

Alkalmazott Nyelvtudomány

A Magyar Tudományos Akadémia Nyelvtudományi

Bizottsága

Alkalmazott Nyelvészeti Munkabizottságának és

a Pannon Egyetem Magyar és Alkalmazott

Nyelvtudományi Intézetének ERIH PLUS folyóirata.

XX. évfolyam, 2020/2. szám

Impresszum

Kiadó:

Pannon Egyetem, Veszprém, Egyetem u. 10.

Kiadásért felelős személy:

Gelencsér András (rektor)

Főszerkesztő:

Navracsics Judit

Nyomtatott változat: ISSN 1587-1061

Online változat: ISSN 2498-4442

KAPCSOLAT

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XX. évfolyam

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István Csernicško–Anita Márku: Minority language rights in Ukraine from the point of view of application of the European Charter for Regional or Minority Languages
Alkalmazott Nyelvtudomány, XX. évfolyam, 2020/2. szám
doi:<http://dx.doi.org/10.18460/ANY.2020.2.002>

Minority language rights in Ukraine from the point of view of application of the European Charter for Regional or Minority Languages

The Ukrainian political elite, which as a result of the 2014 “revolution of dignity” overthrew the regime of President Viktor Yanukovich, in the second half of its term of office, adopted a series of legislative measures restricting the language rights of minorities. These include the law changing the language of electronic media, the new framework law on education, the state language law, the law on complete general secondary education, and the annulment of the language law adopted in 2012 by the Constitutional Court of Ukraine. The representatives of the Hungarian national minority in Ukraine stress that these legislative measures contrary to Ukraine’s international commitments. The Ukrainian government and some researchers, however, claim that the recent steps of language policy do not violate Ukraine’s international commitments in any way. In this article we examine: (a) what commitments Ukraine entered into when ratifying the European Charter for Regional or Minority Languages; (b) the content of the last report of the Committee of Experts of the Charter by the implementation of the Charter in Ukraine; (c) in the light of this report we seek to establish whether, in relation to the protection of minorities’ language rights, Ukraine is complying with the obligations it accepted when ratifying the Charter.

Keywords: European Charter for Regional or Minority Languages, language rights, Ukraine, language conflict

Az ukrán politikai elit, amely a 2014-es „méltóság forradalma” következtében megdöntötte Viktor Janukovics elnök rezsimjét, hivatali ideje második felében számos kisebbségi nyelvi jogot korlátozó jogalkotási intézkedést fogadott el. Ide tartozik az elektronikus média nyelvét megváltoztató törvény, az új oktatási kerettörvény, az állami nyelvtörvény, a teljes általános és középfokú oktatásról szóló törvény, valamint az ukrán alkotmánybíróság által 2012-ben elfogadott nyelvtörvény hatályon kívül helyezése. Az ukrán magyar nemzeti kisebbség képviselői hangsúlyozzák, hogy ezek a jogalkotási intézkedések ellentétesek Ukrajna nemzetközi kötelezettségvállalásaival. Az ukrán kormány és néhány kutató ugyanakkor azt állítja, hogy a nyelvpolitikában tett legutóbbi lépések semmilyen módon nem sértik Ukrajna nemzetközi kötelezettségvállalásait. Ebben a cikkben a következőket vizsgáljuk: (a) milyen kötelezettségeket vállalt Ukrajna a Regionális vagy Kisebbségi Nyelvek Európai Chartájának ratifikálása során; b) a Charta Szakértői Bizottságának a Charta ukrán végrehajtásáról szóló utolsó jelentésének tartalmát; (c) e jelentés fényében arra törekszünk, hogy kiderüljön, Ukrajna a kisebbségek nyelvi jogainak védelme kapcsán eleget tesz-e a Charta ratifikálásakor vállalt kötelezettségeinek.

Kulcsszavak: Regionális vagy Kisebbségi Nyelvek Európai Chartája, nyelvi jogok, Ukrajna, nyelvi konfliktusok

Introduction

The Ukrainian political elite, which as a result of the 2014 “revolution of dignity” overthrew the regime of President Viktor Yanukovich, in the second half of its term of office, adopted a series of legislative measures restricting the language rights of minorities. These include, *inter alia*, the law changing the language of electronic media (23-05-2017)¹, the new framework law on education (5-09-2017)², the state language law (25-04-2019)³, the law on complete general secondary education (16-01-2020)⁴, and the annulment of the language law adopted in 2012⁵ by the Constitutional Court of Ukraine for formal reasons (Constitutional Court 2018).

