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**ДЕРЖАВНА ПОЛІТИКА ЩОДО ЗАХИСТУ  
ПРАВ НАЦІОНАЛЬНИХ МЕНШИН:  
ДОСВІД КРАЇН ВИШЕГРАДСЬКОЇ ГРУПИ**

**КОЛЕКТИВНА МОНОГРАФІЯ**

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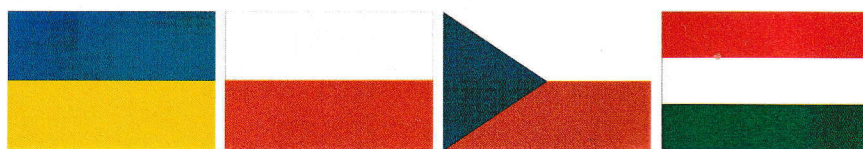
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## UKRAINE'S INTERNATIONAL OBLIGATIONS IN THE FIELD OF MOTHER-TONGUE-MEDIUM EDUCATION OF MINORITIES

5 вересня 2017 р. Верховна Рада України проголосувала за Закон України «Про освіту». Навколо статті 7 Закону розгорілися дискусії, які поступово перетворилися на один із найгостріших конфліктних питань як внутрішнього політичного життя, так і зовнішніх відносин України. З внутрішньополітичного рівня конфлікт піднявся на міжнародний рівень, коли Угорщина заблокувала організацію політичних зустрічей найвищого рівня між Україною та НАТО. У статті розглядаються зобов'язання України у сфері освіти рідною мовою меншин, які Київ взяв на себе із ратифікацією Європейської хартії регіональних мов або мов меншин та Рамкової конвенції про захист національних меншин. На основі офіційних звітів Консультативного комітету Рамкової конвенції про захист національних меншин та Комітету експертів Європейської хартії регіональних мов або мов меншин Ради Європи від 2017 року, ми також розглянемо, що Україна як виконує свої міжнародні зобов'язання у цій сфері.

Ключові слова: освіта рідною мовою, Закон України «Про освіту», Європейська хартія регіональних мов або мов меншин, Рамкова конвенція про захист національних меншин.

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### 1. Introduction

On September 5, 2017, the Supreme Council of Ukraine voted for a new Ukrainian framework law of education [2]. Since its adoption, Article 7 of this law regulating the language of education has been put into a cross-fire of disputes. The focus of the tension is that in Ukraine, which became independent in 1991, legislation has so far provided the choice of the language of education, but by Article 7 of the new law, lawmakers have made it compulsory to teach partially in the state language. The representatives of several national minorities (Hungarians, Romanians, Russians) living in the country do not agree with the statements of the law. It raised the conflict from the level inside Ukraine to the international arena, that Hungary, with its full diplomatic weight stood beside the case of mother-tongue-medium education of Hungarians in Transcarpathia. Hungary is also trying to put pressure on Ukraine to amend the Law on Education by blocking Ukraine and NATO from holding the highest level of political meetings.

In the debate, the Transcarpathian Hungarian community and Hungarian diplomacy emphasize that Article 7 of the Education Framework Law is contrary to Ukraine's international commitments [11; 20]. Ukrainian politicians and researchers, on the other hand, claim that Law on Education and its Article 7 does not in any way and to any extent violate Ukraine's international commitments [6; 19].

We would like to examine:

a) how the right to education in minority languages appears in two European minority protection documents (Framework Convention for the Protection of National Minorities [14] and European Charter for Regional or Minority Languages [12]);

b) what obligations Ukraine has undertaken in ratifying these two conventions;

c) we summarize what minority education is included in the reports prepared by the professional bodies for monitoring the implementation of the two conventions in Ukraine in 2017;

d) finally, in the light of the reports, we are looking for an answer to the question of whether Ukraine fulfills its commitments to ratify the two international conventions in the field of minority education.

The Advisory Committee on the Framework Convention for the Protection of National Minorities and the Commission of Experts of the European Charter for Regular or Minority Languages reports periodically on how each state applies these international documents in their own territory. As a measure of minority rights, it is often not the text of the conventions themselves but the interpretation adopted by the committees, so the reports provide guidance on the situation of minority rights.

## **2. Ukraine's international commitments in the field of education**

Ukraine ratified the Framework Convention [5] in 1997 and the Charter [3] in 1999. However, the Act on the Ratification of the Charter was repealed by the Constitutional Court of Ukraine in 2000 [9]. In 2003, Ukraine ratified the Charter again [4]. However, the document of ratification entered into force in Ukraine only since 1 January 2006.

