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ISTVÁN CSERNICSKÓ

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

Abstract: On September 5, 2017, the Verkhovna Rada (Parliament) of Ukraine voted for the Ukrainian Law “On Education”. Around Article 7 of the Law, discussions broke out, which gradually turned into one of the most acute conflicts in both internal political life and the external relations of Ukraine. The conflict rose from an internal to an international level when Hungary blocked the organization of high-level political meetings between Ukraine and NATO. The present paper examines Ukraine’s obligations in the field of mother-tongue-medium education of minorities. Kyiv had assumed such obligations with the ratification of the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities. Based on the official reports of the Advisory Committee on the Framework Convention for the Protection of National Minorities and the Committee of Experts of the European Charter for Regional or Minority Languages of Council of Europe bodies from 2017, the paper also examines how Ukraine fulfils its international obligations in this area.

On 5 September 2017, the Supreme Council (Parliament) of Ukraine voted to adopt the new Ukrainian Framework Law on Education, which came into force on 28 September after being signed by the then President of Ukraine Petro Poroshenko.¹ Since its adoption, the Law—and more specifically Article 7, which regulates the language used in education—has been at the centre of disputes. The source of the tension is the fact that the new Law on Education, and Article 7 within it, make education in the state language partially compulsory. This is in contrast to previous legislation in force since Ukraine won its independence in 1991, which provided the opportunity to choose the language used in education. Two elements have raised the conflict from the level of a domestic issue within Ukraine to an international level: on the one hand, Hungary has used all the diplomatic means at its disposal to stand up for preservation of the right of Hungarians in Ukraine (Transcarpathia or Zakarpattia Oblast) to be educated in their mother tongue—a long-standing right which dates back to the period before Ukraine’s independence;² on the other hand, international organisations have also become involved in the debate emerging around Article 7 of the Law on Education.

It is worth noting separately that, because of Article 7, Hungary is also seeking to apply pressure on Ukraine to amend its education law by using its veto as a NATO member state to block the highest-level political meetings between Ukraine and NATO. Thus the dispute related to Article 7 of the Law of Ukraine on Education of 2017, which regulates the language used in education, is now taking place at several levels:

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- 1 Закон України «Про освіту» [Law of Ukraine “On Education”]. Available from: <http://zakon.rada.gov.ua/laws/show/2145-19> For details on the Law, see Csilla Fedinec and István Cserniczkó, *A 2017-es ukránjai oktatási kerettörvény: a szöveg keletkezéstörténete és tartalma [Ukraine’s Framework Law On Education of 2017: the origin and content of the text]*, in *Regio 25* (2017)/3, pp. 278–230
 - 2 In the course of the past 150 years the region in Ukraine known today as Transcarpathia has belonged successively to six different states: until 1918 to the Hungarian Kingdom of the Austro–Hungarian Monarchy; from 1919 to 1939 to the Czechoslovak Republic; to Carpatho–Ukraine, which existed for only a few hours in March 1939; to the Kingdom of Hungary (which had no serving monarch) until the end of World War II; to the Soviet Union until the latter’s dissolution; and to Ukraine since 1991). Nevertheless, each of these states allowed the members of each of the nationalities living in its territory to study in their own language. For just over a quarter of a century following its independence (from 1991 until the adoption of the Education Law of 2017), Ukraine also provided a legislative guarantee of the right to education in one’s mother tongue. See István Cserniczkó and Mihály Tóth, *The right to education in minority languages: Central European traditions and the case of Transcarpathia* (Ungvár: Autdor-Shark, 2019)

1. Between Ukraine as a state and representatives of several national minorities living in the country (including a significant number of Hungarians and Romanians living in Transcarpathia);
2. Between Kyiv and some neighbouring states (e.g. Hungary, Romania and Russia);
3. International organisations such as the UN, NATO, the OSCE, the EU and the Council of Europe (the Venice Commission)³ have become involved in discussion of the issue—not least as a result of Hungary's diplomatic activities.

In the debate which has spread to the international stage, both the Hungarian community in Transcarpathia and Hungary's diplomatic representatives stress that, in addition to restricting the rights of Hungarians in Transcarpathia, Article 7 of the Law on Education is contrary to Ukraine's international commitments.⁴ Ukrainian politicians and scholars, however, claim that the Education Law and Article 7 do not violate Ukraine's international commitments in any way.⁵

On January 16, 2020, the Parliament voted in favour of the Law “On Complete General Secondary Education”, and on March 18, the Law came into force.⁶ Article 5 of this Law is intended to clarify the provisions of the framework Law on Education. The Law does not reduce the conflict surrounding the Law on Education, however, as it merely adds some nuance to Article 7 of the framework Law without changing its substance (namely that from Grade 5 onwards ever more subjects should be taught in the state language).

3 István Csernicskó, *Egy nyelvi jogi probléma lehetséges vonatkozásai: két tanulmány a kisebbségek anyanyelvi oktatásáról*, in *Regio* 26(2018)/3: 62–68.

4 See *Ukraine's Law on Education from the point of view of the Hungarian Minority in Transcarpathia*. Available from: <https://kmsz.com.ua/wp-content/uploads/2017/10/brossura.pdf>; and *Education Law of Ukraine: Why is Article 7 Wrong?* Available from: <https://kmsz.com.ua/wp-content/uploads/2017/11/Why-is-wrong-the-Law-of-Education.pdf>

5 Марковський Володимир – Шевченко Вячеслав: *Проблеми та перспективи реалізації статті 7 «Мова освіти» Закону України «Про освіту» 2017 року* [Markovskyyi V., Shevchenko V. *Problems and perspectives of the implementation of Article 7 «Language of Education» of the 2017 Law of Ukraine «On Education»*], in *Вісник Конституційного Суду України* 6(2017): 51–63; Volodymyr Markovskyyi, Roman Demkiv and Vyacheslav Shevchenko, *Ukraina nyelvpolitikájának alakulása az őshonos népek és nemzeti kisebbségek anyanyelvi oktatása területén* [Development of Ukraine's language policy in the field of mother tongue education of indigenous peoples and national minorities], in *Regio* 26(2018)/3, pp. 69–104; Ivan Toronchuk and Volodymyr Markovskyyi, *The Implementation of the Venice Commission recommendations on the provision of the minorities language rights in the Ukrainian legislation*, in *European Journal of Law and Public Administration* 5(2018)/1, pp. 54–69

6 Закон України «Про повну загальну середню освіту». [Law of Ukraine “On Complete General Secondary Education”] Available from: <https://zakon.rada.gov.ua/laws/show/463-20>

However, Ukrainian-Hungarian interstate relations may be further strained by the fact that on 25 April 2019, the Parliament in Kyiv voted for the Law of Ukraine on Supporting the Functioning of the Ukrainian Language as the State Language.⁷ Article 21 of this, entitled “State language in the field of education”, does not change Kyiv’s vision related to language use in education.⁸

Below we examine the following:

1. How the right to education in minority languages is expressed in two European documents on the protection of minorities (the Framework Convention for the Protection of National Minorities—hereinafter “the Framework Convention”, and the European Charter for Regional or Minority Languages—hereinafter “the Charter”);
2. What commitments Ukraine entered into when ratifying these two conventions;
3. We summarize the content of reports by professional bodies monitoring the implementation of the two conventions on minority education in Ukraine;
4. Finally, in the light of these reports we seek to establish whether, in relation to the protection of minorities’ rights to education in their mother tongue, Ukraine is complying with the obligations it accepted when ratifying these two international conventions.