The framework law on education and the state language law has received considerable and substantial criticism from the Venice Commission (CDL-AD[2017]030; CDL-AD[2019]032).

The representatives of the Hungarian national minority in Ukraine stress that these legislative measures restrict the language rights of Hungarians in Transcarpathia, and contrary to Ukraine’s international commitments (Brenzovics et al., 2020; Csernicskó et al., 2020). The Ukrainian government and some researchers, however, claim that the recent steps of language policy do not violate Ukraine’s international commitments in any way (Markovskiy, Demkiv and Shevczenko, 2018; Toronchuk and Markovskiy, 2018).

Because “Ukraine stabbed Hungary in the back” by passing the new education law “that severely violates” the rights of its Hungarian minority⁶, Hungary, as the Kin State (Fiala-Butora, 2020), has stated: it will block the organization of high-level political meetings between Ukraine and NATO Council until the Ukrainian government changes legislation that restricts the language rights of Hungarians living on its territory. “We ask for no extra rights to Hungarians in Transcarpathia, only those rights they had before,” Hungary’s foreign minister Péter Szijjártó told stated.⁷

For Ukraine, rapprochement with NATO has become paramount since spring 2014: in March 2014, Russia occupied the Crimean peninsula, which is a part of Ukraine, and in the easternmost regions of Donetsk and Luhansk counties there is still an armed conflict between the central government and Russian-backed separatists. Ukraine considers accession to the European Union and NATO to be such a strategic issue that a law passed on 7 February 2019⁸, by amending the Constitution of Ukraine⁹, required the parliament, the President and the government to aspire to join the EU and NATO.

With this, Kyiv came into conflict with another neighbour after Russia over language issues (Fiala-Butora, 2020). Ukraine’s mistaken language policy undoubtedly played a role in the eruption of the political, military and economic crisis threatening the security of the whole of Europe and hindering the economic development of the narrower and wider region. Linguistic conflicts have been used as an excuse for the occupation of Crimea and for the outbreak of the armed

conflict that continues to devastate the eastern regions of Ukraine, with thousands of deaths. “Today’s situation in Ukraine is an example of how the linguistic and cultural warfare becomes the prerequisite and official basis for a real military campaign”, wrote Drozda (2014), for example. “No matter how we look at it, the current Russian–Ukrainian war was started because of the language. This is an indisputable fact. Russia used the language factor as a cause of aggression – with the explanation that it had to protect Russian-speaking citizens in Ukraine” – Osnach (2015) summed up the causes of the conflict. Sakwa (2015: 220) also believes that the language issue was one of the root causes of the conflict in eastern Ukraine.

Below we examine:

- a) what commitments Ukraine entered into when ratifying the European Charter for Regional or Minority Languages;
- b) the content of the last report of the Committee of Experts of the Charter¹⁰ by the implementation of the Charter in Ukraine;
- c) finally, in the light of this report we seek to establish whether, in relation to the protection of minorities’ language rights, Ukraine is complying with the obligations it accepted when ratifying the Charter.

Ratification of the Charter: one of the first steps towards European integration

For Ukraine, which became independent after the break-up of the Soviet Union in 1991, international integration was very important. To stabilize its international position, the young state sought to adopt European agreements on the protection of minorities. For example, joining the Council of Europe was one of the first and therefore important steps in European integration. By Opinion No 190 (1995)¹¹ of the Parliamentary Assembly of the Council of Europe Ukraine was required as a condition for membership of the Council of Europe to ratify the Framework Convention for the Protection of National Minorities, and to sign and ratify, within one year of its accession to the Council of Europe, the European Charter for Regional or Minority Languages (hereinafter referred to as “the Charter”).

Accordingly, the Parliament of Ukraine ratified the Framework Convention in 1997¹² and the Charter in 1999.¹³ One would think that this would incorporate these two international documents in Ukraine’s legal order, but the situation is more complex. For formal reasons, in 2000 the Constitutional Court of Ukraine repealed the law ratifying the Charter. According to the Decision the law of ratification was signed and proclaimed by the Chairman of the Verkhovna Rada of Ukraine and not by the President of the state (Constitutional Court, 2000). However, until this Decision every law of ratification was signed by the Chairman of the Parliament, but this was the only one that was repealed by the Constitutional Court on this reason (Kresina and Yavir, 2008: 190-196). The political attempt was to show Ukraine’s intention to meet the international obligations: that is why

they formally ratify the Charter. However the Charter's coming into force was not wanted, because its implementation could endanger the balance of the linguistic situation. According to analysts, Kyiv's political intention was for Ukraine to comply with its international obligations by formally ratifying the Charter, but at the same time to ensure that the international document would not enter into force, and that Kyiv would therefore not need to meet its ratification obligations (Bowring and Antonovych, 2008).

