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EDUCATION POLICY AND MINORITIES

PILOT PROJECT – UKRAINE

FINAL REPORT

DGIV - Directorate General of Education, Culture and Heritage, Youth and Sport
Directorate of School, Out-Of-School and Higher Education
Targeted Co-operation and Assistance Activities Unit

Partnerships for Educational Renewal

The Council of Europe was founded in 1949 to achieve greater unity between European parliamentary democracies. It is the oldest of the European political institutions and has forty-three Member States¹. It is the widest intergovernmental and inter-parliamentary grouping in Europe. The Council of Europe's work includes activities in the following areas: democracy, human rights and fundamental freedoms, legal co-operation, social cohesion, local democracy, education, culture, youth, sport, environment.

The Council of Europe plays a leading role in standard setting and the promotion of co-operation between countries of Europe in the field of education. The European Cultural Convention provides for an effective mechanism to this end. This international treaty is open also to those European countries that are not members of the Council of Europe, and it enables them to take part in the Organisation's programmes on education, culture, sport and youth. So far, forty-seven states have acceded to the European Cultural Convention (ECC): the forty-four Member States plus Belarus, Monaco and the Holy See.

In 2000 the Council of Europe launched a Regional Project "Education Policy and Minorities", which is a priority area for the Education Directorate's technical assistance programme "Partnerships for Educational Renewal". The project has been designed in response to numerous requests for assistance in drafting legislation relating to the educational rights of minorities and their members, and seeks to support these efforts in the countries of the former Soviet Union Party to the European Cultural Convention (ECC).

The aim of the project is to bring to bear the full range of Council of Europe experience in the field of protection of minorities to the reform of the education systems in the region. The project is carried out with a view to the development of genuine equal opportunities policies which can best meet the needs of all individuals and advance the society as a whole, as well as a sum of its parts, to a full realisation of the democratic principles of freedom, equality and participatory citizenship.

The project combines country-specific bilateral consultancy together with a regional co-operation initiative in order to produce the greatest direct benefit and dissemination of the results. It is also hoped that the project will lay the groundwork for a continuing forum of regional co-operation.

The pilot project "Education Policy and Minorities" was launched in Ukraine in 2000 with the support and co-operation of the Flemish Community of Belgium, and was completed in spring 2001. The present report is the product of the extensive work the Council of Europe and the Ukrainian experts. The analyses and recommendations contained herein provide detailed information on the current situation in Ukraine with regard to educational rights and opportunities for minorities as well as possible legislation and policy measures for improving access of minorities to all levels of education.

¹ Albania, Andorra, Austria, Armenia, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Georgia, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Kingdom.

The opinions expressed in this work are those of the authors and do not necessarily reflect the official policy of the Council of Europe.

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SECTION I:

REPORT BY THE GENERAL RAPPORTEUR

Dr Ewald KIEL

1. PRELIMINARY REMARKS

The project “Education Policy and Minorities” has been designed according to numerous requests of NIS-states (Newly Independent States of the Former Soviet Union) for assistance in drafting legislation relating to the educational rights of minorities. Ukraine has been chosen to be the first project in this context because it represents an example of a country, in which the different issues of the social and cultural life of the society touch upon the question of the national minority rights. *The issues raised in this project and the conclusions drawn in this project might serve as models for other NIS-States. Assistance in creating educational laws and assistance in implementation of such laws seem to be of crucial importance for the development of those countries in the direction of self reproducing democracies.* Education policy with a particular perspective on minorities is a key area for such a development.

At the first meeting in Yalta a joint working group was established. This working group consisted of three parties:

1. Members of the Secretariat of the Council of Europe: James Wimberley (Head of the Co-operation and Technical Assistance Division), Mary-Ann Hennessey, and Genadiy Kosyak.
2. Western European experts chosen by the Council of Europe: François Grin (Deputy Director, European Centre for Minority Issues, Flensburg), Tytti Isohookana-Asunmaa (Member of the European Parliament), Ewald Kiel (Institute of Educational Sciences, Educational University of Heidelberg), Frank Ornelis (Director of the *Interuniversitair Centrum voor Onderwijsrecht*), Ludo Veny (Faculty of Law, University of Ghent), Paul Zoontjens (Department of Constitutional and Administrative Law, Catholic University of Tilburg).
3. Ukrainian experts chosen by the Ukrainian government: Larysa Borodenkova (Head of the Section of the National Minorities, Ministry of Education and Science), Kateryna Lubynets (Deputy Head of The Main Department of International Co-operation, Ministry of Education and Science), Olena Martynyuk (Tavrichian National University), Tatiana Pylypenko (Deputy Head of the Board of Ethnic-National Processes and Minorities, State Department on Nationalities and Migration), Olena Semorkina (Deputy Head of the Department of Social and Labour Legislation, Ministry of Justice), Oleksandr Tsvetkov (Deputy Head of the Department of Cultural and Humanitarian Co-operation, Ministry of Foreign Affairs), Volodymyr Yevtukh (Presidential Administration).

The working group met three times in Yalta, Strasbourg and Ghent. The discussions were very open and lively.

The mandate of the working group was:

- to assist the Ukrainian government in drafting, revising and creating laws and regulations concerning the relation of the educational system and minority issues,
- to assist the Ukrainian government in developing policy measures for the implementation of laws and regulations concerning the relation of the educational system and minority issues.

The mandate was **not** to monitor any of the institutions or processes under review by sending European experts on the spot to Ukraine (e.g., for a hearing with representatives of minorities or school principals, etc.). Some of the Council of Europe experts have considered this as very desirable. This means that all the projects and all the ideas developed in the course of fruitful discussions between the Ukrainian delegation and the western experts rely only on information provided by the Ukrainian members of the joint working group. The Council of Europe experts, including the general rapporteur, worked as consultants restricted to this information.

In order to understand the problems raised and the options for recommendations that were developed, it seems to be useful to briefly sketch those problems and options from a theoretical point of view, referring not only to Ukraine but also to the NIS-States in general.

2. THE POLITICAL FRAMEWORK OF THE PROJECT

2.1 General political background

A classical concept of a state is the concept that refers to the state as a “border- power-container”. In this concept the state is supposed to be a very solid box with strong walls. Inside the walls of this box the state executes its power and usually opposes any other institutions outside the border-power-container to execute power in this particular box. In modern times the walls of this container are less solid than they used to be. Many elements penetrate these walls: Technology, goods, media (particularly Anglo-Saxon media), religious ideas (very often of a fundamentalist kind), persons like refugees, repatriates, political ideas like democracy, international legislation, etc. All these elements penetrating the walls of the border-power-container afflict the way of how a state exceeds power inside its borders. For many societies, this means that a considerable amount of power is no longer solely the power of a state but for example the power of religious groups, of international companies or political organizations, as for example the Council of Europe.

From the perspective of a central government the relationship between minorities and a majority as parts of the elements inside the border-power-container often raise particular problems. On the one hand, in some cases minorities tend to exceed power on their own behalf, referring to cultural traditions, language, ethnicity, etc. On the other hand, some of the minorities, for the very same reasons just mentioned, quite often have strong ties to groups of their own kind outside the border-power-container they live in. The majority usually does not appreciate both aspects.

For the NIS-states the background sketched above is difficult to deal with. For a newly independent (national) state there is a natural wish to exceed state-power inside the new borders. This is not only a new experience but it is necessary in order to gain statehood. For the purpose of legitimising this process of exceeding power, ideas of nationhood and long existing cultural traditions are quite often revived, or - unfortunately - created in form of cultural and historical myths (cf. the situation in Serbia and Croatia).

Language plays an important role in this context. So the establishment of a state language is supposed to serve the purpose:

- of unifying people of different backgrounds and of different interests,
- of reviving cultural heritage,

- of indicating a radical change in history for people inside and outside the newly established state.

On the other hand, in ethnically, linguistically or culturally diverse contexts, minorities do not necessarily appreciate this role of a state language. Strong mandatory demands on the linguistic competence of only one state language might exclude people or communities:

- from participating in political decisions,
- from having access to higher education,
- from having access to well-paid tasks or to influential positions, and
- from keeping and developing their cultural heritage and identity (cf. Council of Europe, Parliamentary Assembly, Recommendation 1353).

Education - naturally closely linked to language policy - is another crucial point. General educational systems are supposed to serve similar purposes as a state language does, e.g. unifying people, reviving or maintaining a national cultural heritage, or indicating a radical change. If an educational system is centralized, and if a state is ethnically, linguistically and culturally diverse at the same time, many groups will possibly not feel treated appropriately according to their diverse backgrounds.

A general danger in the NIS-states and any other newly established states on the European continent is an exaggerated emphasis on nationhood and an exaggerated emphasis on one dominating state language of culture. In accordance with a superficial acceptance of international legislation concerning human rights or minority rights this:

- might oppress cultural diversity,
- might impede the possibilities of successfully engaging in the process of the ongoing regionalisation towards a common European house,
- and might impede the possibilities of successfully engaging in the process of the ongoing globalisation in terms of political and economical rapprochement.

It is a concern of the Council of Europe to prevent these kinds of developments.

According to this background the NIS-states have to decide:

- how to deal with the elements that are about to penetrate the newly developed border-power-container,
- how to deal with the diversity inside the container, and
- how to deal with the different languages that are used by the different communities within the state.

2.2 The establishment of individual or group rights as political options

Generally speaking, politics has two different legislative options to deal with the management of diversity. There is the individual or the group rights approach. If the management of diversity takes part in the framework of a group rights approach, groups have to be identified (ethnic groups, religious groups, gender groups etc.). With respect to those groups it has to be meticulously defined:

- how far these group rights go (e.g., allowing the filling out of forms in their own language, having their own schools, having an autonomous government...)

- how minority rights differ from the rights of a majority (e.g., affirmative action for groups such as lower demands on entry exams because of a lack of linguistic competences),
- how to apply for group rights,
- how group rights can be brought in accordance with a concept of citizenship, or
- whether the majority is treated only as one group amongst others.

In contrast to this individual rights do not rely on group definitions. Ideally any individual, independent of whatever group he or she belongs to, is entitled to particular rights. The individual only has to be a citizen of the state and every individual citizen is to be treated equally. This approach has its focus on the concept of citizenship. Concepts of nationality, ethnicity or minority as group-concepts are of less concern. Usually non-citizens of a state have a limited access to rights.

3. THE UKRAINIAN SITUATION

3.1 Possible Ukrainian strategies

Ukraine, as a member of the Council of Europe, has decided to cope with the problems and options sketched above in a European framework. This is indicated by its many legislative efforts. For example, Ukraine is a party of the "European Convention on Human Rights", the "Framework Convention on National Minorities", the "European Charter of Local Self Government" and it signed the "European Charter for Regional or Minority Languages". Alexandr Tsvetkov and Olena Semyorkina have provided an extensive report on the "Coherence/Compatibility of National Legislation with International Laws" (see Section III.B). This report documents the Ukrainian efforts very helpfully and accurately. The western experts - Frank Ornelis, Ludo Veny and Paul Zoontjens - have commented on this report and agree on the fact that Ukraine has made an important legal effort to comply with the Council of Europe and OSCE standards. However, as the recommendations in this report will show, a more detailed elaboration of some of these legal norms would be useful. On top of that, those legal efforts do not provide any information about the real life impacts of the new legal norms. A lot of systematic information gathering is necessary.

Apart from the current situation, it has to be kept in mind that for Ukraine there are other political options than the Western European option. Ukraine is a priority country for the USA, which might be considered as another point of reference for a pluralist and democratic approach to develop and maintain statehood with respect for the rights of minorities. However, from a European political point of view it is questionable whether a Ukrainian turn towards the USA would be desirable for the European community. Another unfavourable political option for the Council of Europe would be a turn towards Russia. This is unlikely, and politically unfavourable from a Western European point of view, but possible.

3.2 The State Language

In its constitution, adopted at the Fifth Session of the Verkhovna Rada of Ukraine on 28 June 1996, it is declared in §10 *"The state language of Ukraine is the Ukrainian language. The state ensures the comprehensive development and functioning of the Ukrainian language in all spheres of social life throughout the entire territory of Ukraine."* At the very same time Ukraine guarantees in the same paragraph the free development, use and protection of Russian and other languages of national minorities. Due to the considerable amount of Russian speakers the Russian language is of particular importance. On the one hand, having

one state language expresses the desire to use language as a unifying instrument. This is a legitimate interest. On the other hand, minority languages are protected by the constitution. This is in favour of the legitimate interests of the minorities. Again the question arises: What are the real life impacts of this construction? A serious answer to this question depends on research on the spot in Ukraine (interviews with minority representatives, with principals, headmasters, evaluation of curricula, etc.) and should not depend solely on governmental information..

3.3 The status of minorities

The status of a minority is unclear in the current legislation since there is no exact definition of the concept of a minority. On top of that there is no clear decision in the Ukrainian legislation to deal with minorities in a group rights or individual rights framework.

In this context Tytti Isoohokana-Asunmaa provided a tentative definition for a minority:

*“- a population group that differs from the majority population group on the basis of its ethnic origin or its nationality or its language or its religion
- a population group that is numerically inferior
- a population group that is not in a dominant position in the country concerned
- a population group that demonstrates a wish to preserve its originality and its culture, traditions, its religions or its language
- a population group that does not consist of recent immigrants or refugees
- a population group which has deep roots in the country in which they live (as a rule citizens).”*

All members of the working group agreed on the fact that this definition covers important aspects. Particularly the Ukrainian side considers at least the first four of these aspects as being in the direction of their own understanding. However, the relations of the different aspects of this definition are not clear: Are all aspects of equal importance? How many of these aspects are necessary in order to qualify for being a minority group? How many of these aspects are already part of the Ukrainian legislation?

Arguing along the practice of the Council of Europe, which defined "nationality" in the "European Convention on Nationality" but did *not* define the term "minority" in the "Framework Convention for the Protection of National Minorities" the working group decided on leaving this question open. At the moment there is only a vague determination of the term "minority" in the sense:

1. No group of a society should be discriminated against, independent of the constitutive criteria of the group.
2. A definition should apply to a reasonable set of minorities.
3. A definition should be in accordance with European and international charters.
4. A final definition appropriate for Ukraine should work on a legislative, juridical and political level.

It has to be mentioned that the Ukrainian government has developed links with groups who are supposed to be minorities. The most important link is the "Council of Representatives of the Civic Communities of the National Minorities" attached to the "State Committee of Ukraine for Nationalities and Migration" (cf. Yevtukh/Pylypenko). It was also emphasized

that it is the responsibility of Ukraine Authorities to provide a definition of “Official Minorities, which can be applied in a coherent way to their legislation.

4. RECOMMENDATIONS

4.1 Recommendations of the general rapporteur

The principle of unity in diversity: The key problem for Ukraine and any other state with minorities is to allow unity in diversity and diversity in unity. On the one hand there is a legitimate interest of any state to undertake unifying measures in order to develop and maintain statehood. On the other hand, there are many legitimate interests of minorities to self-reproducing their cultural, ethnic and linguistic diversity. Any measures to be undertaken have to reconcile these two, sometimes divergent, interests. There is no general detailed blueprint to solve this problem. *From an educational point of view it seems to be an important principle that not only members of minorities should be taught something about the majority culture but also vice versa; members of the majority should be taught about the different minorities cultures.*

Development of a definition minority: In order to make the existing laws and laws which are to be developed workable it seems to be crucial that the Ukrainian representatives develop a definition of the term "minority". All legislative work in the context depends on such a definition. The framework of such a definition has been sketched in 3.3 of this report.

Kyiv centre for minority issues: Generally there are two kinds of strategies to deal with the problematic relation of unity and diversity. On the one hand there is a content oriented approach. This means that the people involved choose particular fields to work on, and do the phrasing or revising of laws, define crucial terms contextually appropriate (like the term "minority") and design implementation procedures or give advice on them. This requires an enormous amount of profound information about the Ukrainian and the Western European context. At the current state this profound information is not available.

This means on the content level some thorough information gathering is necessary. It is recommended that this information gathering be carried out by creating a new institution in Kyiv under the auspices of the Council of Europe, which will study international experience on the management of diversity. This centre should concentrate:

- on studying the international normative legal acts on the educational rights of minorities,
- on collecting international experience on the management of diversity,
- on finding ways of co-operation between NGOs and governmental institutions,
- on establishing research and statistics on the real life effects of the Ukrainian legislative efforts to protect minority rights and languages,
- on identifying and adapting so called "best examples" to the Ukrainian situation.

As one looks from the process level at such a centre, tight restrictions should operate the way in which this centre should work. The centre:

- should concentrate on concrete political measures,
- should concentrate on the steps of selection, design, implementation and evaluation of those measures,

- should develop models (and not isolated solutions) which could be adapted to other NIS-states,
- should emphasize the problem of the cost effectiveness of political measures.

In later stages of the project the centre could serve as a network coordinator for other centres in other NIS-States. A possible legal form of such a centre could be a foundation in which the Ukrainian government is only one partner with no more rights than any other partner. Other possible partners could be Ukrainian research institutions, the Council of Europe, institutions from other NIS-States. This would enhance a desired independence from the Ukrainian government and it would enhance regional acceptance.

Proposal for the census: Another important procedural step in the process of information gathering is to work out a proposal for the next census in Ukraine. The leading question for such a proposal is: How can data gathered during the census contribute to improve the relation of majority and minorities? It has to be decided who will be responsible for this.

Development of quality mechanisms in the context of schools: In general there seems to be a need to develop quality mechanisms inside and outside the administration. It is recommended to strengthen formalized inspection work with the municipalities in a decentralized manner. Decentralization allows a better adaptation to minority problems. Particularly in areas with different ethnicities, the number of inspectors should be increased. The training of inspectors should focus on multicultural spirit, democratic attitudes and techniques of self-evaluation.

Another important point of a quality mechanism is an input-output analysis of the school-system. Quality questions, which arise from such a comparison, are:

- How many students of minorities and how many students of the majority access secondary and higher education and how many of them leave these two systems with the adequate exams?
- How many principals, headmasters or university presidents belong to a minority? Are there proportional imbalances? What are the reasons for these imbalances, if they exist? Do members of the minority head genuine minority institutions?
- How many of the teachers belong to a minority? What do minority teachers teach? (If they only teach languages then there is an imbalance as far as their influence on the educational system is concerned)
- Which are the regions and which are the subjects where entrance exams to secondary and higher education can be taken in minority languages?
- What is the infrastructure of the different school-systems like (primary, secondary, higher education) in terms of student-teacher-ratio and amount of money spent per student? Are there regional, ethnic or other differences as far as these indicators are concerned?

Establishment of an advisory board: In order to institutionalise co-operation between NGOs and the government, it seems to be useful to establish an advisory board of the NGOs.

Ratification of international instruments: Ukraine should ratify, as soon as possible, relevant international instruments, in particular, the European Charter for Regional and Minority Languages of the Council of Europe.

5. FINAL REMARKS OF THE GENERAL RAPPORTEUR

In his drama "Faust", the famous German author Johann Wolfgang von Goethe let his main character say:

"Grey my friend is all theory, but green is the golden tree of life".

By saying this he wanted to encourage his student not only to look for theory but also to look for real experiences, which are only in life but not in theories, which are written on paper. This quotation characterizes to some extent the report and the project under review. Basically the project is on theory. It is on how legal norms and laws work and on how those norms and laws could be brought into accordance with existing European frameworks. As such the project dealt with a framework of how life should be but it does not say anything about how life really is. So the project is only a first but a necessary step.

How could the longer-term impact of a project like this be ensured?

Multi-perspective project construction: First of all I think, the construction that all information is provided by a single source – in this case the government of Ukraine - should be changed. The western experts relied only on information provided by the Ukrainian members of the joint working group. *Multi-perspectivism is an important means of quality assurance* particularly if one deals with the management of *diversity*. In my opinion, which does not necessarily reflect the opinion of other members of the joint working group, minorities should *formally and not incidentally* be incorporated in the design of projects of this kind from the early beginning.

On the spot investigations: Moreover, I propose that some money is allocated to on the spot investigations of the Western experts (interviews with headmasters, minority representatives, etc.) together with native experts. Both measures will possibly lead to some confrontation but they will give hints on how laws and legal norms work out in reality. This could be considered in connection with other monitoring mechanisms in place with regard to the ECHEMC or other Conventions.

Focus change on implementation and monitoring: The most important and very useful achievement of this project was the research done on the coherence and compatibility of Ukrainian legal norms and laws with European legal norms and laws. As far as further projects are concerned this work could be done in advance. Before a big meeting takes place, a small group of legal experts could provide a report like the reports of Tsvetkov, Semyorkina, Ornelis, Veny and Zoontjens. These reports could serve as a framework to look for real life implementation and for creating monitoring processes. Legal norms and laws are only as good as their implementation.

Defining a clear mandate of the working groups: Another important design aspect for further projects is the question of the mandate of a working group. I propose for future projects that this mandate be made clear in advance by providing the parties involved with a well-defined framework of the mandate. The experience of this Pilot Project should be used towards the definition of the mandate of the working group. In particular, the focus on legal compatibility should be complemented by an increased fact-finding role. In this way the implementation of existing policies can be evaluated and an assessment made of the practical basis for ensuring that further reforms may have the desired impact in the communities.

I think our first experience in Ukraine makes it possible not only to see the "golden tree of life but to harvest its fruits."

SECTION II:

COMPATIBILITY OF THE UKRAINIAN LEGISLATION WITH INTERNATIONAL NORMS IN THE AREA OF EDUCATION AND MINORITIES

A. Coherence/Compatibility of National Legislation with International Norms
by Mr Olexandr TSVETKOV and Ms Olena SEMYORKINA

1. Explanatory note to the information on accordance of legislation of Ukraine currently in force in the field of educational rights of national minorities with regulations and standards of the Council of Europe

- 1. The Information contains a reference to legislative adaptation of primary regulations of the Council of Europe on educational rights of national minorities**, which currently represent a part of the national legislation of Ukraine. These primary regulations are: the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the Framework Convention for the Protection of National Minorities (1995), The Hague Recommendations on Educational Rights of National Minorities (1996).
- 2. For convenience and to avoid repetition, the Information is given** simultaneously in accord with both paragraphs of The Hague Recommendations, and the corresponding Articles of the Framework Convention.
- 3. The Information does not contain detailed analysis of the content of the laws**, which are referred to in it, as such analysis is contained in the report headed Legislative Provision of the Rights to Education to National Minorities by O. Semyorkina, and other papers.

4. Education of minorities at primary and secondary levels (paragraph 11).

As it will be made clear from the Information, sufficient legislative guaranteeing of national minorities' rights to pre-school education is declared in the Law of Ukraine On Languages in Ukrainian SR, and it is realized by means of individual Regulations of the Cabinet of Ministers of Ukraine. The regulations of the Ministry of Education and Science do not pay much attention to the elaborating of general requirements for the content of pre-school education and upbringing in languages of national minorities; this issue has been assigned for regional consideration. In areas inhabited by national minorities and in other regions where there is a need for the creation of establishments or groups for national minorities, teaching requirements for such establishments as independently determined by local Departments on Education. This is due to the fact that attendance of pre-school establishments is not obligatory, so that children often get a "home" education.

However, it is necessary to agree with a provision in paragraph 11 of The Hague Recommendations, saying that "the first years of education are of a great importance for the child's development" and that " ideally the language of a child has to be a tool for studying at pre-school level and in kindergarten as well".

Taking into account the aforementioned, the Draft Law On Pre-school Education and Upbringing has to be supplemented with corresponding regulations which would stress the importance of a child's coping with a native language in the educational process at initial level, and has to oblige the Ministry of Education and Science to elaborate state standards for obtaining pre-school education in languages of national minorities.

5. Education at the secondary level (paragraphs 12, 13, and 14)

As is clear from the Information, educational rights of national minorities are best guaranteed at general secondary education level. This is explained by the fact, that the State has established obligatory full general secondary education for all citizens of Ukraine as this level is considered as basic for further education and professional activity.

The general secondary education scheme elaborated in Ukraine, including the procedure for setting up educational establishments, the development of educational textbooks and programmes, and the experience of interaction between national minorities, public organizations and state institutions, may be used by the other countries with national minorities in residence.

6. Education of minorities in vocational establishments (paragraphs 15 and 16)

The legislative provisions for the rights of national minorities to vocational education are actually declared in standards of the aforementioned Laws and in Regulations of the Cabinet of Ministers of Ukraine, which periodically stipulate measures for the support and development of national minorities' vocational education.

According to its structure, vocational education may include the last stage of general secondary education and the first two levels of higher education, and therefore educational rights of national minorities are stipulated in the legislative provisions for secondary and higher education correspondingly.

The setback in national production which is a consequence of the economic crisis in Ukraine, has led to the cutting down of production and consequently to a reduction of a staff. As a result there is less demand for skilled specialists, and consequently less demand for the vocational education institution system. Besides, there are no applications from national minorities registered in the Ministry of Education and Science to set up vocational establishments (their demand is mainly for secondary and higher educational establishments). This means that vocational education is not only an educational problem and the solution first of all depends on the economic development of the state.

However, it is necessary to make every effort to keep the existing system of vocational educational establishments. Therefore, it may be reasonable to advise the Ministry of Education and Science to study the need of national minorities for vocational education, and to take measures in order to keep existing establishments or, if necessary, to provide reprofiling of such establishments. Where there is a need for vocational educational establishments for national minorities, it is necessary to provide training programmes in their own languages.

7. Education of minorities at a higher level (paragraphs 17, 18).

The Information contains legislative provisions only for the education of minorities at higher level. To satisfy the requirements of national minorities, the educational programmes are established by the responsible regional Departments on Education and based on the higher education state standards in the regions where there is a need for establishments set up for national minorities. However, as a rule national minorities set up (or express a need to set up) higher education establishments at 3rd and 4th levels (Institute, University, Academy), that

have the independent right within state standards to determine the content of education, the forms and methods of a training process. On the whole, national minorities' educational rights provision may be considered as satisfactory. However, taking into consideration the content of paragraphs 11, 15, and 16 of The Hague Recommendations, it is necessary to place more emphasis on the higher education of teachers for the pre-school and vocational education system of national minorities.

It is also necessary to improve financial provision for education at all levels, and also to attract the possibility of international assistance, and economic and technical co-operation. The material and technical provision of an educational process, particularly for higher education, requires the provision of computers, connection to Internet, introduction of remote training etc.

Taking into account the aforementioned, having stressed the importance of higher education for the process of the formation of teaching personnel, and recognising the need of Ukrainian society and the state for skilled specialists, it is necessary to supplement the Law of Ukraine On Higher Education with particular standards concerning the provision of education for national minorities.

