

ANALYTICAL NOTE

on the Law 'On ensuring the functioning of Ukrainian as the State language'

On 25 April 2019, the Parliament of Ukraine adopted the law no. 2704-VIII 'On ensuring the functioning of Ukrainian as the State language' which is aimed at strengthening the role of the official language.

The law was officially published on 16 May 2019. It entered into force on 16 July 2019.¹ The law provides for a transitional period whereby several provisions, such as those relating to the use of language in education, in print media, publishing, advertisement and in the provision of services, will commence at a later stage (between January 2020 and January 2030).

The United Nations Human Rights Monitoring Mission in Ukraine (HRMMU) has followed the parliamentary processes, which led to the adoption of the law, since the beginning. In the course of the legislative process, HRMMU had raised its concerns in relation to the law's compatibility with international standards and had shared its analysis and recommendations with the Government. Many of the controversial points were subsequently addressed in the final version.

This briefing note outlines the key features of the final text, indicating the main changes made to the text following the advocacy pursued by HRMMU and the international community. It also provides comments and recommendations.

The law in brief:

- The law aims to regulate the use of Ukrainian as the State language in **a large circle of spheres of public life, with the exception of religious rites.**
- As a positive shift, **the State undertakes to provide adequate educational opportunities** and to make available adult preparatory language training programmes for Ukrainian citizens, foreigners and stateless persons.
- Some of the most serious human rights **concerns highlighted by HRMMU in the first draft were, to a certain extent, mitigated**, particularly in respect to language proficiency requirements for accessing public office, as well as to the linguistic requirements in the electoral process, in the media and in the commercial spheres.
- At the same time additional concerns arise as the law **tightens the language quota requirements for broadcasters** by increasing the proportion of Ukrainian language content from 75 to 90 per cent for national and regional broadcasters and from 60 to 80 percent for the local ones.
- Furthermore, the law makes an **unjustified distinction** between European Union official languages and other minority languages providing a preferential treatment to the former.
- The main concern remains that, in the absence of special legislation regulating the use of minority languages in Ukraine, the provisions outlined by the law **do not ensure sufficient clarity or provide solid legal guarantees for the protection and the use of minority languages. The relevant legislation on minority issues has to be elaborated as a matter of priority in order to prevent violations that could stem from the implementation of the law.**

¹ On 22 May, the Venice Commission received a request from the Chair of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe to analyse the law. The draft opinion will be discussed by the Commission after the parliamentary elections of July 2019. Furthermore, on 21 June, a group of members of parliament filed a complaint to the Constitutional Court challenging the constitutionality of the Law, alleging procedural violations during the review and adoption of the law by the Parliament. The appeal also refers to a discriminatory distinction between the European Union official language and other minority languages.



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I. Aim of the law

- The status of Ukrainian as the State language is enshrined in the Constitution of Ukraine. The preamble of the law refers to article 10(2) of the Constitution concerning the State's obligation to ensure *"the comprehensive development and functioning of the Ukrainian language in all spheres of public life throughout the entire territory of Ukraine"*.
- The preamble quotes the Opinion of the European Commission for Democracy through Law (Venice Commission) (2011)² on Ukraine's previous legislation on principles of the State language policy: *"[T]he Commission recalls that, in the specific context of Ukraine, it is of key importance to opt for a balanced policy in this field, and considers that such an approach inter alia requires adequate guarantees for the preservation of the State language as a tool for integration within society"*. It also quotes the Commission's recommendation, advising *"the Ukrainian legislator to identify more adequate solutions to confirm the pre-eminence of the Ukrainian language as the only State language, and to take additional measures to consolidate its role within Ukrainian society."*³
- The preamble declares the following aims of the law: *"strengthening of state-building and consolidation functions of the Ukrainian language, enhancing its role in ensuring the territorial integrity and national defence of Ukraine"* and *"creating proper conditions for protection of linguistic rights and needs of Ukrainians"*.
- Paragraph 4 of the law's transitional provisions state: *"until cessation of temporary occupation of parts of Ukrainian territory one of the aims of this law is to promote the learning of Ukrainian by the citizens residing in the temporarily occupied territory of Ukraine"*. The respective measures are to be defined by the Cabinet of Ministers within six months from the law's entry into force.

Comment:

The promotion of national identity and the official language is a legitimate objective from a human rights perspective.⁴ However, measures that seek to promote them must neither be coercive nor contrary to international human rights obligations.

While the protection of the Ukrainian language is constitutionally guaranteed, article 10(3) of the Constitution of Ukraine also guarantees: *"free development, use, and protection of Russian and other languages of national minorities of Ukraine"*.

II. Scope of the law

- The law aims to regulate the functioning and use of Ukrainian as the official language in a large circle of spheres of public life *"determined by this law"* throughout the territory of Ukraine.
- The law will not apply to the realms of private communication and religious rites.
- The law specifies that: *"the use of the Crimean Tatar language and other languages of indigenous peoples and national minorities of Ukraine is regulated by the law on realization of the rights of indigenous peoples and national minorities of Ukraine with due consideration to the specific rules set out by this law"*.

² The current legislation replaces a controversial law on language (Ukraine, Law of Ukraine on the Principles of the State Language Policy, No. 5029-VI of 3 July 2012) which was annulled by the Constitutional Court in February 2018 on procedural grounds. The Venice Commission had issued an opinion on the draft version of this law (CDL-AD(2011)047, Venice Commission, Opinion on the Draft Law on Principles of the State Language Policy of Ukraine, 19 December 2011, para 41).

