in Ukraine that certain minority-language schools do not teach a sufficient level of proficiency in Ukrainian language, and due to that situation, pupils belonging to minorities do not have equal access to higher education, which trend is reflected by the fact that one third of the pupils leaving secondary education in Transcarpathia are not able to go to a university because of the poor results in Ukrainian school-leaving language exam.<sup>152</sup>

#### **4.3. Critique of the official Ukrainian proposals**

The solution from the Ukrainian state to that situation was the adoption of a legislative package which I analysed and evaluated in detail in Chapter 2 of my thesis.

I argue that the problem with the above legislative package is not only that it constitutes a step backwards in terms of linguistic human rights, as demonstrated in Chapter 3 of this thesis, but

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<sup>151</sup> Written Comments by Hungarian Researchers and NGOs in Transcarpathia (Ukraine) on the Third Periodic Report of Ukraine on the implementation of the European Charter for Regional or Minority Languages, submitted for consideration by the Council of Europe’s Committee of Experts on the Charter, Berehovo – Beregszász, 11 July 2016, 13-17

<sup>152</sup> Лілія Гриневич: У розвитку мовної освіти в Україні є три основні напрямки, і найважливіший – забезпечення вільного володіння державною мовою, <<https://mon.gov.ua/ua/news/usi-novivni-novini-2017-04-13-liliya-grinevich-u-rozvitku-movnoyi-osviti-v-ukrayini-e-tri-osnovni-napryamki>> accessed 3 June 2024

that this is not an effective way of teaching the official state language. Three important critiques from a linguistic and pedagogical perspective are that (i) the legislative changes do not go hand in hand with the increase of the quality of the teaching of Ukrainian language, (ii) the methods of the teaching still do not reflect the fundamental differences between native speakers of Ukrainian and whose native language is a different one and (iii) it would like to introduce bilingualism in general secondary education based on the principle of subtractive teaching of the state language and not on the additive principle. Of course, further criticisms can be formulated, as I have already mentioned some of them in this thesis, but in this section, I will only describe the most important linguistic and pedagogical problems that have been identified in the relevant literature.

As mentioned above, an obvious criticism towards the above-mentioned legislative package is that it does not include any provisions which could improve the language skills of minority pupils by the improvement of the targeted and quality education (including better trained teachers, better language books, increased number of language classes) and there is no information whether the state will allocate additional funds to the teaching of Ukrainian language, as stated in the Educational Concept referred to in chapter 3.2.;<sup>153</sup> the legislative package only wishes to solve the problem with additional classes taught in Ukrainian language at the expense of classes in Hungarian.

Although, according to the Hungarian Pedagogical Association of Transcarpathia, the minister for education, Liliya Hrynevych, in her visit at Transcarpathia in 2017 acknowledged the shortcomings of the teaching of the Ukrainian language and declared that the state language should be taught as a second language to minorities<sup>154</sup>, the text of the legislation has not followed the route that the minister set out as I analysed in Chapter 2, and it still does not include

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<sup>153</sup> Goals and Tasks to improve the teaching of Ukrainian as a state language (n 140) 4

<sup>154</sup> A Kárpátaljai Magyar Pedagógusszövetség XXVI. Közgyűlésének nyilatkozata, <<https://kmpsz.uz.ua/hirek/a-karpataljai-magyar-pedagogusszovetseg-xxvi-kozgyulesenek-nyilatkozata.html>> accessed 3 June 2024



guarantees to ensure that non-native speakers of Ukrainian are taught the state language using different methods.

