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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
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UKRAINE

OPINION

ON THE LAW ON NATIONAL MINORITIES (COMMUNITIES)

**Adopted by the Venice Commission
at its 135th Plenary Session
(Venice, 9-10 June 2023)**

On the basis of comments by

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Contents

I.	Introduction	3
II.	Background and scope of the Opinion	3
A.	Constitutional and legislative framework	3
B.	Previous Opinions	5
C.	Scope of the Opinion	7
III.	Analysis	8
A.	Adoption procedure	8
B.	Terminology	8
C.	Preamble and general provisions (section I)	8
D.	Rights, freedoms and obligations of persons belonging to national minorities (communities) (section II)	9
1.	In general	9
2.	Linguistic rights and right to education	11
E.	Public policy in the sphere of national minorities (communities) (section III); international cooperation and foreign relations of national minorities (communities) (section IV); final and transitional provisions (section V)	21
IV.	Conclusion	22

I. Introduction

1. By letter of 26 January 2023, Mr Piero Fassino, Chair of the Monitoring Committee of the Parliamentary Assembly, requested an opinion of the Venice Commission on the Law on National Minorities (Communities) of Ukraine (CDL-REF(2023)019, hereinafter “the Law on National Minorities” or “the Law”).
2. Ms Bílková, Ms Kiener, Ms Otálora Malassis and Mr Velaers acted as rapporteurs for this opinion.
3. Delegations of the Commission met: on 31 March 2023 with the Vice-Minister of Education and other representatives of the executive branch of government; on 20 April 2023 (online) with the Government Office for the Coordination of European and Euro-Atlantic Integration, the Council of the national minority NGOs under the Ministry of Education, the Congress of Ethnic Communities, the Ombudsman, the Parliament Committee on Human Rights, the Constitutional Court as well as representatives of national minorities; on 27 April 2023, with the Ukrainian delegation to the Parliamentary Assembly of the Council of Europe; on 4-5 May 2023 (in Kyiv) with the President of Ukraine, the Speaker of the Verkhovna Rada, the Minister of Foreign Affairs, the Deputy Prime Minister for European and Euro-Atlantic Integration, the Minister of Justice and the Vice-Minister of Education, as well as representative of national minorities, other civil society groups and the international community. The Commission is grateful to the Ukrainian authorities and to the Council of Europe office in Kyiv for the excellent organisation of these meetings.
4. This opinion was prepared in reliance on the English translation of the law. The translation may not accurately reflect the original version on all points.
5. This opinion was drafted on the basis of comments by the rapporteurs and the results of the meetings mentioned above. The draft opinion was examined at the meeting of the Sub-Commission on the Protection of National Minorities on 8 June 2023. Following an exchange of views with Mr Viktor Yelenskyi, Head of the State Service of Ukraine for Ethnic Affairs and Freedom of Conscience, it was adopted by the Venice Commission at its 135th Plenary Session (Venice, 9-10 June 2023).

II. Background and scope of the Opinion

A. Constitutional and legislative framework

6. The rights of all nationalities residing in the territory of Ukraine, to free national and cultural development, was recognised already in the 1990 Declaration of State Sovereignty of Ukraine (Article VIII). It was further specified in the 1991 Declaration of the Rights of Nationalities of Ukraine.
7. The Ukrainian Constitution refers to the rights of national minorities in several provisions. According to Article 10(3), *“[i]n Ukraine, the free development, use and protection of Russian, and other languages of national minorities of Ukraine, is guaranteed”*, while Article 10(5) provides that *“[t]he use of languages in Ukraine is guaranteed by the Constitution of Ukraine and is determined by law”*. Article 11 provides that *“[t]he State promotes the consolidation and development of the Ukrainian nation, of its historical consciousness, traditions and culture, and also the development of the ethnic, cultural, linguistic and religious identity of all indigenous peoples and national minorities of Ukraine.”* Article 53(5), on the right to education, provides that *“[c]itizens who belong to national minorities are guaranteed in accordance with the law the right to receive instruction in their native language, or to study their native language in state and communal educational establishments and through national cultural societies.”*

8. According to Article 92(3) of the Constitution, the rights of indigenous peoples and national minorities of Ukraine are determined exclusively by the laws of Ukraine, as is the procedure for the use of languages (Article 92(4)). Article 119(3) refers to the implementation of programmes for the national and cultural development of national minorities in areas inhabited by persons belonging to national minorities traditionally or in substantial numbers.

9. Ukraine has ratified several international treaties on the protection of human rights, which contain specific provisions on minority rights – notably Article 27 of the [International Covenant on Civil and Political Rights](#) (hereinafter: “ICCPR”), the [Framework Convention for the Protection of National Minorities](#) (hereinafter: “the Framework Convention”, “FCNM”) and the [European Charter for Regional or Minority Languages](#) (hereinafter: “the Charter”, “ECMRL”). The Charter entered into force for Ukraine on 1 January 2006 and applies to the following languages: Belarusian, Bulgarian, Crimean Tatar, Gagauz, German, Greek, Hungarian, Karaim, Krimchak, Moldovan, Polish, Romani, Romanian, Russian, Ruthenian, Slovak and Yiddish. The Karaim, Krimchak, Romani and Ruthenian languages are covered by Part II (Article 7) only, whereas the other languages receive protection under both Part II and Part III (Articles 8-14).¹ According to the written contribution of the Ukrainian authorities,² “the Law also does not contain a closed list of ethnic groups for which the official status of ‘national minorities (communities)’ is recognised. Thus, the guarantees provided by the law apply to the languages of all groups of Ukrainian citizens who fall within the definition of “national minorities (communities)” under the Law”.

10. According to Article 9 of the Ukrainian Constitution, “*international treaties that are in force, agreed to be binding by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine. The conclusion of international treaties that contravene the Constitution of Ukraine is possible only after introducing relevant amendments to the Constitution of Ukraine.*” International treaties, as explained in previous opinions of the Venice Commission on Ukraine,³ come therefore immediately after the Constitution and prevail over ordinary laws.

11. The fulfilment of international obligations to protect the rights of persons belonging to national minorities is monitored by specific supervisory bodies of the Council of Europe – the Advisory Committee on the Framework Convention for the Protection of National Minorities (the Framework Convention, ACFC)⁴ and Committee of Experts (COMEX) of the European Charter for Regional or Minority Languages (the Charter, ECRML),⁵ the European Commission against Racism and Intolerance (ECRI)⁶ and the Council of Europe Commissioner for Human Rights,⁷ and has led to the adoption of specific recommendations by those bodies and the Committee of Ministers of the Council of Europe.⁸

¹ European Charter for Regional or Minority Languages, Third report of the Committee of Experts in respect of Ukraine ([CM\(2017\)97](#)), 27 September 2017, § 1.

² See para. 22.

³ Venice Commission, [CDL-AD\(2019\)032](#), Ukraine – Opinion on the Law supporting the Functioning of the Ukrainian Language as the State Language, § 16; [CDL-AD\(2004\)013](#), Opinion on Two Draft Laws amending the Law on National Minorities in Ukraine, § 9; [CDL-AD\(2004\)022](#), Opinion on the latest version of the Draft Law amending the Law on National Minorities, § 6.

⁴ The ACFC has adopted four opinions on Ukraine: [ACFC/INF/OP/I\(2002\)010](#), First Opinion on Ukraine, adopted on 1 March 2002; [ACFC/INF/OP/II\(2008\)04](#), Second Opinion on Ukraine, adopted on 30 May 2008; [ACFC/INF/OP/III\(2012\)02](#), Third Opinion on Ukraine, adopted on 22 March 2012; [ACFC/OP/IV\(2017\)002](#), Fourth Opinion on Ukraine, adopted on 10 March 2017.

⁵ The ECRML has adopted three reports on Ukraine: [Initial monitoring cycle](#), ECMRL (2010) 6, 7 July 2010; application of the Charter in Ukraine. [2nd monitoring cycle](#), ECRML (2014) 3, 15 January 2014; application of the Charter in Ukraine. [3rd report in respect of Ukraine](#), 24 March 2017.

⁶ ECRI [report](#) on Ukraine, fifth monitoring cycle, adopted on 20 June 2017; ECRI [conclusions](#) on the implementation of the recommendations in respect of Ukraine – subject to interim follow-up, adopted on 7 April 2020.