It is also necessary to discuss such possibilities as international assistance, economic and technical co-operation.

8. The Information does not contain a report on realization of decisions of the European Court on Human Rights, as a precedent is not included in the Ukrainian law system. Moreover, there were no decisions submitted by the European Court regarding education of national minorities in Ukraine.

9. Based on the requirements of the judicial procedure of Ukraine, judicial agencies of Ukraine do not establish statistics on Ukrainian courts' decisions having regard to educational rights of national minorities. As a result, there is no information on such cases in Ukraine.

2. List of basic legislative provisions of Ukraine regulating matters of national minorities education in Ukraine

- I. Constitution of Ukraine (1996)
- II. Declaration on the Rights of Nationalities in Ukraine (1991)
- III. Law of Ukrainian SR On Languages in Ukrainian SSR (1989)
- IV. Laws of Ukraine:
 - 1. On National Minorities in Ukraine (1992)
 - 2. On Education (1996)
 - 3. On General Secondary Education (1999)
 - 4. On Vocational Education (1998)
 - 5. On Out-of-School Education (2000)
 - 6. Basics of Legislation of Ukraine on Matters of Culture (1992)
 - 7. On Publishing Means of Mass Information (Mass-Media) in Ukraine (1992)
 - 8. On State Support of Mass-Media and Social Protection of Journalists (1997)
 - 9. On Publishing (1997)
 - 10 On Taxation of Enterprises Income (1997)
 - 11 On Self-Government Authorities in Ukraine (1997)
 - 12 On Local State Administration Agencies (1999)
- V. Criminal Code
- VI. Decree of the President of Ukraine of April 19, 2000 On the Board of Representatives of National Minorities Public Organisations in Ukraine
- VII. Resolutions of the Cabinet of Ministers of Ukraine:
 - Of December 7, 1998 #1931 On Measures to Support the Realisation of the Program of Activity of the Cabinet of Ministers of Ukraine

Of May 14, 1992 #238 On the Establishment of the Ukrainian Part of a Joint Ukrainian - Hungarian Commission on Issues of National Minorities Rights Provision

Of December 29, 1994 #883 On the Establishment of the Ukrainian Part of Joint Bilateral Ukrainian - Slovak Commission on Issues of National Minorities, Education and Culture

Of February 16, 1998 On the Composition of the Ukrainian Part of Joint Ukrainian - Rumanian Commission on Issues of the Rights Protection of Persons Belonging to National Minorities

Of April 27, 2000 #773 On the Approximate Lists of Departments, Units and Other Structural Divisions of Kyiv Municipal and of Local in the City of Kyiv State Administration Agencies

Of May 18, 2000 #821 On the Putting in Order of a Structure of Local State Administration Agencies

Of March 1, 1999 #299 On the Approval of a Complex of Measures for the Development of Cultures of National Minorities of Ukraine for the Period up to 2001

Of April 5, 1994 #228 On the Order of Educational Establishments Set Up,
Reorganization and Liquidation

Of August 5, 1998 #1239 On the Approval of the Basic Training Plan for
Establishments of a General Education

Of March 1, 1999 #309 On the Approval of a Regulation on Preparation of
Scientific-and-Pedagogic Personnel

III. INFORMATION ON ACCORDANCE OF LEGISLATION OF UKRAINE CURRENTLY IN FORCE IN THE FIELD OF EDUCATIONAL RIGHTS OF NATIONAL MINORITIES WITH REGULATIONS AND STANDARDS OF THE COUNCIL OF EUROPE

N	Legislative provisions of the Council of Europe		Legislation of Ukraine		Prospects of Ukrainian legislation development (elaborated drafts of legislative provisions)	
	Name	Regulation	Name	Regulation (content)	Name	Regulation
1.	European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)	Article 2 of the first Protocol (1952)	Constitution of Ukraine Laws of Ukraine On Education On Vocational Education On General Secondary Education On Out-of-School Education	Article.53 Article 3 Article 2.5 Article 6 Article 9	Law Drafts On Higher Education and On Pre-school Education and Upbringing contain provisions similar to those represented in paragraphs of Recommendations	

2.	<p>The Hague Recommendations on Educational Rights of national Minorities (1996)</p> <p>Framework Convention for the Protection of National Minorities (1995)</p>	<p>Spirit of international legislative provisions (paragraphs 1 - 3)</p>	<p>Constitution of Ukraine;</p> <p>These provisions of the Constitution are realised through Laws of Ukraine On National Minorities (Articles 4, and 18), On Education (Articles 3, 6, and 65), On Languages in Ukrainian SSR (Article 8), through the Criminal Code (Article 66), the Declaration for the Rights of Nationalities in Ukraine (Article 1), and the other legislative regulations, mentioned in this Information</p>	<p>Articles 8-11, 22, and 24 (Parts 1 and 2)</p> <p>Prohibition of discrimination on the national basis, guarantee of a realization of the rights and freedoms of citizens of Ukraine belonging to national minorities under the Constitution of Ukraine, according to Laws, and to the other legislative provisions of Ukraine, having been passed on that basis.</p>	<p>Law Drafts of Ukraine On National Minorities (new edition), On Development and Use of Languages in Ukraine, On Higher Education, On Pre-school Education, Conception on the State Ethnic Policy of Ukraine</p>	
	<p>Measures and Resources (paragraph 4) and Article 13 of the Framework Convention for the Protection of National Minorities</p>	<p>Laws of Ukraine: On Education (Articles 61, and 62), On General Secondary Education (Article 43), On Vocational Education (Article 50), On Out-of-School Education (Article 26),</p>	<p>Finance is provided at the expense of State and local budgets, founders (owners), enterprises and organizations; from additional sources of financial provision, not taxed, and are directed to social needs and assistance; from local budget subsidies; from voluntary money and material deposits. Assets, received by the educational establishment from additional sources, are directed for activity which is specified in its Statute;</p>			25

			<p>Law of Ukraine On Taxation of Enterprise Income (Article 7 and others),</p> <p>Resolutions of the Cabinet of Ministers of Ukraine: Of May 14, 19.92 # 238, of December 29, 1994 # 883, of February 16, 1998 # 168.</p> <p>Laws of Ukraine On National Minorities in Ukraine (Articles 5 and 9), On Local Self-Government in Ukraine (Articles 3, and 19)</p> <p>Programme of Activity of the Cabinet of Ministers of Ukraine for the year 1999.</p>	<p>Educational establishments are referred to as unprofitable institutions and they therefore enjoy preferential taxation regime</p> <p>Joint Inter-governmental Commissions with Romania, Slovakia, and Hungary have been created, solving <i>inter alia</i>, issues of financial provision for educational establishments</p> <p>Set up under governmental institutions and under local self-government authorities, and Commissions on international relations matters which consist of persons belonging to national minorities; the right of persons belonging to national minorities to be elected and appointed to the government authorities and to authorities of local self-government.</p> <p>In resolving of state cases it stipulates the strengthening of the role of advisory agencies under the state authorities and under authorities of local self-government.</p>		
		<p><i>Decentralization and participation</i> <i>Paragraphs 5 i 6 of the Framework Convention for the Protection of National Minorities</i></p>				

			Regional programmes accepted by local state administration agencies and by local self - government authorities in accordance with Laws of Ukraine On Local State Administration Agencies (Articles 2, 17, 22, and 23) and On Local Self-Government in Ukraine (Articles 26, 27,30, 32, and 44);	
			Resolutions of the Cabinet of Ministers of Ukraine of April 27, 2000 #733, and of May 18,2000 # 821	Created relevant structural divisions within local state administration agencies on matters of nationalities and education
			Resolution of the Cabinet of Ministers of Ukraine of March 1, 1999 #299	Fostering activities of national and cultural establishments for national minorities
	Paragraph 7		Laws of Ukraine On Education (Article 60), On General Secondary Education (Article 29)	Specified rights and duties of parents in matters of upbringing and teaching of children

			<p>Law of Ukraine On languages in Ukrainian SSR (Article 26)</p>	<p>Teaching in pre-school establishments is conducted in Ukrainian. In areas compactly inhabited by citizens of other nationalities pre-school establishments may be set up, where children shall be taught in their national or other language. In case of need in children's pre-school establishments individual groups may be created, where training shall be given in a language other than in the rest of institutions;</p>		
	<p>Paragraphs 12, 13</p>	<p>Resolution of the Cabinet of Ministers of Ukraine of March 1, 1999 #299; Regulations of the Ministry of Education and Science</p>	<p>There are scientifically supported standards for learning the Ukrainian language in schools, where teaching is conducted in the languages of national minorities; relevant programmes are also prepared;</p> <p>Current training programmes, textbooks, dictionaries and phrase-books are being prepared for learning languages of national minorities and use by general education establishments of a in areas compactly inhabited by national minorities;</p> <p>List of programmes, textbooks,</p>			

			<p>Manuals recommended for use in general education establishments in which teaching is given in Ukrainian. A similar list is recommended for use in schools also teaching in languages of national minorities;</p> <p>List of programmes, textbooks, manuals recommended for use in general education establishments in Russian, Rumanian, Moldavian, Polish, Hungarian, and Crimean-Tatar languages of training;</p> <p>Standards of division into groups of classes for learning in state languages and in languages of national minorities;</p> <p>Pupils who do not have a certificate in the state language are allowed to pass entrance examinations or tests in a language for which they have a certificate;</p>		

			<p>Resolution of the Cabinet of Ministers of Ukraine of August 5, 1998 #1239; and Regulations of the Ministry of Education and Science</p>	<p>Approve basic training plan for general education establishments consisting of an invariant component of a general secondary education programme (single and obligatory for all establishments of general education), and of a variant part (formed by the educational establishment taking into consideration the peculiarities of a region and individual pupils` needs). The invariant and variant components include learning of languages of minorities and teaching in minorities` languages</p>		
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		Paragraph 14	<p>Laws of Ukraine: On Education (Articles 54, and 56), On vocational education (Articles 45-47), On General Secondary Education (Articles 24, and 27),</p> <p>Resolution of the Cabinet of Ministers of Ukraine of March 1, 1999 # 309;</p> <p>Regulations of the Ministry of Education and Science;</p> <p>Resolution of the Cabinet of Ministers of Ukraine of March 1, 1999 #299;</p>	<p>Establishes requirements for pedagogic and scientific teaching specialists, and includes their duties as participants of training and educational process;</p> <p>Preparation of scientific teaching personnel (post graduation specialists) allowing for the passing of entrance and candidate's examinations in any foreign language;</p> <p>Determine the procedure and terms of obtaining a certificate (certifying a qualification level) of pedagogic and scientific-teaching personnel;</p> <p>Permits the conclusion of international treaties on co-operation in the field of personnel preparation for national minorities, including co-operation in other countries subject to the particular needs of the Ukrainian State for specialists of a certain kind; preparation of national teaching specialists is provided through the system of state and private educational establishments.</p>		
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		paragraph 15	<p>Laws of Ukraine On Education (Article 18), On Vocational Education (Article 19), On National Minorities in Ukraine (Article 6),</p> <p>Resolution of the Cabinet of Ministers of Ukraine of April 5, 1994 #228;</p> <p>Law of Ukraine On Languages in Ukrainian SSR (Article 28)</p>	<p>Setting up of educational establishments by national minorities is a part and parcel of the right to national and cultural autonomy; educational establishments are set up where there is national, cultural, educational and linguistic need.</p> <p>Determines the order of educational establishments set up, reorganization and liquidation;</p> <p>In vocational establishments training and educational work is conducted in Ukrainian and in the language of the population majority.</p> <p>To prepare national specialists in such establishments groups may be created to study in the corresponding national language.</p> <p>In all Russian language teaching groups and in other educational establishments where teaching is given in a language other than Ukrainian, notwithstanding their departmental accountability, the learning of the Ukrainian language should be provided.</p>		
		Paragraph 16				

[illegible]

		<p>Elaboration of training plans Paragraph 19, Article 12 of the Framework Convention for the Protection of National Minorities</p> <p>Paragraph 20</p> <p>Paragraph 21</p>	<p>Information in paragraphs 12 and 13;</p> <p>Resolution of the Cabinet of Ministers of Ukraine of August 05, 1998 #1239 (basic educational plan for general secondary education);</p> <p>Basics of the legislation of Ukraine on matters of a culture (Articles.2 and 3);</p> <p>Law of Ukraine On the National Minorities in Ukraine (Article 6)</p> <p>Information in paragraph 5</p> <p>Regulations of the Ministry of Education and Science</p> <p>A system of scientific institutions on problems of national minorities education has been established in Ukraine, which takes part in determining the content of training programmes for national minorities. There are respective chairs in the establishments of higher education.</p> <p>Participating in determination of content of educational programmes for national minorities.</p>	<p>Such educational fields as "Cultural Science", "Social Science"; and the study of the traditions and cultures of different nations are included in both invariant and variant components of the basic educational plan</p> <p>The right of national minorities to the development and widening of their culture and tradition, and the development of national minority culture is one of the directions of the state policy;</p> <p>Has been given before;</p> <p>The Ministry of Education and Science has established the Institute on Content and Methods of Teaching including a department of national minorities.</p>	
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B. Report of the legal experts group on the coherence and compatibility of the Ukrainian legislation concerning the position of national minorities in education with international norms

by Dr F. ORNELIS, Prof. Dr L.M. VENY, Dr P.J.J. ZOONTJENS

1. THE GENERAL FRAMEWORK OF FUNDAMENTAL RIGHTS IN INTERNATIONAL LAW

1.1 Preface

The problem of minorities in education is an important subject of international law. In general, there are two approaches. In several international legal documents one can find provisions that specifically stress the position of minorities. This area of international law, known as intercultural rights, defines, as far as education is concerned, a right to education of members of a minority-group that is connected with their specific identity: cultural heritage, language, religion and traditions.² Another group of international legal documents holds provisions that are of importance for the equality of minorities in relationship to other minorities and to the majority in the state-community. These provisions guarantee non-discrimination of persons (not necessarily belonging to minorities) and the equal treatment of these persons.

A short survey will follow, and will set out international legal provisions that concern intercultural rights. After that, an explanation will be given as to the meaning of provisions that protect equality and prevent discrimination. In a further paragraph, you will find some conclusions about the legal character of several documents. In the last paragraph of this section, attention will be paid to a typology of fundamental rights, as can be derived from the jurisprudence of the European Court of Human Rights. The first chapter contains general remarks that are necessary for a good understanding of chapters 2 and 3.

In the second chapter of this report, an analysis is made of the importance of the right to education for people from minority groups. In a comparison with the Ukrainian legislation the analysis will lead to several recommendations directed to the Ukrainian authorities.

Lastly, the third chapter contains a comment on the explanatory note and table, composed by our Ukrainian colleagues, concerning the “accordance of legislation of Ukraine in the field of educational rights of national minorities with standards of the Council of Europe”.³ This comment will also lead to several recommendations to the Ukrainian authorities.

1.2. The development of international intercultural rights: a short survey⁴

Since 1948, and as a reaction to the horrors of the last World War, several international legal texts in the context of the United Nations have been adopted, which refer to the position of minorities in education. We speak in this respect of *intercultural education*. In the following, only the most important declarations and international human rights treaties will be mentioned.

Article 26, paragraph 2, of the Universal Declaration of Human Rights of 1948 reads:

² See for this definition of ‘identity’: Art. 5, paragraph 1, Framework Convention for the Protection of National Minorities (FCNM).

³ Discussion document by Olexandr Tsvetkov and Olena Semorkina for the 2nd meeting of the Joint Working Group on “Educational Policy & Minorities”, Council of Europe June 2000.

⁴ The most important elements of the first two main paragraphs of chapter 1 of this report have been directly derived from Pieter Batelaan and Fons Coomans, *The international basis for intercultural education, including anti-racist and human rights education*; with a preface by Prof. Dr Theo van Boven, 2nd edition, International Association for Intercultural Education (IAIE) in co-operation with UNESCO: International Bureau of Education (IBE) and the Council of Europe, 1999.

‘Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.’

The Universal Declaration does not have the status of an international treaty and is therefore not binding in a legal sense. Nevertheless, it is the first comprehensive international human rights document in the context of the United Nations and it has been of great importance for the content and understanding of several human rights treaties of the United Nations and the Council of Europe that have come into force since 1948.

Article 13, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights [ICESC] (UN; 19 December 1966) corresponds with the wording of the above-mentioned Article 26:

‘The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic and religious groups, and further the activities of the United Nations for the maintenance of peace.’

Compared to the Declaration there are a few differences in this text. Education shall be directed to the full development of the human personality and of ‘the sense of human dignity’. Further, the text expresses consensus about the idea ‘that education shall enable all persons to participate effectively in a free society’.

Article 29 of the Convention on the Rights of the Child [CRC] (UN; 20 November 1989) contains several new elements with regard to the cultural aspects of education that do not feature in the older texts. Paragraph 1 c of this article reads as follows:

‘States Parties agree that the education of the child shall be directed to the development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own’.

A special position is taken by article 27 of the Covenant on Civil and political rights:

“In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion or to use their own language”.

This is not a right that is directly connected with education but it will also be important vis-à-vis the rights of the participants in education.

Another recent instrument is the International Convention of the Protection of the Rights of All Migrant Workers, and Members of their Families [CRMW] (UN: 18 December 1990). This convention contains provisions that focus on the importance of education for the integration of migrant workers and their families in the states of employment. Article 45, paragraph 2, reads:

'States of employment shall pursue a policy, where appropriate in collaboration with the States of origin, aimed at facilitating the integration of children of migrant workers in the local school system, particularly in respect of teaching them the local language.'

And paragraph 4:

'States of employment shall endeavour to facilitate for the children of migrant workers the teaching of their mother tongue and culture and, in this regard, States of origin shall collaborate whenever appropriate.'

Since the beginning of the 1990s, the Council of Europe has devoted a great deal of attention to the situation and problems of national minorities in Europe. This was a reaction to the collapse of the communist systems in a number of Central and Eastern European countries and the ensuing emergence of claims for minority rights. As a result, governments of the member states of the Council of Europe agreed upon a treaty on the protection of national minorities: the Framework Convention for the Protection of National Minorities [FCNM] (CE: 10 November 1994). Article 6, paragraph 1, reads:

'The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.'

Article 12:

'1. The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.

2. In this context the Parties shall inter alia provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities.

3. The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.'

Article 13:

'1. Within the framework of their education systems, the Parties shall recognize that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments.

2. The exercise of this right shall not entail any financial obligation for the Parties.'

And Article 14:

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

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

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

According to the official explanatory report⁵ the FCNM is the first legally binding multilateral instrument devoted to the protection of national minorities in general. The treaty mostly contains programme-type provisions setting out objectives, which the Parties undertake to pursue. These provisions, which will not be directly applicable, leave the States concerned a measure of discretion in the implementation of the objectives, which they have undertaken to achieve. The FCNM contains no definition of the notion of “national minority”. It was decided to adopt a pragmatic approach, based on the recognition that at this stage, it is impossible to arrive at a definition capable of mustering general support of all member States. In accordance with the other treaties here mentioned, the treaty does not imply the recognition of collective rights. The emphasis is placed on the protection of persons belonging to national minorities, who may exercise their rights individually and in community with others⁶. In this respect, the FCNM follows the approach of texts adopted by other international organisations.

1.3. Equality and non-discrimination in education

1.3.1 A survey of treaties

Several treaties deal with the protection of equality and the combat against discrimination. Art. 26 of the International Covenant on Civil and Political Rights [ICCPR] (UN: 19 December 1966) reads:

*‘All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’*⁷

According to the Human Rights Committee⁸ article 26 provides in itself an autonomous right: “It prohibits discrimination in law or in fact in any field regulated and protected by public authorities. Article 26 is therefore concerned with the obligations imposed on States parties in regard to their legislation and the application thereof. Thus, when a State party adopts legislation, it must comply with the requirements of article 26 that its content should not be discriminatory. In other words, the application of the principle of non-discrimination contained in article 26 is not limited to those rights which are provided for in the Covenant.”⁹ The term “race” in article 26 covers also national and ethnic origin.¹⁰ In monist systems, such as Ukraine, it is to be expected that article 26 ICCPR is self-executive (see paragraph 4, hereafter). It constitutes certain relevant rights that individual members of a minority group can directly invoke before a national judge.

⁵ Explanatory report of the Framework Convention, nrs. 10-13, see WWW, < http://arts.uwaterloo.ca/MINELRES/coe/FC_exr.htm >.

⁶ See: F. Capotorti, *Are minorities entitled to collective international rights?*, Y. Dinstein and M. Tabor (eds.); *The protection of minorities and human rights*, Dordrecht/Boston/London, Kluwer, 1992, p. 505 – 511.

⁷ See also art. 2 ICCPR,

⁸ See art. 28 of the ICCPR.

⁹ VN Doc. A/45/40, Annex VI.

¹⁰ See for an explicit description of race in the definition of ‘racial discrimination’ in article 1, paragraph 1 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICRD), which also concerns discrimination because of ‘colour, or national or ethnic origin’.

Of the group of ‘thematic’ treaties concerning discrimination there are two, which are of importance to the equal treatment and non-discrimination of members of minority-groups. Article 3, sub c of the Convention against Discrimination in Education [CADE] (UNESCO: 15 December 1960) reads as follows:

‘In order to eliminate and prevent discrimination within the meaning of this Convention, the States Parties thereto undertake:

c. Not to allow any differences of treatment by the public authorities between nationals, except on the basis of merit or need, in the matter of school fees and the grant of scholarships or other forms of assistance to pupils and facilities for the pursuit of studies in foreign countries.’

And article 5, paragraph 1, sub c:

‘The States Parties agree that:

c. It is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language, provided however:

(i) That this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities, or which prejudices national sovereignty;

(ii) That the standard of education is not lower than the general standard laid down or approved by the competent authorities;

(iii) That attendance at such schools is optional.’

At last article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination [ICRD] (UN: 7 March 1966) reads:

‘In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(..)

(e) Economic, social and cultural rights, in particular:

(..)

(v) the right to education and training.’

The two thematic treaties CADE and ICRD do not contain self-executing provisions (see paragraph 4, hereafter).

1.3.2 Equality as a legal principle

The principle of equality has two sides. It prescribes an equal treatment of cases that are equal. In the same way it is an imperative to treat cases differently according to their distinction. The legal conception of equality has its roots in the recognition of individual human beings as legal persons: citizens. This recognition encloses two aspects, which are directly linked to each other: the recognition of human freedom and dignity, and the recognition of state power. The outcome of this recognition is the position of the law. Equal protection and treatment of individuals - which also means the absence of arbitrariness or “Willkür” - is strongly presented by the law.

Two aspects of equality need to be further examined:

1. equality before the law,
2. the equal protection of human rights and the prohibition of discrimination.

1.3.3. Equality before the law

Equality before the law means that an individual person only can be bound by *general rules*. General rules are norms that are addressed to everyone (every citizen or everyone of a well-defined group of citizens) in the same manner, without any exception. The first thing we think of, as we speak about general rules, is the rules laid down in written laws. However, that does not exclude the unwritten law. The fundamental importance of general rules as the basis of the legal binding of people in the state-community has to be found in the fact that every individual has the right to be treated by the state authorities from a *general point of view*. In those cases, where the law is absent or the law leaves discretionary powers to the administration, equality before the law means that the administrative government has to determine an individual's acts and actions from general rules of unwritten law. Equality in this respect means for instance that if the government selectively promotes the cultural and linguistic identity of a *certain* group that has been defined as a national minority, it can only exclude other groups in where there are reasonable and objective criteria not to recognize them as a national minority.

Of course, equality before the law does not mean that state authorities, including the legislator, cannot differentiate between groups and individual citizens. In fact, equality forces state authorities to differentiate when there are objective and reasonable grounds to suppose there is a distinction. After all, the essence of the legal debate about equal treatment or differentiation is the question of whether it is justifiable. In general, unequal treatment is justifiable if there are objective and reasonable grounds for it.

1.3.4 The prohibition of discrimination

Real negative discrimination is not in any sense acceptable. In general, it comes to discrimination when persons have been treated unequally (differently) because of qualities that they cannot renounce. Gender, race, sex, colour, religion, language, ethnic origin are qualities, which a person cannot give up without losing his or her human dignity. Discrimination is at stake when a certain differentiation leads to a breach of fundamental rights and human dignity. To be justifiable, discrimination between persons must fit within the well-defined limitations of fundamental rights and human dignity that are constitutionally permitted. Furthermore the actual grounds for discrimination must be objective, reasonable and proportionate. So, in the case of questions arising about discrimination, there are at least two things to deal with:

- does the constitutional or international human rights law permit the placing of limitations on a fundamental right, and on human dignity, and if so, to what extent is the limitation is permitted?
- is the actual ground for discrimination objective, reasonable, ie, necessary and proportionate?

1.4. The legal character of the several international documents

1.4.1 Introduction

In the second and third paragraph, the Universal Declaration and several treaties dealing with the promotion of intercultural education have been mentioned. The question is: what is the significance of those documents to the legal order of the States that have consented or ratified? In the following, the argument will be restricted to the treaties. As stated above, the Universal Declaration has no binding legal force, although it was of great importance for the content and understanding of the later treaties. In general, international declarations and recommendations are not legally binding States Parties. However, when approved by States Parties, they oblige them to act according to the 'spirit' of these international declarations and recommendations. It must be stated that the filling in of this 'spirit' is left to the discretion of the national state powers and is eventually determined by national state law.

1.4.2 General remarks about treaties

Treaties (or covenants, or conventions) are international agreements, concluded in written form between states, and governed by international law.¹¹ States acting as subjects of international law can conclude treaties (see Article 106, paragraph 3, of the Constitution of Ukraine: powers of the President). In many states, such as Ukraine (see Article 9 of the Constitution of Ukraine), treaties need to be approved by parliament and require ratification by the government before coming into effect. A treaty is binding for the contracting parties, who must perform it in good faith (*"pacta sunt servanda"*).¹² This means that a treaty gives rise to legal obligations for states.

When becoming a party to a treaty, a state must be sure that it is able and willing to comply with its provisions. Its national law (see for instance Article 9 of the Constitution of Ukraine), must ensure that policy and practice are in accordance with the letter and the spirit of the treaty. When a state wants to enact new legislation or make a change in policy, the norms of a treaty must operate as a criterion. All agencies of a state must guarantee that they will act in accordance with the provisions of the treaty.