Many new draft bills were submitted to Parliament before Ukraine ratified the Charter again in 2003.¹⁴ The ratification document was only submitted to the Secretary General of the Council of Europe two years later, on 19 September 2005, and so in Ukraine the Charter did not enter into force until 1 January 2006.

Interpretation of the Charter in Ukraine

In Ukraine the Charter's ratification was preceded by intensive negative propaganda, which has persisted to this day. Politicians, state officials, researchers, activists and journalists have criticized the Charter, and during this negative campaign several false claims have been made about it. All this has significantly damaged the prestige of the Charter in the eyes of the country's population.

In 2004, 46 members of Ukrainian Parliament called for the law ratifying the Charter to be declared unconstitutional. According to members of Verkhovna Rada, ratification of the Charter imposes a huge financial burden on Ukraine and was not taken into account during ratification. However, in this case, the Constitutional Court rejected the hearing of the deputies' petition (Constitutional Court, 2004).

A common argument against the Charter's application in Ukraine, for example, is that the Ratification Law does not protect the languages it should do (Csernicskó, 2013). It is argued that in Ukraine the provisions of the Charter cannot be applied, for example, to Russian, Romanian, Hungarian, etc., because the true purpose of the Charter is to protect endangered languages on the verge of extinction; and claims also that the deputies in the Kyiv parliament were misled by an incorrect translation into thinking that the document relates to minority languages (Maiboroda et al., 2008).

Opinions criticizing the Charter are also included in higher education textbooks approved by the Ministry of Education and Science of Ukraine (Maciuk, 2009: 167-168, Masenko, 2010: 145-146). Still some experts gave voice to their opinions that until linguistic problems would be settled, a moratorium should be introduced on the implementation of the Charter in Ukraine (Shemshuchenko and Horbatenko, 2008: 162). These are influencing state authorities and the judiciary. The official legal statement issued by the Ministry of Justice of Ukraine in 2006 effectively reiterates the abovementioned statements made in relation to the Charter: "Ukraine's ratification of this Charter, as it was done on May 15, 2003,

objectively caused a number of pressing legal, political and economic problems in Ukraine. The main reasons for this are the incorrect official translation of the text of the document into Ukrainian, which was added to the Charter Ratification Law, and the misunderstanding of the object and purpose of the Charter.”¹⁵

The statements quoted above are untrue, however. For example, it is not true that the purpose envisaged for the Charter is solely the protection of endangered languages, or that the protection of languages used as official languages of other states is not one of its objectives. The majority of member states that have ratified the Charter have used the international document to protect languages which have official status in other countries. For example, the Ukrainian language is protected by the Charter in Armenia, Bosnia and Herzegovina, Croatia, Hungary, Poland, Romania, Serbia and Slovakia.¹⁶

Ukraine’s international commitments

13 languages of Ukraine’s national minorities are protected under the Charter. It is noteworthy that although only the 13 languages are included in the version of the Ratification Law found on the official government website or in the printed versions in the official gazettes, the Ukrainian state reports submitted to the Council of Europe show that Article 7 of the Charter also applies to Karaim, Krymchak, Romani and Ruthenian/Rusyn languages. Thus, the protection of Article 7 of the Charter extends not to only 13 languages but to 17 languages (*Figure 1*).