⁷ See for example the CoE Commissioner for Human Rights’ statement of 29 October 2019: [Language policies should accommodate diversity, protect minority rights and defuse tensions](#)

⁸ See Recommendation [CM/RecChL\(2018\)6](#) of the Committee of Ministers to member States on the application of the European Charter for Regional or Minority Languages by Ukraine, adopted on 12 December 2018.

12. The Law on Education as well as the Law on Supporting the Functioning of the Ukrainian Language as a State Language (“the Law on the State Language”) affect the situation and rights of national minorities. They were submitted to the Venice Commission for opinion adopted in 2017 and 2019, respectively, as will be recalled below.

B. Previous Opinions

13. The Venice Commission has addressed legislation relating to national minorities in Ukraine on several occasions.⁹ The most recent opinions dealt with 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 Education¹⁰ as well as with the Law on Supporting the Functioning of the Ukrainian Language as the State Language.¹¹

14. In the opinion on the Law on Education, the Venice Commission stated:

“125. (...) the appropriate solution would certainly be to amend Article 7 and replace this provision with a more balanced and more clearly worded one. In particular, the issue of discriminatory treatment of other minority languages - which are not official languages of the EU - would have to be addressed in this context.

126. Many concerns may, however, also be immediately addressed through other legislative acts and when implementing Article 7 as adopted, especially through the Law on General Secondary Education. In this respect, the Venice Commission recommends in particular:

- *to fully use, when adopting implementing legislation, the possibilities provided by paragraph 4 of Article 7 to ensure a sufficient level of teaching in official languages of the European Union for the respective minorities;*
- *to continue ensuring a sufficient proportion of education in minority languages at the primary and secondary levels, in addition to the teaching of the state language;*
- *to improve the quality of teaching of the state language;*
- *to amend the relevant transitional provisions of the Education Law to provide more time for a gradual reform;*
- *to exempt private schools from the new language requirements in accordance with Article 13 of the Framework Convention;*
- *to enter, within the framework of the implementation of the new Education Law, into a new dialogue with representatives of national minorities and all interested parties on the language of education.*
- *to ensure that the implementation of the Law does not endanger the preservation of the minorities’ cultural heritage and the continuity of minority language education in traditional schools.”¹²*

⁹ Venice Commission, [CDL-AD\(2004\)013](#), Opinion on Two Draft Laws amending the Law on National Minorities in Ukraine; [CDL-AD\(2004\)022](#), Opinion on the latest version of the Draft Law amending the Law on National Minorities; [CDL-AD\(2011\)008](#), Opinion on the Draft Law on Languages in Ukraine.

¹⁰ Venice Commission, [CDL-AD\(2017\)030](#).

¹⁰ Venice Commission, [CDL-AD\(2017\)030](#), Ukraine - 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.

¹¹ Venice Commission, [CDL-AD\(2019\)032](#), Ukraine – Opinion on the Law supporting the Functioning of the Ukrainian Language as the State Language.

¹² Venice Commission, [CDL-AD\(2017\)030](#), Ukraine - 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, §§ 125-126.

15. Based on these recommendations, under an amendment prepared by the Government, pupils who start their classes before 1 September 2018 continue to receive education in accordance with the previous rules until September 2023, instead of 2020. This enables these pupils to finish those classes under the old rules. A gradual increase in the number of subjects taught in Ukrainian has nevertheless been also planned for these pupils. From September 2023 on, however, the rules reducing the rights to education in minority languages will be fully in force; according to the Venice Commission, “[t]his could result in a substantial diminution in the opportunities available to persons belonging to national minorities to be taught in their languages, which would amount to a disproportionate interference with the existing rights of persons belonging to national minorities”.¹³

16. In the conclusions of its Opinion on the Law on the State Language, the Venice Commission stated that “[l]anguage policy is an extremely complex and sensitive issue in Ukraine which became in the past and may still become in the future a source of tension within Ukraine and with kin states of national minorities of Ukraine. It is also a highly politicised issue especially due to the recent developments and conflict with Russia”, and made the following key recommendations:

- to prepare without any unnecessary delay the Law on Minorities and to consider postponing until adoption of the Law on Minorities the implementation of the State Language Law’s provisions which are already in force.
- to revise the State Language Law in order to ensure, in the light of the specific recommendations made in the present opinion, its compliance with Ukraine’s international commitments, especially those stemming from the Framework Convention, the Language Charter, and the ECHR and its Protocol No. 12. In the legislative process, the legislator should consult all interested parties, especially representatives of national minorities and indigenous peoples as they are and will be directly affected by the implementation of these two pieces of legislation.
- to repeal the provisions of the Law providing for a differential treatment between the languages of indigenous peoples, the languages of national minorities which are official languages of the EU and the languages of national minorities which are not official languages of the EU to the extent that the distinction between those languages is not based on an objective and reasonable justification.
- to consider repealing the mechanism of complaint and sanctions set forth in the Law or at least to limit it strictly to the public sphere and for the most extreme cases. However, if this mechanism should be kept, the provisions regarding the imposition of sanctions should not be enforced until the adoption of the Law on Minorities and the revision of the State Language Law.
- to consider removing Article 1.6 establishing liability for deliberate distortion of the Ukrainian language in official documents and texts.
- to safeguard the rights of linguistic minorities as well in order to promote a fair balance between the strengthening of the status and use of the State language and the protection of minority languages and to entrust the Commissioner for the Protection of the State Language, or another duly constituted institution or body, with the responsibility to monitor the implementation of the legal provisions on the use of minority and indigenous languages.¹⁴

¹³ Venice Commission, [CDL-AD\(2017\)030](#),

¹³ Venice Commission, [CDL-AD\(2017\)030](#), Ukraine - 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, § 120.

¹⁴ Venice Commission, [CDL-AD\(2019\)032](#), Ukraine – Opinion on the Law supporting the Functioning of the Ukrainian Language as the State Language, § 139.

17. On 14 December 2022, the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU) provided an analysis of draft law no. 8224 “On national minorities (communities) of Ukraine”, which had been adopted in final reading by the Parliament the previous day and was signed by the President’s on 29 December. This analysis, which relies extensively on the previous opinions of the Venice Commission, will be referred to where appropriate.

C. Scope of the Opinion

18. In the present opinion, the Venice Commission examines neither the overall legal framework in force in Ukraine in the field of minority protection, nor the overall situation of national minorities in this country. The opinion is limited to the provisions of the Law on National Minorities (Communities) of Ukraine, adopted by the Verkhovna Rada on 13 December 2022.¹⁵ This Law, in the majority of its provisions, shall enter into force on 1 July 2023, replacing an older Law on National Minorities in Ukraine adopted in 1992.¹⁶ The previous Law, dating back to 1992, was considered as too general and not providing adequate guarantees for the protection of minorities.¹⁷ The adoption of a new law is therefore welcome.

19. The new Law on national minorities (communities) does not amend the legislation on education and on the state language. The recommendations made by the Venice Commission in previous opinions in the field¹⁸ therefore remain valid, to the extent that they have not been adequately met in subsequent special laws. The Venice Commission will refer to its previous opinions on these laws to the extent that the draft law explicitly or implicitly refers to them.¹⁹

20. The Ukrainian Constitution distinguishes between national minorities and indigenous peoples.²⁰ It does not mention “communities”. The Law on National Minorities (Communities) of Ukraine does not address the specific issue of indigenous peoples, such as Crimean Tatars, and neither will this Opinion.

21. The opinion analyses the Law only as to its compliance with applicable international instruments and standards (especially the Framework Convention, the Language Charter, Articles 26 and 27 ICCPR as well as Article 14 ECHR [European Convention on Human Rights] and its Protocol No. 12). It does not assess its conformity with the Ukrainian Constitution.

22. Prior to the visit to Kyiv, the Venice Commission submitted a list of questions to the authorities, which replied in written form. Their replies will be referred to in this Opinion as their “written contribution”.

¹⁵ Закон України № 2827-ІХ Про національні меншини (спільноти) України, 13 грудня 2022 року.

¹⁶ Закон України № 2494-ХІІ Про національні меншини в Україні, 25 червня 1992 року.

¹⁷ See the Committee of Ministers’ Resolution CM/Res CM(2020)13 on the implementation of the FCNM by Ukraine, 8 December 2020, recommendation for immediate action No. 2 [ACFC/OP/IV\(2017\)002](#), Fourth Opinion on Ukraine, adopted on 10 March 2017, recommending to “Adopt without delay and in close consultation with the groups concerned, an adequate and comprehensive legal framework for the protection of national minorities with effective implementation mechanisms” (para. 188).