According to the Hague Recommendations regarding the Education Rights of National Minorities & Explanatory Note (Recommended by the OSCE High Commissioner on National Minorities, 1 October 1996) with regard to minority education at primary and secondary levels, the “*official State language should also be taught as a subject on a regular basis preferably by bilingual teachers who have a good understanding of the children's cultural and linguistic background.*”<sup>155</sup> The above recommendation is in line with the objectives of the Educational Concept referred to above, which states that the effective teaching of the state language requires specially trained bilingual teachers of Ukrainian language.<sup>156</sup>

A further problem with the first version of the Law on Education is that according to it, minority-language schools should have been converted from an effectively monolingual Hungarian-language education to bilingual education. Moreover, according to Csernicskó<sup>157</sup>, the bilingualism introduced by the new legislation cannot be characterised as “*additive bilingualism*”, but so-called “*subtractive bilingualism*”, due to the fact that according to the new legislation, pupils belonging to national minorities will learn Ukrainian instead of, rather than alongside their mother tongue.<sup>158</sup> According to the original version of the new legislation, the subjects taught in Ukrainian are to replace the subjects previously taught in the minority language, which system can be described as a “*zero sum game*” in terms of the relationship between Hungarian and Ukrainian, as Fiala-Butora put it.<sup>159</sup>

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<sup>155</sup> The Hague Recommendations regarding the Education Rights of National Minorities & Explanatory Note (Recommended by the OSCE High Commissioner on National Minorities, 1 October 1996) point 11 and 13

<sup>156</sup> Goals and Tasks to improve the teaching of Ukrainian as a state language (n 140) 1

<sup>157</sup> István Csernicskó, The Law of Ukraine “On education”, Language Conflicts, and Linguistic Human Rights in Tóth József (ed), *Értékmentő és értékteremtő humán tudományok* (Akadémiai Kiadó, 2021) 6

<sup>158</sup> Goals and Tasks to improve the teaching of Ukrainian as a state language (n 140) 1

<sup>159</sup> Fiala-Butora (n 32) 254

The concept of additive and subtractive bilingualism as linguistic concept requires further explanation. Although the above categorisation was criticised lately by certain linguists (e.g. Ofelia García<sup>160</sup>), it is a widely known and used concept introduced by Lambert in 1974.<sup>161</sup> Cummins refers<sup>162</sup> to the definition of Baker and Prys Jones in his 2017 article, which authors define the above types of bilingualisms as follows:

*“Additive Bilingualism: A situation where a second language is learnt by an individual or group without detracting from the maintenance and development of the first language. A situation where a second language adds to, rather than replaces the first language.”*<sup>163</sup>

*Subtractive Bilingualism: A situation in which a second language is learnt at the expense of the first language, and gradually replaces the first language (e.g. immigrants to a country or minority language pupils in submersion education).”*<sup>164</sup>

Practices of subtractive bilingualism are criticised, among others by Tove Skutnabb-Kangas, who characterised subtractive teaching that *“a new (dominant/majority) language is learned at the expense of the mother tongue. (...) In additive language teaching and learning the new language is learned in addition to the mother tongue which continues to be used and developed.”*<sup>165</sup> As Tove Skutnabb-Kangas states *“the longer indigenous and minority children in a low-status position have their own language as the main medium of teaching, the better*

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<sup>160</sup> García, O. (2009), *Bilingual education in the 21st century: A global perspective* (Malden, MA: Wiley-Blackwell)

<sup>161</sup> Lambert, W. E. (1974), Culture and language as factors in learning and education in F. E. Aboud & R. D. Meade (eds), *Cultural factors in learning and education, Proceedings of the Fifth Western Washington Symposium on Learning* (pp. 99–122) (Bellingham, WA: Western Washington University)

<sup>162</sup> Teaching Minoritized Students: Are Additive Approaches Legitimate? September 2017 Harvard Educational Review 87(3):404-425, 406

<sup>163</sup> Baker, C., & Prys Jones, S. (1998) *Encyclopedia of bilingualism and bilingual education* (Clevedon, UK: Multilingual Matters) 698

<sup>164</sup> Ibid 706

<sup>165</sup> Dr. Skutnabb-Kangas, Tove, The right to mother tongue medium education - the hot potato in human rights instruments, II Mercator International Symposium: Europe 2004: A new framework for all languages? 27-28 / 2 / 2004 Tarragona – Catalunya, 5