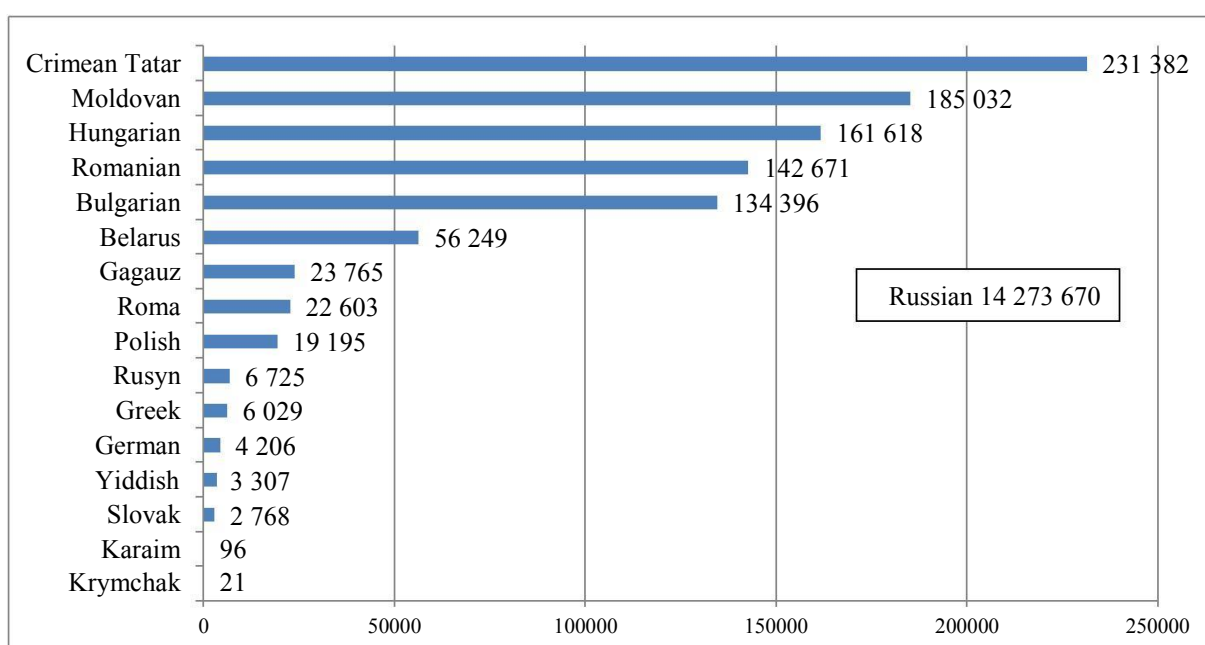


Figure 1. Native speakers of minority languages in Ukraine (2001 census data)

Ukraine undertook fewer obligations under the Charter than it would be justified by the situation of some (e.g. Russian, Hungarian, Romanian) regional or minority languages. This entails the possibility that Kyiv will reduce the rights

to use regional or minority languages to the level it had undertaken when ratifying the Charter. The reality of this threat is demonstrated by the fact that since the previous (third) reporting period, the Kyiv government has adopted a number of new laws that significantly restrict the possibility to use regional or minority languages.

Monitoring the application of the Charter

The Committee of Experts shall report at regular intervals on how each state – including Ukraine – is applying the Charter within its borders. The review and analysis of these reports is important, because in principle they serve as “important guidelines, an objective standard, before the international and domestic fora about the state of minority rights: compliance with minority rights requirements is often not assessed in comparison to the treaties’ text, but to their interpretation adopted by the expert bodies” (Fiala-Butora, 2018: 8). Thus, these reports serve as a kind of objective mirror in international and domestic forums on the situation of minority rights.

Kyiv submitted its first report on the application of the Charter in Ukraine in 2007, followed by three more so far. The Committee of Experts published three reports on Ukraine, the most recent one in March 2017. The Committee of Ministers also adopted three recommendations in respect of Ukraine (*Table 1*).

Table 1. *Monitoring of the application of the Charter in Ukraine*¹⁷

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

Chapter 2 of the report of the Committee of Experts on the implementation of the Charter in Ukraine, adopted on 27 March 2017 (Comex, 2017), evaluates the compliance of Ukraine with its undertakings under the Charter for the languages covered. The Committee of Experts used the following categories for the evaluation of compliance:

(4) *Fulfilled*: policies, legislation and practice are in conformity with the Charter.

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

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

(1) *Not fulfilled*: no action in policies, legislation and practice has been taken to implement the undertaking or the Committee of Experts has over several monitoring cycles not received any information on the implementation.

() *No conclusion*: the Committee of Experts is not in a position to conclude on the fulfilment of the undertaking as no or insufficient information has been provided by the authorities.

The examination of the Committee of Experts' report issued in 2017 reveals that Ukraine has not entirely fulfilled its commitments under the Charter. Based on the articles of Parts II and III of the Charter, *Tables 2–9* show a summary of how the 2017 report of the Committee of Experts assessed Ukraine's compliance with its obligations.