³ *Ibid.* para 42.

⁴ Office of the High Commissioner for Human Rights (OHCHR), Language rights of linguistic minorities, p. 14.

- The law ensures the protection of the Ukrainian sign language.

Comment:

The final text makes it clear that the law will apply to an exhaustive list of spheres of public life which, according to chapters II-V of the law, covers: citizenship, governance and public services, electoral process, employment, education, science, culture, sports, public broadcasting, publishing, print media, advertising, software, public information, public events, consumer protection, technical and project documentation, health care, transport, telecommunications, and business accountability.

However, it remains unclear how the term ‘private communication’ will be defined for the purposes of the law. A definition of private communication currently exists in Article 258 of the Criminal Procedural Code of Ukraine, which reads: “*Communication is considered to be private insofar as information is transmitted and stored under such physical or legal conditions where participants to the communication can expect that such information is protected from interference on the part of others*”. If a similar interpretation was to be applied in the context of the analysed law, this would contravene the right to freedom of expression and the rights protected under Article 10 of the Framework Convention for the Protection of National Minorities (which Ukraine ratified in 1998), as private parties must be allowed to use a minority language among themselves, including when visible or audible by others in public spaces.⁵ The promotion or protection of official language is a legitimate objective; however it should not be interpreted in such a way as to prevent the use of minority languages in private matters.

The law expressly exempts from the scope of its application the performance of religious rites. This should be positively assessed, as in minority contexts the practice of religion is often closely related to the preservation of cultural and linguistic identity. The right to use a minority language in public worship is as inherent as the right to establish religious institutions and the right to public worship itself.⁶

The references to the “*law on the realization of the rights of indigenous peoples and national minorities of Ukraine*” are made throughout the text of the law. Since such a law is currently lacking, it is established in the transitional provisions that the Cabinet of Ministers shall submit to the Parliament a draft law on the realization of the rights of indigenous peoples and national minorities of Ukraine within six months from the entry into force of the law (by January 2020). Nonetheless, an explicit instruction for such a prospective law to be applied “*with due consideration to the specific rules set out by this law*” should not be interpreted in a way that would prejudice the effective provision of legal guarantees for the protection and the use of minority languages through the relevant prospective legislation.

- **Recommendation:** The legal framework should guarantee the use of any language in private activities, whether these are economic, social, political, cultural or religious, including in public view and locations.⁷

III. Citizenship

- The law requires every citizen of Ukraine to have command of the Ukrainian language. It stipulates that the State shall guarantee to every citizen an opportunity to learn the official language through a network of pre-primary, general and higher education establishments. The State shall also organize free adult Ukrainian language

⁵ OHCHR, Language rights of linguistic minorities, p. 35.

⁶ Organization for Security and Co-operation in Europe High Commissioner on National Minorities, Oslo Recommendations Regarding the Linguistic Rights of National Minorities, p.14.

⁷ OHCHR, Language rights of linguistic minorities, p. 34.

courses for citizens of Ukraine, who did not have an opportunity to master the official language in the past.

- It also declares the State's obligation to make available preparatory language training programmes for Ukrainian citizens, foreigners and stateless persons. The respective measures are to be defined under a State Program for the Promotion of the Learning of the Ukrainian Language, which is to be developed by the Cabinet of Ministers within six months from the law's entry into force.
- The law specifies the language requirement for the naturalization process. A person applying for Ukrainian citizenship will need to prove a certain level of proficiency in the Ukrainian language, which is to be determined by the National Commission on the State Language Standards (see Section XII below). This provision will be applicable in two years after the law's entry into force.
- The law foresees an exception to the language requirement for the naturalization process of persons with "*outstanding merits to Ukraine, including foreigners and stateless persons serving in the Armed Forces of Ukraine and awarded with a State award, and persons whose admission to the citizenship of Ukraine constitutes a state interest*". Such individuals are allowed to prove their command of the Ukrainian language within a year since obtaining the Ukrainian citizenship.

Comment:

Pursuant to the recommendations made by HRMMU to the draft version of the law, in the final text the provisions guaranteeing opportunities to learn the official language are no longer merely declarative. The law foresees the introduction of concrete mechanisms (e.g. preparatory training programmes) through a State Program for Promotion of Learning of the Ukrainian Language.

Currently, the language requirements for the naturalization process are more lenient than those foreseen by the law, and which will be in force after July 2021. Persons applying for Ukrainian citizenship are required to understand the Ukrainian language at a level sufficient for communication.⁸ They can obtain a certificate proving their language proficiency at any educational establishment or local administration on the basis of a school, university or language course diploma, or following a simple spoken and written language proficiency test. The law "On Citizenship" exempts from this requirement persons with physical (hearing, speech and visual) disabilities. However, there is no exception for other persons with disabilities, including mental and intellectual disabilities.

- **Recommendation:** In accordance with the law, the authorities should provide adequate educational opportunities – e.g. establish preparatory language training programmes – aimed at enabling persons who according to the law must use the State language, or who would wish to do so for their own benefit.
- **Recommendation:** Exceptions to the language requirement for the naturalization process should be broadened to include persons with not only physical, but also mental and intellectual conditions that preclude them from learning Ukrainian.

