



**Organization for Security and Co-operation in Europe**

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**DATE:** 20 December 2010  
**TO:** Permanent Mission of Ukraine to the OSCE  
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**TO:** Mr Ilya Kvas, Embassy of Ukraine to the Netherlands  
**FAX NO:** 070 - 361 55 65  
**FROM:** Ambassador Knut Vollebaek, OSCE High Commissioner on National Minorities  
**SUBJECT:** Letter to His Excellency Volodymyr Lytvyn, Chairman of the Verkhovna Rada of Ukraine  
**PAGES:** [19 ] incl. this cover page

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Dear Sir/Madam,

Please find enclosed a letter to His Excellency Volodymyr Lytvyn, Chairman of the Verkhovna Rada of Ukraine, from Ambassador Knut Vollebaek, OSCE High Commissioner on National Minorities.

We would be grateful if you could convey this letter to His Excellency Volodymyr Lytvyn, together with a copy to His Excellency Kostyantyn Gryshchenko, Minister for Foreign Affairs of Ukraine, at your earliest convenience.

The original letter will follow by mail.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Anne Torvik', written over a light blue horizontal line.

Anne Torvik  
Secretary to the High Commissioner



**Organization for Security and Co-operation in Europe  
High Commissioner on National Minorities**

**The Hague, 20 December 2010**

**His Excellency Volodymyr Lytvyn  
Chairman of the Verkhovna Rada of Ukraine  
Kyiv**

Dear Chairman,

Thank you very much for your letter dated 17 November 2010 informing me about the latest developments concerning the Verkhovna Rada's legislative work on the Draft Law on Languages in Ukraine (No 1015-3).

As we agreed, I am enclosing my assessment of this Draft Law. It is commendable that the Draft Language Law aims to introduce a far-reaching reform of the legislative framework concerning language issues. While I have noted a number of positive aspects, the Draft Language Law also presents several considerable deficiencies. Overall, the Draft Law fails to regulate the use of languages in Ukraine in a way which meets international minority rights standards, facilitates a balance between the interests of different communities, or promotes integration and stability of Ukrainian society. In my assessment, the Draft Language Law is likely to increase rather than decrease tensions between speakers of different languages and to reinforce existing divisions in society, thus making the Draft Law counter-productive to the stabilization of Ukrainian society.

I therefore recommend the Ukrainian authorities to refrain from considering the Draft Language Law in its current format and instead to pursue a comprehensive reform of Ukraine's outdated legislative framework concerning minority rights and language issues. As indicated earlier in our previous meetings and correspondence, I believe that a broad and transparent consultation process involving representatives of national minorities, the different linguistic communities, and civil society at large can facilitate a reasonable societal compromise and ensure that State interests as well as those of all communities are upheld and respected.

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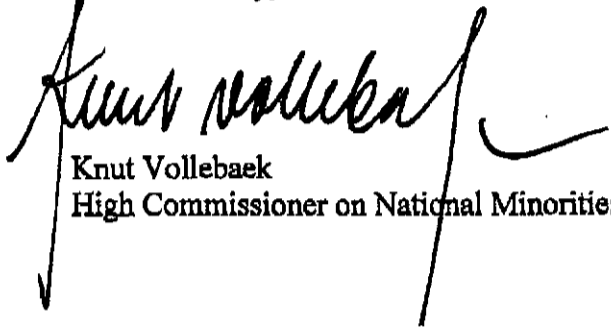
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I trust that my assessment of the Draft Law on Languages will be given consideration in the Verkhovna Rada and I encourage you to share it with all People's Deputies.

As always I stand ready to assist you and look forward to our future co-operation.

Yours sincerely,



Knut Vollebaek  
High Commissioner on National Minorities

CC:  
His Excellency Kostyantyn Gryshchenko, Minister for Foreign Affairs of Ukraine



**Organization for Security and Co-operation in Europe  
High Commissioner on National Minorities**

**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**

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**I. Introduction**

1. During his official visit to Ukraine from 15 to 18 September 2010 the OSCE High Commissioner on National Minorities (HCNM), Ambassador Knut Vollebaek, met with the Chairman of the Verkhovna Rada of Ukraine, H.E. Mr. Volodymyr Lytvyn. The new draft legislation on language issues was one of the main subjects of discussion. A few days before the meeting, a new comprehensive Draft Law on Languages had been submitted to the Verkhovna Rada at the initiative of three People's Deputies representing the parliamentary majority. This Draft Law "On Languages in Ukraine" (No. 1015-3), registered with the Verkhovna Rada on 7 September 2010 (hereafter: the Draft Language Law), is the most systematic Draft Law on this matter currently under consideration. It addresses all relevant spheres of language use and would affect and require amendment of some three dozen other laws. While it preserves Ukrainian as the sole State language, it grants Russian a special role and provides for several other languages to be given "regional" status.
2. During their meeting on 15 September 2010, the Chairman of the Verkhovna Rada informed the High Commissioner that he had submitted the Draft Language Law for assessment to a wide circle of specialists and academic institutions. He

also requested an assessment from the HCNM, based on his mandate and his wide experience with language issues and legislation throughout the OSCE region.