¹⁸ Venice Commission, [CDL-AD\(2019\)032](#), Ukraine – Opinion on the Law supporting the Functioning of the Ukrainian Language as the State Language; [CDL-AD\(2017\)030](#), Opinion 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

¹⁹ See paras 13ff.

²⁰ Articles 11, 92(3), 119(3).

III. Analysis

A. Adoption procedure

23. The Venice Commission has previously recommended to realise consultations regarding laws that could affect national minorities²¹ in accordance with Article 15 of the Framework Convention and Article 7, paragraph 4, of the Language Charter. Similarly, the Special Procedures of the United Nations Human Rights Council, specifically the Special Rapporteur in the field of cultural rights²² and the Special Rapporteur on the rights of indigenous peoples,²³ have recommended that consultations processes be done regarding any change that could affect the interests of the persons belonging to minorities.

24. The Ukrainian authorities informed the Commission that broad consultations with stakeholders, in particular associations of minorities, took place during the preparation of the Law. It is difficult to evaluate up to which extent they resulted in a consensus. The Ukrainian authorities also informed the Commission about consultations which have taken place in view of the adoption of the secondary legislation. The representatives of the national minorities confirmed this during their meetings with the rapporteurs.

B. Terminology

25. The Law adds, including in its title, the term “communities” – between brackets – to that of “national minorities”. The Ukrainian authorities explained, in particular in their written contribution, that some persons belonging to minorities considered the term of “minorities” as demeaning, and a reminder of Soviet times, which prompted to the addition of the term “communities”. The Venice Commission would like to emphasise that the term “minorities” is the one used in international law, including in the Framework Convention and the Charter. The use of both terms (“minority” and “community”) as synonyms is however not contrary to international law.

C. Preamble and general provisions (section I)

26. The Venice Commission welcomes once more the adoption of the Law on National Minorities, which was already recommended in the Opinion on the Law on the Ukrainian language as the State Language. In this Opinion the Commission stated that *“the Law on Minorities should have been prepared simultaneously with the State Language Law in order to secure from the outset a balance between the protection of Ukrainian and the language-related rights of persons belonging to national minorities.”*²⁴ The Venice Commission appreciates the endeavour of the Ukrainian authorities to take into account the international and European standards on the protection of minorities and also – however only to a limited extent – some of the criticisms the Commission expressed in its above-mentioned Opinions.

²¹ Venice Commission, CDL-AD(2017)030 -Ukraine - 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 Commission at its 113th Plenary Session (Venice, 8-9 December 2017), § 54; CDL-AD(2019)032-Ukraine - Opinion on the Law on Supporting the Functioning of the Ukrainian Language as the State Language, adopted by the Venice Commission at its 121st Plenary Session (Venice, 6-7 December 2019). § 28; CDL-AD(2004)026. Opinion on the Revised Draft Law on Exercise of the Rights and Freedoms of National and Ethnic Minorities in Montenegro adopted by the Venice Commission at its 59th Plenary Session (Venice, 18-19 June 2004), § 44; CDL-AD(2004)013. Opinion on Two Draft Laws amending the Law on National Minorities in Ukraine adopted by the Venice Commission at its 58th Plenary Session (Venice, 12-13 March 2004), § 47.

²² United Nations, Special Rapporteur in the field of cultural rights. A/77/290. Development and cultural rights: the principles, para. 79.

²³ United Nations, Special Rapporteur on the rights of indigenous peoples. A/HRC/45/34. Mandate impacts in favour of the protection of the rights of indigenous peoples. Observations on consultation processes, para. 60.

²⁴ Venice Commission, CDL-AD(2019)032, Ukraine – Opinion on the Law supporting the Functioning of the Ukrainian Language as the State Language, § 34.

27. The Preamble includes several references and principles which are welcome. It refers to the Framework Convention, the Charter, and “*other international treaties regarding the rights of national minorities (communities) of Ukraine ratified by the Verkhovna Rada of Ukraine*”. It mentions *inter alia* the creation of proper conditions for the exercise and the protection of the rights of all persons belonging to national minorities (communities), the preservation of the various aspects of their identity, ensuring their full development, respecting full diversity, encouraging an inter-cultural dialogue, and ensuring equality regardless of ethnic origin.

28. The definition of national minorities (communities) in Article 1 corresponds to similar definitions in a number of European countries. It must be noted that the law does not include indigenous peoples amongst national minorities (communities). Their rights are dealt with by another piece of legislation.²⁵ A clarification of the applicability of the Law on National Minorities (Communities) to them would however be welcome, in the understanding that these groups are generally covered by this law, but that the – usually more generous – *lex specialis* on indigenous peoples prevails. The Commission furthermore notes that the definition of national minorities (communities) differs from that in the 1992 law. For instance, it requires that members of national minorities “traditionally live in Ukraine”. During the online interviews, representatives of several national minorities expressed concerns that the expression is vague, and risks being interpreted in an overly restrictive way.²⁶

29. Article 2(2) provides that “*if an international treaty of Ukraine, ratified by the Verkhovna Rada of Ukraine, establishes rules other than those provided for by this Law, the rules of the international treaty shall apply*”. This is welcome, as are the state guarantees of the rights of minorities and the ban on discrimination, which include possible affirmative action (Articles 3-4). In particular, Article 3(2) stipulates that “*[t]he implementation of the state’s integration policy provides for refraining from the policy and practice of assimilation of persons belonging to national minorities (communities) against their will and protecting such persons from any actions aimed at such assimilation*”. Affirmative action is intended at ensuring equal opportunities (Article 4(3) of the Law). This provision is however less broad than Article 4(2-3) FCNM, according to which “*[t]he Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority*”. Amending the Law to ensure its full conformity with the FCNM in this field should be considered.

D. Rights, freedoms and obligations of persons belonging to national minorities (communities) (section II)

1. In general

30. Section II details the rights, freedoms and obligations of persons belonging to national minorities (communities). The list of rights contained in Article 5(2) is rather comprehensive and the Law makes it clear that this list is not exhaustive (Article 5(3)). The obligations under Article 5(5) to comply with the Constitution and laws, to defend state sovereignty and respect the various features of the Ukrainian nation, as well as to promote the integration of the national minority (community) into Ukrainian society, do not go against Article 20-21 FCNM. The interpretation of these obligations should however not be extensive and needs to be adapted to the circumstances. States have the obligation to take measures relating to the preservation and

²⁵ Law of Ukraine No. 1616-IX on Indigenous People of Ukraine, 1 July 2021 (Закон України № 1616-IX Про корінні народи України, 1 липня 2021 року),

²⁶ In its Thematic Commentary No. 4 (para 31), the ACFC considers that “it follows by implication from the fact that only Articles 10(2), 11(3) and 14(2) of the Framework Convention establish specific guarantees in areas traditionally inhabited by persons belonging to national minorities, that the length of residency in the country is not to be considered a determining factor for the applicability of the Framework Convention as a whole. It has further consistently held that any temporal restrictions should be regarded flexibly and that distinctions in the treatment of otherwise similar groups based solely on the length of their residency in the territory can be unjust.”

respect for minorities' identities. "Integration of society" is a key concept which means that "all segments of society, majorities and minorities alike, are addressed in order for integration strategies to effectively facilitate the formation of societal structures where diversity and respect for difference are acknowledged and encouraged as normal, through recognition, mutual accommodation and active engagement on all sides."²⁷ The clause on the limitation of fundamental rights in Article 5(6) largely corresponds to the text of international conventions on human rights. It however fails to indicate that any restriction needs to pursue certain legitimate aims like, for example, Articles 9ff ECHR.

31. Article 5(7), concerning the "popularisation and propaganda of the terrorist state (aggressor state)" and similar actions, is clearly to be seen in the context of the present Russian aggression against Ukraine. It focuses on a specific situation and should normally not appear in a general law on minorities, but rather in criminal legislation. The Venice Commission recommends considering that this provision be removed to another, more appropriate piece of legislation, possibly to specific legislation applying to the present emergency situation.

32. Concerning Article 6, on the right to self-identification, the first sentence in para. 1 is in principle in line with Article 3 FCNM. It however restricts this right to citizens, contrary to the FCNM. The next sentences of Article 6(1) make it clear that nobody can be compelled to declare an affiliation to a national minority: this does not condition the exercise of rights guaranteed to national minorities. See also Article 6(2), prohibiting to force a citizen of Ukraine in any form to recognise his/her affiliation, refuse or change his/her affiliation to a national minority (community). This is in conformity with international law.