Article 7 of the Charter sets out general objectives and principles in relation to regional or minority languages. Commitments include the fact that the state facilitates and/or encourages the use of regional or minority languages in private and public life, orally and in writing. As shown in Table 2, not all cells have a score of 4 (fulfilled). Article 7 also covers the protection of the Karaim, Krimchak, Romani and Ruthenian languages. As we can see, Ukraine has not done much to protect these languages either.

Table 2. *Compliance of Ukraine with its undertakings under the Charter, according to the independent evaluation of COMEX 2017 (Article 7: Objectives and principles)*

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

The official position of Ukraine is that the new provisions contained in Article 7 of the Law on Education, Article 21 of the State Language Law, and the Article 21 of the Law on Complete General Secondary Education are fully in line with Ukraine's international commitments. Seemingly, this is indeed the case: Kyiv

guarantees the right to learn one’s mother tongue and those native languages of minorities appear at all levels of public education as subjects. In reality, however (as can be seen in Table 3), Ukraine has not fully complied with its international obligations in this area, not even before the adoption of the aforementioned laws.

Table 3. *Compliance of Ukraine with its undertakings under the Charter, according to the evaluation of COMEX 2017 (Article 8: Education)*

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

Article 9 of the Charter contains provisions to support the use of minority languages in the field of justice. In this area, Kyiv undertook in 2003 to allow “documents and evidence to be produced in the regional or minority languages”. As can be seen from the data in *Table 4*, the Ukrainian state has almost not fulfilled its commitments in the field of judicial authorities at all (with the exception of the use of the Russian language).

Table 4. *Compliance of Ukraine with its undertakings under the Charter, according to the evaluation of COMEX 2017 (Article 9: Judicial authorities)*

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

Table 5 summarizes how the Committee of Experts sees the use of minority languages in administrative authorities and public services. In very few cells of the table, can we see a rating of 4 (fulfilled). In same time, rating 1 (not fulfilled) can be found in a large number of cells.

Table 5. Compliance of Ukraine with its undertakings under the Charter, according to the evaluation of COMEX 2017 (Article 10: Administrative authorities and public services)

	2.a	2.c	2.d	2.e	2.f	2.g	4.c
Belarusian	1	1	1	1	1	1	1
Bulgarian	2	1	1	1	1	1	1
Crimean Tatar	2	1	1	1	1	1	1
Gagauz	2	1	1	1	1	1	1
German	1	1	1	1	1	3	1
Greek	1	1	1	1	1	1	1
Hungarian	3	1	1	1	3	3	1
Moldovan	1	1	1	1	1	1	1
Polish	2	1	1	1	1	1	1
Romanian	3	1	1	1	1	3	1
Russian	4	4	4	4	4	3	
Slovak	3	1	1	1	1	1	1
Yiddish	1	1	1	1	1	1	1

Article 11 of the Charter supports the use of minority languages in the media. In the light of the State Language Law adopted in 2019 and the mandatory state language quotas introduced on television and radio, it is worth examining whether *Table 6* also contains more 1 (not fulfilled) than 4 (fulfilled). The Ukrainian government was therefore unable or unwilling to fully fulfill its own commitments and obligations in this area either.

Table 6. Compliance of Ukraine with its undertakings under the Charter, according to the evaluation of COMEX 2017 (Article 11: Media)

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

Table 7 summarizes how Ukraine applies the Charter in its territory in cultural activities and facilities. There are a relatively large number of 4s in the table, but we also find a number of 1s.

Table 7. Compliance of Ukraine with its undertakings under the Charter, according to the evaluation of COMEX 2017 (Article 12: Cultural activities and facilities)

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

Table 8 lists only 4 (fulfilled) ratings. During the ratification of this point, Kyiv undertook “to prohibit the insertion in internal regulations of companies and private documents of any clauses excluding or restricting the use of regional or minority languages, at least between users of the same language” (1.b), and “to prohibit the insertion in internal regulations of companies and private documents of any clauses excluding or restricting the use of regional or minority languages, at least between users of the same language” (1.c). However, we do not have any information on the fulfilment of the latter point. Therefore, data on compliance with Article 13 of the Charter cannot be taken into account in the final summary.

Table 8. *Compliance of Ukraine with its undertakings under the Charter, according to the evaluation of COMEX 2017 (Article 13: Economic and social life)*

	1.b	1.c
Belarusian	4	
Bulgarian	4	
Crimean Tatar	4	
Gagauz	4	
German	4	
Greek	4	
Hungarian	4	
Moldovan	4	
Polish	4	
Romanian	4	
Russian	4	
Slovak	4	
Yiddish	4	

Finally, Article 9 of the Charter contains its passages for transfrontier exchanges. As shown in *Table 9*, Ukraine has performed relatively well in this area.