## II. The language situation in Ukraine

3. According to the 2001 Census, the majority of citizens in Ukraine are ethnic Ukrainians (77.8%), while Russians form the most sizeable minority (17.3%). The remaining 5 per cent of the population includes Belarusians, Moldovans, Crimean Tatars, Bulgarians, Hungarians, Romanians, Poles, Jews and many other smaller minority groups. Of the total population of Ukraine, 67.5 per cent declared Ukrainian to be their native language (*ridna mova*), while 29.6 per cent declared Russian to be their native language.
4. These figures demonstrate that a considerable number of ethnic Ukrainians and persons belonging to non-Russian minorities regard Russian as their native language. The loss of the historic native language and the linguistic Russification of many non-Russians, particularly from the younger generation, is all part of the difficult ethnolinguistic situation Ukraine inherited from the Soviet Union. The suppression of non-Russian languages by Soviet authorities or their failure to protect and promote these languages led to the predominance of Russian in a number of fields and regions, in public as well as private life. Ukraine's bilingualism is still asymmetrical in the sense that a higher proportion of ethnic Ukrainians are fluent in and actually use Russian in many communicative situations than ethnic Russians fluent in and using Ukrainian.
5. The commitment to promote Ukrainian – which is both the native language of the titular group and a means of communication as well as integration in Ukraine's multiethnic society – started with the adoption of the 1989 Law "On Languages in the Ukrainian Soviet Socialist Republic" and found its constitutional expression in 1996. Article 10 of the Constitution declares Ukrainian as the State language and ensures the comprehensive development and functioning of the Ukrainian language in all spheres of social life throughout the entire territory of Ukraine. At the same time, Article 10 guarantees the free development, use and protection of Russian and other languages of national minorities of Ukraine.
6. While the debate on the revival of the State language and its relation to Russian and other languages spoken in Ukraine preceded the independence of Ukraine and continues today, its duration, intensity and scope testifies to the cardinal importance of all matters related to language policy for the stability and future of Ukrainian society. Some elements of the different policies of successive Ukrainian Governments aimed at strengthening the State language in various fields through more or less stringent measures were perceived by parts of the population as an attempt to limit the expression of minority ethnic and/or linguistic identity and, ultimately, to assimilate minorities. On the other hand, the persisting dominance of Russian in certain fields and regions is perceived by others as a failure by the State to live up to the constitutional commitment to protect and promote Ukrainian as the sole State language in Ukraine. Some ethnic Ukrainians see their linguistic rights and indeed their linguistic identity threatened by this development. While

the level of ethnolinguistic tolerance in interpersonal relations in Ukraine is in general high, the politicization of language issues and the ethnolinguistic divisions in society give rise to concerns.

### III. The Draft Language Law

7. The Draft Law of Ukraine "on Languages in Ukraine" as registered with the Verkhovna Rada on 7 September 2010. It consists of eleven chapters and was drafted by Oleksandr Yefremov ("Party of Regions"), Petro Symonenko ("Communist Party") and Serhiy Hrynevetsky ("Lytvyn Bloc"). The general provisions of Chapter One (Articles 1-9) determine Ukrainian as the sole State language. The Draft Language Law also describes the role of the Russian language in Ukraine, referring, *inter alia*, to "Ukrainian-Russian bilingualism", and it is the only non-State language to receive separate mention in specific provisions in the Draft. Regarding regional languages, the Draft Language Law introduces a threshold according to which 10 per cent of the inhabitants of certain territorial or geographical units need to be speakers (*nosiyi*) of a minority language for it to qualify as a regional language to be used officially on a par (*narivni*) with the State language by the local state administration, the Government of the Autonomous Republic of Crimea (ARC) and local self-government bodies. In addition, the Draft Language Law includes provisions on the use of Russian in other fields, unrelated to whether or not it qualifies as a regional language in a certain geographical unit. For example within the education system teaching of and in Russian is not subject to the threshold requirement. Other exceptions to the threshold requirement include the official publication of central State acts in Ukrainian and Russian, information contained in passports in Ukrainian and Russian and the unconditional use of Russian on a par with Ukrainian in pre-trial investigation, interrogation and prosecutions. Chapter Four (Articles 25-27) leaves room for choice in the use of languages in the media, apart from the requirement of at least 60 per cent State language programming and at least 20 per cent Russian language programming on State-owned nationwide radio and television broadcasting. Relying in part on the threshold prerequisite, the extent to which a language other than the State language may be used by central and local authorities, the judiciary and in economic and social activities is specified further in Chapter Two (Articles 10-20).
8. According to its Explanatory Note, the Draft Language Law has been submitted in order to fulfill "the obligations of Ukraine to implement the European Charter for Regional or Minority Languages ratified by the Verkhovna Rada of Ukraine."
9. The European Charter for Regional or Minority Languages (ECRML) was opened for signature in Strasbourg on 5 November 1992 and entered into force on 1 March 1998. Ukraine signed the ECRML on 2 May 1996 and ratified it on 15 May 2003. It entered into force in Ukraine on 1 January 2006.
10. The overarching spirit of the ECRML is to safeguard cultural heritage. Its aim is to protect and promote regional and minority languages as well as to ensure that speakers of regional and minority languages can use their language both in private and in public. The ECRML is structured accordingly. Part II, Article 7, of the