The topic of education is addressed in Articles 12-14 of the Framework Convention and Article 8 of the Charter. One of the three paragraphs of Article 12 of the Framework Convention provides that education is to be organized in such a way that the majority and minorities learn about each other's culture, language and traditions. Paragraph 2 mentions the training of teachers and the provision of textbooks. In the 3rd Paragraph, the international document makes the case for equal opportunities for education. The two paragraphs of Article 13 fixes the right of minorities to establish private educational institutions, noting that this law does not impose any financial obligation on the state.

Article 14 says most about minority education. Paragraph 1 obliges States that have ratified the Convention to ensure that every minority has the right to learn their own language. Article 14 (2) states:

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

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

States that have ratified the Charter may, with certain restrictions, choose from the provisions of this document in an *à la carte* system. One part of the election is that the state can choose to which languages the scope of the Charter to be extended. The other part is that states, taking into account the requirements of Part I, Article 2 of the document, can choose from the provisions of the Charter. Part II must be involved in any way, and in addition each Party undertakes to apply a minimum of thirty-five paragraphs or sub-paragraphs chosen from among the provisions of Part III of the Charter, including at least three chosen from each of the Articles 8 and 12 and one from each of the Articles 9, 10, 11 and 13.

In the first and second ratifications of the Charter in 1999 and in 2003, Ukraine did not choose from the same provisions of the educational article and the extent was also different. During the first ratification, the country assumed much more responsibilities than a few years later (Table 1).

	Law of 1999	Law of 2003
para. 1		
a) pre-school education	a (i), a (ii), a (iii)	a (iii)
b) primary education	b (i), b (ii), b (iii)	b (iv)
c) secondary education	c (i), c (ii), c (iii)	c (iv)
d) technical and vocational education	d (i), d (ii), d (iii)	–
e) university and other higher education	e (i), e (ii)	e (iii)
f) adult and continuing education	f (i), f (ii)	f (iii)
g)	g	g
h)	h	h
i)	i	i
para. 2.	para. 2.	para. 2.

**Table 1. Commitments made by Ukraine in 1999 and 2003 from Article 8 (Education) of the Charter**

This means that in the field of pre-school and primary and secondary education, Ukraine has only undertaken that if the families of the children belonging to the minority wish it and their number is sufficient for this according to the decision of the authorities, it will provide part of the education in the minority languages. In

the field of vocational training, Kyiv has not made any commitments. It has hardly committed itself to the use of minority languages in higher education. In spite of the fact that Kyiv has set such a low level of self-sufficiency that in the country there are many minority languages (Russian, Hungarian, Romanian, Moldavian) that have developed and operate traditionally, even as a legacy of the former Soviet system, after Ukraine became independent it has evolved even further.

If we look at the new Law of Ukrainian On Education voted on October 5, 2017, we have the impression that its Article 7, which regulates the language of education, contains Ukraine's above-mentioned obligations under the Framework Convention and the Charter.

Article 7 of the Law on Education provides that „The language of the educational process at institutions of education is the state language”. It also turns out from the text that „Persons belonging to national minorities of Ukraine are guaranteed the right to education in communal educational institutions of pre-school and primary education in the language of the national minority they belong to and in the official language of the State. This right is realized by creating (in accordance with the legislation of Ukraine) of separate classes (groups) with educational process in the language of the respective national minority group along with the official language of the State and is not applied to the classes (groups) with the Ukrainian language of educational process” [2; 10].

The law thus guarantees the right to learn the mother tongue, and to some extent the possibility of education in the mother tongue. It is also provided by Article 7 of the Law that „One or more disciplines may be delivered at institutions of education according to the educational programme in two or more languages: the state language, in English, in other official EU languages” [2; 10].

In its opinion on Article 7 of the Law, the Venice Commission expresses the hope that the special law on general secondary education will detail the provisions of Article 7 of the Education Framework Law [16].