IV. Public office

- The law requires public officials "*to have command of the State language and to use it in the exercise of their professional functions*". The exact degree of required proficiency in the State language is to be defined by a National Commission on State Language Standards (see Section XII below) on the basis of the Common European

⁸ Article 9 of the Law of Ukraine "On Citizenship" no. 2235-III of 18 January 2001.

Framework of Reference for Languages.⁹ The requirement enters into force on 16 July 2021, two years after the law's enactment.

- The law further specifies that persons holding high level government positions and command positions in the National Police and law enforcement, heads and deputies of the local State administrations, civil servants, prosecutors, judges, members of the High Qualification Commission of Judges and the High Council of Justice, as well as the heads of all types of educational institutions (including private ones) are required to provide a language proficiency certificate issued by the National Commission on State Language Standards. This requirement will not apply to persons who hold the relevant positions at the moment of the provision's entry into force.
- The law allows the use of school diplomas, indicating that a person studied Ukrainian as a subject, as proof of language proficiency for other professions subject to mandatory language requirement, in particular for: members of local parliaments and local self-government bodies, the National Bank officials, contracted military officers, police and law enforcement officers, members of the bar, notaries, pedagogical and scientific workers (who are not foreigners or stateless persons), medical professionals in State and communal establishments, and other officials at State or communal institutions, organizations and enterprises (except for non-Ukrainian citizens).

Comment:

In the course of the legislative process, HRMMU had cautioned that language proficiency requirements for accessing public office should not result in restrictions of the right of citizens to seek office and of the freedom of the electorate to choose their representatives (e.g. elimination of representatives of certain political groups). Disenfranchising or excluding individuals from standing for office because they do not speak the official language would most likely constitute an unreasonable, and discriminatory, restriction. This would be incompatible with Article 25 of the International Covenant on Civil and Political Rights (ratified by Ukraine in 1973), which stipulates that "no distinction" is to be made with regard to the right to stand for elected office. It would also be considered as precluding the participation of minority language-speakers in public life.¹⁰ The same applies with regard to non-elected positions, where a balanced ethnic composition of personnel is desired in various branches of the public service such as governmental departments, the military and police.

The above recommendation was partially addressed in the final version of the law, which excluded members of the national parliament from the list of officials subject to the language proficiency requirement, while such requirement remains mandatory for members of local parliaments (including the Verkhovna Rada of the Autonomous Republic of Crimea).

As the draft version of the law obliged all persons holding public office to provide a language proficiency certificate issued by a National Commission on State Language Standards, HRMMU called for a more flexible approach permitting to provide school diplomas as an alternative proof of language proficiency. Positively, this recommendation was also taken on board.

Article 44(1.3) of the law, which provides that the Commission "*sets the requirements as to the levels of proficiency [...]*" suggests that the Commission will follow a differentiated approach in identifying the required degree of proficiency for various officials/professionals.

- **Recommendation:** The language proficiency requirements established by law must be directly and convincingly connected with specific legitimate public interest and must

⁹ The Common European Framework of Reference for Languages was designed by the Council of Europe to provide a coherent and comprehensive basis for the elaboration of language syllabuses and curriculum guidelines, the design of teaching and learning materials, and the assessment of foreign language proficiency in Europe.

¹⁰ OHCHR, Language rights of linguistic minorities, p. 37.

be proportionate to the stated objectives. Their implementation should not preclude participation of minority language-speakers in public life.

V. Electoral process

- The law provides for the use of the State language in the electoral process. It requires voting ballots and printed information campaign materials, as well as those broadcast on television or radio to be produced in the Ukrainian language.
- The law permits reproducing the electoral campaign materials also in the respective minority or indigenous language for their distribution in certain localities “*in accordance with the rules prescribed by the law on realization of the rights of indigenous peoples and national minorities of Ukraine*”.
- The law also provides that information materials pertaining to elections should be adapted for sign language users.

Comment:

In its analysis of the draft version of the law, HRMMU had expressed concern as to the compatibility with international standards of the provision prescribing the use of the official language in the electoral process and as to the risk of weakening the participation of minorities in elections and public affairs it posed. HRMMU warned that limiting the language on campaign and related materials only to the State language may have prevented some candidates to communicate with parts of the electorate.¹¹

The Office for Democratic Institutions and Human Rights Guidelines to Assist National Minority Participation in the Electoral Process stipulate that the use of any language should not be prescribed or proscribed in the electoral process. In areas where speakers of a minority language are concentrated in significant numbers, ballots, and information documents pertaining to elections, consultations and other processes involving decision-making in public life should, to a reasonable degree, be available in minority languages.¹² State authorities should, to an appropriate degree, also put in place public service television and radio programmes in minority languages devoted to election campaigns and other consultative processes.¹³

The abovementioned concern was addressed, to a certain extent, in the final version of the law through the addition of a clause that permits reproducing the electoral campaign materials also in the respective minority or indigenous language in certain localities. It is expected that the rules for such distribution, including the criteria for identifying the localities, where it is possible, will be set out by the “*law on realization of the rights of indigenous peoples and national minorities of Ukraine*”.

- **Recommendation:** Linguistic requirements for voting or for political participation must be non-discriminatory. The Government should take steps to encourage and facilitate the effective participation of minorities in public life including, where practical, the use of their languages in electoral, consultative and other public participation processes.

