

THE LANGUAGE ISSUE IN THE EVOLUTION OF UKRAINIAN CONSTITUTIONALISM

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El resum és al final de l'article.

Resumen al final del artículo.

Le résumé se trouve à la fin de l'article.

Ukraine has had a long history of various official (non-Ukrainian) languages which were administratively imposed by the frequently changing governing regimes. The Russian linguistic influence was particularly strong with the result that the Ukrainian and other languages enjoyed a position inferior to that of the Russian language. While theoretically persons belonging to a national minority could rely on a legal framework, including at the constitutional level, in order to defend their language rights, it is observable that as is usual in many multilingual societies, important differences were noticeable between constitutional guarantees and reality in Ukraine.

The historical challenges of nation and state building in Ukraine set the stage for current state-ethnic relations in Ukraine, and determined the main trends in language policy. The foundations of the language policy are laid down in the 1996 Constitution of Ukraine.

This paper highlights some aspects of the position of the state language and minority languages in the constitutional development of the Ukrainian state before and after its independence.

Key words: Ukraine; language rights; minority rights; constitutionalism; language of the State.

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Summary

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[...] History shows that when a people is deprived of all else, language remains as a symbol of solidarity — the ultima Thule of ethnic aspirations.¹

1. Introduction

Unlike many countries of Central and Eastern Europe, Ukraine does not have a stable and developed historical tradition of independent statehood. Until now, there have only been two brief periods of independence: for a few years after the rebellion of 1648, and under a succession of weak governments between 1917 and 1921.² Basically, independence did not come to Ukraine until 1991.

It is for these reasons that the primary emphasis of this paper will be put on the analysis of language provisions in the current constitution of Ukraine adopted in 1996. Nevertheless, it would seem appropriate to introduce the reader to the major developments in the constitution building in Ukraine in the twentieth century and its attitude to and effect on language rights of minority groups.

Thus, the article will first set out some of the historical aspects relating to language use and regulation in the Ukrainian state, after which it will proceed to the essence of the main developments in contemporary Ukrainian constitutionalism touching on the issues pertaining to linguistic diversity.

1. ORNSTEIN, J., «Soviet Language Theory and Practice», *the Slavic and East European Journal*, Volume 3, Number 1, Spring, 1959, p. 17.

2. KUZIO, T., «Ukraine. The Unfinished Revolution», London, Alliance Publishers, 1992, p. 7.

2. Historical Context of Ukrainian Multilingualism

The origins of the Ukrainian state date back to the 9th century when it was known under the name of Kyiv Rus and comprised a significant part of today's territory of Ukraine, Belarus and the European part of Russia. Throughout the centuries, the Ukrainian lands were part of other States - the Mongol Empire, the Polish Kingdom, the Great Lithuanian Principality, the Crimean Khanate, the Hungarian Kingdom, the Moscow State and the Ottoman Empire. As a result, Ukraine has had a number of official (non-Ukrainian) languages, including Polish, Russian, German, and Romanian, which were administratively imposed by the governing regimes.

Prior to World War I, the territory of contemporary Ukraine was divided between the Russian and Austro-Hungarian Empires. This period is characterised by the emergence of various initiatives aimed at the revitalisation of the Ukrainian culture.³ However, these initiatives took different forms in the West and in the centre and East due to the 'different historical trajectories' of these territorial regions. As Shulman notes:

«It is one thing for a territory and its people not to govern themselves, but quite another if they are conquered by different states simultaneously.»⁴

Under the relatively liberal Austrian rule Western Ukrainians developed a strong sense of national identity and had various opportunities for the use of their native language. Suffice it to recall that Article 19 of the 1867 Austrian Constitution recognized the right of Ukrainians along with other peoples to maintain and cultivate their nationality and languages and provided for equality of the various languages in the schools, public offices, and in public life. The well-developed national identity of Western Ukrainians led to a strong mass national liberation movement. After World War I Western Ukrainians continued to fight for their independence, and since 1939 also against the Soviet rule causing troubles for the communist authorities.

On the contrary, Eastern and Central parts of the country, under the rule of the Russian empire, never really developed nationalism as a mass phenomenon. What is more, the regional version of Ukrainian identity developed in the East and centre did neither exclude a commitment to the Russian lan-

3. See reasons in KUZIO, T., «Ukraine: Coming to Terms with the Soviet Legacy», *Journal of Communist Studies and Transition Politics*, Volume 14, Number 4, 1998, pp. 2-4.

4. SHULMAN, S. «Sources of Civic and Ethnic Nationalism in Ukraine», *Journal of Communist Studies and Transition Politics*, Volume 18, Number 4, 2002, p. 10.

guage and culture nor later a certain loyalty to the Soviet system.⁵ Unlike the 1867 Austrian Constitution, the 1906 Constitution of Imperial Russia did not contain any explicit guarantees for linguistic diversity. On the contrary, Article 3 ascribed the Russian language the role of the all-state language and made it obligatory for 'the army, the fleet and all state and public institutions', modestly mentioning that 'the use of local languages and dialects in public institutions is determined by special laws'.

Soviet linguistic policies generally suppressed the Ukrainian language and other non-Russian languages in favour of Russian, with the result that 'the Ukrainian language was marginalized and rarely used',⁶ especially in the central and eastern parts of the country; its position fluctuated between a co-equal status with Russian and a markedly lower status than Russian. The position of other languages was even more fragile. Russian was imposed forcefully and also attracted people by the privileges associated with it. Not only was it politically reprehensible not to know and use Russian (except for peasants), but the Russian language was required for access to good education and decent jobs and tended to be highly regarded.

That is why, as most authors working on Ukraine agree, since Ukraine gained its independence, it has engaged itself into a linguistically oriented nation-building project and has consistently pursued a policy of promoting a new national identity⁷ based on the titular language and culture. What many authors disagree about is how to assess this policy. Whereas, Motyl sees it as a justifiable policy of 'nation-building' leading to social cohesion,⁸ Arel views it as undemocratic 'nationalization' resulting in discriminating against the Russian-speakers.⁹ More recently, this policy has been referred to as inherently ambiguous because of conscious subordination of identity

5. ZHURZHENKO, T. «The Myth of Two Ukraines», *Tr@nsit online*, No. 23, 2002.

6. MARSHALL, C.A., «Post-Soviet Language Policy and the Language Utilization Patterns of Kyivan Youth», *Language Policy*, Volume 1, Number 3, 2002, p. 238.

7. As Smith notes, it is an inevitable process because 'the rediscovery of the national self is... a pressing practical issue, vexed, and contentious, which spells life or death for the nationalist project of creating a nation'.

SMITH, A.D., *The Ethnic Origins of Nations*, Oxford, Basic Blackwell, 1986, p. 148.

8. MOTYL, A., «The Conceptual President: Leonid Kravchuk and the Politics of Surrealism», in COLTON, T. J. and TUCKER, R. C. (eds.), *Patterns in Post-Soviet Leadership*, Boulder, CO, Westview Press, 1995, pp. 103-21.

9. AREL, D., «Ukraine: The Temptation of the Nationalizing State », in TISMANEANU, V. (ed.) *Political Culture and Civil Society in Russia and the New States of Eurasia*, New York, M.E. Sharpe, 1995, pp. 157-88.

matters to the issues of fostering social stability and consolidating presidential power.¹⁰

3. The Language Issue in Ukrainian Constitutions in the Soviet Period

In 1917 when the Bolshevik Revolution broke up the Russian Empire, an independent Ukrainian National Republic (UNR) was proclaimed in Kiev. Ethnic and cultural needs of Ukraine's national minorities came to the fore of the national policy of the newly created state which recognised equality of rights and the right for development of all ethnic communities residing within the borders of Ukraine.

The independent Ukrainian state that arose in 1917-1921 had several constitutions. The first of them was adopted on 29 April 1918 by the Central Rada (Parliament) of the proclaimed UNR.¹¹ This constitution, also known as *the Statute about State Government, Rights, Liberties of the UNR*,¹² is, in Holovaty's opinion, 'comparable to the other new European constitutions which in those times were characterised as the most democratic'.¹³ Indeed, the 1918 constitution was remarkable for its positive statements regarding national minorities and their rights and even 'far exceeded similar provisions in other contemporary constitutions'.¹⁴ Thus, in Article 6 it guaranteed to all the nations inhabiting the territory of Ukraine the right to realize their cultural rights,

10. AREL, D., «Ukraine: The Muddle Way», *Current History*, Volume 97, Number 621, 1998, pp. 342-6; WILSON, A., *The Ukrainians: Unexpected Nation*, New Haven, Yale University Press, 2000; WOLCZUK, K. «History, Europe and the 'National Idea': The Official Narrative of National Identity in Ukraine», *Nationalities Papers*, Volume 28, Number 4, 2000, pp. 671-94.

