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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT OPINION

ON THE DRAFT LAW
ON PRINCIPLES OF THE STATE LANGUAGE POLICY

OF UKRAINE

On the basis of comments by

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I. Introduction

1. On 21 October 2011, the Chairman of the Committee on Culture and Spirituality of the Verkhovna Rada of Ukraine requested the Venice Commission to examine the Draft Law on Principles of the State Language Policy (CDL-REF(2011)061), hereinafter “the Draft Law”). On 26 August 2011, the Draft Law was registered with the Parliament (Verkhovna Rada) of Ukraine (registration N°9073).
2. A working group of Rapporteurs was set up, composed of Messrs Sergio Bartole and Jan Velaers.
3. *The present Opinion, prepared on the basis of the Rapporteurs’ comments, was adopted by the Venice Commission at itsPlenary Session (Venice, ...).*

II. Preliminary remarks

4. The Venice Commission has had the occasion to examine a previous draft law pertaining to the protection of languages in Ukraine, the “Draft Law on Languages in Ukraine”. This draft was dealt with by the Commission in the Opinion adopted at its 86th Plenary Session (CDL-AD (2011)008). In its Opinion, the Venice Commission found that the draft was unbalanced, as its provisions were disproportionately strengthening the position of the Russian language, without taking appropriate measures to confirm the role of Ukrainian as the state language, and without duly ensuring protection of other regional and minority languages. The Commission moreover drew attention to some restrictions to the individual freedom to use the language of one’s choice in private and social life.
5. The present Draft Law “on Principles of the State Language Policy” is clearly based on the previous draft. It confirms to a very large extent the previous draft and contains numerous provisions that reproduce those of the old text. At the same time, in order to take into account the critiques made in the Opinion adopted in March 2011, its authors have introduced interesting novelties and adopted several amendments to the previous text.
6. In the context of this Opinion, the Venice Commission has not examined the overall legal framework in force in Ukraine in the field of language and minority protection nor the overall situation of national minorities and their languages in this country. The present Opinion is limited to the assessment of the new provisions and novelties contained in the new Draft Law, in the light of the comments the Commission made in its previous Opinion. The Opinion is based upon on an English translation of the Draft Law, as provided to the Venice Commission. There is no "rationale" nor any other explanatory document attached to the Draft Law.
7. The assessment is based on the applicable international standards, in particular the Framework Convention for the Protection of National Minorities (Framework Convention) and the European Charter for Regional or Minority Languages (Language Charter)¹, as well as the relevant provisions of the Ukrainian Constitution. Particular attention has been paid, in this context, to the linguistic situation in Ukraine².
8. As in its previous Opinion, the Venice Commission “wishes to underline from the outset that the use and the protection of languages has been and remains a complex and highly sensitive issue in Ukraine, which has repeatedly become one of the main issues in different election campaigns and continues to be subject of debate - and sometimes to raise tensions - within the Ukrainian society”. The Commission further notes that “[T]he balance between regional and/or

¹ See also Art. 14 ECHR; Art. 1 of Protocol No. 12 to the ECHR; Art. E of the European Social Charter; Art. 26 of the International Covenant on Civic and Political Rights; Art. 2 (2) of the International Covenant on Social, Cultural and Economic Rights.

² For the linguistic situation in Ukraine and further background information, see Venice Commission, *Opinion on Draft Law on Languages in Ukraine*, (CDL-AD (2011)008).

minority language protection and the protection of Ukrainian as the state language, including the specific situation of the Russian language, continues to be a serious challenge for the authorities of Ukraine”.

III. Constitutional and legislative framework for the protection of languages

9. Several articles of the Ukrainian Constitution contain guarantees for the protection of linguistic rights. The key article is Article 10 which reads as follows:

“The State language of Ukraine shall be the Ukrainian language.

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

Free development, use, and protection of Russian and other languages of national minorities of Ukraine shall be guaranteed in Ukraine.

The State shall promote the learning of languages of international communication.