¹¹ In 1999, for example, the Office for Democratic Institutions and Human Rights Election Observation Mission in Estonia noted that the Estonian regulations on language use interfered with the ability of some candidates to communicate with parts of the electorate by limiting the language on campaign posters and related materials only to the State language. See Report of the Office for Democratic Institutions and Human Rights Election Observation Mission, 7 March 1999.

¹² Office for Democratic Institutions and Human Rights, Guidelines to Assist National Minority Participation in the Electoral Process (Organization for Security and Co-operation in Europe: Warsaw, 2001), p. 16.

¹³ OHCHR, Language rights of linguistic minorities, p. 37.

VI. Governance and public services

- The law provides that Ukrainian is the working language (documents, meetings, events, and work-related communication) of State and municipal institutions, agencies and enterprises.
- It expressly provides for certain exceptions concerning the use of minority languages by State and municipal authorities in the educational, cultural and scientific spheres.
- In case of use during official meetings or events of a language other than the official one, a translation into Ukrainian must be provided.
- As a general rule, the authorities shall accept documents and respond to appeals in the official language, *“unless otherwise provided by law”*.
- The law provides that individual legal acts issued by the government and local self-government institutions in the territory of the Autonomous Republic of Crimea may be published in the Crimean Tatar language (as an indigenous language) in addition to the State language.
- The law establishes the mandatory use of the State language in military and law enforcement activities, as well as during border and customs control. In communication with persons who do not understand the official language, law enforcement officers are allowed to use a language *“acceptable to the parties”*. In communication with foreigners during border and customs control the relevant officials can use *“other language [a particular official] knows”*.
- With regard to health services, while providing for the general use of the Ukrainian language, the law allows the provision of services in other languages *“acceptable to the parties”* upon request of a recipient of such services. Nonetheless, it requires all documents concerning the state of health of a patient to be prepared only in the State language.
- The law does not introduce any changes to the existing rules on the use of language in legal proceedings.

Comment:

Positively, a worrisome provision of the draft law prescribing without any exceptions the use of the State language in professional legal aid was removed.

While the law foresees certain exceptions leaving space for the use of minority languages in governance and public services, such exceptions cannot be effectively applied until the relevant implementing legislation (the abovementioned *“law on realization of the rights of indigenous peoples and national minorities of Ukraine”*) is in place. Without such legislation it is also unclear how some specific exceptions allowing for the use of minority languages in communications with public authorities would correlate with the general rule requiring the authorities to accept and issue documents only in the State language (e.g. whether a person not sufficiently fluent in Ukrainian would be able to prepare a complaint concerning abuse by the police or local authorities).

In addition, the law does not envisage any explicit exception to the use of the official language in emergency situations (e.g. in communication with rescue services).

Therefore, in the absence of special legislation regulating the use of minority languages in Ukraine, the abovementioned provisions appear to be insufficient to ensure the observance of Ukraine’s international obligations under Article 10(2) a), c) and d) of the European Charter for Regional and Minority languages, which establish specific measures for the use of minority languages within the framework of regional and local authorities on whose territory

the number of residents who are users of regional or minority languages is such as to justify such measures.¹⁴

It is important to note that the law does not establish a transitional period for these provisions, which will therefore commence on 16 July 2019.

Whereas a State can adopt an official language, there are situations where it would be unreasonable and discriminatory not to allow the use of other languages in the provision of public services or in the sphere of public administration, in addition to the State language. This applies typically (though not exclusively) in areas where minorities live "traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need".¹⁵ The prohibition of the use of minority languages before public authorities may, in some cases, lead to effective denial of other constitutionally guaranteed rights.

- **Recommendation:** Where practical and in application of the principle of proportionality, clear and easy access should be provided to public health care, social and other administrative or public services in minority languages.¹⁶

VII. Education, culture and identity

- As regards the use of languages in education, the law mirrors the provisions of article 7 of the Law 'On Education',¹⁷ and extends the transitional period for their application from 1 September 2020 until 1 September 2023 though only for students studying in minority languages that are official languages of the European Union. For students studying in other minority languages, the relevant provisions will take effect earlier, on 1 September 2020.
- The law also introduces a new clause restricting the use of language during the final school/"external independent" testing and admission exams to Ukrainian (except for foreign language tests). This provision will take effect in 2030.
- Setting the general rule on the use of the official language in cultural, art and entertainment events, the law allows for the use of other languages "*if it is justified by the artistic, creative idea of the organizer of the event*" and in other cases provided by the "*law on the realization of the rights of indigenous peoples and national minorities of Ukraine*". These language requirements do not apply to singing performances. The law requires ensuring translation of foreign language performances in State or communal theatres and sets out detailed requirements for movie releases and screenings. The application of these provisions will commence in 2021.
- The law confirms the right of persons to have their names or surnames transliterated in line with their national traditions.

Comment:

While the law extends the transitional period for the gradual implementation of article 7 of the Law 'On Education' as was recommended by the Venice Commission in its opinion No. 902/2017,¹⁸ it is worrisome that this is done in a manner that runs contrary to the recommendations made by the Commission in the same opinion – by differentiating between minorities speaking an official language of the European Union and other national minorities and providing preferential treatment to the former.

¹⁴ The provisions of the European Charter for Regional and Minority languages, which Ukraine ratified in 2005, form part of the national legal framework.