11. KUBIJOVYČ, V. (ed.), *Encyclopedia of Ukraine*, Volume I, Toronto, University of Toronto Press, 1993, p. 568.

12. Constitution of the Ukrainian National Republic (Statute about State Government, Rights, Liberties of the UNR) of 29 April 1918 [Конституція Української Народної Республіки (Статут про державний устрій, права і вольності УНР) 29 квітня 1918 р.], available in Ukrainian in GONCHARENKO, V. D. (ed.) *Collection of Documents on the History of the State and Law of Ukraine*, Volume 2, Kiev, 1997, pp. 52-60 [Хрестоматія з історії держави і права України : В 2-х т. / За ред. В. Д. Гончаренка.— К.]

13. HOLOVATY, S. «Ukraine's Constitutionalism in the Context of the Constitutional Heritage of Europe», in *The Constitutional Heritage of Europe. Proceedings. Montpellier (France) 22-23 November 1996*, Strasbourg, Council of Europe Publishing, 1998, p. 131.

14. HOLOVATY, S. «Ukraine's Constitutionalism in the Context of the Constitutional Heritage of Europe», in *The Constitutional Heritage of Europe. Proceedings. Montpellier (France) 22-23 November 1996*, Strasbourg, Council of Europe Publishing, 1998, p. 131.

and assumedly language rights as an integral part of cultural rights.¹⁵ Articles 69-70 accorded all nations the right to national-personal autonomy,¹⁶ which provided a legal avenue for ethnic minorities to establish self-government in relation to certain culturally-sensitive policy domains. Unfortunately, the 1918 constitution was never implemented because the day of its adoption coincided with Hetman P. Skoropadsky's coup.

The period until 1919 was marked in Ukraine by political anarchy. Subtelny describes the situation in the following terms:

«In 1919 total chaos engulfed Ukraine. Indeed, in the modern history of Europe no country experienced such complete anarchy, bitter civil strife, and total collapse of authority as did Ukraine at this time. [...] Ukraine was a land easy to conquer but impossible to rule.»¹⁷

Not surprisingly, the period was marked by a series of draft constitutions depending on the authority coming to power. Most of the drafts did not directly touch upon language issues.¹⁸ Of interest is the November 1918 draft constitution which prescribed Ukrainian as a sole state language while guaranteeing free national and cultural development of national minorities.¹⁹

On March 10, 1919 according to the III Congress of Soviets in Ukraine the UNR was turned into Ukrainian Socialist Soviet Republic (SSR) which eventually was incorporated into the Soviet Union in 1922.

15. Of course, the borderline between culture and language is not easy to define. However, I treat language as part of a broader concept 'culture'.

See more on that in PALERMO, F. «Linguistic Diversity within the Integrated Constitutional Space», in CHOLNOKY, G. (ed.), *Minorities Research*, Number 10, 2008, p. 74; also MANCINI, S., DE WITTE, B., «Language Rights as Cultural Rights: A European Perspective», in FRANCIANI, F., SCHEININ, M. (eds.) *Cultural Human Rights*, Martinus Nijhoff Publishers, 2008, p. 247.

16. National-personal autonomy refers to the concept of self-government for minorities. WOLCZUK, K., «Catching up with 'Europe'? Constitutional Debates on the Territorial-Administrative Model in Independent Ukraine», *Regional & Federal Studies*, Volume 12, Number 2, 2002, pp. 65-88, at p. 76.

17. SUBTELNY, O., *Ukraine. A History*, Toronto, University of Toronto Press, Second Edition, 1994, pp. 359-360.

18. For an overview see PRADID YU, F. «The Language Issue in the Ukrainian Constitutions of the 20th Century», *Movoznavstvo*, Number 1, Kiev, 2002, p. 18 [Ю. Ф. Прадід *Мовне питання в Українських Конституціях XX ст.*, Мовознавство].

19. PRADID YU, F. «The Language Issue in the Ukrainian Constitutions of the 20th Century», *Movoznavstvo*, Number 1, Kiev, 2002, p. 18 [Ю. Ф. Прадід *Мовне питання в Українських Конституціях XX ст.*, Мовознавство].

In the Ukrainian SSR four constitutions were adopted (1919, 1929, 1937, 1978). All of them were inspired by or were modelled on the constitution of the Russian Soviet Federative Socialist Republic (RSFSR) and later of the USSR.

The first constitution of the Ukrainian SSR was adopted on 14 March 1919 by the Third All-Ukrainian Congress of Workers', Peasants' and Soldiers' Deputies.²⁰ Just as its prototype, the Constitution of the RSFSR of 10 July 1918, it was primarily devoted to defining 'the dictatorship of the proletariat' in legal terms.²¹ Rather than addressing the co-existence of a Ukrainian ethnic diversity, it aimed at the union of the working class people and the peasantry in general and did not deal precisely with language rights. However, it did proclaim in Article 32 the inadmissibility of discrimination of national minorities or the restriction of their rights. Since language is an inalienable feature of one's national or ethnic identity, there are grounds to believe that the constitution implicitly guaranteed the equality of languages of national minorities.²²

In 1922, most of Ukraine became part of the USSR as one of the Soviet republics.²³ Ukrainians were recognized as a separate ethnic group. What is more, the new regime did not immediately affect the national minority policy conducted by the UNR.

However, as Goodman remarks, even this earliest period 'was marked by relapses into Russification'. For instance, from 1920 until 1923, the "theory of the struggle of two cultures" was actively promoted by the Soviet government in the Ukraine. Under the cover of proposing a natural struggle between Russian and Ukrainian, this theory was really intended to produce the victory of Russian over Ukrainian, on the grounds that the future belonged to the Rus-

20. Constitution of the Ukrainian Soviet Socialist Republic of 14.03.1919 [Конституція Української Соціалістичної Радянської Республіки (березень 1919 р.)], available in Ukrainian in GONCHARENKO, V. D. (ed.) *Collection of Documents on the History of the State and Law of Ukraine*, Volume 2, Kiev, 1997, pp. 140-145 [Хресноматія з історії держави і права України : В 2-х т. / За ред. В. Д. Гончаренка.— К.].

21. KUBIJOVYČ, V. (ed.) *Encyclopedia of Ukraine*, Volume I, Toronto, University of Toronto Press, 1993, p. 569.

22. PRADID YU, F. «The Language Issue in the Ukrainian Constitutions of the 20th Century», *Movoznavstvo*, Number 1, Kiev, 2002, p. 18 [Ю. Ф. Прайд Мовне питання в Українських Конституціях ХХ ст., Мовознавство].

23. In the period between the wars Ukraine was divided among the USSR, Poland, Romania and Czechoslovakia. Only during World War II, all Ukrainian lands were united within the Ukrainian SSR, except for the Crimean peninsula which was transferred from the Russian Federation to Ukraine in 1954.

sian-speaking urban proletariat which possessed a culture superior to the backward-looking, Ukrainian-speaking peasantry.²⁴

In the late 1920s, at the final stage of the Stalin totalitarian regime establishment in the USSR, dramatic changes took place in the nationality policy sphere: both the Ukrainian community and its minorities were repressed. The Stalinist regime, claiming to pursue the political goals of collectivization and the struggle against a 'class enemy', created a deadly famine in Ukraine - with the aim of crushing the independent peasantry and the last vestiges of Ukrainian nationalism. More Ukrainians died during the 1932-33 man-made famine than during the Second World War.²⁵ What is more, some ethnic groups were expelled from Ukraine to remote parts of Central Asia and eastern regions of Russia. During and after the war, almost 450,000 ethnic Germans and about 200,000 Crimean Tatars, as well as more than 38,000 Crimean Greeks, Bulgarians and Armenians, were deported from eastern Ukraine to Central Asian regions of the USSR and Siberia.²⁶

It is at this time that the second constitution of the Ukrainian SSR²⁷ was adopted. Theoretically, and I believe, in order to mask the on-going repressions, it continued a trend started by the first Constitution towards more openness and legitimacy of cultural difference.

First and foremost, the legal position of national minorities in Ukraine was defined by constitutional principles which guaranteed in paragraph 1 of Article 19 equal rights to all citizens of Ukraine, including those belonging to national minorities. It then reiterated the lawlessness of any discrimination based on national affiliation:

24. GOODMAN, E.R., «The Soviet Design for a World Language», *Russian Review*, Volume 15, Number 2, 1956, p. 90. See a comprehensive analysis of the period under discussion in MARTIN, T., *An Affirmative Action Empire: Ethnicity and the Soviet State, 1923-1939*, London, Cornell University Press, 2001, pp. 78-98.