In relation to the Framework Convention, the Advisory Committee on the Framework Convention (hereinafter “the Advisory Committee”)⁹ and the Committee of Experts of the Charter (hereinafter “the Committee of Experts”)¹⁰ shall report at regular intervals

7 Закон України «Про забезпечення функціонування української мови як державної» [The Law of Ukraine “On Supporting the Functioning of the Ukrainian Language as the State Language”] Available from: <https://zakon.rada.gov.ua/laws/show/2704-19> For more on the law, see, e.g., *Four language laws of Ukraine: Continuous limitation of language rights (1989–2019)*

8 This law was seriously criticized by the Venice Commission in its official opinion of 9 December 2019: CDL-AD(2019)032. EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION). UKRAINE. OPINION ON THE LAW ON SUPPORTING THE FUNCTIONING OF THE UKRAINIAN LANGUAGE AS THE STATE LANGUAGE. Opinion No. 960/2019. Strasbourg, 9 December 2019. Available from: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)032-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)032-e)

Available from: https://kmsz.com.ua/wp-content/uploads/2019/04/Language-Rights-1989_2019.pdf

9 Available from: <https://www.coe.int/en/web/minorities/advisory-committee>

10 Available from: <https://www.coe.int/en/web/european-charter-regional-or-minority-languages/committee-of-experts>

on how each state—including Ukraine—is applying within its borders the international documents referred to here. 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.”¹¹

The most recent reports issued by the Advisory Committee and the Committee of Experts on the application in Ukraine of the Framework Convention and the Charter were drafted before the adoption of the Law on Education in October 2017, On Supporting the Functioning of the Ukrainian Language as the State Language in April 2019. Nevertheless, the materials produced by these international bodies can help to give an indication of the extent to which the requirements of the new Ukrainian legislation related to the language used in education are compatible with the country’s international commitments.

Ratification in Ukraine of the Framework Convention and the Charter

After Ukraine became independent in 1991, the Parliamentary Assembly of the Council of Europe’s Opinion 190 (1995)¹² on the country’s application for membership of the Council required Kyiv to ratify the Framework Convention and to sign and ratify the Charter within one year of Ukraine’s accession to the Council of Europe.¹³ Accordingly, the Supreme Council of Ukraine ratified the Framework Convention in 1997¹⁴ and the Charter in 1999.¹⁵ One would think that this would incorporate these two international

11 See also János Fiala-Butora, *Implementation of the Framework Convention for the Protection of National Minorities and the European Language Charter: Unified Standard or Divergence?* in *Hungarian Journal of Minority Studies* Vol. II (2018): 7–21.

12 PACE Opinion 190, 26/9/95. Available from: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=13929&clang=en>

13 Mihály Tóth and István Csernicskó, *Az ukrajnai kisebbségi jogalkotás fejlődése és két részterülete: a névhasználat és a politikai képviselet [Development of minority legislation in Ukraine in its two sub-areas: use of the names and political representation]*, in *Regio* 2009/2: 69–107.

14 Закон України „Про ратифікацію Рамкової конвенції Ради Європи про захист національних меншин” [Law of Ukraine “On Ratification of the Council of Europe’s Framework Convention for the Protection of National Minorities”] Available from: <https://zakon.rada.gov.ua/laws/show/703/97-%D0%B2%D1%80>

15 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”] Available from: <https://zakon.rada.gov.ua/laws/show/1350-14>

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.¹⁶ 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.¹⁷

Many new draft bills were submitted to Parliament before Ukraine ratified the Charter again in 2003.¹⁸ However, 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.

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.

A common argument against the Charter's application in Ukraine, for example, is that the Ratification Law does not protect the languages it should. In Ukraine many people have misled the public by arguing that the Charter cannot be used to protect languages used as official languages in other states. It is argued that in Ukraine the provisions of the Charter cannot be applied, for example, to Russian, Romanian, Moldovan, Slovakian, German, Hungarian, etc. According to a book published by the IF Kuras Institute of Political and Ethnonational Studies of the National Academy of Sciences of Ukraine, the true purpose of the Charter is to protect endangered languages on the verge of extinction,

16 Рішення Конституційного Суду України у справі за конституційним поданням 54 народних депутатів України щодо відповідності Конституції України (конституційності) Закону України „Про ратифікацію Європейської хартії регіональних мов або мов меншин 1992 р.” [Decision of the Constitutional Court of Ukraine in the case on the constitutional petition of 54 Deputies of Ukraine on compliance with the Constitution of Ukraine (constitutionality) of the Law of Ukraine “On Ratification of the European Charter for Regional or Minority Languages of 1992”] Adopted 12.07.2000, Document v009p710-00. Available from: <https://zakon.rada.gov.ua/laws/show/v009p710-00>

17 For more, see Bill Bowring and Myroslava Antonovych, *Ukraine's long and winding road to the European Charter for Regional and Minority Languages*, in *The European Charter for Regional and Minority Languages: Legal Challenges and Opportunities*, Council of Europe Publishing (Strasbourg, 2008): 157–182.

18 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”] Available from: <https://zakon.rada.gov.ua/laws/show/802-15>

and the book claims that the deputies in the Kyiv parliament were misled by an incorrect translation into thinking that the document relates to minority languages.¹⁹

Opinions criticizing the Charter are also included in higher education textbooks approved by the Ministry of Education and Science of Ukraine. According to a university textbook by Halyna Maciuk, professor at the Ivan Franko National University in Lviv, “*There were problems with the implementation of the Charter*”.²⁰ In Maciuk’s view, the languages listed in the Ukrainian ratification law should not be covered by the Charter. The professor of the leading university in the country cites an “expert” who claims that the Charter “*was created in the bosom of the Western European terminological tradition and therefore cannot be interpreted only from the standpoint of the current Constitution of Ukraine, since the Charter is contrary to the Constitution*”.²¹ Larysa Masenko, a senior professor at one of the major universities in Kyiv, writes in her textbook that the ratification of the Charter in Ukraine has been pushed by Russian politicians. The professor states in her book that the real purpose of the Charter is to protect languages that are in danger of disappearing.²²

In Ukraine, other renowned academics and researchers have voiced similar views on the Charter.²³ In their opinion, researchers are influencing state authorities and the judiciary. For example, in December 2016, the Constitutional Court of Ukraine held a public hearing on the Language Law adopted in 2012.²⁴ On 13 December 2016 Iryna Farion, a professor at Ivan Franko National University of Lviv, appeared at the court as an expert