The use of languages in Ukraine shall be guaranteed by the Constitution of Ukraine and shall be determined by law.”

10. In addition, Article 11 prescribes that the State shall “*promote the consolidation and development of the Ukrainian nation, its historical consciousness, traditions, and culture, as well as development of ethnic, cultural, linguistic, and religious identity of all indigenous peoples and national minorities of Ukraine*”.

11. Article 24, § 2, forbids “*privileges or restrictions based on race, skin colour, political, religious, and other beliefs, gender, ethnic and social origin, property status, place of residence, linguistic or other characteristics.*”

12. Finally article 53, § 5, stipulates: “*Citizens belonging to national minorities shall be guaranteed, in accordance with law, the right to education in their native language, or to study their native language at the state and communal educational establishments or through national cultural societies.*”

13. As to the protection of languages, the Venice Commission recalls that, notwithstanding the efforts made in recent years to update and modernize the legislation in force in this field, the use of languages continues to be regulated by the Law of the Ukrainian Soviet Socialist Republic on Languages, dating back to 1989 (hereinafter the 1989 Language Law)³.

14. As far as the persons belonging to national minorities are concerned, the protection of their linguistic rights is guaranteed by the 1992 Law on National Minorities (see in particular Article 6 and 8)⁴, the “Law On the Ratification of the European Charter on Regional or Minority Languages”, other legislative provisions regulating the language use in specific sectors (education, public administration etc.), as well as the international treaties that are legally binding for Ukraine.

³ According to the 1989 Language Law, “*the development of the understanding of the social value of the Ukrainian language as the state language of the Ukrainian Soviet Socialist Republic and the Russian language as the language of the interethnic communication of peoples of the Union of Soviet Socialist Republics among citizens regardless of their national affiliation shall be the duty of the state, party and public bodies and mass media of the Republic. The choice of the language of the interpersonal communication among citizens of the Ukrainian Soviet Socialist Republic shall be an inalienable right of citizens themselves.*”

⁴ Law On National Minorities, Law no. 2494-12 of June 25th, 1992 (Supreme Executive Council, No. 36, Art. 529).

IV. Analysis of the Draft Law

A. Terminology

15. The Venice Commission takes note with interest of the wide range of definitions provided by Article 1 of the Draft Law. These include key notions such as the “state language”, the “native language”⁵, the “regional language, or language of minority”, the “language of national minority”. Further definitions concern the notions of “linguistic group”, “linguistic minority”, “regional language group”, “region” and “territory at which the regional language is used”.

16. While welcoming the effort to provide guidance on the terminology used in the various provisions of the Draft, the Commission finds that the definitions proposed and their interrelations are too complex and therefore confusing. It would suggest that a more simple and unified vocabulary is chosen, which should subsequently be used in a consistent manner throughout the Draft. In particular, the use of the concepts of “native language” or “minority language” in the context of the definition of a “linguistic group/linguistic minority” and of the individuals’ affiliation to such a group (see art. 7.5 of the Draft Law), should be reviewed, harmonized and coordinated with the terminology used with regard to the right to linguistic self-determination (art. 3). The Commission recalls in this context that, in order for the future law to be in line with applicable international standards⁶, the principle of the individual free choice should prevail. This would imply to abandon the reference to the “native language” or to redefine it so that it includes the dimension of the free linguistic self-affiliation.

17. The Commission also notes that a real ambiguity remains in the current Draft as to the territorial dimension of the protection of the regional or minority languages. According to Art.1 of the Draft Law, the territories of relevance for the protection of regional languages are areas formed of one or several administrative units of Ukraine (Autonomous Republic of Crimea, oblast, rayon, city, township, and village). As stated by art. 7.3, the languages spoken by 10% or more of the total population of one of these unities deserve the special protection provided for by the law. It could happen that a language gets more than 10 % in a minor unity but does not meet this percentage at the superior administrative level. The protection is guaranteed at the lower level unity but the draft is silent as to the relevance that the linguistic group present in its territory and its language have at the superior levels. This would seem to mean that, where a group does not reach the required threshold at the higher administrative level, it does not enjoy any protection at all. The Commission wonders whether the second alinea of art. 7.3, which leaves a margin of appreciation and flexibility to the concerned local authorities, could be applied in these cases. The decision is indeed left to the local council and the adoption of the protection measures for the concerned minority appears not to be of a compulsory nature.