Table 9. *Compliance of Ukraine with its undertakings under the Charter, according to the evaluation of COMEX 2017 (Article 14: Transfrontier exchanges)*

	a	b
Belarusian	4	4
Bulgarian	4	3
Crimean Tatar	3	
Gagauz	1	1
German	4	
Greek	4	4
Hungarian	4	4
Moldovan	4	4
Polish	4	4
Romanian	4	4
Russian	4	4
Slovak	4	4
Yiddish	1	1

Fulfilling the Charter's commitments: a summary

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

If we calculate average values on the basis of the scores, it becomes clear that Ukraine has *partially fulfilled* its obligations under Articles 14 and 7 of the Charter. In respect of Article 8, the government is closer to the evaluation of

partially fulfilled than *formally fulfilled*. Unfortunately, for Articles 12, 11 and 9, the average value is closest to the evaluation of *formally fulfilled*, which means, according to the report of the Committee of Experts, that “policies and legislation are in conformity with the Charter, but there is no implementation in practice”. Ukraine has practically not complied with its obligations under Article 10, as the average value is closest to the evaluation of *not fulfilled*, which means that “no action in policies, legislation and practice has been taken to implement the undertaking or the Committee of Experts has over several monitoring cycles not received any information” (Figure 2).

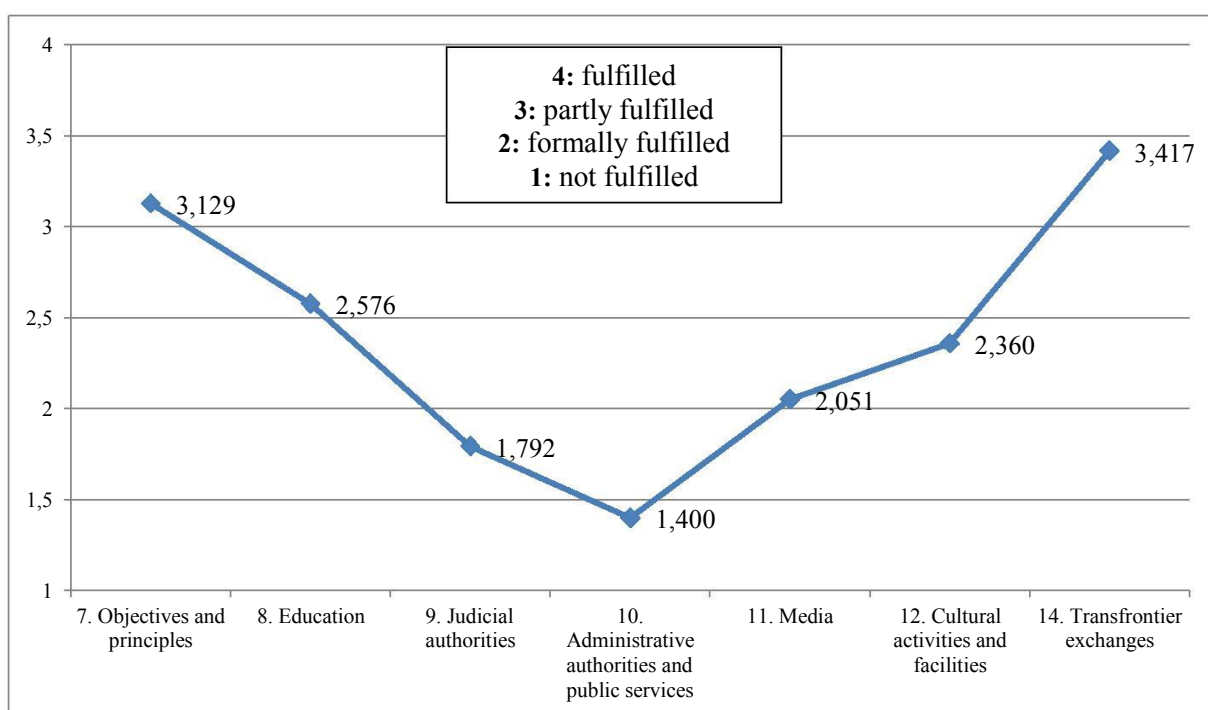


Figure 2. Average values of compliance of Ukraine with its obligations under the Charter, based on the evaluation of COMEX 2017, by articles of the Charter

Treating the averages shown in Figure 2 as school grades, we find that, based on the 2017 report of the Committee of Experts, Ukraine’s imaginary certificate included three grades of 3, three grades of 2 and one grade of 1, which means an average of 2. With a textual assessment based on the criteria used by the Committee of Experts, this means: “Policies and legislation are in conformity with the Charter, but there is no implementation in practice”.