These things are probably not unfamiliar to the Ukrainian authorities. There are enough solid indications in the Ukrainian legislation to conclude that the government of this country is fully aware of these obligations. However, there are no sufficient data known about the implementation and application of the legislation in Ukraine. Therefore, in many cases there is no possibility to judge the meaning of Ukrainian law provisions in concrete situations. To fulfil their obligations according to international law, it is of the utmost importance that the Ukrainian authorities concentrate their activities in the near future on the adequate implementation and enforcement of legal provisions, which means concretising them in accordance with the national and international law. In this context, the legislator, the administration and the jurisdiction share joint responsibility.

¹⁰ Of great importance in this respect is the Vienna Convention on the Law of Treaties (1969). See Article 2, paragraph 1a, Vienna Convention.

¹² Article 26 of the Vienna Convention on the Law of Treaties.

1.4.3 Supervision on compliance with the treaties

In several treaties that exist in the field of human rights, some kind of international supervisory procedure, such as a reporting procedure to an international body of experts, is provided for. According to Art. 16, 17 of the International Covenant on Economic, Social and Cultural Rights, States Parties are obligated to report to the Secretary General of the United Nations. These reports should refer to the measures that the States Parties have adopted and the progress made by them in complying with the treaty's provisions. Reports may also indicate factors and difficulties affecting the degree of fulfilment of the treaty obligations.¹³ In general, the reporting procedure is very important for the development and understanding of the juridical meaning of treaties. The conclusions and recommendations of experts in the framework of this reporting procedure are however not obligatory to the States Parties. Nor can they be enforced, nor can they bind States in a legal sense to a certain interpretation.

The significance of these conclusions and recommendations can, however, be threefold.¹⁴ Firstly, they should be seen as a common standard of achievement. This implies that states must do their utmost to realize and promote observance of these norms by means of progressive measures. Secondly, they can serve as yardsticks of accountability and responsibility. Students, parents, teachers and non-governmental organisations may address their governments and ask them about their plans of implementation. States should openly give account of the policy pursued. Thirdly, the conclusions and recommendations reflect guiding principles for national educational laws and policy. They should be published widely and discussed at all levels of education and so involve all relevant actors in implementing them.

It is obvious that the treaties mentioned in the second and third paragraph, afford the States Parties a certain degree of discretion as to how to comply best with the norms. This does not mean that they are permissive. In Ukraine - with its constitutional rule that those international treaties in force are part of the national legal order (monism) (see Article 9 of the Constitution of Ukraine) - the obligations of every treaty immediately apply in the national legal order. This means that the provisions are obligatory for the Ukrainian legislator and administration. Discretion is left to the Ukrainian State authorities, not in the sense that the objectives of the rights that are guaranteed by these provisions are disputable, but in the choosing of the means to reach to these objectives. It should be pointed out that, according to international law, the judgment of the chosen means has to be based on principles of legitimacy, necessity and proportionality.

With the exception of article 26 ICCPR, all the above-mentioned treaty provisions regarding intercultural education and non-discrimination are *not self-executing*. This means that these provisions do not have a *direct* effect in the national legal order. They do not constitute individual rights that every citizen, for example, can directly invoke before the judiciary. Therefore, on the national level there is no supervision outside the political (governmental, parliamentary, legislative) domain on the treaty provisions that concern intercultural rights. To gain the status of an individual right, these treaty provisions need first to be implemented by the legislative and administrative authorities of the State Party.

¹³ See also Art. 44 of the Convention on the Rights of the Child. A lighter version of international supervision has been laid down in Articles 25, 26 of the Framework Convention for the Protection of National Minorities: a Contracting Party shall transmit "full information on the legislative and other measures taken to give effect to the principles" set out in the treaty. There is no obligation to inform. The term "information" is also less compulsory than "report".

¹⁴ See Th. van Boven, *The European Context for Intercultural Education*, in: *European Journal of Intercultural Studies* Vol. 4 (1993), p. 7-15, at p. 13-14.

1.4.4 *The meaning of international norms governing intercultural education*

What then is the practical relevance of the norms and documents discussed above? It can be concluded that the treaty provisions on intercultural education imply obligations for states to *progressively realise* the aims of such education. States Parties are obliged to guarantee that their national laws, policy and practice are in conformity with the relevant treaty provisions, but - as stated above - they have some discretion to the forming of the definition of conformity.

Less respect for discretionary powers of a State Party and a stronger supervision on the fulfilment of its obligations have been connected with the international human rights treaties that guarantee individual rights and freedoms. Especially the International Covenant on Civil and Political Rights [ICCPR] (UN; 19 December 1966) and the European Convention for the Protection of Human Rights and Fundamental Freedoms [ECHR] (CE: 4 November 1950) are of great importance in this respect. The two treaties have a lot in common. The interpretation of provisions of the UN-treaty in the framework of the reporting procedure plays a role in the jurisprudence of the European Court of Human Rights. Decisions of the European Court are compulsory to the States Parties (Art. 46 ECHR). In the following paragraph attention will be paid, in general terms, to the principles of testing State's behaviour against the provisions of the European Convention by the European Court.

1.5. A typology of fundamental rights¹⁵

1.5.1 *Fundamental rights in the present state-community*

According to the classical liberal vision fundamental rights are rights of individuals against the state. In this vision the attention is concentrated to the meaning of fundamental rights as a base for the limitation of state powers against the individual freedom. State powers are necessary for the ensuring of safety, for the social ordination and for the guarantee of rights of others. To that end the state is allowed to infringe on individual freedom. Thus, in the classical liberal state vision the legal range of state powers and the legal range of limitation of state powers are measurable, foreseeable and controllable. In a strict sense the principle of legality reigns.¹⁶

According to this theory the state and the individual represent separated legal worlds. There is, for instance, no room left for an "apart" status of social institutions *between* the state and the individual, which characterizes modern society in so many ways. It offers a scheme for the approach of fundamental freedoms and social rights as different legal phenomena. Fundamental freedoms are legally enforceable by an individual, social rights are not. Fundamental freedoms call up state authorities to respect and protect individual freedom, social rights to ensure and to promote performance. Fundamental freedoms implicate limited discretion for state authorities, social rights do not. Yet, it is to be questioned whether the *opposition* of state and individual for the analysis of fundamental rights in the present conditions is theoretically and practically satisfying. The structure of the present state community is very complex. In the modern social "*Rechtsstaat*" the rights and freedoms of the individual are often conditioned by, or the result of, state efforts: housing, environmental care, income, health care, education, scientific research, elections, et cetera. The concept of individual freedom as a right that corresponds with the obligation of state authorities to solely respect this freedom, is not a thing that we see often in reality. Nowadays, in many cases true individual freedom is not possible without real conditions offered by the state. In the jurisprudence of the European Court of Human Rights we see a lot of cases, in which state performance is

¹⁵ F. Vlemminx, *Een nieuw profiel van de grondrechten* (A modern profile of fundamental rights), Deventer 1998.

¹⁶ See M.C. Burkens, *Algemene leerstukken van grondrechten naar Nederlands constitutioneel recht* (A general doctrine of fundamental rights according to Dutch law), Zwolle 1989, p. 29 e.v.

prescribed and regulated by the obligation to respect fundamental freedoms. According to several judgments of this Court the treaty has to be interpreted “in the light of present days conditions”.¹⁷ In the eyes of the Court the necessary adaptation of the treaty’s interpretation to “changing circumstances” needs a “progressive development of the (...) law through judicial law-making”.¹⁸ By this development fundamental freedoms are not only to be considered as individual freedoms, they tend to evolve to ordination principles of the society, the state community. In this light, the role and place of the state is moving into the centre of legal attention. Fundamental rights as a whole (fundamental freedoms as well as social rights) need to be considered from the point of view of obligations of the state.

1.5.2 *Fundamental rights as state obligations*

In the framework of the United Nations social rights are characterized according to a typology of obligations. This typology serves to analyse several rights guaranteed in the ICESCR, such as the right to subsistence and the right to food (art. 11, paragraph 1, ICESCR). In later studies, the typology of obligations was broadened to social and fundamental freedoms (ICCPR).¹⁹ This new theoretical approach entails the final declaration at the second World Conference on Human Rights (Vienna 1993), in which the relationship between economic, social and cultural rights, on the one hand, was stressed, and civil and political rights on the other. “All human rights are universal, indivisible and interdependent and interrelated”.²⁰ According to this, the concrete meaning of human rights in a specific case is often dependent on a certain mixture of state obligations, which can be divided into obligations to respect, to ensure, to protect or to promote. This typology offers a framework to describe (not to prescribe) the legal judgment of non-interference and performance *in concreto*. It appears that the interpretation and application of human rights in the jurisprudence of the European Court of Human Rights can be analysed by the typology of these four obligations.

In the light of the circumstances of a concrete case, human rights can contain one or more of a total of four obligations. The *obligation to respect* forbids the state itself to act in any way, which would directly encroach upon recognized rights or freedoms. This aspect, therefore, closely resembles what in the traditional scheme was called an obligation of non-interference. According to the *obligation to ensure* the state has to actively create conditions aimed at the achievement of a certain result in the form of a (more) effective realization of recognized rights and freedoms. The *obligation to promote* is also designed to achieve a certain result, but in this case it concerns more or less vaguely formulated goals, which can only be achieved progressively or in the long term. According to the *obligation to protect* the state has to actively create conditions aimed at the protection of citizens against other citizens.

¹⁷ See for instance Judgment of 25 April 1978 (Tyler case), Series A, nr 26, par. 31, p. 15.

¹⁸ Judgment of 22 November 1995 (S.W. vs. UK), Series A, nr 335-8, p. 42, par. 42.

¹⁹ G.J.H. van Hoof, The legal nature of economic, social and cultural rights: a rebuttal of some traditional views, in: P. Alston/K. Tomasevski (ed.), The right to food, Den Haag 1984, p. 106/107.

²⁰ U.N. Doc. A/Conf. 157/23, part 1, par. 5.

2. THE RIGHT TO EDUCATION AND NATIONAL MINORITIES

2.1. Most important international sources of law

It should again be stated that the most important international sources of law which acknowledge the right to education in one of their provisions in a general sense, are the following:

- article 2, 1st Protocol ECHR;
- article 13 ECOSOC convention;
- articles 28 and 29 Convention on the rights of the child.

In addition, special convention provisions should be mentioned which refer in some way to educational rights. These would include, among others:

- article 18 of the PIDCP convention (religious and moral education of children);
- article 10 of the European Social Charter (right of vocational education);
- articles 12 -14 of the Framework Convention for the Protection of National Minorities;
- article 5, e) of the International Convention on the Elimination of All Forms of Racial Discrimination.

Finally, there are educational provisions in regional charters (in accordance with the Protocol at the American Convention on Human Rights, the African Charter for Human and Peoples' Rights, European Convention) which self-evidently are important for the region involved with respect to the acknowledgement and enforceability of educational rights (of minorities) but which are not relevant to educational rights of minorities in Ukraine. In the following sections the positioning of the right on education will only take place in relation to the ECHR, ECOSOC and the Convention on the rights of the child. The reason for this delimitation can be explained by the fact that Ukraine has ratified these conventions, and by the (direct or indirect) effect of these agreements on the legal order of the Party States. The Framework Convention on National Minorities will be specifically described in Chapter 3.

2.2. Legal character of the educational rights in the three conventions

2.2.1 Analysis

Fundamental rights and liberties that have been safeguarded by international agreements, and more specifically the social economical civil rights involve various obligations in the context of the Party States, which can be described as the obligation to respect, the obligation to protect, the obligation to ensure and the obligation to promote. In the general introduction to this recommendation all of those obligations are more fully elaborated on – theoretically, at any rate. Currently it is more important to evaluate in what way each of these obligations occur in the context of the educational rights (of minorities).

In this context, it seems important to us to bring to mind the essence and also the wording of the conventional provisions. According to article 2, 1st Protocol ECHR 'Nobody [...] will be denied the right to education', while articles 13 ECOSOC and 28 of the Convention on the rights of the child state that the Party States 'acknowledge everyone's right to education'.

Although at first glance certain conclusions might be drawn with regard to the obligations of the state on the basis of the editing of the conventional provisions – especially from the 'negative manner of acknowledgement' for the ECHR while there was a more 'positive description' for the other two conventions – an assessment in the light of all the obligations mentioned above is

required. The text of the convention notwithstanding, the right to education means that the state that signed the convention is obliged:

- to respect, in the sense that the state should not infringe on this right in any way. This infringement can be observed in a positive as well as in a negative government attitude; state does not uphold the educational rights if in the relevant laws access to education is explicitly denied to certain (minority) groups, but also if the state does not acknowledge the legal consequences of the refusal to recognize a certificate of qualification that a member of a minority group has received from an independent educational institute.
- to protect, as the Party State also guarantees – especially on the basis of the ECHR – to prevent infringements by third parties on a civil right. Under international law an ECHR Convention state is not just responsible for deferring to the rights that are recognised in the convention by central government (bodies) but also for the respect at a local government level, of, as the occasion arises, even by private citizens. There is no doubt that the educational rights of minorities should be protected against infringements by decentralised or subordinate governmental bodies and therefore the Party State has a positive obligation in this respect.
- to ensure. Without a doubt, the right to education is a direct obligation of the government, and the state should create the circumstances that make it possible to implement the right to education. Neither can this obligation be denied in the context of the right to education as stated in article 2 ECHR. However, this does not imply that every simple demand by users of education should be granted. The first obligation of the state is to create a sound system of education that is available to everyone, and to ensure that the right to education can be realised by everyone. It is obvious, although this is not an obligation stated in the ECHR, that not all individual demands to establish certain educational provisions can, or should, be complied with.
- the obligation to promote should also be strived for with respect to educational rights, on the understanding that the objectives in this context are less clear, and that the state will more likely attempt to realise them in the somewhat longer run. In the light of the UN conventions, educational rights include amongst others the obligation, by the states, to realise this right by providing mandatory and free primary schools, while efforts will be made in education at second and higher level in the light of the gradual implementation of free education. The budgetary resources of each State, taking other essential public services into account, will be qualifying. Note: for this obligation, the state adopts a ‘stand still’ attitude, which means that realised attainments will not be undone. As soon as a Party State recognises educational rights of and for national minorities, it is obliged to maintain this recognition – under all circumstances.

2.2.2 Conclusion

Based on the above texts we conclude that Ukraine complies to a large extent with the obligation previously described. The regulating legislation mentioned above, in particular ‘The Law on Education’ and ‘General and Vocational Secondary Education’ recognise that everyone, including members of national minorities, has a right to be educated, or at least has access to the existing educational institutions. With regard to minority groups, important efforts are made towards providing education in the original language of the members.

Formally, i.e. in a purely legal sense, the conventions are implemented within the framework of Ukrainian law. The screening (by us) of, predominantly basic regulations for the various education levels, obviously does not involve assessment of the implementation and the concrete application of the law in local government, or by ‘self governing bodies’. The conference at Yalta and the joint

working group seminars have made clear that possible difficulties will arise, not at government level but at the levels below that. However – and we will later come back to that issue – by entering into the conventions, each Party State undertakes the undisputed obligation to ensure the fulfilment of the rights stated in the convention, regardless of which governmental body or third parties have been allocated the responsibility to organize the educational system. In this respect, at least, the expert committee is of the opinion that Ukraine should make the necessary efforts to comply with this stated aim, and that it should enter into a commitment to create an internal supervisory system that will monitor the implementation of the obligations stated in the conventions by local government.

Recommendation 1

To effectively safeguard the educational rights of members of national minorities, and to counteract infringements on this right by local government, a clearly described and structured mechanism should be introduced into the (educational) laws, with regard to monitoring decentralised local government. A central Complaints Committee would be a possibility. Each individual educational user could apply to this committee when his educational rights are denied, and an independent investigation into the justification of the complaint could subsequently be initiated.

The above-mentioned body, which should be incorporated into the wider political system, and whereby the internal sovereignty of Ukraine should be totally respected, could also draw up recommendations and proposals which could be presented to the political authorities in order to improve the education system, or to prevent new infringements on the educational rights of national minorities. This could take place at the committee's own initiative, or as the follow-up to a complaint.

2.3. The area of application of educational rights under international law

2.3.1 Analysis

In this respect a distinction should be made between the institutional and the personal area of application of the conventional provisions with regard to educational rights.

Concerning the first aspect the educational right of any user of the educational system who is resident on the territory of a Party State is acknowledged *regardless the level and the type of education*. The European Court of Human Rights has explicitly validated this view in the case of the Belgian linguistic issues. The highest judicial authority in Strasbourg has never confirmed various later decisions by the Commission, which stated that '*educational rights applied predominantly to first level education [...] and not necessarily to higher specialised studies*'. In the specialist literature this opinion has been strongly criticised; these limitations are at least not listed in the conventional provisions. The Convention on the rights of the child works by definition with a narrower spectrum of education levels, as this convention purely applies to people under eighteen, which means that third level education is hardly ever involved.

Analysis of the most important Ukrainian educational laws makes it clear that the conventional provisions with regard to education are complied with; the basic laws acknowledge educational rights at all levels and for all types of education, although the group of experts has to admit that some qualitative (in the area of language, among others) and quantitative limitations on access to third level education which are not necessarily contrary to the convention, would result in impediments which may affect members of minority groups in the administrative system, more than any other users of the educational facilities. If this has been caused by governmental actions, which

cannot be detected on the basis of this legal research, this could be an infringement of educational rights; conclusions in this direction would require further educational research. This falls outside the brief of the current working group.

As far as the personal scope of action is concerned, two aspects deserve close consideration.. *Firstly*, it should be clear that the wordings in each relevant provision of the Convention refer to *individual education rights*. It is our opinion that neither the ECHR, nor the UN Conventions offer the adequate legal grounds to enforce the rights of (minority) groups, i.e. the collective right to education. Indeed, discrimination of any user of the educational system belonging to a minority group is illegal pursuant to Articles 2, 1st Protocol, and 14 of the ECHR. For this reason, it is not obvious that a national minority is able to enforce specific educational facilities to be provided by a Party-State on the grounds of Article 2, 1st Protocol. As far as the right to education is concerned, these objections also apply to the UN Conventions. *Secondly*, it should be made clear that the word ‘Nobody’ as used in Article 2, 1st Protocol, and the word ‘Everybody’ as used in the UN Convention, are not be read/interpreted in a restrictive way. Both words do refer to minors as well as adults, boys as well as girls, citizens as well as foreigners. One should bear in mind that the first sub-paragraph of Article 2 recognises the right to education with respect to the students, including minors, while the second sub-paragraph discusses the philosophic and religious beliefs of the parents. Therefore possible conflicts between the child’s right to education and the parent’s ideological beliefs should be accounted for.

As such, it is clear that the Ukrainian legislation complies with the said Conventions. The general term ‘everyone’, which is used in specific texts of Law explicitly to refer to foreigners, undoubtedly indicates that a wide variety of persons may be seen as being entitled to exercise the said rights.

Less obvious is the legal issue of ‘*illegal aliens*’. Indeed, since a person’s basic right to education includes the opportunity for personal development; the idea that also illegal students of school age enjoy the right to education is increasingly embraced in Western countries. Evidently, the above mentioned statement would never enable the person involved to use his or her right to education to have a deportation or repatriation decision annulled.

At least one Act on Education (vocational secondary education) refers to the requirement of legal residency. The legal experts claim that the said reference is contradictory to general trends, and that legal measures should be taken.

2.3.2 Conclusion

The field of application of the rights to education in Ukraine includes all educational aspects, and therefore complies with the legal requirements of the Conventions. The legal expert group does not comment on the implementation. Except for the provisions regarding illegal aliens, the country’s legislation does not tolerate any personal limitations to the rights to education for members of a minority group. From a purely judicial point of view, it is impossible to claim that the right to education is restricted for anyone. However, the Laws do not provide adequate guarantees to ensure the completion of the minimum compulsory education by children of school age. The right to education remains merely a theory if the authorities do not provide the necessary resources to ensure the minimum compulsory education for everyone, and if they do not act compulsively when necessary.

Recommendation 2

Without interfering with the sovereign rights of a Party-State to accept or deport foreigners, the expert group insists on amending the effective Laws in order to grant the right to education to illegal users during their stay.

The right to education which refers to the indefeasible right of every child to personal development, should be guaranteed by the introduction of well-defined regulations with regard to minimum compulsory education for children of school age, and monitoring activities by the authorities.

2.4. Legal and actual consequences of the rights to education as provided by international conventions

2.4.1 Analysis

The Administration of Justice with regard to the legal provisions of the Conventions concerning the 'right to education', primarily from authorities based in Strasbourg, such as the European Commission and the European Court of Human Rights, includes a number of selected legal aspects of education, which are going to be discussed in detail below. The activities of the expert group in this matter did not have an exhaustive character. The group, however thoroughly studied those aspects that it considers necessary to indicate to the Ukrainian authorities in establishing policies for the education of minority groups. It is recommended that these specific aspects be considered in the legislation to the maximum possible extent. Nevertheless, it is mandatory that said aspects are at least respected by the actual Administration, and that the (central) authorities are obligated to guarantee their implementation and observance.

a. The right to regulate education

The right to education, as guaranteed by various Human Rights Conventions, does not obstruct a Party-State to 1) implement *education policies* respecting the basic right, and 2) regulate *the provision of education*. In the Decree on Belgian Linguistic Issues, as confirmed by several judgments made by the European Commission, the Court explicitly declares that '*the right to education guaranteed by the first sentence of article 2 calls by its very nature for regulation by the State*'.

Therefore, the right to education of ethnic or national minorities as provided by the Conventions, is not obstructed if the appropriate regulating authorities link the access to existing education facilities, the continuation of any education, etc., to specific terms and conditions. However, the education regulations should evidently never be the tool to deny any person (of a specific group) the right to basic education.

The legal right to education as provided by the Conventions also does not forbid the authorities to define the curriculum of the education to be provided, obviously without eroding the right to education.

Recommendation 3

To remove any sources of misapprehension, the expert group advises the provision of means of access to objective information for a considerable part of the population. The information should include the general scope and meaning of the right to education as legally provided by the Conventions and national law in general and focused on minorities in particular.

b. The right to education and compulsory education

The right to education is inextricably bound up with compulsory education for children of school age. Various decisions of the European Commission consider any Act on Compulsory Education to comply with Article 2, 1st Protocol of the ECHR: *'it's clear that article 2 of the Protocol n° 1 implies a right for the State to establish compulsory schooling (.....) and that verification and enforcement of educational standards is an integral part of that right'*.

The said governmental authority should evidently be exercised with due regard for the religious and philosophic beliefs of the parents, and should provide the parents with the appropriate room for educating their children. Obviously a Party-State should clearly define the Compulsory Education in the Education Legislation. It is the opinion of the members of the expert group that the Ukrainian regulations in this matter are unclear and not convincing or even not defined. It is also required that the regulations clearly define the measures to be taken against any violations of the Compulsory Education.

Recommendation 4

It is the opinion of the expert group that the present texts of Law for Compulsory Education are inadequate. It is therefore advised to prepare a well-defined Compulsory Education Act (age for compulsory education, contents, inspection, and corrective measures).

c. The right to education in the national languages

'The right of education would be meaningless if it did not imply in favour of its beneficiaries, the right to be educated in the national language or in one of the national languages, as the case may be'. This interpretation by the Court of Article 2 of the First Protocol, and the ban of discrimination as provided by article 14 of the ECHR, do not imply that the child or the parents have the right to be educated in the language of their choice, but solely guarantee the right to education of all subordinates, without any language-based discrimination. A different interpretation would lead to the situation that any resident of the Party-State would have the opportunity to require any type of education anywhere on the territory of the State, in any language. The right to education as legally provided by the Conventions does not contain any linguistic requirements, nor does it contain any obligation from the authorities to observe any of the parents' linguistic preferences.

However, the right to be educated in one's native tongue is recognised in cautious wordings by the Framework Convention.

The Ukrainian Laws definitely meet the expectations and ideas of the authorities based in Strasbourg as far as primary and secondary education are concerned. However, the study group was unable to assess the merits of the Linguistic Laws for educational matters, since on the one hand the Education Acts refer to the Law on Languages in this matter, and since on the other hand the text of the Laws submitted to the study group does not contain any specific provisions with regard to the regulations and use of languages in schools.

The criteria to organise and provide education for linguistic minority groups are also unclear. It is the opinion of the expert group that this type of criteria should be added to the legislation for this issue and for all levels of education.

It is specifically important to clearly define the term 'Education minority' in the perspective of the establishment and continuation of specific minority institutions or special departments in the official institutions where education is provided in the language of a specific minority group. Obviously

political choices are to be made defining the standards in the perspective of the overall available budgets, and accounting for the other tasks of public service to be carried out by the State. However, such a standard is prerequisite, not only to prevent any type of arbitrariness with regard to specific minorities, but also to be able to reject certain individual requests in a justifiable way.

Recommendation 5

The expert group advises regulatory measures for primary and secondary education clearly defining the term ‘minority’ in the education regulations, and identifying the establishment and rationalisation of standards for providing education in the language of ethnic and national minorities.

d. The right to education and corrective actions

The right to education of users of the educational system implies that the authorities should take corrective measures against any actions by fellow students obstructing the provision of appropriate education. In the Campbell and Cosans case, the Court clearly foresees disciplinary measures, provided that the disciplinary education regulations observe the other rights guaranteed by the ECHR. In this matter, reference can be made to the existence of corporal punishment, which may violate Article 3 of the ECHR, and to Article 2, 2nd sub-paragraph of the First Protocol in which the authorities are obligated to respect the parents’ religious and philosophic beliefs in providing education. As such, national legislation may for example explicitly provide for a ban on corporal punishment without this being any violation of the parents’ right to give their children the education that is in line with their religious and philosophic beliefs.

Disciplinary action may be required to realise the educational objectives, to ensure the quality of education, to complete the curriculum of the school or the education program, etc. In the Valsamis case it was perceived as a school’s fundamental right in the perspective of the personal, emotional and academic development of the student.

The right to education in general, and the same right for members of minority groups specifically, may not be denied by arbitrary disciplinary action. It should be emphasised that for this issue the user of the education system is protected in the best possible way if his or her legal position is legally defined with regard to rights and obligations.

Based on the submitted regulations, the expert group was unable to thoroughly examine the compliance of the Ukrainian education Laws concerning this aspect of the right to education. The expert group concludes that the current regulations are inadequately detailed as far as the status of the student is concerned, and should provide for a specific legal framework, instead of uncoordinated legal provisions.