19 Майборода Олександр, Шульга Микола, Горбатенко Володимир, Ажнюк Борис, Нагорна Лариса, Шаповал Юрій, Котигоренко Віктор, Панчук Май, Переvezий Віталій: *Мовна ситуація в Україні: між конфліктом і консенсусом* [The Language Situation in Ukraine: Between Conflict and Consensus] Київ: Інститут політичних і етнонаціональних досліджень імені І. Ф. Кураса НАН України, 2008

20 Мацюк Галина: *Прикладна соціолінгвістика. Питання мовної політики*. [Applied Sociolinguistics. Language policy issues] Видавничий центр Львів: Львівський Національний Університет імені Івана Франка, 2009, p. 167

21 *Ibid.*, p. 168

22 Масенко Лариса: *Написи з соціолінгвістики*. [Essays on Sociolinguistics] Київ: Видавничий дім „Кисво-Могиляньська академія”, 2010, pp. 145–146

23 See e.g. Бестерс-Дільгер Юліане: *Нація та мова після 1991 р. – українська та російська в мовному конфлікті* [The nation and language after 1991: Ukrainian and Russian in language conflict]. In: *Україна. Процеси націотворення* [Ukraine: processes of nation-building]. Київ: Видавництво „К.І.С.”, 2011. pp. 362–363

24 *Закон України «Про засади державної мовної політики»* [Law of Ukraine “On the Principles of State Language Policy”] Available from: <https://zakon.rada.gov.ua/laws/show/5029-17>

witness. The expert opinion she gave the court can be viewed on YouTube.²⁵ The linguist professor called the constitutional judges' attention to the fact that the term "regional or minority language" does not appear in the Constitution of Ukraine, and that therefore she does not consider it to be applicable in the Ukrainian legal system. Speaking as an expert witness, Professor Farion also argued in the Court that the sole purpose of the Charter is to protect endangered languages (and not to protect languages used as official languages in other states).

The position represented by such "experts" is also supported by the Ministry of Justice of Ukraine. The official legal statement issued by the Ministry in 2006²⁶ 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.*"²⁷

The conception expressing the fundamental principles of state language policy lists one of its most important objectives as the need to amend the Charter Ratification Law in Ukraine to ensure that the new law is aligned with the Charter's original aims.²⁸ The document thus states that the Ratification Law adopted in Kyiv in 2003 is incompatible with the objectives of the Charter.

25 Ірина Фаріон, *Захист рідної мови у конституційному суді 13 грудня '16*. [Iryna Farion, *Protection of the mother tongue in the Constitutional Court*, 13 December 2016] Available from: <https://www.youtube.com/watch?v=8fB2YslJaq4>

26 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] Available from: https://minjust.gov.ua/m/str_7477

27 The original Ukrainian text: „Ратифікація Україною цієї Хартії у такому вигляді, як це було вчинено 15 травня 2003 року, об'єктивно спричинила виникнення в Україні низки гострих проблем юридичного, політичного та економічного характеру. Головними причинами цього є як неправильний офіційний переклад тексту документа українською мовою, який був доданий до Закону про ратифікацію Хартії, так і хибне розуміння об'єкта і мети Хартії.”

28 Концепція державної мовної політики [Conception of the state's language policy] Available from: <http://zakon5.rada.gov.ua/laws/show/161/2010>

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, according to the Ukrainian “experts” quoted above, German, Russian or Hungarian are not eligible for protection under the Charter in Ukraine, because they are not endangered languages and they are used as official languages in other countries. German, however, is one of the languages protected by the Charter in Armenia, Bosnia and Herzegovina, Croatia, the Czech Republic, Denmark, Hungary, Poland, Romania, Serbia, Slovakia, Slovenia and Switzerland—and, of course, Ukraine. Outside Ukraine, the Russian language is protected by the Charter in Armenia, Finland, Poland and Romania. The Hungarian language is protected not only in Ukraine, but also in Austria, Bosnia and Herzegovina, Croatia, Romania, Serbia, Slovakia and Slovenia. The Ukrainian language (the only state language of Ukraine) is protected by the Charter in Armenia, Bosnia and Herzegovina, Croatia, Hungary, Poland, Romania, Serbia and Slovakia.²⁹

We have seen, however, that in Ukraine the information campaign waged against the Charter is supported by state policy. All this suggests that Ukraine does not aim to implement the Charter.

Commitments made by Kyiv in the process of ratification

Articles 12 to 14 of the Framework Convention³⁰ and Article 8 of the Charter³¹ directly address the subject of education. The first of the three paragraphs of Article 12 of the Framework Convention state that education should be organised so that the majority and minority populations familiarise themselves with one another’s culture, language and traditions. The second paragraph mentions teacher training and provision of textbooks. In the third paragraph, the international document expresses support for equal opportunities

29 *States Parties to the European Charter for Regional or Minority Languages and their regional or minority languages*. Available from: <https://rm.coe.int/states-parties-to-the-european-charter-for-regional-or-minority-langua/168077098c>

30 *Framework Convention for the Protection of National Minorities*. Available from: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800c10cf>

31 *European Charter for Regional or Minority Languages*. Available from: <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680695175>

in education. The two paragraphs of Article 13 lay down the right of minorities to found private educational institutions, noting that this right does not impose any financial obligation on states.

Article 14 says the most about minority education, but it is also the article that offers states the greatest room for maneuver. The first paragraph of the article obliges states which have ratified the Convention to grant members of every minority the right to learn their own language. The next paragraph states that minorities have the right to “adequate opportunities for being taught the minority language or for receiving instruction in this language”. In practice, however, this right is rendered unenforceable by a number of factors set out in the paragraph which are not susceptible to legal interpretation. Point 2 of Article 14 states the following: “*In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavor 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.*”

Nowhere is it made clear, however, what is meant by minorities needing to live in a given state “traditionally or in substantial numbers” in order to claim this right. It is also unclear how “sufficient demand” is to be interpreted. Even if the executive of a state finds that the representatives of a particular national minority live in the country “traditionally or in substantial numbers” and it has deemed the demand they express to be sufficient, this is no guarantee of progress towards learning one’s mother tongue or practicing the right to education in one’s mother tongue. In such circumstances, states will only accept the duty to “endeavor” to ensure, “as far as possible and within the framework of their education systems”, that members of minorities have “adequate opportunities” to enjoy the right to education set out in this part of the Framework Convention. It is not clear, however, whether this imposes an obligation on the state to provide “adequate opportunities”, or what kind of obligation that might be. This is compounded by Paragraph 3 of Article 14, which states that the preceding paragraph “shall be implemented without prejudice to the learning of the official language or the teaching in this language”. As will be seen below, however, the Advisory Committee’s past practice in interpretation provides guidance for the interpretation of the passage quoted.

