



Summary of the Analysis of the Law of Ukraine “On Ensuring The Functioning of Ukrainian as the State Language”

This review provides an analysis of the adopted version of the Law of Ukraine “On ensuring the functioning of Ukrainian as the state language” No. 2704-VIII from April 25, 2019 (the law or the language law) based on international human rights standards and the Constitution of Ukraine. It does not assess the expedience or feasibility of implementing the law’s provisions.

While the law is, without a doubt, the best “language law” in Ukraine’s history, it has many significant downsides that this analysis focuses on. If these downsides are not rectified, the law’s positive aspects would be substantially diminished or eliminated. We encourage lawmakers’ to acknowledge the law’s conflict with human rights standards and amend the law, thus depriving the law’s opponents within and outside Ukraine of their case.

According to our detailed analysis, the key human rights obligations and standards implicated by the law are:

- Constitution of Ukraine (Articles 10, 24, 34, 42, 43, 53, 54)
- European Convention for the Protection of Human Rights and Fundamental Freedoms (Articles 10, 14)
- ICCPR (Articles 2, 19, 27)
- Framework Convention for the Protection of National Minorities (Articles 13, 14)
- The Oslo Recommendations regarding the Linguistic Rights of National Minorities
- European Charter for Regional or Minority Languages

Positive Aspects of the Law

Among the law’s positive elements, the following are worth noting:

- Provisions for the implementation of a variety of policies, including requirements on the knowledge of the state language provided for by other laws.
- Regulation of Ukrainian Sign Language.
- Regulation of the National Committee for State language standards.
- Provisions on the teaching of Ukrainian to virtually anyone interested, although the financing and feasibility of these measures is in doubt.

Problematic Areas

Overall, the law lacks a unifying and clear legal approach. For example, it applies different principles of control to different spheres. In many cases, it appears that lawmakers had not developed a complete justification for certain provisions. What is more, many of the law’s

provisions are based neither on international standards nor on international human rights practice nor on existing Ukrainian law.

Definitions

One of the most significant flaws of the law is its poor definition of terms. This lack of clear definitions enables broad interpretation of the law's provisions. It also seriously affects the quality of the law's text, the predictability of its impact, and the clarity of its provisions, basic requirements for bills limiting human rights in a rule of law country. Almost every article of the law imposes a limitation on human rights and, thus, requires accuracy and precision. For example, the law, which touches on all spheres of public and state life, does not define what a "state language" is. Unfortunately, this lack of clarity deepens, rather than clears, the ambiguity of the term "state language" in the Ukrainian legal framework.

Regulation of Private Communication

In democratic countries, the state (or official) language typically means a language that is recognized as the mandatory language for use by government authorities, including the judicial, legislative and executive branches. Private entities and individuals may also carry obligations around communication with authorities. In general, this status does not apply to private communication between or among private institutions or individuals, with a few minor exceptions. However, the law considerably interferes with private communication, which, in our opinion, does not comply with the Constitution of Ukraine and international human rights standards.

The law's conflation between public and private communication begins on the conceptual level, when it mixes regulation of the state and government authorities with regulation of the private sphere. This conflation introduces dozens of problems into the law, extending its scope to areas in which the state cannot and should not interfere in a democratic system. While such interference with privacy may be expected in an authoritarian country, it should not be expected in one that aspires to join the European Union.

As a result, Section 5 of the law, which establishes the use of the Ukrainian language as the state language in the public sphere, actually interferes in the private life and communication of individuals and thus runs contrary to international human rights standards and the Constitution of Ukraine when it comes to labor relations, education, science, culture, publishing, and sport. In particular:

1. Article 20 defines Ukrainian as the language of labor relations and obliges its use in all workplaces, even private institutions, enterprises, and organizations. In general, such decisions should be made based on the mutual agreement of the parties to a labor or contractual relationship.
2. Article 21 prohibits the establishment of private educational institutions with a language of instruction other than Ukrainian. This contradicts the Constitution and laws of Ukraine that allows the use of national minority languages in education and limits state requirements on the language of education to state and municipal institutions.
3. Article 22 establishes the Ukrainian language as the language of science, including by non-governmental scientific institutions, enterprises, and organizations, as well as by individual

scientists, in violation of the scientific and intellectual freedom guaranteed by the Constitution of Ukraine.