Figure 3 summarizes how Ukraine has fulfilled its obligations for each language. We can see that only the indicators of the Russian language stand out. This is because there are very many speakers of the Russian language (see Figure 1), and the Russian language was in the same position as the state language when independent Ukraine was created.

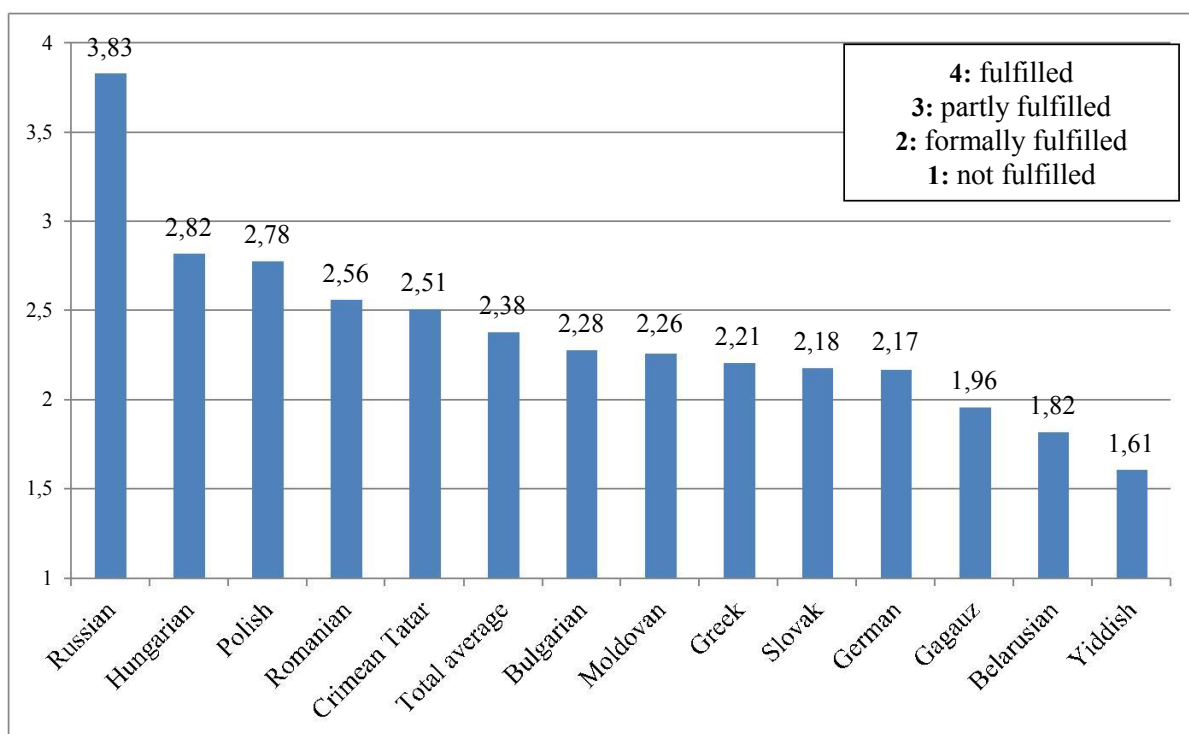


Figure 3. Average values of compliance of Ukraine with its obligations under the Charter, based on the evaluation of COMEX 2017, by languages

Conclusions

The Committee of Experts' 2017 report provide an opportunity to examine whether this body considered that the minority language rights guaranteed by Ukraine were in accord with the state's commitments and obligations. As can be seen from the above, a number of comments on the issue of minority language rights made the Committee of Experts indicate that Ukraine is not fully fulfilling its commitments. It must be emphasized, that the Comex, 2017 was prepared before the adoption of the series of legislative measures restricting the language rights of minorities. The assessment of the independent international body makes it clear that already in 2017 (that is, well before the adoption of these laws) Ukraine failed to fulfill its international obligations in respect of the implementation of the rights to use minority languages.