ECRML draws up the general principles for policies, legislation and practice and is applicable to all regional and minority languages within the territory of the State, regardless of the extent of its commitments under Part III. Part III, Articles 8 to 14, concerns specific measures to ensure the use of regional and minority languages in public life. When specifying which languages Part III shall cover, States must choose from a list of optional measures and apply them "according to the situation of each of these languages" (Article 7(1)). Being deemed a matter of internal State policy, the ECRML does not provide clear guidance on the status of languages. However, the widespread use of a language does not negate its right to protection. To this end, it is important to note that any weakening of the State or official language(s) runs contrary to the spirit of the ECRML.<sup>1</sup> The protection and promotion of regional and minority languages should not be at the expense of the State or official language(s). Similarly, this is also expressed in Articles 5(2) and 14(3) of the Framework Convention for the Protection of National Minorities (FCNM) concerning general integration policies and education respectively.

#### **IV. The High Commissioner's approach: integration with respect for diversity**

11. The general approach of the HCNM throughout the OSCE area is based on integration with respect for diversity. The aim underlying this policy is to create a society in which all members, including persons belonging to national minorities, share and build a feeling of common identity while recognizing their differences. Such an approach entails the integration *of* societies rather than *into* societies and a focus on society as a whole. It is important to acknowledge that persons belonging to national minorities represent an enrichment of society, rather than just tolerating their presence.
12. Likewise, national minorities have a responsibility to integrate and to co-operate with legitimate integration policies. A successful State must ensure social cohesion within its territory. This is particularly the case when a country is going through a transitory phase. However, ensuring successful cohesion needs to take into account appropriate respect for and a balance between integration and diversity. An exclusive approach to nation building such as elevating some groups within society above others or a lack of sensitivity about sense of identity, increases the potential for tension and conflict. Accordingly, there is no contradiction between promoting minority rights and the interests of the majority and strengthening nationhood. On the contrary, striving towards interethnic harmony is in the State's own interest.
13. The State language can be an effective tool in ensuring cohesion. Consequently, promoting the use of the State language constitutes a legitimate State interest. Moreover, knowledge of the State language is also beneficial to persons belonging to national minorities. Having a command of the State language increases the opportunities for effective participation in society at all levels. This requires that persons belonging to national minorities are given and make use of the

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<sup>1</sup> Committee of the Experts on the ECRML, 7 July 2010, ECRML (2010)6, Para. 71.

*longer suit the reality of today's Ukraine and their inter-relations lack clarity.*"<sup>3</sup>

17. The Committee of the Experts on the ECRML in 2008 found:  
*"In Ukraine, the Law on Languages dates back to 1989 and does not correspond to the present situation. [...] The Ukrainian authorities are invited to better coordinate the whole language policy in consultation with the speakers and to adopt a new legislation that reflects today's situation in Ukraine"*<sup>4</sup>
18. In recent years, the Commissioner on Human Rights<sup>5</sup> and the European Commission against Racism and Intolerance<sup>6</sup>, both bodies of the Council of Europe, have made identical recommendations, calling for new legislation on language and national minority issues to be adopted as soon as possible.

#### **A. Positive characteristics of the Draft Language Law**

19. The current Draft Language Law has a number of positive characteristics. The first is the Draft Law's aim to introduce a far-reaching reform of the legislative framework concerning language issues. As indicated above, such a reform is long overdue.
20. The Draft Language Law furthermore takes a comprehensive approach, covering all relevant areas of language use, rather than pursuing reforms in an ad hoc manner in specific areas as has been the case in the last couple of years. If adopted, the Draft Language Law could contribute to achieving greater clarity and legal certainty.
21. Another positive element of the Draft Language Law is that its stated point of departure is compliance with the international human and minority rights instruments by which Ukraine is bound.
22. This rights-based approach of the Draft Law could help to provide legal certainty regarding the rights and obligations related to the use of both the majority and the minority languages in all relevant fields, including education, the media, contact with public authorities, etc. This would help to remedy the current ambiguity of the legal framework and could contribute to improving the dynamics of minority-majority relations in Ukraine and so ease some of the tensions related to language policy.
23. A particular improvement envisaged by the Draft Language Law is the guarantees it aims to introduce for the use of minority languages in education. Article 21(3) and (4), of the Draft Law introduces a system whereby free parental choice in

<sup>3</sup> ACFC of the Council of Europe, Second Opinion on Ukraine, 30 May 2008, ACFC/OP/II(2008)000, Para. 9.