Recommendation 6

The protection of the various aspects of the right to education is best served by a legally defined student status. It is therefore the advice of the expert group to set standards for this issue.

e. The right to education and the official certification of the studies

Pursuant to Article 2, 1st Protocol, the parties of the Convention are obligated to guarantee a certain type of certification at the end of the studies so that the right to education of individuals would be effective. This governmental obligation is both related to studies followed at non-public institutions as to studies followed in a foreign country. The obligation in relation to non-public institutions

means that the education regulations must contain clear provisions with regard to education provided by non-public schools. In this perspective non-discriminating accreditation conditions may be considered. The establishment of private schools can evidently contribute to the national minorities' rights to education in their own language. However, this option makes sense only if the studies completed in such institutions are certified by the official authorities. As indicated earlier with regard to the meaning of 'minority in matters of education', legal and well-defined regulations are prerequisites and the quality of the provided education must always be considered. As far as studies in foreign countries are concerned, the Ukrainian authorities recognise that standards are still to be set. The education Laws basically meet the requirements of the Convention, but the option for bilateral agreements with mutual diploma certification may currently obstruct direct recognition of studies completed in foreign countries. The expert group understands the concern of the Ukrainian authorities to give priority to the quality level of studies completed in foreign countries, but dares to insist that the appropriate authorities take the necessary actions to conclude and ratify the required agreements for all minority groups as soon as possible.

Recommendation 7

The expert group recognises the numerous efforts that already have been made to certify studies at non-public institutions and studies completed in foreign countries. However the expert group notices gaps in the regulations in the field of education inspection preventing adequate quality assurance of the education provided at minority schools. The study group advises the preparation of specific legislation for this issue. For studies completed in foreign countries, the study group advises the listing of the needs of minority groups in the field of opportunities for studies in foreign countries, and the listing of any pending files for the certification of studies completed in foreign countries. All necessary actions should be taken thereafter.

f. Freedom of education and subsidising private institutions

The right of parents or specific organisations to organise the education of their children in non-public schools in compliance with their religious or philosophic beliefs is explicitly recognised by the ECOSOC Treaty and the Convention of the Rights of the Child, and is recognised by the jurisprudence of the ECHR in the interpretation of Article 2, 1st Protocol, of the ECHR. Yet, the aforementioned does not imply the right to force the authorities to subsidise or maintain specific education facilities, nor does it imply official certification of the studies. However, subsidising may not take place in a discretionary or arbitrary way, although the European Commission's Administration of Justice does not object to differences in financing plans for public and private schools.

It is the opinion of the expert group that the Ukrainian education Laws fail badly in this matter. The effective Laws are very unclear on the issues of subsidising, conditions and obligations, spending control, the rules for withdrawal or repayment of (mistakenly received) funds.

Recommendation 8

The urgent need for legislative action with regard to financing the education at the various levels has been defined. The current Laws are inadequate and only contain the financing principle, while the required provisions for financing criteria and conditions, spending, and monitoring the use of governmental funds are missing. It is the opinion of the expert group that these are serious gaps in the current Laws, and that detailed regulations considerably contribute to the filling-in of the right to education of minorities, subsidies, etc. Furthermore, it must be noted that the various sector Laws contain few adjusted provisions for financing institutions at various education levels, while the financing regulations should not be linked to the right to education. In the procedure of financing

education institutions, legally defined criteria and allocation ratios must be used to effectively ensure the equality of schools, students and teachers by possibly using more favourable arrangements for the education provided to less fortunate groups or members of educational minorities.

The financing procedures also contain well-defined rules for spending the resources to teaching tools, investments, teaching assignments, quality monitoring and enhancement, etc.

3. COMMENTS ON THE EXPLANATORY NOTE AND TABLE “ON ACCORDANCE OF LEGISLATION OF UKRAINE IN THE FIELD OF EDUCATIONAL RIGHTS OF NATIONAL MINORITIES WITH STANDARDS OF THE COUNCIL OF EUROPE”

3.1. Preliminary

The Framework Convention for the Protection of the National Minorities (FCNM) came into effect on 1 February 1998. This convention was signed by Ukraine on 15 September 1995, ratified by the Verkhovna Rada on 9 December 1997 and has been in effect since 1 May 1998. In accordance with paragraph 1 of Article 9 of the Constitution of Ukraine, this ratified convention forms part of the national legislation.

The internal legal position of the European Charter for Regional or Minority languages is unclear: according to the report²¹, this charter has still not been ratified, although it has already been signed and ratified according to the document 'The legislative ensuring of the rights of minorities on education and its perfection'²². With regard to this, members of the Ukrainian delegation stated that the Council of Europe had yet to be informed of this fact. The convention has not been included in this commentary.

The note and table examine the compatibility of the internal legal provisions with 'the Hague Recommendations regarding the education rights of national minorities'. It is to be noted that these recommendations do not come from the Council of Europe, but from the OSCE. However, they can also be meaningfully included in the study of conformity, particularly in view of the starting point of The Hague Recommendations, namely "the starting point of the consultations was to presume compliance by States with all other human rights obligations (...)". The legal force of the formal framework convention is obviously different. The difference in content is important: the recommendations are much more detailed and expressed, less in terms of conditions than the relevant provisions of in the framework convention. They also carry the risk of restricting the examination of the Ukrainian legislation and regulations for compatibility with the standards of the Council of Europe to one, certainly indeed important, aspect of lessons in/from one's own language versus the language of the State. This commentary has also considered the scope of the convention, where possible.

The Explanatory Note and the table refer to a series of Resolutions of the Cabinet of Ministers of Ukraine and to a number of regulations of the Ministry of Education and Science whose content has been summarized in the table. However, at the time when this commentary was produced, there was no English language version available for a number of the documents²³, so that the examination of compatibility is confined to the other, nevertheless fundamental, documents.

This section does not say anything about the definition of minorities. With regard to this, reference is made to other sections, including section II.C of Ms Tytti Isohookana-Asunmaa.

²¹ The report of Ukraine on implementation of the provisions of the Framework Convention for the Protection of National Minorities, hereinafter referred to as 'report'), p. 7. See the charter relating to France : Conseil Constitutionnel Français, décision 99-412.

²² Document of O.M. Semyorkina, presented at the Yalta Conference.

²³ It relates to the following documents (numbering as at end of explanatory note) : IV. 5 – 12; V; VI en VII.

3.2. Comments regarding the Explanatory Note and the table

3.2.1 Spirit of international instruments (The Hague Recommendations 1 - 3)

We will return to the recommendation in § 1 later (cf. Art. 14 of the FCNM).

The internal legal provisions mentioned in the table ensure the observance of the principle of equality and non-discrimination (cf.: Art. 4 of the FCNM).

The interpretation of the international standards as minimum provisions (cf.: articles 2, 19 and 22 of the FCNM) should also be apparent from the above provisions and their application in practice.

3.2.2 Measures and resources (The Hague Recommendation 4 in conjunction with Art. 12 FCNM)

This recommendation is more an indication of a line of policy (the State should aim for the gradual implementation of all the educational rights of minorities within the context of complete equality) than an enforceable right. The following comment is made subject to this reservation.

The provisions quoted from the laws 'On Education' (E), 'On General Secondary Education' (GSE) and 'On Vocational Training' (VoT) mainly state the sources and principles of finance and cannot be regarded as an implementation of this recommendation. The provisions contain important principles, such as:

- paragraph 2 of Article 61 and paragraph 1 of Article 62 E : the proportion of the national income allocated to education in the state budget is at least 10%; at least 10% of the higher education budget is allocated to basic scientific research;
- Paragraph 6 of Art. 50 of the Vocational Training Act: this Article guarantees the same amount of public funds even if there are other sources of income.

However, these (and the other provisions mentioned) are general indications of a line of educational policy and they have not specifically been drawn up for minorities. They also do not make it possible to assess the adequacy, priorities, effective implementation, allocation according to region/level of education ... of resources within the context of an educational policy for minorities.

Attention to the gradual implementation of this recommendation should also be inferred from other documents (or other than legal provisions). With regard to this, reference can among other things be made to 'The programme of activities of the Cabinet of Ministers of Ukraine for 1999 and the activities which are mentioned on pages 27-28 of the Report: "to further develop the network of (...) schools, where teaching and education are carried out in national minorities' languages, in conformity with the ethnic composition of population of a region." And: "to expand training of highly qualified personnel being of national minorities' origin (...)".

3.2.3. Decentralization and participation (The Hague Recommendations 5-7 in conjunction with Art. 15 of the FCNM)

§§ 5 - 6

Ukraine has already made considerable efforts to involve minorities in policy in a structural manner (see: report, pp. 32-34).

From the Discussion Document (DD) of Dr Yevtukh for the 2nd Meeting, we conclude that the Council of Representatives of the civic communities attached to the State Committee of Ukraine for nationalities and migration mentioned in Art. 5 of 'The law of Ukraine on national minorities in Ukraine' (NM) has been replaced by the Council of Representatives of public organizations of national minorities.

In the light of The Hague recommendation no. 5, there arise questions about:

- The representativeness of members of this council;
- The degree of independence of members of this council (cf. comment of F. Grin about distinction between governance institutions and role of the NGOs);
- 'Participate in a meaningful way': what is support for the members? if the list of matters mentioned (in the DD of Dr Yevtukh) has to be dealt with by volunteers, the question arises of whether this is not an overstated setting of a task.

In view of the lack of more specific wordings in the acts (than the quoted Art. 5 of the NM quoted), there is no indication of the activities, composition and powers (cf. "appropriate competences") of the committees in the 'Local Deputy Councils' and the 'Advisory bodies set up in the city councils'.

Art. 9 of the NM is an application of the general principle of equality to in the matter of the eligibility of members of minorities for a public mandate or office. This is certainly indeed a necessary requirement for the participation of members of minority groups in the exercising of part of the authority of the State, but is not in itself an indication of the participation of the minority group as a whole in the policy of a particular sector. In our opinion, this provision is consequently not an implementation of The Hague recommendations no. 5-6.

§ 7

Parental involvement (in conjunction with The Hague Recommendation 20)

The quoted articles 59 and 60 E and Art. 29 of the GSE, together with the principles arising from Art. 24 and 38 of the Constitution, Art. 6 of the NM, and articles 3 and 6 E, ensure that parents have the right to elect/be elected to the bodies of public self-administration in educational establishments. Consequently, there is certainly indeed 'parental involvement' with regard to this, but there is a lack of any specific indication of the presence of minority groups at school level. Moreover, the relationship with Art. 16 E is also not completely clear, since parents are not mentioned in this Article (yet, in our view, about the same subject). At last, reference should be made to the mention of among other things the trade unions as participating partners (at the end of Art. 16/3 E), an equivalent model that can also be followed for the minorities.

Parental choice

Articles 3 and 60 E guarantee parental choice. It is not clear to what extent this can be achieved in practice, bearing in mind the many possible combinations of preferences (language, education, level of education...).

3.2.4. Public and Private Institutions (in conjunction with Art 13 of the FCNM)

Unrestricted establishment is possible (articles 18 E, 11 and 4 of the GSE and 19-20 of the Vocational Training Act), provided that the need for a particular institution has been established by the Cabinet of Ministers or a municipality in accordance with a formation procedure after obtaining a license as well as the approval of the statutes and subject to the attainment of 'state educational standards'.

It is important that these preceding conditions should not be used as a form of preventive censorship. A non-discriminatory method is obviously required for this, something that has been implemented by Resolution 218 of April 1994 according to the table. However, the question arises of whether or not it is not appropriate from a democratic point of view (democratic control and democratic recognition of standards and enforceability by the citizen) to give the outlines of the establishment and maintenance standards a legal basis rather than to employ an administrative practice²⁴.

It is only in Art. 11.1 of the GSE that cultural education and language needs are taken into account with regard to the establishment of institutions. The question is whether this should not be generally applicable.

The provision of finance is in accordance with The Hague Recommendation 10 and the FCNM, since there is no state intervention in private establishments, while 'private' 'funding' is not prohibited (e.g. paragraph 5 of Art. 50 of the Vocational Training Act).

3.2.5. Minority education at primary and secondary levels (in conjunction with Art 12 § 2 and 14 of the FCNM)

§ 11

The authors of the Explanatory Note themselves recognize that 'Draft law on pre-school Education and upbringing' should be supplemented by a provision which states that a child should receive lessons in its mother tongue in the pre-school kindergarten (Compare recommendation 9 in DD of Ms Isohookana). It is consequently recommended that this suggestion be implemented.

Art. 26 of 'the Law on languages in Ukraine' (LU) mentions this language tuition in 'localities of compact residence': this is most probably consistent with the phrase 'as far as possible' in Art. 14/2 of the FCNM and 'wherever possible' in The Hague recommendation 11, but a narrow factual interpretation seems nevertheless not in keeping with the spirit of this recommendation.

§§ 12 - 13

The above-mentioned Art. 27 of the LU is not a satisfactory implementation of these recommendations which strongly emphasize the mix of native language and State language and the gradual increase in the number of subjects taught in the State language during the school career. The provision mentioned is too generalized for this.

The Resolutions and regulations in the table accompanying these recommendations give the impression that this component has indeed been included in these standards. Some of the questions that arise are:

- Is the proportion of native language / State language compatible with The Hague recommendations?
- Is there a gradual shift towards an outlined bi-(multi-)lingualism?
- Resolution # 1239 is understood to mean the way in which there is a place for teaching in a child's own language (not only teaching of the child's own language) in both the 'invariant' and 'variant component' of the curriculum; is this correct and, if so, is the proportion consistent with The Hague recommendations?

²⁴ The expert group presumes that a meaningful reading of art. 53 Constitution implies a legal act by Parliament.

In a view of the establishment of schools for minority groups, it should more generally be considered whether it is not appropriate to draft and to give a legal basis to the outlines of the establishment and maintenance standards (i.e. a quantitative indication of a 'sufficient demand' according to which the State is obliged to intervene by the establishment or subsidization of schools.)

§ 14

The above mentioned legal provisions only contain general qualification criteria which apply to all teachers, but do not give specific indications of adequate facilities for (access) to a teacher's education and training for minority groups.

According to the explanation on the above resolutions / regulations, entrance and degree examinations obviously exist. Are they actually held in each language as stated by the table states?

The DD of Mrs Lubynets and the report (pp. 28-29) gives different data and figures; it is not possible to assess whether these measures are sufficient to satisfy this recommendation. In our opinion, it may be inferred /concluded from this DD that they are insufficient at this point in time.

3.2.6. Minority education in vocational schools (in conjunction with articles 12 and 14 of the FCNM)

§ 15

The provisions of the Vocational Training Act lead to the conclusion that the socio-economic requirements are of decisive importance with regard to the establishment, maintenance and closure of a vocational training institution, even though Art. 18/1 E provides wider grounds. This is most probably correct, but it is not sufficiently clear whether this provision is able to ignore the desire of an adequate sufficient number of people in a minority (with shown vocational needs) with regard to the establishment of a school.

There is all the more reason for doubt, now that the Explanatory Note itself states that no request for the establishment of these training centres has been submitted by a minority. However, the Note itself recognizes the need "to study the requirement need of national minorities for vocational education, and to take measures in keeping existent establishments or (...) re-profiling (...). In case of need for vocational educational establishments of national minorities, it is necessary to provide an elaboration of training programmes in languages of national minorities".

As in §§ 12 and 13A, standardization that describes the quantitative establishment and maintenance standards of a school is recommended; in view of the limited government resources and the multitude of social tasks, a differentiated policy can obviously be pursued (cf. 'if their numerical strength justifies it').

§ 16

Art. 28 of the LU is consistent with this recommendation, although the question arises whether this is also the situation in practice, bearing in mind the conclusion in the previously mentioned passage in the Note.

3.2.7 Minority education at tertiary level (in conjunction with articles 12 and 14 of the FCNM)

Reference is made to

- The reservations in n° 5 and 10 - 15 of the note of Ms Isohookana;

- The note (point 7, paragraph 3) recognises the need for the supplementation of the 'Law of Ukraine on Higher Education' with 'particular standards concerning a provision of education for national minorities'; this provision should obviously be in keeping with The Hague Recommendation;
- The need 'to pay more attention to a preparation by establishments of a higher education of pedagogues for the pre-school and vocational education system of national minorities (point 7, paragraph 1, at the end of the note).

Article 4 of the Draft Law on Higher Education refers to articles 28 - 29 of the LU. The question is whether these provisions are fully consistent with their interpretation in the table:

- Is there effectively, as the note states, any legal guarantee that there is a 'competitive entrance examination' in the language 'in which they were certified at school'? Since this would imply that the languages of minorities are treated on an equal basis.
- Art. 28 of the LU states that, together with Ukrainian, tuition can be provided in the language of the majority of the population. The group of experts does not have an insight into the territorial demarcation which is used in order to make this operational and consequently to establish the majority; this cannot at any rate be done in a discriminatory way. Moreover it should also be pointed out that this form of wording does not take notice of the rights of other, quantitatively less strong minority groups.
- In the table, reference is made to 'national specialists' who are able to take an entrance examination and who can complete their studies in their language. It is not completely clear whether this concept can be related to Art. 15 of the Draft Law on Higher Education, in which case this probably consists of a limited group of students.

3.2.8 Curriculum development (in conjunction with Art. 12 of the FCNM)

Next to Art. 6 of the NM, which is mentioned in the table, we also refer to articles 3, 6, 56 E, articles 3 and 5 of the GSE and recommendations 3 and 4 in the DD of Yevtukh. All these provisions are an indication of respect for a multicultural society. However, the group of experts does not have any picture of school practice with regard to intercultural education nor of how the government aims to achieve and control this school practice in the sense of the recommendation.

There are also no precise legal provisions that require that the majority learn the language (languages) of the minority (minorities), although it is stated in the DD of Borodenkova: "Secondary school ensures perfect knowledge of the Ukrainian and native languages".

4. CONCLUSIONS AND RECOMMENDATIONS

4.1 General conclusions

1. The following recommendations with respect to the coherence and compatibility of the Ukrainian legislation on education of minorities with international norms do not tell the whole story. International treaties do not only oblige State Parties to have legislation that is in accordance with their provisions, but also oblige them also to implement and apply this legislation in an adequate manner. The expert group does not have sufficient data about the implementation and application of the afore-mentioned legislation in Ukraine. Therefore, in many cases it is not capable of judging the meaning of Ukrainian law provisions in concrete situations. It stresses however, that the Ukrainian authorities will have to concentrate their activities in the near future on the adequate implementation and application of legal provisions, which means concretising them in accordance with the international law. In this context, the legislator, the administration and the jurisdiction share joint responsibility.
2. International declarations and recommendations are not legally binding State Parties. However, when approved by a State Party, they oblige State Parties to act according to the 'spirit' of these international declarations and recommendations. The expert group recognizes that the filling in of this 'spirit' is left to the discretion of the Ukrainian state powers and is eventually determined by Ukrainian law.
3. The international treaties concerning intercultural rights, such as the aforementioned provisions of the International Covenant on Economic, Social and Cultural Rights (ICESC), the Convention on the Rights of the Child (CRC), the International Convention of the Protection of the Rights of All Migrant Workers, and Members of their Families (CPMW) and the Framework Convention for the Protection of National Minorities (FCNM) are apparently not self-executing. These provisions imply obligations to *progressively* realize the aims of such education. According to Article 9 of the Ukrainian Constitution these provisions immediately apply in the Ukrainian legal order. This means that they are obligatory for the Ukrainian legislator and administration. Discretion is left to the Ukrainian State authorities, not in the sense that the objectives of the rights that are guaranteed by these provisions are disputable, but in the choosing of the means to reach to these objectives. The expert group points out that, according to international law, the judgment of the chosen means should be based on principles of legitimacy, necessity and proportionality.
4. The provisions of international treaties concerning non-discrimination, such as Art. 26 of the International Covenant on Civil and Political Rights (ICCP) constitute certain relevant rights that individual members of a minority group can directly invoke before a judge. It also appears, that Art. 2 of the First Protocol of the European Convention on Human Rights and Fundamental Freedoms (ECHR), which stands under the supervision of the European Court of Human Rights, is of great importance for the protection of educational rights of members of minority groups.

These first four conclusions are the background of following 12 recommendations, stated by the expert group.

4.2 Recommendations

1. To remove any sources of misapprehension, the expert group advises the provision of means of access to objective information for a considerable part of the population. The information

should include the general scope and meaning of the right to education as legally provided by the Conventions and national law in general and focused on minorities in particular.

2. In order to effectively guarantee the right to education of members of minority groups effectively against violations of this right by local authorities, the expert group recommends the adoption of a clear mechanism in the (educational) legislation concerning the state supervision of decentralized governments (oblasts, districts, municipalities). Of course, various ways of effective supervision are possible. Eventually, this is a matter for the sovereign state-powers of Ukraine. However, the expert group suggests a mechanism in the shape of an independent complaints committee at the level of the central government, to which an individual can address his or her complaint about violation of his or her right and the committee would examine it in an impartial way to see if the complaint was justified. The judgment of the complaints committee should not be legally binding. It is however essential that it should be made public. The complaints committee should have the opportunity to make “public made” proposals and recommendations to the central and decentralized political authorities for the improvement of the educational system and for the prevention of future violations of educational rights of members of minority groups.
3. With all due respect to the sovereign right of the State of Ukraine to regulate the entrance and deportation of aliens, the expert group urges that the legislation be adapted in such a way to ensure that minor illegal aliens staying in the country should be offered the right to visit schools and to receive education.
4. The right to education, conceived as the inalienable right of every minor to develop his talents and abilities, should be guaranteed by the introduction of balanced legislation with respect to the minimum duration of compulsory education and the supervision thereof by the government.
5. The expert group recommends the adoption of new provisions in the legislation on primary and secondary education in order to define clearly the term “minority” and in order to prescribe minimum criteria for the foundation, management and closing of schools in which education is offered in the language of ethnical and national minorities.
6. The expert group suggests the adoption of new legislation for the introduction of a “pupils statute”. The right to education, in his various forms, is served by the elaboration of pupils’ rights and obligations within the school in a pupil’s statute.
7. The expert group appreciates that numerous efforts are made by the government of Ukraine for the recognition of studies offered by non-state or foreign institutions. However, it finds gaps in the legislation concerning inspection, since the assurance of the quality of the education at “minority schools” seems to be insufficient. The expert group suggests the adoption of new legislation through which the existence, the task, and the powers of school inspectors will be in accordance with norms in countries with a well-developed school system.
8. With respect to studies that are followed by Ukrainian students in foreign institutions, the expert group suggests an inventory of the needs and possibilities of minority groups to study in foreign countries, and of the existing problems concerning recognition of foreign studies. The expert group recommends the taking of concrete steps on the basis of this inventory in order to facilitate minority groups.

9. The expert group finds a serious gap in the legislation concerning the funding of educational institutions at all levels. The actual provisions are insufficient, because they only stipulate the principle of public funding. In the interest of the legal certainty of the institutions and the rights of minority groups that are connected with it, and in the interest of assuring the quality of education, the expert group finds it necessary to adopt new legislation with respect to the criteria for public funding, the conditions for the use of public funding and the reasons for which the public funding is required. In the opinion of the expert group, detailed regulation in this respect can contribute in a relevant way to respect of the right to education of minority groups.
10. According to article 5 of the Law of Ukraine in national minorities in Ukraine there is Council of Representatives of public organizations of national minorities. There are also Local Deputy Councils and the Advisory Bodies set up in the city councils. The expert group recommends the adoption of new provisions in the fore mentioned Law or in another law, concerning the representativeness and the independence of the members of the councils. With respect to the local councils and advisory bodies, the expert group recommends the making of global provisions in national law to provide more clarity and direction to the activities, powers and composition of these councils and bodies.
11. According to art. 18 Law on Education, art. 11, paragraph 4, Law on General Secondary Education and art. 19-20 of the Law on Vocational Training the right of minorities to set up and to manage their own private educational and training establishments is guaranteed. The right to set up their own establishments is a fundamental right that is also closely connected with the right to education of article 53 of the Ukrainian Constitution. Given the aspect of a fundamental right, the expert group recommends the working out and laying down in national law the norms concerning the foundation and management conditions of non-state schools, the procedure, the conditions under which a school will be licensed and the state educational standards. Article 11, paragraph 1, Law on General Secondary Education should also be laid down in the other laws concerning education.
12. The expert group supports the suggestion made by Ukrainian colleagues, to add a provision to the 'Draft law on pre-school education and upbringing' in which it is stated that a child should receive education in his or her mother tongue in the Kindergarten.
13. Art. 27 of the Law on the languages of Ukraine is not in line with The Hague recommendation 12, while the formulation is too general. The expert group recommends the adaptation of this article to the principles of The Hague recommendation 12 that defines a subtle mixture of native language and State language in education.

C. How do the Laws and Practical Regulations of Ukraine reflect International Conventions ?

by Ms Tytti ISOHOOKANA-ASUNMAA

Result/aim:

The aim of the development of the legislation is to build in Ukraine a society that is able to provide basic services to its citizens in their own language (e.g. health services, media, religious services, safety, school, cultural services) and to respect, as well promote, the position of minority cultures in Ukraine. This kind of legislation strengthens bilateral respect and develops diversity in the society.

Present situation:

The present situation in the legislation of Ukraine is a good basis for improving the rights of the minorities in education. It has been a pleasure to see how Ukrainian legislators have appreciated the cultural enrichment of the minorities in their country. In this paper the focus is on how to regulate the rights of the minorities in the field of education, particularly in higher education.

Background problems:

Ukraine became a member of the Council of Europe in 1995. It has not yet ratified the Council's essential convention on the rights of national minorities, "European Charter for Regional or Minority Languages". That should be done as soon as possible.

The status of minorities is rather unclear in the existing legislation. In the Constitution and other legislation there are many points of view on national minorities but the problem is that there is no exact definition for "minority".

The only exception is Article 10 in the constitution, which mentions Russian and that there are around 130 different ethnic minorities living in Ukraine. This definition is too general. The law on languages in Art.4 establishes a special status for Russian as an international language. Ukraine has to decide whether the Russians are a minority or whether they should have a special status and to which other national minorities (and minority languages) will give a special status in legislation. The number of official minorities must be considerably less than 130 - otherwise the administration will not be able to ensure all the services in minorities' languages. These decisions must be made by the Parliament. An example of the criteria for a definition of a national minority could be as follows:

- a population group that differs from the majority population group on the basis of its ethnic origin or its nationality or its language or its religion
- a population group that is numerically inferior
- a population group that is not in a dominant position in the country concerned
- a population group that demonstrates a wish to preserve its originality and its culture, its traditions, its religion or its language
- a population group that does not consist of recent immigrants or refugees
- a population group that has deep roots in the country where they are living (as a rule citizens)

To be able to estimate the concrete means of how the status of national minorities in education can be established, exact statistics are needed. Ukraine is planning to organize a population census in 2001. This is also ideal for the improvement of the status of the national minorities. It is very important that every citizen is able to take part in the population census without limitations caused by his or her nationality and/or mother tongue.