B. The Ukrainian language as the sole official language and the protection of the Russian language

18. In one of the conclusions of its previous Opinion, the Venice Commission stated: “*Although the Draft does not provide the Russian language any additional formal status, it may be perceived as an attempt to broaden the scope of use of the Russian language in the country and as a step towards practical official bilingualism. It therefore raises numerous issues of incompatibility with both the Ukrainian Constitution and its provisions pertaining to language protection (notably Article 10) and the international instruments applicable, namely the Language Charter and the Framework Convention*” (§113).

19. The Commission noted in particular that Article 7 of the draft, devoted to the Russian language and to the Ukrainian-Russian bilingualism, was stating explicitly that “*Russian is the native language or language of everyday communication of the majority of the citizens of*

⁵ See also Art. 14 ECHR; Art. 1 of Protocol No. 12 to the ECHR; Art. E of the European Social Charter; Art. 26 of the International Covenant on Civil and Political Rights; Art. 2 (2) of the International Covenant on Social, Cultural and Economic Rights.

⁶ See in particular art. 3 of the Framework Convention.

Ukraine. It is generally established along with Ukrainian as a language of inter-personal communication at the whole territory of Ukraine...". According to the Venice Commission, this was an unnecessary and purely declarative statement, which should not have a place in a normative text and which was contested and subject to divergent views in Ukraine (§ 35 and § 58). The Commission further noted that, in several specific provisions of the draft, the Russian language was the only language, among Ukraine's minority or regional languages, that was separately mentioned (§58).

20. Moreover, in spite of the fact that Article 10 of the Constitution only recognizes the Ukrainian language as the State Language, under several articles of the Draft Law the Russian language was provided the same level of protection as the Ukrainian State language. This includes: publication of acts of central state bodies, passports and personal data documents in both languages (art. 14.1); pre-trial investigation, interrogation and prosecutor supervision (art. 16); education in "pre-school, general secondary and out-of-school, vocational and higher educational institutions, according to the citizens' needs (articles 21.2 and 21.8 to 21.11); study of the State language and the Russian language in all establishments of general secondary schools (art. 21.7); mailings and telegrams (art. 26.2).

21. Thus for different aspects of public administration the Russian language was treated "on a par" with the State language. Although the study of the Ukrainian language was compulsory and had to be ensured, under the draft law it was possible to conduct the entire curriculum from pre-school to university in Russian. The recognition of linguistic freedom in the media and in the cultural area could moreover, due to market considerations, result in the dominance of the Russian language (§99).

22. As the Venice Commission underlined, it was from the outset clear that the Russian language would most probably meet the 10% threshold for the enhanced protection in many if not most parts of the territory of Ukraine. This implies that for a number of aspects of public life Russian would be used "on a par" with or even instead of the state language (§91).

23. Finally, the Venice Commission drew attention to Article 15 of the draft on the language of judicial proceedings. According to this article, in territories in which regional language is used by 10% or more of the total population, judicial proceedings could be conducted, at the request of one of the parties, in the given regional language, and this even if the other party insists on holding the proceedings in the State language (§ 100).

24. In the Commission's view, protection of the Russian language and its use as an expression of the identity of members of the Ukrainian society who have freely chosen this linguistic identification was a legitimate aim. The Venice Commission however also highlighted the risk that treating the Russian language on an equal level to that of the Ukrainian language would diminish the integrative force of the Ukrainian language and endanger the role that this language has to play as the sole State language (§ 98). Moreover, the Commission raised the issue of the conformity of the draft law with Article 10 of the Constitution.

