

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 26 June 2023

MIN-LANG (2023) 15

EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES

**Statement by the Committee of Experts
on the legal framework for the implementation
of the European Charter for Regional or Minority Languages
in Ukraine**

*unanimously adopted by the Committee of Experts at its 76th plenary meeting, Strasbourg,
12-16 June 2023*

The Committee of Experts of the European Charter for Regional or Minority Languages takes note of the adoption by Ukraine of the Law on National Minorities (Communities), hereafter “National Minorities Law”¹, which will enter into force on 1 July 2023. In this context it wishes to share its position on this development having an effect on the promotion or protection of minority languages, in accordance with Article 19.1.b of its Rules of Procedure.

The Committee of Experts condemns again in the strongest possible terms the aggression of the Russian Federation against Ukraine and expresses its deep concern and solidarity with all people of Ukraine. The Committee of Experts finds unacceptable the instrumentalization by the Russian Federation of the presence of Russian as a minority language in Ukraine as a pretext for aggression. The Committee stands ready to continue its support to the Ukrainian authorities in implementing the Charter and considers this document as a way to provide guidance to the Ukrainian authorities on how to strengthen the protection of the minority languages in the country.

In the context of the 2019 Law on Ensuring the Functioning of Ukrainian Language as the State Language, hereafter “State Language Law”, a special law to address the rights of national minorities, including the use of minority languages in public life, was foreseen and expected, with a view to providing sufficient guarantees for an effective protection and promotion of minority languages, in line with international standards, including the Charter. Moreover, secondary legislation, including on minority languages, is still to be developed on the basis of the National Minorities Law, the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages.

The Committee of Experts welcomes the opinion on the Law on National Minorities (Communities) of Ukraine, adopted by the Venice Commission at its 135th Plenary Session (Venice, 9-10 June 2023), which provides important guidance to the Ukrainian authorities on how to improve the protection of national minorities and minority languages in Ukraine.

The Committee of Experts uses this opportunity to emphasize the main commitments of Ukraine in accordance with the undertakings ratified under the European Charter for Regional or Minority Languages, bearing in mind in particular the reference to this treaty in the preamble of the National Minorities Law.

All states parties to the Charter undertake to protect and promote the country’s traditional minority languages in all fields of public life: education, judicial authorities, administrative authorities and public services, media, cultural activities and facilities, economic and social life, and transfrontier exchanges. This implies *inter alia* an adequate legal framework, which clearly provides for the use of minority languages in different spheres of public life. It also requires states to take proactive and positive measures to promote minority languages in public and private life, which reflect “the facilitation and/or encouragement” of such use (Article 7.1.d) and a “resolute action to promote regional or minority languages in order to safeguard them” (Article 7.1.c). The promotion and use of the official language, which is a key element of integration and social cohesion, and of the minority languages are not in opposition.

As far as minority language **education** is concerned, the National Minorities Law (Article 5) provides for the right to “education, in particular in the languages of the national minorities (communities)”. According to Article 11 of the same law, the “specifics of the use of languages of national minorities (communities) in the educational process shall be determined by the Law of Ukraine “on Education” (2017) and special laws in this field”. Consequently the National Minorities Law does not provide for amendments of the already existing legislation in this field.

Nevertheless, the 2017 Law on Education triggered significant changes in education, in particular by reducing the scope of education in minority languages especially at secondary school level.

Under the Charter, Ukraine has ratified provisions which require the authorities to provide for one of three possible models of minority language education: to teach in the given minority language, to make available a substantial part of education in the minority language, or (except at pre-school

¹ This statement was prepared on the basis of the English translation of the law. The translation may not accurately reflect the original version on all points.

level) to teach the given language only as a subject, if so requested by a sufficient number of speakers. However, Ukraine did not specify which of the three models would apply to the individual languages. The fact that the educational models have not been specified in the ratification instrument does not necessarily mean that the implementation of the Charter is confined to a lower or the lowest of the options. Rather, teaching in minority languages and teaching of minority languages should be available on the basis of an individual “model mix” reflecting the situation of the given language and the wishes expressed by parents or pupils. Each minority places different emphasis on the individual models. For speakers of some minority languages, teaching in these languages would be the main model, whereas the other models would be demanded only to a lesser extent. Other minorities would be interested rather in bilingual education or teaching of the language.²

According to the current legal provisions (2017 Law on Education, 2019 State Language Law, 2020 Law on Complete General Secondary Education³ and the 2021 Law on the Indigenous Peoples of Ukraine) persons belonging to “indigenous peoples” have the right to education in their languages, along with learning Ukrainian, from pre-school through secondary education. Persons belonging to national minorities have the right to education in their languages, along with learning Ukrainian, in pre-school and primary school. At secondary level, the regime changes depending on whether the minority language is an official language of the European Union (EU) or not. For national minorities whose languages are official languages of the EU, in basic secondary education, at least 20% of the annual amount of school hours in the fifth grade must be provided in Ukrainian, with a gradual increase to 40% in the ninth grade; as of the 10th grade, the share to be provided in Ukrainian increases to 60%. To those enrolled in general secondary education before 1 September 2018, these provisions apply as of 1 September 2023 “with gradual increase of the number of subjects taught in Ukrainian”. For the other national minorities whose languages are not official languages of the EU as of the fifth grade, at least 80% of the annual amount of school hours has to be provided in Ukrainian. To those enrolled in general secondary education before 1 September 2018, these provisions have been applied since 1 September 2020.