25. See KUZIO, T., NORDBERG, M. «Nation and State Building, Historical Legacies and National Identities in Belarus and Ukraine: A Comparative Analysis», *Canadian Review of Studies on Nationalism*, Volume XXVI, 1999, pp. 71-2; CONQUEST, R., *The Great Terror, Stalin's Purge of the Thirties*, London, MacMillan, 1968, p. 22; KUZIO, T., «Ukraine: Coming to Terms with the Soviet Legacy», *Journal of Communist Studies and Transition Politics*, Volume 14, Number 4, 1998, pp. 5-6.

26. See STEPANENKO, V. «A State to Build, A Nation to Form: Ethno-policy in Ukraine», in BIRO, A.- M. and KOVACS, P. (eds.) *Diversity in Action: Local Public Management of Multi-Ethnic Communities*, 2000, pp. 312-3, available at: http://lgi.osi.hu/publications/books/Diversity_in_Action/2_7.

27. Constitution (Basic Law) of the Ukrainian Soviet Socialist Republic of 15.05.1929 [Конституція (основний закон) Української Соціалістичної Радянської Республіки, 15 травня 1929 р.], available in Ukrainian at: <http://gska2.rada.gov.ua/site/const/istoriya/1929.html>.

«The Ukrainian Soviet Socialist Republic, recognizing that the rights of the citizens do not depend on their racial and national belonging proclaims that any discrimination of national minorities or restriction of their rights is absolutely incompatible with the basic laws of the Republic.»²⁸

Paragraph 2 of Article 19 granted new legitimacy to the claims and concerns of national minorities by providing them with the right to satisfy their national aspirations by territorial, administrative methods and devices:

«For better realization of the interests of national minorities that make up the majority of the population in this or that locality, there may be created in accordance with the resolutions of the highest bodies of the Republic national administrative territorial units which will guarantee the rights of nationalities which are in minority in these localities.»²⁹

With regard to cultural rights of national minorities generally, Article 13 stated straightforwardly that the Ukrainian state aimed at the development of both the Ukrainian culture and culture of national minorities and would not tolerate any manifestations of cultural superiority:

«In the field of the cultural building, the Ukrainian Soviet Socialist Republic aims at providing within all possible means the development by proletarian methods of the national culture and culture of national minorities and at combating decisively any manifestations of nationalist superiority.»³⁰

With regard to language rights specifically, the constitution adopted extremely progressive minority language protection policies. Not only it did not give official status to any particular language, but it also highlighted the critical practicality of minority languages by explicitly stating that minority languages are to be freely used not only in private but also in public. Article 20 read:

«The languages of all nationalities living in the territory of the Ukrainian Soviet Socialist Republic, are equal and every citizen regardless of his national belonging is provided with full possibility to use his native language in his relations with public bodies and in relations of public bodies with him, in all public speeches as well as in all aspects of public life.»³¹

28. Author's translation.

29. Author's translation.

30. Author's translation.

31. Author's translation.

Basically, the 1929 Constitution was the first Ukrainian constitution that directly addressed the language issue, and in very democratic terms indeed.

It is important to understand that from the late 1920s till the 1980s, the Communist Party centralized the nationality policy in Ukraine and other former Soviet republics. The policy was Russia-oriented and aimed at the denationalisation of ethnic groups in Ukraine. The so-called doctrine of 'elder brother' was promoted, which presupposed 'that Russians were more ancient and more accomplished than their younger brothers, the Ukrainians'.³² This doctrine, 'together with the idea of the special role of Russians in the building of socialism, served to raise the prestige of Russian language and culture in Ukraine'.³³

This resulted in the situation when 'Ukrainians possessed their own separate republic but nationality policies ... promoted a Little Russian, regional and geographical identity (not a Ukrainian national identity separate from Russian)'.³⁴ However, curiously enough, some authors say that it is this 'weakening of the dividing line between ethnic Russians and ethnic Ukrainians in Ukraine'³⁵ that contributed to the 'peaceful handling of ethnic and linguistic conflict potential' in already independent Ukraine.³⁶

The 1937 Constitution of Ukraine³⁷ which replaced the 1929 Constitution omits any mentioning of national minorities and their rights. There is only one solitary reference in Article 122 to the equality of all citizens regardless of their nationalities in all spheres of public life.

32. KOHUT, Z.E., «History as Battleground: Russian–Ukrainian Relations and Historical Consciousness in Contemporary Ukraine» in STARR, S.F. (ed.) *The Legacy of History in Russia and the New States of Eurasia*, New York, Sharpe, 1994, p. 127.

33. SHULMAN, S. «Sources of Civic and Ethnic Nationalism in Ukraine», *Journal of Communist Studies and Transition Politics*, Volume 18, Number 4, 2002, p. 13.

34. KUZIO, T., «Ukraine: Coming to Terms with the Soviet Legacy», *Journal of Communist Studies and Transition Politics*, Volume 14, Number 4, 1998, p. 6.

35. BARRINGTON, L.W., «Views of the 'Ethnic Other' in Ukraine», *Nationalism and Ethnic Politics*, Volume 8, Number 2, 2002, p. 93.

36. VAN ZON, H., «Ethnic Conflict and Conflict Resolution in Ukraine», *Perspectives on European Politics and Society*, Volume 2, Number 2, 2001, p. 221. See also KULYK, V., «Constructing Common Sense: Language and Ethnicity in Ukrainian Public Discourse», *Ethnic and Racial Studies*, Volume 29, Number 2, 2006, p. 290.

37. Constitution (Basic Law) of the Ukrainian Soviet Socialist Republic of 30.01.1937 [Конституція (Основний Закон) Української Радянської Соціалістичної Республіки], available in Ukrainian at: <http://gska2.rada.gov.ua/site/const/istoriya/1937.html>.

Serious differences can also be observed regarding the treatment of language rights. Whereas the 1929 Constitution at least theoretically aimed at creating a free and fair context of language use where nobody could be forced to speak a particular language which is not the one in which he or she felt most confident of expression, including in the public domain, the 1937 Constitution made the first attempt to implicitly introduce the concept of the state language and diminish the sphere of application of minority languages. Thus, Article 109 stated that in court proceedings Ukrainian was to be used.³⁸ However, it envisaged a right to translations of relevant material for persons who had no command of the Ukrainian language. It also contained a positive right to use one's native language in oral trial defence with the consequence that the state had the duty to make this possible.

A liberal approach is, however, preserved with regard to the use of languages in education. In accordance with Article 120 citizens of Ukraine have a **right** to education in their native language.

The 1978 Constitution³⁹ manifested a further departure from a conscious decision to single out the protection of minorities for special attention characteristic of 1929 Constitution in general, and the original idea of equality of all languages, in particular.

Equality of all nationalities still advocated by Articles 32 and 34 is now equated with the uniformity by the latter:

«Citizens of the Ukrainian SSR of different races and nationalities have equal rights.

The realization of such rights is guaranteed by the policy of all-round developments of all nations and nationalities and *drawing together of all nations and nationalities of the USSR*, uprising of citizens in the spirit of Soviet patriotism and socialist internationalism, possibility to use a native language and languages of other peoples of the USSR.»⁴⁰

In addition, Article 62 envisaged a duty of every citizen of the Ukrainian SSR to 'to strengthen friendship of nations and nationalities of the Soviet multina-

38. In the Moldovan Autonomous Republic which at that time was part of Ukraine, the use of both Ukrainian and Moldovan languages was foreseen.

39. Constitution (Basic Law) of Ukraine of 20.04.1978 [Конституція (основний закон) Україні], available in Ukrainian at: <http://gska2.rada.gov.ua/site/const/istoriya/1978.html>.

40. Author's translation.

tional state'. It is legitimate to ask how the stated purpose could be accommodated. Apparently, the constitution drafters decided that this could be done through education.

Thus, another notable provision is that contained in Article 43. It mentioned a mere *possibility*, not a constitutionally protected *right* to receive an education in the native language in schools, as did Article 120 of the preceding constitution. A slight, but nevertheless quite significant change in the wording between the two constitutions signalled the official move away from encouragement of national languages toward Russian monolingualism.

With regard to the use of languages before judicial authorities, being worded in identical terms with Article 109 of the Constitution of 1937, Article 157 of the Constitution under analysis adds that persons unable to understand the language of the proceedings are entitled to the services of an interpreter during the court proceedings.