States ratifying the Charter may, subject to certain limitations, choose from the provisions of this document in an *à la carte* manner. Part of this choice enables a state to choose which languages will be covered by the provisions of the Charter. Furthermore, as long as

the provisions of Section II are applied in every circumstance, states may choose—subject to application of the provisions of Article 2 in Section I—which provisions of Section III to apply, on condition that “at least thirty-five paragraphs and sub- paragraphs” are adhered to, including “at least three chosen from each of the Articles 8 and 12, and one from each of the Articles 9, 10, 11 and 13”.

Ukraine did not select the provisions of the article on education in the same manner and to the same extent in the Charter's first ratification in 1999 and its second ratification in 2003. As shown in Table 1, in the first ratification the country made a much broader set of commitments than it did a few years later.³²

Table 1. The provisions of Article 8 (Education) of the Charter which refer to obligations accepted by Ukraine under the ratification laws of 1999 and 2003 respectively

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

32 For more see István Csernicskó, *The European Charter for Regional or Minority Languages by Ukraine*, *Acta Academiae Beregsiensis*, 2013/2: 127–145.

All this means that in the areas of pre-school, primary and secondary education, Ukraine has made commitments only to the partial provision of education in minority languages provided that the families of children from minorities so wish, and the authorities consider the number of such children to justify it. Kyiv has made no commitments related to the use of minority languages in vocational education, and hardly any related to their use in higher education. Kyiv has set such low standards for itself despite the fact that advanced educational structures have been functioning traditionally in several minority languages (Russian, Hungarian, Romanian, Moldovan) as a legacy of the former Soviet system, which has further evolved since Ukraine achieved independence.³³

If we look at the new Ukrainian Law on Education, which was adopted on 5 October 2017, the impression we receive is that Article 7, which regulates the language in which education is conducted, contains the abovementioned obligations placed on Ukraine by the Framework Convention and the Charter.

Article 7 of the Law on Education, however, stipulates that “*The language of the educational process at institutions of education is the state language*”. Nevertheless the text also makes clear that “*Persons belonging to indigenous peoples³⁴ and national minorities of Ukraine are guaranteed the right to study the language of the respective indigenous people or national minority in municipal institutions³⁵ of general secondary education or in national cultural associations.*” The law therefore guarantees the right to learn one’s mother tongue.

To a certain extent the possibility of education in one’s mother tongue is also provided by Article 7 of the law: “*Persons belonging to national minorities of Ukraine are guaranteed the right to education in municipal educational institutions of pre-school and primary education in the language of the national minority they belong to and in the official language of the state. This right is realized by creating (in accordance with the legislation of Ukraine) separate*

33 See e.g. Vasyl Kremen (ed.), *National Report on the State and Prospects of Education Development in Ukraine* (Kyiv: Pedahohichna dumka, 2017)

34 The law uses the term *корінні народи*, or “indigenous peoples”; according to Resolution 1140-VII, passed by the Ukrainian parliament on 20 March 2014, the Crimean Tatars are in this category. See Постанова Верховної Ради України № 1140-VII від 20.03.2014 «Про Заяву Верховної Ради України щодо гарантії прав кримськотатарського народу у складі Української Держави». [Resolution of the Verkhovna Rada of Ukraine No. 1140-VII of 20.03.2014 “On the Statement of the Verkhovna Rada of Ukraine on Guaranteeing the Rights of the Crimean Tatar People in the Ukrainian State”] Available from: <https://zakon.rada.gov.ua/laws/show/1140-18>

35 According to Article 22, Point 3 of the Law on Education, in Ukraine there are four ownership forms for educational institutions: state, communal, private or cooperative. The founders and maintainers of communal educational institutions are county or settlement municipalities.

classes (groups) for education in the language of the respective national minority group along with the official language of the state, and is not applied to classes (groups) taught in the Ukrainian language.”

Article 7 also states that “*One or more disciplines may be studied, according to the educational programme, in addition to the State language, in English or in other official European Union languages.*” These provisions are effectively repeated in Article 21 of the Law of Ukraine on Supporting the Functioning of the Ukrainian Language as the State Language of 2019. However, Section IX, Point 3 of this State Language Law postpones until 1 September 2020 application of Article 21 in relation to members of national minorities who do not speak one of the official languages of the EU (provided they started their studies before 1 September 2018). The legislation postpones the application of Article 21 until 1 September 2023 for citizens who speak an official EU language and who began their studies before 1 September 2018. For both groups, however, this delay will only apply alongside the “gradual increase in the number of subjects taught in the state language”.

In its opinion on Article 7 of the Law on Education,³⁶ the Venice Commission expressed the hope that the Special Law on General Secondary Education will articulate in detail and interpret the provisions of Article 7 of the Framework Law on Education.

Let us look at what is contained in the new special law on the language of education.³⁷ Table 2 shows that before the application of Article 7 of the Law on Education of 2017 and Article 5 of the law on complete general secondary education, all citizens of Ukraine had the right to study in their mother tongue at all levels of education (from pre-school to university).³⁸ It is also evident that Ukrainian native speakers are not affected by the legislative changes: they can continue to study in their mother tongue throughout. Persons belonging to indigenous peoples (in fact, the Crimean Tatars) can pursue their studies in their mother tongue “along with the State language”. Persons belonging to national minorities (Hungarians, Romanians, Poles, Bulgarians) whose languages are official languages of the European Union may receive education in their mother tongue in primary

36 Opinion on the provisions of the Law on Education of 5 September 2017 which concern the use of the State Language and Minority and other Languages in Education. Adopted by the Venice Commission at its 113th Plenary Session (8–9 December 2017).

Available from: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)030-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)030-e)

37 Закон України «Про повну загальну середню освіту». [Law of Ukraine “On Complete General Secondary Education”] Available from: <https://zakon.rada.gov.ua/laws/show/463-20>

38 Minorities in today’s Transcarpathia have enjoyed this right for the past 150 years. See István Csernickó and Mihály Tóth, *The right to education in minority languages: Central European traditions and the case of Transcarpathia* (Ungvár: Autdor-Shark, 2019)

schools, but in grade 5 at least 20% of the annual amount of lessons should be taught in the State language. This scope has to reach at least 40% by grade 9 and 60% by grades 10–12. National minorities whose languages are not official in the EU (Russians, Belarusians)³⁹ receive education in the State language in scope of not less than 80 percent of the annual amount of study time from grade 5 onwards.

Table 2. Maximum percentage of the use of mother tongue at different levels of public education, pursuant to Article 7 of the Law on Education of 2017, Article 5 of the law on general secondary education, and Article 21 of the State Language Law

	Grades 1–4	5th grade	9th grade	Grades 10–12	Who are they?
persons belonging to the majority*	100	100	100	100	Ukrainians
indigenous people**	100	100	100	100	Crimean Tatars
minorities whose languages are official in the EU**	100	80	60	40	Hungarians, Romanians
minorities whose languages are <u>not</u> official in the EU**	100	20	20	20	Russians

* At least one foreign language is taught as a subject from Grade 1

** At least one foreign language + Ukrainian language and literature is taught as a subject. The mother tongue may only appear in education “alongside the state language”.