There is a need for a map of the regions where a majority of non-Ukrainians prevails. Are there any statistics of baccalaureates and higher education students based on mother tongue? That information

is needed in order to know how many minority-speaking baccalaureates there are in every generation and how many of them continue in university education. Is there a difference when, for example, they are compared to Ukrainians?

Ukraine should improve its legislation in the field of education to synchronize forms of education with international norms. OECD's model structure for different levels in education is the widely accepted norm. One point is, that lower vocational education cannot be called higher education. The present legislation causes confusion and is difficult to compare in foreign systems. In these comments the problems of vocational education are not raised.

Discrimination of national minorities can be avoided by using the means listed below:

As has already been said, in order to make clear the position of minorities, an unambiguous definition for a minority, and a list of those minorities, is needed in the official legislation of Ukraine.

After having made these decisions, the administration should inform all the citizens so that parents may decide whether they would like to have their child at a Ukrainian elementary and lower secondary school, or at a school using a minority language. All the students in upper secondary, post-secondary and tertiary education must also be informed of these decisions so that they know where and how it is possible to study in minority languages, or how to study in their mother tongue when all the rest of education is given in Ukrainian.

Basic education must be given to the official minorities in their mother tongue. It is a premise for many minority people to achieve an adequate level of education in their own language, at least the very first steps at school. This can be seen in the present law on languages: *"Ukraine guarantees the right of every child on upbringing and education on his native language"*. The use of minority languages should be recommended, even in the pre-primary level. In general it is a very good principle that the only limitation to entering university is the level of knowledge, but all children must have equal possibilities to start education. There could also be extra language courses for those minority nationality pupils who would otherwise have serious problems in entering university because of the language. This is the responsibility of the Ministry of Education. For these reasons, statistics of what is needed are very important, together with a survey covering information on how language teaching is organized in different regions.

The premise for getting in to higher education is baccalaureate-diploma, and it should be possible to obtain this in one's own native language, if the individual wants to do so. This means that the official Ukrainian baccalaureate diploma must also be recognized legally in the official minority languages. It should also be considered that in some cases the admission tests could be carried out in an official language other than Ukrainian, with regard to the principle of equality of citizens. It is also important that the results of the tests are made public so that students are able to check the background of their own results.

Organizing minority language education in primary schools respecting parents' choice, requires that in universities:

- a) there is sufficient teacher training in minority languages
- b) there are sufficient possibilities for studying minority languages, professorships in these languages and cultures and/or quotas in foreign universities for the study of these schemes.
- c) there is a minimum rate defined in the law, compelling the authorities to establish a special school/class for pupils from a minority culture.

There must be a sufficient number of education places in the universities. The government of Ukraine must write and approve a political agenda on education in which they define for what percentage of each age class higher education is provided, and what percentage of baccalaureates in each age class. The agenda should state in which branches there is a need for extra places. This could operate, for example, for five years.

Quotas could be used for national minorities in, for instance, teacher, medical and juridical training. At first the quotas could be especially reasonable. We have to remember that minorities also have the right to basic services in their own language. The precondition would be that there were enough minority language speaking personnel to give the services.

In higher education the tutor system may give important support to avoid dropouts among non-Ukrainian speaking students. The tutor system might also be transferred to lower education to help minority language speaking pupils and to make ties between different groups of nationalities.

Allowances for students from national minorities are a good investment.

It is positive fact that Ukraine already has bilateral as well as multilateral co-operation agreements. But the administration should work towards getting a partnership for Ukraine in EU's wide educational programmes Leonardo (vocational education) and Socrates (all other education). There are already many non-member countries in those programmes.

Are there national minority groups in which the social level is below average and which for this reason do not have economical possibilities for education? How can education be organized for them? These groups need special economic support for their study expenses. What kind of legislation is there for study grants? A minority with this problem is, for example, gypsies in many European countries.

In lower and upper secondary schools, in vocational schools and in tertiary education Ukraine must ensure the possibility of studying in one's mother tongue and one's own nation's culture when all the other education is in Ukrainian. One possibility is for the minority language to be adjusted in the constitution and in the law on languages in Ukraine as a second language at schools when Ukrainian is the first language in the syllabus. Courses in the mother tongue should also be provided as non-formal education, e.g. in radio, television, evening courses in the third sector, because the ability to speak and write language should never be a hindrance to studying.

The syllabi of primary schools must include multicultural sections meant for all the pupils, not just for the children from minority cultures. The Ministry of Education must prepare modern educational material for this purpose.

The lack of educational material in minority languages seems also to be a problem, but it is encouraging that the Ministry of Education places importance on the preparation of curricula and textbooks. However, a programme must be created for developing the production of educational material. Internet may help a lot in this task. It is essential to draw up a list of the most pressing needs. Co-operation with foreign Ministries of Education is remarkable. Limited economical resources make co-operation with foreign tertiary education authorities a necessity.

The responsibility for execution must move to regional administration under ministerial control. The aim to establish centres of co-ordination is very good. Advisory teachers in different branches can be nominated to every region. They will be formed into a training network over the whole country. This network can be also used for the production of teaching material. Their task would

also be to monitor and report on improvement to the Ministry, and possibly to the Council of Europe.

Indicators for monitoring the improvement must be developed.

The state budget of Ukraine should include an annual allocation for the development of national minorities.

SECTION III:

EDUCATION POLICY AND MINORITIES IN UKRAINE IN PRACTICE

A. The Actual Education Situation (Primary & Secondary Education)

by Ms Larysa BORODENKOVA

1. REALIZATION OF THE RIGHTS OF NATIONAL MINORITIES IN THE FIELD OF GENERAL EDUCATION

The last ten years have brought changes to the political map of the world and Europe. New states have appeared in Central and Eastern Europe and caused further development of national self-awareness and stimulated regeneration of languages, cultures and historical customs. Population in most of the countries including Ukraine became more versatile.

Democratic changes in Ukraine have brought equal political, social, economic and cultural rights for all citizens of Ukraine, beyond their national origin. Secondary educational establishments offer all citizens of Ukraine equal possibilities of receiving fully fledged general secondary education, due account being taken of their interests, gifts and capabilities. Secondary education ensures the all-round development of a child as a person, the enrichment and through this the intellectual potential of the people, its spiritual and cultural values.

Education in Ukraine represents a continuous system of educational levels and is designed to fully meet the educational needs of the whole population, to develop personality, to motivate people to life-long education. Pre-school education, general secondary school, extra activities, vocational and higher school, accreditation and training of specialists, and scientific research create the most favourable conditions for combining training and education and to shape the personality of a Ukraine citizen.

The starting point in the continuous system of education is *pre-school education* both in families and in pre-school educational institutions. The aim of pre-school education is the formation of a child's personality, its physical and psychological development, benefit of early life experience, and readiness for further training.

Pre-school education teaches a child his or her mother tongue, both in a kindergarten and family, to develop cognition, creative abilities, to teach him or her the culture of communication.

General secondary school as a basic component in a system of continuous education ensures comprehensive development of a child's personality, of his or her abilities and talents, thus enriching the intellectual, spiritual and cultural potential of the people.

General secondary education provides thorough knowledge of the basic subjects by opinion, provides vocational bias, forms the understanding of nature, individual and society, the civic values of a person, the possibility of obtaining higher education.

Extramural educational institutions are designed to meet individual psychological, physical and social needs of a person and reveal his creative potential. Supplementing, expanding and deepening the influence of the family and school, they meet individual requirements of small children, teenagers and youth, stimulate the development of their gifts and abilities in various spheres of human activities – science, technology, culture and sports.

Vocational school combines humanitarian, general technical and special subjects with productive work and ensures the right of an individual to receive vocational training, to obtain special skills and qualifications corresponding to his or her interests, abilities, the state of health and social order of the society and state.

Higher education in Ukraine makes it possible for every citizen of Ukraine or a citizen of any other country to master various programmes of higher education, to get retraining or to upgrade qualifications, to do graduate, postgraduate or intern studies, or to participate in fundamental or applied research.

1.1. PRESCHOOL EDUCATION

The World Declaration on the survival, protection and development of children, published in the nineties, proclaims that to achieve harmonious and all round development children must be brought up in families, which should bear full responsibility for the safety of their lives. All other social institutions should support the parents' efforts in providing the normal physical and spiritual development of children.

The first social environment a child finds himself or herself in is a pre-school institution. Ukraine has a wide system of pre-school institutions, which differ in form, content, orientation.

At the beginning of the year 1.3 million children attended 20.2 thousand kindergartens, which constitutes 41.3 per cent of their total.

In different regions of the country there is an upward trend of schools with a certain professional bias.

1.2 GENERAL SECONDARY SCHOOL

Secondary educational establishments offer all the citizens of Ukraine equal possibilities of receiving fully fledged general secondary education, with due account being taken of their interests, gifts and capabilities. Secondary education ensures all round development of a child as a person, thus enriching the intellectual potential of the people, and its spiritual and cultural values.

According to the Constitution of Ukraine, general secondary education is compulsory and the right of every citizen to receive it is guaranteed by the state.

The basic type of secondary educational establishment is a general secondary school of three levels.

Primary school (the first level) ensures overall development of a child, provides a child with good writing and reading skills, basic knowledge of arithmetic, teaches him to use books and other sources of information, shapes general understanding of environment, gives the abc of morals, personal communication and hygiene, and develops the initial working skills.

The differentiation of educational process at the initial level of education is achieved by the option (from 6 or 7 years) and the duration (3 or 4 years) of education, and of adapting the scope of teaching material considering the individual abilities of junior pupils.

Secondary school (the second level) ensures perfect knowledge of Ukrainian and native languages, initial knowledge of fundamental sciences, the possibility of studying at other educational levels, motivation to either start working life or to get a qualification through various forms of vocational training, and the formation of a high moral and civic outlook.

The 9th form graduates can continue their studies at high school (evening school or by correspondence), vocational technical school which together with professional training provides general secondary education, at a higher educational establishment of the I or II level of accreditation which also provides general secondary education.

High school (III level) provides general secondary education based on wide differentiation of studies, profound knowledge of fundamental sciences, professional specialisation, profound understanding of nature, society and human beings, civic responsibilities, and the possibility of obtaining higher education.

It is up to the local authority to decide what will be the language of studying. They take people's wishes into consideration. There are many different classes for pupils who are eager to learn different languages. They can learn minority languages.

All school activity is based on the law of Ukraine, on equal conditions for people in Education, on state demands concerning contents and level of education, on the stimulation of creative work of teachers and scientists. The network of schools concerning socio-economic, national, and cultural-educational requirements is formed with the help of the local authority. According to these requirements we have 21280 secondary schools. Among them are:

Ukrainian language - 16352 (37548 pupils),
Russian language - 2399 (12156 pupils),
Rumanian language - 98 schools (25351 pupils),
Moldavian language - 11 schools (4715 pupils),
Hungarian language - 67 schools (16617 pupils),
Crimean-Tatar language - 9 schools (3004 pupils),
Polish language – 3 schools (739 pupils) and
bilingual – 2339 schools.

We have some private schools where the national language is studied, for example in Kyiv or Odessa we have some primary schools where the Jewish language is studied.

Some public organisations initiated the creation of Sunday schools where pupils can study the history of languages and traditions and customs of different nationalities. Some languages are taught optionally: - Crimean-Tatar, Hungarian, Polish, Rumanian, Turkish, Jewish, Bulgarian, Slovenian, Czech, German.

We have some groups of children from these minorities in pre-school educational establishments.

Educational establishments are created on the basis of normative and legal documents, which provide the conceptual basis of their activities and administrations.

The reform of the contents of general secondary education is under way. The draft Law on general secondary education, the basic curriculum and state standards of general secondary education has been prepared. They define state requirements for the minimum general secondary educational training of schoolchildren.

The Educational Plan consists of two parts; variant and invariant. The invariant part of the contents of education consists of the list of the subjects that are compulsory in all secondary schools in Ukraine, and the variant part of the contents of education consists of the list of the subjects that contain the attitude to minorities, and the enhancing of children's intellectual development.

In the case of minorities, the children study their native language, literature, history and geography of their native land.

2. RECOMMENDATIONS FOR THE IMPROVEMENT OF EDUCATIONAL RIGHTS OF NATIONAL MINORITIES IN THE FIELD OF GENERAL EDUCATION

With the need for fundamental and rapid decisions on material issues, it is necessary to create Departments of Educational Establishments for National Minorities in the regions, together with Centres for the co-ordination of educational activity of schools of national minorities, which pursue the co-ordination of efforts of all interested parties to satisfy the broader educational-cultural needs of national minorities of a region. The representatives of public organizations of the region should be included in the structure of such Centres.

It is recommended that a Centre be created in Kyiv, under the auspices of the Council of Europe, for studying the international experience of the maintenance of educational needs of national minorities, studying the international normative-legal acts on the educational rights of national minorities, and for distribution of the information concerning the international experience on maintenance of the educational rights of national minorities. The creation of a library dealing with the aforementioned subjects is also recommended, together with a Division on creating the optimal model for application in Ukraine of the international experience of maintenance of the educational rights of national minorities.

B. The Actual Education Situation (Professional & Higher Education)

by Ms Kateryna LUBYNETS

1. REALIZATION OF THE RIGHTS OF NATIONAL MINORITIES IN THE FIELD OF HIGHER EDUCATION

Ukraine, despite its economic troubles, creates favourable conditions for protection of the ethnic, cultural and language originality of national minorities. That is one of the important factors of social and political stability in society. Education is one of the most important factors of maintenance of stability in the society, and only by education, states the Ministry of Education and Science of Ukraine, is it possible to realize the rights of national minorities, as only education determines the place of the state in the world, and a man or woman in society. Only education can take our state out of crisis, ensure the future of our people, and ensure a worthy life for each citizen.

Among the first legal acts adopted after the declaration of independence of Ukraine, there was a Declaration on the Rights of Nationalities of Ukraine (1.11.1991). In Article 1 of the Declaration it is stated that the Ukrainian state guarantees to all peoples, national groups and citizens, who live in its territory, political, economic, social and cultural rights.

Discrimination on the basis of national background is forbidden and is subject to legal sanctions. The access of national minorities to education, in particular to higher education, and equality of opportunity is a question of special concern for our state.

One of the main tasks of education in Ukraine is the revival and further development of a national system of education, its orientation towards satisfaction of the needs of the people of Ukraine, national-cultural and national-educational rights and needs of all citizens irrespective of their origin, race, colour of skin, language, religion, political views, national, social or ethnic background. All this presupposes radical updating of the content of education in view of new social realities, the introduction of a single direct content of continuous education, advanced pedagogical concepts and technologies, the best domestic and global experience, and the formation of new generation of pedagogical staff.

One of the most important fields in a system of continuous education is higher education.

In higher educational establishments of Ukraine the regional and professional optimisation of educational establishments is gradually being carried out in view of the ethnic, demographic, socio-economic situation. Academies and other institutions of higher education are being created on the basis of existing educational establishments, and through the mechanism of accreditation the classical and technical universities,

The higher educational establishments of the state, and other forms of ownership, are functioning. 951 higher educational establishments of ² - ^{2V} levels of accreditation (vocational schools, technical schools, colleges, institutes, academies, universities) belong to this network.

The network comprises 653 higher educational establishments of ² - ²² levels of accreditation, including 592 establishments of a state form of ownership. The general quota of students accounts for 503,000. Among them there are 460,000 students, ageing from 14 to 24. The potential represents 100 students for each 10,000 of the population.

The network of higher educational establishments of ²²² - ^{2V} levels of accreditation comprises 299 establishments, including 206 state-owned establishments. Among them there are 98 universities, 46 academies, 62 institutes. 23 universities and academies have the status of a national higher educational establishment. The network provides training for 240 students for each 10,000 of the population. 1,210,000 students study at the universities, academies, and institutes. Among them there are 1,086,000

students, ageing from 17 to 24, who receive higher vocational training, which is 90% of the general number of students.

According to the Law of Ukraine "On Education" higher education is obtained at higher educational establishments that correspond, as a rule, to four levels of accreditation:

- First level - technical schools, vocational schools;
- Second level - colleges;
- Third level - academies, institutes;
- Fourth level - universities.

The levels of accreditation of educational establishments guarantee the appropriate levels of qualification of specialists, who receive higher education or take a retraining course in a certain professional field or speciality at the following educational qualification levels: "junior specialist", "bachelor", "specialist", "master".

"Junior specialist" (level I) is the educational qualification level of a specialist, who on the basis of general secondary education has obtained primary technical or professional training for the performance of concrete tasks of an industrial or service character.

"Bachelor" (level ²²) is an educational qualification level of a specialist, who on the basis of complete general secondary education has received a thorough general educational preparation, fundamental and professionally focused skills and knowledge for the performance of typical professional tasks in a certain field of economy, industry, science, engineering, or culture. The graduate is awarded with the qualification of "Bachelor" and the diploma, in which the name of the field of competence ("Pedagogy", "Economy", "Philosophy" etc.) is determined.

"Specialist" (level ²²²) is a completed educational qualification level of a specialist, who on the basis of the received qualification of "Bachelor" has obtained special skills and knowledge, necessary experience of their application for the decision of professional tasks in the certain field of economy, industry, science, engineering, culture. The graduate is awarded with the qualification of "Specialist" and the diploma, in which the speciality (for example "Finance and Credit") and concrete qualification, acquired by a specialist ("Engineer", "Teacher" etc.) is marked.

"Master" (level ^{2V}) is a completed educational qualification level of a specialist, who on the basis of previously received qualification of "Bachelor" has obtained thorough special skills and knowledge of an innovatory character, experience of application and the production of new knowledge for professional decision-making in fields such as economy, industry, science, engineering, or culture. The programme of preparation gives the graduate knowledge and skills of scientific, pedagogical and research activity. The graduate is awarded with the qualification of "Master" and the diploma, in which the speciality or field of knowledge is specified.

It should be noted that today there are more than 500 state- and non-state-owned higher educational establishments and subdivisions that carry out the improvement of professional skills and retraining of the adult population, working in various areas of national economy. Each citizen, without any restriction, can obtain higher education. The primary factor is a level of knowledge.

According to the rules of admission the Ministry of Education and Science of Ukraine has developed a number of normative documents, which assist in the realization of constructive reforms and practical work regarding the educational/cultural needs of national minorities in the field of higher education. Since its declaration of its independence, Ukraine has developed a significant legislative base. The Law of

Ukraine "On Education" has been adopted and the Law of Ukraine "On Higher Education" has gone through its second reading in the Verkhovna Rada of Ukraine.

It should be noted that the policy on national minorities in Ukraine has always been one of the most important concerns of the state. Within the framework of the State Programme "Diaspora until 2005 " the representatives of national minorities receive annual state grants for training at higher educational establishments of Ukraine.

According to the Law of Ukraine "On National Minorities" (Article 17), the state assists the development of international co-operation in maintenance and protection of rights and interests of national minorities, in particular through the conclusion and implementation of the multilateral and bilateral agreements.

The guarantee of protection of the rights of national minorities is given an important place in the intergovernmental agreements of Ukraine with foreign states.

The Ministry of Education and Science of Ukraine has concluded 60 international agreements that are now in force. The Agreements presuppose the allocation of quota for training the representatives of national minorities. Co-operation with Romania, Czech Republic, Hungary, Poland, Germany, Moldova, Russian Federation, Byelorussia, and Slovakia is the most productive. During the last 5 years 178 graduates of the Odessa comprehensive schools have been trained at higher educational establishments in Moldova. For the year 2000 higher educational establishments in Moldova allocated 45 places. 75 graduates were sent to Romania. Among them were 29 students who trained in pedagogical specialities. For instance, within the framework of international agreements:

- 248 students from Zakarpattyia region studied in Hungary,
- 98 in Slovakia,
- 100 in Romania,
- 10 in Moldova.

Special attention has been given to maintenance of the national-educational rights of the citizens of Russian Federation.

The Ministry of Education and Science of Ukraine assists the creation of chairs, departments of the Russian language at higher educational establishments of Ukraine and the Ukrainian language at higher educational establishments in the Russian Federation. The Ministry of Education and Science of Ukraine supports close contacts with cultural associations of Ukrainians in Tyumen, Bashkortostan, Krasnodar region, Yakutia, Republic of Komi.

In each region of Ukraine efforts are made to respect the educational rights of national minorities. For instance, 2430 student representatives of national minorities are being trained at higher educational establishments of the Zakarpattyia region. 560 Hungarians, 276 Russians, 64 Slovaks, 27 Rumanians, 22 Germans and 205 representatives of other nationalities are studying at higher educational institutions of the region, in particular at Ushhorod University.

At Ushhorod University there are chairs of Slovak philology (31 students), Hungarian philology (102 students), German philology (224 students), classic and Rumanian philology (11 students), Russian language and literature (109 students).

Since coming into existence, University Faculties have trained 621 students in Hungarian philology, 23 students in classical and Rumanian philology, 8 in Slovak philology, 712 in German philology, 3210 in Russian philology.

In general 23,300 pupils are being trained in 33 technical training colleges in Kyiv. The Russian language, as a subject, according to the syllabi, is studied at 23 technical training colleges (16,100 pupils).

Among non state-owned higher educational establishments, students are being trained in the Hungarian language in Zakarpattya Hungarian Teacher's Training College, established in 1996.

Analysing the situation in the Autonomous Republic of Crimea, positive examples of realization of the rights of national minorities can be observed. During the period from 1990 to 2000 the number of students of the Crimean-Tatar language increased from 8868 up to 39863, and the number of students who study all subjects in the Crimean-Tatar language increased from 78 students in 1990 up to 4324 in 2000.

In all regions of Ukraine there is a problem of lack of normative-legal base on the development of education in the native language. There is no specification of what educational level in the native languages is necessary for admission, nor any indication of how it can be introduced.

Article 10 of the Constitution of Ukraine, and Articles of the Law of Ukraine "On Education", according to their normative-legal content, concern the rules of law of a directing and determining character. This means that mechanisms of realization of any particular rule of law are not indicated, and only this norm determines the precise borders in which it can be realized.

With a view to improving the normative-legal base of the development of education of national minorities the Ministry of Education and Science of Ukraine has established the Division on National Minorities and Diaspora to carry out this activity. The Division updates the content of education for national minorities and introduces the new educational-professional programmes on the training of specialists. For more qualitative training of specialists - not only the representatives of national minorities - it is necessary to create syllabi of a new type, to train highly qualified teachers and provide them with textbooks and manuals.

The legitimacy of changes in syllabi, and the improvement of normative-legal bases is maintained by creating consultancy services at the Ministry of Education and Science for representatives of regional state administrations, rectors of higher educational establishments, and the public. The most effective forms of advice are "Round tables", meetings of teachers of certain subjects, working meetings of the official bodies of the Ministry and regional representatives.

The Ministry of Education and Science of Ukraine takes part in sessions of the Supervisory Council on National Minorities at the President's Administration of Ukraine.

There are regular interviews of the official bodies of the Ministry of Education and Science of Ukraine with the press, radio and TV.

It should be noted that this problem is being thoroughly and carefully dealt with.

The preparation of the pedagogical staff plays a special role in the process of taking an appropriate decision on a question. Teachers working at higher educational establishments have to obtain regional attestation, and participate in retraining courses at regional institutes of methodology of training, education and improvement of qualification. There have also been study visits to Hungary, Romania, Slovakia, and Germany for Ukrainian pedagogical staff.

Training of the pedagogical staff for higher educational establishments is carried out at pedagogical institutes, universities and classical universities.

In total, 17 out of 27 pedagogical universities and institutes train teachers of the Russian language and literature.

For the needs of Jewish minorities, the International Solomon University has been accredited to offer the following specialities: biology, computer software, world history, and law.

The training of teachers in the Polish language is carried out by Zaporizhzhya and Lviv classical, Drohobich and Zhitomir pedagogical universities; for the Bulgarian language, by Lviv classical and South-Ukrainian universities, Belgorod - Dnistrovsk pedagogical college; for the Rumanian language, by Chernovtsy classical, South-Ukrainian pedagogical universities; for the Moldavian language, by Chernivtsy university.

For the purpose maintenance of personnel teaching the Crimean-Tatar language and literature, there the Crimean State Industrial-Pedagogical Institute was opened in 1994, and 50% of teachers and students are of the Crimean-Tatar origin. In 1999 the Institute had its first graduation ceremony; 25 graduates received a speciality "teacher of the Crimean-Tatar language and literature".

Training of teachers of the Crimean-Tatar language and literature is also carried out at Taurian Vernadsky National University.

The course on training and retraining of teachers of the Crimean-Tatar language and literature was organized at the Crimean Republican Institute of Improvement of Qualification and Pedagogical Personnel Retraining. From 1999, the subject retraining of teachers has been put into practice.

However, the lack of maintenance of personnel should be carefully considered. For instance, in the Autonomous Republic of Crimea, only 51,5% of the teachers of the Crimean-Tatar language and literature received basic education; no staff are available for teaching all subjects in the Crimean-Tatar language.

In spite of the difficult financial situation in the field of education, the Ministry of Education and Science of Ukraine has carried out a number of measures for material and technical improvement in all higher educational institutions, and in particular, where representatives of national minorities are trained. Within the framework of separate programmes the Cabinet of Ministers of Ukraine supports such educational institutions. For instance, in Autonomous Republic of Crimea the Programme of Arrangement of Social and Cultural Development of Deported Citizens in ARC for 2000 is being implemented.

Due to financial restrictions, the challenge for all higher educational establishments of Ukraine, including higher education institutions, where the representative's national minorities are trained, is the strengthening of their material and technical base (maintenance of furniture, computer engineering, devices and tools, visual aids).

Financial restraints in the educational sphere hinder the material maintenance of educational institutions, and this negatively influences the organization of the educational process.

Special attention should be given to ensuring that students of higher education institutions are provided with textbooks and manuals, programme literature.

In the Odessa region, for example, at the Odessa Institute of Improvement of Qualification, a laboratory of Bulgarian studies has been established. A number of manuals in the Bulgarian language, a Bulgarian-Russian dictionary, a programme on the Bulgarian language and 12 methodical items on the Bulgarian language have been developed.

The provision of textbooks for national minorities remains an unsolved problem.

For instance, there are no available textbooks for studying the Turkish language at higher educational institutions in the Kherson region, Gornostaiivsk, and there are no textbooks on the Crimean-Tatar language in Genichesk region.

There are no textbooks in the German language in educational establishments of Sumy region (supply accounts for 87%) as well as in the Russian language (59 %).