<sup>4</sup> Committee of the Experts on the ECRML, 7 July 2010, ECRML (2010)6, Para. 3.1 sub D.

<sup>5</sup> Commissioner for Human Rights of the Council of Europe, Report of 26 September 2007, CommDH(2007)15, Para. 72: "The language issue is of significant importance in Ukraine. It is therefore essential to have a set of clear rules with regard to the use of minority languages. Improvements to the existing legislation would be welcome. They would provide greater legal certainty and sustainability to existing arrangements."

<sup>6</sup> European Commission against Racism and Intolerance (ECRI), Third Report on Ukraine, 12 February 2008, CRI(2008)4, Paras. 17 and 19.



selecting the minority language to be used in a child's school education will form the basis for the establishment of classes in a particular language. This will be determined through a yet to be defined mandatory procedure. Such a provision would meet one of the HCNM's main recommendations regarding the education rights of national minorities in Ukraine.

24. Another important improvement envisaged by the Draft Language Law concerns the use of minority languages by the local authorities in areas of concentrated settlement. Currently, the legislative framework governing the use of minority languages in relations with administrative authorities (Article 8 of the Law on National Minorities and Article 3 of the Law on Languages) provides that a minority language can be used by various public bodies as a working language only in the localities where a minority constitutes a majority. This threshold is rather high, and has been criticized by the relevant international monitoring bodies and would benefit from a significant reduction.<sup>7</sup>

#### **B. Shortcomings of the Draft Language Law**

25. While the Draft Language Law presents a number of significant improvements, in the HCNM's assessment of the High Commissioner it also presents several considerable shortcomings, ambiguities and lacunae. These deficiencies – analysed below separately – not only obstruct the effective implementation of a comprehensive reform of the language regulation but could also lead to a weakening of the State language. The latter in particular could increase rather than a decrease tensions between groups of speakers of different languages, thus making the Draft Law counter-productive to the stability of Ukrainian society.

#### *Reform of the language regulation should be linked to reform of minority issues*

26. First of all, the HCNM is concerned about the fact that the current Draft Language Law pursues language regulation reform in isolation from the legal framework governing minority issues. As the HCNM has previously recommended, for such reform to be effective, it must go hand in hand with a parallel reform of the existing legislation on minority issues. The legal framework covering both fields is closely related and overlaps to a large extent. Therefore, if the current Draft Language Law is adopted without reforming the legislation on minority rights, this could lead to further contradictions and ambiguity within the existing legal framework. For example Paragraph 16 of Chapter XI (Transitory Provisions) of the current Draft Language Law only foresees a modification of Article 8 of the Law "On National Minorities in Ukraine" and is therefore too narrow in scope. A two-pronged approach is therefore recommended, addressing reform in both areas concurrently, based on adequate consultations with all affected groups.

#### *The Draft Language Law uses inadequate criteria*

<sup>7</sup> ACFC of the Council of Europe, Second Opinion on Ukraine, 30 May 2008, ACFC/OP/II(2008)000, Para. 154; and Committee of Ministers of the Council of Europe, Recommendation RecChL(2010)5, 7 July 2010, Para. 2.

27. Article 1 of the Draft Language Law defines "regional language group" as "group of persons residing in a given region (settlement) and using predominantly one language", while Article 8(3) establishes a threshold of 10 per cent of "speakers" (*nosiyi*) of a regional language. The way in which the Draft Language Law approaches and defines the beneficiaries of the guarantees contained in the Law is thus problematic. First, it is based on the criterion of "use" rather than "choice". In regions in which a certain language is dominant – be it the State language or a minority language – the use of language will not necessarily coincide with that of the preferred choice of the individual as that person will almost certainly be under economic or social pressure to use the dominant language of that area. This criterion is therefore likely to disadvantage in particular speakers of smaller minority languages. Second, no accurate or up-to-date statistics on the linguistic preferences of Ukraine's citizens exist (or indeed on their actual "use" of different languages). This data is crucial for the effective application of the main provisions of the Draft Law such as for example the determination of the languages that qualify as a "regional language" on the basis of Article 8(3). The 2001 Census data on declared native language is the only source that might be used as an indicator of individuals' linguistic preferences.

*The Draft Language Law fails to adequately protect smaller minority languages*

28. Another concern of the HCNM regarding the Draft Language Law is related to its limited scope of application, which unjustifiably restricts the protection of smaller languages in a number of ways and takes insufficient account of Ukraine's international obligations in this particular field as well as in other parts of its legal framework.
29. The proclaimed aim of the Draft Language Law, as expressed in Article 2, is the "regulation of social life in the sphere of comprehensive development and use by the population of the Ukrainian, Russian and other languages". Article 5 (Purposes and Principles of the State Language Policy) furthermore states that the Draft Language Law guarantees the "free development of the Russian language, other regional or minority languages, the right to linguistic self-determination and language preferences of every individual." While it formally also includes the protection of "other minority languages" (see Article 8), the Draft Law almost exclusively focuses on the protection and promotion of the Russian language and fails to afford adequate protection to smaller minority languages. This approach, which is due to a number of factors, misrepresents the object and purpose of the international human and minority rights instruments to which Ukraine is party, including the ECRML and the FCNM.
30. First, the principal protective elements of the Draft Language Law only apply to those minority languages which have acquired the status of "regional language" by reaching the threshold set by Article 8(3). As explained above, the criterion used here is the "use" rather than the "choice" of a certain language, which is likely to disadvantage speakers of smaller minority languages who are not always free to use their language of preference.