¹⁵ Article 10(2) of the Framework Convention for the Protection of National Minorities.

¹⁶ OHCHR, Language rights of linguistic minorities, p. 23.

¹⁷ Law of Ukraine "On Education" no. 2145-VIII of 5 September 2017.

¹⁸ Opinion No. 902/2017 on the Provisions of the Law on Education of 5 September 2017 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). Full text of the Opinion: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)030-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)030-e)

The Venice Commission opined: “it is highly likely that the less favourable treatment of the Russian language (and other languages which are not official languages of the European Union [e.g. Belorussian, Jewish]), in Article 7 paragraph 4, is not justifiable in the light of the principle of non-discrimination, unless a more convincing justification is provided, and raises potential issues of constitutionality in relation to Article 10 and Article 24 (the equality clause) of the Ukrainian Constitution, as well of consistency with other relevant provisions of the Ukrainian legislation”.¹⁹ The Venice Commission noted that an appropriate solution would be to amend article 7 of the Law “On Education” to address the issue of discriminatory treatment of minority languages, which are not official languages of the European Union.²⁰

In addition, since Article 7 of the law ‘On Education’ allows for the use of languages of indigenous peoples as the medium of instruction throughout secondary education in public schools, the legislation should as well allow for final exams to be in the corresponding languages.²¹ Similarly, admission exams or entrance requirements to public universities and other State educational institutions must take account of the use of minority languages as a medium of instruction in the educational system.

It is essential that, prior to the entry into force of the provisions on the use of language in cultural, art and entertainment events, the law “on the realization of the rights of indigenous peoples and national minorities of Ukraine” is enacted and guarantees that the use of a minority language in cultural events is respected within the sphere of freedom of expression. Any restriction on the use of minority languages and freedom of expression must be fully justified and proportionate.

Positively, the law ensures respect for the linguistic form of a person’s name, which is one of the most important markers of a person’s identity. At the same time, the provision allowing the use of minority languages on street signs and topographical designations in “areas of compact residence of minorities in Ukraine” was removed.

- **Recommendation:** The Government should pay specific attention to the issue of differential treatment between, on the one hand, national minorities speaking an official language of the EU, and, on the other hand, national minorities, whose languages are not official languages of the EU, as highlighted by the Venice Commission, in order to avoid violations of the right of equality before the law and of equal protection of the law.
- **Recommendation:** The regulations on final and admission exams must take into account the use of minority languages as a medium of instruction in the educational system.
- **Recommendation:** The prospective law “law on the realization of the rights of indigenous peoples and national minorities of Ukraine” must ensure that the use of a minority language in cultural events is respected within the sphere of freedom of expression.

VIII. Media and publishing

- With regard to the use of language in broadcasting, the law makes a direct reference to the provisions of Article 10 of the Law ‘On Television and Radio Broadcasting’²². At the same time, through its transitional provisions, the law introduces amendments to Article 10, tightening the language quota requirements, by increasing the proportion of Ukrainian language content for national and regional broadcasters from 75 to 90

¹⁹ *Ibid.*, para 114.

²⁰ *Ibid.*, para 125.

²¹ OHCHR, Language rights of linguistic minorities, p. 19.

²² Law of Ukraine ‘On Television and Radio Broadcasting’, no. 3759-XII of 21 December 1993.

per cent and, for the local broadcasters, from 60 to 80 percent. The amendments also further limit cases when other languages can be used in a broadcast without dubbing or subtitling: excluding from the list speeches, interviews, comments, explanations, questions, etc. of guests of a broadcast. These changes will take effect in 2024, five years after the law's entry into force.

- The law allows publishing of print media in two or more language versions, one of which must be Ukrainian, provided that all language versions are identical in size, format and substance and are issued simultaneously. Exception is made only for media issued in Crimean Tatar or other indigenous language, and those issued in English or other official European Union language (which do not need a translation into Ukrainian). The law requires that the Ukrainian language print media constitute no less than 50% of selection in all print media distribution points. These rules will apply to national and regional media in two and a half years from the law's entry into force and to the local media in five years.
- The law requires that default versions of web sites or social network pages of the media registered in Ukraine should be in the Ukrainian language, except for media issued exclusively in Crimean Tatar or other indigenous language, and those issued in English or other official European Union languages. Other language versions may be available, but they must not exceed in size and scope the Ukrainian language version. These rules will apply (as of 2022) in three years from the law's entry into force.
- The law obliges all registered book publishers to ensure that books in the Ukrainian language constitute no less than 50% of their annual publishing. This requirement does not concern books published in the indigenous or minority languages and funded by the State or local budgets "*according to the law on realization of the rights of indigenous peoples and national minorities of Ukraine*".
- The law also requires that books in Ukrainian constitute no less than 50% of selection in all book stores, except for those selling exclusively foreign language learning materials or books in the official European Union languages, as well as specialized bookstores established for the purposes of "*realization of the rights of indigenous peoples and national minorities as provided by law*". These rules will apply (as of 2021) in two years after the law's entry into force.