33. Article 6(3) on names, surnames and patronyms mainly reflects Article 11(1) FCNM, and is welcome. The "official recognition" of names in the minority languages according to this provision could however be made more explicit.

34. Articles 7 and 8, on freedom of public associations and peaceful assembly, freedom of expression, religion and thought, implement Articles 7 FCNM and Articles 9–11 ECHR, and are welcome.

35. Article 9, on participation in political, economic, and social life, is intended at implementing Article 15 FCNM. It enumerates the rights of persons belonging to national minorities. However, Article 15 FCNM goes beyond Article 9 of the Law by asking states to act positively so as "*to create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs (...)*". The Venice Commission recommends developing in the law how such conditions can be created.²⁸

²⁷ ACFC thematic commentary No.4.

²⁸ According to the [Explanatory report to the FCNM](#), "Parties could promote – in the framework of their constitutional systems – *inter alia* the following measures:

- consultation with these persons, by means of appropriate procedures and, in particular, through their representative institutions, when Parties are contemplating legislation or administrative measures likely to affect them directly;
- involving these persons in the preparation, implementation and assessment of national and regional development plans and programmes likely to affect them directly;
- undertaking studies, in conjunction with these persons, to assess the possible impact on them of projected development activities;
- effective participation of persons belonging to national minorities in the decision-making processes and elected bodies both at national and local levels;
- decentralised or local forms of government."

2. Linguistic rights and right to education

a. Linguistic rights

36. Linguistic rights of national minorities (including in education) have been the focus of the recent discussions on the legislation concerning minorities in Ukraine, as shown by the previous opinions of the Venice Commission as well as the analysis of the United Nations Human Rights Monitoring Mission.

Article 10(1): freedom to use the language of one's choice and non-discrimination

37. Article 10(1) of the Law recognises to every person belonging to a national minority the right to free and unimpeded use of the language of his/her national minority. This right is however only recognised *“to the extent not contradicting the law”*. While such a formulation appears acceptable as such, it should not be interpreted as only allowing those restrictions by legislation as are in conformity with the Constitution and international treaties.

38. The Venice Commission is not in a position to examine all restrictions to the right to freely use the language of national minorities, that are covered by the condition *“to the extent not contradicting the law”*. The Commission has however already examined some of these restrictions, namely those contained in the provisions of the Law on the Ukrainian language as the State Language. These provisions have been in force since 16 July 2019. They have not been amended by the Law on National Minorities (Communities), rather, they seem to be implicitly confirmed by Article 10(1) of this Law. Therefore, the Venice Commission finds it appropriate to repeat the criticism on these provisions it expressed in its Opinion on the Law on the Ukrainian language as the State Language, whose main findings may be summarised as follows:²⁹

- *Art. 22 (2) of the Law on State language provides “scientific publications shall be made public in the State language, English and/or other official languages of the European Union”. The Venice Commission stated in its Opinion that this provision constitutes a breach of the freedom of expression and academic freedoms of the persons who want to make scientific publication in on EU-languages. It was moreover of the opinion that this differential treatment between languages does not seem justified. (para. 82)*
- *Art. 23 (6) of the Law on the State language provides that the language of domestic film distribution and screening must be Ukrainian with the dialogue component of a soundtrack performed in Ukrainian, “including by dubbing or voice-over”. This provision further provides that domestic films may be screened in the Crimean Tatar language or other languages of indigenous people. The Venice Commission stated in its Opinion that such a provision imposes “additional work and costs” and in order for it to be proportionate to the legitimate aim it pursues, the government “should provide funding to support translation, as the financial burden may otherwise cause “substantial disruption and could have a chilling effect on the organisation of cultural events in minority languages.” (para. 88) The Commission moreover stated that the principle of non-discrimination was violated as the exception for the Crimean Tatar Language or other languages of indigenous people did not apply to national minorities. (para. 87).*
- *Article 23(8) of the Law on the State language provides that the “language of tourist and sightseeing services shall be the State language. Tourist and sightseeing services may be provided to foreigners or stateless persons in other languages”. The Venice Commission stated in its Opinion that “this provision is a violation of freedom of expression as enshrined*

²⁹ Venice Commission, [CDL-AD\(2019\)032](#), Ukraine – Opinion on the Law supporting the Functioning of the Ukrainian Language as the State Language

in Article 10 ECHR [European Convention on Human Rights] as this does not seem to serve any legitimate aim". It further noted that "[t]his provision is difficult to implement. These services are usually provided to groups of tourists where there may be citizens and non-citizens together. It would be unrealistic to expect a provider of such services to check each time if his or her clients are citizens or not and not to answer a question in another language asked by a client who is a citizen. A person should not be punished for doing so". (paras 91-92).

- *Article 32(1) of the Law on State language provides that the language of advertising shall be Ukrainian. Pursuant to Article 32(2) an exception is made for advertisements in one of the European Union official languages in print media. Article 32(3) establishes that the use of minority and indigenous languages in advertising should be regulated by the Law on Minorities. The Venice Commission stated in its Opinion: "As commercial expression is also guaranteed by the provisions on the freedom of expression the principle should be the freedom of the advertiser to choose the language in which he wants to advertise, including minority languages. The exercise of this freedom can only be limited "by law", in the pursuance of a legitimate aim, such as the protection of health or the right of the consumers to receive information on the goods and services in the market, and in so far as the limitation is "necessary in a democratic society" which implies that it has to be proportionate to the legitimate aim it pursues. Furthermore, the Law on Minorities should not provide a lesser guarantee to the languages which are not the official EU [European Union] languages." (para. 111). The Venice Commission moreover finds that the Law on National Minorities does not contain any provisions on the use of minority languages in advertising, as announced in article 32 (3) of the Law on State language.*
- *Article 34 of the Law on the State Language provides that "information and other announcements during a sporting event", and "admission tickets to a sporting event and other information products about sporting events" shall be in Ukrainian, except for international sporting events for which, in addition to Ukrainian, other languages can be used. The Venice Commission stated in its Opinion: "The fact that the use of other languages is not allowed under any circumstances as regards national or local sporting events constitutes a breach of the right to freedom of expression. Furthermore, as no exception is provided for minority languages, this provision is not in line with the obligations incumbent on Ukraine under the Framework Convention [on the Protection of Minority Languages] (Article 11.2) and the Language Charter [European Charter for Regional or Minority Languages] (Article 12)." (para. 92)*
- *Article 37 of the Law on State Language imposes the obligation on political parties and other legal entities (non-governmental organisations) to adopt "their constituent documents and decisions" in Ukrainian and use Ukrainian in their dealings with the public authorities. The Venice Commission stated in its Opinion: "This obligation constitutes a limitation of freedom of association, which entails the right to self-organisation. The interference in the exercise of this freedom serves a legitimate aim of public order, as it makes possible supervision by State bodies of political parties, associations and other legal entities, in the interest not only of the State but also of the members of those entities. However, the term "constituent documents and decisions" is not clear. In order to be proportionate to that legitimate aim, the obligation to adopt documents and decisions in Ukrainian should be limited to those documents and decisions which are necessary in order to exercise legitimate public functions." (para. 115).*

39. Several provisions of the State Language Act (Articles 21, 22.2, 25.5, 26.2, 27.1) provide a differential treatment between the languages of national minorities which are EU official languages (more specifically Bulgarian, Greek, German, Polish, Romanian, Slovak and Hungarian) and the languages of minorities that are not EU official languages (in particular

Russian, Byelorussian and Yiddish). In its Opinion on the Law on the State Language, the Venice Commission recognised that the historical oppression of Ukrainian could lead to the adoption of positive measures aimed at promoting Ukrainian but did not justify depriving other minority languages – including Russian, but also many other languages – and their speakers living in Ukraine of the protection granted to other languages and their speakers, from the perspective of human rights in general and the prohibition of discrimination in particular.³⁰

40. The Venice Commission takes however note of judgment n° 1-r/2021 of July 14, 2021, in which the Constitutional Court of Ukraine stated that the preferential treatment of the languages of national minorities that are also official languages of the European Union does not constitute a discrimination going against the Constitution of Ukraine, as it is « a tool for advancing Ukraine towards the values of the united Europe and Ukraine’s possible future participation in its further formation. » As said before, the Commission does not assess the Law in light of its conformity with the Ukrainian Constitution, which is the task of the Constitutional Court. The Venice Commission also takes note of the amendments to the Constitution of Ukraine of 2019, which state about “the irreversibility of the European and Euro-Atlantic course of Ukraine” and obliges the legislative and the executive authorities of the State to seek a fully-fledged membership of Ukraine in the European Union and the NATO.