31. Second, while the "territory" named in Article 8(3) can consist of administrative territorial units at different levels, the province or "oblast" is also one of the most important levels at which minority languages are to be used.<sup>8</sup> Given the demographic and ethnocultural composition of Ukraine, very few languages will reach the required 10 per cent threshold and thus qualify as a "regional language". In addition to Russian in a majority of the Ukrainian oblasts, only Hungarian (in Zakarpattia), Romanian (in Chernivtsi) and possibly – depending on the criteria used – Crimean Tatar (in Crimea) will reach this threshold.<sup>9</sup> Other minority languages spoken by a relatively large number of speakers, but who are not sufficiently concentrated in one area in order to meet the 10 per cent threshold at oblast level, would therefore not qualify for protection at regional and national levels.
32. Third, while Article 8(1) of the Draft Language Law states that the Law shall apply to "all regional or minority languages of Ukraine used on its territory", Article 8(2) seems to restrict the application of the Law to the languages listed in this provision, thus excluding all others. If this is indeed the intention and eventual consequence of the Draft Language Law, then this provision fails to take account of Ukraine's international obligations, *inter alia*, under the FCNM and the relevant OSCE Commitments, which also apply to other minority languages not mentioned in Article 8(2). Furthermore, as noted by the Committee of Experts on the ECRML, such a limited scope of application may well contradict the Charter itself, Part II of which also applies to languages not included in Ukraine's instrument of ratification such as Karaim, Krimchak and Ruthenian.<sup>10</sup>

***The Draft Language Law is likely to weaken the State language and increase tension***

33. One of the most important concerns of the HCNM regarding the Draft Language Law relates to its potential negative impact on the position and use of the State language. If such a development should occur, it could undermine the important role of the State language as a tool of social integration and increase rather than decrease tensions concerning language issues in Ukraine. It would also reinforce existing divisions by language in society.

<sup>8</sup> It is unclear how the use of a "regional or minority language" will be determined at the sub-regional level, e.g. at village, city, neighbourhood or rayon level, and how multiple "regional and minority languages" of different level on the same territory will interact. The Draft Language Law does not stipulate this, leaving this important aspect of the scope of application unregulated. Furthermore, currently, the Constitution does not allocate any competences in the sphere of language regulation to administrative authorities at this level.

<sup>9</sup> Whether Crimean Tatar will qualify as a "regional language" will depend on the interpretation of the criteria used in the application of Article 8(3). The definitions of "linguistic group" and "linguistic minority" of Article 1 refer to a group "using predominantly" a certain language. If these definitions are interpreted literally, then Crimean Tatar would not qualify for official status in the ARC, as by no means do all Crimean Tatars "predominantly use" this language and therefore the total number of speakers using Crimean Tatar "predominantly" will not reach the 10 per cent threshold required by the Draft Language Law.

<sup>10</sup> Committee of the Experts on the ECRML, 7 July 2010, ECRML (2010)6, Chapter 3, sub Z.

34. The Draft Language Law officially declares that it is based on "recognition and comprehensive development of Ukrainian as the State language" (Article 5(1) and that it shall safeguard "[...] the comprehensive development and functioning of Ukrainian as the State language in all spheres of public life on the whole territory of Ukraine" (Article 5 (2.1)). A provision specifically targeting the protection of the State language furthermore states:

*"Ukrainian as the State language is mandatory for use on the whole territory of Ukraine in the work of legislative, executive and judicial bodies of power, in international treaties, in the educational process, in educational establishments within the scope prescribed by the present Law. The State promotes the use of the State language in the mass media, science, culture and other spheres of public life.*

Article 8(9) stipulates:

*"None of the provisions of this Law on measures for development, use and protection of regional or minority languages shall be interpreted as presenting an obstacle to gaining a command of the State language."*

35. Another declared aim of the Draft Language Law, as stated in Article 5(3), is to "promote multilingualism", while Article 7(2) refers to "Ukrainian-Russian bilingualism". The Draft Language Law does not define these terms.
36. The central question which arises is whether the Draft Language Law strikes an adequate balance between, on the one hand, ensuring an effective functioning of the State language as an effective tool in securing cohesion between all linguistic groups of the country, and, on the other hand, protecting the right of persons belonging to national minorities to preserve their identity and their language. Essential for this balance, as set out above, is that persons belonging to national minorities are given the opportunity to learn the State language sufficiently well so as to be able to make use of it. The HCNM has doubts as to whether the provisions of the Draft Law could achieve this. An analysis of the provisions of the Draft Language Law in the areas of public administration, education and the media illustrates this concern