Comment:

Freedom of expression guarantees not only the right to impart and receive information, but the right to do so in the chosen medium, including language and form. For minorities it guarantees the freedom to communicate among themselves and with others in their own language through broadcast, printed and electronic media.²³

In this respect, the new language quota requirements in broadcasting raise specific concerns, as highlighted by the Council of Europe's Advisory Committee on the Framework Convention for the Protection of National Minorities, in its opinion on the previous version of Article 10 of the Law 'On Television and Radio Broadcasting': "*whereas promotion of the State language in public media is a legitimate aim, provided that adequate provisions are made for broadcasting in national minority languages, the conditions set in the new legislation breach the Framework Convention since they overstep licensing requirements and unduly interfering with private broadcasters*".²⁴

The draft version of the law obliged all minority language print media to issue a Ukrainian language version, which, as highlighted by HRMMU, could have constituted an undue burden that could have precluded the existence of small media outlets using minority

²³ OHCHR, Language rights of linguistic minorities, p. 31.

²⁴ Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth Opinion on Ukraine (ACFC/OP/IV(2017)002) adopted on 10 March 2017, para 22.

languages. In response to this, an exception to this requirement was introduced in the final text only for print media issued in Crimean Tatar and those issued in English or other official European Union languages. However this exception does not cover Russian or other minority languages. The final text also provided more time for transition to local print media outlets, postponing for them the application of the new rules for five years.

Positively, the provision on possible restrictions on the import of books in foreign languages was removed.

- **Recommendation:** Free use of language, including minority languages, must be permitted in the private broadcasting sector, print and electronic media. In the public media sector, the languages of minorities must be provided with sufficient and proportionate space.

IX. Commercial sphere

- The law requires private legal entities registered in Ukraine to use the State language in dealings with the public authorities (e.g. in accounting, taxation, correspondence).
- The law requires the use of Ukrainian by all commercial enterprises in relation to consumer protection (e.g. in provision of information on goods and services, including in e-commerce). Such information may be reproduced in other languages. In that case the scope of the information provided in Ukrainian may not be less than is required by the Law ‘On Consumer Protection’²⁵. The law also permits the provision of services in other language “*acceptable to the parties*” upon request of a customer. These rules will commence as of end 2020. Violation of these rules following the initial warning may incur administrative fines (5,100-6,800 UAH / 200-260 USD).
- The law requires that default versions of web sites or social network pages of enterprises selling goods or services in Ukraine and which are registered in Ukraine to be in the Ukrainian language. Other language versions may be available, but they must not exceed in size and scope the Ukrainian language version. These rules will take effect three years after the law’s entry into force.
- The law provides for the use of the State language in advertising. It contains a reference stating that the use of minority languages in advertising is regulated by “*the law on realization of the rights of indigenous peoples and national minorities of Ukraine*”. At the same time, the law specifically allows the print media issued in one of the European Union official languages to place ads in that language, and permits placing ads in the European Union official languages alongside the State language in foreign broadcast media. These rules will apply as of January 2020, six months after the law’s entry into force.

Comment:

The approach set by the law does not appear to prohibit the use of any language(s) in commercial sphere. It prescribes the primary use of the official language alongside with other languages.

International standards recognize that private enterprises can be required to accommodate the official language of the State in certain areas where a legitimate public interest may be invoked — such as the furtherance of workplace health and safety or consumer protection or in dealings with the public authorities in accounting, taxation or other processes.²⁶ Such requirements though must be proportional to the public interest to be served.

²⁵ Law of Ukraine ‘On Consumer Protection’, no. 1023-XII of 12 May 1991.

²⁶ Organization for Security and Co-operation in Europe High Commissioner on National Minorities, Oslo Recommendations Regarding the Linguistic Rights of National Minorities, p. 25.

The initial draft required private legal entities registered in Ukraine to issue all their internal documents solely in the State language. HRMMU called to observe the principle of proportionality and to limit the requirement for businesses to use the State language only to those areas where a legitimate public interest may be invoked. It is recognized that, in the interest of accurate public administration (e.g. in relation to taxation), the State may require that administrative forms be submitted in the official language and that, in the case of an audit by the public authorities, relevant records be made available also in the official language.²⁷ This, however, should not require that private enterprises maintain all records in the official language, but only that the burden of possible translation rests with the private enterprise. In the final text, the requirement for the legal entities to issue all their internal documents in the State language was replaced with the obligation to use the State language only in dealings with the public authorities (in accounting, taxation, etc.).

In the absence of specific rules on the use of minority languages (other than European Union official languages) in advertising, the general rule providing for the use of the official language in this sphere may pose risk to freedom of expression, which is recognized to cover the right of persons belonging to minorities to use their languages in private commercial activity and signs or posters, etc. of a commercial nature.²⁸ The abovementioned considerations regarding the differential treatment between, on the one hand, national minorities speaking an official language of the EU, and, on the other hand, national minorities, whose languages are not official languages of the EU, are also applicable in the context of the rules on the use of language in advertising.

- **Recommendation:** The linguistic requirements in economic life, especially in advertising, must not make unrealistic and discriminatory demands on private businesses and must be in line with the freedom of expression.

X. Political parties and non-governmental organizations

- The law obliges the political parties and non-governmental organizations (NGO) registered in Ukraine to use the State language in dealings with the public authorities (e.g. in accounting, taxation, correspondence).
- The law protects the right of persons to address any political party or NGO registered in the country in Ukrainian both orally and in writing. All such entities are obliged to respond in Ukrainian to all the applications addressed to them in this language. Yet they are allowed to accept and review applications in other languages as well.