Consequently, the possibilities of using the minority languages as the medium of instruction after primary school are limited for most of the minority languages. For those languages which have traditionally been used as the medium of instruction throughout education this represents a setback.

The Committee of Experts underlines that, in light of the provisions of the Charter, after the ratification, the state party should not introduce a less favourable regime of protection than the one in place at that time and should at least guarantee the maintenance of the existing level of protection; new legislation should not have a negative impact on the existing protection of minority languages in education.

Moreover, the creation of categories of languages, in particular based on their status in the European Union, cannot be justified in light of the Charter. The Charter does not imply that the same education model applies to all languages, but the choice has to be made “in accordance with the situation of the language” and the wishes of the speakers. The approach of distinguishing between languages in this way is not only followed in education, but also in other domains of public use of minority languages and goes against Article 7.2 of the Charter.

In addition, as far as the minority languages which are also official languages of the EU are concerned, the legal provisions define only the minimum share to be provided in Ukrainian, but not a minimum to be taught in a minority language. Even if all the other available time would be used to teach in a minority language, this would amount to 80% in the fifth grade, decrease to 60% in the ninth grade, and to 40% afterwards. Except for the fifth grade, the decreasing shares correspond to “a substantial part of education” rather than “education in the minority language”. Less than half of the teaching time in the minority language hardly qualifies even as a “substantial part of education” in a minority language.

Consequently, there is a need to make sure that all education models - education in the minority language, a substantial part of education in the minority language, and teaching of the minority language - remain available for all minority languages at all levels of education; in order to ensure that a “substantial part” of education is made available in the minority language, a share of at least 50% of

² 3rd report of the Committee of Experts in respect of Ukraine, CM(2017)97, paragraph 18; 2nd report of the Committee of Experts on the application of the Charter by Ukraine, ECRML (2014) 3, paragraph 108 – 111.

³ Complete general secondary education in Ukraine includes primary and secondary education.

the teaching time should be foreseen. Where the minority language is only taught as a subject, a sufficient number of hours (at least three hours weekly) should be ensured to guarantee language proficiency. Similar considerations apply in technical and vocational education and *mutatis mutandis* higher education. The Committee of Experts underlines that, according to the Charter, the teaching in and of minority languages is without prejudice to the teaching of Ukrainian, whichever the model chosen.

The Committee of Experts also notes that the legal provisions refer to the education in the minority language provided by setting up separate classes, which can imply that minority language schools will no longer function. Although minority language education can be organised in any school, traditional minority language schools have an emblematic value for national minorities and the Ukrainian authorities should take measures ensuring that they are maintained.

As far as **judicial authorities** are concerned, the Committee of Experts recalls that the use of minority languages, in accordance with the undertakings ratified, should be possible irrespective of a person's knowledge of the official language. Article 9 of the Charter aims to contribute to the development and maintenance of minority languages as living languages in public life; therefore, even persons who master the official language should be entitled to use the minority languages, if they choose to do so, in accordance with the provisions ratified.

With respect to **administration** and the local and regional authorities, Ukraine ratified the provisions related to the use of minority languages within the framework of these authorities (Article 10.2.a of the Charter) - a far-reaching commitment requiring the use of the minority language as a working language of the authority and covering both the use of the language internally as well as in relations with citizens, the publication of official documents in minority languages (Article 10.2.c and d), the use of the minority languages in debates in assemblies (Article 10. 2.e and f) the use or adoption of traditional and correct forms of place names in minority languages (Article 10.2.g), as well as to comply as far as possible with requests from public service employees having a knowledge of a minority language to be appointed in the territory in which that language is used (Article 10.4.c).

The National Minorities Law (Article 10.7) foresees that in "settlements" where persons belonging to national minorities "traditionally live or make up a significant part of the population", "inscriptions of the official names on the signs of local self-government authorities, municipal enterprises" may be displayed in minority languages, in addition to Ukrainian, upon decision of the local authorities (village, settlement or city council). In the same settlements, information to the public shall be displayed in minority languages, in addition to Ukrainian, upon decision of the local authority (Article 10.8).

Article 10.10 of the National Minorities Law foresees that the details concerning the use of minority languages "including for providing any topographical information", and in "communication with authorities, including when providing emergency assistance in areas, where persons belonging to national minorities (communities) traditionally live or make up a significant part of the population, upon request of such persons and if such request meets real needs", shall be defined by the methodology approved by the Cabinet of Ministers of Ukraine, on the basis of the Council of Europe Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages.

These provisions indicate that it will be possible to publish some information at local level also in minority languages, but only upon decision of the local authority. Therefore, further measures are needed to fully implement the undertakings ratified.

