

On April 25, 2019, the Verkhovna Rada of Ukraine voted in favor of the Law of Ukraine “On Supporting the Functioning of the Ukrainian Language as the State Language”. The law obliges all citizens to use the state language in all spheres of public life. The political elite who governed the state for the years 2014–2019 passed the State Language Law only when they had to pass power after losing the presidential election.

The Law is unable to resolve the social tension that has arisen around the language issue. On the contrary, the law is the source of further conflicts.

This analytical review indicates that the State Language Law contradicts Ukraine's international obligations. The Law of Ukraine “On Supporting the Functioning of the Ukrainian Language as the State Language” is the wrong path of Ukrainian language policy.

UKRAINIAN LANGUAGE POLICY

GONE ASTRAY

Ukrainian language policy gone astray





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*The Law of Ukraine “On Supporting the Functioning
of the Ukrainian Language as the State Language”
(analytical overview)*

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2020



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Верховна Рада України 25 квітня 2019 р. проголосувала за Закон України «Про забезпечення функціонування української мови як державної». Закон зобов'язує використання державної мови у всіх сферах суспільного життя. Політична еліта, яка керувала державою протягом 2014–2019 років ухвалила Закон про державну мову тільки тоді, коли після програшу на президентських виборах їм треба було передати владу. Закон нездатний вирішити суспільну напругу, яка виникла навколо мовного питання. Навпаки: закон є джерелом наступних конфліктів. Цей аналітичний огляд вказує на те, що Закон про державну мову суперечить міжнародним зобов'язанням України. Закон України «Про забезпечення функціонування української мови як державної» – це помилковий шлях мовної політики України.

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Foreword

This summary on language policy in Ukraine, provides a broad view of contemporary developments and their roots. The authors seek to understand recent developments in Ukrainian statehood from a perspective that does not simply reduce the discussion to a case of replacing Russian with Ukrainian. While such a mainstream view has been effective in political campaigns both internally and internationally, the authors outline how the practical manifestations of language policy and the grassroots multilingual reality, with various minorities and regional majorities, paint a different picture.

Among the former Eastern Bloc countries, issues of language policy have been perhaps the most emotionally loaded in Ukraine. Since the country's independence in 1991, news stories about fist-fights in the Rada (Parliament) while drawing up language regulations, have become familiar around the world. The authors are Hungarian minority researchers in Ukraine. However, they take a comparative and holistic perspective on Ukrainian language policy in general, and provide an explanation of Ukrainian developments from a critical insider's point of view. The authors have been engaged with Ukrainian language policy since the 1990's making them the top experts on the topic.

Actuality of the booklet is given by the new (2019) language law in Ukraine "Law on Supporting the Functioning of the Ukrainian Language as the State Language", which entails a serious curtailing of minority language rights in comparison to earlier policies in the country. Especially alarming is that the new law projects a general diminishing of languages other than Ukrainian as languages of instruction.

My first hand expertise on Ukraine is based on my Academy of Finland postdoctoral project (2011–2013) titled 'Language ideologies among the Hungarian minorities in Slovakia, Romania and

Ukraine from a comparative perspective'. This project included a one month fieldwork in Ukraine (see e.g. Csernicskó and Laihonen 2016). In Ukraine, most Hungarian speakers (totalling 150 000 in Ukraine) live in the Transcarpathian region (Oblast), where they constitute a regional majority in the area next to the Hungarian border. This region has belonged to several states (Hungary, Czechoslovakia, Soviet Union and now Ukraine), where it has always formed a distant periphery in many ways (for details, Csernicskó and Laihonen 2016).

Minority medium schools are cultural and linguistic 'oases'. The Hungarian minority in Ukraine constitutes the local majority in villages and towns near to the Hungarian border, and the Hungarian language has been used as the language of instruction in state run schools in that region throughout history, including the period when it was part of the Soviet Union. The need to have minority medium schools is explained on the one hand on the language repertoire of the children: forcing Hungarian dominant children to be immersed to Ukrainian would lead to ethnolinguistic conflicts, mass migration to Hungary, and under-education of the remaining Hungarian minority for a generation or two. On the other hand, the Hungarian minority regions history as part of the Hungarian Kingdom and their cultural as well as religious peculiarities have little mention in the Ukrainian national narratives or histories. That is, the 'Hungarian' region presents a historical no-man's-land or a white spot on the cultural map of Ukraine. As a conclusion to know yourself and to form a positive picture of your past and heritage is possible only through Hungarian medium education. For the learning of the majority, official language of the country, context based, bilingual pedagogies have been developed by Hungarian linguists working in Ukraine. Only mother tongue education and a sophisticated bilingual pedagogy to learn the national language, can promote positive self-identity and belonging both locally and nationally.

For Ukraine, minority language communities, such as the Hungarian one, constitute an economic, cultural and linguistic asset. Their presence elevates the Transcarpathian region as a culturally and linguistically rich touristic destination (see Laihonen and Csernicskó 2019). The minority, together with Ukrainians in Hungary, serves as a bridge between the neighbouring countries. To maintain the vitality and numbers of a relatively strong regional linguistic minority, such as Hungarians in Ukraine, requires the right to have the minority language as the language of instruction in all education. As many studies show, the number of minority language speakers still tend to gradually dwindle. What is at stake in Ukraine, is a dangerous move towards an unprecedented and disproportionate forced immersion of minority language dominant children to Ukrainian language and culture. Such a move is most ill-advised by available applied linguistic knowledge and European legal expertise (see the opinion by Venice Commission) alike and it is clearly against the economic, cultural and linguistic well being and interests of not just the minorities in Ukraine but also the Ukrainian speaking majority as well.

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I. Introduction: the linguistic situation in Ukraine

1. In Ukraine, the language issue is highly politicized. This has been repeatedly pointed out by researchers¹ and experts of international organizations². Paragraph 18 of the opinion of

¹ Shumlianskyi, Stanislav: Conflicting abstractions: language groups in language politics in Ukraine. *International Journal of the Sociology of Language* 201. (2010) 135–161.; Stepanenko, Viktor: Identities and Language Politics in Ukraine: The Challenges of Nation-State Building. In: Farimah Daftary – François Grin (eds.): *Nation-Building Ethnicity and Language Politics in transition countries*. Local Government and Public Service Reform Initiative – Open Society Institute, Budapest, 2003. 109–135.; Kulyk, Volodymyr: What is Russian in Ukraine? Popular Beliefs Regarding the Social Roles of the Language. In: Lara Ryazanova-Clarce (ed.): *The Russian Language Outside the Nation*. Edingurgh University Press, Edingurgh, 2014. 117–140.; Pavlenko, Aneta: Multilingualism in Post-Soviet Countries: Language Revival, Language Removal, and Sociolinguistic Theory. *The International Journal of Bilingual Education and Bilingualism* 11. (2008) No. 3–4. 275–314.; Ulasiuk, Iryna: The Ukrainian Language: what does the future hold? (A Legal Perspective). In: Antoni Milian-Massana (ed.): *Language Law and Legal Challenges in Medium-Sized Language Communities. A Comparative Perspective*. Institut d'Estudis Autònoms, Barcelona, 2012. 25–51.; Zabrodskaia, Anastassia – Ehala, Martin: Inter-ethnic processes in post-Soviet space: theoretical background. *Journal of Multilingual and Multicultural Development* (2013) DOI: 10.1080/1434632.2013.845194. 1–2.; Шевченко Лариса: Конституційна норма в суспільній дискусії щодо мовних прав в Україні [The Constitutional norm in a public discussion about language rights in Ukraine]. *Мовознавство* 2013/5: 37–41.

² Assessment and Recommendations of the OSCE High Commissioner on National Minorities on the Draft Law “On Languages in Ukraine” (No. 1015-3). The Hague, 20 December 2010.

<https://portal.rada.gov.ua/en/news/page/news/News/News/37052.html>;

Opinion on the Draft Law on Languages in Ukraine. Adopted by the Venice Commission at its 86th Plenary Session (Venice, 25-26 March 2011).

[http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)008-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)008-e;);

the Venice Commission on the law “On Supporting the Functioning of the Ukrainian Language as the State Language” also highlights this fact: “The use of languages has been for a long time in Ukraine a highly sensitive issue, which has repeatedly become one of the main topics in different election campaigns and continues to be a subject of debate – and sometimes to raise tensions – within the Ukrainian society as well as with kin-States of some national minorities of Ukraine.”³

2. The specific features of Ukraine’s geopolitical and geographical situation, its territory inherited from the Soviet Union, the divergent political, historical, economic, cultural and social development of its regions⁴, the heterogeneous ethnic, linguistic and denominational composition of its population⁵, and the fact that representatives of the titular nation of all the neighbouring states are present among its citizens make the linguistic issue a matter of domestic and foreign policy as well as security policy.
3. The relationship between the language issue and security policy is also confirmed by the ongoing armed conflict in the

Ukraine: UN Special Rapporteur urges stronger minority rights guarantees to defuse tensions. Geneva, 16 April 2014.

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14520>.

³ European Commission for Democracy Through Law (Venice Commission). Ukraine. Opinion on the Law on Supporting the Functioning of the Ukrainian Language as the State Language. CDL-AD(2019)032. Opinion No. 960/2019. Strasbourg, 9 December 2019.

[https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)032-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)032-e).

Hereinafter: Opinion 2019.

⁴ Karácsonyi, Dávid – Kocsis, Károly – Kovály, Katalin – Molnár, József – Póti, László: East-West dichotomy and political conflict in Ukraine – Was Huntington right? *Hungarian Geographical Bulletin* 2 (2014): 99–134.

⁵ Kocsis, Károly – Rudenko, Leonid – Schweitzer, Ferenc eds.: *Ukraine in maps*. Kyiv-Budapest: Institute of Geography National Academy of Sciences of Ukraine, Geographical Research Institute Hungarian Academy of Sciences, 2008.

country since autumn 2013. Linguistic conflicts have been used as an excuse for the occupation of Crimea and for the outbreak of the armed conflict that continues to devastate the eastern regions of Ukraine, with thousands of deaths. “Today’s situation in Ukraine is an example of how the linguistic and cultural warfare becomes the prerequisite and official basis for a real military campaign”, wrote Drozda, for example.⁶ “No matter how we look at it, the current Russian–Ukrainian war was started because of the language. This is an indisputable fact. Russia used the language factor as a cause of aggression – with the explanation that it had to protect Russian-speaking citizens in Ukraine” – Osnach summed up the causes of the conflict.⁷ Sakwa also believes that the language issue was one of the root causes of the conflict in eastern Ukraine.⁸

4. The Ukrainian state, which became independent in 1991, has been undergoing the deepest crisis of its short history since spring 2014. Ukraine’s mistaken language policy undoubtedly played a role in the eruption of the political, military and economic crisis threatening the security of the whole of Europe and hindering the economic development of the narrower and wider region.

⁶ Дрозда А. 2014. Розрубати мовний вузол. Скільки російськомовних українців готові наполягати на російськомовності своїх дітей і внуків? [Cut the language knot. How many Russian-speaking Ukrainians are willing to insist on Russian speaking their children and grandchildren?] *Портал мовної політики*, November 23, 2014. <http://language-policy.info/2014/11/rozrubaty-movnyj-vuzol-skilky-rosijskomovnyh-ukrajintsiv-hotovi-napolyahaty-na-rosijskomovnosti-svojih-ditej-i-vnukiv/>

⁷ Оснач С. 2015. Мовна складова гібридної війни [The language component of hybrid warfare]. *Портал мовної політики*, June 13, 2015. <http://language-policy.info/2015/06/serhij-osnach-movna-skladova-hibrydnoji-vijny/>

⁸ Sakwa, Richard: *Frontline Ukraine: Crisis in the Borderlands*. London: I.B. Tauris, 2015.

5. After the collapse of the Soviet Union, Ukrainian nation-building was greatly facilitated by the federal structure of the communist empire: the Soviet Socialist Republic of Ukraine had (relatively) well-defined external and internal administrative boundaries; it had its own government in Kyiv with parliament and ministries; the Republic had its own constitution and codified legal system; there were public administration offices with qualified officials; the administration functioned, in addition to Russian, partly in the Ukrainian language; and Ukraine was represented at the UN. On the other hand – besides the deep economic crisis and the shock caused by the social and political transformation –, the formation of the modern Ukrainian nation was made difficult by the significant Russian community, which overnight became a minority in the sociological sense in the independent Ukraine.⁹
6. The multi-million community of Russians in Ukraine suddenly became a minority, that is, a group having a *de jure* subordinate status, whereas it had formerly belonged to the linguistically and culturally privileged group of the Soviet empire. However, *de facto*, they managed to retain these favourable economic, political and cultural positions to a large extent even after the regime change.
7. In addition to the large number of persons with Russian ethnicity, the position of the Russian language has been strengthened by the millions of Ukrainian citizens who were linguistically assimilated and those who use Russian in their everyday lives. At the time of the 2001 census, the proportion of people belonging to the Russian national minority in the country was 17.28%, whereas the proportion of persons with

⁹ Brubaker, Rogers: *Nationalism Reframed: Nationhood and the National Question in the New Europe*. Cambridge: Cambridge University Press, 1996. 17.

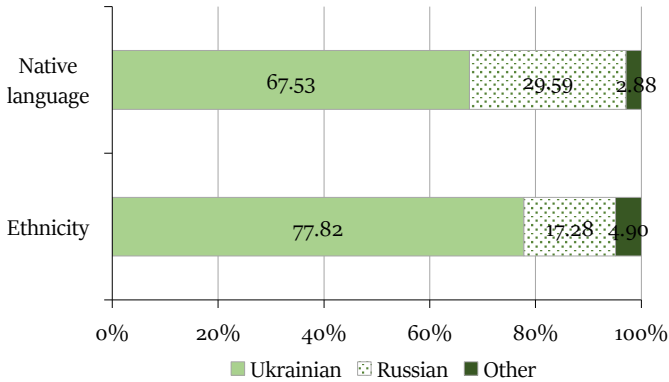
Russian mother tongue was much higher (Figure 1). The main reason for this is that 5.5 million ethnic Ukrainians declared themselves to be Russian native speakers (Table 1).¹⁰

Table 1. The population of Ukraine according to mother tongue and ethnicity (based on 2001 census data)

Ethnicity and mother tongue	Number of people	%
Ukrainians (by ethnicity) whose mother tongue is Ukrainian	31,970,728	66.27
Russians whose mother tongue is Ukrainian	328,152	0.68
National minorities whose mother tongue is Ukrainian	278,588	0.58
TOTAL NUMBER OF THOSE WHOSE MOTHER TONGUE IS UKRAINIAN	32,577,468	67.53
Russians whose mother tongue is Russian	7,993,832	16.57
Ukrainians whose mother tongue is Russian	5,544,729	11.49
National minorities whose mother tongue is Russian	735,109	1.52
TOTAL NUMBER OF THOSE WHOSE MOTHER TONGUE IS RUSSIAN	14,273,670	29.59
National minorities whose ethnicity and mother tongue are the same	1,129,397	2.34
National minorities who speak the mother tongue of another minority group as their own	260,367	0.54
TOTAL NUMBER OF THOSE WHO SPEAK MINORITY LANGUAGES	1,389,764	2.88
TOTAL NUMBER OF POPULATION IN UKRAINE	48,240,902	100

¹⁰ The terms “mother tongue” and “native language” are used interchangeably throughout this paper.

Figure 1. The overlap of native language and ethnicity in the population of Ukraine according to the 2001 census (%)



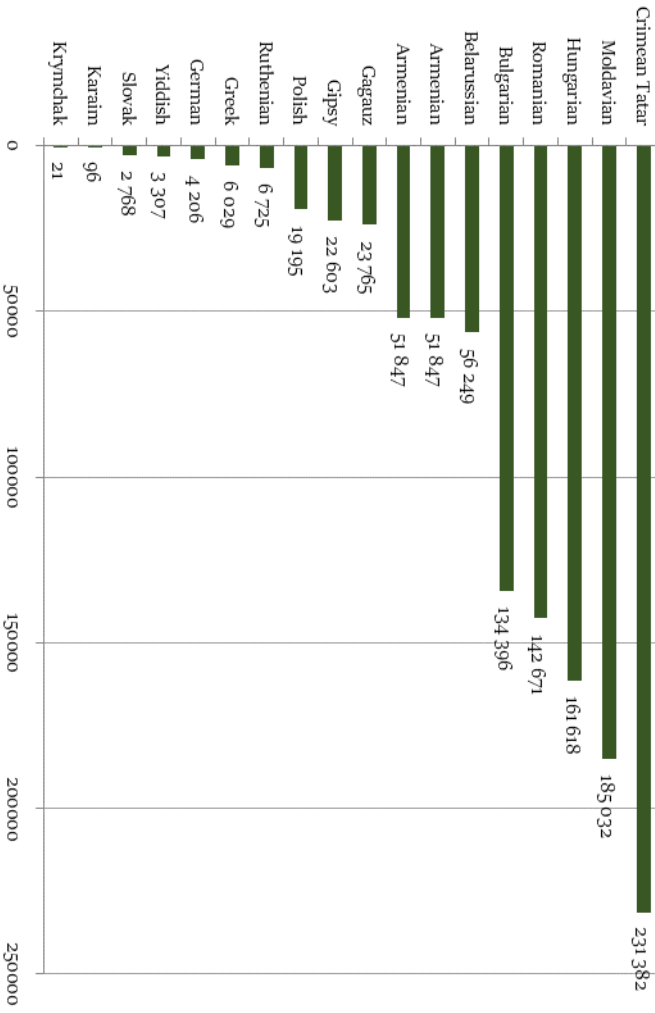
8. Among Ukrainian citizens whose ethnicity or mother tongue is not Ukrainian, ethnic Russians and Russian native speakers are by far the most prominent. In 2001, the proportion of Russians was 77.89% among ethnic minorities of Ukraine and 91.13% among linguistic minorities thereof (Table 2).
9. At the time of the 2001 census, the proportion of ethnic Ukrainians and Russians within the Ukrainian population was 95 percent, and speakers of these two languages together accounted for 97 percent of the total population.
10. From the above data it is clear that the minority issue in Ukraine is almost identical to the issue of the Russian community. Apart from Ukrainians and Russians, the proportion and weight of other ethnic and linguistic groups, including Hungarians, is not significant.