41. In its 2020 Opinion on the recent amendments to the Legislation on Education in Minority Languages of Latvia, the Venice Commission accepted a differential treatment of EU and non-EU languages. This was justified by two main differences with Ukraine: contrary to Ukraine, Latvia was a member of the European Union and, unlike the Constitution of Ukraine where there is a clear reference to the “*free development, use and protection of Russian*” (Article 10), the constitutional order of Latvia did not give specific recognition to any minority language.³¹ Moreover, the privileged status of European Union languages referred to them as foreign languages, not as minority languages. Even if in the meantime Ukraine has obtained EU candidate status, these arguments remain valid. However, due to the brutal aggression of the Russian Federation against Ukraine, it would be justified to provide for a transitional period during martial law where this privileged status would not be given to the Russian language.³²

Article 10(2-3): public events

42. Article 10(2) provides that “persons belonging to national minorities” may organise public events in minority languages. “Public associations of a national minority” may organise cultural, and similar events in minority languages. This seems to limit the right to freedom of association by preventing persons not belonging to a minority, respectively to a public association of a national minority, from organising such events.³³ Even if the authorities recalled in their written contribution that Article 29 of the Law on the State Language does not provide for such a limitation, the Law on National Minorities (Communities), as *lex posterior*, could be understood as having introduced it. The Venice Commission recommends amending the Law on National Minorities (Communities) to make clear that there is no such limitation.

43. Article 10(2-3) moreover distinguishes between, on the one side, public events (such as meetings, conferences, rallies, exhibitions, training courses, seminars, workshops, discussions, or forums) and, on the other side, cultural and artistic, entertainment and “spectacular” events organised by a public association of a national minority (community). While there is no rule dealing with the need to ensure translation (more precisely: interpretation) in the context of the former events, concerning the latter, “*upon request of visitors (spectators) (...) the organiser shall*

³⁰ Venice Commission, [CDL-AD\(2019\)032](#), Ukraine – Opinion on the Law supporting the Functioning of the Ukrainian Language as the State Language, § 44.

³¹ Venice Commission, [CDL-AD\(2020\)012](#), Latvia - Opinion on the recent amendments to the Legislation on Education in Minority Languages, paras 112-114.

³² Cf. below paras 71ff.

³³ Cf. HRMMU analysis, p. 8.

provide simultaneous or consecutive translation (...), if such request was submitted no later than 48 hours prior to the start of the event". Although this provision pursues a legitimate aim, more specifically preventing segregation and promoting integration, the Venice Commission is of the opinion that its terms are too vague, and moreover that its effects are disproportionate to the aim pursued. This provision is imprecise by not making clear how many visitors (spectators) can request such interpretation. If just two visitors would be sufficient, that would make the holding of events without interpretation practically impossible. At any rate, imposing on the organisers the financial and practical burden of interpretation, even at the request of a reasonable number of participants, would go against Article 5 and 10(1) FCNM. It would also go against the letter and spirit of the ECRML, and in particular, Article 7(1)(d) concerning "*the facilitation and/or encouragement of the use of regional or minority languages, in speech and writing, in public and private life*".³⁴ In its previous Opinion on the State Language Act the Venice Commission stated that "*the law should regulate only the language of events organised by the public authorities and/or through public funds and leave it to the organisers to decide freely the language of private events without any obligations for them to provide interpretation from or into the State Language*" (para 84). The Venice Commission therefore recommends reconsidering this provision.

44. The Ukrainian authorities stated that this provision would in practice be applied in a proportionate way and that possible abuses would be avoided by more precision in secondary legislation. The Ukrainian government stated moreover that no appeals from persons belonging to national minorities (communities) have been launched regarding difficulties in applying the norms on the organisation of public events, that no violations of these norms were recorded and that a "methodology" will be developed to specify the implementation of this provision. More specifically the State service for Ethnic Affairs and Freedom of Conscience intends to adopt specific rules on its implementation. The Venice Commission considers however, in conformity with the principles of the Rule of Law,³⁵ that legislation which should not be applied should not be in force and recalls that secondary legislation cannot suppress a right (*in casu*: to ask for interpretation) provided for in primary legislation. Furthermore, the vagueness of this provision may inhibit or discourage the legitimate exercise of freedom of speech. The fact that no appeals or violations have been registered – before the entry into force of the legislation at stake – does not contradict this assessment. The authorities' response shows that broad discretion is given to the authorities, which could be detrimental to national minorities, with the consequence that the average citizen cannot generally determine which situations are regulated and in which cases there would be legal consequences. The result of this vagueness is that the provision is not fully in line with the Article 10(2) ECHR requirements on restrictions to freedom of expression, to "be prescribed by law", "pursue a legitimate aim" and "be necessary in a democratic society". The Venice Commission recommends revising Article 10(3), to avoid a disproportionate application of the law. The Venice Commission also takes notice of Article 14.2 which stipulates that civil society associations of national minorities (communities) may on a competitive basis be provided with financial support for the implementation of programmes (projects, events) at the expense of the State Budget of Ukraine and local budgets, including expenses related to provision of interpretation into the state language. The Venice Commission welcomes this provision and underlines that providing such financial support is a condition that has to be fulfilled in order to comply with the principle of proportionality.

45. The second part of Article 10(3) makes the duplication of informational materials about these events in the language of the national minority "*subject to the requirement provided for by the parts 3 and 5 of Article 23*" of the Law on the State Language (*i.e.* the amount and font of the text in another language should not be larger than those of the text in Ukrainian). Article 23(7) of the

³⁴ Cf. Venice Commission, [CDL-AD\(2019\)032](#) - Ukraine – Opinion on the Law supporting the Functioning of the Ukrainian Language as the State Language, §§ 85ff, on Article 23 of that Law. It seems that Article 10(2-3) abrogate the most restrictive rules of that Article 23, but this should be said explicitly.

³⁵ Venice Commission, [CDL-AD\(2016\)007](#), Rule of Law checklist, II.A.7.

Law on the State Language however provides that film posters and admission tickets to cinemas and other film exhibition facilities shall be made in the State language. The Venice Commission has already stated in its Opinion on the Law of the State Language that this constitutes a breach of the right to freedom of expression. The Venice Commission recommends that film posters and admission tickets to cinemas and other film exhibition facilities be allowed to be printed in minority languages.³⁶

Article 10 (4): mass media

46. The use of minority languages in mass media is dealt with by Article 10(4), which allows it *“in accordance with the law”*. This makes the use of minority languages dependent on other pieces of legislation. In practice, this refers to Article 40 of the Law of Ukraine on the Media, adopted by the Verkhovna Rada of Ukraine on 13 December 2022 and to Article 24, Article 25 and Section IX, point 7(24) of the final and transitional provisions of the Law on State Language, which increased the proportion of the Ukrainian language content for national and regional broadcasters from 75 to 90 per cent and, for local broadcasters, from 60 to 80 per cent.³⁷ The Venice Commission already criticised these transitional provisions to the extent that they apply to private broadcasting companies as limiting freedom of expression guaranteed by Article 10 ECHR, as well as the right of minorities to enjoy their own culture or to use their own language enshrined in Article 27 ICCPR. The Commission stated: *“Although these limitations serve a legitimate aim, it can be questioned whether they are proportionate to this aim, as they leave very little room for the use of minority languages. It should be recalled that Ukraine, by ratifying the Framework Convention, undertook to ensure, in the legal framework of sound radio and television broadcasting, as far as possible, that persons belonging to national minorities are granted the possibility of creating and using their own media (Article 9.3.)”*.³⁸ As stated in the written contribution of the authorities, these rules will apply from 1 January 2024 on. The Commission cannot therefore but repeat its previous criticism.

Article 10(5) publications

47. Article 10(5) provides that publications in the languages of national minorities (communities) at the expense of the state and/or local budgets are not subject to the requirement provided for by the first paragraph of part one of Article 26 of the Law of Ukraine “On Ensuring the Functioning of the Ukrainian Language as a State Language”. Specialised bookstores opened for the exercise of the rights of national minorities (communities) are not subject to the requirements of part two of Article 26 of the Law of Ukraine “On Ensuring the Functioning of the Ukrainian Language as a State Language”. Article 10(5) thus merely confirms both Article 26(1) and article 26(2) of the Law on the State Language.