The specificity of the language situation in Ukraine at the end of 1970s - beginning of the 1980s lies in the fact that Ukrainian was by no means illegitimate, as we can see from the wording of the constitution. As Kulik rightly notes,

«Not only was its existence as a separate language unequivocally accepted, which in itself constituted a tremendous change in comparison with the tsarist practice of treating it as a dialect of Russian and banning its use in most public domains. It was also accepted as an important characteristic of the nation and a crucial means of its self-expression, a belief supported by a number of institutions of the Ukrainian SSR using its titular language exclusively or on a par with Russian. On an individual level, Ukrainian was perceived as a natural 'native language' of ethnic Ukrainians, the fact demonstrated by the declarations of an overwhelming majority of the group in the decennial censuses. However, the correspondence between ethnicity and language ceased to be the only conceivable norm, as ever more Ukrainians chose to change 'native language' without changing the 'nationality'.»⁴¹

However, several measures introduced by the Soviet leadership, especially in the field of education, led to the strengthening of the position of the Russian language and weakening of the position of the Ukrainian and other non-

41. KULYK, V., «Constructing Common Sense: Language and Ethnicity in Ukrainian Public Discourse», *Ethnic and Racial Studies*, Volume 29, Number 2, 2006, p. 291.

Russian languages. In 1979 an all-Union conference on Russian language education⁴² called for a revamp of the curriculum to incorporate the teaching of the Russian language to non-Russians.⁴³ In the early 1980s new programmes and texts were introduced and facilities for training teachers of Russian were greatly expanded in non-Russian regions. The 1984 General Education Reform mandated that beginning in 1990 fluency in Russian would be a high-school graduation requirement.⁴⁴ Generally, the widespread use of Russian as the primary daily language for official and non-official purposes diminished both the need for Ukrainian, and consequently, the desire on the part of a new generation of Ukrainians to know and use Ukrainian. This period of increasing assimilation of Ukrainian culture and political spheres eventually, as some dramatically put it, ‘threatened the extinction of the Ukrainian language’:⁴⁵

«On the eve of independence, more than half of the children in Ukrainian schools and kindergartens were taught in Russian. In most cities in the eastern and southern parts of the country, there were almost no schools with instruction in Ukrainian. The language of the titular nation was rarely spoken in the street, and almost

42. See a detailed account in SOLCHANYK, R. «Russian Language and Soviet Politics», *Soviet Studies*, Volume 34, Number 1, 1982, pp. 23-42. See also BILINSKY, Ya. «Expanding the Use of Russian or Russification? Some Critical Thoughts on Russian as a Lingua Franca and the “Language of Friendship and Cooperation of the Peoples of the USSR»», *Russian Review*, Volume 40, Number 3, 1981, pp. 317-332.

43. The headlines in the major educational journals were quite eloquent on the ongoing trends. See for example, «On the Conditions and Measures for Further Improvement of the Teaching of the Russian Language and Literature in National Schools of the Union Republics», *Narodnoe Obrazovanie*, Number 3, 1974, pp. 6-7 [О состоянии и мерах дальнейшего улучшения преподавания русского языка и литературы в национальных школах союзных республик. Решение Совета по вопросам средней общеобразовательной школы, Народное образование, No. 3, 1974], «Better Learning of the Language of International Communication», *Narodnoe Obrazovanie*, Number 3, 1974, pp. 2-5 [Лучше овладеть языком межнационального общения, Народное образование, No. 3, 1974], «Perfecting of the Teaching of the Russian Language in All National Schools of the Country», *Narodnoe Obrazovanie*, Number 3, 1974, pp. 7-10 [Совершенствование преподавания русского языка во всех школах страны, Народное образование, No. 3, 1974].

44. KIRKWOOD, M. (1991) ‘Glasnost’, ‘The National Question’ and Soviet Language Policy’, *Soviet Studies*, Vol.43, No.1, p. 67.

45. PRIZEL, I. «The Influence of Ethnicity on Foreign Policy », in SZPORLUK, R. (ed.) *National Identity and Ethnicity in Russia and the New States of Eurasia*, New York, M. E. Sharpe, 1994, p. 107. On a wider scale, Ukrainian culture faced great competition from Russian culture, which led some authors to declare that ‘Ukrainian culture is the culture of a minority’, one that suffers from low status and ‘colonial marginalization’ in a society culturally dominated by Russophones. See RIA-BCHUK, M. «Behind the Talks on “Ukrainization”: Laissez Faire or Affirmative Action», in KIS, Th. and MAKARYK, I. (eds.) *Towards a New Ukraine II: Meeting the New Century*, University of Ottawa, 1999, pp. 138, 141.

never in the government and public bodies. Many other ethno-cultural demands of the (Ukrainian-speaking) Ukrainians were not better met. Very few institutions of higher education continued to teach in Ukrainian, with the exception of the western regions. Almost no movies were shown in Ukrainian, not even among those that were produced in Ukraine.»⁴⁶

When Ukraine became independent after the dissolution of the Soviet Union in 1991 it made an attempt to reinforce at the constitutional level the position of the Ukrainian language.

4. The Language Issue after Ukraine's Independence: the Constitution of 1996

The present Constitution of Ukraine was adopted on 28 June 1996⁴⁷ and was the reflection of the commitment that Ukraine assumed upon its accession to the Council of Europe (to adopt within a year a new Constitution in conformity with Council of Europe standards).⁴⁸

However, it should be stressed that Constitution-making in Ukraine was a longer process than in any other former Soviet republic. This indicates, in Sasse's opinion, 'the lack of consensus on new state structures and national identity.'⁴⁹ As a result, the constitution can be seen as 'a minimum compromise in all respects and often contradictory'.⁵⁰

Several of these contradictions pertaining to the language rights will be outlined.

The analysis of the drafting history of the Ukrainian Constitution suggests that the 'national issue' in general was an extremely contentious one. As a result, as Wolczuk's analysis indicates, the Ukrainian constitution 'strove to

46. KULYK, V. «Revisiting a Success Story: Implementation of the Recommendations of the OSCE High Commissioner on National Minorities to Ukraine, 1994-2001 », *CORE Working Paper 6*, Hamburg, 2002, p. 11.

47. Constitution of Ukraine, adopted at Fifth Session of the Verkhovna Rada of Ukraine on 28 June 1996, available in English at: <http://www.rada.gov.ua/const/conengl.htm>.

48. PACE Opinion No. 190 (1995) *On the Application by Ukraine for Membership of the Council of Europe*, point 11 v.

49. SASSE, G. «Conflict-Prevention in a Transition State: The Crimean Issue in Post-Soviet Ukraine», *Nationalism and Ethnic Politics*, Volume 8, Number 2, 2002, p. 13.

50. SASSE, G. «Conflict-Prevention in a Transition State: The Crimean Issue in Post-Soviet Ukraine», *Nationalism and Ethnic Politics*, Volume 8, Number 2, 2002, p. 13.

define the nation as an organic unity, the boundaries of which coincide with the state and whose needs that state serves'.⁵¹

Thus, the Preamble and Article 11 of the Constitution allow to single out an implicit hierarchy of communities residing in the territory of Ukraine:

- the Ukrainian people (*Український народ*) comprises 'citizens of Ukraine of all nationalities';⁵²
- the Ukrainian nation (*українська нація*) connotes ethnic Ukrainians;⁵³
- indigenous peoples (*корінні народи*);
- national minorities (*національні меншини*).

As Kuzio notes, 'the mix of civic and ethnic elements' is reflected in the notion of 'nation' in the Ukrainian Constitution. While the Preamble describes the Ukrainian nation as comprising all citizens of Ukraine regardless their ethnic affiliation, Article 11 describes the Ukrainians as the titular nationality. It also foresees extensive rights for minorities 'in exchange to their loyalty to the state and their integration within the Ukrainian political nation'.⁵⁴

The Constitution does not define the concept of indigenous peoples. In accordance with Article 92.3 the status of the indigenous peoples is to be regulated in a separate law. However, no such law has been adopted so far. There have been attempts to develop this legal concept. In a Draft Law on the Status of the Indigenous Peoples of Ukraine submitted to the Venice Commission for an opinion in 2004 indigenous peoples were defined as

«a historical community of peoples who live on the territory of modern-day Ukraine and are its citizens, who are numerically smaller than the rest of the population of the country, are not composed of recent immigrants, display a sense of ethnic awareness and preserve their ethnic identity, culture, traditions and language.»⁵⁵

51. WOLCZUK, K. «The New Ukrainian Constitution: In Pursuit of a Compromise», Centre for Economic Reform and Transformation, Edinburgh, 1997, p. 7.