#### **a) Public Administration**

37. The structure and provisions of the Draft Language Law introduce a system in which regional languages "shall be used on a par with the State language on the given territory of Ukraine" [emphasis added]. On the basis of Article 8(6) this applies first and foremost to the "local state administration in the given territory" as well as to "local self-government bodies".<sup>11</sup> Acts issued by local self-government bodies in the regional language in these areas shall have "equal legal force" (Article 11(2)), while the regional language shall be used "on a par" with the State language "in the work, documentation and records of the local State administrations and self-government bodies" (Article 12(1)). The regional

<sup>11</sup> This provision also refers to language use by the Government of the ARC even though this issue is already regulated by the Constitution of the ARC.

language will also be used in correspondence, in meetings and in other documents of the local self-government bodies (Article 12(6)). The regional language will also be used in elections and referenda (Article 13), in official documents which "certify identity of a citizen of Ukraine or provide personal information", civil status documents or documents related to the educational process (Article 14(1)), for example diplomas, etc. In the relevant regions, the regional language will also be used in the judiciary (Article 15). While the Draft Language Law contains a general provision to the effect that the need to provide services in different languages "shall be taken into account during recruitment of professional staff", the Law contains no provisions on the requirement for civil servants to speak or master the State language.

38. As described above, due to the linguistic and geographic situation and the composition of the population of Ukraine, Russian, as a language used by 10 per cent or more of the inhabitants of a certain oblast, will be used "on a par with the State language" in a majority of oblasts. Other minority languages will largely miss out on protection provided by the Draft Language Law. As a result, the Draft Law will, first and foremost, apply to Russian, which will be used "on a par with the State language" in most of the country.
39. In addition to the relevant administrative bodies at sub-national level, Russian will also have special status at national level, including in its use by the central State bodies (Article 11(1)), in all passports (Article 14(1)), in pretrial investigations and other work of the prosecutor (Article 16), while in other important areas such as teaching and the education system, existing provisions stimulating or guaranteeing the use of the State language would be reduced or abolished (see below).

#### b) Education

40. In the field of education, the role of the State language, which has gradually increased since Ukraine's independence due to various factors, would be significantly weakened because of a number of reasons. The Draft Language Law (Article 21) foresees a return to the situation in which the entire education curriculum from pre-school to university could be conducted in Russian.<sup>12</sup> With the exception of Ukrainian language and literature (Article 21 (8)), all subjects would be taught in Russian in State and municipal educational institutions. In private educational establishments, there would be special provisions regarding the teaching of the State language (Article 21 (6)). Apart from Ukrainian language and literature, examinations for school leavers and the selection procedures for universities could also be conducted exclusively in Russian or another minority language.
41. The education reforms foreseen by the Draft Language Law run counter to the previous recommendations of the HCNM, according to which the education system for minorities must strike a balance between the goal of preserving and

<sup>12</sup> Article 21 (2) also refers to regional or minority languages which reach the 10 per cent threshold. For the reasons explained above, realistically this would only apply to Hungarian as other minority languages do not qualify.

developing minority identities and languages, on the one hand, and that of the integration of minorities into the society in which they live, on the other. The realization of this aim should be sought through carefully balanced measures that will help children to achieve a better proficiency in the State language without restricting the possibility to study in their own minority language. The Draft Law is likely to lead to a predominantly monolingual education system in minority-language schools, which is unlikely to offer adequate opportunities for children from a minority background to develop sufficient State language skills. It is doubtful that classes in Ukrainian language and literature alone will provide these opportunities, particularly in a region and an environment where the minority language is dominant and where there is little incentive to study and use the State language in the employment sector or for access to higher education. Finally, such an approach runs counter to the object and purpose of both the FCNM<sup>13</sup> and the ECRML.<sup>14</sup>

42. In conclusion, in spite of the assertion in Article 8(9) of the Draft Language Law that “[n]one of the provisions of this Law [...] shall be interpreted as presenting an obstacle to gaining a command of the State language”, there are serious concerns that the approach and content of the Draft Law will lead to a significant decrease in the interest in and opportunities for studying the State language in a large parts of Ukraine, thus reinforcing existing language divisions.

#### c) The Media

43. The Draft Language Law also foresees the abolition of restrictions on the use of minority or regional languages in the media sector. Article 24(4) provides for the abolition of most restrictions on the use of language in the cinema, while Article 25(4) does the same for the broadcast media and Article 27(1) would end all language restrictions in advertising. On the basis of the Draft Law, language quotas for programmes to be broadcast in the State language would only apply to the State-run or public broadcasting channels (Article 25(3)). The print media would not be subject to any language quota or regulation (Article 25(6)).
44. The HCNM has in the past expressed his concern about language quotas and other restrictions concerning the use of minority languages in the broadcast media, particularly where these present a disproportionate burden to the media outlets of smaller minorities. However, removing almost all regulation and restrictions concerning the use of the State language in the broadcast and print media, in particular in the private sector, may seriously undermine the use of the State language. Market considerations, in combination with the situation of asymmetrical bilingualism in Ukraine, will promote the import and production of

<sup>13</sup> See Article 14(3) of the FCNM, which provides that the right to be taught the minority language or to receive instruction in this language contained in Article 14(2) “shall be implemented without prejudice to the learning of the official language or the teaching in this language.” Furthermore, the Advisory Committee recalled in its Second Opinion that “the main criteria for the introduction of minority language education should be the existence of a ‘sufficient demand’ rather than the ethnic composition of the region at issue.” See Paragraph 191 of the Second Opinion, 2008.