4. Article 23 requires the use of Ukrainian at all cultural events, without exception, and establishes quotas and other requirements for the screening of films in private cinemas exclusively in Ukrainian. This article excessively restricts the freedom of expression and dissemination of information, including the right of a person to choose their language of communication, while the quotas in fact prohibit cultural events from being held in languages other than Ukrainian.
5. Article 26 establishes language quotas for private publishers (50% of published books in Ukrainian each calendar year) and Ukrainian-language quotas for non-state bookstores and other book distribution outlets, in violation of the freedoms of expression and entrepreneurship.
6. Article 34 of the law stipulates that all sports competitions should be held in the state language, without exception, including those organized by non-state entities.

It is our belief that these articles, which largely exclude the use of languages other than the state language in a variety of private spheres, are discriminatory and violate human rights.

Discriminatory Preferences for EU and Indigenous Languages

The provisions of the law that provide a preference to the languages of EU countries and Ukraine's national minorities also bear signs of discrimination. In essence, they ensure that the full enjoyment of a person's human rights depends on the language they are using, which is a form of language discrimination. While some preferences for the Crimean Tatar language and other indigenous languages may be acceptable, Ukrainian law does not currently recognize the collective rights of indigenous people living in Ukraine.

The problems with the law are exacerbated by the shortcomings of the Law of Ukraine "On National Minorities in Ukraine," which also does not meet international standards. For example, the Law "On National Minorities in Ukraine" does not grant national minorities any additional language rights. This problem intensifies with adoption of the current language law. In some cases, the law refers to regulations on national minority languages which do not yet exist and must be defined by a separate law. Thus, the provisions on national minorities in the language law do not guarantee to the national minorities any additional rights to use their language in Ukraine.

Minority Languages in Education and Media

In the sphere of education, the language law prohibits instruction in national minority languages by private educational institutions, despite the requirements of international human rights standards. While the Constitution of Ukraine requires the use of the state language in state and municipal educational establishments, the language law extends these requirements to private establishments.

The law does not provide any additional protection for the rights for national minorities in the field of audiovisual media, printed media, as well as in the regulation of culture, including the regulation of cultural and entertainment events, cinema screenings, activities of theaters, museums and the like.

Unfortunately, the language law completely ignores Ukraine's obligations under the European Charter for Regional or Minority Languages, to which it is a party, which elaborates principles on which state parties should develop their minority language policy, laws, and practice.

Scope and Liability

The law does not provide local self-government bodies with any authority to regulate language policy, in contravention of European practice. Even the language used by municipal enterprises, institutions and organizations is fully regulated by the law.

What is more, the law establishes the Commissioner for the Protection of the State Language, which operates independently of other government bodies and is endowed with such expansive powers, including over judicial and legislative branches of government, that it contradicts the Constitution in Ukraine based on the guidance of the Constitutional Court. According to the Constitutional Court, the Constitution of Ukraine does not provide for the establishment of such an authority, which in the Ukrainian system must be provided for by the basic law, no less with such an expansive scope of powers over other constitutional actors.

In our opinion, the liability provided for the violation of the law's provisions amounts to an unconstitutional restriction on the freedom of expression and information, and the freedom of literary, artistic, scientific, and technical creativity, which fully guarantees the right to choose a language for exercising these freedoms.

Conclusion

In sum, we recommend limiting requirements on the use of the state language to state and government authorities, state-owned enterprises, and other official institutions, and excluding provisions that regulate the private sphere and institutions. In particular, the articles of the law, which, in our opinion, contradict the Constitution of Ukraine and international human rights standards should be reviewed. We believe that amendments which address these weaknesses will strengthen the law and bolster its effectiveness and legitimacy.

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