52. On the debates regarding the adoption of the term *Ukrainian people* as opposed to *people of Ukraine* see WOLCZUK, K. «The New Ukrainian Constitution: In Pursuit of a Compromise», Centre for Economic Reform and Transformation, Edinburgh, 1997, pp. 7-8.

53. SHULMAN, S., «Sources of Civic and Ethnic Nationalism in Ukraine», *Journal of Communist Studies and Transition Politics*, Volume 18, Number 4, 2002, p. 17.

54. KUZIO, T. *Ukraine: State and Nation Building*, Routledge Studies of Societies in Transition, 1998, p. 148.

55. Venice Commission, Opinion No. 303 / 2004, CDL(2004)079.

It should also be mentioned that some Ukrainian and Western scholars doubt the very existence of indigenous peoples in Ukraine. The only one qualifying to some extent seems to be the Crimean Tatar. Kymlicka writes in this respect:

«The Crimean Tatars have adopted the label of 'indigenous peoples', and appealed in international forums to be recognized as such. This, I think, differs from the usual use of the term 'indigenous peoples' in the West.»⁵⁶

Thus, the Ukrainian legislation dealing with national issues uses mainly two notions: Ukrainian nation and national minorities.

The Constitution refers to the notion of national minority in a number of articles without defining the concept, presumably accepting the notion as defined in the Law on National Minorities, namely,

«To national minorities belong groups of Ukrainian citizens, who are not of Ukrainian nationality, but show feeling of national self-awareness and affinity.»⁵⁷

So, Ukraine's 'national question' is considered in the context of the presence of the titular majority, Ukrainian nation, and its national minorities.⁵⁸

This said, the analysis now proceeds to the consideration of the treatment of language rights the Constitution affords to the above mentioned categories of people.

The 1996 Constitution addresses language issues on several occasions.

Articles 10, 11, 22, 53 and 119 of the Constitution are the source of the most important rights and guarantees for linguistic minorities.

The Constitution of Ukraine declares the right of the free use of national minorities' languages: 'In Ukraine, the free development, use and protection of Russian, and other languages of national minorities of Ukraine, is guaranteed' (Article 10); the State promotes ... the development of the ethnic, cultural,

56. KYMLICKA, W., *Western Political Theory and Ethnic Relations in Eastern Europe* in KYMLICKA, W. and OPALSKI, M. (eds.) *Can Liberal Pluralism be Exported?*, Oxford University Press, 2001, p. 79.

For an overview of the scientific debate on the existence of indigenous peoples in Ukraine, see HRYTSENKO, O., «Imagining the Community: Perspectives on Ukraine's Ethno-cultural Diversity», *Nationalities Papers*, Volume 36, Number 2, 2008, p. 211.

57. Law of Ukraine 2494-XII, of 25.06.1992, on national minorities in Ukraine, Article 3.

58. WOLCZUK, K. «History, Europe and the 'National Idea': The Official Narrative of National Identity in Ukraine», *Nationalities Papers*, Volume 28, Number 4, 2000, p. 672.

linguistic and religious identity of all indigenous peoples and national minorities of Ukraine (Article 11) and prohibits any privileges or restrictions based on linguistic characteristics (Article 24).

Furthermore, the Constitution confirms state support for the development of ethnic minorities (Article 11), and obliges local authorities in places of compact minority residence to ensure the implementation of national and regional programs for minorities' national and cultural development.

However, the drafting history of the Constitution shows that language issues, and in particular, the status of the Russian language were indeed the bone of contention. This, however, comes as no surprise. The 2001 Ukrainian census results point to a central feature of Ukraine which is comparatively unusual: the fact that Russian is the mother tongue or the language of common use for many people who identify themselves in ethnic terms as Ukrainians, together with some smaller ethnic groups such as Belarussians, Jews, Greeks, Tatars, Georgians, Germans as a consequence of history.⁵⁹ The lack of congruence between ethnicity, declared mother tongue and actual language use has made some researchers propose a three-fold division of the Ukrainian population: Ukrainophone Ukrainians (40%), Russophone Ukrainians (33-34%) and Russophone Russians (20-21%).⁶⁰

Thus, the basic disagreement among constitution drafters was centred round the need to decide upon which language to make the state language, only Ukrainian, as the language of the titular nation, or both Ukrainian and Russian to satisfy linguistic needs of numerous Russian language speakers.

Wolczuk reports that none of the official drafts of the constitution stipulated the official status of the Russian language. However, the draft proposed in March 1996 envisaged that 'in areas of dense population of citizens of one or several national minorities, the language accepted by the majority of the pop-

59. Shulman refers to the results of a mass public opinion survey implemented in 2001 by the Institute of Sociology which revealed that 37 per cent of respondents communicate only in Ukrainian with their families, 37 per cent only in Russian, and 26 per cent in both languages. He also points to the fact that even those Ukrainians who use Ukrainian are generally able to understand and speak Russian. See SHULMAN, S. «Sources of Civic and Ethnic Nationalism in Ukraine», *Journal of Communist Studies and Transition Politics*, Volume 18, Number 4, 2002, p. 6.

60. KHMELKO, V., WILSON, A., «Regionalism and Ethnic and Linguistic Cleavages in Ukraine», in KUZIO, T. (ed.) *Contemporary Ukraine: Dynamics of Post-Soviet Transformation*, New York, M.E. Sharpe, Inc., 1998, p. 75.

ulation of a certain location may be used in the activities of bodies of state power and state organizations, along with the state language'.⁶¹

The final version of the Constitution was formulated in broader terms, and thus inevitably was open to different interpretations. It turned out to be a defeat for those who sought to upgrade the status of Russian language⁶² and a sort of a victory who wanted to redress centuries' long marginalization of the Ukrainian language and Russification of the Ukrainian ethnos.

Article 10 reads:

«The state language of Ukraine is the Ukrainian language.

The State ensures the comprehensive development and functioning of the Ukrainian language in all spheres of social life throughout the entire territory of Ukraine.

In Ukraine, the free development, use and protection of Russian, and other languages of national minorities of Ukraine, is guaranteed.

The State promotes the learning of languages of international communication.

The use of languages in Ukraine is guaranteed by the Constitution of Ukraine and is determined by law.»

Not only did the constitution confirm the provisions of the 1989 law on languages,⁶³ which stated that Ukrainian was the only state language, but the state was put under an obligation to ensure **comprehensive development and functioning** of the Ukrainian language in **all** spheres of social life throughout the **entire territory** of Ukraine. Nevertheless, the Constitution **guaranteed** free development, use and protection of languages of national minorities of Ukraine and made a particular reference to the Russian language, as a way of placating the Russophones:⁶⁴ Russian *can* develop freely, yet Ukrainian *has* to be promoted by the state.

The complexity and ambiguity surrounding language issues in Article 10

61. WOLCZUK, K. «The New Ukrainian Constitution: In Pursuit of a Compromise», Centre for Economic Reform and Transformation, Edinburgh, 1997, p. 8.

62. WOLCZUK, K. «The New Ukrainian Constitution: In Pursuit of a Compromise», Centre for Economic Reform and Transformation, Edinburgh, 1997, p. 9.

63. Law of Ukraine 8312-XI, of 28.10.1989, on languages in Ukrainian SSR.

64. HRYTSENKO, O., «Imagining the Community: Perspectives on Ukraine's Ethno-cultural Diversity», *Nationalities Papers*, Volume 36, Number 2, 2008, p. 213.

resulted in a need for an official interpretation of the scope of this Article by the Constitutional Court of Ukraine.

The Constitutional Court of Ukraine is the judicial body authorized to give decisions on the non-conformity of laws and other legal acts with the Constitution in the event of their violating human rights. Laws and other legal acts or individual provisions thereof which have been declared unconstitutional cease to have effect from the date on which the Constitutional Court declares that they are unconstitutional.

In its Decision⁶⁵ the Court defined the Ukrainian language as an 'obligatory means of communication on all territory of Ukraine in exercising their powers by the bodies of state power and local self-government (language of acts, work, correspondence, documentation, etc.), as well as in other public spheres of the society's life stipulated by the law'. However, the Decision also emphasized that together with the state language, local executive and self-government bodies, as well as state bodies in the Crimea⁶⁶, could use Russian and other minority languages within the framework provided for by the Ukrainian legislation. With regard to the use of languages in education, the Court ruled that it shall be Ukrainian, while other languages could be used and taught.