48. Article 26(1) provides that a publisher *“shall be required to publish in the State language at least 50 per cent of all book titles published by it in the respective calendar year.”* According to Article 26(1), this requirement shall however not apply to *“publishing products published in the Crimean Tatar Language, other languages of indigenous people or national minorities of Ukraine with the funds from the State and/or local budgets under the law on the procedure for the exercise of rights of indigenous peoples and national minorities of Ukraine.”* Article 10(5) of the law on National Minorities confirms that the exception is applicable to *“publishing products published in the languages of national minorities (communities) at the expense of the state and/or local budgets”*. It is therefore not applicable to private publications, as confirmed in the written contribution of the authorities.

³⁶ Venice Commission, [CDL-AD\(2019\)032](#) - Ukraine – Opinion on the Law supporting the Functioning of the Ukrainian Language as the State Language, § 90; HRMMU analysis, pp. 9-10.

³⁷ HRMMU analysis, p. 12. See also article 40 of the Law of Ukraine on the media adopted by the Verkhovna Rada of Ukraine on December 13, 2022.

³⁸ Venice Commission, [CDL-AD\(2019\)032](#), Ukraine – Opinion on the Law supporting the Functioning of the Ukrainian Language as the State Language, § 96.

49. Article 26(2) of the Law requires that books in Ukrainian constitute no less than 50 % of the selection of each bookshop and other distribution facilities except for those selling exclusively foreign language learning materials (dictionaries, phrase books etc.) or books in the official EU-languages as well as specialised bookstores “*established for the purposes of realisation of the ‘rights of indigenous peoples and national minorities of Ukraine according to the law.’*” Article 10(5) of the Law on National Minorities (Communities) confirms that the exception is applicable to “*the activities of specialised bookstores established for the realisation of the rights of national minorities (communities)*”.

50. The Commission cannot but repeat its criticism expressed in its Opinion on the Law on the State Language: “*In addition to being possibly problematic from the point of view of non-discrimination this provision is possibly problematic from the perspective of Article 12, subparagraph 1 a of the Language Charter and Article 5 of the Framework Convention, as it could be viewed as discouraging and restricting the distribution of books in regional or minority languages. The term “specialised bookstores” will need to be clarified.*”³⁹

Article 10(6): emergency assistance

51. Article 10(6) provides: “*Upon request (...) the language of the national minority (community) may be used to provide him/her with emergency assistance if it is acceptable to (understandable by) the parties.*” (Article 10(6)) of the Law). This provision is welcomed insofar as “acceptable” needs be understood as limited to “understandable” needs. To make it clearer, the term “acceptable” could be replaced by “understandable” The Venice Commission however repeats its recommendation to enlarge the scope of this provision to “*institutions for the elderly – which are not necessarily health care institutions – as especially such persons belonging to minorities might not have sufficient command of Ukrainian.*”⁴⁰ The Venice Commission also supports the HRMMU’s recommendation, “that emergency services for victims of domestic violence [should] also [be] allowed to use minority languages”.⁴¹

52. The Venice Commission moreover endorses the stance taken by the United Nations High Commissioner on Human Rights that Article 10(10) of the law might in practice complicate the application of Article 10(6) as it stipulates that “*the specific aspects of the use of the languages of national minorities, ... including when providing emergency assistance ... shall be determined by the methodology approved by the Cabinet of Ministers of Ukraine...*” (see below). In order to guarantee an unconditional right to emergency assistance in the language of the minority, the Venice Commission recommends removing the words “including when providing emergency assistance” from Article 10(10).

Article 10(7): official inscriptions

53. Article 10(7) provides that in settlements traditionally inhabited by persons belonging to national minorities (communities), or where such persons constitute a significant part of the population, the inscriptions of official names on the signs of local self-government bodies and municipal enterprises in the state language may be duplicated in the languages of national minorities (communities) by decision of the relevant village, town or city councils and shall be placed on the right side or at the bottom. The Venice Commission welcomes this provision in principle. It notes however that there is no definition of the term “traditionally inhabited” or “where such persons constitute a significant part of the population”. It would be suitable to define such terms in a way which would ensure legal certainty, and in an extensive way.

³⁹ Venice Commission, [CDL-AD\(2019\)032](#), §. 94.

⁴⁰ Venice Commission, [CDL-AD\(2019\)032](#) - Ukraine – Opinion on the Law supporting the Functioning of the Ukrainian Language as the State Language, § 112.

⁴¹ HRMMU analysis, p. 19.

Moreover, the decision to duplicate the inscriptions in a minority language has to be taken by local authorities, without the law itself containing any criteria. In their written contribution, the authorities stated that “the specification of criteria for settlements where persons belonging to national minorities (communities) traditionally reside, or where such persons make up a significant part of the population, is expected within the framework of the methodology regarding the specifics of using the languages of national minorities (communities), the development of which is envisaged by part ten of Article 10 of the Law of Ukraine *“On National Minorities (Communities) of Ukraine”*. The Venice Commission takes notes of this statement and recommends that the “methodology” provide for clear criteria. In addition, the right to adopt, use and display place names and topographical indications in minority languages in areas where they are traditionally spoken, in line with Article 11(3) FCNM and Article 10-2-g ECRML, should be clearly provided for.

Article 10(8): general information

54. Article 10(8) provides that in settlements traditionally inhabited by persons belonging to national minorities (communities), or in which such persons constitute a significant part of the population, general information (announcements, including public offers to conclude a contract, signs, pointers, signboards, messages, inscriptions and other publicly posted text, visual and sound information that is used or may be used to inform an unlimited number of persons about goods, works, services, certain business entities, officials, employees of enterprises or public or local self-governing authorities) shall be duplicated in the language of the national minority (community) by decision of the relevant village, town or city councils. This provision has however to be read in combination with Article 28 of the Law of the State Language which requires such information to be available in Ukrainian even in settlements with an almost exclusively minority population. In its Opinion on the Law on the State Language, the Venice Commission stated that *“the fact that all publicly available information should also be available in Ukrainian could imply a heavy burden on all those who want to communicate with the public. (...) and that it could be so onerous in some situations as to have a chilling effect on the exercise of the freedom of expression.”*⁴² The Commission invited the authorities to re-examine the provision in the light of the principle of proportionality.⁴³ This invitation still applies.

Article 10(9): election campaign

55. Article 10(9) makes the use of minority languages for election campaign material possible in the same municipalities. This is welcome, however the requirement to have such material also in Ukrainian appears as a disproportionate restriction to freedom of expression. In its Opinion on the Law on the State language the Venice Commission already stated that *“by distributing election campaign materials, the candidates for elections and the political parties behind them, do not exercise a public function. They merely make use of their freedom of expression in order to impart their political ideas and their programme to the electorate. The freedom of expression implies the freedom to choose the means and also the language in which one communicates”*. In the view of the Venice Commission, Article 18(4) of the Law on State language *“does not comply with the conditions that have to be fulfilled in order to justify the limitation of the freedom of expression it entails, as it is not clear how this limitation can be considered to be “necessary in a democratic society”, in the sense of Article 10(2) of the ECHR”*.⁴⁴

⁴² [CDL-AD\(2019\)032](#) - Ukraine – Opinion on the Law supporting the Functioning of the Ukrainian Language as the State Language, § 105.

⁴³ Venice Commission, [CDL-AD\(2019\)032](#), §§ 94, 105.

⁴⁴ [CDL-AD\(2019\)032](#) - Ukraine – Opinion on the Law supporting the Functioning of the Ukrainian Language as the State Language, § 65.

56. The Venice Commission stated moreover that *“it should be possible to distribute electoral campaign materials in any language not only in areas of compact residence of minorities but in the whole country. Furthermore, the obligation to distribute only materials issued in Ukrainian and translated/dubbed in another language could place a heavy burden on some political parties or candidates seeking votes from minority communities. If the authorities wish to have those materials in Ukrainian as well, it would be appropriate that the State provides adequate financial support for their translation, dubbing or subtitling.”*⁴⁵ In a very recent judgment, the European Court of Human Rights made it clear that electoral campaigning in minority languages should be allowed.⁴⁶

57. In their written contribution, the authorities stated that “participation in elections and other use of civil rights by citizens of Ukraine implies knowledge of the state language.” While recognising the importance of the official language and of its knowledge by the whole population, the Venice Commission considers that, if made explicit in legislation, such requirement would not be in conformity with international standards, which do not allow making civil and political rights dependent on language knowledge. The Venice Commission cannot therefore but reiterate that the need of having all electoral material in Ukrainian, as well as the limitation of the use of minority languages to settlements with an important minority population, do not fulfil the conditions of the limitation to freedom of expression set in Article 10(2) ECHR, and recommend revising this provision.⁴⁷

Article 10(10): communication with authorities

58. Pursuant to Article 10(10), *“[s]pecificities/features of the use of languages of national minorities (communities), namely, but not limited to (...) topographical information, communication with authorities, including when providing emergency assistance (...) shall be determined by the methodology approved by the Cabinet of Ministers of Ukraine based on the main provisions of the FCNM and the ECRML”*. The reference to the Council of Europe treaties is welcome.