<sup>14</sup> See Article 8.1 of the ECRML, which states that teaching in or of minority languages shall be made available “without prejudice to the teaching of the official language(s) of the State.”

Russian-language programmes, films and publications as these will be considerably cheaper to produce or import. Moreover, they are more likely to reach a wider audience consisting not only of the Russian-speaking community but also of the majority of Ukrainian speakers who are fluent in Russian. Such deregulation would be unique as most OSCE participating States regulate in order to ensure the adequate presence of the State language in the media, in particular in the broadcast media. This applies not only to "smaller" languages such as Dutch or the Scandinavian languages but also to larger ones such as French.

45. Based on an analysis of the provisions of the Draft State Language Law in the above mentioned areas, the HCNM is of the opinion that the Draft Law is likely to lead to a decrease in use of the State language in important areas of public life such as public administration, the media and the education system. The provisions concerning the last area might also undermine the opportunities and incentives for large sections of Ukraine's population to achieve a sufficient command of the State language. All in all, instead of promoting bilingualism with a proficiency in the State language and in Russian or another minority language, the Draft Language Law is likely to weaken the State language, thus increasing existing linguistic divisions within the country. Finally, adopting the Draft Law in its current format may provoke strong negative reactions from proponents of an increased role for the State language, thus leading to a rise in tensions. Rather than "strengthening the unity of Ukrainian society" as envisaged in Article 2 (Tasks of the Language Law), if adopted in its current form, the Draft Law could have the opposite effect.

*The Draft Law provides insufficient guarantees for speakers of the State language*

46. While Article 12(2) of the Draft Language Law states that the State shall "guarantee provision of services to those having dealings with the state and local self-government bodies in the State language", the Law does not specifically stipulate how this provision is to be implemented, in contrast with the elaborate provisions on the use of regional languages. However, in regions where the use of a minority language is dominant and where the local authorities will also be dominated by the minority, there may well be a need for specific guarantees for the use of the State language by the authorities.<sup>15</sup> Furthermore, it is generally accepted that in such a situation where persons belonging to the nationwide majority are the numerical minority – *a minority within a minority* – those persons are entitled to benefit from general minority rights protection if they so desire.<sup>16</sup>

<sup>15</sup> See for example Council of Europe Commissioner for Human Rights, viewpoint of 25 January 2010, available at <[http://www.coe.int/t/commissioner/Viewpoints/100125\\_en.asp](http://www.coe.int/t/commissioner/Viewpoints/100125_en.asp)>.

<sup>16</sup> See the opinions of the ACFC, in particular the First Opinion on Finland, adopted on 22 September 2000, ACFC/INF/OP/I(2001)002, para.17 (regarding the Finnish-speaking population on the Åland Islands) and the First Opinion on Denmark, adopted on 22 September 2000, ACFC/INF/OP/I(2001)005, para.20 (the ACFC criticized Denmark for *a priori* excluding persons of ethnic Danish origin living in the home rule areas). However, each time the ACFC qualifies the situation by referring to the level of autonomy enjoyed and/or the nature of the powers exercised by the authorities of the sub-state unit. Depending on the competences and the powers devolved, a person belonging to the majority at national level, but constituting a minority at regional level, can indeed be in the need of protection under the FCNM. Regarding a "minority-in-a-minority" that does not belong to the majority population of the entire country, see the Opinion on Italy (2001), para.12. The position

Therefore, it would be advisable to include specific guarantees for speakers of the State language who live in regions where a minority or regional language is dominant.