Pursuant to Article 9 of the Constitution of Ukraine and Article 19 of the Law on International Treaties of Ukraine,¹⁸ international conventions ratified by the Parliament of Ukraine form part of the country's national legislation. According to the opinions of the Venice Commission on Ukraine (CDL-AD[2004]013: para. 9; CDL-AD[2004]022: para. 6.), such international treaties prevail over ordinary national law. This means that Ukraine should urgently repeal or at least amend these new laws, bringing its provisions in line with the Charter (see CDL-AD[2019]032: para. 139).

Roter and Busch (2018: 165) state that in Ukraine, "the exclusive nation building (the so-called Ukrainisation) is very clearly aimed at promoting the Ukrainian language as the sole legitimate language in the public domain, at the

expense of other languages, particularly Russian, but also other minority languages. Their use may have been affected as a ‘collateral damage’ of the process of Ukrainisation as anti-Russian policies, but it is not less painful for the speakers of those languages”.

With regard to the application of the Charter in Ukraine, we can state that “the implementation and enforceability of existing legislation is hampered” (Szabó Mihály, 2017: 300). The linguistic human rights “on paper are but a first step and mean little if proper implementation is not forthcoming” (Skutnabb-Kangas and Phillipson, 2016: 12). We are well aware that in international law there is little enforceable positive law related to the linguistic rights of minorities (De Varennes and Kuzborska, 2019). As we have seen from the foregoing, however, the real aims of the Charter are incompatible with language policies which deny the needs of minorities.

Since the ratification of the Charter, Kyiv has made every effort to destroy the prestige of the Charter among its population, suggesting to Ukrainian society that the international instrument should not be applied in Ukraine. The ratification of the Charter seems to have been only a means to a step of European integration: the incorporation of the international treaty into the domestic legal system was not a value-oriented decision, but a choice made solely on the basis of a momentary political interest.

The outcome of the controversy following the adoption of new measures in field of language policy could play a decisive role in interpreting the right of autochthonous minorities in Europe to education in their mother tongue and, in general, the rights to use minority languages. “This situation could have been avoided if the international community had been more proactive in enforcing international human rights norms related to minorities. (...) The lack of enforcement of minority rights mechanisms not only undermines the goal of human rights treaties, it also undermines the goal of conflict prevention mechanisms, by creating perverse incentives to capture the interest of the international community by presenting minority concerns as issues of security” (Fiala-Butora, 2020: 259-260). Should European international organizations assist in eroding the linguistic rights of minorities in Ukraine, a precedent will be set, according to which the rights of minorities previously acquired in the legal system of the State they are citizens thereof can be curtailed at any time. This precedent could generate serious conflicts in different parts of Europe.

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¹³ Закон України «Про ратифікацію Європейської хартії регіональних мов або мов меншин, 1992 р.» [Law of Ukraine “On Ratification of the European Charter for Regional or Minority Languages, 1992”] <https://zakon.rada.gov.ua/laws/show/1350-14> (Last accessed 16 May 2020).

¹⁴ Закон України «Про ратифікацію Європейської хартії регіональних мов або мов меншин» [Law of Ukraine “On Ratification of the European Charter for Regional or Minority Languages”] <https://zakon.rada.gov.ua/laws/show/802-15> (Last accessed 16 May 2020).

¹⁵ Юридичний висновок Міністерства юстиції щодо рішень деяких органів місцевого самоврядування (Харківської міської ради, Севастопольської міської ради і Луганської обласної ради) стосовно статусу та порядку застосування російської мови в межах міста Харкова, міста Севастополя і Луганської області від 10 травня 2006 року [Legal Opinion of the Ministry of Justice on decisions of some local self-government bodies (Kharkiv City Council, Sevastopol City Council and Luhansk Regional Council) regarding the status and procedure of using Russian in the city of Kharkiv, Sevastopol and Lugansk region, 10 May 2006] https://minjust.gov.ua/m/str_7477 (Last accessed 16 May 2020).

¹⁶ What languages does the European Charter for Regional or Minority Languages apply to? <https://www.coe.int/en/web/european-charter-regional-or-minority-languages/languages-covered> (Last accessed 16 May 2020).

¹⁷ Source: <https://www.coe.int/en/web/european-charter-regional-or-minority-languages/reports-and-recommendations> (Last accessed 15 May 2020).

¹⁸ Закон України «Про міжнародні договори України» [Law of Ukraine “On International Treaties of Ukraine”]. <https://zakon.rada.gov.ua/laws/show/1906-15> (Last accessed 16 May 2020).