25. The Venice Commission welcomes the efforts made to take into account some of the critiques made in its Opinion. The drafters amended several provisions of the text, in order to comply with the suggestions made by the Commission. As a result, different situations can now be noted.

- *Amendments that have only a textual significance without substantially changing the normative content of the text*

26. Some of the amendments have only a textual significance without substantially changing the normative content of the text.

27. The Commission welcomes the deletion of Article 7 of the previous draft. However, as Article 7 was only a descriptive statement, this does not change the normative content of the Draft Law.

28. In several provisions, the specific reference to the Russian language has been deleted and replaced by a reference to “a regional or minority language” (see e.g. art. 2, 20.9, 20.11, 21, 24.3, 25, 26.3). However, given that Russian language is also a “regional or minority language”, this amendment does not fundamentally change the normative content of the text.

29. Finally the words “on a par” or “equal force” have been deleted and replaced in a number of provisions by “alongside with”, without however changing the linguistic rights or obligations that these provisions contain (see e.g. art. 10.2, 11.1, 15).

- *Provisions which in the previous Draft provided the use of the Russian on the same level as the Ukrainian language and which have been enlarged to provide also the use of other regional and minority languages.*

30. Some of the provisions that provided the use of the Russian Language on the same level as the Ukrainian language have been enlarged to provide also the use of other regional and minority languages. Such provisions are dealing with the publication of the acts of the central state authorities (art. 10.1), passports or other official documents that certify identity of citizens and other persons (art. 13.1), acts of pre-trial investigation, interrogation and prosecutor supervision (art. 15):

- The acts of the central state authorities shall not only be published in the state language and the Russian language, but also in the other regional and minority languages (art. 10.1);
- Passports of the citizens of Ukraine or a substituting document and personal data shall no longer be drawn up in the state language and in the Russian language, but “*in the state language and along with it, whatever is chosen by the citizen, in one of the regional or minority languages of Ukraine*”(art. 13.1);
- Acts of pre-trial investigation, interrogation and prosecutor supervision will no longer be drawn up in the state language and “on a par” in the Russian language, but in the state language and “*alongside with the state language, the parties may use regional, minority and other languages of Ukraine*” (art. 15)⁷;
- As to the language of education, article 20.1 explicitly states that the free choice of the language of education is an integral right of the citizens of Ukraine, “*on condition of mandatory acquisition of a command of the State language sufficient for the individual’s integration into the Ukrainian community*”.

31. The Venice Commission also notes, in this connection, that art. 20.7 does no longer impose, in all establishments of general secondary education, the study of the Russian language but of “one of the regional or minority languages”. The Venice Commission however finds that, as it stands now, the first sentence of art.20.7 appears to impose a too strict obligation (“ensure”), which could be better nuanced. The Venice Commission recalls that, under Article 14.2 of the Framework Convention, “in areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, *if there is sufficient demand*, the Parties shall *endeavour to ensure, as far as possible* and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language” (*emphasis added*).

32. The interpretation of all articles of Chapter IV (Language of information and Communication) of the Draft Law supports the conclusion that the Russian language has the status of regional or minority languages and can be used in accordance with the rules governing the use and the protection of the regional or minority languages. Art. 24.2 is however confusing as, while its first part requires the distribution of official information in the state

⁷ The specific reference to the Russian language is no longer present in art. 15 (see previous art. 16). Nevertheless, it is not clear whether the minority or regional languages may be used - alongside with the state language - only as working languages in the prosecutorial activity or they can be used in drafting official documents also.

language and - if necessary - in a regional or minority language, in its second part it provides for a translation in the state language if the official information is distributed in another language. It could be helpful to provide clarity in this respect.