Keeping in mind the provisions of the State Language Law, a clear legal basis for the application of the provisions ratified under Article 10 of the Charter for local and regional authorities to all minority languages covered by the ratification should be provided. This should expressly provide for the use of the minority languages within the framework of these authorities, the publication of official documents in the minority languages, the use of the minority languages in debates in assemblies, the use or adoption of place names in the minority languages, as well as for human resources measures.

It should also be underlined that the Charter is based on a pro-active approach on the part of the authorities to promote minority languages, which should be reflected in legislation and practice.

As far as **media** is concerned, the National Minorities Law (Article 10. 4) foresees that “languages of the national minorities may be used in the media in accordance with the law” and “national minorities (communities) are entitled to create their mass media in accordance with the law”. Ukraine undertook, *inter alia*, to “make adequate provision so that [public] broadcasters offer programmes” in minority languages, to “encourage and/or facilitate” the broadcasting of private radio and television programmes in minority languages on a regular basis and to “encourage and/or facilitate the creation and/or maintenance” of at least one newspaper in minority languages. This requires that authorities also take measures supporting media in minority languages.

As far as broadcasting media is concerned, the legislation in force provides for quotas to be broadcast in Ukrainian. Content in other languages needs to be dubbed or subtitled unless it is in “languages of indigenous peoples”. As of 2024, the Ukrainian language quota will increase from 75% to 90% for national and regional broadcasters, and from 60% to 80% for local broadcasters. Unlike dubbing or voice over, as a rule, subtitling in Ukrainian programmes in minority languages is not problematic and makes such programmes available to non-speakers of minority languages. However, the authorities need to make sure that sufficient financial and/or human resources are available for this purpose. It is nevertheless important to review the quotas and dubbing or voice-over requirements, with a view to ensuring that they do not hamper the use of minority languages.

Current legislation aimed at limiting political influence over the press prohibits authorities from funding and co-funding printed media. This had a - probably unintended - side effect on newspapers and other periodicals in minority languages, for which public support has also been discontinued. In addition, the State Language Law foresees that print media may be published in languages other than Ukrainian if an edition in Ukrainian is published simultaneously with the edition in the “foreign language”; exceptions apply to “languages of the indigenous peoples”, English or other official languages of the EU. For those cases where an additional edition in Ukrainian has to be produced, this constitutes a significant additional cost, and even a serious threat to the financial viability and attractiveness of print media in minority languages.

Keeping in mind the legal provisions in force, including the State Language Law, and the provisions ratified under the Charter, it is important to foresee legal exceptions from the prohibition of public funding for printed media for all minority languages protected under the Charter. Furthermore, exceptions should also be foreseen from the requirement to publish an additional version in Ukrainian for newspapers in all minority languages.

The National Minorities Law provides for some use of minority languages in **cultural** activities. This is important since various provisions of the State Language Law discourage rather than encourage the use of minority languages in cultural activities. Public events organised by national minorities may take place in minority languages (Article 10.2 of the National Minorities Law). Cultural events organised by national minorities may be organised and hosted in the minority languages, but interpretation to Ukrainian has to be provided, upon request submitted by spectators 48 hours in advance (Article 10.3). Minority languages may be used, in addition to Ukrainian, in informational materials about such events, subject to the requirements of Article 23.3 and 23.5 of the State Language Law.

The National Minorities Law (Article 10.5) implements the exemptions from the 50% quotas in Ukrainian foreseen in Article 26 of the State Language Law concerning the publishers and publications in minority languages, as well as specialised bookstores for national minorities.

However, more space for minority languages should be opened up in cultural life, in the domains specified above as well as in other instances where the State Language Law has repercussions on the cultural sector. This is the case, for example, for films and related work (Article 23.6 of the State Language Law), which have to be in Ukrainian, with the sole exception of the “languages of indigenous peoples”. “Public events” organised wholly or partly by authorities, state-owned institutions or economic entities in a form of public ownership have to take place in Ukrainian or be interpreted, if requested by at least one attendee (Article 29 of State Language Law).

Since the undertakings in the field of culture under the Charter require *inter alia* the authorities to “encourage” or “foster”, different types of expressions, initiatives or activities, it is important to provide specific long-term financial support for the organisations of national minorities and cultural activities in minority languages.

From the perspective of the Charter, it is also important to further promote the use of minority languages in public life, including **economic and social life**. In light of the undertakings ratified, there is a need for legal provisions expressly prohibiting the insertion in internal regulations of companies and private documents of clauses excluding or restricting the use of minority languages (Article 13.1.b of the Charter). Moreover, the State Language Law requires the use of Ukrainian in many instances linked to economic and social life (such as tourism, sport events, transport); only in some cases, other languages may be used. There is a need to amend some provisions which do not allow for the use of minority languages, while in other cases positive action is required to ensure that minority languages continue to be used. In light of the legal framework and its impact on economic and social life, it is important that sufficient guarantees are in place that the authorities oppose practices designed to discourage the use of minority languages in this field. (Article 13.1.c of the Charter).

The Committee of Experts encourages the Ukrainian authorities to take into account the guidance provided in this statement, in order to further improve the legal framework for the protection and promotion of minority languages and invites them to submit their next periodical report on the application of the Charter by 1 May 2024.