*they also become in the dominant language, provided, of course, that they have good teaching in it, preferably given by bilingual teachers, just as the Hague Recommendations on the Educational Rights of National Minorities and the UNESCO Education Position Paper Education in a multilingual world (2003) recommend.*"<sup>166</sup> The above arguments of Skutnabb-Kangas is also backed with empirical evidence. The papers referred to by Skutnabb-Kangas<sup>167</sup> which studied native Spanish-speaking students in the USA conclude that the pupils whose main medium of education was their mother tongue for the most extended period performed best in school and reached the highest level of the official language as well. Such findings were also confirmed by her own study performed among Finnish working-class immigrants in Stockholm, Sweden.<sup>168</sup>

The negative aspects of subtractive bilingualism and the positive aspects of additive bilingualism were also emphasised in the Good Practices of Multilingual and Minority Language Medium Education published by the Council of Europe.<sup>169</sup> The above document states that subtractive bilingualism "*encourages minority children to ultimately abandon their mother tongue and transition to the use of the official language*", therefore aims at the assimilation of linguistic minorities<sup>170</sup>. Additive bilingualism, however "*seeks to promote high levels of fluency in both the minority language as well as in the official language.*"

A reason why the achievement of certain level of bilingualism by way of the above explained additive method would be beneficial, is that bilingual children have a cognitive advantage compared to monolingual children.<sup>171</sup> As May emphasises, "[t]here are now close to 150 major research studies [...] which consistently report significant advantages for bilingual students on

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<sup>166</sup> Ibid 2

<sup>167</sup> Ramirez et al. (1991) and Thomas & Collier (1997, 2002) referred to in Dr. Skutnabb-Kangas (n 167)

<sup>168</sup> Dr. Skutnabb-Kangas (n 167) 3

<sup>169</sup> Good Practices of Multilingual and Minority Language Medium Education published by the Council of Europe, Council of Europe Publishing, November 2020

<sup>170</sup> Ibid 11

<sup>171</sup> Stephen May, "Rearticulating the Case for Minority Language Rights", 4(2) Current Issues in Language Planning (2003) 117

*a range of metalinguistic and cognitive tasks”, and that bilinguals “are superior to monolinguals on divergent thinking tasks and in their analytical orientation to language, and demonstrate greater social sensitivity than monolinguals in situations requiring verbal communication.”<sup>172</sup>*

Although the previously analysed Amendment Law abandons the idea, at least in the case of EU languages that the percentage of the subjects taught in Ukrainian gradually increases in higher grades, the original concept of the Law on Education, as analysed in point 2.2.1., was based on that concept, and it corresponded to the idea of subtractive bilingualism, as essentially, it wanted to achieve the better knowledge of the state language by increasing the quantity of teaching hours in that language and not by improvement of the quality of the teaching of Ukrainian. However, the idea behind the previous legislation is presumably still in the minds of the policy makers, and for languages that are not in a privileged position as being official EU languages, this idea appears to remain the backbone of the legislation.

Although it seems that there are fundamental differences between the interests of the opposing sides, as the fundamental interest of minority representatives is the preservation of the current system while improving state language education, and on the contrary, the government's interest is essentially to ensure that the state language is used as widely as possible by minorities, an objective it is willing to achieve even at the cost of assimilation. However, I will argue in the next chapter that the general aim of both interested parties is common and overcoming the contradiction between the two positions is simpler than it first appears as it only requires changes in the methodological approach with regard to the teaching of the state language.

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<sup>172</sup> Ibid 120

## **5. Conclusions and proposal to solve the contradiction**

As I concluded in subchapter 3.6. above, Ukraine breached its obligations stemming from the Framework Convention and the Charter, however, the Amendment Law mostly remedied the violation of rights caused by the previous versions of the laws in question, but the legal uncertainty surrounding the institutional autonomy of schools and the expansion of the range of subjects taught in Ukrainian may cause further violations of rights for the Hungarian minority in the future.

Nevertheless, I would like to close my thesis with a forward-looking proposal. For that purpose, I assumed that the goal of Ukraine is to integrate its citizens belonging to minorities into the majority society by teaching the official language rather than assimilate them, and that the goal of the Hungarian minority is the preservation of their minority language and culture rather than self-segregation.