While strengthening the position of the Ukrainian language,⁶⁷ the Court nevertheless implies that this shall not impede efforts to safeguard minority languages. The latter can be viewed, in my opinion, as a reaction to the increasing emphasis on multilingualism and multicultural heritage within Europe placed by European institutions and also in light of the debates on the possible ratification of the Council of Europe's European Charter for Regional or Minority Languages which took place over the same period of time.⁶⁸

65. Decision of the Constitutional Court of Ukraine of 14 December 1999 N° 10-рп/99 (case on the use of the Ukrainian language)[Рішення Конституційного Суду України N° 10-рп/99 від 14.12.1999 (справа про застосування української мови)].

66. Crimea enjoys the status of an autonomous republic in Ukraine and is the only region in Ukraine where Russian make up an ethnic majority.

67. As Kulyk notes,

«Its obvious ambiguities notwithstanding, the decision was unequivocally perceived as being aimed at strengthening the position of the state language, primarily by implicitly ruling out Russian as an acceptable language in the central power bodies...»

KULYK, V., «Revisiting A Success Story: Implementation of the Recommendations of the OSCE High Commissioner on National Minorities to Ukraine, 1994-2001», *CORE Working Paper 6*, Hamburg, 2002, p. 112.

68. See more in BOWRING, B., ANTONOVYCH, M. «Ukraine's Long and Winding Road to the

Some authors accused the Constitutional Court of being biased and very much politically influenced:

«Control over the effective implementation of various guarantees of rights is exercised by the Constitutional Court of Ukraine and by courts of general jurisdiction. However, the country's judicial system is still not fully independent, and its control upon governmental agencies is insufficiently developed. The central government's influence over the Constitutional Court, particularly in the sphere of ethnopolitics, has prompted minority activists to complain that the Court acts as a tool for the government's goal of Ukrainisation. ... I find that the Constitutional Court's bias was also apparent in another recent ruling on the use of state language in government institutions and educational process in Ukraine.»⁶⁹

It should be mentioned that this Decision was accompanied by the dissenting opinion of one of the constitutional judges, O. Mironenko. He argued that according to the constitution Ukrainian is the official and working language of the state but not necessarily of society or private persons.⁷⁰

Article 53 of the Constitution deals with an issue touched upon by the Constitutional Court in the forenamed Decision, namely the use of languages in education. The Constitution **guaranteed** the right of persons belonging to national minorities to learn their mother tongue and to be educated in this language under the conditions laid down in the corresponding Law on education:

«Citizens 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.»

European Charter for Regional or Minority Languages» in «The European Charter for Regional or Minority Languages: Legal Challenges and Opportunities», Regional or Minority Languages, No. 5, Council of Europe Publishing, 2008, pp. 169-170.

69. STEPANENKO, V., «A State to Build, a Nation to Form: Ethno-Policy in Ukraine», in BIRO, A.-M., KOVACS, P. (eds.) *Diversity in Action: Local Public Management of Multi-Ethnic Communities in Central and Eastern Europe*, Budapest, LGI Managing Multiethnic Communities Project, 2001, pp. 309-346, at pp. 328-9.

Zhurzhenko also points to the political nature of this decision. See ZHURZHENKO, T. «Language and Nation Building Dilemmas of Language Politics in Contemporary Ukraine», *Tr@nsit online*, No. 21, 2002.

70. Dissenting Opinion of the Judge of the Constitutional Court of Ukraine Mironenko O.M.

It may be interesting to recall that the then OSCE High Commissioner on National Minorities, Max Van der Stoel expressed his particular approval of this constitutional provision as well as the one in Article 10 *guaranteeing* the free development, use and protection of Russian and other minority languages, and qualified the word 'guaranteed' in both provisions as particularly important:

«The legislator can use no stronger expression. It means that the legislator has chosen a mandatory, and not a permissive system of granting rights. In an organic law, the legislator can formulate detailed provisions about the content of such a right, but, once the Constitution has guaranteed a right the actual exercise of that right cannot be linked to a system of licenses.»⁷¹

While linguistic rights are guaranteed in the Constitution, Article 92(4) proclaims that their scope is to be regulated in a separate law.

The Constitution also addresses the language issue in several other articles.

Article 11 recognizes the need to promote linguistic identity of Ukraine's indigenous peoples and national minorities:

«*The 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 24 guarantees the equality of all persons before the law and prohibits language discrimination:

«Citizens have equal constitutional rights and freedoms and are equal before the law.

There shall be no privileges or restrictions based on race, colour of skin, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, *linguistic* or other characteristics.»

Similarly to Western academic and political discourse, the term (ethnic) discrimination in Ukraine is understood as the 'distinctiveness of some groups or

71. *Letter by Max van der Stoel*, OSCE High Commissioner on National Minorities, to H. E. Mr. Anatoly M. Zlenko, Minister for Foreign Affairs, Ukraine, 12 January 2001, cited in KULYK, V., «Revisiting A Success Story: Implementation of the Recommendations of the OSCE High Commissioner on National Minorities to Ukraine, 1994-2001», *CORE Working Paper 6*, Hamburg, 2002, p. 119.

individuals on the basis of their race, ethnicity, gender, religion, etc., hereby limiting the group's (person's) rights'.⁷² It is extremely significant that in Article 24 of the Constitution and provisions in corresponding laws⁷³ language is chosen as one of the bases upon which discrimination would be prohibited.

What seems to be lacking, however, in the Ukrainian legislation is the precision necessary for the correct implementation of the non-discrimination provisions, a specificity to which the Advisory Committee, a monitoring body under the Framework Convention for the Protection of National Minorities, referred in its Opinion on Ukraine:

«The Advisory Committee notes that there exist general anti-discrimination provisions in the Constitution of Ukraine as well as in the new Criminal Code, [. . .] but that there are no detailed and comprehensive civil and/or administrative law provisions pertaining to discrimination in specific fields. The Advisory Committee is of the opinion that it would be desirable to develop such legislation in order to protect, in a comprehensive manner, individuals from discrimination by both public authorities and private entities.»⁷⁴

Another peculiarity of Article 24 to which I would like to draw attention is that according to the wording of the text, the idea of positive discrimination cannot be implied; there may be no privileges on the basis of language or other characteristics. Caution should be taken not to interpret this provision too strictly:⁷⁵

«The Advisory Committee notes that a provision contained in Article 24 of the Constitution stipulating that there shall be no privileges based on ethnic origin has been at times used in public discussions as an argument against the introduction of special measures for the benefit of persons belonging to national minorities. This has been the case in the context of public discussion on the electoral rules

72. HRYTSENKO, O., «Imagining the Community: Perspectives on Ukraine's Ethno-cultural Diversity», *Nationalities Papers*, Volume 36, Number 2, 2008, p. 214.

73. Law of Ukraine 2494-XII, of 25.06.1992, on National Minorities in Ukraine (Article 18) and in Law of Ukraine 280/97-BP, of 21.05.1997, on Local Self-Government in Ukraine (Article 2).

74. Advisory Committee of the Framework Convention for the Protection of National Minorities, Opinion on Ukraine, ACFC/INF/OP/I(2002)010, para. 165.

75. Hrytsenko notices that the Ukrainian authorities, 'at least in some cases, tend to use anti-discriminatory regulations as a justification for existing inequalities'. HRYTSENKO, O., «Imagining the Community: Perspectives on Ukraine's Ethno-cultural Diversity», *Nationalities Papers*, Volume 36, Number 2, 2008, p. 214.

aimed at effective participation of persons belonging to national minorities in decision-making processes.

The Advisory Committee stresses that such measures must not be considered to be an act of discrimination.»⁷⁶

Article 37 of the Constitution of Ukraine prohibits the establishment and activities of political parties or public organizations whose programmatic objectives or actions are aimed at propagating a war or violence, at inflaming inter-ethnic, racial or religious enmity, or at infringing on human rights and freedoms.⁷⁷

Finally, both **Article 103** and **Article 148**⁷⁸ recognize language as an important symbol of the country's sovereignty and require both the President of Ukraine and a judge of the Constitutional Court of Ukraine to know the state language of Ukraine.

That being the basic constitutional foundation for the language rights in Ukraine, their detailed regulation is provided in the corresponding laws and secondary legislation and administrative instructions.

5. Conclusion

The analysis of the constitutional evolution of language rights in Ukraine has shown that language has often become a bone of contention in the Ukrainian society which was reflected in the different constitutions adopted since the beginning of the twentieth century. Throughout the years, and with every

76. Advisory Committee of the Framework Convention for the Protection of National Minorities, Opinion on Ukraine, ACFC/INF/OP/I(2002)010, para. 166.