Let's see, if adopted, how the new special law would transform the use of individual languages in education [7]. Prior to the application of Article 7 of the 2017 Law on Education and Article 5 of the Law of Ukraine On General Secondary Education, all citizens in Ukraine had the right to study in their mother tongue at all levels of public education (from kindergarten to university) [10]. Table 2 shows that the native speakers of Ukrainian are not affected by the legislative changes: they can continue to learn in their mother tongue. Representatives of indigenous peoples (practically the Crimean Tatars) can also learn in their mother tongue. In forms 1 to 4 the same is true of national minorities. Under Article 5 (7) of the draft, representatives of national minorities using an official language of the European Union (Hungarians, Romanians, Poles, Bulgarians, Slovaks) in the 5<sup>th</sup> grade can learn at least 20% of the annual number of hours in the state language, and in grade 9 this ratio should reach 40%; in grades 10 to 12 at least 60% of the annual lessons in the classroom must be held in Ukrainian. National minorities (Russians, Belarusians) who speak non-EU languages, from the 5<sup>th</sup> grade study 80% of the annual lessons



in the state language. The native language of native peoples and national minorities, whether or not this language is an official language in the EU, can only appear in the educational process according to the framework law and the draft.

Share of mother tongue in the educational process (in %)	Grades 1-4	5 <sup>th</sup> grade	9 <sup>th</sup> grade	Grades 10-12	Who are these?
representatives of majority	100	100	100	100	Ukrainians
indigenous people	100	100	100	100	Crimean Tatars
minorities, whose language is official in the EU	100	80	60	40	Hungarians, Romanians
minorities, whose language is NOT official in the EU	100	20	20	20	Russians

**Table 2. Proportion of the use of mother tongue in schools of different groups of citizens before the entry into force of Article 7 of the 2017 Act and on the draft law on secondary education**

If we look at Article 5 on the language of education in the draft of Law on General Secondary Education, then it also seems that Ukraine wants to regulate this issue in its internal legislation to meet its international obligations: minorities can learn their mother tongue and be present at all levels of public education, their mother tongue is somewhat present in the educational process. In the field of vocational education, Kyiv did not undertake to ensure the presence of minority languages.

However, if we look at the reports on the application of the Framework Convention and the Charter in Ukraine, it turns out that the situation is not so clear.

### **3. The most recent reports on minority language education have been published on the application of the Framework Convention and the Charter in Ukraine**

Below is a description of what is involved in minority education about the application of the Framework Convention in Ukraine in a report issued by the Advisory Committee on March 10, 2017 (March 5, 2018) [13] and on the implementation of the Charter in a report prepared by on March 27, 2017 [18]. It is important to emphasize that both reports were prepared before the adoption of the new Education Framework Law, adopted in October 2017, so they respond to the educational regulations before the 2017 law.

Since the release of Fourth Opinion on Ukraine and Third report of the Committee of Experts in respect of Ukraine, significant changes have taken place in the regulation of education in Ukrainian language policy and within minority languages. As mentioned, on October 5 2017, the Verkhovna Rada of Ukraine passed a new educational framework law [2]. Constitutional Court of Ukraine on February 28, 2018, for official reasons, repealed the Ukrainian language law adopted

in 2012 [8]. The Verkhovna Rada voted in its first reading on 4 October 2018, and in its final version on 25 April 2019, a law entitled 'Ensuring the functioning of Ukrainian as a state language' [1]. Although the reports could not respond to these events, the previous reports were also critical for Ukraine, including minority education issues [15].

The Fourth Opinion states that there are schools in Ukraine where the language of instruction is the mother tongue of a minority, where the Ukrainian language and literature is a compulsory subject [13, para. 152]. It also notes, however, that many languages are not even present as subjects in education [13, para. 153], and that there are few teachers who are capable of teaching in minority languages at a high standard [13, para. 154, 155].

The report's dissatisfaction is expressed by the fact that textbooks used in minority medium schools are often poorly translated, and often reach schools after the beginning of the school year, also, the lack of teaching aids in minority languages (illustrators, maps, atlases, workbooks, etc.) [13, para. 156].

The report also highlights the lack of qualified teachers and educational materials on language teaching in minority schools, including textbooks [13, para. 158, 159]. In the context of teaching Ukrainian as a state language, the report states that although in the 11<sup>th</sup> grade of public education in minority schools, according to curricula, children attend nearly five hundred less Ukrainian language and literature lessons than their Ukrainian-speaking counterparts, at the Ukrainian language and literature independent test exams, which were introduced for those seeking higher education in 2008, and required for all graduates since 2015, they must pass this exam on the basis of the same requirements, which adversely affects the representatives of minorities reflected in the results of the exam [13, para. 158, 159]. It calls on Kyiv to ensure equal opportunities for minority language students on Ukrainian language at the external independent exams and to take steps to improve the quality of teaching Ukrainian as a state language [13, para. 163, 164].