In the light of the above assumptions, I believe that minority education should be reformed in such a way that the system established (i) provides high quality Ukrainian language teaching in minority schools by appropriately qualified, preferably bilingual teachers, taking into account minority specificities, i.e. teaching the state language as a second language and (ii) maintains the dominance of the minority language in primary and secondary education for minorities, with the teaching of Ukrainian language, Ukrainian literature, the history of Ukraine and the Defence of Ukraine in Ukrainian, which would result in a significant improvement in minority students' knowledge of the official language, which I believe can be to the long-term advantage of both parties.

The goal, if the above assumptions are true, is therefore common: to improve the teaching of Ukrainian language in the state school system in compliance with international treaties on the protection of minorities, which could help to eliminate the disadvantages that affect minorities in domestic higher education, labour market and other aspects of social life due to the fact that

they have an unsatisfactory knowledge of the official language, and the achievement of which can promote better integration of persons belonging to minorities, which could help to overcome economic disadvantages and thus lead to greater prosperity for the entire Transcarpathia region. These goals should be goals which are also accepted by the representatives of the Hungarian minority, as they all contribute to the better well-being of the local Hungarian community and provide opportunities for the prosperity of the areas with a Hungarian population, moreover, they also bring Ukraine closer to European integration, as respect for and protection of minorities is a fundamental condition for admission to the European Union under the Copenhagen criteria<sup>173</sup>.

The most effective way to achieve the common goal would be to teach Ukrainian as a foreign language using appropriate methods, with appropriate teachers and sufficient numbers of lessons just as in Slovakia, as discussed in subchapter 4.2., and to develop this new system of teaching of the state language with the involvement of minority representatives.

In order to achieve the above-mentioned goals, the Ukrainian government must break with the subtractive concept of education and must embrace the idea that minority pupils should not learn certain subjects in Ukrainian at the expense of the subjects studied in their own minority language, but in addition to it, as on the long run it is the most effective way of achieving the aim of the state. In this respect, it could be an important argument that teaching certain subjects in Ukrainian and thus improving the knowledge of the language could help students to remain in their home country by not necessarily forcing them to move to their kin-state for higher education, as it would make it easier for them to enter Ukrainian-language higher education institutions.

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<sup>173</sup> Accession criteria (Copenhagen criteria) <<https://eur-lex.europa.eu/EN/legal-content/glossary/accession-criteria-copenhagen-criteria.html>> accessed 4 June 2024

Moreover, the Ukrainian government should admit that without the allocation of additional funds, such education reform will remain ineffective, and will only take away from the Hungarian minority and give nothing, in view of which it is not surprising to see the sharp rejection from the local Hungarian community. The reference by the Ukrainian side to the lack of resources is also objectionable from the point of view that Hungary has invested considerable sums in the development of minority school system in Ukraine, according to the minister of foreign affairs of Hungary, Mr Péter Szijjártó, as of 2020 more than EUR 250 million.<sup>174</sup> However, the question of the financing of minority education in Ukraine would require separate research.

In addition to the above pedagogical and linguistic considerations, there are of course a number of problematic elements of the legislation, which I have analysed previously, including the planned abolition of the organisational autonomy of minority-language schools. Nevertheless, by making the methodological changes described above, and trusting local institutions with adapting national policies to the needs of the local student body, I believe that the above controversies can be reconciled.

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<sup>174</sup> Dmytro Tuzhanskyi, How Ukraine must develop its minority policy to avoid the “ethnic trap” during EU accession negotiations, and how international partners could help, 3 <<https://www.globsec.org/sites/default/files/2023-02/How%20Ukraine%20must%20develop%20its%20minority%20policy%20to%20avoid%20the%20E2%80%9Cethnic%20trap%E2%80%9D%20during%20EU%20accession%20negotiations%2C%20and%20how%20international%20partners%20could%20help.pdf>> accessed 4 June 2024

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