Table 2. Minority citizens by ethnicity and mother tongue in Ukraine (based on 2001 census data)

Minorities by	Persons (%)	Of whom:	Persons	Ratio in total population (%)	Ratio in total minority population (%)
ethnicity	10,699,209 (22.18%)	Russian	8,334,141	17.28	77.89
		other minorities	2,365,068	4.90	22.11
mother tongue	15,663,434 (32.47%)	Russian	14,273,670	29.59	91.13
		other minorities	1,389,764	2.88	8.87

- There are also significant differences in the number of speakers of different minority languages. After the Russians, the largest group is the Crimean Tatar speakers, numbering more than 200,000 persons. They are followed by speakers of Moldovan, Hungarian, Romanian and Bulgarian. The number of native speakers of other minority languages is less than 100,000 (Figure 2).

Figure 2. Native speakers of minority languages in Ukraine, based on 2001 census data (Ruthenian or Rusyn speakers were counted among Ukrainian native speakers)



12. Ukraine is characterised by widespread bilingualism.¹¹ “Ukraine is practically a bilingual country where everyone seems to understand both Ukrainian and Russian, and where the vast majority (roughly two-thirds of respondents in various polls) claim they speak both languages fluently” – Rjabcsuk summarizes the situation.¹²
13. According to the 2001 census, 56.84% of the Ukrainian population speak “fluently” at least one language other than their mother tongue. This proportion was 63.23% among the urban population and 43.92% among the rural population.¹³ Because the data included language skills for infants and elderly people, Lozyns’kyi estimates that 80% of the adult population can speak fluently (at least) one language in addition to their mother tongue.¹⁴
14. In 2001, 87.84% of the country’s population spoke Ukrainian and 67.71% spoke Russian (Table 3). According to the census data, 58.76% of Russians had a good command of the

¹¹ Besters-Dilger, Juliane (ed.): *Language policy and language situation in Ukraine: Analysis and recommendations*. Peter Lang, Frankfurt am Main, 2009.; Bowring, Bill: The Russian Language in Ukraine: Complicit in Genocide, or Victim of State-building? In: Lara Ryazanova-Clarce (ed.): *The Russian Language Outside the Nation*. Edingurgh University Press, Edingurgh, 2014. 56–78.; Bilaniuk, Laada: Language in the balance: the politics of non-accommodation on bilingual Ukrainian–Russian television shows. *International Journal of the Sociology of Language* 210 (2010): 105–133.; Майборода Олександр та ін. (ред.): *Мовна ситуація в Україні: між конфліктом і консенсусом* [The Language Situation in Ukraine: Between Conflict and Consensus]. Інститут політичних і етнонаціональних досліджень імені І. Ф. Кураса НАН України, Київ, 2008.

¹² Rjabcsuk, Mikola: *A két Ukrajna* [Two Ukraines]. Örköség Kultúrpolitikai Intézet, Budapest, 2015. 136.

¹³ Лозинський Роман: *Мовна ситуація в Україні (суспільно-географічний погляд)* [Linguistic situation in Ukraine: a socio-geographical view]. Видавничий центр ЛНУ імені Івана Франка, Львів, 2008. 246.

¹⁴ Лозинський 2008: 254.

Ukrainian language, and 58.07% of Ukrainians had a good command of Russian.¹⁵

Table 3. Number and proportion of persons speaking Ukrainian and Russian “freely” in Ukraine, based on 2001 census data¹⁶

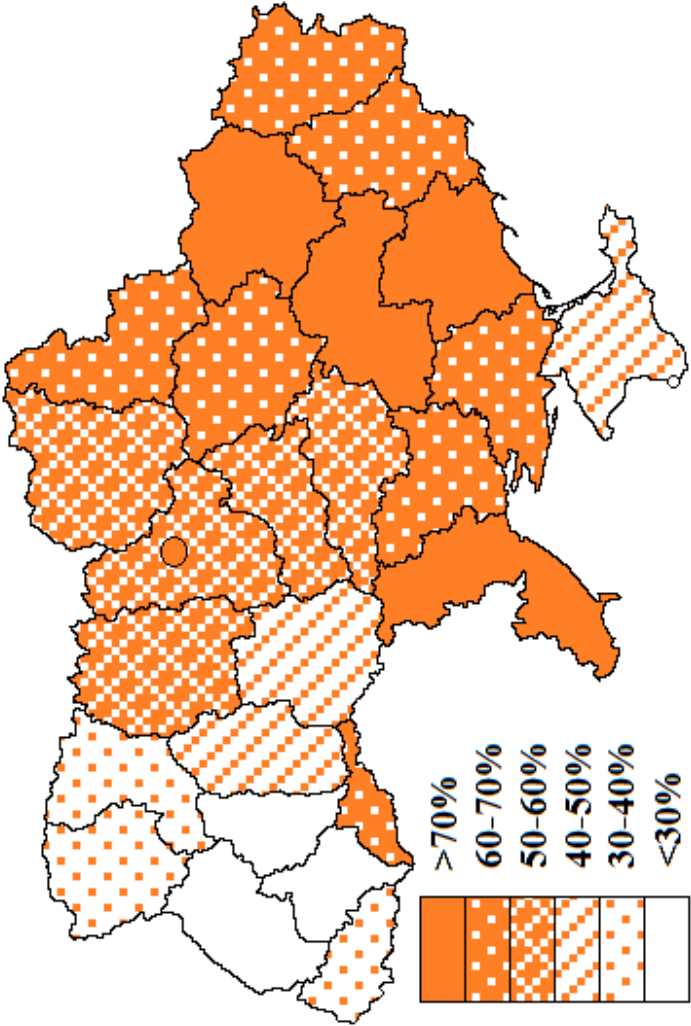
	Ukrainian speakers		Russian speakers	
	<i>persons</i>	<i>ratio in total population (%)</i>	<i>persons</i>	<i>ratio in total population (%)</i>
total	42,374,848	87.84	31,698,051	67.71
of whom				
as a mother tongue	32,577,468	67.53	14,273,670	29.59
as a second language	9,797,380	20.31	17,424,381	36.12

15. The proportion of bilinguals was much higher in the eastern (mainly Russian-populated) areas of the country than in the (mostly Ukrainian) western parts (Figure 3).

¹⁵ Лозинський 2008: 216.

¹⁶ Лозинський 2008: 199–200., 214–215.

Figure 3. Proportion of persons who speak (at least) one language “freely” in addition to their mother tongue, according to 2011 census data (Based on Lozyns’kyi 2008: 246.)



16. Sociological and sociolinguistic research also confirms the widespread use of bilingualism. In certain parts of the country and in many situations (such as in pop culture) the Russian language is dominant.
17. The nature of bilingualism in Ukraine is primarily due to historical factors, such as that during the existence of the Soviet Union, the Russian language received stronger support in Soviet Ukraine than Ukrainian and other languages.
18. In the last days of the Soviet Union and after the fall of the empire, both among the Ukrainians and among the Romanians, Hungarians, Poles, etc. there was a growing interest in their own culture and language, and there appeared demands for extending the use of their own language as opposed to the previously privileged position of the Russian language. During this period and in the early years of Ukrainian sovereignty, the respective goals of the majority nation (the Ukrainians) and those of the minorities living in the country coincided. However, while the situation of the Ukrainian majority and that of the minorities in the Soviet Union had been similar in many respects, after 1991 their parallel efforts to strengthen the position of their languages has come into conflict: the language policy of the Ukrainian state insists that the functions previously enjoyed by the Russian language be taken over by the Ukrainian language, whereas national minorities also want to use their mother tongues in as many spheres of language use as possible.
19. As a result, after Ukraine's independence, the linguistic situation has created conflicts in an already troubled transitional situation, full of political and economic crises. These conflicts are still not fully resolved. The conflict stems from the fact that the state-organizing ethnic group (the Ukrainian) seeks to play an exclusive role in the public, symbolic space of languages.

20. The conflict is exacerbated by that Ukraine's language policy considers strengthening the position of the Ukrainian language as one of its most important goals.
21. The language policy of impatient Ukrainianisation, which has longed for revenge for historical insults, is being pushed by the Ukrainian political elite despite the fact that since spring 2014 the country's population has become much more homogenous both ethnically and linguistically. One reason for this is that a large part of the Donetsk and Luhansk districts of eastern Ukraine, uncontrolled by Kyiv, and the Crimean peninsula, annexed by Russia in contravention of international law, have significant ethnic Russian and Russian-speaking populations. A substantial part of the Crimean Tatars also remained in the Moscow-controlled Crimea. As a result, the weight of the clearly Ukrainian dominated western territories has increased significantly in the country.
22. The wartime situation and the loss of control over some areas have greatly strengthened patriotic sentiment and national pride, at the same time impatient nationalism has also been gaining ground.
23. Central language policy should strike a balance between promoting the State language and protecting minority languages in this complex situation. However, as shown below, the Law of Ukraine on Supporting the Functioning of the Ukrainian Language as the State Language (hereinafter: SLL2019), passed by the Supreme Council (Parliament) of Ukraine on 25 April 2019, is not capable of strengthening social consensus, nor promoting social reconciliation, and thus cannot create a delicate balance.

II. Language laws in Ukraine

24. In Ukraine, which became independent in 1991, four laws were adopted until spring 2019 with the central aim of regulating the language regime. These laws are: (1) Law of Ukraine “On Languages in the Ukrainian SSR” (LL1989)¹⁷; (2) Law of Ukraine “On Ratification of the European Charter for Regional or Minority Languages, 1992”¹⁸ (ECRML1999); (3) Law of Ukraine “On Ratification of the European Charter for Regional or Minority Languages”¹⁹ (ECRML2003); (4) Law of Ukraine “On the Principles of State Language Policy” (LL2012).²⁰
25. The 1989 Language Law (LL1989), adopted before the independence, was a compromise between Ukrainianisation and the maintenance of the existing status quo.²¹ According to analysts,²² the law equally promoted Ukrainian nation-building and the continued presence of the Russian language

¹⁷ Закон України «Про мови в Українській РСР» [Law of Ukraine "On Languages in the Ukrainian SSR"]. <http://zakon4.rada.gov.ua/laws/show/8312-11> (LL1989)

¹⁸ Закон України «Про ратифікацію Європейської хартії регіональних мов або мов меншин, 1992 р.» [Law of Ukraine “On Ratification of the European Charter for Regional or Minority Languages, 1992”].

<https://zakon.rada.gov.ua/laws/show/1350-14>. Hereinafter: ECRML1999.

¹⁹ Закон України «Про ратифікацію європейської хартії регіональних мов або мов меншин» [Law of Ukraine “On Ratification of the European Charter for Regional or Minority Languages”]. <http://zakon4.rada.gov.ua/laws/show/802-15>. Hereinafter: ECRML2003.

²⁰ Закон України «Про засади державної мовної політики» [Law of Ukraine "On the Principles of State Language Policy"].

<https://zakon.rada.gov.ua/go/5029-17>. Hereinafter: LL2012.

²¹ Arel, Dominique: Language politics in independent Ukraine: Towards one or two state languages? *Nationalities Papers* 23(1995)/3: 597–622.

²² Kulyk, Voldymyr: Constructing common sense: Language and ethnicity in Ukrainian public discourse. *Ethnic and Racial Studies* 29(2006)/2: 281–314.

in many areas of life. Others²³ interpret the law as a compromise which, on the one hand, codified the status of the Ukrainian State language and, on the other hand, preserved the privileged position of the Russian language in many spheres of social and public life. There also exists an assessment according to which LL1989 was the first legal step towards the de-Sovietization and independence of the country in 1991.²⁴

26. Ukraine, an independent state since 1991, was required by Opinion No 190 (1995) of the Parliamentary Assembly of the Council of Europe²⁵ as a condition for membership of the Council of Europe to ratify the Framework Convention for the Protection of National Minorities (hereinafter: “the Framework Convention”), and to sign and ratify, within one year of its accession to the Council of Europe, the European Charter for Regional or Minority Languages (hereinafter referred to as “the Charter”).
27. Accordingly, the Supreme Council of Ukraine ratified the Framework Convention in 1997²⁶ and the Charter in 1999.²⁷ However, the law on the ratification of the Charter

²³ Котигоренко Віктор: *Етнічні протиріччя і конфлікти в сучасній Україні: політологічний концепт* [Ethnic Contradictions and Conflicts in Modern Ukraine: A Concept of Political Science]. Київ, 2004. 518–519.

²⁴ Bilaniuk, Laada: Gender, Language Attitudes, and Language Status in Ukraine. *Language in Society* 32 (2003): 47–78.

²⁵ PACE Opinion 190, 26/9/95. Application by Ukraine for membership of the Council of Europe. Para. 12.7. <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=13929&lang=en>

²⁶ Закон України «Про ратифікацію Рамкової конвенції Ради Європи про захист національних меншин» [Law of Ukraine “On Ratification of the Council of Europe’s Framework Convention for the Protection of National Minorities”]. <https://zakon.rada.gov.ua/laws/show/703/97-%D0%B2%D1%80>

²⁷ ECRML1999

(ECRML1999) was repealed by the Constitutional Court of Ukraine in 2000 for formal reasons.²⁸ According to analysts, Kyiv's political intention was for Ukraine to comply with its international obligations and formally ratify the Charter, but it never wanted the international instrument to enter into force, so that it would not have to implement its obligations undertaken by the ratification.²⁹

28. In 2003, Ukraine ratified the Charter again (ECRML2003).³⁰ However, the instrument of ratification was deposited with the Secretary General of the Council of Europe only two years later, on 19 September 2005. The Charter entered into force in Ukraine as late as 1 January 2006.
29. The ratification of the Charter was preceded and followed by strong negative propaganda in Ukraine. Politicians, State officials, academics, activists, and journalists have criticized the Charter. During this negative campaign, several false claims were made about the Charter. This has significantly undermined the prestige of the Charter among the population of the country.

²⁸ Рішення Конституційного Суду України у справі за конституційним поданням 54 народних депутатів України щодо відповідності Конституції України (конституційності) Закону України «Про ратифікацію Європейської хартії регіональних мов або мов меншин 1992 р.» від 12.07.2000 р. № 9-рп/2000. [Decision of the Constitutional Court of Ukraine in the case on the constitutional petition of 54 People's Deputies of Ukraine on compliance with the Constitution of Ukraine (constitutionality) of the Law of Ukraine "On Ratification of the European Charter for Regional or Minority Languages of 1992" of 12.07.2000 No. 9-rp/2000.] <https://zakon.rada.gov.ua/laws/show/v009p710-00>. Hereinafter: Constitutional Court 2000.

²⁹ Bowring, Bill – Antonovych, Miroslava: Ukraine's long and winding road to the European Charter for Regional and Minority Languages, In: *The European Charter for Regional or Minority Languages: Legal Challenges and Opportunities*, Council of Europe Publishing, Strasbourg, 2008, 157–182.

³⁰ ECRML2003.

30. On 3 July 2012, after lengthy debates and under scandalous circumstances, the Kyiv Parliament passed a new language law (LL2012) to replace the former one (LL1989). The text of the law was published in the official gazette *Голос України* [Voice of Ukraine] on 10 August 2012, and thus LL2012 entered into force.³¹ The law continued to be in the crossfire of disputes.
31. There have been several attempts to declare the law unconstitutional. A petition submitted by 51 People's Deputies in 2012 was rejected by Decision 10-у/2013 of the Constitutional Court of Ukraine on 27 March 2013.³² On 7 July 2014, 57 People's Deputies referred the matter to the Constitutional Court once more.³³ However, the Constitutional Court started to deal with the petition only years later. The law was finally annulled by the Constitutional Court of Ukraine (due to formal reasons) on 28 February 2018.³⁴

³¹ LL2012.