33. The provisions dealing with programmes broadcasted from neighbouring countries “*in the same or similar languages to the state language or regional or minority languages of Ukraine*” (art. 24.5) would also benefit from increased clarity. It is worth mentioning as well that, according to art. 24.7, “at the territory where (a) regional language(s) is/ are used“, the local council may “also” permit the issue of printed material for official and public use in this/these regional languages. It is again unclear whether “also” means “or” or “and”.

34. Similarly, in art. 26.1 it could be advisable to provide for a presentation of advertisements, announcements and other forms of audio and visual commercial products in the state language “and” (instead of “or”) any other language of choice of the advertiser.

- *Provisions that restore to a certain extent the preferential position of the State language*

35. Finally, some of the provisions restore, to a certain extent, the preferential position of the State language. This preferential position of the State language can be noted in the new provisions concerning sectors such as the judicial proceedings (art.14), which will only be conducted in a given regional language “when agreed between the parties”, and not any longer, as provided by the previous draft, in Russian, “at the request of one party” (see § 23 above).

36. Also, according to article 25.2 of the Draft, delivery and return addresses of mailings and telegrams shall only be written in the state language and no longer in the state language. Similarly, the language of statutes, documentation, records, commands and other statutory communication of the Armed Forces of Ukraine shall be the state language (art. 29).

GENERAL ASSESSMENT

37. In the light of the above findings, the Venice Commission concludes that it is the intent of the drafters to no longer attribute a preferential position to the Russian language among the languages that are different from the State language, but to include the Russian language among the other regional and minority languages. This new emphasis is clearly stated by the provisions of Article 5.2.2, dealing with the purposes and principles of the State language policy⁸.

38. The Venice Commission notes however that, in art. 10.1 and several other provisions (see also article 18.3, or art. 28.3) of the current Draft law, Russian still is the only language, amongst regional or minority languages, which is explicitly mentioned. This choice seems to give again to the Russian language a special relevance and does not entirely follow the approach described in § 37.

39. The Venice Commission acknowledges that the Ukrainian Constitution in its Article 10 singles out the protection of the Russian language. It considers however that, for the sake of consistency, the approach chosen by the authors of the Draft - protection of the Russian language under the requirements of the rules regulating regional and minority languages - should be the same throughout the various provisions of the Draft.⁹

⁸According to this article, on the main aims of the linguistic policy of Ukraine is to ensure “comprehensive development and functioning of Ukrainian as the state language in all areas of social life at the entire territory of the state, at the same time creating opportunities for parallel use of regional or minority languages on these areas and in those cases when it is justified”.

⁹In the last part of article 10.2 on the language of acts of state and local self-government bodies, the word “or” (“shall be adopted in the state language **or** in the given regional language or minority language(s) should be replaced by “and”. In this respect, art. 11. 2 and 11.3, clarify - in conjunction with other provisions of that article - that art. 11.1 (on the language of work, documentation and records of state and local self-government bodies) allows the use of the minority or regional language *alongside* with - and not *at the exclusion of* - the state language). Nevertheless, in art. 11.5 the Russian language is separately mentioned notwithstanding its status of

40. Nevertheless, the main result of the proposed amendments will however not be that the Russian language will be used in fewer situations than it would have been the case according to the previous draft, but that persons belonging to other minorities will also enjoy the same equal protection¹⁰. In practical terms, the Russian language, which meets in almost the entire territory of Ukraine the 10% threshold set out in Article 7 of the Draft, will have to be used in parallel with the State language in many spheres of public and social life.

41. Thus, the question remains whether the role the Ukrainian language has to play in the Ukrainian multilingual society, as the sole State language, is not endangered and whether its integrative force is not diminished by the protection, on the same level, of the regional and minority languages, in the abovementioned spheres.

42. In its previous Opinion, the Venice Commission advised the Ukrainian legislator to identify more adequate solutions to confirm the pre-eminence of the Ukrainian language as the only State language, and to take additional measures to consolidate its role within Ukrainian society.