77. Article 161 of the Criminal Code of Ukraine lays down responsibility for inciting inter-ethnic enmity or hatred, for disparagement of national honor or dignity and for limitation of the rights of, or the institution of privileges in respect of, citizens on the basis of ethnic origin or linguistic or other characteristics.

78. Article 103 reads:

«A citizen of Ukraine who has attained the age of thirty-five, has the right to vote, has resided in Ukraine for the past ten years prior to the day of elections, and *has command of the state language*, may be elected as the President of Ukraine.»

Article 148 reads:

«A citizen of Ukraine who has attained the age of forty on the day of appointment, has a higher legal education and professional experience of no less than ten years, has resided in Ukraine for the last twenty years, and *has command of the state language*, may be a judge of the Constitutional Court of Ukraine.»

newly-adopted constitution, emphasis has been shifting: from the proclamation of the complete equality of all languages to the establishment of a single official language, from *de jure* recognition to the *de facto* marginalization of the language of the titular nationality (the Ukrainian language). Debates have been opened and closed and then re-opened again regarding the position of the Russian language.

The 1996 Ukrainian Constitution laid down the foundations of the language policy in Ukraine which can be summarised in the following way. Ukrainian is to replace Russian as a language everybody understands and uses both in public and, hopefully, in private. This position of the Ukrainian language is to be legalized by granting it the status of the sole state language of Ukraine. As for the non-Russian national minorities whose national revival was also called for, their languages can be used in areas where they reside compactly. The Russians are to become a minority like any other. That is indeed, in Bloom's words, 'a severe reversal of status from 'elder brother' nationality to national minority.'⁷⁹ The Russian language is to occupy a place in the Ukrainian society just like any other minority language. The situation is indeed precarious. Here comes to mind a warning given by the OSCE. Its actuality for the Ukrainian context is obvious:

«When the policy of a state is to enhance its character as a nation by promoting the use of the state language, it can encounter resistance from a powerful minority to any downgrading of that minority's language. Thus language can become an explosive issue.»⁸⁰

79. BLOOM, St., «Which Minority is Appeased? Coalition Potential and Redistribution in Latvia and Ukraine», *Europe-Asia Studies*, Volume 60, Number 9, 2008, p. 1575

80. The citation has been taken from the official site of the organisation.

6. Bibliography

Primary Sources

Constitution of the Ukrainian National Republic (Statute about State Government, Rights, Liberties of the UNR) of 29 April 1918 [Конституція Української Народної Республіки (Статут про державний устрій, права і вольності УНР) 29 квітня 1918 р.]

Constitution of the Ukrainian Soviet Socialist Republic of 14.03.1919 [Конституція Української Радянської Соціалістичної Радянської Республіки (березень 1919 р.)]

Constitution (Basic Law) of the Ukrainian Soviet Socialist Republic of 15.05.1929 [Конституція (основний закон) Української Соціалістичної Радянської Республіки, 15 травня 1929 р.]

Constitution (Basic Law) of the Ukrainian Soviet Socialist Republic of 30.01.1937 [Конституція (Основний Закон) Української Радянської Соціалістичної Республіки]

Constitution (Basic Law) of Ukraine of 20.04.1978 [Конституція (основний закон) Україні]

Constitution of Ukraine, adopted at Fifth Session of the Verkhovna Rada of Ukraine on 28 June 1996.

Decision of the Constitutional Court of Ukraine of 14 December 1999 No.10-рп/99 about the official interpretation of provisions of Article 10 of the Constitu-

tion of Ukraine concerning use of the State language by bodies of state power, bodies of local self-government and its application in teaching process in educational institutions of Ukraine [Рішення Конституційного Суду України у справі за конституційними поданнями 51 народного депутата України про офіційне тлумачення положень статті 10 Конституції України щодо застосування державної мови органами державної влади, органами місцевого самоврядування та використання її у навчальному процесі в навчальних закладах України (справа про застосування української мови)]

Secondary Sources

AREL, D., «Ukraine: The Temptation of the Nationalizing State», in TISMANEANU, V. (ed.) *Political Culture and Civil Society in Russia and the New States of Eurasia*, New York, M.E. Sharpe, 1995, pp. 157-88.

AREL, D., «Ukraine: The Muddle Way », *Current History*, Volume 97, Number 621, 1998, pp. 342-6.

AREL, D., «Interpreting 'Nationality' and 'Language' in the 2001 Ukrainian Census», *Post-Soviet Affairs*, Volume 18, Issue 3, 2002, pp. 213-249.

BARRINGTON, L. W., «Views of the 'Ethnic Other' in Ukraine», *Nationalism and Ethnic Politics*, Volume 8, Number 2, 2002, pp. 83-96.

BILINSKY, Ya. «Expanding the Use of Russian or Russification? Some Critical Thoughts on Russian as a Lingua Franca and the Language of Friendship and Cooperation of the Peoples of the USSR», *Russian Review*, Volume 40, Number 3, 1981, pp. 317-332.

BOWRING, B.; ANTONOVYCH, M. «Ukraine's Long and Winding Road to the European Charter for Regional or Minority Languages» in «The European Charter for Regional or Minority Languages: Legal Challenges and Opportunities», *Regional or Minority Languages*, No. 5, Council of Europe Publishing, 2008, pp. 157-182.

GOODMAN, E. R., «The Soviet Design for a World Language», *Russian Review*, Volume 15, Number 2, 1956, pp. 85-99.

GONCHARENKO, V. D. (ed.) *Collection of Documents on the History of the State and Law of Ukraine*, Volume 2, Kiev, 1997

[Хрестоматія з історії держави і права України: В 2-х т. / За ред. В. Д. Гончаренка.— К.].

HOLOVATY, S., «Ukraine's Constitutionalism in the Context of the Constitutional Heritage of Europe», in *The Constitutional Heritage of Europe. Proceedings. Montpellier (France) 22-23 November 1996*, Strasbourg, Council of Europe Publishing, 1998, pp. 129-139.

HRYTSENKO, O., «Imagining the Community: Perspectives on Ukraine's Ethnocultural Diversity», *Nationalities Papers*, Volume 36, Number 2, 2008, pp. 197-222.

KHMELKO, V.; WILSON, A. «Regionalism and Ethnic and Linguistic Cleavages in Ukraine», in KUZIO, T. (ed.) *Contemporary Ukraine: Dynamics of Post-Soviet Transformation*, New York, M.E. Sharpe, Inc., 1998, pp. 60-81.

KUBIJOVYČ, V. (ed.) *Encyclopedia of Ukraine*, Volume I, Toronto, University of Toronto Press, 1993.

KULYK, V., «Revisiting a Success Story: Implementation of the Recommendations of the OSCE High Commissioner on National Minorities to Ukraine, 1994-2001», *CORE Working Paper 6*, Hamburg, 2002.

KULYK, V., «Constructing Common Sense: Language and Ethnicity in Ukrainian Public Discourse», *Ethnic and Racial Studies*, Volume 29, Number 2, 2006, pp. 281-314.

KUZIO, T., *Ukraine. The Unfinished Revolution*, London, Alliance Publishers, 1992.

KUZIO, T., «Ukraine: Coming to Terms with the Soviet Legacy», *Journal of Communist Studies and Transition Politics*, Volume 14, Number 4, 1998, pp. 1-27.

KUZIO, T., *Ukraine: State and Nation Building*, Routledge Studies of Societies in Transition, 1998.

KUZIO, T.; NORDBERG, M. «Nation and State Building, Historical Legacies and National Identities in Belarus and Ukraine: A Comparative Analysis», *Canadian Review of Studies on Nationalism*, Volume XXVI, 1999, pp. 69-89.