³² Ухвала Конституційного Суду України про відмову у відкритті конституційного провадження у справі за конституційним поданням 51 народного депутата України щодо відповідності Конституції України (конституційності) Закону України «Про засади державної мовної політики» від 27. 03. 2013 р. № 10-у/2013. [Decision of the Constitutional Court of Ukraine on refusal to open constitutional proceedings in the case of the constitutional petition of 51 People's Deputies of Ukraine on compliance with the Constitution of Ukraine (constitutionality) of the Law of Ukraine "On Principles of the State Language Policy" of March 27, 2013, No. 10-у/2013.] <http://zakon4.rada.gov.ua/laws/show/v010u710-13>

³³ <http://ccu.gov.ua/doccatalog/document?id=252116>

³⁴ Рішення Конституційного Суду України у справі за конституційним поданням 57 народних депутатів України щодо відповідності Конституції України (конституційності) Закону України «Про засади державної мовної політики» від 28. 02. 2018 р. № 2-р/2018. [Decision of the Constitutional Court of Ukraine in the case of the constitutional petition of 57 People's Deputies of Ukraine on compliance with the Constitution of Ukraine (constitutionality) of the Law of Ukraine "On Principles of the State Language Policy" of February 28, 2018,

32. LL2012 was annulled by the Constitutional Court on the ground that the constitutional procedure for debating and adopting laws in Parliament had been violated. The Constitutional Court made no criticism as regards the content of LL2012.
33. LL1989, ECRML1999 and ECRML2003 apply to the languages of the national minorities in the country. In contrast, LL2012 defines the rights of native speakers of regulated languages. The distinction is important. In fact, there is a significant difference in the composition of Ukraine's population in terms of ethnicity as opposed to mother tongue. As can be seen from Table 4, during the 2001 census much more people declared themselves to be ethnic Ukrainians than to have Ukrainian as their mother tongue. Therefore, the number and proportion of people belonging to national minorities is significantly lower than the number of members of linguistic minorities.
34. LL1989 protects the languages of all national minorities in Ukraine, totalling almost 130 languages. According to the 2001 census, more than 130 nationalities and ethnicities live in the country.³⁵ Although the Charter applies to regional or minority languages, the scope of the Ukrainian ratification laws of the international document (ECRML1999 and ECRML2003) extends to the languages of 13 national minorities in Ukraine. In turn, LL2012 safeguards the rights of native speakers of 18 Ukrainian minority languages (Table 5).

No. 2-p/2018.] <https://zakon.rada.gov.ua/laws/show/v002p710-18>. Hereinafter: Constitutional Court 2018.

³⁵ Kuras, Ivan F. – Pirozhkov, Serhyi I. eds.: *First All-National Population Census: historical, methodological, social, economic, ethnic aspects*. Kyiv: State Statistic Committee of Ukraine and Institute for Demography and Social Studies, 2004. 99.

Table 4. Population of Ukraine by ethnicity and mother tongue (2001 census)³⁶

	by ethnicity		by mother tongue	
	persons	%	persons	%
Ukrainian	37,531,510	77.80018	32,570,743	67.51686
Russian	8,334,141	17.27609	14,273,670	29.58831
Belarusian	275,763	0.57164	56,249	0.11660
Moldovan	258,619	0.53610	185,032	0.38356
Crimean Tatar	248,193	0.51449	231,382	0.47964
Bulgarian	204,574	0.42407	134,396	0.27859
Hungarian	156,566	0.32455	161,618	0.33502
Romanian	150,989	0.31299	142,671	0.29575
Polish	144,130	0.29877	19,195	0.03979
Jewish (Yiddish)	103,591	0.21474	3,307	0.00686
Armenian	99,894	0.20707	51,847	0.10748
Greek	91,548	0.18977	6,029	0.01250
Roma(ni)	47,587	0.09864	22,603	0.04685
German	33,302	0.06903	4,206	0.00872
Gagauz	31,923	0.06617	23,765	0.04926
Slovak	6,397	0.01326	2,768	0.00574
Karaim	1,196	0.00248	96	0.00020
Krymchak	406	0.00084	21	0.00004
Rusyn / Ruthenian	10,183	0.02111	6725	0.01394
Other	510,390	1.05800	143,142	0.29672
No response	-	-	201,437	0.41756
<i>Total</i>	<i>48,240,902</i>	<i>100</i>	<i>48,240,902</i>	<i>100</i>

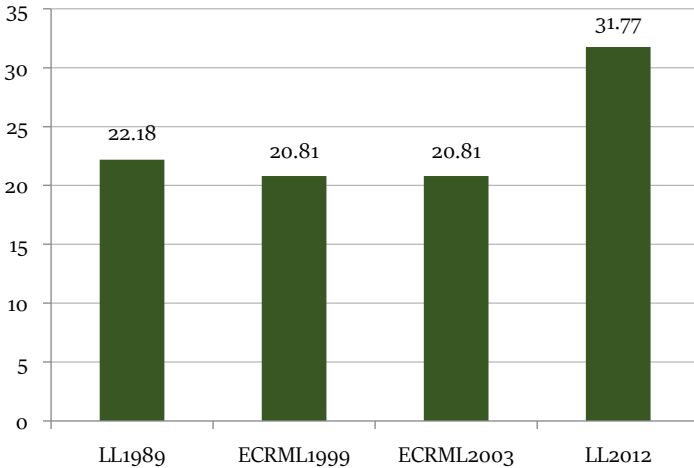
³⁶ Source: <http://2001.ukrcensus.gov.ua/results/general/nationality/>

Table 5. Languages covered by the four laws

LL1989	ECRML1999	ECRML2003	LL2012
The languages of all national minorities in Ukraine. Approx. 130 languages.	The languages of 13 national minorities (Belarusian, Bulgarian, Greek, Gagauz, Jewish, Crimean Tatar, Moldovan, German, Polish, Russian, Romanian, Slovak and Hungarian)	The languages of 13 national minorities (Belarusian, Bulgarian, Greek, Gagauz, Jewish, Crimean Tatar, Moldovan, German, Polish, Russian, Romanian, Slovak and Hungarian)	The native speakers of 18 languages (Russian, Belarusian, Bulgarian, Gagauz, Yiddish, Crimean Tatar, Moldovan, German, Neo-Greek, Polish, Romani, Romanian, Slovak, Hungarian, Rusyn, Karaim, Krymchak)

35. LL1989 affects 22.18 percent of the country's population. The scope of ECRML1999 and ECRML2013 extends to 20.81 percent of Ukraine's population. LL2012 applies to nearly one third (31.77%) of the population (Figure 4).
36. Under certain conditions, all four laws allow minority languages to appear in the public sphere, usually alongside the State language. Most of the legislation analysed set a demographic threshold for the use of minority languages in official situations (Table 6).

Figure 4. Proportions of the country’s population affected by the four laws



37. LL1989 allows for the use of the languages of national minorities in public offices if the members of the respective national minority constitute an absolute majority within the borders of the administrative unit. The demographic threshold for using a minority language is therefore very high: 50%. Even so, the use of the minority language is not obligatory, it is only an option.
38. ECRML1999 provides for the use of national minority languages in public offices where the proportion of persons belonging to the given national minority exceeds 20 percent.
39. ECRML2003 does not define a demographic threshold, instead it states that the use of regional or minority languages is permitted in the areas of those regional or local governments

where the number of users of regional or minority languages justifies this.

40. Pursuant to LL2012, regional or minority languages can be used in public offices and local governments if the proportion of their native speakers reaches 10% in the territory of the given administrative unit. In such cases, the law obligatorily prescribes the use of minority languages in oral and written communications. Local governments shall also publish their resolutions in the respective minority language, in addition to Ukrainian (Table 6).

Table 6. Demographic thresholds for the use of minority languages in Ukraine

LL1989	ECRML1999	ECRML2003	LL2012
Within administrative units where the proportion of members of a given national minority is higher than 50%.	Within administrative units where the proportion of members of a given national minority is higher than 20%.	Not specified.	Within administrative units where the proportion of native speakers of one (or more) of the 18 languages reaches 10%.

41. LL1989, LL2012 and ECRML1999 determine that minority languages can be used in administrative units at the regional (область), district (район) and municipal (city, town and village) levels. The ECRML2003 does not specify the types of administrative areas in which regional or minority languages can be used (Table 7).

Table 7. Administrative levels covered by the four laws

LL1989	ECRML1999	ECRML2003	LL2012
Region, district, municipality.	Administrative unit (region, district, municipality)	Not specified.	Region, district, municipality.

42. LL2012, in accordance with the first paragraph of Article 10 of the Constitution of Ukraine, designated Ukrainian as the only State language.
43. According to the official interpretation of the above article of the Constitution by the Constitutional Court,³⁷ the State language (державна мова) is also an official language (офіційна мова) in Ukraine. However, pursuant to the opinion of the Constitutional Court, the fact that the country has only one State language does not mean that only Ukrainian can be used as an official language. Accordingly, LL2012 allows for the official use of minority languages under certain conditions.

³⁷ Рішення Конституційного Суду України у справі за конституційним поданням 51 народних депутатів України про офіційне тлумачення положень статті 10 Конституції України щодо застосування державної мови органами державної влади, органами місцевого самоврядування та використання її у навчальному процесі в навчальних закладах України (справа про застосування української мови) від 14. 12. 1999 р. № 10-рп/99. [Decision of the Constitutional Court of Ukraine on the constitutional petition of 51 People's Deputies of Ukraine on the official interpretation of Article 10 of the Constitution of Ukraine on the use of the State language by State authorities, local self-government bodies and in the educational process in educational establishments of Ukraine (the case on the use of the Ukrainian language) of December 14, 1999, No. 10-pr/99.] <http://zakon4.rada.gov.ua/laws/show/v010p710-99>. Hereinafter: Constitutional Court 1999.

44. Under LL2012, certain rights were required to be granted obligatorily and automatically by local authorities in those administrative units where the proportion of native speakers of one (or more) of the 18 languages listed in the law reached 10%. Such rights included, for example, the official publication of documents of local State and municipal authorities in minority or regional languages; public officials had to use minority languages in their communications with persons speaking minority languages; written submissions in a regional language had to be answered in the same language; minority languages had to be taught in school education; geographical names had to be displayed in minority languages, too.
45. Although the proportion of Russian native speakers in the country was 29,5% at the time of the 2001 census, the application of LL2012 was only required at the regional, district and municipality levels. Consequently, in spite of the fact that the proportion of Russian native speakers in Ukraine is significantly above 10%, only one State and official language remained at the national level after the adoption of LL2012: Ukrainian.
46. At the macro level, therefore, LL2012 did not introduce official bilingualism: Ukrainian remained the only State language of Ukraine, and Russian did not even become a second official language at the national level.
47. LL2012 allowed for the use of regional or minority languages – both orally and in writing, in private and public life – in the territory of those regions (область), districts (район) and municipalities where, according to official census data, the proportion of native speakers of the respective language met the 10 % threshold.

48. At the time of the 2001 census, Ukraine was divided into 27 administrative units (24 regions, the capital of Kyiv, the Autonomous Republic of Crimea, and the capital thereof, Sevastopol). In 11 of the 24 regions (область), the proportion of Russian native speakers exceeded 10%. In addition, the proportion of Russian-speakers was higher than 10% in Kyiv and Sevastopol. In the Autonomous Republic of Crimea, both Russian and Crimean Tatar native speakers counted more than 10%. In Chernivtsi region, Romanian speakers met the 10% threshold. The proportion of Hungarian native speakers in Transcarpathia was almost 13%. Thus, at the highest administrative level, the Russian, Hungarian, Romanian and Crimean Tatar languages could be used alongside the State language under LL2012 (Figure 5).
49. If we take not only the regional level, but also the level of districts (район) and cities of regional significance (місто обласного значення), and examine which languages had enough speakers there to reach the 10% threshold required for the enforcement of linguistic rights, we can see that the proportion of Russian native speakers was at least one tenth of the population in many districts and cities (Figure 6).
50. In addition to Russian, in some districts, native speakers of Bulgarian, Gagauz, Crimean Tatar, Hungarian, Romanian and Moldovan have also reached the demographic thresholds set by LL2012. Bulgarian, Crimean Tatar, Gagauz, Moldovan and Romanian native speakers reached 10% in 7, 15, 1, 8 and 7 districts, respectively. Hungarian native speakers made up at least one-tenth of the population in four districts and one city of district significance (Figure 7).

Figure 5. Regional or minority languages in Ukraine at the regional level, based on 2001 official census data

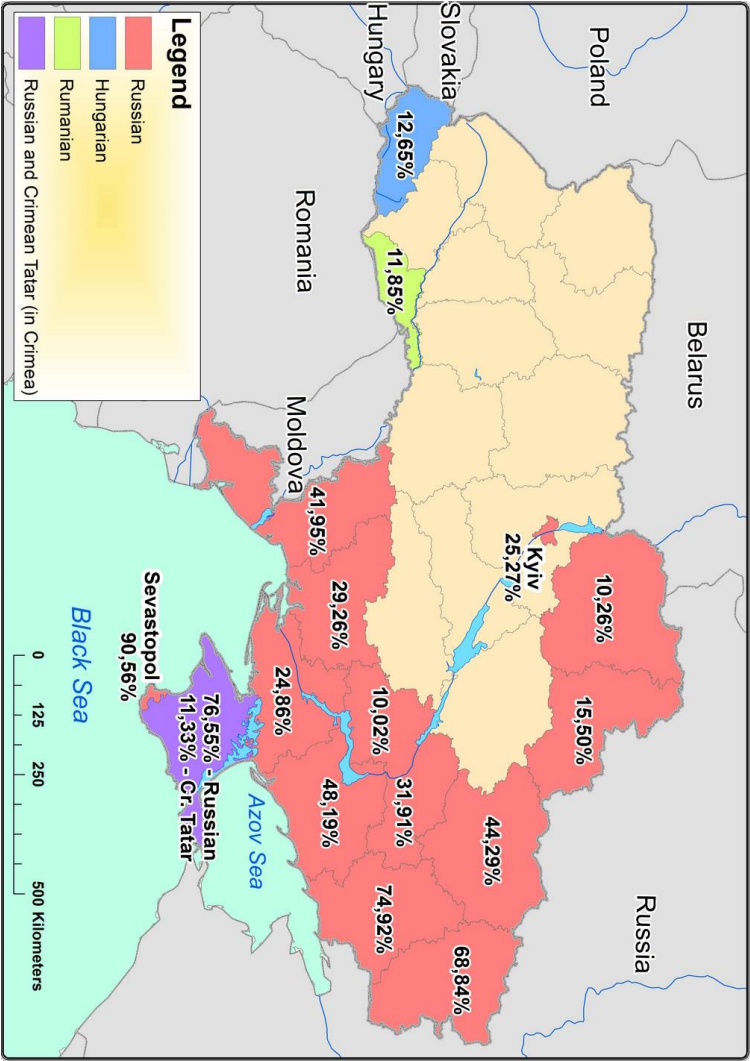


Figure 6. Districts and cities of district significance where Russian native speakers reach the 10% threshold (based on 2001 census data)

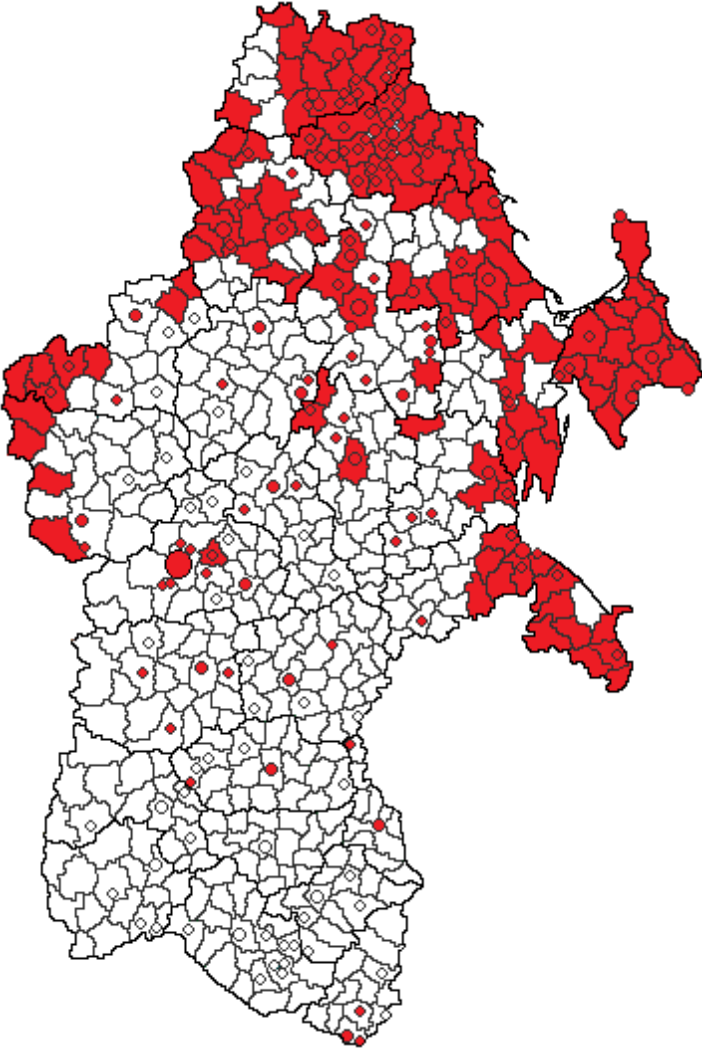
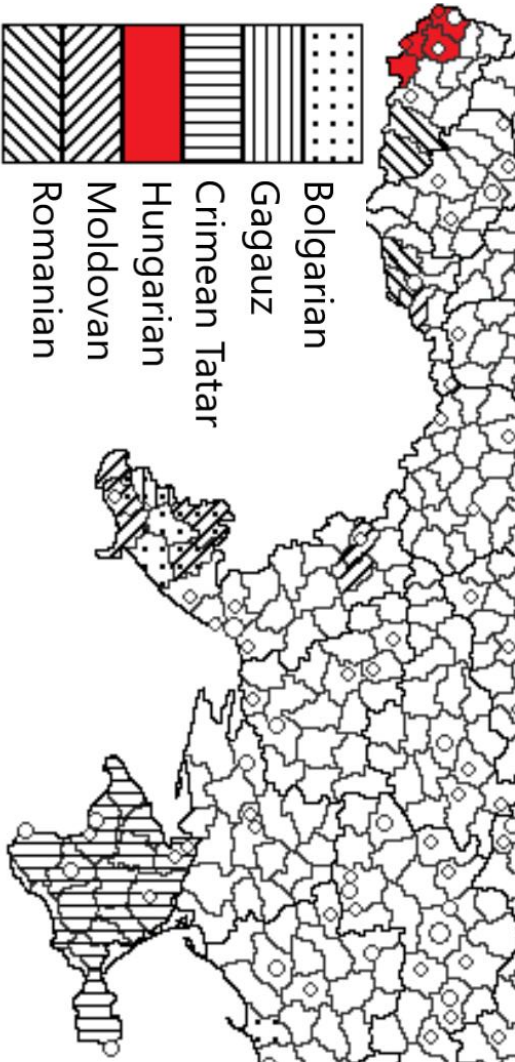