A number of subjects in the Polish language in Lviv region are taught by using textbooks published in the Ukrainian language, as there are no translated textbooks.

The provision of textbooks in Hungarian and Rumanian educational establishments is very problematic in the Zakarpattya region. Rumanian schools are currently supplied with the textbooks at the level of 85%, which, in comparison to Hungarian schools, is higher by 25%. There is no educational-methodical literature for teaching the Ukrainian language and literature at higher educational establishments, where national minorities students are trained.

Today the Ministry of Education and Science of Ukraine is preparing a new generation of quality textbooks for the needs of national minorities. The state has financed the publication of textbooks, in particular, in Russian, Rumanian, Hungarian, Polish, Crimean-Tatar, Bulgarian and many other languages.

The publication of manuals and maintenance of educational establishments, where representatives of national minorities are trained, has always been and remains an issue of great state concern in Ukraine. This is confirmed by the fact, that the publication and delivery of these books to educational establishments is carried out at the expense of the state. With the purpose of improvement of developing and publishing the textbooks, it has recently been decided to create at the Ministry of Education and Science of Ukraine and the Academy of Pedagogical Sciences of Ukraine a laboratory on the problems of educational literature and an automated system called "Textbook".

2. RECOMMENDATIONS FOR THE IMPROVEMENT OF EDUCATIONAL RIGHTS OF NATIONAL MINORITIES IN THE FIELD OF HIGHER EDUCATION

In order to train specialists with high qualifications, to improve the quality of education of national minorities, and to promote further the democratisation process, it is necessary to mention in the draft Law of Ukraine "On Higher Education" the increasing role of universities as polycultural centres of education and culture, using advanced foreign experience and achievements in the sphere of higher education of Ukraine.

The new syllabi should mention using advanced educational technologies and the wide introduction of computer engineering with the purpose of exchanging knowledge and skills, strengthening creative potential and intercultural dialogue, and increasing civil participation and mutual understanding between nations.

The draft Law of Ukraine "On Languages" should contain precise definitions and mechanisms of realization and maintenance of national minorities through the provision of textbooks and manuals in the field of higher education, and should determine concrete ways of maintaining HEE through the relevant specialists and, with the purpose of realization of this Law, to provide the improvement of qualification of teachers of language of national minorities abroad.

A fundamental and rapid decision should be made on material issues, and it is necessary to create Departments of educational establishment of national minorities in region, together with Centres of co-ordination of educational activity in national minorities schools which would coordinate the efforts of all interested parties to satisfy the broader educational/cultural needs of national minorities of a region. Representatives of regional public organizations should be included in the structure of such Centres.

A Centre should be created in Kyiv, under the auspices of the Council of Europe, to study the international experience of the maintenance of educational needs of national minorities, also to study the international normative-legal acts on the educational rights of national minorities, and distribution of information concerning the international experience on maintenance of the educational rights of national minorities. A library should be created to deal with the aforementioned subjects, and also a Division to create the optimal model for application in Ukraine of the international experience of maintenance of the educational rights of national minorities.

C. Civil Society Relations/Partnerships: Ethno-political Management

by DrVolodymyr YEVTUKH and Ms Tatiana PYLYPENKO

1. THE ROLE OF GOVERNMENT AND NGO'S IN THE SYSTEM OF ETHNO-POLITICAL MANAGEMENT IN UKRAINE

Ethno-political management is a part of the system of governmental management, which has controlling-regulatory functions in the sphere of inter-ethnic relations. The main functions of the ethno-political management are: 1) the legislative provision of processes of ethno-national development; 2) control over the realization of laws and other normative acts in the sphere of inter-ethnic relations; 3) formation of the structure of all-Ukrainian, regional and local organs of management and organizing of interaction on the vertical (central-regional-local) and horizontal (local to local) levels of the activities of these organs.

The activity of central, regional and local organs of executive power is determined by the laws of Ukraine, decrees of the President (he or she confirms the regulations of the central organ of management), and regulations of departments in the structure of regional (local) administrations (confirmed by the head of the corresponding administration).

The main methods of ethno-political management in Ukraine are:

- 1) monitoring and prognosis of ethno-social processes;
- 2) administrative-organizational regulation (through laws, decrees, special resolutions) of ethno-national development
- 3) elaboration of models of management standards in the sphere of state ethno-policy;
- 4) financial support for ethno-cultural development of national minorities;
- 5) promotion of activities of minority organizations.

The goal of the ethno-political management in Ukraine is for the realization of the rights of ethnic minorities to be declared in national and international legislations, the prevention of ethnic conflicts, the solving of conflict situations due to ethnic backgrounds, and the formation of the integral type of ethno-social development of society.

Within the structure of ethno-political management of Ukraine there are three aspects:

- 1) operational (administrative);
- 2) implementational (elaboration of methods and means, which provide realization of state ethno-policy);
- 3) non-governmental (NGOs), which influence the formation and realization of state policy in the sphere of interethnic relations.

1.1 THE FIRST ASPECT (OPERATIONAL) INCLUDES:

1) Central organs of the executive power: the coordinated state organ Department for Nationalities and Migration in the structure of the Ministry of Justice²⁵); the section for education of national minorities in the Ministry of Education, and a Section in the Ministry of Science and Arts.

In the system of the executive power of the Autonomous Republic of Crimea, there is a Republican Committee for Nationalities and Deported Persons.

2) Organs of regional and local executive power (departments, sections) within the structure of regional administrations and the administrations of several cities and towns with multiethnic population (for example, Kyiv, Sevastopol, Ushgorod etc.). The number of staff of the structures mentioned above is about 100 persons.

2.2 THE SECOND ASPECT (ETHNO-POLITICAL MANAGEMENT) INCLUDES:

I. State programmes, which are being realized in different spheres of state-ethno-policy:

1. The complex programme «Ukrainian language» .

2. A programme of adaptation and integration into Ukrainian society of deported Crimean Tatars and other nationalities, the revival and development of their cultures and education.

3. A complex plan of measures towards development of culture of national minorities in Ukraine up until 2001.

4. A programme of preservation of historical-cultural heritage and promotion of ethno-social development of Crimean Karaite and Krymchaks.

5. The State programme «Ukraine-2010» (includes section as to education and culture of national minorities.

II. Special programmes (for example, «Children of Ukraine»).

III. Regional programmes (for example «Programme of covering the ethno-cultural needs of national minorities in Trans-Carpathian region».

IV. Special activities: congresses, forums, meetings etc: as example, the First Congress of Nationalities, 1991.

The results of ethno-policy in Ukraine brought about through the ethno-political management mentioned above can be seen in different spheres of ethno-national life. Presently, there are about 2 400 Russian schools, 11 Moldavian, 6 Crimean Tartar, 65 Hungarian, 3 Polish, 10 Rumanian and 5 Jewish schools. In addition to these essentially minority schools there are 2399 mixed schools in Ukraine.

²⁵ * It should be mentioned that such an organ in the system of Ukraine's executive power has existed since 1991: first as Committee for Nationalities; 1993 — Ministry for Nationalities and Migration; 1994 — Ministry for Nationalities, Migration and Cults; 1995 — Ministry for Nationalities and Migration; 1996 — State Committee for Nationalities and Migration; 2000 — Department for Nationalities and Migration, Ministry of Justice.

It should be taken into account that the state finances definite measures which are implemented in the framework of the all-Ukrainian programmes on educational issues (the maintenance of schools with teaching in ethnic languages), culture, information, radio and television, book publication.

As far as the publication of books in ethnic languages in Ukraine is concerned, the Main Specialized Editorial Office for the Literature in the Languages of National Minorities of Ukraine has been functioning since 1992. Since it began, it has published literature (textbooks, books on social and political issues, fiction) in Russian, Hungarian, German, Polish, Rumanian, Jewish, Gagauz, Modern Greek, Slovak, Crimean Tartar, Byelorussian, Azerbaijani, Bulgarian, Czech, Lithuanian and other languages (in 20 languages of the national minorities), in total about 450 book titles, the most significant group of which are the textbooks for the schools with ethnic language teaching.

Due to the complicated economic situation, such support of the ethno-cultural life of national minorities at least reflects the desire of the state to keep to its stated intention (declarations, laws, decrees of the executive bodies) to stimulate the ethno-political renaissance of all ethnic groups in Ukraine. This thesis is confirmed by facts from other spheres of social life. In Ukraine today there are about 60 newspapers published for national minorities. The Supreme Council's newspaper «The Voice of Ukraine» now publishes 6 additional newspapers together with ethno-cultural societies. In particular, in Bulgarian — «Rodni Krai», in Polish — «Dziennik Kijowski», in Jewish — «Jewish news», in Armenian — «Aragatz», in Rumanian — «Concordia», in Russian — «The Voice of Crimea» for the Autonomous Republic of Crimea.

The circulation of these newspapers ranges from 5 000 to 20 000 copies. These supplementary newspapers have proved to be stable and popular editions of national minorities. According to the official data, the total broadcast volume in the national minorities' languages in television in recent years was about 1300 hours, on the radio about 2000 hours.

The libraries and the museums are an important source of protection by the State and development of the special ethno-cultural features of the national minorities. Thus, 367 libraries of Ukraine contain literature sections in the languages of national minorities, and this number does not include the Russian literature libraries as the Russian library service comprises 24 382 general and universal libraries with a total of more than 240 million copies of books and magazines. In 120 museums of Ukraine (without Kyiv), national minorities' halls are open to the public, and about 1100 historic and cultural memorials can be found. Historic and cultural memorials of the Autonomous Republic of Crimea make up another 10 000, and almost all of them belong to the national minorities.

Specialists of national minorities are receiving education at 11 universities, 20 pedagogical universities and colleges.

1.3. THE THIRD ASPECT (ethno-political management)

The third aspect is connected with activities of NGOs, as a rule, of national minorities.

There are 429 such NGOs: 26 of all-Ukrainian status, others are regional and local. 38 national minorities have their own organizations. Some associations recently created, for example, include: - «Association of Jewish organizations and communities», «Association of Bulgarian national-cultural societies» etc. The legal framework of activities of NGOs of national minorities is determined by the Law of Ukraine «On Associations of Citizens».

The chief aim of NGO activities is to provide the needs of ethno-cultural development of national minorities and to encourage tolerant interactions between all sections of ethno-national structure of Ukrainian society, the building up of public opinion and finding ways of influencing decision-making by organs of legislation and executive power. NGOs try to reach these goals through daily organizational activities (meetings of associations contacts with representatives of executive power) and through congresses, conferences, seminars, «round tables», the drawing of attention of officials and public opinion to the status of national minorities and through resolutions, proposing ways of solving their social, ethno-cultural and legal problems. In the educational sphere, several measures which took place during the last three years should be mentioned: All-Ukrainian conferences and seminars “Contemporary Ukrainian school in multiethnic regions”, “Education and languages of national minorities of Ukraine in the context of The Hague and Oslo recommendations”, “Education of national minorities in Ukraine”, “Educational rights of national minorities”. The resolutions produced by the conferences are taken into consideration during the decision-making process of the Ministry of Education and Science.

The results of co-operation between governmental and non-governmental organizations in the sphere of ethno-cultural development and education can be illustrated by several examples: on the initiative of NGOs of national minorities, regional ethnic festivals took place as the all-Ukrainian festival of national minorities “We all are your children, Ukraine”; the Hungarian theatre (Beregovo), Trans-Carpathian region, Roma theatre “Romance»”(Kyiv), Roma exposition in the state museum of Bila Tserkva, the Institute of Hungarian language teaching (Beregovo).

A very important part of the NGOs’ influence is their interaction with organs of executive power on all-Ukrainian, regional and local levels. An effective factor in this interaction during the last three years was the Council of Representatives of the Civic Communities of the National Minorities attached to the State Committee of Ukraine for Nationalities and Migration. Its membership included the leaders of the ethnic organizations that have an all-Ukrainian status (23 members of the Council). It held twice-yearly sessions and discussed the acute problems of national minorities, such as desirable additions and changes to the Act of Ukraine on National Minorities, the concept of the national minorities, the draft of the State Programme for the Development of the Cultures of the National Minorities, the financing of the activities of the national minorities’ organizations, etc.

Today, NGOs have a new opportunity to strengthen their influence on decision-making in the sphere of ethno-national developments in Ukraine due to the inauguration of a special consultative-deliberative organ by the President of Ukraine. Its aim is to promote the increase of the role of NGOs of national minorities in the social life of the Ukrainian society and the preservation and the development of their ethnic, cultural, linguistic and religious originality. The Council of the Representatives of Public Organization of National Minorities was established by the Decree of the President (April 2000). This Council includes 33 Members.

The main goals of the Council are:

- 1) To present proposals for the formation of state ethno-policy, the protection of the rights of national minorities, their participation in state building;
- 2) The analysis of the situation, tendencies and perspectives of ethno-national development of Ukraine, of national minorities status;
- 3) The analysis of bills and decrees of the President of Ukraine and of the Cabinet of Ministers, programmes, adopted by central organs of executive power, connected with national minorities and presentation of proposals for their improvement;

- 4) The elaboration of proposals for the ethno-cultural development of national minorities for implementation of international agreements, adopted by the Verkhovna Rada (Supreme Council);
- 5) The presentation of proposals for conferences, forums, symposiums, to be held at state level;
- 6) The promotion the contacts between national minorities of Ukraine and their homelands.

The establishment of the Ombudsman's Institute in Ukraine is a positive sign for the implementation of national minorities rights and the NGOs influence on this process. The first Ombudsman's report on human rights in Ukraine in 1999 contains numerous proposals (initiated by NGOs) for improvement of the status of national minorities.

We have discussed the mechanisms involved in the satisfaction of ethno-cultural needs of national minorities with the support of NGO participation. One of the main topics is education. We are convinced of the fact that educational problems can be successfully solved only in the context of the satisfaction of ethno-cultural needs; that is why we felt it necessary to cover the entire system of ethno-political management.

2. RECOMMENDATIONS FOR IMPROVEMENT

To reach the proper level of satisfaction of educational needs, the following steps should be taken:

- 1) identification of needs, especially among the most disadvantaged ethnic groups (for example Roma, Gagauz, Crimean Tatars). This can be done by conducting special sociological research;
- 2) elaboration of programmes of social integration of disadvantaged groups with reinforcement of the role of qualitative education;
- 3) the installation of a system of tolerance in interethnic relations in the school environment through the teaching of the history and culture of different national minorities (introducing special courses, programmes);
- 4) the preparation of textbooks on the history and culture of Ukraine's ethnic groups, human rights and rights of ethnic minorities;
- 5) the elaboration of programmes for the education of specialists for schools, classes for national minorities, for ethno-cultural organizations;
- 6) the use of different forms of satisfaction of educational needs, (for example, ethnic week-end schools);
- 7) the improvement of the system of local ethnic management through the co-operation of local administration, NGOs, and of national minorities on the basis of introducing different cultural and educational multi-ethnic programmes;
- 8) the establishment in Ukraine, under the auspices of the Council of Europe, a scientific-methodological centre for the educational problems of national minorities of CIS.

**D. Comments on Volodymyr YEVTUKH and Tatiana PYLYPENKO's
Discussion Document on « Civil Society Relations/Partnerships: Ethno-political
Management »**

by Dr François GRIN

1. INTRODUCTION

The discussion document in Section III.C. (hereafter the section) is informative and well written. It provides a very useful overview of the general political context of « ethno-political management » in Ukraine, as well as relevant information about more specific actions being undertaken by different stakeholders.

The extent to which the currently available state of theoretical and practical knowledge about the position of minorities in Ukraine is a good starting point for the development of a policy plan for minority education, constitutes a question different from that of the evaluation of the section itself. It is primarily in the perspective of that other question that the following comments are developed.

These comments are organised “sequentially” in section 2 (that is, following the order in which various issues are raised in the section). Section III proposes a brief overall assessment.

2. SPECIFIC COMMENTS

The entire document sets great store by the notion of “ethno-politics”, which is mentioned in the title and is developed on (p. 94). However, this notion is one that might be needed to be handled with caution, because its theoretical and ideological implications are not altogether clear. What theoretical substance it has, is mainly grounded in disciplines whose *form* of theoretical elaboration is largely *inductive*, often giving corresponding texts (e.g., in domains such as international relations, minority rights, etc.) a somewhat “exegetic” rather than analytical character.

The notion of ethnopolitics, because it relies heavily on the notion of “ethnicity” is a very *essentialist* concept (other adjectives encountered in this debate are “primordialist” or “ascriptive”). For a variety of historical and cultural reasons (explained among others by authors like G. Schöpflin), this way of approaching ethnic, linguistic and cultural diversity is particularly popular in Eastern Europe; however, it has largely receded to the background in Western Europe. The closely related notion of “national minority” is discussed in Yevtukh’s “National Minorities in Ukraine: Status, Rights, Prospects”. There are, however, strong arguments for preferring, instead of “ethnopolitical management” (presumably, “management” of the set-up created by the presence of different “national minorities”), the notion of “management of linguistic [and cultural] diversity”, which, inasmuch as it refers to language *use* and cultural *practices*, emphasises what people *do*, rather than what people *are* (or are *considered to be* by others). As such, it provides for a much more fluid approach to diversity and difference, which offers the added advantage of meshing more easily with the concern of established nation-states for their integrity. This philosophy underpins some of the most forward-looking international instruments, such as the Council of Europe’s *Charter for Regional or Minority Languages*.

The possibly unwieldy nature of the notion of ethnopolitics is confirmed by the difficulty of giving precise meaning to some of the terms used in the section, in particular “ethnosocial processes ” or “ethnosocial development” (both on p. 94).

In general, the approach adopted in the section strikes the reader as being chiefly legal / institutional. It should be clear, however, that a legislative apparatus, and a legal discourse explaining this apparatus, constitute stepping stones towards the selection, design, implementation and [ex post] evaluation of actual *policies* (see concluding section at the end of these *Comments*). Policies matter, because they are the mechanisms through which “rights” are given substance, and reality is amended through concerted action embodied in policies. Obviously, these questions

cannot be avoided, and they are implicit in the mention made of “management standards” (item 3 in the numbered list on p.91) and “promotion of activity of minorities organisations” (item 5).

The description of the institutional structures dealing with minorities in Ukraine, and the account of their development over time, reveals that in the course of the past nine years, no less than six different structures appear to have been in use. It is not always clear which of these structures were, and at what time, in force, and whether there has been or still is some overlap, both in terms of time and in terms of competence.

As regards the current institutional structure, the clarity of the section would probably be enhanced by the use of an “organigram”—or similar graphical aid. It may also be useful to know in more detail the attributions of instances such as the “supreme council”. Another point deserving attention is that of the co-ordination between different parts of government (e.g., the Ministry of Justice and the Ministry of Education and Science).

Reference is made to “definite measures”, but it would be helpful to indicate whether such measures mainly have to do with the production of printed materials (to which most of the rest of the subsection is devoted) or whether *other* “definite measures” are, or have been, applied.

In order to assess the meaning of these figures, it would also be helpful if the document contained basic ethnodemographic and demolinguistic information (even if such information *is* available in other documents made available under this project), indicating the current make-up of the resident population in simple table form.

The information regarding the provision of minority-language printed materials is interesting, but insufficient to evaluate the precise nature of such provision, and whether this *supply* (i) matches *demand*; (ii) responds to other criteria. For example, the fact that “367 libraries of Ukraine contain literature sections in the languages of the national minorities” does not tell the reader how large these sections are, what type of books they contain, how well-funded they are in the absolute or in relation to other departments, who gets to decide on the purchasing policy, etc. In the same way, it is difficult to interpret the information according to which “specialists of national minorities receive education at 11 universities, 20 pedagogical universities and colleges

The detailed information about minority community NGOs is interesting and relevant. However, it is unclear whether this should be considered part of “ethnopolitical management”. Typically, “**management**” should be understood as a variant of the (possibly broader, yet not always clearly defined) notion of “**governance**”, which normally materialises through **policies**. Policies are (normally) elements of a plan adopted and executed by the **state** and/or its surrogates, following (in principle) a **democratic debate** about the **goals** of a set of policies, and the **means** that should be adopted (including the **resource** input) for reaching those goals. NGOs normally fall *outside* this governance process and governance institutions. The way in which the action of NGOs can be considered “part of” this “management” relies on the fact that conferences (apparently organised by these NGOs—perhaps, though this is not clear, with government support) adopt *resolutions* which are “taken into consideration” by the Ministry of Education and Science.

Mention is also made of “measures” without it being clear *who* adopts which measures.

The text in p. 97 reverts to questions of institutional structure, mentioning in particular the “Council of Representatives of Civic Communities of the National Minorities” (CRCCNM) and the “Council of the Representatives of Public Organisations of National Minorities” (CRPONM); the relationship between these two bodies is not altogether clear in the text (i.e., did the latter replace or complement the former?); the degree of independence enjoyed by both may need closer examination (e.g., the

fact that the former was “attached” to the “State Committee of Ukraine for Nationalities and Migration” (SCUNM) implies some degree of government control).

A similar question applies in the case of the “Ombudsman’s Institute”.

A set of proposals is formulated at the end of the section. These proposals address very different levels of generality, from the fundamental (item 1: “identification of needs”) to the specific (item 4: “preparation of textbooks on the history and culture of Ukraine’s ethnic groups [...]”). Item 8 calls for the creation, under the auspices of the Council of Europe, of a “scientific-methodological centre for educational problems of national minorities in the CIS”). This latter proposal, of course, raises a number of questions regarding:

- 1) the need for the further development of a set of scientific arguments that would make a convincing case;
- 2) the issue of the sharing of the work with other existing organisms, whether or not such organisms are supported (financially or politically) or simply endorsed by the Council of Europe;
- 3) the organisational and political issues raised by the idea that a centre based in Ukraine would be in a position to offer expertise or advice to other CIS countries, particularly the formidably diverse Russian Federation;
- 4) the feasibility of such a plan, in terms of financial and human resources.

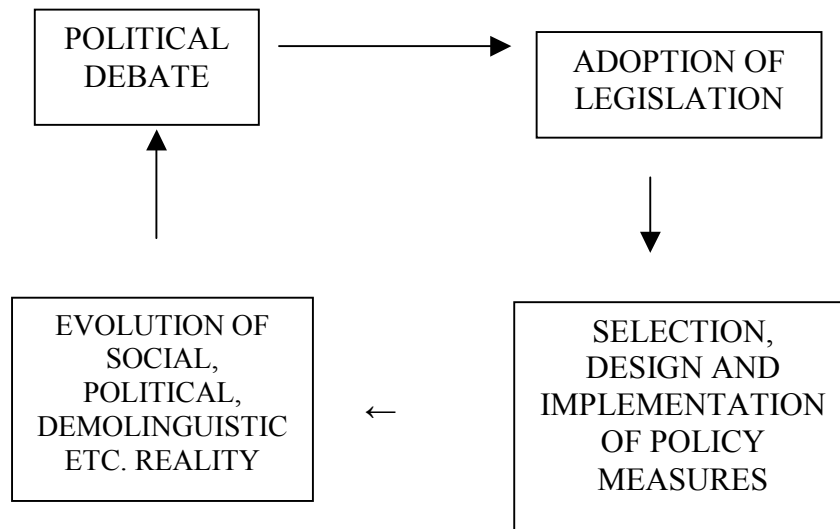
3. OVERALL ASSESSMENT

The section contains useful and relevant elements for the reflection on the ways in which the position of minorities in Ukraine could be furthered, including in the educational sphere. However, a number of steps still need to be taken in order to move towards a document that would constitute a strong basis for a policy plan.

In particular, as noted with respect to some points made on p. 94 of the section, it is important to re-examine critically some of the concepts used to structure the approach, and to draw on the tools developed by other disciplines.

The approach in the section strikes the reader as being essentially legal/institutional, and to be linked with the *politics* involved, but it only offers partial pointers towards *policy* development.

“Diversity management” (a term which, for reasons briefly summarised above, can be considered preferable to “ethnopolitical management”) must be understood as a form of public policy. To this end, the relationship between politics, legislation and policies must be clarified; the following diagram can help in this respect:



Let us refer to these four boxes as Stages 1, 2, 3 and 4, starting with “Political Debate” as Stage 1. Clearly, legal analysis is essential only at Stage 2. The development of actual measures takes place primarily at Stage 3, and this is where a *public policy approach* to diversity management is required. These policy measures, which require understanding of the way in which policies affect social reality, *do* aim at altering the latter in a welfare-increasing direction (Stage 4).

The selection, design and implementation of policy measures are, of course, case-dependent, but some general principles can be applied (some of these were mentioned by the undersigned, in diagrammatic form, at the meeting of the Working Group at the Council of Europe in Strasbourg on 1st July 2000). This presupposes the following steps:

- 1) Definition of specific goals → identification of specific measures → possibility of evaluating alternative measures and selecting the most effective;
- 2) Linking up of specific measures with the resources to be spent for their implementation → possibility to compare measures in terms of their cost-effectiveness in order to select the most cost-effective;
- 3) Linking up of each set of policy measures (defined in terms of specific measures to be adopted, expected outputs resulting from such measures, and resources used) with the origin of the resources used → possibility to assess resource (re)distribution between groups, “fairness” of the proposed measures, potential “acceptability” by majority opinion, etc.
- 4) Examination of the overall policy-definition process, including in particular the channels allowing individuals and groups (democratic movements from the minorities and majority) to be informed about the process and to advise and/or impact on it.

The above constitutes, in very simplified form, the structure of a public policy approach to diversity management. Completion of the above steps yields the cornerstones of a general policy plan, from which more specific measures can be consistently developed.

SECTION IV:

RECOMMENDATIONS AND CONCLUSIONS

A. Recommendations for reform and improvement of educational policy for minorities in Ukraine

1. Recommendations of the general rapporteur

The principle of unity in diversity: The key problem for Ukraine and any other state with minorities is to allow unity in diversity and diversity in unity. On the one hand there is a legitimate interest of any state to undertake unifying measures in order to develop and maintain statehood. On the other hand there are many legitimate interests of minorities to self-reproducing their cultural, ethnic and linguistic diversity. Any measures to be undertaken have to reconcile these two sometimes-divergent interests. There is no general detailed blueprint to solve this problem. *From an educational point of view, it seems to be an important principle that not only members of minorities should be taught something about the majority culture but also vice versa; members of the majority should be taught about the different minorities' cultures.*

Development of a definition minority: In order to make the existing laws and the laws to be newly developed workable it seems to be crucial that Ukrainian representatives develop a definition of the term "minority". All legislative work in the context depends on such a definition. The framework of such a definition has been sketched in section II.C. of this report.