***The Draft Language Law risks encroaching on civil liberties***

47. Treaty obligations impose limits on what may be required and/or prohibited in relation to the use of language. In particular, attention should be given to the provisions of Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and Article 10 of the European Convention on Human Rights (ECHR) on freedom of expression, which are two of the cornerstones of international human rights protection. The Constitution of Ukraine also sets out important guarantees – see in particular Chapter II of the Constitution on Human and Citizens' Rights, Freedoms and Duties, which includes provisions on the right to respect for private and family life (Article 32), the right to freedom of thought, speech and free expression (Article 34) and the freedom of literary, artistic, scientific and technical creativity (Article 54).
48. As a general rule, when determining whether and to what extent the State may prescribe the use of a particular language, the distinction between the private and public spheres is vital. In general, the State may not regulate the use of language in the private sphere. However, while international human rights instruments refer to the use of (minority) languages in public and in private, these same instruments do not precisely delimit the “public” as opposed to the “private” spheres. Indeed the spheres may overlap. This may well be the case, for example, when individuals acting alone or in community with others seek to establish their own private media outlets or schools.
49. The Draft Language Law contains several provisions which raise the question of possible unjustified interference of the State with regard to the freedom of expression in the private sphere.
50. First, the reference in Article 9(1), to “legal liability” for “public humiliation or disrespect, deliberate distortion of the Ukrainian or other languages in official documents or other texts” is problematic in that it does not specify the kind of liability entailed (civil, administrative and/or criminal liability), the kind of expression or wording that constitutes such a violation and under what conditions. As such, this provision provides insufficient legal certainty and therefore may run counter to the rule of law and the freedom of expression. Furthermore, while the current Draft Language Law (Articles 9(3), (4) and (5)) also aims to provide more clarity on remedies for infringements of language rights, these provisions remain largely of a declaratory nature and offer insufficient clarity.

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of the ACFC has also been adopted by the CoE Venice Commission in its “Opinion on Possible Groups of Persons to which the Framework Convention for the Protection of National Minorities Could Be Applied in Belgium”, CDL-AD(2002)1, Strasbourg, 12 March 2002, <<http://www.venice.coe.int>>, paras.10-19.



51. Second, according to Article 19(3) “[it] shall be forbidden for enterprises, establishments and organizations, irrespective of the form of ownership, to adopt any internal rules preventing or restricting communication between employees in the State, Russian and other languages.” The scope of application of this provision is too far-reaching in that it for example prohibits a company or a not-for-profit organization from adopting any internal rules on their working languages. It is doubtful whether a legitimate public interest exists that justifies imposing such far-reaching restrictions. The same concern applies to the equally far-reaching but unclear and potentially contradictory obligations contained in Article 8(7). This provision makes it “mandatory” for a whole range of entities including “associations of citizens, establishments, organizations, enterprises, their officials, public servants and citizens who are involved in entrepreneurial activity and natural persons” to “take measures” for the “development, use and protection” of the regional language in the respective region. Again, such a general and undefined obligation for such a wide range of private entities, irrespective of their ownership or tasks, may give rise to arbitrary and/or disproportionate interference with the freedom of association and expression.

## **VI. Conclusion and Recommendations**

52. It is commendable that the Draft Language Law aims to introduce a far-reaching reform of the legislative framework concerning language issues.
53. While the Draft Language Law presents a number of significant improvements, it also presents several considerable deficiencies. Overall, the Draft Language Law fails to regulate the use of languages in Ukraine in a way which meets international minority rights standards, facilitates a balance between the interests of different communities and promotes integration and stability of the Ukrainian society.
54. The Draft Language Law pursues language regulation reform in isolation of that of the legal framework governing minority issues.
55. The criterion of “language use” underlying the definition of beneficiaries of the guarantees contained in the Draft Law is inadequate, as it neglects the linguistic preferences and linguistic identity of citizens.
56. The Draft Language Law fails to adequately protect smaller minority languages, due to the almost exclusive focus on the protection and promotion of the Russian language.
57. Instead of promoting bilingualism with a proficiency in the State language and in Russian or another minority language, the Draft Language Law is likely to weaken the State language as an effective tool in ensuring social cohesion. In public administration, the provisions of the Draft Language Law introduce a system in which Russian would enjoy excessive benefits, elevating it de facto to an official language across most of Ukraine’s territory and reducing incentives to

use the State language. In the field of education, provisions foreseen by the Draft Language Law would have a negative effect on the motivation of children to learn the State language and thus fail to ensure a balance between the goal of preserving and developing minority identities and languages on the one hand and that of promoting proficiency in the State language on the other hand. In the area of media, the provisions foreseen by the Draft Language Law may seriously undermine the use of the State language.

58. The Draft Language Law provides insufficient guarantees for speakers of the Ukrainian language who live in regions where a minority or regional language is dominant.
59. The Draft Language Law contains provisions which raise questions as to possibly unjustified interference of the State with the freedom of expression in the private sphere.
60. Resulting from the deficiencies and shortcomings identified above, the Draft Language Law is likely to increase rather than decrease tensions between groups of speakers of different languages and to reinforce existing divisions in society, thus making the Draft Law counter-productive to the stability of Ukrainian society.
61. In addition, the Draft Language Law fails to give consideration to the costs of measures needed to implement the Law.
62. Based on the current assessment the HCNM recommends the Ukrainian authorities to refrain from considering the Draft Language Law in its current format. Instead, a comprehensive reform of Ukraine's outdated legislative framework concerning minority rights and language issues should be pursued, to bring this framework into line with the applicable international instruments to which Ukraine signed up over the last 15 years.
63. The elaboration of such a comprehensive reform should include a broad and transparent consultation process involving representatives of national minorities, the different linguistic communities, and civil society at large, in order to facilitate finding a reasonable societal compromise and to ensure that State interests as well as those of all communities are upheld and respected.