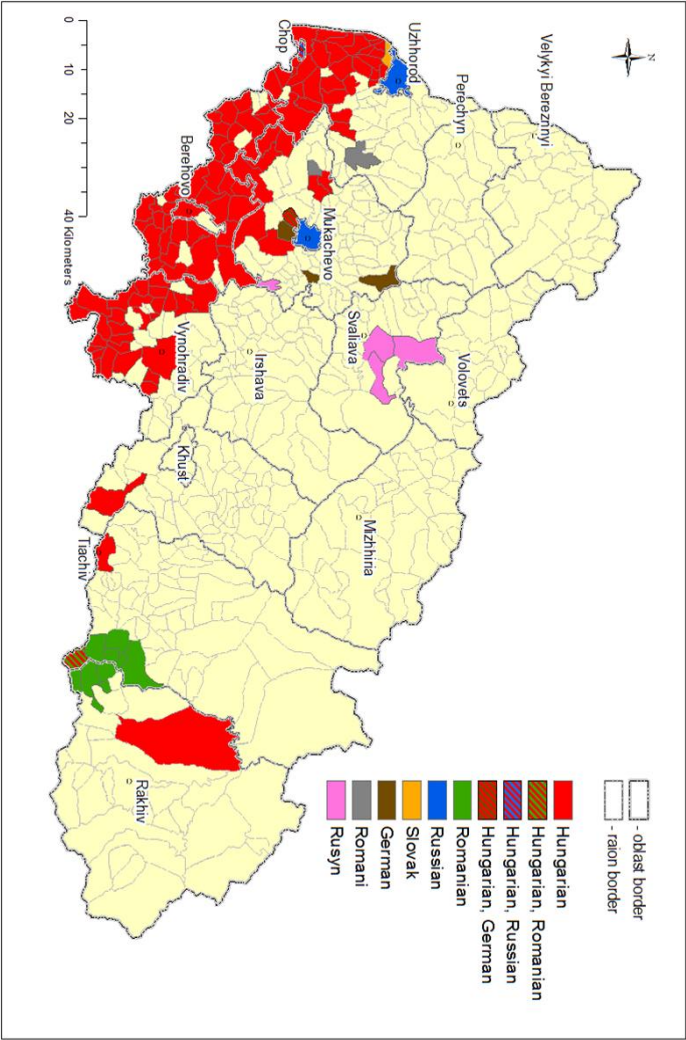
Figure 7. Districts and cities of district significance where the proportion of native speakers of certain regional or minority languages reaches the 10% threshold (based on 2001 census data)



51. According to the latest (2001) census in Ukraine, the proportion of Hungarian native speakers in Transcarpathia was 12.65%. The proportion of Hungarian native speakers reached the 10% threshold in the Berehove district (80.2%), the Vynohradiv district (26.0%), the Mukachevo district (13.8%), and the Uzhhorod district (36.5 %), furthermore, in four cities (Berehove / Берегове / Beregszász, Chop / Чоп / Csap, Vynohradiv / Виноградів / Nagyszőlős, Tyachiv / Тячів / Técső) and 69 rural municipalities. The proportion of Romanian native speakers met the 10% threshold in the Tiachiv / Тячів / Técső and Rakhiv / Рахів / Rahó districts and in seven municipalities. Slovak native speakers achieved 10% in one municipality (Storozhnytsia / Строжниця / Órdarma), German native speakers in two municipalities (Shenborn / Шенборн / Schönborn, Pavshyno / Павшино / Paushing). The proportion of Roma native speakers reached 10% in Seredne / Середнє / Szerednye, whereas Rusyn native speakers composed more than 10% of the population in Hankovytsia / Ганьковиня and Nelipyno / Неліпино municipalities (Figure 8).
52. It can be seen from the above that LL2012 created favorable conditions for the use of the Russian language, but other minority languages also became available at the regional (Hungarian, Romanian, Crimean Tatar) and/or district (Hungarian, Romanian, Moldovan, Gagauz, Bulgarian, Crimean Tatar) levels, whereas at the municipal level the official use of many other languages (e. g. Slovak, German, etc.) was allowed by the law.
53. However, as mentioned before, LL2012 was repealed by the Constitutional Court of Ukraine in 2018.³⁸

³⁸ Constitutional Court 2018.

Figure 8. Municipalities in Transcarpathia where the proportion of speakers of one (or more) regional or minority languages reaches 10 percent, according to 2001 official census data



54. At the ratification of the Charter, under Article 9 (3), Ukraine undertook to make available in regional or minority languages the most important legal texts of the State and those which are of particular interest to the users of these languages. The last law the Kyiv government made available in minority languages was LL1989. Official translations of ECRML2003, LL2012 and SLL2019 have still not been produced in regional or minority languages, despite the fact that these legal instruments directly affect the rights of minority language users.

III. The Law of Ukraine “On Supporting the Functioning of the Ukrainian Language as the State Language”

Circumstances of the adoption of the law

55. The Supreme Council of Ukraine passed the new law on the State language on 25 April 2019³⁹ (hereinafter: SLL2019).
56. On 15 May 2019, President Petro Poroshenko signed the law, and SLL2019 entered into force on 16 July 2019.
57. The parliamentary voting and the signing of the law by the President (which were necessary conditions for the law to enter into force) took place after the second round of the Ukrainian presidential election. In the first round of the presidential election, held on 31 March 2019, President Poroshenko, who had been in power since 2014, took second place with 15.95 percent of the votes, behind Volodymyr Zelensky, who gained 30.24 percent. In the second round of April 21, Poroshenko suffered a massive defeat: against the backdrop of a 62.07 percent participation rate, he garnered only 24.46 percent of the ballots, while Zelensky gained 73.23 percent. The Kyiv parliament therefore adopted the law on the State language when it was already clear that a new political era was to begin in Ukraine.

³⁹ Закон України «Про забезпечення функціонування української мови як державної». [Law of Ukraine “On Supporting the Functioning of the Ukrainian Language as the State Language”.] <https://zakon.rada.gov.ua/laws/show/2704-19>. Non-official translation of the law is available here: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2019\)036-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2019)036-e) (SLL2019). Excerpts from SLL2019 in this paper are given based on this document.

58. Poroshenko handed over power to the newly elected head of State on 20 May 2019, and signed SLL2019 on May 15. Thus Poroshenko (although by law he could have left it to the new president to decide whether to sign the law or return it to parliament) enacted the law when voters had already clearly expressed their views on rejecting his policy.
59. On 21 July 2019, the people of the country articulated their opinions on the parliament having adopted the law: in the early parliamentary elections, the party of the new president (Слуга народу – Servant of the People) took first place (gaining 254 seats in the 450-seat parliament). Poroshenko’s party (Європейська солідарність – European Solidarity) in turn was ranked only fourth and garnered a total of 25 mandates (compared to the previous term, the party lost 102 seats).
60. During the five years of their rule, the Poroshenko camp that came to power after the so-called “revolution of dignity” and governed the country between 2014 and 2019, never made a political decision about passing a law on support for the State language. SLL2019 was adopted only when they were forced to hand over power after losing the presidential election. SLL2019 is therefore, without a doubt, the product of a bygone political era.
61. Passing and enacting the law after the loss of effective political power had the only purpose that Poroshenko pass on to his successor a legacy that divides the entire Ukrainian society.
62. The new political power entered a forced trajectory due to SLL2019. If they were to leave the law unchanged and to apply its provisions, they would oppose a significant proportion of the electorate who made them win the 2019 presidential and parliamentary elections. On the other hand, if they were to

repeal the law, they would have to face the attacks of their political opponents who set themselves up as representatives of Ukraine's national interests, declaring Zelensky and his team anti-national.

63. Nevertheless, currently SLL2019 determines the language regime in Ukraine.
64. However, SLL2019 is not capable of resolving social tensions around the language issue. On the contrary, the law is a source of further conflicts. The main reason for this is that the provisions of SLL2019 represent a significant step back from the standards set out in LL2012 and in some respects also from the norms established by LL1989. The law imposes the use of the State language in all public situations and confines regional or minority languages to private life and church services.
65. The adoption of SLL2019 was not preceded by real social discourse. Representatives of national minorities were not consulted on the text of the law, either. This happened so despite Ukraine's obligation under Article 7(4) of the Charter to take into account the needs and wishes of groups using regional or minority languages when defining its policy on these languages. By ratifying the Framework Convention, Ukraine has again committed itself to consulting stakeholders in shaping its language policy. Article 15 of the Framework Convention stipulates that the State shall create the necessary conditions for the participation of persons belonging to national minorities in public affairs affecting them. This includes, inter alia, the consultation with such persons when States take measures which directly affect minorities. SLL2019 directly affects speakers of minority languages, thus the lack of consultation with them is a serious omission on the part of the legislator.

66. One of the reasons for adopting SLL2019 was that with the abolition of LL2012, the language regime was not sufficiently regulated in Ukraine. However, the legislator has only enacted a law on the support of the State language, whereas no law has been adopted on the use and promotion of minority languages.
67. Article 8(3) of Section IX (Final and Transitional Provisions) of SLL2019 requires that within six months from the law coming into force the government of Ukraine shall submit for consideration by the parliament a draft law on the procedure for the exercise of rights of indigenous peoples and national minorities. SLL2019 entered into force on 16 July 2019. Therefore, the government should have submitted a draft law on minority rights to the parliament in January 2020. However, this has not yet happened (as of 13 April 2020).
68. The government has undoubtedly committed a serious omission and a manifest violation, considering that many provisions of SLL2019 directly affect the use of minority languages.
69. If Ukraine's political elite considered minority languages and their speakers as a value to be preserved, then the law on minorities should have been enacted at the same time as SLL2019.
70. It is obvious that Ukraine must suspend the application of SLL2019 until a balanced law guaranteeing the rights of minorities is adopted. Representatives of minorities and experts should also be involved in the elaboration of this law. Ukraine has committed itself to this by ratifying international conventions (the Charter and the Framework Convention).

The preamble to the law

71. The preamble to the law – referring to the official document “The Concept of the State Language Policy”⁴⁰ – states that the purpose of the law is to overcome deformations in the national linguistic-cultural and linguistic-informational space caused by the centuries-old assimilation policies of the colonizers and occupiers. This paragraph treats language policy as a means of revenge for perceived or real historical grievances. However, while acknowledging that it is a legitimate aim of every State to strengthen the State language, especially in countries where it had been subject to oppression in the recent past, the Advisory Committee on the Framework Convention has consistently emphasized that measures to promote the State language must not unduly restrict the language-related rights of persons belonging to national minorities.⁴¹
72. According to the preamble, “the full-fledged functioning of the Ukrainian language in all spheres of public life throughout the State is a guarantee of preserving the identity of the Ukrainian nation and strengthening the state unity of Ukraine”. There are many States in the world (such as Canada, Finland, etc.) in which several official languages are used, and this in no way threatens national identity or the unity of the State. Also, there are languages (Spanish, German, French, English, etc.) that are used as official languages in several States, and the unity of these States is not endangered by this.
73. SLL2019 expresses that “the Ukrainian language is the determining factor and the key feature of the identity of the Ukrainian nation that has formed historically and for many

⁴⁰ Концепція державної мовної політики [Concept of the State Language Policy]. <https://zakon.rada.gov.ua/laws/show/161/2010>

⁴¹ Opinion 2019: para. 41.

centuries lived continuously on its own ethnic territory, constitutes the overwhelming majority of the country's population, has given the State its official name, and is also the basic systemic component of the Ukrainian civil nation". This part of the preamble establishes a primordial relationship between the Ukrainian language, the Ukrainian state and the Ukrainian nation. It places the members of the majority society above the minorities, creating a hierarchical relationship between the citizens of the country.

74. Pursuant to the preamble, the legislator is, by this law, "seeking to strengthen the state-building and consolidating functions of the Ukrainian language", increasing "its role in ensuring the territorial integrity and national security of Ukraine". This part of the text implicitly suggests that minority languages threaten the territorial integrity of the State and national security.
75. One of the main aims of the adoption of the law was "to create appropriate conditions for ensuring and protecting the language rights and needs of Ukrainians". The drafters of the preamble have nothing to say about the language rights of inhabitants with non-Ukrainian ethnicity or non-Ukrainian mother tongue.
76. The wording of the preamble implies that the purpose of the law is to ensure the supremacy of the Ukrainian language in the hierarchical system of languages used in the country. Hence, securing the language rights of minorities and guaranteeing equality between persons are not among the aims of the law. Instead the legislator considers it as the task of the law to ensure the hierarchical supremacy of the Ukrainian language, and this, in turn, leads to linguistic discrimination and inequality between citizens.

The status of the Ukrainian language; State language = official language?

77. According to Article 1(1), “[t]he Ukrainian language shall be the only State (official) language in Ukraine”. This wording is based on a 1999 decision of the Constitutional Court of Ukraine,⁴² which defines the concept of the State language (official language) as follows: “The State language (official language) is the language which, according to the legal status conferred upon it by the State, functions as the mandatory language of contact in the public spheres of social life”.⁴³ By “public spheres of social life”, constitutional judges mean the area of work, decisions and administration of the legislature, the executive, the judiciary, as well as other State organs and local governments, and the area of cooperation between these bodies. Therefore, according to the legal interpretation of the Court, the terms *State language* and *official language* are synonyms.
78. In this way, the legislator theoretically excludes the possibility of using other languages as official languages in Ukraine. However, the cited decision of the Constitutional Court also sets out that local state authorities and local governments may use the Russian language or the languages of other national minorities in addition to the State language in the course of their work in accordance with the laws of Ukraine.⁴⁴

⁴² Constitutional Court 1999.

⁴³ In the original, Ukrainian text: «Під державною (офіційною) мовою розуміється мова, якій державою надано правовий статус обов'язкового засобу спілкування у публічних сферах суспільного життя.»

⁴⁴ «Поряд з державною мовою при здійсненні повноважень місцевими органами виконавчої влади, органами Автономної Республіки Крим та органами місцевого самоврядування можуть використовуватися російська та інші мови національних меншин у межах і порядку, що визначаються

Therefore, the legislator cannot rule out the possibility that minority languages have an official language status and be used in public administration at the regional level (in regions, districts or the territory of local governments). The forthcoming minority law must provide for this possibility.

79. Article 1 (8) of SLL2019 stipulates that in Ukraine the Ukrainian language “functions as the language of interethnic communication”. According to Article 3 (2), the purposes of the law include the “establishment of the Ukrainian language as the language of interethnic communication”. With this provision, the State seriously violates the right to privacy rights, as it obliges Ukrainian citizens of, inter alia, Romanian or Hungarian ethnicity to use the Ukrainian language in their communication with each other (regardless of the situation). This provision of the law is absurd and unenforceable. It also violates the linguistic human rights and privacy rights of non-Ukrainian-speaking citizens, as well as the freedom of expression.
80. Article 1 (8) of SLL2019 furthermore infringes the rights set out in Article 10 (1) of the Framework Convention: “The Parties undertake to recognise that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing”.
81. In its opinion on SLL2019, the Venice Commission clearly states that the above statement is also valid with regard to civil servants, and they should not be required to use the official

законами України.» [In addition to the State language, Russian and other languages of national minorities may be used in the exercise of their powers by local executive authorities, bodies of the Autonomous Republic of Crimea and local self-government bodies within the limits and in the order determined by the laws of Ukraine.]

language in non-official verbal or written communication between themselves (para. 46).