Opinion is concerned about the (back then only planned) legal reform of language law in Ukraine, including the content of the new draft law on education and the expected public administration reforms [13, para. 160-162].

Third report of the Committee of Experts in respect of Ukraine states that „The situation of the minority languages in education is not uniform” [18, para. 17]. As several minority communities have expressed a need for education in their mother tongue or for learning their mother tongue as a subject, Rep2017 calls on the Ukrainian authorities to develop a policy that guarantees their educational rights to meet the needs of each community [18, para. 18].

The document establishes the passivity of state bodies in providing education in minority languages and draws attention to the fact that the Charter in this area „requires pro-active measures by the authorities” [18, para. 19]. „The Committee of Experts underlines the importance of education for the different levels of education” [18, para. 19].

Chapter 2 of the Report analyzes how Ukraine fulfills its commitments to ratify the Charter in respect of each of the languages covered by the document. The rows in Table 3, based on the analysis in the report, show the 13 languages that Ukraine has protected under the Act on the Ratification of the Charter in Ukraine. The rows contain some points in Article 8 on education; the paragraph is present in the table, which Kyiv has undertaken to apply. The numbers in each cell cover the following categories (according to the criteria in the report):

4. *Fulfilled*: Policies, legislation and practice are in conformity with the Charter.

3. *Partly fulfilled*: Policies and legislation are wholly or partly in conformity with the Charter, but the undertaking is only partly implemented in practice.

2. *Formally fulfilled*: Policies and legislation are in conformity with the Charter, but there is no implementation in practice.

1. *Notfulfilled*: 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.

0. *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.

	8.1.a.iii	8.1.b.iv	8.1.c.v	8.1.d.vi	8.1.e.vii	8.1.f.viii	8.1.g	8.1.h	8.1.i	8.2.
Belarusian	1	1	1	1	4	1	1	1	1	1
Bulgarian	1	3	3	1	4	4	1	3	1	4
CrimeanTatar	3	3	4	1	4	3	0	4	1	3
Gagauz	1	3	3	1	4	1	0	3	4	1
German	3	3	3	1	4	4	1	3	1	1
Greek	3	3	4	1	4	4	0	3	1	4
Hungarian	4	4	4	1	4	4	3	4	1	1
Moldavian	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	0	4	1	4
Slovak	4	3	3	1	4	1	1	3	1	1
Yiddish	3	1	1	1	4	4	0	1	1	1

**Table 3. To what extent does Ukraine comply with its own commitments to Article 8 (Education) of the Charter? [Based on: 18, Chapter 2]**

As shown in Table 3, the report concludes that Ukraine has not fully complied with its commitments in virtually any of the 13 languages covered by the Charter. We must emphasize again that the report reflects the state before the adoption of the 2017 Law on Education.

#### 4. Summary

In the context of the Law of Ukraine On Education, there was a sharp debate between the representatives of the central government and the Hungarian community in Transcarpathia, as to whether Article 7 of the new law regulating the language of education complied with Ukraine's international obligations. The two most recent reports on the application of the Framework Convention and the Charter in Ukraine have been prepared by independent international bodies that are not committed to the debate. These two reports provide an opportunity to examine whether Ukraine has fulfilled its in the field of mother-tongue-medium education of minorities.

Both the Advisory Committee on the Application of the Framework Agreement in Ukraine and the Expert Committee on Monitoring the Implementation of the Charter have made a number of comments on the issue of education in the language of minorities, suggesting that Ukraine is not fully fulfilling its commitments. As the new Law of Ukraine On Education Law significantly reduces the use of minority languages in public education as compared to the earlier, the new regulation will make Kyiv even less able to fulfill the obligations by ratifying the Framework Convention and the Charter.

Roter and Busch in their 2018 study state: „In Ukraine (...) the exclusive nation-building (the so-called Ukrainisation) is very clearly aimed at promoting the Ukrainian language as the sole legitimate language in the public domain, at the expense of other languages, especially Russian, but also other minority languages. Their use may have been affected as a ‚collateral damage‘ of the process of Ukrainisation as anti-Russian policies, but it is not less painful for the speakers of those languages. This has been demonstrated in Ukraine's new 2017 Law ‚On Education‘ (Article 7).” [17, c. 165]

Thus, the language and education policy which, despite the needs of minorities, restricts the presence of minority languages in education is incompatible with the real aims of the Framework Convention and the Charter.

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