Kyiv centre for minority issues: Generally there are two kinds of strategies to deal with the problematic relation of unity and diversity. On the one hand there is a content oriented approach. This means that the people involved choose particular fields to work on, and carry out the re-phrasing or the revising of laws, define crucial terms contextually appropriate (like the term "minority") and design implementation procedures or give advice on them. This requires an enormous amount of profound information about the Ukrainian and the Western European context. At the current state this profound information is not available.

This means on the content level some thorough information gathering is necessary. It is recommended this information gathering be achieved by creating a new institution in Kyiv under the auspices of the Council of Europe, for the study of the international experience on the management of diversity. This centre should concentrate:

- on studying the international normative legal acts on the educational rights of minorities,
- on collecting international experience on the management of diversity,
- on finding ways of co-operation between NGOs and governmental institutions,
- on establishing research and statistics on the real life effects of the Ukrainian legislative efforts to protect minority rights and languages,
- on identifying and adapting so called "best examples" to the Ukrainian situation.

As one looks from the process level at such a centre, tight restrictions should be placed on the way in which this centre should work. The centre:

- should concentrate on concrete political measures,
- should concentrate on the steps of selection, design, implementation and evaluation of those measures,
- should develop models (and not isolated solutions) which could be adapted to other NIS-states,
- should emphasize the problem of the cost effectiveness of political measures.

In later stages of the project the centre could serve as a network coordinator for other centres in other NIS-States. A possible legal form of such a centre could be a foundation in which the Ukrainian government is only one partner with no more rights than any other partner. Other possible partners could be Ukrainian research institutions, the Council of Europe, institutions from

other NIS-States. This would enhance a desired independence from the Ukrainian government and it would enhance regional acceptance.

Proposal for the census: Another important procedural step in the process of information gathering is to work out a proposal for the next census in Ukraine. The leading question for such a proposal is: How can data gathered during the census contribute to improving the relation of majority and minorities? It also has to be decided on who will be responsible for this.

Development of quality mechanisms in the context of schools: In general there seems to be the need to develop quality mechanisms inside and outside the administration. It is recommended that formalized inspection work with the municipalities be strengthened in a decentralized manner. Decentralization allows better adaptation to minority problems. The numbers of inspectors should be increased, particularly in those areas with different ethnicities. The training of inspectors should focus on multicultural spirit, democratic attitudes and techniques of self-evaluation.

Another important point of a quality mechanism is an input-output analysis of the school-system. Quality questions, which arise from such a comparison, are:

- How many students of minorities, and how many students of the majority, access secondary and higher education, and how many of them leave these two systems with the adequate exams?
- How many principals, headmasters or university presidents belong to a minority? Are there proportional imbalances? What are the reasons for these imbalances, if they do exist? Do members of the minority head genuine minority institutions?
- How many of the teachers belong to a minority? What do minority teachers teach? (If they only teach languages then there is an imbalance as far as their influence on the educational system is concerned)
- Which are the regions and which are the subjects where entrance exams to secondary and higher education can be taken in minority languages?
- What is the infrastructure of the different school systems like (primary, secondary, higher education) in terms of student-teacher-ratio and amount of money spent per student? Are there regional, ethnic or other differences as far as these indicators are concerned?

Establishment of an advisory board: In order to institutionalise the co-operation between NGOs and the government it seems to be useful to establish an advisory board of the NGOs.

Ratification of international instruments: Ukraine should ratify, as soon as possible, relevant international instruments, in particular, the European Charter for Regional and Minority Languages of the Council of Europe.

2. General Policy Recommendations

Discrimination of national minorities can be avoided by using the means listed below: - In order to make clear the position of minorities, an unambiguous definition of a minority, and a list of those minorities, is needed in the official legislation of Ukraine, as has already been said in this text.

After having made these decisions, the administration should inform all the citizens so that parents may decide whether they would like to have their child at a Ukrainian elementary and lower secondary school or at a school using a minority language. All the students in upper secondary, post-secondary and tertiary education must also be informed of these decisions so that they know

where and how it is possible to study in the minority languages, or how to study in their mother tongue when all the rest of the education is given in Ukrainian.

Basic education must be given to the official minorities in their mother tongue. It is a premise for many minority people to achieve an adequate level of education in their own language, at least the very first steps at school. This can be seen in the present law on the languages: *"Ukraine guarantees the right of every child on upbringing and education on his native language"*. It would be recommended to use minority languages even in the pre-primary level. In general it is a very good principle that the only limitation to entering university is the level of knowledge, but all children must have equal opportunities to begin education. There could also be extra language courses for those minority nationality pupils who would otherwise have serious problems to enter university because of their language. This is the responsibility is at the Ministry of Education. For these reasons, statistics of what is needed are very important, together with a survey covering information on how language teaching is organized in different regions.

The premise for getting in to higher education is baccalaureate-diploma, and it should be possible to obtain this in one's own language, if the individual wants to do so. This means that the official Ukrainian baccalaureate diploma must also be recognized legally in the official minority languages. It must also be considered that in some cases the admission tests could be carried out in some official language other than Ukrainian, bearing in mind the principle of equality. It is also important that all the results of the tests are made public so that students can check the background of their own results.

Organizing minority language education in primary schools, respecting parents' choice, requires that in universities: -

- a) there is sufficient teacher training in minority languages;
- b) there are sufficient possibilities for studying minority languages, professorships in these languages and cultures and/or quotas in foreign universities for studying these schemes;
- c) there is a minimum rate defined in law, for the compulsory establishment of a special school/class for pupils from a minority culture.

There must be a sufficient number of education places in universities. The government of Ukraine must write and approve a political agenda on education in which they define, for what percentage of each age class the possibility for higher education is provided, and what is the percentage of baccalaureates on each age class. The agenda should also state in which branches there is a need for extra places. This could operate, for example, for five years.

It should be possible to use quotas for national minorities in, for instance, teacher, medical and juridical training. At first, the quotas could be reasonable. We have to remember that minorities also have a right to basic services in their own language. The precondition would be that there were enough minority language speaking personnel to give the services.

In higher education the tutor system may give important support to avoid dropouts among non-Ukrainian speaking students. The tutor system might also be transferred to lower education to help minority language speaking pupils and to make ties between different groups of nationalities. Allowances for students coming from national minorities are a good investment.

It is a positive fact that Ukraine already has bilateral as well as multilateral co-operation agreements. But the administration should work towards getting partnership for Ukraine in the EU wide educational programmes Leonardo (vocational education) and Socrates (all other education). There are already many non-member countries in those programmes.

Are there national minority groups in which the social level is below general circumstances? and which for this reason do not have economical possibilities for education? How will education be organized for them? These groups need special economic support for their study expenses. What kind of legislation is there for study grants? A minority with this problem is for example gypsies in many European countries.

In lower and upper secondary schools, in vocational schools and in tertiary education Ukraine must ensure the possibility of studying in one's mother tongue and one's own nation's culture when all the other education is in Ukrainian language. One possibility is for the minority language to be adjusted in the constitution and in the law on languages in Ukraine as a second language at schools when Ukrainian is the first language in the syllabus. Courses in the mother tongue should also be provided as non-formal education, e.g. in radio, television, evening courses in the third sector, because inability to speak and write a language should never be a hindrance to studying.

The syllabi of primary schools must include multicultural sections meant for all the pupils, not only for children from minority cultures. For that purpose, the Ministry of Education must prepare modern educational material.

The lack of educational material in minority languages seems also to be a problem, but it is encouraging that the Ministry of Education places importance on the preparation of curricula and textbooks. Nevertheless, a programme must be created for the development of the production of educational material. Internet may help a lot in this task. It is essential to draw up a list of the most pressing needs. Co-operation with foreign Ministries of Education is remarkable. In addition, limited economical resources make co-operation with foreign tertiary education authorities a necessity.

The responsibility for execution must move to regional administration under ministerial control. The aim to establish centres of co-ordination is very good. Advisory teachers in different branches should be nominated to every region. They will be formed into a training network for the whole country. This network can also be used for the production of teaching material. Their task would also be to monitor and report on improvement to the Ministry, and possibly to the Council of Europe.

Indicators for monitoring improvement must be developed.

The state budget of Ukraine should include an annual allocation for the development of national minorities.

3. Recommendations for the Legal Framework

1. To remove any sources of misapprehension, the expert group advises the provision of means of access to objective information for a considerable part of the population. The information should include the general scope and meaning of the right to education as legally provided by the Conventions and national law in general and focused on minorities in particular.

2. In order to effectively guarantee the right to education of members of minority groups against violations of this right by local authorities, the expert group recommends the adoption of a clear mechanism in the (educational) legislation concerning the state supervision of decentralised governments (oblasts, districts, municipalities). Of course, various ways of effective supervision are possible. Eventually, this is a matter for the sovereign state-powers of Ukraine. However, the expert group suggests a mechanism in the shape of an independent complaints committee at the level of

the central government, to which an individual can address his or her complaint about the violation of his or her rights and the committee would examine in an impartial way to see if the complaint was justified. The judgment of the complaints committee should not be legally binding. It is however essential that it should be made public. The complaints committee should have the opportunity to make “public made” proposals and recommendations to the central and decentralized political authorities for the improvement of the educational system and for the prevention of future violations of educational rights of members of minority groups.

3. With all due respect to the sovereign rights of the State of Ukraine to regulate the entrance and deportation of aliens, the expert group urges that legislation be adapted in such a way to ensure that minor illegal aliens staying in the country should be offered the right to visit schools and to receive education.

4. The right to education, conceived as the inalienable right of every minor to develop his talents and abilities, should be guaranteed by the introduction of balanced legislation with respect to the minimum duration of compulsory education and the supervision thereof by the government.

5. The expert group recommends the adoption of new provisions in the legislation on primary and secondary education in order to define clearly the term “minority” and in order to prescribe minimum criteria for the foundation, managing and closing of schools in which education is offered in the language of ethnical and national minorities.

6. The expert group suggests the adoption of new legislation for the introduction of a “pupils statute”. The right to education, in its various forms, is served by the elaboration of pupils’ rights and obligations within the school in a pupils’ statute.

7. The expert group appreciates that numerous efforts are made by the government of Ukraine to recognise studies offered by non-state or foreign institutions. However, it finds gaps in the legislation concerning inspection, since the assurance of the quality of education at “minority schools” seems to be insufficient. The expert group suggests the adoption of new legislation through which the existence, the task and the powers of school inspectors will be in accordance with norms in countries with a well-developed school system.

8. With respect to studies that are followed by Ukrainian students in foreign institutions, the expert group suggests an inventory of the needs and possibilities of minority groups to study in foreign countries, and of existing problems concerning the recognition of foreign studies. The expert group recommends the taking of concrete steps on the basis of this inventory in order to facilitate minority groups.

9. The expert group finds a serious gap in the legislation concerning the funding of educational institutions at all levels. The actual provisions are insufficient, because they only stipulate the principle of public funding. In the interest of the legal certainty of the institutions and the rights of minority groups that are connected with it, and in the interest of assuring the quality of education, the expert group finds it necessary to adopt new legislation with respect to the criteria for public funding, the conditions for the use of public funding and the reasons for which the public fundings are required. In the opinion of the expert group, detailed regulation in this respect can contribute in a relevant way to the respect of the right to education of minority groups.

10. According to article 5 of the Law of Ukraine on national minorities in Ukraine there is a Council of Representatives of public organizations of national minorities. There are also Local Deputy Councils and the Advisory Bodies set up in the city councils. The expert group recommends

the adoption of new provisions in the aforementioned Law or in another law, concerning the representativeness and the independence of the members of the councils. With respect to the local councils and advisory bodies, the expert group recommends the making of global provisions in national law to give more clarity and direction to the activities, powers and composition of these councils and bodies.

11. According to art. 18 Law on Education, art. 11, paragraph 4, Law on General Secondary Education and art. 19-20 of the Law on Vocational Training the right of minorities to set up and to manage their own private educational and training establishments is guaranteed. The right to set up their own establishments is a fundamental right that is also closely connected with the right to education of article 53 of the Ukrainian Constitution. Given the aspect of a fundamental right, the expert group recommends the working out and laying down in national law of the norms concerning the foundation and management conditions of non-state schools, the procedure, the conditions under which a school will be licensed and the state educational standards. Article 11, paragraph 1, Law on General Secondary Education should also be laid down in the other laws concerning education.

12. The expert group supports the suggestion, made by Ukrainian colleagues, of adding a provision to the 'Draft law on pre-school Education and upbringing' in which is stated that a child should receive education in his or her mother-tongue in the Kindergarten.

13. Art. 27 of the Law on the languages of Ukraine is not in line with The Hague recommendation 12, while the formulation is too general. The expert group recommends that this article be adapted to the principles of The Hague recommendation 12, which defines a subtle mixture of native language and State language in education.

4. Recommendations for the Improvement of Educational Rights of Minorities in the Field of General Education

With the need for a fundamental and rapid decision on material issues in mind, it is necessary to create Departments of national minorities educational establishments in the regions, together with Centres of co-ordination of educational activity of schools of national minorities, which respect the co-ordination of efforts of all interested parties to satisfy the broader educational cultural needs of the national minorities of a region. The representatives of public organizations of the region should be included in the structure of such a centre.

A Centre should be created in Kyiv, under the auspices of the Council of Europe, to study the international experience of maintenance of educational needs of national minorities, the international normative-legal acts on the educational rights of national minorities, and distribution of the information concerning the international experience on maintenance of the educational rights of national minorities. The creation of a library dealing with the above-mentioned subjects is also recommended, together with a Division which would create the optimal model for application in Ukraine of the international experience of maintenance of the educational rights of national minorities.

5. Recommendations for the Improvement of Educational Rights of Minorities in the Field of Higher Education

Bearing in mind the preparation of specialists with high qualifications, the improvement of quality of education of national minorities, and the promotion of further democratisation processes, the

draft Law of Ukraine “On Higher Education” should mention the rising role of universities as poly-cultural centres of education and culture, using advanced foreign experience and achievements in the sphere of higher education in Ukraine.

New syllabi should be created using advanced educational technologies, and computer engineering should be introduced widely, in order to exchange knowledge and skills, to strengthen the creative potential and intercultural dialogue, and to increase civil participation and mutual understanding between nations.

The draft Law of Ukraine "On Languages" should contain precise definitions and mechanisms of realization concerning maintenance of national minorities through textbooks and manuals in the field of higher education, should determine concrete ways of maintaining higher education institutions by the relevant specialists and, to provide the improvement of qualification of teachers of language of national minorities abroad.

With the need for a fundamental and rapid decision with material issues in mind, it is necessary to create Departments of national minorities educational establishments in the regions, and Centres of co-ordination of educational activity of schools of national minorities, which respect the co-ordination of efforts of all interested parties to satisfy the broader educational-cultural needs of national minorities of a region. The representatives of public organizations of the region should be included into the structure of such Centres.

A Centre should be created in Kyiv, under the auspices of the Council of Europe, to study the international experience of maintenance of educational needs of national minorities, to study the international normative-legal acts on the educational rights of national minorities, and to distribute information concerning the international experience on maintenance of the educational rights of national minorities. The creation of a library dealing with the above-mentioned subjects is recommended, together with a Division which would create the optimal model for application in Ukraine of the international experience of maintenance of the educational rights of national minorities.

6. Recommendations Concerning Ethno-political Management

The following steps should be taken in order to reach the proper level of satisfaction of educational needs: -

- 1) identification of these needs, especially among the most disadvantaged ethnic groups (for example Roma, Gagauz, Crimean Tatars). This can be done by conducting special sociological research;
- 2) elaboration of programmes of social integration of disadvantaged groups with reinforcement of the role of qualitative education;
- 3) the installation of a system of tolerance in interethnic relations within the school environment, through the teaching of history and culture of different national minorities (introducing special courses, programmes);
- 4) the preparation of textbooks on the history and culture of Ukraine's ethnic groups, human rights and rights of ethnic minorities;
- 5) the elaboration of programmes for the teaching of specialists in schools, national minorities classes; for ethno-cultural organizations;
- 6) the use of different forms of satisfaction of educational needs, (for example, ethnic week-end schools);

- 7) the improvement of the system of local ethnic management through the co-operation of local administration and NGOs, and of national minorities by introducing different cultural and educational multiethnic programmes;
- 8) the establishment in Ukraine, under the auspices of the Council of Europe, a scientific-methodological centre for educational problems of national minorities of CIS.

7. Recommendations Concerning the Diversity Management Approach

“Diversity management” (a term which, for reasons briefly summarised above, can be considered preferable to “ethnopolitical management”) must be understood as a form of public policy. To this end, the relationship between politics, legislation and policies must be clarified.

Let us refer to these four boxes in Section III.D. as Stages 1, 2, 3 and 4, starting with “Political Debate” as Stage 1. Clearly, legal analysis is essential only at Stage 2. The development of actual measures takes place primarily at Stage 3, and this is where a *public policy approach* to diversity management is required. These policy measures, which require understanding of the way in which policies affect social reality, *do* aim at altering the latter in a welfare-increasing direction (Stage 4).

Selection, design and implementation of policy measures are, of course, case-dependent, but some general principles can be applied. This presupposes the following steps:

- 5) Definition of specific goals → identification of specific measures → possibility of evaluating alternative measures and selecting the most effective;
- 6) Linking up of specific measures with the resources to be spent for their implementation → possibility to compare measures in terms of their cost-effectiveness in order to select the most cost-effective;
- 7) Linking up of each set of policy measures (defined in terms of specific measures to be adopted, expected outputs resulting from such measures, and resources used) with the origin of the resources used → possibility to assess resource (re)distribution between groups, “fairness” of the proposed measures, potential “acceptability” by majority opinion, etc.
- 8) Examination of the overall policy-definition process, including in particular the channels allowing individuals and groups (democratic movements from the minorities and majority) to be informed about the process and to advise and/or impact on it.

The above constitutes, in very simplified form, the structure of a public policy approach to diversity management. Completion of the above steps yields the cornerstones of a general policy plan, from which more specific measures can be consistently developed.

B. Report of the evaluation and Assessment Meeting (Kyiv, 26 – 29 April 2001)

by Dr Frank ORNELIS

1. Meeting with Prof. Kremen, Minister of Education and Science of Ukraine

Prof. Kremen, Minister of Education and Science of Ukraine, welcomes the members of the joint working group and gives a brief overview of the Ukrainian educational system.

First of all, he reminds the members of the fact that the Ministry of Education and Science has only existed for one year and four months, as there were two separate Ministries of Science and Education before. The main target is to monitor these two branches. This ministry administrates about 22,000 schools of secondary education (which is free and compulsory), some 987 institutions for vocational training and a wide set of technical schools, colleges, institutes, (musical) academies and universities for the four levels of accreditation in the higher education sphere.

The underpinning stream of the educational reform is the democratisation of the system. This means changing the way in which the system is run. Whereas up to recent times, schools were state-owned, there is a clear tendency towards a system with a mix of state and public organs. Private organizations are already active, mainly in higher education. Secondly, democratisation means introducing the spirit of tolerance and democracy in pupils' minds, instead of the previous model with the accent on totalitarian regime (and personality). Thirdly, the Ukrainian society has to transform from an industrial into an information society. Schools must follow this change and have access to the new technologies and must be able to use them. In the field of languages, democratisation aims at a multilingual education: when finishing the compulsory part of the curriculum, every schoolchild should know Ukrainian, one language of a minority and one widely spread foreign language.

Ukraine has made a lot of efforts particularly in this field, as the members know. The government has supplied many schools with textbooks, prepared and published in Ukraine, in the minorities' languages (e.g. Russian, Rumanian, Bulgarian, Crimean-Tatar,...) and this process is still going on. This is the case for example for the Roma people, for whom a Roma school opened recently. In addition to this, Ukraine has a strong tradition in preparing teachers in the languages of the national minorities (e.g. the Crimean- Tatar teachers' training at the pedagogical high school in Simferopol and at the Taurian National Vernadsky university).

Ukraine still has to cope with some problems in this field. Children, who do not know the Ukrainian language at the end of secondary education, will have problems in entering higher education. At this very moment, there is a public discussion amongst the leaders of the national minorities about the share of the subjects being taught in the languages of the national minorities in Ukraine. With regard to this subject, the Ukrainians are eager to open a centre for the educational problems of national minorities.

As *Mrs. T. Isohookana-Asunmaa*, member of the Parliamentary Assembly of the Council of Europe, points out, the general spirit of the resolution of the Assembly is to co-operate further with Ukraine. She wants to know if Ukraine is willing to ratify the European charter for regional or minority languages. Ukraine promised to do this in its report concerning the current situation before the end of June. She mentions some criticism, expressed by the Turkish, Russian and Rumanian delegates in the Assembly.

As far as the ratification of the Charter is concerned, *Prof. Kremen* wishes to clarify that there is official support for it. The matter has not been solved yet, due to an appeal to the Constitutional Court.

The Minister also wants to react to the remarks of the neighbouring countries. As a result of powerful Russification, less than 50 % of the schools in Kyiv taught their subjects in Ukrainian

(1991). Compare this with the pre-war period, where a majority of the schools taught in Ukrainian. Another measure of comparison is the higher number of Russian schools (28%), related to their relative proportion of the population (20%). The situation in Russia differs drastically: there exists only one Ukrainian school in Moscow, whereas Russia counts approximately 8 million ethnic Ukrainians. With regard to the situation of the Rumanian-speaking minority in Ukraine, there are some 96 schools with approx. 25,600 pupils who learn all the subjects in Rumanian. This contrasts to the situation in Rumania, with only one lyceum in Constanza where the Ukrainian language is taught as a subject. Furthermore, the agreement on an exchange programme between Rumanian and Ukrainian schools has not been fairly executed by the Rumanian partners: some 200 students were sent to Ukraine without prior consultation. Attention should be drawn to the fact that the Ukrainian government made the return of the Crimean-Tatar people possible, by providing schools, housing, hospitals etc. The minister points out that the Tchernobyl catastrophe still costs Ukraine about 20% of the annual budget.

Mr F. Ornelis, general rapporteur, stressed the importance of correct and updated information for the work of the expert team. He hoped that the joint working group would co-operate fruitfully in the future.

2. Assessment of the Recommendations, mentioned in the report of Dr Kiel, the general Rapporteur and in the document of the legal experts

According to *Dr V.O. Ogneviyuk*, Vice Minister of Education and Science of Ukraine, the rights of the national minorities are secured, since they all have education, and more recently teacher training, in their language. The vice minister urges the neighbouring countries to undertake adequate measures for their national minorities.

The conclusions and recommendations, as mentioned in the report of the Council of Europe, were thoroughly examined in the ministry of Education and Science. He thanks the expert team for the fruitful collaboration and to have taken into account the current Ukrainian situation. As a general remark, the vice minister makes it clear that some steps have already been taken by the cabinet of Ministers to adopt new legal instruments: the law on the languages of Ukraine, for instance, has been sent to the Verkhovna Rada. There is criticism on some other points, for instance on the law of pre-school education. The Vice Minister does not consider it a good idea to receive pre-school education in one's own language.

Mr Gennadiy Kosyak, member of the Council of Europe Secretariat, pointed out the two main aims of this meeting. First of all the meeting was intended to make a preliminary assessment of this pilot project and to evaluate the present outcome of the conclusions and recommendations, which have been widely distributed in the Ukrainian society. Secondly, an agreement should be reached on dates and conditions for publication of the results of this project.

He invited the Ukrainian members to comment on the recommendations and the state of affairs.

From the point of view of *Ms K.M. Luby nets*, Deputy Head of the department of International co-operation of the Ministry of Education and Science, the ministry has done a great deal during the past few months, although time was short after the final conference. As a result, a scientific conference on textbooks in the national languages was held in February. As another result of the conference, the Ukrainian-Rumanian, the Ukrainian-Hungarian and the Ukrainian-Slovak governmental commissions met. A discussion on some topics of the report took place. Ms Luby nets believed that some recommendations were redundant, because the problem was solved in existing regulations, which were unfortunately not translated. This point led her to the conclusion that the

analytical work should be carried out in a Kyiv based centre, which would facilitate the decision-making process and a quicker implementation.

Following the question of *Mr F. Ornelis* about how the report was disseminated, who it was intended for, and what the results of the debates were, the Ukrainian partners replied that the report was sent to all regional administrations, which reacted to the above mentioned conference in February. A lively discussion took place at several round-tables where national minorities were present. Up to now, only 5 minorities (Russian, Rumanian, Hungarian, Roma, Ajan) of the 27 All-Ukrainian national minorities have officially reacted.

Ms L.M. Borodenkova, Head of the section of the national minorities, Ministry of Education and Science, appreciated the report, although she felt critical of some of the points put forward. As a pilot project for the NIS, visiting the schools might have been included, in addition to the information delivered by the Ministry.

Ms O.M. Semyorkina, Head of the department of social and labour legislation of the Ministry of Justice of Ukraine, explained that her ministry has made parallel efforts to analyse their laws on several occasions. They identified a way of co-operation with the competent committee in the Verkhovna Rada.

Recommendation 2: In order to effectively guarantee the right to education of members of minority groups against violations of this right by local authorities, the expert group recommends the adoption of a clear mechanism in the (educational) legislation concerning the state supervision of decentralised governments (oblasts, districts, municipalities). Of course, various means of effective supervision are possible. Eventually, this is a matter for the sovereign state-powers of Ukraine. However, the expert group suggests a mechanism in the shape of an independent complaints committee at the level of the central government, to which an individual can address his or her complaint about violation of his or her rights and that committee would examine in an impartial way the justification of the complaint. The judgment of the complaints committee should not be legally binding. It is however essential that it should be made public. The complaints committee should have the opportunity to make “public made“ proposals and recommendations to the central and decentralised political authorities for the improvement of the educational system and for the prevention of future violations of educational rights of members of minority groups.

In the opinion of *Dr Yevtukh*, Director of the Institute of Sociology of the Academy of Sciences, the proposition of a central complaints committee is a useful suggestion and a mark of high development. The situation in Ukraine is, however, different. There are at present quite enough structures to deal with complaints within the frames of the existing organisations. He supports the accent on the independence of the committee. A very effective way of dealing with the education rights of national minorities, especially with regard to the situation in the compact settlements, would be to set up such complaints committees on a regional level. This committee might clear up the problem of the sometimes-exaggerated level of demand for schooling facilities for national minorities. This is the reason why the committee should not only have to consider the quantitative aspect, but also the qualitative aspect (e.g. will pupils find a job after finishing school?)