82. In the same opinion, the Venice Commission also pointed out, by referring to international precedents, that “a State has to accept that, when private individuals address the public authorities in a non-official language, civil servants may voluntarily answer in this language, if they are capable of doing so” (para. 60).
83. The Venice Commission therefore makes it clear that SLL2019 cannot require officials, civil servants, public service employees, etc. to use the State language in informal oral or written communication during their working hours. Furthermore, the State may not prohibit citizens, regardless of their ethnicity, from addressing State or local government bodies in a language other than the State language, and receiving a reply in the same language if the official is able to respond in that language.

The use of languages in the public sphere

84. Article 6 (1) of SLL2019 stipulates that “[e]ach citizen of Ukraine is required to be proficient in the State language”.⁴⁵ This provision of the law is discriminatory. Regardless of the circumstances, the legislator declares every Ukrainian citizen a law-breaker who (for example, because of his age or for health reasons) does not speak Ukrainian. Due to the historical characteristics of Ukraine, there are many such people: according to the data of the latest (2001) official census in Ukraine, 13.42% of the population (6 472 794 persons) do not speak the State language.

⁴⁵ The original text reads as follows: «Кожний громадянин України зобов’язаний володіти державною мовою».

85. The quoted part of the law is inapplicable in practice. The State has neither the right nor the ability to check all its citizens whether they can speak Ukrainian or not. However, this provision is capable of intimidating minority language speakers. Pursuant to the law, any official body or public official which/whom Ukrainian citizens address in a language other than Ukrainian may require proof that the given person is proficient in the State language. In practice, this means that public authorities can enforce the use of the State language in virtually every situation.
86. SLL2019 and the Law on Civil Service⁴⁶ mandatorily prescribes that civil servants and public service employees shall be familiar with the State language. This provision is natural and necessary. However, there is no mention in these laws of appointing officials who are familiar with regional or minority languages in those territories where these languages are used. By ratifying Article 10 (4) c of the Charter, Ukraine has undertaken to appoint “public service employees having a knowledge of a regional or minority language [...] in the territory in which that language is used”.
87. According to Article 1 (6) of SLL2019, “[d]eliberate distortion of the Ukrainian language in official documents and texts, including its deliberate use in contravention of the requirements imposed by Ukrainian spelling and the State language standards, as well as creation of obstacles and restrictions in the use of the Ukrainian language, shall entail the liability established by law”. This part of the law is legally incomprehensible. For example, how is it possible to prove that someone has intentionally violated the spelling rules or grammar

⁴⁶ Закон України «Про державну службу» [Law of Ukraine "On Civil Service"]. <https://zakon.rada.gov.ua/laws/show/889-19>. Hereinafter: LU 2015.

standards? This part of SLL2019 produces legal uncertainty, provides opportunities for abuse and language-based discrimination, and creates a threatening atmosphere for speakers of regional or minority languages, thus preventing the public use of these languages. This provision should be repealed as soon as possible (see the recommendations of the Venice Commission in para. 139 of Opinion 2019).

The use of languages in the field of education

88. Education in the Hungarian language has a significant historical tradition in the territory of today's Transcarpathia. Currently known as Transcarpathia, the region belonged to several different states in the past 150 years. However, the Kingdom of Hungary within Austria–Hungary (1867–1918), the Czechoslovak Republic (1919–1938), Carpatho-Ukraine (1939), the Kingdom of Hungary (1939–1944) and the Soviet Union alike granted minorities the right and opportunity to mother tongue education.⁴⁷
89. Ukraine, which became independent in 1991, also used to guarantee the right to mother tongue education to minorities living in its territory. Article 53 (5) of the Constitution of Ukraine⁴⁸ stipulates: “Citizens who belong to national minorities, in accordance with the law, are guaranteed the right to receive instruction in their native language, or to

⁴⁷ Csernicskó, István and Tóth, Mihály: *The right to education in minority languages: Central European traditions and the case of Transcarpathia*. Ungvár: Autor-Shark, 2019. http://hodinkaintezet.uz.ua/wp-content/uploads/2019/02/CsI_TM_THE_RIGHT_TO_EDUCATION_IN_MINORITY_LANGUAGES.pdf

⁴⁸ Конституція України [Constitution of Ukraine]. <http://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>
Hereinafter: Constitution 1996.

study their native language in State and communal educational establishments and through national cultural societies”. Similarly to the Constitution, the Law on National Minorities⁴⁹ states in relation to education of minorities: “The State guarantees to all national minorities the right to [...] education in their native languages or learning of their native languages in State educational establishments or through national cultural societies” (Article 6). The same is repeated in Article 19 (3) of the Law on the Protection of Childhood.⁵⁰ Article 25 of LL1989 codified more extensive rights: “The free choice of the language of instruction is an inalienable right of the citizens of the Ukrainian SSR. The Ukrainian SSR guarantees every child the right to upbringing and education in their national language. This right is ensured by the establishment of pre-school and other educational institutions in which education is conducted in Ukrainian or another national language.” Pursuant to Article 20 of LL2012, “the free choice of the language of instruction is an inalienable right of the citizens of Ukraine, [...] subject to compulsory study of the State language to an extent sufficient for integration into Ukrainian society.” According to the same article of the law, citizens of Ukraine are guaranteed education in the State language as well as in regional or minority languages at all levels of education, from kindergarten to university.

90. Until 2017, Ukrainian legislation had defined the right to choose the language of instruction as an inalienable right of

⁴⁹ Закон України «Про національні меншини в Україні» [Law of Ukraine "On National Minorities in Ukraine"]. <http://zakon2.rada.gov.ua/laws/show/2494-12>

⁵⁰ Закон України «Про охорону дитинства» [Law of Ukraine "On the Protection of Childhood"]. <http://zakon2.rada.gov.ua/laws/show/2402-14>

citizens.⁵¹ However, Article 7 of the new Law on Education adopted in 2017⁵² and Article 21 of SLL2019 significantly changed the rules related to the language of education. These laws abolished the right of citizens to choose the language of education. This right had been provided to the citizens of Ukraine during the existence of the Soviet Union, and was also granted to the citizens of independent Ukraine from 1991 to 2017. Therefore, the new laws restrict a right of significant historical tradition.

91. Article 21 of SLL2019 and Article 7 (1) of the new Law on Education⁵³, adopted on 5 September 2017, make it clear that in Ukraine “[t]he language of the educational process in educational institutions shall be the State language”. Article 7 (4) of the Law on Education further stipulates that for minorities, “one or more subjects may be taught in two or more languages – the State language, English, or other official languages of the European Union”.
92. It is obvious that Article 21 of SLL2019 and Article 7 of the new Law on Education are incompatible with Article 20 of LL2012. However, the Constitutional Court of Ukraine, in its decision of 28 February 2018,⁵⁴ annulled LL2012, thus eliminating the contradiction between the two laws.
93. On January 16, 2020, Parliament voted in favor of the Law of Ukraine “On Complete General Secondary Education”, and

⁵¹ Csernicskó-Tóth 2019.

⁵² Закон України «Про освіту» [Law of Ukraine "On Education"].
<https://zakon.rada.gov.ua/laws/show/2145-19>. Hereinafter: LU 2017a.

⁵³ LU 2017a.

⁵⁴ Constitutional Court 2018.

on March 18, the Law came into force.⁵⁵ Article 7 of the LU 2017a is supposed to be explained by Article 5 of the new law (LU 2020).

94. Under Article 21 of SLL2019, Article 7 of the new Law on Education of 2017,⁵⁶ and Article 5 of the law on general secondary education, the citizens of Ukraine are divided into four major groups based on their rights related to the language of education. The first group is the majority (Ukrainians): they are not affected by legislative changes, as they can continue to study in their mother tongue at all levels of education. Persons belonging to indigenous peoples (in fact, the Crimean Tatars)⁵⁷ can also pursue their studies in their mother tongue “along with the State language”. Persons belonging to national minorities (Hungarians, Romanians, Poles, Bulgarians) whose languages are official languages of the European Union may receive education in their mother tongue in elementary school (grades 1–4), but in grade 5 at least 20% of the annual amount of lessons should be taught in the State language. This ratio has to reach at least 40% by grade 9 and 60% by grades 10–12. National minorities whose languages are not official in the

⁵⁵ Закон України «Про повну загальну середню освіту». [Law of Ukraine "On Complete General Secondary Education"]

<https://zakon.rada.gov.ua/laws/show/463-20>. Hereinafter: LU 2020.

⁵⁶ LU 2017a.

⁵⁷ The term “indigenous people” (in Ukrainian: корінний народ) was introduced into the Ukrainian legal system by Article 11 of the Constitution of Ukraine. A legal interpretation of the concept has still not been adopted. A parliamentary decision of February 2014 classifies the Crimean Tatar people as “indigenous people”: Постанова Верховної Ради України № 1140-VII від 20.03.2014 «Про Заяву Верховної Ради України щодо гарантії прав кримськотатарського народу у складі Української Держави» [Resolution of the Verkhovna Rada of Ukraine No. 1140-VII of March 20, 2014 “On the Statement of the Verkhovna Rada of Ukraine on Guaranteeing the Rights of the Crimean Tatar People in the Ukrainian State”]. <http://zakon2.rada.gov.ua/laws/show/1140-18>

EU (Russians, Belarusians) receive education in the State language in not less than 80 percent of the annual amount of study time from grade 5 onwards (Table 8).

Table 8. Maximum percentage of the use of mother tongue at different levels of public education, pursuant to Article 7 of the LU 2017a, Article 5 of the LU 2020, and Article 21 of the SLL2019

	Grades 1-4	5th grade	9th grade	Grades 10-12	Who are they?
persons belonging to the majority*	100	100	100	100	Ukrainians
indigenous people**	100	100	100	100	Crimean Tatars
minorities whose languages are official in the EU**	100	80	60	40	Hungarians, Romanians, etc.
minorities whose languages are not official in the EU**	100	20	20	20	Russians

* At least one foreign language is taught as a subject from grade 1 onwards.

** At least one foreign language + Ukrainian language and literature are taught as subjects. The mother tongue may only appear in education “alongside the State language”.

95. According to the first and second paragraphs of Article 3 of Section IX of the SLL2019, schools having Russian as the language of instruction will have to switch to the new educational model in 2020, whereas Hungarian- and Romanian-language schools have to do so in 2023. However, the deferral for

schools having either Russian, or Hungarian, Romanian, etc. as the language of instruction applies only along with “a gradual increase in the number of academic subjects taught in the Ukrainian language”.

96. Considering that until the adoption of the new Law on Education of 2017, every citizen of Ukraine had the right to pursue their studies in their mother tongue at all levels of education, it is clear that the new laws – including SLL2019 – narrow that right.
97. In its opinion, the Venice Commission strongly condemned discrimination against national minorities on the basis of whether or not their mother tongue is an official language in the EU.⁵⁸ This position was emphasized by the international legal body not only in connection with the LU 2017a, but also in its – undoubtedly negative – opinion issued on 9 December 2019 in connection with SLL2019.⁵⁹ The Article 5 of the LU 2020 also divides the population of Ukraine into the groups defined above.
98. Article 21 of SLL2019 and Article 7 of the LU 2017a provide for education in the State language (Ukrainian) at all levels of education in State and communal educational institutions.
99. However, these two laws allow education in regional or minority languages only in communal institutions. This means that the Ukrainian government banishes regional or minority

⁵⁸ European Commission for Democracy Through Law (Venice Commission). Opinion 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. CDL-AD (2017) 030. Opinion no. 902/2017. Strasbourg, 11 December 2017. [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). Hereinafter: Opinion 2017.

⁵⁹ Opinion 2019.

languages from State educational institutions. This is an obvious case of discrimination.

100. Article 53 (5) of the Constitution of Ukraine stipulates: “Citizens who belong to national minorities, in accordance with the law, are guaranteed the right to receive instruction in their native language, or to study their native language in State and communal educational establishments and through national cultural societies”. The 1999 decision of the Constitutional Court of Ukraine also ascertains that “[i]n State and communal educational institutions, along with the State language [...], the languages of national minorities may be used and learned in the educational process”.⁶⁰ Therefore, the constitution of the country guarantees the right to education in the mother tongue or to the learning of the mother tongue in State schools, as well. Since Article 7 of the Law on Education and Article 21 of SLL2019 exclude regional or minority languages from State educational institutions, the cited parts of these two laws are unconstitutional. Article 5 of the LU 2020 does not displace minority languages from public educational institutions.
101. The Law on Higher Education was adopted by the Supreme Council of Ukraine on 1 July 2014.⁶¹ Article 48 of this law regulated the language of instruction in higher education. According to Article 48 (1), the language of higher education

⁶⁰ In original: «У державних і комунальних навчальних закладах поряд з державною мовою (...) в навчальному процесі можуть застосовуватися та вивчатися мови національних меншин». [National and communal educational establishments, along with the state language (...) in the educational process can use and learn the languages of national minorities.] See, Constitutional Court 1999.

⁶¹ Закон України «Про вищу освіту» [Law of Ukraine “On Higher Education”]. <https://zakon.rada.gov.ua/laws/show/1556-18/ed20140701>. Hereinafter: LU 2014.

shall be Ukrainian. Article 48 (2) granted higher education institutions the right to teach one or more subjects in English or in other foreign languages in special groups set up for this purpose, while providing compulsory instruction in the State language. Article 48 (3) allowed private higher education institutions to choose the language of instruction, subject to compulsory provision of the teaching of the State language as a separate subject. Article 48 (4) provided for the teaching of languages of national minorities as subjects in higher education. However, Article 7 of the Law on Education of 2017⁶² and Article 21 of SLL2019 regulate the use of languages in education differently. As a consequence, on 25 April 2019, Article 48 of the Law on Higher Education was modified with reference to the two above-mentioned laws. Article 48 (1) remains unchanged. Under Article 48 (2), as amended, the language of instruction in higher education is governed by SLL2019 and the Law on Education. Paragraphs 3 and 4 of the original wording of Article 48 were deleted from the text of the Law on Higher Education. Both the original (as adopted in 2014)⁶³ and the amended versions⁶⁴ of Article 48 of the Law on Higher Education are available online. This change means that Ukraine has abolished the right of private higher education institutions to choose the language of instruction. The modification of the Law on Higher Education is closely related to the entry into force of SLL2019.

102. Article 7 (1) of the LU 2017a stipulates: “Persons belonging to national minorities of Ukraine are guaranteed the right to receive pre-school and primary education in communal

⁶² LU 2017a.

⁶³ LU 2014.

⁶⁴ Закон України «Про вищу освіту» [Law of Ukraine “On Higher Education”]. <https://zakon.rada.gov.ua/laws/show/1556-18>

educational institutions in the language of the respective national minority, along with the State language. This right shall be realized by setting up, in accordance with the law, of separate classes (groups) providing education in the language of the respective national minority, along with the State language, and shall not apply to classes (groups) providing education in Ukrainian”. Article 21 (1) of SLL2019 and Article 5 of the LU 2020 contains the same provisions.

103. It follows from Article 21 of SLL2019 and the sentences quoted from Article 7 of the LU 2017a and Article 5 of the LU 2020 that the State of Ukraine abolishes the institutional autonomy of educational establishments (kindergartens, schools) teaching in regional or minority languages (since it only allows the functioning of classes in minority languages). This is an obvious case of discrimination.
104. Thus, pursuant to the two above-mentioned laws, Ukrainian-medium groups and classes shall be opened in kindergartens and schools providing education in Russian, Hungarian, Romanian, Moldovan and Polish languages (whether or not parents wish so). In many municipalities, it is difficult to implement this provision in practice. For example, according to official census data from 2001, there are 44 municipalities in Transcarpathia where the proportion of Hungarian native speakers exceed 90 percent. To mention only a few of these, the proportion of Hungarian native speakers was 98.2% in Badaló (Бадалово), 98.1% in Vári (Вари), 96.1% in Kaszony (Косино), 97.7% in Nagydobrony (Велика Добронь), 97.6% in Eszeny (Есень), 96.7% in Tiszaásvány (Тисаашвань), and 94.8% in Szalóka (Соловка). Pursuant to Article 7 of the LU 2017a, Article 5 of LU 2020 and Article 21 of SLL2019, in kindergartens and schools of these villages Ukrainian-medium groups and classes shall also be established.

105. As most of these municipalities have small populations, there is no realistic possibility for setting up parallel – Ukrainian- and Hungarian-medium – groups and classes in kindergartens and schools. This, in turn, may lead to the closure of institutions and the dissolution of Hungarian-medium groups/classes, which endangers the survival of Hungarian as a regional or minority language.
106. In those municipalities where parallel Ukrainian- and Hungarian-medium classes will be established, the use of regional or minority language will necessarily be reduced. In practice, it is inconceivable that every kindergarten and school ceremony and public event is conducted in both languages (for example, it is not possible to keep the attention of the children indefinitely by saying everything in Ukrainian as well as Hungarian). And if there is a need to choose from the languages (for example, pursuant to enforcement measures of SLL2019), the kindergarten or school management will most likely decide to use the State language.
107. The elimination of the autonomy of institutions providing education in regional or minority languages removes these languages from a very important sphere.
108. According to Article 21 of SLL2019, Article 7 of LU 2017a, and Article 5 of LU 2020, in Ukraine the use of regional or minority languages in education is allowed only “along with the State language” [in Ukrainian: «поряд із державною мовою»]. However, nowhere does the legislator define what this means in practice. This creates legal uncertainty and makes it difficult to organize education in regional or minority languages.
109. The application of the legal provisions laid down in Article 21 of SLL2019, Article 7 of the LU 2017a and Article 5 of the LU 2020 lead to a significant decrease in the presence of several

regional or minority languages (e.g. Russian, Romanian or Hungarian) in the educational process.