59. One of the main gaps of the previous legislation was the absence of any rules on the use of minority languages in contact with and by administrative authorities as regulated in Article 10(2) FCNM and Articles 10(2) and 10(4) ECRML. This was criticised by the Venice Commission.⁴⁸ It is therefore welcome that the use of minority languages in *“communication with authorities... based on the main provisions of the FCNM and the ECRML”* is now foreseen in the Law. The Venice Commission however notes that Article 10(10) does not contain any precise rules on the use of the minority languages in contact with the administration, but only tasks the Cabinet of Ministers to develop a “methodology” based on the main provisions of the FCNM and the ECRML”. According to the authorities, *“[i]t is expected that the methodology will determine the specifics of using the languages of national minorities (communities) of Ukraine in places where their members traditionally reside, in areas where they constitute a significant part of the population, as well as the criteria under which the relevant algorithm should be applied. In addition, the methodology may specify the specifics of using the languages of national minorities (communities) defined by the Law of Ukraine ‘On National Minorities (Communities) of Ukraine’, for example, regarding terms such as ‘places where persons belonging to national minorities (communities) traditionally reside’ or ‘places where such persons belonging to national minorities (communities) constitute a significant part of the population’, or determining the number of*

⁴⁵ [CDL-AD\(2019\)032](#) - Ukraine – Opinion on the Law supporting the Functioning of the Ukrainian Language as the State Language, § 66.

⁴⁶ See also ECHR, *Mestan v. Bulgaria*, n° 24108/15, 2 May 2023. See in particular para. 33 of the judgement: out of 37 states parties to the FCNM examined, only Bulgaria and Ukraine provided for such restrictions to the use of national minority languages in electoral campaigns..

⁴⁷ Venice Commission, [CDL-AD\(2019\)032](#), §§ 64-67. See already Venice Commission, [CDL-AD\(2017\)016](#), Bulgaria - Joint opinion on amendments to the electoral code, § 54.

⁴⁸ Venice Commission, [CDL-AD\(2019\)032](#), §§ 59-61.

persons whose request should be sufficient to ensure translation into the state language during cultural, artistic, entertainment, and spectacular events organised by public associations of national minorities (communities)". The Venice Commission understands that for the implementation of the right to communicate with the administration in a minority language, the Ukrainian authorities will have to take into account the specificities of the central, regional and local administrations and the size of concrete minorities. The Commission however recommends determining the essential criteria of the methodology in the Law itself. The Venice Commission therefore recommends revising Article 10(10) to determine in this Article the essential elements of the right to use the minority language, incorporating all the undertakings ratified under Articles 10(2) and 10(4) of the ECRML.⁴⁹ Moreover, Article 10(10) applies "in areas traditionally inhabited by persons belonging to national minorities (communities) or where such persons constitute a significant part of the population, at the request of such persons and if such request meets real needs". While the first part of the sentence should be defined in a way which would ensure legal certainty, and in an extensive way (see above para. 53), the requirement for "real needs" seems to be a repetition of the wording of Article 10(2) FCNM. The Venice Commission therefore recommends considering a more concrete definition so as to avoid unjustifiable and unreasonable limitations of the effect of the provision concerned."⁵⁰

60. Finally, the Venice Commission reiterates the recommendation made in its Opinion on the Law on State Language of 2019, that the Law should grant the possibility for civil servants, in responding to private individuals who address public authorities, to answer also in minority languages, if they can do so (paras 59-61).

b. Right to education

Article 11(1) reform of the education system

61. Concerning the right to education, Article 11(1) of the Law refers to the Law "on Education". In its Opinion of 5 September 2017, the Venice Commission thoroughly examined Article 7 of this law.⁵¹ While emphasising that improving the knowledge of and the competence in the Ukrainian language of all pupils of Ukraine is a legitimate purpose, the Venice Commission also stressed that measures taken to achieve this purpose have to be adequately balanced with guarantees and measures for education in and/or of the languages of Ukraine's minorities (para. 77). More specifically they must be in compliance with the principle of proportionality, implying that the policy option chosen "*should be the one with the least degree possible of adverse impact on the legitimate interests of those concerned.*" (para. 95). Additionally, the Venice Commission recommended that Article 11(1) of the Law on Minorities guarantee the right of the persons that belong to national minorities to be educated in their own language as well as their linguistic rights in the whole educational process, when it is reasonably required by the applicable international standards, *i.e.* in areas inhabited by persons belonging to national minorities traditionally or in substantial numbers and if there is sufficient demand.

62. In its Opinion of 2017, the Venice Commission expressed several concerns and proposed several recommendations (see above para. 14), in order to comply with the international and European standards on minority rights in education. In the present Opinion, the Venice

⁴⁹ The Ukrainian authorities ratified: Article 10(2)(a) (use of language within the framework of the local or regional authority); 10(2)(c-d) (publication of official documents by local and regional authorities also in the minority language); 10(2)(e-f) (use of minority languages by local and regional in debates in their assemblies, without excluding the use of the official language); 10(2)(g) and 10(4)(c) (compliance as far as possible with requests from public service employees having a knowledge of minority languages to be appointed in the territory in which that language is used).

⁵⁰ Communication with judicial authorities is dealt with in another piece of legislation.

⁵¹ Venice Commission, [CDL-AD\(2017\)030](#), Ukraine - 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, paras 125-126, quoted above at para. 14.

Commission has not exhaustively reassessed the overall current situation of the protection of minority languages in the field of education in Ukraine. More specifically, the Venice Commission has not examined the Law on Comprehensive Secondary Education the Verkhovna Rada adopted in March 2020, which contains detailed education models for national minorities. The Venice Commission further takes notice of the judgment of the Constitutional Court of Ukraine of 2 October 2019 in which the Court held that by adopting the Law on Education the state had created the conditions for full realisation of the respective rights of national minorities, including indigenous peoples of Ukraine, to study their mother tongue, as well as to receive education in the state language, regardless of their origin.

63. The Commission nevertheless deems it however appropriate to refer to the main concerns and recommendations expressed in its Opinion of 5 September 2017, more specifically as to 1) the lack of qualified teachers and adequate schoolbooks and pedagogical methodology for the teaching of the Ukrainian language (para. 79); 2) the considerable reduction of the amount of teaching through the medium of minority languages (para. 87), putting at risk the survival of minority schools (para. 99), the proficiency in the minority language and thus even the linguistic identity of the minority (paras 101-104) and 3) the differential treatment of the different minority languages – the languages of the indigenous peoples, the languages of national minorities that are EU-languages and the languages of minorities that are not EU languages – which, without a convincing justification, has to be qualified as a discrimination - (paras 106-115). These concerns and recommendations remain valid to the extent they were not adequately met in the subsequent special laws.

64. The Venice Commission moreover notices that the Ukrainian legislator has postponed until 1 September 2023 the full implementation of the reform implying the gradual transformation of the secondary minority language school-system into a state-language school-system. The COVID-19-pandemic and the military aggression by the Russian Federation and their negative impact on the State Budget however seem to have affected the full implementation of the reform. As stated in the written contribution of the authorities, “*the necessary work on adaptation of educational and disciplinary study programs is being carried out jointly with local educational authorities; textbooks, manuals and methodical materials are being prepared. The issue on possible extending the transitional period for the Article 5 of the Law of Ukraine “On Complete General Secondary Education” provisions’ application is also being considered. No school where children are taught in the languages of national minorities (communities) will be closed.*” The Venice Commission acknowledges the efforts made by the Ukrainian authorities to try to provide for adequate textbooks and scientific and methodological support for the teaching of the Ukrainian language. It moreover takes note with satisfaction of the readiness of the authorities to further postpone this implementation and recommends doing so explicitly in the law, reconsidering in the meantime the reform in light of the recommendations in its 2017 Opinion.