39 With regard to this category of citizens, we would like to draw attention to a factor which, to our knowledge, has still not arisen: the problem of the Moldovan community. Ukraine recognises Moldovans as a separate national minority and treats their mother tongue as a separate language. In the 2017–2018 school year, 2,600 children studied in their mother tongue in three Moldovan-language schools. As Moldova is not a member of the EU – and therefore Moldovan is not an official language of the EU – the law does not place the Moldovan national minority in the same category as the Romanian national minority, but in the same category as the Russian minority.

If we examine (a) Article 7 of the framework Law on Education, (b) Article 5 of the law on general secondary education, and (c) Article 21 of the State Language Law 2019, it appears that in its legislation at a national level, Ukraine intends to regulate the language of education in conformity with its international obligations. In other words, the aforementioned legislation States that: (a) minorities may learn their mother tongue; and (b) their mother tongue is present to some extent (as a subject) in the curriculum at all levels of general school education. Kyiv has not undertaken, however, to ensure the presence of minority languages in vocational education.

The situation is less clear, however, if we examine the reports on the application in Ukraine of the Framework Convention and the Charter.

The latest reports on the implementation in Ukraine of the Framework Convention and the Charter in relation to minority language education

Ukraine issued its first country report on the application of the Framework Convention in 1999. So far, four such documents have been produced, and the Advisory Committee has also produced four reports. The most recent of these was published on 5 March 2018 (Table 3). Following the political events in Ukraine in the spring of 2014 (the occupation of Crimea), the Advisory Committee made an ad hoc visit to the country from 21 to 26 March 2014, and produced an extraordinary report on 1 April.

Table 3. Monitoring of the application of the Framework Convention in Ukraine⁴⁰

	first cycle	second cycle	third cycle	fourth cycle
submission deadline for country report	01.05.1999	01.05.2004	01.05.2009	01.05.2014
country report received	02.11.1999	08.06.2006	07.05.2009	30.05.2016
Advisory Committee's visit	4–6.12.2001	06–10.04.2008	23–27.01.2012	21–29.11.2016
acceptance of Advisory Committee's report	01.03.2002	30.05.2008	22.03.2012	10.03.2017
publication of Advisory Committee's report	27.11.2002	30.03.2011	05.04.2013	05.03.2018
reaction of the state	12.08.2002	19.11.2008	28.03.2013	05.03.2018
decision of CoE Committee of Ministers	05.02.2003	30.03.2011	18.12.2013	pending

Kyiv submitted its first report on the implementation of the Charter in Ukraine in 2007, and so far three others have been issued. The Committee of Experts has published three reports on Ukraine, the latest in March 2017. The Committee of Ministers has also issued three recommendations to Ukraine (Table 4).

⁴⁰ Available from: <https://www.coe.int/en/web/minorities/ukraine>

Table 4. Monitoring of the application of the Charter in Ukraine⁴¹

	first cycle	second cycle	third cycle	fourth cycle
country report received	02.08.2007	06.01.2012	12.01.2016	04.09.2019
acceptance of Committee of Experts' report	27.11.2008	15.11.2012	27.03.2017	
recommendations of CoE Committee of Ministers	07.07.2010	15.01.2014	12.12.2018	

Below we compare two recent reports on the application of two international documents in Ukraine in terms of how they evaluate education in Ukraine in minority languages. We shall compare the report issued by the Advisory Committee on 10 March 2017 (published on 5 March 2018)⁴² on the application of the Framework Convention in Ukraine with the report issued by the Committee of Experts on 27 March 2017 on implementation of the Charter.⁴³ The two texts were completed at almost the same time (in March 2017), and so—despite significant differences as well as overlaps⁴⁴ between the two international documents on which the reports are based—this provides a good opportunity to compare how the Advisory Committee and the Committee of Experts see the same issue in Ukraine: education in minority languages. Another justification for comparison of

41 Available from: [https://www.coe.int/en/web/european-charter-regional-or-minority-languages/reports-and-recommendations?fbclid=IwAR3lg8e8EiNYyEwbZDVAIK7o2isF4C_OIZkZthdVH6467Gc5NHPs8ryuxvE#{%2228993157%22:\[23\]}](https://www.coe.int/en/web/european-charter-regional-or-minority-languages/reports-and-recommendations?fbclid=IwAR3lg8e8EiNYyEwbZDVAIK7o2isF4C_OIZkZthdVH6467Gc5NHPs8ryuxvE#{%2228993157%22:[23]})

42 *Fourth Opinion on Ukraine, adopted on 10 March 2017, published on 5 March 2018*
Available from: <https://rm.coe.int/fourth-opinion-on-ukraine-adopted-on-10-march-2017-published-on-5-marc/16807930cf>. Hereinafter: AC2017

43 *Third report of the Committee of Experts in respect of Ukraine*
Available from: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168073cdfa
Hereinafter: CE2017

44 János Fiala-Butora: *Implementation of the Framework Convention for the Protection of National Minorities and the European Language Charter*, op.cit. 57

the two reports is the fact that the country reports on which the two reports are based were also completed at approximately the same time (one in May 2016 and the other in January of the same year), and representatives of the Hungarian community in Transcarpathia submitted their own report on each document.⁴⁵

It is important to underline that both reports were drafted before the new framework of Law on Education was adopted in October 2017 and the State Language Law was created in 2019, and so the reports could not respond to this legislation. The two reports which we have analysed evaluated the education legislation and its application before 2017. Prior to the introduction of new Ukrainian legislation on the language of education, the most important principle in Ukrainian law was that the choice of language for education is among citizens' inalienable rights, and that the state would guarantee the right to study one's mother tongue or be taught in one's mother tongue.⁴⁶

Before doing so, however, it is worth examining how this issue was seen by the reports published in the previous cycle.