Comment:

Public authorities may require that public organisations/associations, similarly to commercial enterprises, conform to the requirements on the use of the official language on the basis of a legitimate public interest – in situations requiring interface with public bodies.

Pursuant to a recommendation by HRMMU cautioning against any undue interference in the internal affairs of such entities, the requirement for them to issue all their internal documents in the State language, which was initially included in the draft version of the law, was removed in the final version of the text, while preserving the obligation to use the State language in dealings with the public authorities.

²⁷ *Ibid.* pp. 25-26.

²⁸ The United Nations Human Rights Committee in *Ballantyne, Davidson and McIntyre v. Canada* (Communication Nos. 359/1989 and 385/1989, 31 March 1993) clearly stated its view that the freedom of expression applies to any commercial activity and signs, rejecting the argument that commercial expression is somehow less worthy of protection under Article 19 of the International Covenant on Civil and Political Rights.

XI. Implementation mechanisms

- The law provides for the establishment of a **National Commission on State Language Standards** (hereinafter the Commission) - a nine-member entity authorized to set the standards of the Ukrainian language (rules, terminology, transliteration, etc.), conduct the Ukrainian language proficiency testing, and to issue relevant certificates attesting the knowledge of the language.
- Members of the Commission should be citizens of Ukraine above 30 years of age who have a doctoral degree in philology.
- Members of the Commission are appointed by the Cabinet of Ministers on the submission of the Minister of Education, who forms the list of candidates on the basis of proposals made by the Ministry of Justice, the Ministry of Education, the Ministry of Culture, and the National Academy of Sciences. Members of the Commission are appointed for a term of six years with a possibility of one time re-appointment. The Commission is supported by a Secretariat.

Language proficiency testing

- For Ukrainian citizens, taking the test is free of charge. Persons may retake the test as many times as they wish, but not more than once in four months. Testing results may be appealed to the Commission and then to a court.
- The language proficiency certificates issued by the Commission will be valid indefinitely. The Commission can request the annulment of the certificate by a court if significant violations were committed during the testing that influenced the results.
- The information about all valid certificates (including the holder's name and test score) will be accessible online on the Commission's website.
- The detailed testing procedures are to be set by the Cabinet of Ministers.

XII. Control mechanisms

- The law creates the post of **Commissioner for Protection of State Language** (hereinafter the Commissioner) who will monitor the observance of regulations set forth by this law and report on it to the Cabinet of Ministers on a yearly basis.
- The Commissioner is appointed for a five-year term by the Cabinet of Ministers from among three candidates proposed by the Ministry of Justice, the Ministry of Culture and the Ukrainian Parliamentary Commissioner for Human Rights (Ombudsperson). The Commissioner may be reappointed for another term.
- Candidates for the post must be citizens of Ukraine who are over 35 years of age, they must be proficient in Ukrainian and English, and must have experience in human rights or in the protection of the State language. Persons who had been brought to liability for violating the rules set forth by this law, or who participated in attempts to introduce official multilingualism cannot be candidates for this post.
- The Commissioner's Secretariat will examine complaints concerning the alleged violations by public authorities, political parties, NGOs or private legal entities of rules on the use of the official language set forth by this law. Persons may submit complaints to the Commissioner, for instance, in relation to the use of language during public meetings, the refusal to use the official language in communication with individuals, issuance of documents, legal acts or judgements that are not in conformity with the standards of the Ukrainian language. However, complaints concerning the respect of the Ukrainian language standards in public statements of representatives of the State or local self-government authorities will not be admissible.

- In the context of complaints received or on his/her own initiative the Commissioner may:
 - a) Conduct a language expertise in cases concerning the observance of the State language standards in the official documents, judgments, in the activity of the media, etc. The procedure for such expertise will be set out by the Cabinet of Ministers.
 - b) Exercise language control measures and apply administrative sanctions in cases concerning violations of the mandatory language use requirements.
- The administrative fines for violating the law (from 1,700 UAH to 11,900 UAH / 65 USD to 460 USD) can be applied only upon an initial warning and may be contested in court. The toughest sanctions are foreseen for violation of the rules on the use of language in print media and for repeated violation within a year. The provisions on administrative liability will commence in 2022, three years after the law's entry into force.
- The provisions introducing criminal liability for *“attempts to introduce official multilingualism”* and for *“public humiliation or disrespect of the Ukrainian language”* were removed from the final version. Although the Commissioner's powers still encompass: *“issuing conclusions identifying features of public humiliation or disrespect of the Ukrainian language in public statements of State or local self-government officials, employees of State and communal enterprises, representatives of NGOs, political parties, private legal entities, as well as of representatives of foreign States”*.

Comment:

While a number of positive changes were made in the final text to the provisions concerning the implementation and control mechanisms, this chapter of the law still contains many inconsistencies, which may be incompatible with the requirements of clarity and foreseeability of the law.

It is certainly positive that the provisions, which posed serious threat to the freedoms of opinion and expression by criminalizing such uncertain notions as *“attempts to introduce official multilingualism”* and *“public humiliation or disrespect of the Ukrainian language”*, were removed from the final version of the law. However, the final text still contains a few isolated mentions of these notions.

For instance, *“participation in the attempts to introduce official multilingualism contrary to the Constitution of Ukraine and the established constitutional procedure”* is still mentioned among the criteria that rule out a candidate's eligibility for the position of Commissioner (article 50(5.2)) and as one of the grounds for early termination of powers of the Commissioner (article 50(12.5)), though it is unclear how the fact of such participation will be established. If these provisions remain in the law they may compromise the independence of the institution of the Commissioner.