43. The confirmation, in article 20.1 of the Draft, of the “*mandatory acquisition of a command of the State language sufficient for the individual’s integration into the Ukrainian community*” is welcomed by the Venice Commission¹¹. This requirement is in line with the Draft’s declared purpose of promoting the use and knowledge of the state language as a tool for the communication between persons belonging to different linguistic groups. It is not clear however for the Commission whether the drafters’ intention is to strengthen the position of the Ukrainian language in the education system or only to confirm its current position. Moreover, the teaching of the state language has to be guaranteed in any case, including in the implementation of article 21.4 (on classes or groups with a language of instruction other than that of the educational institution in general) and 21.5 (on language classes/groups created to support numerically insignificant language groups). The same requirement should be fulfilled within the private educational establishments, at least as far as the documents of education obtained at those educational establishments have a public relevance.

44. The Venice Commission also notes that the newly drafted article 24.3 leaves it to the discretion of television and radio companies to broadcast “*in the state language, regional or minority languages, and languages of international communication and other languages, both in one or several languages.*” It considers that these provisions are too broad and vague, as they do not propose any easily applicable yardstick for their effective implementation. No specific requirement is foreseen for the allocation of the general daily broadcast volume to programming in the state language or in minority or regional languages. One could even see these provisions as diminishing the role of Ukrainian language. The Commission recalls in this respect that art 25.3 of the previous draft imposed an obligation on the state national television and radio companies to allocate “*not less than 60% of general daily broadcast volume to programming in the State languages and not less than 20 % to programming in the Russian language*”.

45. Finally, the question also remains whether the Draft Law is in conformity with Article 10 of the Constitution. One of the amendments seems to be intended to confirm the position of the State Language. A new art. 6.5. indeed states: “*None of the provisions in this law shall be interpreted as aiming at narrowing the area of the State language use*”. At the same time, In article 1 of the Draft the state language is defined as “*a legislatively established language, which should be used by state government and documentation control bodies by enterprises, state-owned institutions of education, science, culture, by sectors of communication and information*”, with no reference made to individuals’ related rights and obligations. It is however disturbing to note that, while Ukrainian language should be seen as the only state language as

regional or minority language. In any case, this last provision should be interpreted in view of the contemporary dissemination of the texts in the state language and in the regional language(s).

¹⁰With the exception of the article 14 and 25.2.

¹¹ The following paragraphs 20.1, 20. 2 and 20.3 are devoted to the implementation of the principle of the free choice, but they should be read in connection with the paragraphs 20.7 and 20.8.

required by article 10 of the Constitution, in the same article 1 of the Draft Law, in the context of the new definition of “the regional language or language of minority”, reference is made to “(an) official language(s) of this state”. (*emphasis added*)

46. The Venice Commission recalls in this context the ruling n° 10-rp/99, of 14 December 1999, of the Constitutional Court of Ukraine, according to which Article 10 of the Constitution implies that “*public sectors in which the state language is used include above all the sectors in which legislative, executive and judicial bodies, other state and local self-government bodies exercise their authority (the language of acts, work, records , documentation etc.)*”. The Constitutional Court also held that “*while exercising their authority, local executive bodies, bodies of the autonomous Republic of Crimea and local self-government bodies may use alongside the state language the Russian and other languages of national minorities within the remits and in line with the procedure defined by laws of Ukraine*”. It seems questionable to the Venice Commission that the parallel use of the State language and regional and minority languages, and in practice mostly the Russian language in large spheres of public life and not only on a local level, can still be considered to be in compliance with article 10 of the Constitution, as clarified by the Constitutional Court.

C. The protection of other minority languages

47. In its assessment of the previous draft law, the Venice Commission also made several remarks regarding to the protection of other regional and minority languages. The Venice Commission regretted in this context that no reference was made to the Framework Convention and that the protection of languages was disconnected from the protection of the relevant minority groups (§ 25).