110. It must be stressed that under Article 22 (3) of the Constitution of Ukraine, the narrowing of rights is unconstitutional. When enacting new laws, it is prohibited to curtail existing rights.
111. Article 7 of the LU 2017a has been criticized by the Parliamentary Assembly of the Council of Europe⁶⁵ and the Venice Commission.⁶⁶ On 6 October 2017, 48 Members of Parliament submitted a petition⁶⁷ to the Constitutional Court of Ukraine requesting it to declare that the Law on Education⁶⁸ is unconstitutional. However, the Constitutional Court, in its decision of 16 July 2019, did not find Article 7 of the LU 2017a unconstitutional.⁶⁹ The Constitutional Court's decision of 16 July 2019⁷⁰ on the LU 2017a makes no mention of the relevant

⁶⁵ 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. <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24218&lang=en>. Hereinafter: Resolution 2017.

⁶⁶ Opinion 2017.

⁶⁷ Конституційне Подання щодо відповідності Конституції України (неконституційності) Закону України «Про освіту» від 05 вересня 2017 року № 2145-VIII [Constitutional petition on compliance with the Constitution of Ukraine (constitutionality) of the Law of Ukraine "On Education" of 5 September 2017, No. 2145-VIII]. http://www.ccu.gov.ua/sites/default/files/3_4072.pdf

⁶⁸ LU 2017a.

⁶⁹ Рішення Конституційного Суду України у справі за конституційним поданням 48 народних депутатів України щодо відповідності Конституції України (конституційності) Закону України «Про освіту» № 10-р/2019 [Decision of the Constitutional Court of Ukraine No. 10-r/2019 in the case of the constitutional petition of 48 People's Deputies of Ukraine on compliance with the Constitution of Ukraine (constitutionality) of the Law of Ukraine "On Education"]. http://ccu.gov.ua/sites/default/files/docs/10_p_2019_o.pdf.

Hereinafter: Constitutional Court 2019.

⁷⁰ Constitutional Court 2019.

opinion of the Venice Commission of December 2017⁷¹ or the criticisms and recommendations therein.

112. The Constitutional Court ignored the recommendations of the Venice Commission despite the specific request in paragraph 15 of the resolution of the Parliamentary Assembly of the Council of Europe, issued on 12 October 2017: “The Assembly asks the Ukrainian authorities to fully implement the forthcoming recommendations and conclusions of the Venice Commission and to amend the new Education Act accordingly.”⁷²
113. Attention must be drawn to the views of the Committee of Experts, according to which “the undertakings entered into [...] under Article 8 require the authorities to make available regional or minority language education at the different levels of education. This implies that the offer needs to precede the demand, i.e. that the education has to be planned and organised, in co-operation with the speakers”.⁷³
114. Article 21 (3) of SLL2019 prescribes that the compulsory external independent testing (EIT) at the end of secondary education shall be conducted in the State language for all subjects (except foreign languages). However, this creates inequality and competitive disadvantage for speakers of regional or minority languages. Pursuant to Article (1) of Section IX of the law, Ukraine shall postpone the implementation of this provision until 1 January 2030. However, discrimination will be discrimination in 2030, too.

⁷¹ Opinion 2017.

⁷² Resolution 2017.

⁷³ See, 4th Report of the Committee of Experts on the Slovak Republic, ECRML(2016)2, para. 319.

115. According to paragraph 5 of Article 47 of the LU 2020 “The tasks of the work of external independent evaluation shall be done in the state language. At the request of a person who has completed or completed a comprehensive general secondary education in another language, the tasks are translated into the relevant language (except for the language component training tasks).” Despite requests to this effect, the State has still not allowed the organization of EIT for minority languages (including Hungarian language and literature). This reduces the prestige of regional or minority languages.

The use of languages in the administration of justice

116. According to Article 29 of Ukraine’s Code of Criminal Procedure,⁷⁴ anyone who does not speak or know the State language at an appropriate level may give evidence in their mother tongue or in a language they know.
117. Article 6 (1) of SLL2019 obliges every citizen of Ukraine to be proficient in the Ukrainian State language. Referring to this, Ukraine may deny the use of regional or minority languages in court proceedings and litigation (since if mastering the Ukrainian language is a legal requirement, non-proficiency is illegal).
118. Pursuant to Article 13 of SLL2019, laws and regulations in Ukraine shall be adopted and published in the State language. The law only allows that laws and regulations be published also in the Crimean Tatar language (because it is a native language in Ukraine). There is no mention of the possibility of publishing laws, regulations and other legal documents in other regional or minority languages.

⁷⁴ Кримінальний процесуальний кодекс України [Ukraine’s Code of Criminal Procedure]. <https://zakon.rada.gov.ua/laws/show/4651-17>.

The use of languages in public administration and public services

119. According to Article 1 (1) of SLL2019, “[t]he Ukrainian language shall be the only State (official) language in Ukraine”. This means that in Ukraine, languages other than Ukrainian cannot have the status of an official language, not even at the regional level. According to the latest (2001) census of Ukraine, 80% of the population of the Berehove / Берегівський / Beregszászi district are Hungarian native speakers. Pursuant to the quoted provision, not even in this district can the Hungarian language be used as an official language alongside the State language.
120. Article 1 (7) of SLL2019 prescribes the mandatory use of the State language “in the exercise of powers by government authorities and local self-government authorities, as well as in other common spheres of public life determined by this Law”. The law thus makes it virtually impossible to use regional or minority languages in the work of State authorities and local self-government bodies.
121. Articles 12 and 13 of SLL2019 stipulate that the working language of government authorities as well as local and regional authorities shall be the State language. Article 12 (2) of the law permits, in principle, the use of other languages at meetings of State bodies and regional and local authorities. In such cases, however, it is mandatory to translate everything that has not been said in the State language into Ukrainian. This in practice makes it impossible to hold meetings of local self-governments in regional or minority languages.
122. Pursuant to Article 13 (3) of SLL2019, decisions and documents of regional and local authorities shall be made public in the State language.

123. However, at the ratification of the Charter, Ukraine undertook under Article 10 of the Charter to, inter alia, allow “the use of regional or minority languages within the framework of the regional or local authority”, encourage “the publication by regional authorities of their official documents also in the relevant regional or minority languages”, etc. SLL2019 therefore clearly contradicts Ukraine’s international commitments.
124. Article 37 prescribes that the language of documents and correspondence of political parties and public associations shall be the State language.
125. According to Article 41 (1), geographical names, as well as the names of squares, avenues, streets, other public designations, bridges, etc., shall be used in the Ukrainian language. However, this is incompatible with Ukraine's international commitments (cf. Article 10 (2) *g*) of the Charter and Article 11 (3) of the Framework Convention).
126. Article 41 (3) of the law requires that geographical names be displayed in the State language in transcription (transliteration) from the original language into Ukrainian. This means, for example, that in Hungarian textbooks used in Ukraine’s schools, the name of the city of *Kuïs* cannot be used in the form of *Kijev* according to the traditions of the Hungarian language, but only the version of *Kyiv* can be used in the Hungarian texts as well.
127. Pursuant to Article 41 (4), inscriptions on geographical signs (for example, signboards of city names or street names) shall be conveyed in the Ukrainian language. Below or to the right of the Ukrainian inscription (in smaller font size), the geographical name can also be displayed in a transcript of Latin characters. This provision excludes the use of traditional geographical names (names of cities, villages, streets, squares,

rivers, mountains, etc.) in regional or minority languages. This means that according to the law, instead of city names such as *Ungvár, Beregszász, Munkács, Nagyszőlős*, etc., having been used in the Hungarian language for hundreds of years, the names of these localities may only appear on signs as *Uzhhorod, Berehove, Mukacheve, Vynohradiv*. This is a significant step back from the previous and current practice, since as of today (April 2020) the signboards of nearly a hundred localities include the traditional Hungarian name along with the Ukrainian name (Figure 9).

128. Article 11 (3) of the Framework Convention requires States Parties, “[i]n areas traditionally inhabited by substantial numbers of persons belonging to a national minority”, to endeavour “to display traditional local names, street names and other topographical indications intended for the public also in the minority language when there is a sufficient demand for such indications”. SLL2019 jeopardizes the continued implementation of this long-standing right.
129. Article 39 (3) of SLL2019 requires that the nameplates, official documents, seals and stamps of State authorities, local self-government bodies, State- and community-owned enterprises and institutions shall be inscribed in the State language. Paragraph 4 of the same article allows these names and inscriptions to be indicated in English alongside the State language. In principle, the law also allows nameplates, official documents, seals and stamps of local self-government bodies, enterprises and institutions to appear in the Crimean Tatar language or in the languages of national minorities. In turn, pursuant to the second passage of Article 39 (4) of SLL2019, the use of minority languages in this area is regulated by a separate law. However, as of April 2020, no such law on the rights of indigenous peoples and national minorities exists in

Ukraine, and no such bill has been registered in Parliament. In practice, this means that it is currently not legal to use regional or minority languages on nameplates, stamps and seals of municipal bodies, enterprises and institutions in Ukraine.

130. However, using multilingual nameplates, seals, stamps of institutions and official forms is a historical tradition in Transcarpathia. According to Article 11 (2) of the Framework Convention, “every person belonging to a national minority has the right to display in his or her minority language signs, inscriptions and other information of a private nature visible to the public”.
131. Article 29 (1) of SLL2019 prescribes the use of the State language at public events organized by State or municipal bodies. Other languages may be used only if the organizers provide simultaneous interpreting or literal translation into Ukrainian. According to Article 29 (2), the use of the Crimean Tatar language and the languages of national minorities in public events is governed by a law which does not exist as of April 2020.
132. It is a serious omission by the legislator that it has not adopted a law on the language rights of indigenous peoples and national minorities following the abolition of LL2012. The absence of such a law has created legal uncertainty concerning the use of regional or minority languages.

Figure 9. Bi- and trilingual place name signs in Transcarpathia in April 2020: pursuant to the new law, these signs are to become illegal



The use of languages in the media

133. By adopting new laws, Ukraine has fundamentally changed the language regime of electronic media. The new laws significantly reduce the proportion of regional or minority languages on television and radio. On 16 June 2016, a law⁷⁵ was passed, which stipulated a minimum quota of 60% for Ukrainian-language broadcasts within all broadcasts. This law also specified that at least 35% of musical works with text on radio and television were to be in Ukrainian.
134. The law allowed some TV and radio broadcasters (under a separate license) to broadcast musical works with text up to 60% of their broadcasting time in an official EU language. This means that regional or minority languages that are not official languages in the EU (such as Russian or Belarusian) could appear only in 40% of radio and television music broadcasts. In turn, regional or minority languages that are official in the EU (e.g. Hungarian, Romanian, Polish, etc.) could be present in up to 60% of music broadcasts in radio and television.
135. In 2017, Ukraine passed a law⁷⁶ that amended a number of laws that had previously regulated this issue. The law stipulates a minimum quota of Ukrainian-language broadcasts. Pursuant to the amendments of previous laws,

⁷⁵ Закон України «Про внесення змін до деяких законів України щодо частки музичних творів державною мовою у програмах телерадіоорганізацій» [Law of Ukraine “On Amendments to Certain Laws of Ukraine Regarding the Share of Musical Works in the State Language in the Programs of Broadcasting Organizations”]. <https://zakon.rada.gov.ua/laws/show/1421-19>.

⁷⁶ Закон України «Про внесення змін до деяких законів України щодо мови аудіовізуальних (електронних) засобів масової інформації» [Law of Ukraine “On Amendments to Certain Laws of Ukraine on the Language of Audiovisual (Electronic) Media”].

<https://zakon.rada.gov.ua/laws/show/2054-19>. Hereinafter: LU 2017b.

national and regional television and radio broadcasters have to broadcast at least 75% of their weekly programs in Ukrainian, whereas local radio and television broadcasters (present in no more than one region) have to broadcast at least 60% of their weekly programs in the State language. This law does not specifically provide for the use of regional or minority languages (according to the term used in Ukraine: the languages of national minorities) in television and radio broadcasting. This means that these languages can be present up to 25% and 40% of national and local radio- and television broadcasts, respectively.

136. Article 25 of SLL2019 has brought about significant changes affecting the press. Pursuant to Article 25 (1), print mass media in Ukraine shall be published in the State language. Publication of print press products in other languages is subject to discriminatory conditions. In accordance with the law, a non-State language newspaper or magazine can only be published if, at the same time, the entire content is also printed in Ukrainian. All language versions shall be given the same title, shall correspond to each other in their content, size, number of copies and printing method, and their editions shall have the same consecutive numbering and be issued on the same day.
137. According to Article 27 (6) of SLL2019, online mass media (such as news portals) registered in Ukraine are also obligated to have a Ukrainian-language version. The page in the State language shall be loaded by default (the Ukrainian-language page shall be the front page). The Ukrainian version shall have the same information in terms of content, size and structure as the version in another language.
138. Pursuant to Article 25 (5) and passage 4 of Article 27 (6) of SLL2019, the previous provisions do not apply to print mass

media products published in English, Crimean Tatar, and other regional or minority languages which are used as official languages in the European Union. Even so, the law designed to support the State language severely affects the non-Ukrainian-medium press.

139. SLL2019 constricts language quotas for television and radio broadcasting compared to previous laws: it increases the minimum proportion of content in the State language from 75% to 90% for broadcasters with national coverage and to 60-80% for regional or local TV and radio companies. In addition, the law does not make an exception for private broadcasters either, the above quotas also apply to them. This, in turn, restricts freedom of expression and is contrary to Article 9 (3) of the Framework Convention.

The use of languages in culture and sport

140. Article 23 (2) of SLL2019 prescribes the use of the State language in cultural life and in cultural events. The use of regional or minority languages is permitted only as provided for by the law on the rights of indigenous peoples and national minorities. However, there exists no such law in Ukraine, and (as of April 2020) no draft has been prepared, either.
141. SLL2019 allows the use of regional or minority languages in cultural events only if the organizers provide simultaneous interpretation into Ukrainian.
142. Pursuant to Article 23 (3), in announcements, posters, admission tickets, etc. of cultural events minority languages can only appear along with the State language. This means that posters, announcements and other information materials in the cultural sphere cannot be produced exclusively in regional or minority languages.

143. Article 23 (4) stipulates that theatrical performances in a language other than the State language at a state or communal theatre shall be accompanied by translation in the Ukrainian language.
144. The obligation of Article 23 of SLL2019 to provide translation, interpretation, subtitles or dubbing imposes disproportionately high costs on the organizers of cultural events, as the law does not provide for public funding for these activities. The law thus negatively affects minorities in the exercise of cultural activities that are essential to the preservation of their identity.
145. According to Article 34 of the law, information and other announcements during a sporting event, as well as admission tickets and other information products about sporting events shall be produced only in the Ukrainian language (except for international sporting events, where languages other than Ukrainian may be used). The fact that the use of other languages is not permitted under any circumstances in connection with national or local sporting events constitutes a violation of freedom of expression, and is contrary to Article 12 of the Charter and Article 11 (2) of the Framework Convention, ratified by Ukraine.
146. The above article of SLL2019 entered into force on 16 July 2019. In November 2019, a fine was imposed on the Shakhtar Donetsk football club. The reason for the fine was that at the Shakhtar Donetsk vs. Dynamo Kyiv national league football match, played in Kharkiv on 10 November 10 2019, announcements in the stadium were made in Russian.⁷⁷ (In any case, Shakhtar won the match 1-0.)

⁷⁷ Шахтар оштрафовано через оголошення на стадіоні російською мовою [Shakhtar was fined for Russian announcements in the stadium].

147. Article 53 (1) of SLL2019 empowers the Commissioner for the Protection of the State Language to initiate proceedings against those who make a disrespectful statement about the Ukrainian language or intentionally use the State language in violation of language standards. However, the judgement of this is subjective and difficult, which causes legal uncertainty and may lead to intimidation of and discrimination against citizens. On 10 February 2020, the Kyiv city police, following an accusation by a member of parliament, initiated a formal proceedings against a producer of the national television channel 1 + 1 for expressing his view in one of his public interviews that the Ukrainian language is much more suited to comedies than to dramas.⁷⁸ The proceedings were initiated by the city police on the basis of Article 161 (1) of the Criminal Code of Ukraine.⁷⁹ The article in question deals with discrimination against citizens on any ground including nationality and language. The procedure is not without stakes at all. If a violation of the law is established, the penalty is a fine up to the equivalent of 200 to 500 untaxed minimum wages (which is an amount of 3400–8500 UAH, that is 127–318 EUR in April 2020), or, in severe cases, up to 5 years' imprisonment.