As early as 2012, in its report the Advisory Committee criticized Kyiv⁴⁷ for failing to provide mother-tongue education in many settlements where it would have been possible, and for reducing the number of hours taught in minority languages.⁴⁸ The report also criticized the earlier Ukrainian education legislation for its lack of explicit wording—for example, for not making clear how many requests would be needed to launch a kindergarten

45 See *Written Comments by Hungarian Researchers and NGOs in Transcarpathia (Ukraine) on the Third Periodic Report of Ukraine on the implementation of the European Charter for Regional or Minority Languages, submitted for consideration by the Council of Europe's Committee of Experts on the Charter*, 11 July 2016 Available from: <https://kmsz.com.ua/wp-content/uploads/2017/01/Ukraine-Charter-shadow-report-Arnyekjelentes-nyk.pdf>; *Written Comments by Hungarian Researchers and NGOs in Transcarpathia (Ukraine) on the Fourth Periodic Report of Ukraine on the implementation of the Framework Convention for the Protection of National Minorities*, 20 January 2017 Available from: https://kmsz.com.ua/wp-content/uploads/2017/01/Framework-Convention_Transcarpathia_Ukraine_Shadow-Report-KE.pdf. At the end of 2019, Transcarpathian Hungarian organizations prepared an alternative report for the fourth state report of the Ukrainian government: *THE CONTINUOUS RESTRICTION OF LANGUAGE RIGHTS IN UKRAINE: Joint alternative report by Hungarian NGOs and researchers in Transcarpathia (Ukraine) on the Fourth Periodical Report of Ukraine on the implementation of the European Charter for Regional or Minority Languages, submitted to the Council of Europe's Committee of Experts*. Available from: http://hodinkaintezet.uz.ua/wp-content/uploads/2020/01/Written-Comments-Charter_2019.pdf

46 See István Csernicsekó and Mihály Tóth, *The right to education in minority languages: Central European traditions and the case of Transcarpathia* (Ungvár: Atdor-Shark, 2019)

47 Advisory Committee on the Framework Convention for the Protection of National Minorities, *Third Opinion on Ukraine adopted on 22 March 2012*. Available from: <https://rm.coe.int/168008c6c0>. Hereinafter: AC2012

48 AC2012, Paragraphs 125 and 128

group, class or school using a minority language.⁴⁹ The report draws the Ukrainian authorities' attention to the fact that the needs expressed by members of national minorities are a key element in the provision of minority language education, as stated in the Framework Convention, Article 14 Paragraph 2.⁵⁰

Similar arguments were made in the 2014 report by the Committee of Experts⁵¹ on the implementation in Ukraine of the Charter. The latter report indicates that if there is a demand among a minority in a country for education in that minority's mother tongue, the state must not limit education to taking place only in the state language.⁵² The recommendations also make clear that the state should “*secure the right of minority language speakers to receive education in their languages, while preserving the achievements already attained*”.⁵³ The report also refers to a lack of precision on the number of parental requests needed to start a class using a minority language, stating that this hampers the organisation of minority language education.⁵⁴

Since the publication of the 2017 reports by the Advisory Committee and the Committee of Experts, significant changes have taken place in Ukrainian language policy and, within that, in the regulation of minority language education. As mentioned, on 5 October 2017, the Parliament in Kyiv adopted a new law on education. On 6 October 2017, 48 Members of Parliament submitted a petition⁵⁵ to the Constitutional Court of Ukraine requesting it to declare that the Law on Education is unconstitutional. However, the Constitutional Court, in its ruling of 16 July 2019, did not find Article 7 of the Law on Education

49 AC2012, Paragraphs 22, 124 and 127. Analysts raised the same criticism of Article 20 of the Language Law 2012, which regulates the language of education. See István Csernicskó and Mihály Tóth, *Tudományos-gyakorlati kommentár Ukrajnának az állami nyelvpolitika alapjairól szóló törvényéhez [Scientific and practical commentary of the Law of Ukraine on the fundamentals of the State Language Policy]* (Ungvár and Budapest: Intermix Kiadó, 2014): 67–75.

50 AC2012, Paragraph 128

51 *Report of the Committee of Experts on the Charter. Strasbourg, 15 January 2014* Available from: <https://rm.coe.int/16806dc600> Hereinafter: CE2014

52 CE2014, Paragraphs 1303–1305

53 CE2014, Paragraph 107

54 CE2014, Paragraphs 112–113, 1304

55 Конституційне Подання щодо відповідності Конституції України (неконституційності) Закону України «Про освіту» від 05 вересня 2017 року № 2145-VIII [Constitutional petition on compliance with the Constitution of Ukraine (constitutionality) of the Law of Ukraine “On Education” of 5 September 2017, No. 2145-VIII]. Available from: http://www.ccu.gov.ua/sites/default/files/3_4072.pdf

unconstitutional.⁵⁶ However, it is interesting that the Constitutional Court's decision of 16 July 2019 on the Law on Education makes no mention of the relevant opinion of the Venice Commission of December 2017, or the criticisms and recommendations therein. The Constitutional Court ignored the recommendations of the Venice Commission despite the specific request in paragraph 15 of the resolution of the Parliamentary Assembly of the Council of Europe, issued on 12 October 2017: "*The Assembly asks the Ukrainian authorities to fully implement the forthcoming recommendations and conclusions of the Venice Commission and to amend the new Education Act accordingly.*"⁵⁷ On 31 October 2019, the NATO–Ukraine Commission issued a statement in Kyiv. Paragraph 6 of the document concludes as follows: "*With regard to the Law on Education adopted by the Verkhovna Rada in September 2017, Allies urge Ukraine to fully implement the recommendations and conclusions of the Venice Commission. Ukraine is committed to doing so.*"⁵⁸ On 28 February 2018, for formal reasons the Constitutional Court of Ukraine repealed the Ukrainian language law of 2012.⁵⁹ In its first reading on 4 October 2018, and then in its final version on 25 April 2019, the Supreme Council of Ukraine voted for the Ukrainian law entitled Law of Ukraine On Supporting the Functioning of the Ukrainian Language as the State Language. This law has received considerable and substantial criticism from the Venice Commission.⁶⁰

56 Рішення Конституційного Суду України у справі за конституційним поданням 48 народних депутатів України щодо відповідності Конституції України (конституційності) Закону України «Про освіту» № 10-р/2019 [Decision of the Constitutional Court of Ukraine No. 10-р/2019 in the case of the constitutional petition of 48 Deputies of Ukraine on compliance with the Constitution of Ukraine (constitutionality) of the Law of Ukraine "On Education"]. Available from: http://ccu.gov.ua/sites/default/files/docs/10_p_2019_0.pdf

57 Resolution 2189 (2017) of Parliamentary Assembly. The new Ukrainian law on education: a major impediment to the teaching of national minorities' mother tongues. Available from: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=24218&lang=en>

58 Statement of the NATO–Ukraine Commission. Available from: https://www.nato.int/cps/en/natohq/official_texts_170408.htm

59 Рішення Конституційного Суду України У справі за Конституційним поданням 57 народних депутатів України щодо невідповідності Конституції України (неконституційності) Закону України «Про засади державної мовної політики» від 28.02.2018 р. № 2-р/2018. Available from: <http://zakon.rada.gov.ua/laws/show/v002p710-18>

60 CDL-AD(2019)032. European Commission for Democracy Through Law (Venice Commission). Ukraine. Opinion on The Law on Supporting The Functioning of The Ukrainian Language as The State Language. Opinion No. 960/2019. Strasbourg, 9 December 2019. Available from: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)032-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)032-e)

Although the reports of both the Advisory Committee and the Committee of Experts could not have reacted to these developments (as they were prepared before these developments occurred), the reports are—both this time and earlier—critical of Ukraine, including on questions related to the education of minorities.⁶¹