48. While welcoming the special protection, in several provisions of the draft, of the regional and minority languages and their use in areas where the 10% numerical threshold was reached, the Commission noted that the criterion used in these provisions¹² was unclear and therefore failing to ensure legal certainty in this field. In particular, the exact meaning of terms such as “region” , “regional language” and “speaking the language” was unclear (§ 83-89) as well as the question whether in a given territorial unit two or more languages can enjoy this protection (§90).

49. The Venice Commission also recalled that still only a limited number of regional languages were listed in the draft Law, whereas the Language Charter, ratified by Ukraine, guarantees protection to all regional and minority languages. In its most recent report on Ukraine (ECRML 7 July 2010, (2010)6), the Language Charter Committee of Experts had pointed out that the Language Charter also applies to other languages such as Karaim, Krimchak and Ruthenian (§104).

50. Moreover the Commission underlined that, apart from Russian, only very few other regional languages would meet the 10 % threshold to enjoy the special protection (§105-106).

51. The Venice Commission again welcomes the efforts made to take into account its critiques and notes that several provisions of the text have been amended in order to comply with its suggestions.

52. It notes that a reference to the Framework Convention is made in art. 4.1 of the current Draft Law, but regrets that no such a mention is made under art.7 dealing with the protection of regional or minority languages.

53. The efforts made to enhance legal certainty as to the application of the 10% threshold are also commendable. In art. 1 of the new Draft Law, the notion “region” is defined as “a separate self-government administrative unit that may consist of Autonomous Republic of Crimea, oblast, rayon, city, township or village.” The notion “regional language” is also duly specified. The

¹²“regions where a regional or minority language is spoken by 10 % of the population”.

inclusion Rusyn, Karaite and Crimean language in the list of protected regional or minority languages is a positive development.

54. Moreover, in article 7.3, a procedure is introduced for initiating measures “targeted at the use of regional or minority languages”. In addition, a new § 5 stipulates that, “[i]n order to establish belonging of natural persons to particular linguistic groups, questionnaires for the national census shall include a question to identify a person’s native language and his/her belonging to a particular group”. Finally, the draft, by referring to “the territory where (a) regional language(s) is/are used” makes it clear that, in a given territorial unit, two or more languages can enjoy the special protection.

55. As to the application of article 7 on the protection of the language rights of local minorities (“minority in minority” situations) in territories where they reach the threshold of 10% of the population, the remarks the Commission made in its Opinion on the previous draft (§ 93-96) remains valid.

D. The protection of the individual freedom to use the language of one’s choice

56. In its previous Opinion, the Venice Commission welcomed the recognition in several provisions of the draft of the individual freedom to use the language of one’s choice in the spheres of private life, socio-economic activities, science, culture and mass media (see Previous Opinion, §40-43).

57. However, the Venice Commission also made some critical remarks with regard to certain linguistic obligations or certain limitations to the individual freedom of one’s choice introduced by that draft.

58. Such critical remarks were related to possible undue limitations of freedom of expression by the unclear provisions of Art. 9.1 introducing “legal liability” in case of “public humiliation of disrespect” of the Ukrainian or other languages. Similarly, the Commission noted possible undue limitations to freedom of association by Art. 18.3 of the draft preventing enterprises, establishments and organizations from adopting rules on their working languages. The Commission was also concerned that the obligation on cultural events organizers (art. 24 of the draft) to conduct announcements in the state language, Russian and other regional languages of their choice could have, in the absence of adequate public funding for translation, a chilling effect on the organisation of these events (see previous Opinion, § 46, 47 and 48).

59. Here again, the Venice Commission notes the amendments made to the aforementioned provisions to take into account its critiques. As a result, article 8.1 of the current Draft Law provides increased clarity, as the notion of “legal liability” under Article 161 of the Criminal Code of Ukraine is established for offences affecting individuals’ linguistic rights and freedoms. Increased clarity would however be needed as to the meaning, in the context of article 8, of the words “violation of human rights” included in the list of such offences. The notions “humiliation” and “disrespect” remain uncertain as well as the criteria on which criminal liability can be initiated in relation to linguistic offences.