- KUZIO, T., «Ukraine: Myths, National Historiography, Nation and State-building», *Nationalism and Ethnic Politics*, Volume 6, Number 4, 2000, pp. 106-109.
- MANCINI, S.; DE WITTE, B., *Language Rights as Cultural Rights: A European Perspective* in FRANCONI, F., SCHEININ, M. (eds.) *Cultural Human Rights*, Martinus Nijhoff Publishers, 2008, pp. 247-284.
- MARSHALL, C. A., «Post-Soviet Language Policy and the Language Utilization Patterns of Kyivan Youth», *Language Policy*, Volume 1, Number 3, pp. 237-260, 2002.
- MARTIN, T., *An Affirmative Action Empire: Ethnicity and the Soviet State, 1923-1939*, London, Cornell University Press, 2001.
- MOTYL, A., «The Conceptual President: Leonid Kravchuk and the Politics of Surrealism», in COLTON, T. J. and TUCKER, R. C. (eds.), *Patterns in Post-Soviet Leadership*, Boulder, CO, Westview Press, pp. 103-21, 1995.
- PALERMO, F. «Linguistic Diversity within the Integrated Constitutional Space», in CHOLNOKY, G. (ed.), *Minorities Research*, Number 10, 2008, pp. 69-107.
- PRADID YU., F. «The Language Issue in the Ukrainian Constitutions of the 20th Century », *Movoznavstvo*, Number 1, Kiev, 2002, pp. 17-22 [Ю. Ф. Прадід Мовне питання в Українських Конституціях XX ст., Мовознавство].
- PRIZEL, I. «The Influence of Ethnicity on Foreign Policy», in SZPORLUK, R. (ed.) «National identity and Ethnicity in Russia and the New States of Eurasia», New York, M. E. Sharpe, 1994, pp. 103-128.
- RADZIEVSKII, A. «Preservation of Spiritual-Cultural Unity and Emergence from Economic Crisis in Russia and Ukraine», Fourth International Conference *Dialogue of Russian and Ukrainian Cultures in Ukraine*, 9-10 December 1999, Kiev [Радзиевский А. И. Сохранение духовно-культурного единства и выход из экономического кризиса Украины и России, IV-я Международная научно-практическая конференция «Диалог украинской и русской культур в Украине»], available at: <http://www.niurr.gov.ua/ukr/dialog_1999/index_dialog_99.html>
- RESHETAR, J.S.Jr., *The Ukrainian Revolution, 1917-1920: A Study in Nationalism*, New York, Arno Press, 1972.
- SASSE, G., «Conflict-Prevention in a Transition State: The Crimean Issue in Post-Soviet Ukraine», *Nationalism and Ethnic Politics*, Volume 8, Number 2, 2002, pp. 1-26.
- SHULMAN, S., «Sources of Civic and Ethnic Nationalism in Ukraine», *Journal of Communist Studies and Transition Politics*, Volume 18, Number 4, 2002, pp. 1-30.
- SMITH, A. D., «The Ethnic Origins of Nations», Oxford, Basic Blackwell, 1986.
- SOLCHANYK, R., «Russian Language and Soviet Politics», *Soviet Studies*, Volume 34, Number 1, 1982, pp. 23-42.

- STEPANENKO, V., «A State to Build, A Nation to Form: Ethno-policy in Ukraine», in BIRO, A.-M. and KOVACS, P. (eds.) *Diversity in Action: Local Public Management of Multi-Ethnic Communities*, 2000, pp. 309-346, available at: <http://igi.osi.hu/publications/books/Diversity_in_Action/2_7>
- SUBTELNY, O., *Ukraine. A History*, Toronto, University of Toronto Press, Second Edition, 1994.
- SZPORLUK, R., «Ukraine: From an Imperial Periphery to a Sovereign State», *Daedalus*, Volume 126, Number 3, 1997, pp. 85-119.
- SZPORLUK, R., «The Western Dimension of the Making of Modern Ukraine», *Tr@nsit online*, No. 29, 2007.
- VAN ZON, H., «Ethnic Conflict and Conflict Resolution in Ukraine», *Perspectives on European Politics and Society*, Volume 2, Number 2, 2001, pp. 221-240.
- WILSON, A., *Ukrainian Nationalism in the 1990s: A Minority Faith*, Cambridge, Cambridge University Press, 1997.
- WILSON, A., *The Ukrainians: Unexpected Nation*, New Haven, Yale University Press, 2000.
- WOLCZUK, K., «The New Ukrainian Constitution: In Pursuit of a Compromise», Centre for Economic Reform and Transformation, Edinburgh, 1997.
- WOLCZUK, K., «History, Europe and the 'National Idea': The Official Narrative of National Identity in Ukraine», *Nationalities Papers*, Volume 28, Number 4, 2000, pp. 671-94.
- WOLCZUK, K., «Catching up with 'Europe'? Constitutional Debates on the Territorial-Administrative Model in Independent Ukraine», *Regional & Federal Studies*, Volume 12, Number 2, 2002, pp. 65-88.
- ZASTAVNYI, F., *Population of Ukraine*, L'viv, Svit, 1993, pp. 110-1 [Заставний Ф. Д. *Населення України*. - Львів: Світ].
- ZHURZHENKO, T., «Language and Nation Building Dilemmas of Language Politics in Contemporary Ukraine», *Tr@nsit online*, No. 21, 2002.
- ZHURZHENKO, T., «The Myth of Two Ukraines», *Tr@nsit online*, No. 23, 2002.

Resum

El tema de la llengua en l'evolució del constitucionalisme ucraïnès

Iryna Ulasiuk

Ucraïna ha tingut una llarga història de llengües oficials (no ucraïneses) imposades administrativament per règims governants que canviaven sovint. La influència lingüística del rus va ser particularment forta, i va provocar que l'ucraïnès i altres llengües gaudissin d'una posició inferior a la de la llengua russa. Mentre que, en teoria, les persones pertanyents a una minoria nacional podien confiar en un marc legal, fins i tot en l'àmbit constitucional, per tal de defensar els seus drets lingüístics, es podien observar, tal com és usual en moltes societats multilingües, diferències importants entre les garanties cons-

titucionals i la realitat a Ucraïna.

Els desafiaments històrics de la construcció de la nació i l'estat a Ucraïna van preparar el terreny per a les actuals relacions entre les ètnies i l'Estat i van determinar les principals tendències en política lingüística, els fonaments de la qual estan establerts a la Constitució ucraïnesa de 1996.

Aquest article posa en relleu alguns aspectes de la posició de la llengua estatal i les llengües minoritàries en el desenvolupament constitucional de l'Estat ucraïnès abans i després de la seva independència.

Paraules clau: Ucraïna; drets lingüístics; drets de les minories; drets constitucionals; llengua de l'Estat.

Resumen

El tema de la lengua en la evolución del constitucionalismo ucraniano

Iryna Ulasiuk

Ucrania ha tenido una larga historia de lenguas oficiales (no ucranianas) impuestas administrativamente por regímenes gobernantes que cambiaban a menudo. La influencia lingüística del ruso fue particularmente fuerte, y provocó que el ucraniano y otras lenguas disfrutaran de una posición inferior a la de la lengua rusa. Mientras que, en teoría, las personas pertenecientes a una minoría nacional podían confiar en un marco legal, incluso en el ámbito constitucional, con el fin de defender sus derechos lingüísticos, se podían observar, tal como es usual en muchas sociedades multilingües, diferencias importantes

entre las garantías constitucionales y la realidad en Ucrania.

Los desafíos históricos de la construcción de la nación y el estado en Ucrania prepararon el terreno para las actuales relaciones entre las etnias y el Estado y determinaron las principales tendencias en política lingüística, los fundamentos de la cual están establecidos en la Constitución ucraniana de 1996.

Este artículo pone de relieve algunos aspectos de la posición de la lengua estatal y las lenguas minoritarias en el desarrollo constitucional del Estado ucraniano antes y después de su independencia.

Palabras clave: Ucrania; derechos lingüísticos; derechos de las minorías; derechos constitucionales; lengua del Estado.

Résumé

L'aspect linguistique dans l'évolution du constitutionalisme ukrainien

Iryna Ulasiuk

L'Ukraine a une longue histoire de langues officielles (non-ukrainiennes) imposées administrativement par les nombreux régimes qui se sont succédés. L'influence linguistique russe a été particulièrement forte et elle a eu pour résultat le fait que l'ukrainien de même que les autres langues n'ont joui que d'une position inférieure par rapport à celle du russe. Alors que les personnes appartenant à une minorité nationale pouvaient confier, théoriquement, en un cadre légal, y compris à niveau constitutionnel, afin de défendre les droits associés à leur langue, on peut constater, comme c'est le cas dans de nombreuses socié-

tés multilingues, d'importantes différences entre les garanties offertes et la réalité.

Les défis de la construction de la nation et de l'État en Ukraine ont préparé le terrain pour les relations État-ethnies actuelles en Ukraine, et ils ont déterminé les principales tendances de la politique linguistique dont les fondements sont exposés dans la constitution de 1996.

Cet article met l'accent sur certains aspects de la situation de la langue de l'État et des langues minoritaires dans le développement constitutionnel de l'État ukrainien avant et après son indépendance.

Mots-clés : Ukraine ; droits linguistiques ; droit des minorités ; droit constitutionnel ; langue de l'État.