<https://www.unian.ua/sport/football/10763744-shahtar-oshtrafovano-cherez-ogoloshennya-na-stadioni-rosiyskoyu-movoyu.html>

⁷⁸ Поліція відкрила справу через заяви продюсерки "1+1" про українську мову [Police opened a case because of statements by the producer of "1+1" about Ukrainian language]. <http://language-policy.info/2020/02/politsiya-vidkryla-spravu-cherez-zayavu-prodyuserky-1-1-pro-ukrajinsku-movu/>

⁷⁹ Кримінальний кодекс України [Criminal code of Ukraine]. <https://zakon.rada.gov.ua/laws/show/2341-14>

Sanctions and penalties

148. SLL2019 intends to promote the use of the Ukrainian language in all public spheres of social life through coercive measures. The law, in addition to the preamble and the final provisions, consists of 57 articles. Of these, 15 articles (44 to 57) concern State institutions and agencies charged with enforcing the use of the Ukrainian language in all spheres of social life.
149. SLL2019 accurately regulates how the State protects citizens' rights to use the State language. However, the linguistic rights of citizens using other languages are entirely neglected. Speakers of minority languages are mentioned only in exceptional cases. In such cases, however, SLL2019 refers to a law which has not even been drafted by the Ukrainian government.
150. SLL2019 (see, for example, Articles 49 and 54) creates the possibility for citizens to file a complaint when they feel that authorities, organizations, institutions, etc. do not use the State language in the public sphere to an adequate extent, or when they consider that their rights to use the State language have been violated. This creates a threatening atmosphere for the speakers of regional or minority languages, and therefore hinders the public use of those languages. At their meeting in Kyiv on 21 February 2020, the International Mother Tongue Day, civil society organizations close to the government addressed the government in a statement⁸⁰ outlining the responsibilities of the State and CSOs in implementing SLL2019 in 2020–2021. The statement calls on citizens to re-

⁸⁰ План першочергових дій з виконання закону про мову на 2020-2021 роки [Priority action plan for the implementation of the language law in 2020–2021]. <http://language-policy.info/2020/02/plan-pershocherhovyyh-dij-z-vykonannya-zakonu-pro-movu-na-2020-2021-roky/>

port all those who have presumably violated the State language law; to dismantle non-Ukrainian-language billboards; and to write to public and private companies, organizations, institutions, thereby drawing attention to the provisions of SLL2019. This behaviour is conducive to intimidation and can lead to language-based discrimination and escalation of language-based conflicts.

151. The law does not in any way provide means of redress for those who feel that authorities, organizations, institutions, etc. make inadequate use of regional or minority languages in the public space or, if they consider that their rights to use a minority language have been violated. Pursuant to Article 49 of SLL2019, the Government of Ukraine has established the institution of “the Commissioner for the Protection of the State Language”,⁸¹ and has appointed a person to this post, known in the press as the State Language Ombudsman.⁸² This provision is discriminatory, as the Commissioner only protects the rights to use the State language. However, SLL2019 does not provide redress for violations of the use of other languages. The government has not established a body to which citizens can turn if their right to use their mother tongue has been restricted. This was clearly referred to in an interview⁸³ with Tetiana Monakhova, the Ukrainian language commissioner, when she stated that it was not her job to investigate violations of minorities’ language rights. In her interview, the language

⁸¹ In Ukrainian language: Уповноважений щодо захисту державної мови.

⁸² Кабмін призначив мовного омбудсмена. [The Cabinet has appointed the language ombudsman] <https://ua.korrespondent.net/ukraine/4165314-kabmin-pryznachyv-movnoho-ombudsmena>

⁸³ Треба створити передумови вивчення української мови, щоб до штрафів справа не дійшла. [Conditions for learning the Ukrainian language must be created so that fines can be avoided.] <https://www.ukrinform.ua/rubric-politics/2837945-tetana-monahova-upovnovazena-iz-zahistu-derzavnoi-movi.html>

commissioner also declared that the opinion of the Venice Commission on SLL2019 would be taken into account by the Ukrainian government when drafting the law on minorities, but priority must be given to the national interest in shaping the State language policy.

IV. Ukraine's international commitments and the State Language Law

152. The Committee of Experts of the European Charter for Regional or Minority Languages⁸⁴ periodically evaluates the application of the provisions of the Charter by individual states, including Ukraine, in their respective territories. These reports serve as a kind of objective mirror in international and domestic forums on the situation of minority rights.
153. Kyiv submitted its first report on the application of the Charter in Ukraine in 2007, followed by three more so far. The Committee of Experts published three reports on Ukraine, the most recent one in March 2017. The Committee of Ministers also adopted three recommendations in respect of Ukraine (Table 9).

Table 9. Monitoring of the application of the Charter in Ukraine⁸⁵

	first cycle	second cycle	third cycle	fourth cycle
State Report submitted	02.08.2007	06.01.2012	12.01.2016	04.09.2019
Committee of Experts' report	27.11.2008	15.11.2012	27.03.2017	
Committee of Ministers' recommendation	07.07.2010	15.01.2014	12.12.2018	

⁸⁴ <https://www.coe.int/en/web/european-charter-regional-or-minority-languages/committee-of-experts>

⁸⁵ Source: <https://www.coe.int/en/web/european-charter-regional-or-minority-languages/reports-and-recommendations>

154. Chapter 2 of the report of the Committee of Experts on the implementation of the Charter in Ukraine, adopted on 27 March 2017,⁸⁶ evaluates the compliance of Ukraine with its undertakings under the Charter for the languages covered. The Committee of Experts used the following categories for the evaluation of compliance: *Fulfilled*: policies, legislation and practice are in conformity with the Charter (4); *Partly fulfilled*: policies and legislation are wholly or partly in conformity with the Charter, but the undertaking is only partly implemented in practice (3); *Formally fulfilled*: policies and legislation are in conformity with the Charter, but there is no implementation in practice (2); *Not fulfilled*: no action in policies, legislation and practice has been taken to implement the undertaking or the Committee of Experts has over several monitoring cycles not received any information on the implementation (1); *No conclusion*: the Committee of Experts is not in a position to conclude on the fulfilment of the undertaking as no or insufficient information has been provided by the authorities (-).
155. The examination of the Committee of Experts' report issued in 2017⁸⁷ reveals that Ukraine has not entirely fulfilled its commitments under the Charter. Based on the articles of Parts II and III of the Charter, Tables 10–17 show a summary of how the 2017 report of the Committee of Experts assessed Ukraine's compliance with its obligations.

⁸⁶ Third report of the Committee of Experts in respect of Ukraine. https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168073cdfa. Hereinafter: COMEX 2017.

⁸⁷ COMEX 2017.

Table 10. Compliance of Ukraine with its undertakings under the Charter, according to the independent evaluation of COMEX 2017 (Article 7: Objectives and principles)

7. Objectives and principles	1.a	1.b	1.c	1.d	1.e	1.f	1.g	1.h	1.i	2.	3.	4.
Belarusian	4	4	1	1	-	1	1	3	3	4	3	3
Bulgarian	4	4	3	3	-	3	1	3	3	4	3	3
Crimean Tatar	4	4	-	3	-	3	4	4	-	4	4	-
Gagauz	4	4	3	3	-	3	1	4	1	4	3	3
German	4	4	1	3	-	3	4	3	3	4	3	3
Greek	4	4	1	3	-	3	4	3	3	4	3	3
Hungarian	4	3	3	3	-	3	3	4	3	4	3	3
Moldovan	4	4	1	3	-	3	4	3	3	4	3	3
Polish	4	4	3	3	-	3	4	3	3	4	3	3
Romanian	4	4	3	3	-	3	1	4	3	4	3	3
Russian	4	4	3	4	-	4	4	4	4	4	3	3
Slovak	4	4	1	3	-	3	1	3	3	4	3	3
Yiddish	4	4	1	1	-	3	1	3	1	4	3	3
Karaim	4	-	-	-	-	-	-	-	-	-	-	-
Krimchak	4	-	-	-	-	-	-	-	-	-	-	-
Romani	4	4	1	3	-	1	1	1	1	4	3	3
Ruthenian	3	4	1	1	-	1	1	1	1	4	3	1

156. The official position of Ukraine is that the new provisions contained in Article 21 of SLL2019 and Article 7 of the Law on Education are fully in line with Ukraine's international commitments. Seemingly, this is indeed the case: Kyiv guarantees the right to learn one's mother tongue and that native languages of minorities appear at all levels of public education as subjects (but not as languages of instruction). In reality, however (as can be seen in Table 11), Ukraine has not fully complied with its international obligations in this area, not even before the adoption of SLL2019.

Table 11. Compliance of Ukraine with its undertakings under the Charter, according to the independent evaluation of COMEX 2017 (Article 8: Education)

8. Education	1.a.iii	1.b.iv	1.c.iv	1.d.iv	1.e.iii	1.f.iii	1.g	1.h	1.i	2.
Belarusian	1	1	1	1	4	1	1	1	1	1
Bulgarian	1	3	3	1	4	4	1	3	1	4
Crimean Tatar	3	3	4	1	4	3	-	4	1	3
Gagauz	1	3	3	1	4	1	-	3	4	1
German	3	3	3	1	4	4	1	3	1	1
Greek	3	3	4	1	4	4	-	3	1	4
Hungarian	4	4	4	1	4	4	3	4	1	1
Moldovan	3	4	4	1	4	4	1	3	4	1
Polish	3	4	4	1	4	4	1	4	1	4
Romanian	3	3	3	1	4	4	1	4	1	1
Russian	4	4	4	4	4	4	-	4	1	4
Slovak	4	3	3	1	4	1	1	3	1	1
Yiddish	3	1	1	1	4	4	-	1	1	1

Table 12. Compliance of Ukraine with its undertakings under the Charter, according to the independent evaluation of COMEX 2017 (Article 9: Judicial authorities)

9. Judicial authorities	1.a.iii	1.b.iii	1.c.iii	2.c	3.
Belarusian	1	1	1	–	1
Bulgarian	2	2	2	–	1
Crimean Tatar	2	2	2	–	3
Gagauz	2	2	2	–	1
German	1	1	1	–	1
Greek	1	1	1	–	1
Hungarian	3	3	2	–	1
Moldovan	1	1	1	–	1
Polish	2	2	2	–	1
Romanian	3	3	2	–	1
Russian	4	4	4	4	4
Slovak	2	2	2	–	1
Yiddish	1	1	1	–	1

Table 13. Compliance of Ukraine with its undertakings under the Charter, according to the independent evaluation of COMEX 2017 (Article 10: Administrative authorities and public services)

10. Administrative authorities and public services	2.a	2.c	2.d	2.e	2.f	2.g	4.c
Belarusian	1	1	1	1	1	1	1
Bulgarian	2	1	1	1	1	1	1
Crimean Tatar	2	1	1	1	1	1	1
Gagauz	2	1	1	1	1	1	1
German	1	1	1	1	1	3	1
Greek	1	1	1	1	1	1	1
Hungarian	3	1	1	1	3	3	1
Moldovan	1	1	1	1	1	1	1
Polish	2	1	1	1	1	1	1
Romanian	3	1	1	1	1	3	1
Russian	4	4	4	4	4	3	-
Slovak	3	1	1	1	1	1	1
Yiddish	1	1	1	1	1	1	1

Table 14. Compliance of Ukraine with its undertakings under the Charter, according to the independent evaluation of COMEX 2017 (Article 11: Media)

11. Media	1.a.iii	1.b.ii	1.c.ii	1.d	1.e.i	1.g	2.	3.
Belarusian	1	1	1	1	1	1	4	1
Bulgarian	3	1	1	1	4	1	4	1
Crimean Tatar	-	-	-	1	-	1	4	1
Gagauz	3	1	1	1	1	1	4	1
German	3	1	1	1	1	1	4	1
Greek	-	1	1	1	1	1	4	1
Hungarian	3	4	4	1	4	3	4	1
Moldovan	3	1	1	1	4	1	1	1
Polish	3	4	1	4	4	1	4	1
Romanian	3	3	1	1	4	3	4	1
Russian	4	4	4	4	4	4	4	3
Slovak	3	3	1	1	1	1	4	1
Yiddish	1	1	1	1	1	1	1	1

Table 15. Compliance of Ukraine with its undertakings under the Charter, according to the independent evaluation of COMEX 2017 (Article 12: Cultural activities and facilities)

12. Cultural activities and facilities	1.a	1.b	1.c	1d	1.f	1.g	2.	3.
Belarusian	4	3	1	4	3	3	1	1
Bulgarian	3	1	1	4	3	3	1	1
Crimean Tatar	4	1	1	4	3	1	4	3
Gagauz	3	1	1	1	3	1	1	1
German	3	1	1	4	4	1	1	-
Greek	3	1	1	3	3	1	-	1
Hungarian	4	1	3	4	3	4	1	1
Moldovan	3	1	1	4	3	1	1	3
Polish	4	1	3	4	4	4	4	3
Romanian	4	1	1	4	3	3	1	3
Russian	4	4	4	4	4	-	4	-
Slovak	4	1	1	4	3	1	1	1
Yiddish	3	1	1	1	4	1	1	1

Table 16. Compliance of Ukraine with its undertakings under the Charter, according to the independent evaluation of COMEX 2017 (Article 13: Economic and social life)

13. Economic and social life	1.b	1.c
Belarusian	4	-
Bulgarian	4	-
Crimean Tatar	4	-
Gagauz	4	-
German	4	-
Greek	4	-
Hungarian	4	-
Moldovan	4	-
Polish	4	-
Romanian	4	-
Russian	4	-
Slovak	4	-
Yiddish	4	-

Table 17. Compliance of Ukraine with its undertakings under the Charter, according to the independent evaluation of COMEX 2017 (Article 14: Transfrontier exchanges)

14. Transfrontier exchanges	a	b
Belarusian	4	4
Bulgarian	4	3
Crimean Tatar	3	-
Gagauz	1	1
German	4	-
Greek	4	4
Hungarian	4	4
Moldovan	4	4
Polish	4	4
Romanian	4	4
Russian	4	4
Slovak	4	4
Yiddish	1	1

157. If the Ukrainian government had completely fulfilled all its obligations under the Charter, there would be a number 4 in each cell of the above tables (where a number is given). However, this is clearly not the case.

158. Considering the Committee of Experts' evaluation as scores, it turns out that Ukraine has fulfilled its commitments to the greatest extent in respect of Articles 7 (66.2%), 8 (61.9%) and 12 (58.4%) of the Charter. The Kyiv government has complied with its international commitments to the least extent in respect of Articles 9 (44.8%), 10 (34.3%) and 11 (48.8%) of the Charter (Figure 10). (The maximum points that can be obtained, i.e. 100%, would be shown in the figure if value 4 was included in each cell).
159. Using the above method to examine how Ukraine has fulfilled its international obligations with regard to the languages protected by the Charter, we may conclude that Ukraine has complied with its obligations under the Charter to a significant extent with regard to the Russian language. Kyiv has fulfilled its commitments to a degree of more than 60% in respect of Hungarian, Polish and Romanian, whereas it has done the least for Yiddish, Belarusian and Gagauz (Figure 11).
160. If we calculate average values on the basis of the scores, it becomes clear that Ukraine has *partially fulfilled* its obligations under Article 7 of the Charter. In respect of Article 8, the government is closer to the evaluation of *partially fulfilled* than *formally fulfilled*. Unfortunately, for Articles 12, 11 and 9, the average value is closest to the evaluation of *formally fulfilled*, which means, according to the report of the Committee of Experts, that "policies and legislation are in conformity with the Charter, but there is no implementation in practice". Ukraine has practically not complied with its obligations under Article 10, as the average value is closest to the evaluation of *not fulfilled*, which means that "no action in policies, legislation and practice has been taken to implement the undertaking or the Committee of Experts has over several monitoring cycles not received any information" (Figure 12).