60. The Venice Commission notes that a new sentence of article 18.3. of the new Draft Law explicitly states that “Enterprises can also use other languages in their activity”. Finally, the Draft law does no longer impose announcements in the state language, but leaves it to the discretion of the event facilitators to conduct the announcements, during concerts and other cultural events, in the state language, regional or minority language (art. 23). The Venice Commission partly welcomes, partly deplores this new provision. It considers that it is a legitimate aim that public announcements should be understandable to the persons belonging to all linguistic groups and therefore to require the use of the state language. This being said, the provision of public funding is essential to promote the use of the state language in such events.

V. Conclusions

61. The Venice Commission welcomes the efforts made by the authors of the Draft Law on Principles of the State Language Policy to propose a comprehensive framework for the protection of languages in Ukraine. It notes that the Draft largely draws on the provisions of the 2010 Draft Law on Languages in Ukraine, which has already been subject of the assessment of the Commission. The Commission notes with interest the novelties introduced by the new Draft Law, as well as the fact that a series of amendments have been made in respect of key provisions of the previous draft as a result of its related recommendations.

62. The Venice Commission is of the view that, in general, the present Draft Law represents an improved text compared to the 2010 draft, and the amendments introduced are going into the right direction. In particular, as it is stated by its provisions, the approach underlying the current Draft law seems to be a more balanced one, especially as regards the inter-relation between the protection of the Ukrainian language as Ukraine's state language and Russian, a language which continues to benefit from a prominent position within the country's linguistic landscape.

63. According to the Draft Law, Ukrainian is confirmed as the sole state language, which deserves specific promotion and protection, while the Russian language will enjoy the status of a regional language whose protection and use shall be based on the norms governing the protection of the regional or minority languages. More generally, the need for adequate protection of regional or minority languages, including Russian, in line with the applicable standards, is reiterated by the Draft. The Venice Commission is of the view that this new approach will facilitate the interpretation of the law and the understanding of the legal system of the languages in Ukraine.

64. As a result, the present draft does no longer formally focus on the Russian language, as the references to this language are almost always replaced by a reference to "the regional or minority language". This equalization of the treatment of the Russian language to the treatment of the regional or minority languages appears to be beneficial, in certain areas of public life, to other regional or minority languages. More generally, while clearly stating the aim of the protection of the state language among the purposes and principles of Ukraine's linguistic policy, the Draft Law reflects a rather liberal approach with regard to the protection of Ukraine's regional or minority languages.

65. While welcoming the above-mentioned novelties introduced by the Draft Law, the Commission is of the view that further improvements, increased guarantees and more substantial changes to the normative content of the Draft should be introduced, in order to create conditions for the effective implementation, in line with the applicable international standards, of the principles enshrined in the Ukrainian Constitution and formulated by the Draft itself.

66. As previously noted in this Opinion, the question remains whether, having regard to the specific situation in Ukraine, there are sufficient guarantees, in the current Draft Law, for the consolidation of the Ukrainian language as the sole State language, and of the role it has to play in the Ukrainian multilingual society. The Venice Commission can only reiterate its call, in its previous Opinion, for a fair balance between the protection of the rights of minorities, on the one hand, and the preservation of the State language as a tool for integration within society, on the other hand. It ultimately is for the Ukrainian legislator to decide on this important matter.

67. Particular attention should be paid, alongside other issues raised in the present Opinion, to the adequate coordination of the emphasis given to the free linguistic affiliation of individuals with the criteria chosen for the identification of linguistic groups, which is also a key issue in devising the country's linguistic policy.

68. At the same time, the terminology used in and the definitions proposed by the Draft would need careful review as they are of fundamental importance in such a process. More generally, it would be important that the authors carefully revise the entire Draft as in many parts of it internal references to provisions of the Draft are made with regard to the old draft and are not taking into consideration the modifications introduced with the new text.

69. The Venice Commission remains at the disposal of the Ukrainian authorities, should they ask for further assistance be necessary in this matter.