Article 11(2) teachers in minority languages

65. Article 11(2) provides that the state shall promote training and improvement of the qualifications of pedagogical and academical workers in the languages of national minorities (communities). The Venice Commission welcomes this provision. In order to ensure its full conformity with Article 12(2) FCNM, which expressly mentions access to textbooks, however, it recommends completing it with the obligation for the State to provide textbooks and education materials in the minority language.

Article 11(3) private education institutions

66. Article 11(3) states that “*private education institutions providing full general secondary education*” are entitled to choose the language of the education process “*except for educational institutions receiving public funds*”. The latter are obliged to ensure that students master the State

language in accordance with the State standards. Private education institutions using the language of minorities cannot therefore receive public funding. This provision partly complies with one of the Commission's recommendations in its 2017 Opinion.⁵² Moreover, the text of the law gives the impression that the choice of the education language does not apply to primary and higher education, but the Ukrainian authorities informed the Venice Commission that "secondary education" in Ukrainian law includes what is commonly called primary education, and that a specific legislation applies to higher education. The Venice Commission takes note of this explanation with satisfaction.

E. Public policy in the sphere of national minorities (communities) (section III); international cooperation and foreign relations of national minorities (communities) (section IV); final and transitional provisions (section V)

67. The provisions in section III are welcomed in general. The aims of public policy in the sphere of national minorities are comprehensive (Article 13). Nevertheless, a further aim for the State policy in the field of national minorities could be introduced in Article 13(1): "5) *guarantee the linguistic survival of those languages that are in danger of disappearing.*"

68. Financial support from the State Budget to activities related to the exercise of rights and freedoms of national minorities as well as to public associations of national minorities is provided for, which is welcome (Article 14).

69. Concerning the powers of the various public bodies, previous legislation empowered local self-government bodies with the right to provide for topographical indications in minority languages. The Venice Commission recommends reintroducing such a rule.

70. Article 19 deals with centres for national minorities (communities). Its paragraph 3 includes a broad delegation to the relevant State administrations and local self-governing bodies concerning the procedure for their establishment, main directions, and forms of activity. It would however be suitable to formulate the law more precisely regarding the composition, powers, and tasks of the centres.

71. Section IV on international cooperation and foreign relations is welcome in general. Article 21(1) is clearly inspired by Article 17 FCNM. Article 21(2) prohibits persons belonging to national minorities (communities) and public associations of national minorities (communities) to cooperate with and receive assistance from foreign states, individuals and NGO's of other states, international NGO's and other foreign institutions "*whose activities are aimed at the elimination of the independence of Ukraine, changing the constitutional order by violent means, violation of the sovereignty and territorial integrity of the state, undermining its security, illegal seizure of the state power, promotion of war and violence, inciting inter-ethnic, racial, religious enmity, encroaching on human rights and freedoms, health of the population*". In their written contribution, the authorities stated that "*these provisions are dictated rather by urgent national security considerations, taking into account the experience of hybrid warfare and the instrumentalisation of the ethnic issue by the Russian Federation in Ukraine and abroad to justify its armed aggression against Ukraine and undermine the internal political stability of Ukrainian society*". Interpreted strictly, these prohibitions would not go against freedom of association. Since they are linked to the specific situation of the armed aggression against Ukraine, they should rather appear in transitional provisions (cf. the next paragraphs), or in criminal legislation, as derogations in the sense of Articles 15 ECHR and Article 4 ICCPR to avoid any excessive restriction of freedom of association. At any rate, they should not target specifically persons belonging to national minorities and their organisations (see below paras 73-74).

⁵² Venice Commission, [CDL-AD\(2017\)030](#), Ukraine - Opinion on the provisions of the Law on Education of 5 September 2017, § 105.

72. Pursuant to item 3 of the final and transitional provisions,
- the right to peaceful assembly (Article 7),
 - the right to state funding of events associated with the implementation of rights and freedoms of national minorities (Article 14),
 - the right of representatives of national minority NGO's to participate in advisory bodies of state administrations and local councils (Article 18),
 - the right of national minority NGO's to be a member of the Centres of National Minorities (communities) established by regional state administrations (Article 19)
 - the right of individuals belonging to national minorities to be a member of intergovernmental bilateral commissions on ensuring rights and freedoms of national minorities (Article 20, part 3)

“are subject to temporary restriction in the exercise of and protection during the period of martial law in Ukraine and six months after its termination (cancellation).”

73. The right to peaceful assembly and the right to association are guaranteed both in Article 11 ECHR and in Articles 21 and 22 ICCPR. In the context of the armed aggression of the Russian Federation against Ukraine, the Ukrainian authorities have submitted since 2014 several derogation notices under Article 15 of the ECHR and Article 4 of the ICCPR.⁵³ Ukraine has derogated specifically from its obligations related to the above-mentioned freedom of assembly and of association. Pursuant to both Article 15 ECHR and Article 4 ICCPR derogations from these freedoms are possible, on the condition that they are strictly required by the exigencies of the situation and that they are not discriminatory.

74. To the extent that the temporary restrictions are only applicable to persons belonging to national minorities, the Venice Commission endorses the stance taken by the United Nations High Commissioner on Human Rights that *“the measures envisaged by paragraph 3 of the transitional provisions appear to be discriminatory and therefore not in line with Article 4 of the ICCPR.”*⁵⁴

75. Moreover, it would be suitable for the law to specify in Section V a list of issues to be regulated at the level of secondary legislation, and to determine the scope of these issues.

IV. Conclusion

76. On 26 January 2023, the Chair of the Monitoring Committee of the Parliamentary Assembly, requested an Opinion of the Venice Commission on the Law on National Minorities (Communities) of Ukraine.

77. The Venice Commission is grateful to the Ukrainian authorities for their co-operation in the preparation of this Opinion; and in particular their readiness and interest in a constructive dialogue with the Venice Commission.

78. The Venice Commission welcomes the adoption of a long-expected new Law on National Minorities, which provides a number of guarantees in conformity with international standards. However, to ensure full conformity with such standards, a number of provisions of that Law should be reconsidered.

79. The Venice Commission therefore makes the following key recommendations on the Law on national minorities (communities):

⁵³ See [Legal Analysis of the derogation made by Ukraine under Article 15 of the European Convention of Human Rights and Article 4 of the International Covenant on Civil and Political Rights 2 \(coe.int\)](#).

⁵⁴ United Nations, High Commissioner's Office, Opinion on the draft law, p. 22

- A. To extend the right to organise events in minority languages to all persons (Article 10(3));
- B. To remove the obligation in Article 10(3) to provide for interpretation into Ukrainian of information on public events at the request of visitors (spectators), or at least to reconsider it in the light of the principle of proportionality;
- C. To reconsider the obligations related to publishing books and to bookshops (Article 10(5)), in the light of the principle of proportionality;
- D. To ensure more legal certainty regarding the possibility to have official inscriptions (Article 10(7)) and general information (Article 10(8)) translated in a minority language;
- E. To revise Article 10(10) by providing in the Law itself criteria for the adoption of the methodology, in order to ensure the use of minority languages in contact with administrative authorities in conformity with Article 10 FCNM and with the undertakings ratified by Ukraine under Article 10(2) and 10(4) ECRM;

80. Furthermore, the Venice Commission makes the following recommendations on other laws it already assessed, and which are referred to explicitly or implicitly by the Law on national minorities (communities):

- F. To reconsider the provisions in other laws containing limitations of the freedom to use the minority language and differential treatments of the minority languages, in the light of the previous Opinions of the Venice Commission;⁵⁵ (see however also para. 41, last sentence, deeming it justified to have a transitional period until the end of martial law, to amend the specific provisions containing a differential treatment of the EU- and the non-EU-minority languages);
- G. To ensure the right to access to mass media in minority languages (Article 10(4)) by removing quotas provided for in point 7(24)(c) of the final and transitional provisions of the Law on the State language and in Article 40 of the Law of Ukraine on the Media of December 13, 2022;
- H. To further postpone the gradual transformation of the minority language school-system and to reconsider it in the light of the 2017 Opinion the Venice Commission.⁵⁶

81. Other recommendations can be found in the text of the opinion.

82. The Venice Commission remains at the disposal of the Ukrainian authorities and the Parliamentary Assembly for further assistance in this matter.

⁵⁵ Venice Commission, [CDL-AD\(2019\)032](#), Ukraine – Opinion on the Law supporting the Functioning of the Ukrainian Language as the State Language; [CDL-AD\(2017\)030](#), Ukraine - 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.

⁵⁶ [CDL-AD\(2017\)030](#), Ukraine - 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..