Figure 10. Percentages of compliance of Ukraine with its obligations under the Charter, based on the evaluation of COMEX 2017, by articles of the Charter

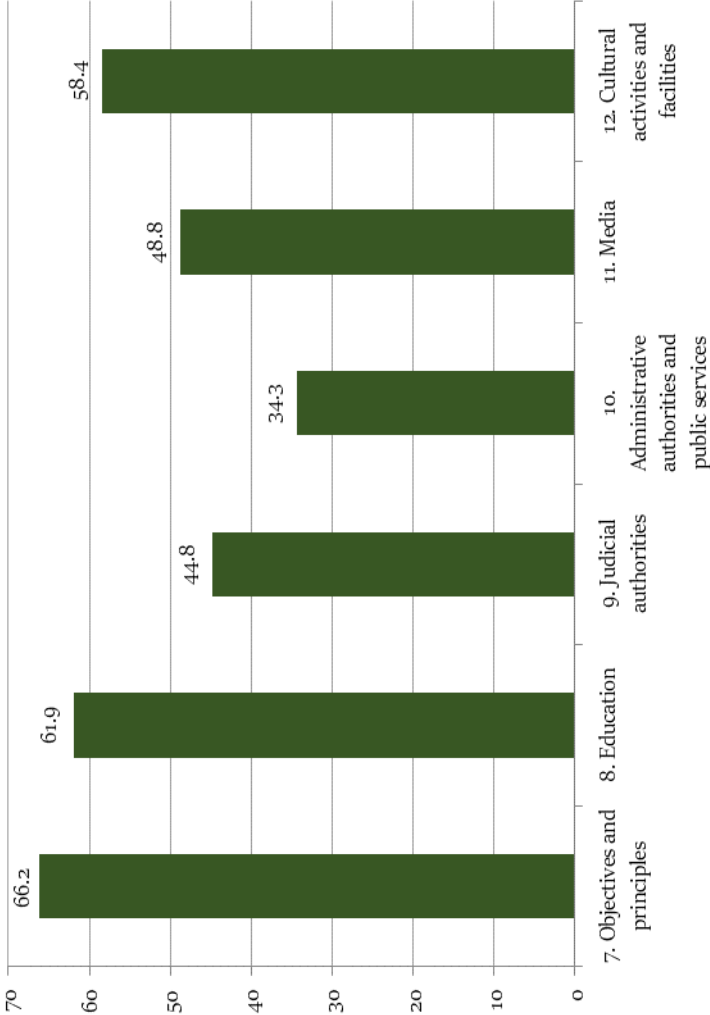


Figure 11. Percentages of compliance of Ukraine with its obligations under the Charter, based on the evaluation of COMEX 2017, by languages

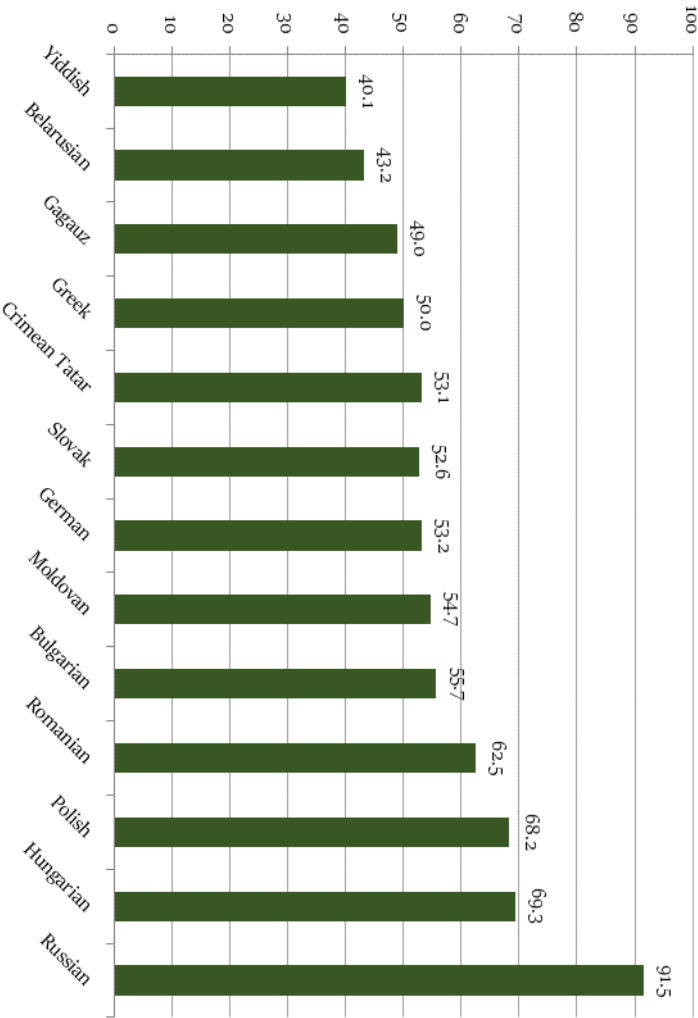
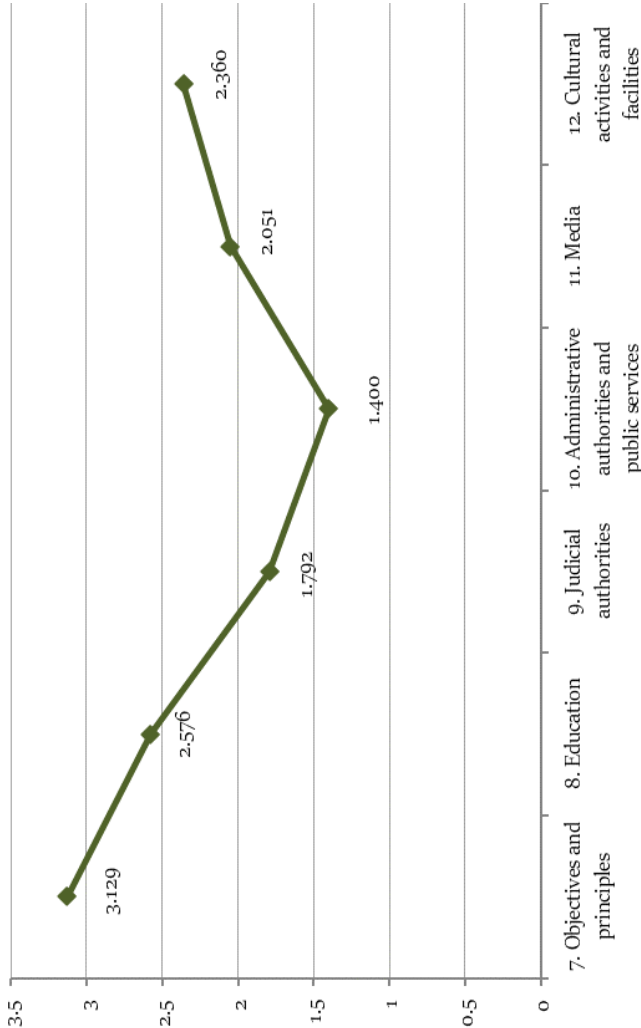


Figure 12. Average values of compliance of Ukraine with its obligations under the Charter, based on the evaluation of COMEX 2017, by articles of the Charter (4: fulfilled; 3: partly fulfilled; 2: formally fulfilled; 1: not fulfilled)



161. It must be emphasized that the Committee of Experts' 2017 report on the application of the Charter in Ukraine was prepared *before* the adoption of the Law on Education in October 2017 and that of SLL2019 in April 2019. The assessment of the independent international body makes it clear that already in 2017 (that is, well before the adoption of SLL2019) Ukraine failed to fulfil its international obligations in respect of the implementation of the rights to use minority languages.
162. The provisions of SLL2019 are of particular importance to the areas covered by the Charter. This means that, if the SLL2019 is to be applied in practice, Ukraine will not be able (and probably will not want) to meet its international commitments – voluntarily undertaken by ratifying the Charter.
163. Pursuant to Article 9 of the Constitution of Ukraine and Article 19 of the Law on International Treaties of Ukraine,⁸⁸ international conventions ratified by the Supreme Council (Parliament) of Ukraine form part of the country's national legislation. According to the opinions of the Venice Commission on Ukraine,⁸⁹ such international treaties prevail over ordinary national law. This means that Ukraine should urgently repeal or at least amend SLL2019, bringing its provisions in line with the Charter and the Framework Convention.

⁸⁸ Закон України «Про міжнародні договори України» [Law of Ukraine "On International Treaties of Ukraine"]. <https://zakon.rada.gov.ua/laws/show/1906-15>

⁸⁹ CDL-AD(2004)013: Opinion on Two Draft Laws amending the Law on National Minorities in Ukraine, para. 9.

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2004\)013-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2004)013-e); CDL-AD(2004)022, Opinion on the latest version of the Draft Law amending the Law on National Minorities, para. 6.

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2004\)022-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2004)022-e)

164. In its opinion on SLL2019,⁹⁰ the Venice Commission recommends “to revise the State Language Law in order to ensure, in the light of the specific recommendations made in the present opinion, its compliance with Ukraine’s international commitments, especially those stemming from the Framework Convention, the Language Charter, and the ECHR and its Protocol No. 12. In the legislative process, the legislator should consult all interested parties, especially representatives of national minorities and indigenous peoples as they are and will be directly affected by the implementation of these two pieces of legislation”.
165. On 21 June 2019, 51 Ukrainian members of parliament filed a petition with the Constitutional Court of Ukraine,⁹¹ requesting a declaration of unconstitutionality of SLL2019. One of the reasons given by MPs in their submission is that, when passing the State Language Law, the Parliament has repeatedly violated the rules on the adoption of laws. As of 13 April 2020, the Constitutional Court of Ukraine has not ruled on this petition. A decision by the Constitutional Court could annul SLL2019 without political manipulation.
166. Such a decision would not be unprecedented in Ukraine. LL2012 was also annulled by the Constitutional Court of Ukraine in 2018 for violating the rules of procedure for

⁹⁰ Opinion 2019, para. 139.

⁹¹ Конституційне Подання щодо відповідності Конституції України (конституційності) Закону України «Про забезпечення функціонування української мови як державної» від 25 квітня 2019 року № 2704-VIII. [Constitutional petition on compliance with the Constitution of Ukraine (constitutionality) of the Law of Ukraine “On Supporting the Functioning of the Ukrainian Language as the State Language” of April 25, 2019, No. 2704-VIII.] http://www.ccu.gov.ua/sites/default/files/3_4094_r.pdf

adoption.⁹² Earlier (in a decision issued in 2000⁹³), the Constitutional Court of Ukraine repealed the law⁹⁴ by which Ukraine ratified the Charter in 1999 for similar reasons.

167. The independent press has on several occasions proved⁹⁵ that the Supreme Council of Ukraine has adopted decisions and legal acts in violation of the relevant laws. However, to the best of our knowledge, except for the above two laws, the Constitutional Court of Ukraine has not annulled any other law on formal grounds. The two laws that ended up so were directly related to language rights. SLL2019 could be repealed for similar reasons, on the basis of existing precedents, avoiding further political manipulation of the language issue.

⁹² Constitutional Court 2018.

⁹³ Constitutional Court 2000.

⁹⁴ ECRML1999

⁹⁵ For example: Рада, аналогов которой нет [A parliament that has no match]. <https://www.youtube.com/watch?v=U9r6kdaWXY>

V. Summary and conclusions

168. Since 2014, Ukraine's language policy has undergone fundamental changes, in terms of both legislation and practical implementation. The direction of change is clearly unfavourable for speakers of regional or minority languages, as Kyiv has significantly reduced the rights to use regional or minority languages. Between 2014 and 2019, the Ukrainian government passed a number of new laws that significantly restrict the right and possibility to use minority languages. Such are the Law on Civil Service,⁹⁶ the law changing the language regime of the electronic press,⁹⁷ or the new Law on Education.⁹⁸ The repeal of LL2012 also significantly curtailed the rights of speakers of regional or minority languages. Compared to LL1989 and ECRML2003, LL2012 granted more rights to use regional or minority languages in public administration, justice, education, media, and culture.

169. Although SLL2019 in principle contains rules only for the use of the State language, in fact it applies to all other languages used in Ukraine, namely by restricting their use. We believe that SLL2019 should also be thoroughly examined by the Parliamentary Assembly of the Council of Europe, based on the opinion of the Venice Commission, as the provisions of this law have virtually abolished the possibility for using regional or minority languages (a term not used by law itself) in social and public life.

⁹⁶ LU 2015.

⁹⁷ LU 2017b.

⁹⁸ LU 2017a.

170. It must be underlined that, despite calls to this effect, the Kyiv government did not send the draft of the State Language Law to the Venice Commission for review before its adoption. Nevertheless, at the initiative and at the request of the Chairman of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), the Venice Commission did examine the law, and it has been severely critical of it.⁹⁹ The Venice Commission could only give an opinion on the already adopted law, and even then, it did so not at the request of the Ukrainian government. The same behaviour was followed by Ukraine in connection with the law on education, which provoked a great controversy and was also criticized by the Venice Commission. All this suggests that the political elite in power between 2014 and 2019, in contrast to Ukraine's international obligations, used the language issue for its own domestic political purposes, deliberately exacerbating the conflicts inherent in the language issue, in order to mobilize their constituents. SLL2019 is another stage in Ukraine's flawed language policy: with SLL2019, Ukrainian language policy has gone astray.

⁹⁹ Opinion 2019.

List of Abbreviations

COMEX 2017 – Third report of the Committee of Experts in respect of Ukraine.

https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168073cdfa

Constitutional Court 1999 – Рішення Конституційного Суду України у справі за конституційним поданням 51 народних депутатів України про офіційне тлумачення положень статті 10 Конституції України щодо застосування державної мови органами державної влади, органами місцевого самоврядування та використання її у навчальному процесі в навчальних закладах України (справа про застосування української мови) від 14. 12. 1999 р. № 10-рп/99. [Decision of the Constitutional Court of Ukraine on the constitutional petition of 51 People’s Deputies of Ukraine on the official interpretation of Article 10 of the Constitution of Ukraine on the use of the State language by State authorities, local self-government bodies and in the educational process in educational establishments of Ukraine (the case on the use of the Ukrainian language) of December 14, 1999, No. 10-rp/99.] <http://zakon4.rada.gov.ua/laws/show/v010p710-99>

Constitutional Court 2000 – Рішення Конституційного Суду України у справі за конституційним поданням 54 народних депутатів України щодо відповідності Конституції України (конституційності) Закону України «Про ратифікацію Європейської хартії регіональних мов або мов меншин 1992 р.» від 12.07.2000 р. № 9-рп/2000. [Decision of the Constitutional Court of Ukraine in the case on the constitutional petition of 54 People’s Deputies of Ukraine on compliance with the Constitution of Ukraine

(constitutionality) of the Law of Ukraine "On Ratification of the European Charter for Regional or Minority Languages of 1992" of July 12, 2000, No. 9-рп/2000.]

<https://zakon.rada.gov.ua/laws/show/v009p710-00>

Constitutional Court 2018 – Рішення Конституційного Суду України у справі за конституційним поданням 57 народних депутатів України щодо відповідності Конституції України (конституційності) Закону України «Про засади державної мовної політики» від 28. 02. 2018 р. № 2-р/2018. [Decision of the Constitutional Court of Ukraine in the case of the constitutional petition of the 57 People’s Deputies of Ukraine on compliance with the Constitution of Ukraine (constitutionality) of the Law of Ukraine "On Principles of the State Language Policy" of February 28, 2018, No. 2-р/2018.]

<https://zakon.rada.gov.ua/laws/show/v002p710-18>

Constitutional Court 2019 – Рішення Конституційного Суду України у справі за конституційним поданням 48 народних депутатів України щодо відповідності Конституції України (конституційності) Закону України «Про освіту» № 10-р/2019. [Decision of the Constitutional Court of Ukraine in the case of the constitutional petition of 48 People’s Deputies of Ukraine on compliance with the Constitution of Ukraine (constitutionality) of the Law of Ukraine "On Education", No. 10-р/2019.]

http://ccu.gov.ua/sites/default/files/docs/10_p_2019_o.pdf

ЕСRML1999 – Закон України «Про ратифікацію Європейської хартії регіональних мов або мов меншин, 1992 р» [Law of Ukraine “On Ratification of the European Charter for Regional or Minority Languages, 1992”].

<https://zakon.rada.gov.ua/laws/show/1350-14>

- ECRML2003 – Закон України «Про ратифікацію європейської хартії регіональних мов або мов меншин» [Law of Ukraine “On Ratification of the European Charter for Regional or Minority Languages”].
<http://zakon4.rada.gov.ua/laws/show/802-15>
- LL1989 – Закон України «Про мови в Українській РСР» [Law of Ukraine “On Languages in the Ukrainian SSR”].
<http://zakon4.rada.gov.ua/laws/show/8312-11>
- LL2012 – Закон України «Про засади державної мовної політики» [Law of Ukraine “On Principles of the State Language Policy”]. <https://zakon.rada.gov.ua/go/5029-17>
- LU 2014 – Закон України «Про вищу освіту» [Law of Ukraine "On Higher Education"].
<https://zakon.rada.gov.ua/laws/show/1556-18/ed20140701>
- LU 2015 – Закон України «Про державну службу» [Law of Ukraine "On Civil Service"].
<https://zakon.rada.gov.ua/laws/show/889-19>
- LU 2017a – Закон України «Про освіту» [Law of Ukraine "On Education"]. <https://zakon.rada.gov.ua/laws/show/2145-19>
- LU 2017b – Закон України «Про внесення змін до деяких законів України щодо мови аудіовізуальних (електронних) засобів масової інформації» [Law of Ukraine "On Amendments to Some Laws of Ukraine on the Language of Audiovisual (Electronic) Media"].
<https://zakon.rada.gov.ua/laws/show/2054-19>
- LU 2020 – Закон України «Про повну загальну середню освіту». [Law of Ukraine "On Complete General Secondary Education"] <https://zakon.rada.gov.ua/laws/show/463-20>

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[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)

Opinion 2019 – European Commission for Democracy Through Law (Venice Commission). Opinion on the Law on Supporting the Functioning of the Ukrainian Language as the State Language. CDL-AD(2019)032. Opinion No. 960/2019. Strasbourg, 9 December 2019.

[https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)032-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)032-e)

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SLL2019 – Закон України «Про забезпечення функціонування української мови як державної» [Law of Ukraine “On Supporting the Functioning of the Ukrainian Language as the State Language”].

<https://zakon.rada.gov.ua/laws/show/2704-19>