The Advisory Committee's 2017 report notes that there are schools in Ukraine in which all education takes place in the mother tongue of the minority (in these schools the Ukrainian language and literature are compulsory subjects).⁶² It also notes, however, that several minority languages are not yet subjects in school education,⁶³ and that there are few teachers who can teach to a high standard in minority languages.⁶⁴ The authors of the report express their dissatisfaction with the fact that textbooks used in minority language schools are often poorly translated and delivered to schools well after the start of the school year, and that there is a lack of supplementary educational materials in minority languages (illustrations, maps, atlases, workbooks, etc.).⁶⁵ The report separately highlights the lack of qualified vocational teachers and educational materials—including textbooks—in minority language schools.⁶⁶

Concerning education in Ukrainian as the state language, the report notes that curricula in minority language schools show that throughout eleven years of school education children in those schools receive almost five hundred fewer hours of Ukrainian language and literature teaching than their counterparts studying in the Ukrainian language. In spite of this fact, external independent testing in Ukrainian language and literature—which was introduced in 2008 for entry to institutions of higher education, and has been compulsory for all students taking school-leaving exams since 2015—impose the same requirements upon all students in order for them to pass. This, in turn, adversely affects members of

61 For an analysis of the CE2017 report from a different perspective, see: Noémi Nagy, *Language Rights of Minorities in the Areas of Education, the Administration of Justice and Public Administration: European Developments in 2017* in *European Yearbook of Minority Issues* 16 (2019): 63–97.; and Noémi Nagy, *A nemzeti kisebbségek nyelvi jogainak aktuális helyzete az Európa Tanács intézményei tevékenységének tükrében [The current situation of the linguistic rights of national minorities in the light of the activities of the Council of Europe institutions]*, in *Pro Minoritate* 2018/2: 47–70.

62 AC2017, Paragraph 152

63 AC2017, Paragraph 153

64 AC2017, Paragraphs 154, 155

65 AC2017, Paragraph 156

66 AC2017, Paragraph 157. For an account of shortcomings in the teaching of Ukrainian as a state language, see e.g. Ilona Huszti, István Cserniczkó and Erzsébet Bárány, *Bilingual education: the best solution for Hungarians in Ukraine?* in *Compare: A Journal of Comparative and International Education*, Volume 49, 2019 – Issue 6, 1002–1009. Available from: <https://doi.org/10.1080/03057925.2019.1602968>

minorities, and this disadvantage is reflected in the test results.⁶⁷ The document calls on Kyiv to ensure equal opportunities for minority language students in external independent testing in Ukrainian language and literature, and to take steps to improve the quality of the teaching of Ukrainian as a state language.⁶⁸

The report expressed concern about the effect on the use of language in education in Ukraine that could be caused by legislative changes (which at that time were only in the planning stage), including the content of the new draft law on education and prospective reforms in public administration.⁶⁹

The 2017 report on the implementation of the Charter in Ukraine states that the situation of the minority languages in education is not uniform.⁷⁰ As several minority communities have expressed the need for education in their mother tongues or for their mother tongues to be taught as school subjects, the Committee of Experts has called on the Ukrainian authorities to develop policies that guarantee each community's educational rights according to its needs.⁷¹

The report notes state bodies' passivity in the provision of minority language education and points out that the Charter "requires pro-active measures by the authorities".⁷² The Committee of Experts emphasizes that Ukraine's commitments under the Charter "require the authorities to make available minority language education at the different levels of education", from pre-school to higher education.⁷³

Chapter 2 of the report analyses how in its ratification law Ukraine is fulfilling its commitments under the Charter in relation to each of the languages covered by the document. The thirteen languages that Ukraine has protected in its law for ratification of the Charter can be seen in Table 5, which was compiled through analysis of the report. The table contains several of the points in Article 8 of the Charter on education; it features the paragraph which Kyiv has undertaken to implement.⁷⁴ The numbers in the cells refer to the following categories (according to the categories in the report):

67 AC2017, Paragraphs 158–159. For more detail on the subject, see István Cserniczkó: *Державна мова для угорців Закарпаття: чинник інтеграції, сегрегації або асиміляції?* [*The State Language for the Hungarians of Transcarpathia: the Factor of Integration, Segregation or Assimilation?*], in *Справезичні пріоритети* 46 (2018)/1: pp. 97–105

68 AC2017, Paragraphs 163–164

69 AC2017, Paragraphs 160–162

70 CE2017, Paragraph 17

71 CE2017, Paragraph 18

72 CE2017, Paragraph 19

73 CE2017, Paragraph 19

74 For example, in the first column, 8.1.iii means that Kyiv has agreed to comply with Article 8, Paragraph 1, Point iii of the Charter; see also Table 1.

5. *Fulfilled*: policies, legislation and practice meet the requirements of the Charter.
4. *Partially fulfilled*: policies and legislation are fully or partially compliant with the provisions of the Charter, but in practice these commitments have only been partially implemented.
3. *Formally fulfilled*: Policies and legislation are in compliance with the Charter, but in practice these commitments have not been implemented.
2. *Not fulfilled*: No action has been taken by the authorities in the areas of policy, legislation and practice, or over several monitoring cycles the Committee of Experts has received no information on implementation.
0. *No conclusion*: the Committee of Experts is unable to determine whether the undertaking has been met, because the authorities have not provided sufficient information.

Table 5. To what extent is Ukraine complying with its commitments under Article 8 (Education) of the Charter? (Based on CE2017)⁷⁵

	8.1. aiii	8.1. biv	8.1. civ	8.1. div	8.1. eiii	8.1. fiii	8.1. g	8.1. h	8.1. i	8.2.
Belarusian	2	2	2	2	5	2	2	2	2	2
Bulgarian	2	4	4	2	5	5	2	4	2	5
Crimean Tatar	4	4	5	2	5	4	0	5	2	4
Gagauz	2	4	4	2	5	2	0	4	5	2
German	4	4	4	2	5	5	2	4	2	2
Greek	4	4	5	2	5	5	0	4	2	5
Hungarian	5	5	5	2	5	5	4	5	2	2
Moldovan	4	5	5	2	5	5	2	4	5	2
Polish	4	5	5	2	5	5	2	5	2	5
Romanian	4	4	4	2	5	5	2	5	2	2
Russian	5	5	5	5	5	5	0	5	2	5
Slovakian	5	4	4	2	5	2	2	4	2	2
Yiddish	4	2	2	2	5	5	0	2	2	2

⁷⁵ Compiled on the basis of CE2017, Chapter 2.

As shown in Table 5, the report concludes that, in relation to virtually all of the thirteen languages covered by the Charter, Ukraine has not fully complied with its undertakings. It should be emphasized once more that the report reflects the situation before the adoption of the Law on Education of 2017, the State Language Law of 2019, and the Law on general secondary education of 2020.