The fact that the list of powers of the Commissioner (article 53(1.3)) includes *“issuing conclusions identifying features of public humiliation or disrespect of the Ukrainian language in public statements of State or local self-government officials, employees of State and communal enterprises, representatives of NGOs, political parties, private legal entities, as well as of representatives of foreign States”* appears to be accidental. Under the draft version of the law such conclusions invoking criminal liability under Articles 110, 338 of the Penal Code would have to be referred by the Commissioner to the law enforcement bodies. However, the final text of the law foresees no mechanism for the implementation of such conclusions; therefore, the purpose of such instrument remains unclear.

In addition, the provisions on language expertise were removed from the law, leaving the detailed procedure to be elaborated in bylaws by the Cabinet of Ministers. However, until

such regulations are approved, it remains unclear how the results of such expertise will be used.

The implementation and control mechanisms are vested primarily with standard-setting, investigative and sanctioning functions. In view of the complex socio-linguistic context in Ukraine, it is important to give preference to promotional measures rather than to those of a punitive nature, in order to pursue the legitimate objective of strengthening the knowledge and use of the State language by all members of the population in an effective manner.²⁹

- **Recommendation:** The methods of monitoring the implementation of the official language policy should favour a constructive and incentive-based approach, rather than a system of inspections and sanctions.

XIII. Protection of minority languages

- The law provides only a general framework for the use of State language and does not regulate the use of minority languages in Ukraine.
- The legislator acknowledges that the current framework is not complete and that there is a need for specific legislation on minority issues. As mentioned above, in its transitional provisions the law establishes that the Cabinet of Ministers shall submit to the Parliament a draft law on the realization of the rights of indigenous peoples and national minorities of Ukraine within six months from the entry into force of the law (by January 2020).

Comment:

HRMMU notes with regret that, despite the recommendations made by HRMMU, the Organization for Security and Co-operation in Europe High Commissioner on National Minorities³⁰ and the Council of Europe Commissioner for Human Rights³¹, both language and national minority-related legislation were not developed in parallel. This would have been an appropriate solution to secure from the outset a balance between the protection of the State language and the language-related rights of persons belonging to national minorities.

In the absence of special legislation regulating the use of minority languages in Ukraine, the provisions outlined by the law do not ensure sufficient clarity, nor provide solid legal guarantees for the protection and the use of minority languages and, therefore, are insufficient to ensure the implementation of Ukraine's obligations in the field of minority language protection.³²

Currently, the national legislation only sporadically addresses the protection for minority languages. The now-outdated 1992 Law 'On National Minorities'³³ is widely considered badly focused and too vague to regulate complex issues connected to the protection of national minorities in contemporary Ukraine, and the existing legislation is disjointed,

²⁹ Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth Opinion on Ukraine (ACFC/OP/IV(2017)002), para 118.

³⁰ Letter of the Organization for Security and Co-operation in Europe High Commissioner on National Minorities, Lamberto Zannier, to the Speaker of the Verhovna Rada of Ukraine, Adrii Parubii, October 2018. Visit of the Organization for Security and Co-operation in Europe High Commissioner on National Minorities, Lamberto Zannier, to Ukraine, May 2019.

³¹ Statement by the Council of Europe High Commissioner for Human Rights, Dunja Mijatovic, of 12 March 2019: <https://www.unian.info/politics/10476888-ukraine-s-rada-should-postpone-language-bill-vote-council-of-europe-says.html>

³² The list of provisions of the European Charter for Regional or Minority Languages ratified by Ukraine: <http://zakon3.rada.gov.ua/laws/show/802-15>

³³ Law of Ukraine 'On National Minorities' no. 2494-XII of 25 June 1992.



contradictory and piecemeal.³⁴ A coherent policy on national minorities is still lacking at the State level.

As mentioned above, the law establishes a transitional period, ranging from six months to up to ten years for a number of provisions which, if applied in the absence of a special legislation, could jeopardize the rights of minorities, such as, for instance, those relating to the use of language in education, in print media, publishing, advertisement and in the provision of services. Since these provisions will not take effect immediately after the entry into force of the law, this gives some time to adopt a special legislation, which will be crucial to safeguard the rights of national minorities, enshrined in the European Charter for Regional or Minority Languages.

At the same time, the provisions on the use of State language by public authorities, including local and regional authorities, will be in force on 16 July 2019. While the law foresees certain exceptions leaving space for the use of minority languages in governance and public services, such exceptions cannot be effectively applied until the relevant special legislation is in place. Therefore, it is pivotal for the Parliament to adopt the law on the realization of the rights of indigenous peoples and national minorities of Ukraine as a matter of priority in order to prevent violations of the provisions of Article 10(2) of the European Charter for Regional or Minority Languages that Ukraine undertook to guarantee.

- **Recommendation:** The Government should elaborate, without undue delay and in an inclusive consultative process, the aforementioned law on realization of the rights of indigenous peoples and national minorities of Ukraine in order to provide solid legal guarantees for the protection and use of all minority languages and to strike a balance between the goal of promoting the official language and the language rights of persons belonging to national minorities.

³⁴ Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth Opinion on Ukraine (ACFC/OP/IV(2017)002), para 45.