Ms O.M. Semyorkina added that in line with the recommendation on a mechanism concerning the State supervision of decentralised bodies, the idea of decentralising to the regional or local level is being developed. This work has been done in order to give local authorities more power in educational matters. According to *Ms O.M. Semyorkina*, the suggestion of a central complaints

committee was crucial in this matter. Three years ago, a special working group had to propose solutions on the structure of an administrative appeal organ, which could solve problems before people addressed to the court. A draft codex with the proposal, an independent organ with members appointed by the Council of Ministers with special consent of the Minister of Justice, received favourable comment by the Council of Europe.

Recommendation 3: With all due respect to the sovereign rights of the State of Ukraine to regulate the entrance and deportation of aliens, the expert group urges that the legislation be adapted in such a way that minor illegal aliens staying in the country should be offered the right to visit schools and to receive education.

In the opinion of *Dr Yevtukh*, the present Ukrainian legislation does not regulate the illegal staying of persons on the territory. At the present time, the committee on education of the Verkhovna Rada is thinking about the implementation of this recommendation. The Ukrainian side is aware of the fact that including all children of illegal immigrant in a legal sphere would mean a prominent step toward the integration of Ukraine in Europe.

Ms O.M. Semyorkina announces that a draft on the status of refugees and immigrants is already at the stage of the second reading in the committee of national minorities and inter-ethnic relations.

Recommendation 5: The expert group recommends the adoption of new provisions in the legislation on primary and secondary education in order to clearly define the term ‘minority’ and in order to prescribe minimum criteria for the foundation, managing and closing of schools in which education is offered in the language of ethnic and national minorities.

Recommendations of the general rapporteur:

Development of a definition minority:

In order to make the existing laws and the laws to be developed workable, it seems to be crucial that the Ukrainian representatives develop a definition of the term ‘minority’. All legislative work in the context depends on such a definition.

Proposal for the census: Another important procedural step in the process of information gathering is to work out a proposal for the next census in Ukraine. The leading question for such a proposal is: How can data gathered during the census contribute to improving the relation of majority and minorities? It has to be decided on who will be responsible for this.

Dr Yevtukh explains that the national minorities differ on the theme of language as a medium of education. Some minorities (e.g. Bulgarian) are in favour of a system in which all subjects are taught in the State language, with the exception of some subjects (e.g. history), to be taught in the national minorities’ language. Other minorities (e.g. Hungarian and Rumanian) are, on the contrary, in favour of a curriculum in the mother tongue, with the exception of the State language and the history/literature of Ukraine.

In the opinion of *Dr Yevtukh* this recommendation is related to the ethnic-social structure of Ukraine. He would suggest the following structure:

- 1) native Ukrainians;
- 2) ethnic communities with non-identified status. This differs, in *Dr Yevtukh*’s point of view, from the concept of indigenous people as promoted by the CoE and UN and excludes the Crimean-Tatar minority;

- 3) National minorities: according to Dr Yevtukh's criteria, up to 18 or 20 national minorities occur in Ukraine;
- 4) Representatives of different ethnic groups, with a distinction between numerous (from 3000 to 5000 representatives) and non-numerous (up to 100 members).

This system correlates with the ideas expressed by the CoE, according to Dr Yevtukh.

Ms O.M. Semyorkina announced that the draft law on national minorities was sent to the Verkhovna Rada, but was returned with the request to clarify the concept 'minority'. In March, the Directorate General of Human Rights of the Council of Europe assisted Ukraine with some proposals on this item.

Ms T. Antonyuk, Chief Counsellor of the Department of Humanitarian Development of the Council of ministers of Ukraine, stressed the right of existence of the Ukrainian nation, which was under pressure for a hundred years. Ukrainians may experience this oppression on everyday basis, when they live in (the neighbourhood of) compact dwellings of national minorities (e.g. the question arose whether the rights of the Ukrainians would be respected if a special region in Transcarpatia was created).

According to *Ms L.M. Borodenkova*, financing was a harsh problem. Her ministry is working on a document about the reorganisation and closing of schools; the draft version refers to recommendation 5.

In the view of *Dr P.J.J. Zoontjens*, professor at the Catholic University of Tilburg, the attitude of Dr Yevtukh toward minorities is an essentialist one, which could raise some problems: when you have given a definition of a national minority, you have to define what national minorities are not. He suggested that the Dutch model could be an inspiration: one overall definition of a minority does not exist, but depends on the provided service. In the education sector, a minority is defined as a given number of pupils. *Ms O.M. Semyorkina* explained that no consensus has been reached since 1993 on the definition of 'minority'. The main task is to come to a reasonable agreement that does not minimise the existing rights and does not violate the rights of national minorities nor those of the majority. *Mr O.G. Tsvetkov*, Deputy head of the department of cultural and humanitarian co-operation of the ministry of foreign affairs, added that, from his point of view, the problem was not about creating schools or classes, but situated on a more abstract level. Sometimes, the Russian-speaking group, or factions within a minority, would like to be called a minority.

Ms T.I. Pylypenko, Deputy Head of the Board of Ethnic-National Processes & Minorities, from the State Department on Nationalities and Migration of Ukraine, announced that in March 2001, the committee on Human Rights of the Verkhovna Rada received a letter from 15 organisations of national minorities with a proposal to improve the draft law on National minorities, but the 'major' and 'minor' minorities expressed a different point of view on the definition of the term 'minority'. Recommendation 5 contains the proposal to define clearly the term 'minority' on the one hand and prescribes minimum (quantitative) criteria for the foundation of a school on the other. As a result, the State Department on Nationalities and Migration of Ukraine proposed tackling these two problems separately: defining 'minority' autonomously in the legislation on national minorities, and solving the question of state control and finance in other legislative norm.

Recommendation 7:

The expert group appreciates the numerous efforts being made by the government of Ukraine for the recognition of studies offered by non-state or foreign institutions. However, it finds gaps in the legislation concerning inspection, because of which the assurance of the quality of

the education at 'minority schools' seems to be insufficient. The experts group suggests the adoption of new legislation by which the existence, the task and the powers of school inspectors will be in accordance with norms in countries with a well-developed school system.

Recommendation of the general Rapporteur:

Development of quality mechanisms in the context of schools: In general there seems to be a need to develop quality mechanisms inside and outside the administration. It is recommended that formalised inspection work with the municipalities should be strengthened in a decentralized manner. Decentralization allows for better adaptation to minority problems. The number of inspectors should be increased, particularly in areas with different ethnicities. The training of inspectors should focus on multicultural spirit, democratic attitudes and techniques of self-evaluation.

Another important point of a quality mechanism is an input-output analysis of the school system.

In the view of *Dr Yevtukh*, the quality assurance and inspection could be situated, within the scope of activity of the Kyiv Centre. National minorities tend to think rather strictly about obtaining education, paying little attention to questions of financing and outcome. The government cannot meet all demands at once.

It is his firm belief that the best solution is to have a good substantial law on national minorities and to include these minorities in the different laws on education. If the laws on education were of high quality, there would be no need to have laws dealing with national minorities alone.

The new law of the foundation of rights of national minorities was on the agenda of the next session of the council of national minorities (beginning of June), with a separate topic on educational rights.

Recommendation 9: The expert group finds a serious gap in the legislation concerning the funding of educational institutions at all levels. The actual provisions are insufficient, because they only stipulate the principle of public funding. In the interest of the legal certainty of the institutions and the rights of minority groups that are connected with it, and in the interest of the assurance of the quality of education, it finds it necessary to adopt new legislation with respect to the criteria of the outset of public funding, the conditions for the use of public funding and the ends to which the public funding should be spent. In the opinion of the expert group, detailed regulation on this matter could contribute in a relevant manner to respect of the right to education of minority groups.

Ms L.M. Borodenkova said that the Ministry of Education and Science agreed with the recommendation and tried to solve the problem of studying abroad in line with this recommendation.

On the point of the completion of studies abroad, *Dr Yevtukh* appreciated the approach of the experts group.

Recommendation 10: According to article 5 of the Law of Ukraine in national minorities in Ukraine there is a Council of Representatives of public organisations of national minorities. There are also Local Deputy Councils and the Advisory Bodies set up in the city councils. The expert group recommends the adoption of new provisions in the aforementioned Law or in another law, concerning the representativeness and the independence of the members of the

councils. With respect to the local councils and advisory bodies the expert group recommends the making of global provisions in national law to give more clarity and direction to the activities, powers and composition of these councils and bodies.

Recommendations of the general Rapporteur:

Establishment of an advisory board: In order to institutionalise the co-operation between NGOs and the government it seems to be useful to establish an advisory board of the NGOs.

Kyiv centre for minority issues: If this centre were to be set up, it should operate independently from politics. This centre could provide different ministries with relevant data and study policy questions on minorities. Hence, it would be appropriate to insert ‘assisting the government in the implementation of their policy’ as a new activity.

The Ministry of Justice will participate in the activities concerning recommendations 6 to 10, which are mainly within the competence of the Ministry of Education and Science.

Ms T.I. Pylypenko, considered that the proposals have influenced the current situation and give a perspective for further improvement.

In 1992, only 4 public organisations were representing the national minorities (Jew, Azerbaijan, Russian). The ministry worked out a special questionnaire and sent this to 25 regions and the cities of Kyiv and Sebastopol, with the purpose of collecting data on public organisations functioning on all levels. It turned out that 461 NGOs were functioning, amongst whom were 27 with an all-Ukrainian status.

In February 2001, the ministry realized that it was necessary to seek ways of co-operation with local authorities and public organizations.

In March 2001, three all-Ukrainian events took place, when leaders of the national minorities and representatives of state bodies met, and two of them were within the framework of the pilot project: one meeting dealt with languages of the national minorities, the other with education of Koreans in Ukraine. As a rule, information on national minorities is spread within the department and aims at making sure that the leaders of the minorities are familiar with these documents.

The government provided support for the meetings of the German, Russian and Estonian speaking groups in Ukraine.

The above-mentioned questionnaires revealed that half of the regions created a council, similar to the presidential council on national minorities. . This council was formed by a special presidential order and a regulation on the activity of the council. One serious drawback of the current regulation is the fact that local authorities can accept the recommendations of the local councils (which are not obligatory), but are not obliged to implement them. The recommendation 10 should be more precise on this point. Further research on regional and central level must be undertaken by public organs in order to strengthen the self-governance.

The presidential Council has issued a ‘State of the inter-ethnic relations in Ukraine’ and a ‘Forecast 2001 –2002’.

Recommendation 11: According to art. 18 Law on Education, art. 11, paragraph 4, Law on General Secondary Education and art. 19-20 of the Law on Vocational Training, the right of

minorities to set up and to manage their own private educational and training establishments is guaranteed. The right to set up establishments is a fundamental right, also closely connected with the right to education of article 53 of the Ukrainian Constitution. Given the aspect of a fundamental right, the expert group recommends the working out and laying down in national law of the norms concerning the foundation and management conditions of non-state schools, the procedure and conditions under which a school will be licensed, and the state educational standards. Article 11, paragraph 1, Law on General Secondary Education should also be laid down in the other laws concerning education.

Recommendation 12: The expert group supports the suggestion, made by Ukrainian colleagues, to add a provision to the 'Draft law on pre-school Education and upbringing' in which is stated that a child should receive education in his or her mother tongue in the Kindergarten.

Recommendation 13: Art. 27, Law on the languages of Ukraine is not in line with The Hague recommendation 12, while the formation is too general. The expert group recommends the adaptation of this article to the principles of The Hague recommendation 12, which defines a subtle mixture of native language and State language in education.

According to *Ms O. M. Semyorkina* the recommendations on Sunday schools, on pre-school education and on the Law on languages of Ukraine were quite favourable proposals. The law on languages is currently being discussed in the Verkhovna Rada, where the best provisions of each of the five draft laws were extracted and inserted in one draft law. The analytical work of the legal experts was useful in order to have a critical review of these drafts.

Ms T. I. Pylypenko's Department will focus the attention of the leaders of the minorities to the international (Framework Convention on national minorities, the Oslo and The Hague recommendations) and national (the law on the languages in the SU) legal framework during three seminars on 'national minorities, a state of the problem'. This seminar will bring together relevant officials from the ministry of education, culture and policy. A new department for the languages of the national minorities was created in mid-April, which will finish the work on the draft law on national minorities and has as a main sphere of activity the stimulation of the close, organic co-operation between the state language and the languages of the national minorities in society.

Ms T.I. Pylypenko would like to add a recommendation 14 to the list, which deals with infra-structural problems. Half of the approx. 400 existing NGOs does not have the appropriate equipment or rooms to extend their activities. The government tries to help the 210 Sunday schools and supply them with enough rooms. In Kyiv some 66 organisations do not have any place to meet.

3. Meeting with P. Tolochko, First Deputy Chairman of the Committee for Education and Science of the Verkhovna Rada

Mr Tulochko saw the harmonisation of relations between the titular nations and the nations of the national minorities as a major challenge for a lot of countries. At present, Ukraine has set a high standard for the rights of national minorities, as their rights are guaranteed by Constitution and many legal norms (e.g. law on vocational training, on secondary education, on pre-school education, on languages in Ukraine, on national minorities in Ukraine). Several draft laws are in the legislative process: a draft law on higher education, a draft law on national minorities, on pre-school education, on languages... Ukraine ratified the charter on national minorities but, due to procedural mistakes, the Constitutional Court judged that the work has to be revised. Not all the problems have yet been solved, because of a lack of time.

Mr Gennadiy Kosyak referred to the idea of establishing a co-ordination centre in Kyiv, aimed at the study of the national minorities. This could collect data, upon which education policy could be based. This policy could be a model for CIS-countries.

Ms T. Isohookana-Asunmaa raises the question of the media in Ukraine. The Council of Europe has a mainly positive attitude towards Ukraine and wants further co-operation. She wished for a reaction of the first deputy chairman on recommendation 5, where a definition of 'minority' is advised.

Mr Tolochko admitted that the draft law does not contain a clear definition of the term minority, since there are various types of minorities. He saw frankly no difference between representatives of people who have lived in Ukraine for more than 600 years, and to whom the term 'indigenous people' would apply, and those who have lived here for only 100 years, and to whom 'national minority' would apply. He wondered why there should be a different treatment as a result of a hierarchy of approaches towards minorities. This complicates the definition of the concept 'minority'. At present, there are no national tensions in Ukraine. In the field of education, the main question is not whether there should be schools, since there already exist various institutes. The most important task is to harmonise the intercourse between the different groups. The problem at this point is to take measures in such a way that rights of national minorities are secured, without going so far as to become destructive (from a financial or social point of view). There is for instance a problem when national minorities can pass the final exam in their language, whereas the entrance exam is in the State language. Another example: leaders of the national minorities want special vocational training in their languages. This causes problems of a different type; it considerably increases the cost for the governmental budget. And after their study, these skilled pupils must have a command of the State language in order to find a job. Moreover, the immediate demand for schools in the national minorities' languages endangers the quality of the education, because there is a lack of teachers with a thorough knowledge of all the skills for the wide range of technical jobs. This led him to conclude that the curriculum should be in Ukrainian, with one exception for the education of the mother tongue.

Ms T. Isohookana-Asunmaa reacted by saying that it is a basic right to learn and use your own language. Therefore, it is mandatory that the Parliament define the minorities. Amongst others, it was necessary to respect the timetable to ratify the charter on languages of national minorities.

Dr P.J.J. Zoontjens added that the quality of education is primarily a state responsibility. There should be a transparent system to judge the qualities of teachers. *Mr F. Ornelis* made reference to the The Hague recommendation number 15, which prescribes vocational training in the minority language if numerical strength justifies it. Recommendation number 16 explicitly guarantees a mixed curriculum, in both the state language and the mother tongue, in order to enable practice in both languages. The legal experts based their report on the analytical table, produced by Ms Semyorkina and Mr Tsvetkov, which dealt with the compliance of Ukrainian legislation with the The Hague Recommendations and with the Framework Convention for the protection of the National minorities.

Mr Tolochko's consultant drew attention to the fact that The Hague recommendations are a good manual, but sometimes contradict the Framework Convention for the protection of the National Minorities. The draft did not deal with all the problems of the national minorities. In his opinion, it was not a good idea to establish criteria for the foundation, closing and management of schools for national minorities, as suggested in recommendation 5, because general criteria must be sufficient. Nor would it be wise to develop criteria for the closing of schools, since Ukraine never had such

criteria. The Parliament aspires to an educational system with different types of schools, with pupils capable of using more than two languages.

Dr Yevtukh comments on the issue of the The Hague Recommendations. As very few people know these documents, it would be a great help if the Council of Europe translated and published these documents.

The chairman gave a brief overview of the draft laws. Different versions of the draft law on languages contradict each other. The draft law on higher education has been pending in the Verkhovna Rada for the second reading for one month. The draft law on national minorities has not yet passed the first reading and is still pending in the committees, where there is little enthusiasm. Moreover the project has to be revised. He reminded the members of the peculiar language situation in Ukraine : Russian is spoken by a large part of the population. After independence, there was a fear that, if Russian were to be recognised as an official State language, Ukrainian would gradually disappear. Nowadays this is unlikely to happen, since Ukrainian is the State language.

4. Additional recommendation

The members of the expert group wished to attract the attention of the Ukrainian Government to the findings of Mr M. Van der Stoel, as cited in his letter of 12 January 2001 to Mr A. M. Zlenko, especially to the maintaining of the principle of parental choice with more clarity and a more transparent complaint system to be set at the local level, with the possibility of appealing to the central level.

C. Recommendations for the improvement of the overall design of the project and its regional continuation

by Dr Frank ORNELIS

Preliminary

The aim and working method of the pilot project was described as follows (see: Programme for Legislative and policy consultancy in Education): “The project will provide support and consultancy for the legislative and policy frameworks needed for the development of the education system, in particular higher education, with regard to the minorities and formerly deported people in Ukraine. In the first phase, a seminar bringing together relevant officials and representatives will determine the objectives and expected outcomes of educational policy for national minorities and FDP in Ukraine. In the second phase, precise legislative formulations and implementation mechanisms will be developed by a working group together with [various Ukrainian official bodies mentioned]”.

A questionnaire has been sent to all the experts who participated in at least two sessions of the project. Rather than giving my opinion on the project or to write ‘Recommendations for the improvement of the overall design of the project and its regional continuation’ which reflect only my findings, I think it is more useful to include in my final report the opinion of members of the working group.

I have designed this form, using ‘common sense’, not using any scientific model, since I’m not a social scientist. The purpose of this form is clearly to improve next projects. The reactions of the members are compiled anonymously. Four of the six experts have answered the questions.

1. Input

1. Have you been provided with relevant study materials (law, reports...)? What did you miss, what did you appreciate?

The experts considered the information to be plentiful, but preferred to have more statistics, maps, diagrams, tables etc. in addition to the (legal) texts and as a timesaving, condensable medium. As far as content was concerned, it was rather difficult to assess what the quality of the source was, since the readers were not always aware of the contributor’s reputation. The origin was almost always an official source, which contrasts to the desire to rely on sources from various authors.

2. Would you add other sources of information if you designed a similar project?

The experts would have added internationally comparable statistics, consultations of MP’s or local / regional councils or information from concerned groups or individuals.

One expert put it this way:

“One source of information ought to be a *short* piece containing a *reliable* overview of essential facts and figures. This piece ought to prioritise compact information (diagrams, tables, etc.) for “economical” access to essential information by outside experts who are donating their time. The piece ought to be commissioned from an *independent* scholar”.

3. In your opinion, was the Western expert team composed in such a way that it could tackle the range of problems raised by the Ukrainian partner?

Several experts believed that the different backgrounds of the members usefully complemented each other. The balance between lawyers and social scientists worked out to be most helpful. A structural weakness of the Council of Europe, compared with other international organisations, is the limited resources. This results in the fact that experts have to invest their spare time for their involvement in this project, as they are not getting paid. Another structural weakness of this project

was, according to one expert, the fact that academics have no authority to tackle the political – administrative dimension of the problems; a strong chairperson with political experience who acts during the whole project as an independent mission-leader, seems to be necessary.

4. Did you have the feeling that the Ukrainian counterparts delivered relevant material that enabled you to see things more clearly?

In some of the reports, it was not easy to establish the factual and logical links between items of information supplied by different papers. The papers with more analytical information (e.g. the table with the comparison international norms – internal norms) were highly appreciated.

One major weakness was that the information came mostly (if not exclusively) from government sources. This can be considered sufficient only as a starting point. Any serious further development, or follow-up on this project, requires tapping other information sources (NGO's, etc.).

5. Did our Ukrainian colleagues have a thorough understanding of our mission and needs? Do you consider the Ukrainian members of the joint working group as appropriate counterparts in terms of knowledge of the problem (legal/factual knowledge)?

Cultural differences are distinct and cannot easily be erased. The opinions on how to classify schools were diverse, so mutual understanding was hard to find. International norms and conventions and their acknowledgement would have helped here.

One expert expressed the opinion that there were only a few possibilities for exchange or dialogue from a scientific perspective. According to one expert, there could have been more if the project had moved to a subsequent step, i.e., into the area of “hard” education planning, because some members of the Ukrainian team were real professionals from the education management side. Another expert would have expected more in-depth information during the discussions and counterparts who would be in more influential position.

Any other comment:

In order to increase the efficacy of projects and missions, the CoE should endeavour to secure appropriate funding in order to be able to get significant working time from the analysts / experts / etc. involved in such projects and missions. The World Bank could be a workable model. Ultimately, the responsibility lies with the governments, which should give the CoE means comparable to those they are giving to other international organisations.

2. Process

Aim and mandate

6. Was the aim of the Pilot Project the right one, given the current situation in Ukraine and starting from a scientific approach of the problems of minorities?

To one member, the aim and mandate was right and clear. The aim, as set in the description, could not to be reached however without information from minority organisations.

7. Was this aim sufficiently clear to you?

To one member, the aim was not entirely clear from the start. The project ought to have been couched in terms of a good analytical framework from the outset, which was missing. Hence, neither the aim nor the mandate was clear.

8. Was the mandate of the Western expert team sufficiently clear to you?

For some experts, the mandate was clear. As a result of the rather unclear aim of the project, the mandate wasn't fully clear for another member of the team.

Working forms

9. What is your opinion, in general, on the design of the project with one Starting Conference, two working group meetings, and one closing conference? Would there be more appropriate working models for the pilot project?

One expert thought that the design of the project was fine, given the budget limitations. Other members held the view that it takes time to understand each other. Nevertheless, not all of the meetings were strictly necessary. Some members ask more opportunities to get to know the grass roots, in order to have a clear picture of real life problems and how the law is put in practice. Monitoring should be an essential part of the work. One member favoured an independent and political experienced chairperson, a serving and supportive role of the secretariat, more feedback from other experiences of the CoE with the country involved and more room for strategic deliberations as a group.

The experts should be asked to join the team and get involved in the project at the earliest stage possible. Otherwise previous commitments can prevent experts from taking part in the first phase.

10. How do you evaluate the starting conference? Did it make the target clear? Did it give you enough information?

The starting conference was a solely Ukrainian matter and rather confusing to one member. Another member held the opinion that the opening statements should have been followed by a rather general and broad overview of the main data that characterise the educational system in general and the position of national minorities in particular. This would have helped the quick start-up of a discussion.

11. What about the two working visits? Did they contribute to the final aim; would there have been other models of information transfer?

The information transfer could have been organised in such a way that one meeting of the joint working group was sufficient. If clear mutual arrangements on content and approach of the required fields of interest could be made after a large discussion, this would have avoided one meeting.

12. What is your opinion on the closing conference?

Several members pleaded for a real discussion and wanted to have more time on the programme for this. It should go beyond the stage of information from Western reports. They found it regrettable that, given the location of the second conference, there was no possibility to meet representatives of Minority groups, e.g. the Crimean Tatar community, or local officials.

The Kyiv-meeting in April 2001 should have given more information about the ongoing process of lawmaking, so that the team could have assessed the changes already made. The chairperson should

definitely be the person who is in charge, i.e. the Minister of Education, and be present during the whole stay.

Time pressure

13. Was there enough time to study the documents in depth?

The short period of time could have been more efficiently used if the information provided was more analytical so that the meetings would have been more relevant.

Basically, investing time in this project meant that the members had to make time, that is to say to take time away from their other professional activities or spare time. Since staff time has to be paid for, this meant in some cases that there was serious pressure from the institutions on the members, because there was no compensation.

14. Did the Council of Europe Secretariat offer appropriate support?

The secretariat did well. One member remarked however that their role should be more supportive and serving.

3. Output

15. Did the project reach the target, set out in the first description?

It was hard to evaluate at the moment, since the targets were mainly on the legal plane. Precisely in this field, there is still a lot of work to be done. The appendix to the report of the Kyiv visit should clarify the current stage of the various legal procedures.

16. Do the Ukrainian interim reports correspond with your professional standards?

Most of the reports are in line with standards of civil service (as experienced in similar projects in of CIS-countries), not with academic research. So the reports more or less corresponded to expectations. But again, a more analytical way of presenting facts would have made things much clearer than they are now.

17. Do the western final reports correspond with your professional standards?

Given the budgetary, organizational and structural content, the reports corresponded with the standards.

18. What would you suggest as a follow-up of the pilot project?

It is important that there should be a follow-up by means of discussions with MP's, ministers, teachers, and local authorities and by means of monitoring the target group. An extensive seminar could be a model. Some experts are in favour of a mixed approach politics/experts, since the project enters a new phase after completion of the final report.

One expert put it this way: "It would probably be advisable to structure a next phase with the following elements: (i) first, clarifying the objectives of the government, of the CoE, and of various minority communities; (ii) second, identifying the area of consensus emerging from these various objectives; (iii) third, defining areas on which consensus may not be present yet, but can conceivably be achieved with good negotiating, which the CoE could help broker; (iv) fourth, sketching out, as a preliminary step, the type of policy measures that could be implemented as a

consequence; (v) fifth, comparing the “*Ist*” and the “*soll-Zustand*” of the legislation (I consider it somewhat premature to examine legislation in preceding steps); (vi) sixth, embarking on a dual-track strategy of assistance (which could itself be broken down in several steps): TRACK I would focus on assistance in legal matters (updating/changing legal texts, etc.); TRACK II would focus on assistance in policy analysis (selection, design and evaluation of policy measures to give substance to the “new” legislation regarding minorities and education)”.

Annexe 1 : Analytical table with current stage of implementation of the Recommendations (to be provided by the Ukrainian partners)

APPENDICES

1. List of meetings

1st national conference, Yalta, 16-19 April 2000

1st Working Group Meeting, Strasbourg, 30 June –1 July 2000

2nd Working Group Meeting, Ghent, 1–3 October 2000

Final National Conference, Yalta, 13-18 December 2000

Assessment and evaluation of the pilot project, 25-29 April 2001

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