Summary

Ukraine's 2017 Law on Education has been the subject of heated debate between the Government in Kyiv and representatives of the Transcarpathian Hungarian community in relation to Article 7 on language in education and its degree of compliance with the country's international obligations. International organisations such as the Council of Europe⁷⁶ and its Venice Commission⁷⁷ have also issued formal declarations and opinions in response to the conflict, which has become an international issue. The problem is even touched upon—albeit indirectly—in the EU-Ukraine Association Agreement⁷⁸ and in certain declarations on NATO-Ukraine relations. For example, Paragraph 66 of the declaration adopted by the heads of state and government attending the NATO meeting in Brussels on 11 and 12 July 2018⁷⁹ calls on Ukraine to observe its international obligations in the field of minority rights.⁸⁰

76 *The new Ukrainian law on education: a major impediment to the teaching of national minorities' mother tongues* Available from: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24218&lang=en>

77 *Opinion on the Law on Education of 5 September 2017 which concern the use of the state language and minority and other languages in education. Adopted by the Venice Commission at its 113th Plenary Session (8–9 December 2017), Strasbourg (Fr), 11 December 2017, 25 p. Opinion no. 902/2017 CDL-AD (2017) 030* Available from: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)030-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)030-e)

78 Fidesz-KDNP MEP Andrea Bocskor stated that “*The closing document of the EU-Ukraine Association Council, adopted on Friday, states that the existing rights of minorities must not be curtailed; yet with the adoption in autumn 2017 of the new Ukrainian law on education, this is exactly what has happened in Ukraine.*” Available from: <http://www.karpatalja.ma/karpatalja/nezopont/bocskor-andrea-elfogadhatatlan-a-karpataljai-magyarok-szerzett-jogainak-szukitese/>. Text of the Association Agreement available from: http://publications.europa.eu/resource/cellar/4589a50c-e6e3-11e3-8cd4-01aa75ed71a1.0006.03/DOC_1

79 Brussels Summit Declaration Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Brussels 11–12 July 2018 Available from: https://www.nato.int/cps/en/natohq/official_texts_156624.htm?selectedLocale=en

80 NATO and the Ukrainian law on education Available from: <http://hodinkaintezet.uz.ua/a-nato-es-az-ukran-oktatasi-torveny/>

The two most recent reports on Ukraine's application of the Framework Convention and the Charter were prepared before the 2017 Education Law was adopted, and were submitted by independent international bodies which were not involved in the debate on that legislation. The two reports provide an opportunity to examine whether those bodies considered that the rights guaranteed by Ukraine in the field of education in minority languages 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 education made by both the Advisory Committee and the Committee of Experts indicate that Ukraine is not fully fulfilling its commitments. As the new Framework Law on Education and the newly adopted State Language Law significantly reduce the use of minority languages in public education,⁸¹ the new regulation will make Kyiv less able to fulfil its obligations under the ratification of the Framework Convention and the Charter. In their 2018 study on language rights in the context of the activities of the Advisory Board of the Framework Convention, Roter and Busch state that in Ukraine, "*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. This has been demonstrated in Ukraine's new 2017 law 'On Education' (Article 7)*".⁸²

Of course we are well aware that in international law there is little enforceable positive law related to the education of minorities in their mother tongues.⁸³ As we have seen from the foregoing, however, the real aims of the Framework Convention and the Charter are incompatible with language and education policies which deny the needs of minorities by restricting the presence of minority languages in education.

81 These provisions are expected to be further strengthened by legislation on general secondary education.

82 Petra Roter and Brigitta Busch, *Language Rights in the Work of the Advisory Committee*. In: Iryna Ulasiuk, Laurențiu Hadîrcă and William Romans (eds.), *Language Policy and Conflict Prevention* (Leiden and Boston: Brill Nijhoff, 2018): 155–181.

83 See e.g.: Fernand De Varennes and Elżbieta Kuzborska, *Minority Language Rights and Standards: Definitions and Applications at the Supranational Level* (in Gabrielle Hogan-Brun and Bernadette O'Rourke (eds.), *The Palgrave Handbook of Minority Languages and Communities* (London: Palgrave Macmillan, 2019): 21–72.; and Tove Skutnabb-Kangas, *Language Rights and Bilingual Education* (in Ofelia García, Angel M.Y. Lin and Stephen May (eds., general ed. Stephen May), *Encyclopedia of Language and Education, 3rd edition, Volume 5: Bilingual and Multilingual Education*, 2017: 51–63.

The Hague Recommendations Regarding the Education Rights of National Minorities make it clear that parents have the right to choose the language of their children's education.⁸⁴ The explanatory notes accompanying the recommendations state the following: "*States are required to give due consideration to the needs of national minorities as these are consistently expressed and demonstrated by the communities in question.*"⁸⁵

According to Paragraph 45 of the Ljubljana Guidelines on Integration of Diverse Societies,⁸⁶ "*States should respect the right of persons belonging to minorities to be taught their language or to receive instruction in this language, as appropriate, especially in areas inhabited by them traditionally or in substantial numbers.*"

A document by the United Nations Special Rapporteur on minority issues entitled "Language Rights of Linguistic Minorities", also states the following: "*Where there is a sufficiently high numerical demand, public education services must be provided in a minority language to the appropriate degree, broadly following a proportional approach.*"⁸⁷

According to a report issued by the European Parliament on 24 October 2018 entitled "Minimum standards for minorities in the EU", the European Parliament "stresses that every person belonging to a national minority has the right to education in a minority language"⁸⁸; furthermore, the European Parliament encourages EU Member States to "ensure that, in line with international norms, persons belonging to national and ethnic minorities have their rights guaranteed and adequate opportunities ensured as regards receiving education in a minority language as well as instruction in their mother tongue, in both public and private educational institutions".⁸⁹

Although the documents cited are not binding, we are convinced that, if Ukraine is truly pursuing the goal of European integration, it cannot afford to ignore either these guidelines or the Framework Convention and the Charter. A major question, however, is whether the criticisms made in the reports analyzed above can be enough to encourage Kyiv to consider breaking with the language policy of Ukrainisation.

84 The Hague Recommendations regarding the Education Rights of National Minorities & Explanatory Note (Point 7) Available from: <https://www.osce.org/hcnm/hague-recommendations?download=true>

85 *Ibid.*, 10.

86 The Ljubljana Guidelines on Integration of Diverse Societies Available from: <https://www.osce.org/hcnm/ljubljana-guidelines?download=true>

87 Language Rights of Linguistic Minorities: A Practical Guide for Implementation. United Nations Special Rapporteur on minority issues. Geneva, 2017: 16. Available from: <http://md.one.un.org/content/dam/unct/moldova/docs/pub/Language%20Rights%20of%20Linguistic%20Minorities%20%E2%80%93%20A%20practical%20Guide%20for%20implementation.pdf>

88 Report on minimum standards for minorities in the EU (2018/2036(INI)), Paragraph 50 Available from: http://www.europarl.europa.eu/doceo/document/A-8-2018-0353_EN.html

89 *Ibid.*, Paragraph 54

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