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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

NORTH MACEDONIA

DRAFT OPINION

ON THE LAW ON THE USE OF LANGUAGES

on the basis of comments by

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I. Introduction

1. On 23 January 2019, the Prime Minister of North Macedonia requested the Venice Commission to prepare an opinion, in the light of European standards and the principle of the rule of law, on the Law on the Use of Languages (hereinafter: "the Language Law"), adopted in 2018, as well as on the alternative to its Article 8 (CDL-REF(2019)019).

2. The English translation of the Language Law and the alternative to its Article 8 was provided by the authorities of North Macedonia. This Law replaced the Law on the use of languages spoken by at least 20% of the citizens of North Macedonia and in the units of local self-government (hereinafter: "the 2008 Language Law"). The rapporteurs also had at their disposal the English translation of the 2008 Language Law, the explanatory note to the Language Law, and some amendment proposals submitted by the political parties from the majority and opposition during the process of the adoption of the Language Law. Inaccuracies may occur in this opinion as a result of incorrect translation of the Language Law and the alternative to its Article 8.

3. For the present opinion, the Venice Commission invited Ms Kiener (Switzerland), Mr Velaers (Belgium) and Mr Vermeulen (Netherlands) to act as rapporteurs. Mr Christian Scheu (Austria), DGII expert, was invited to join the rapporteur group tasked with this opinion. From 5 to 6 September 2019 a delegation of the Venice Commission composed of the rapporteurs Ms Kiener, Mr Velaers, Mr Christian Scheu and accompanied by Mr Markert, Secretary of the Venice Commission, and Mr Bedirhanoglu, legal officer at the Secretariat, visited Skopje. The delegation met with the Prime Minister, the Deputy Prime Minister in charge of European Union Affairs, the Minister of Justice, the Minister of Political System and Inter-Community Relations, the Ministry of Interior, the representatives of various fractions of the Parliament, the Judicial Council, the Constitutional Court, the Prosecutor General's Office, the Bar Association, the Agency for realization of the rights of the communities, the Association of the units of local self-government and the Agency for application of the language law. The Venice Commission is grateful to the authorities of North Macedonia for the preparation of the visit and their hospitality.

4. The present opinion was prepared on the basis of contributions of the rapporteurs and the information provided by the interlocutors during the visit. The draft opinion was examined by the Sub-Commissions on Fundamental Rights, on National Minorities and on Gender Equality at their joint meeting on*… Following an exchange of views with …, it was adopted by the Venice Commission at its … plenary session.*

II. Preliminary remarks

A. Constitutional and legal framework for the use of non-majority languages

5. The 1991 Constitution of North Macedonia allowed the use of non-majority languages in local self-government units only if the language community was in the majority (50%), while a municipal council could decide on the official use of the languages spoken by at least 20% of the inhabitants of its municipality.

6. The conclusion of the Ohrid Framework Agreement[1] on 13 August 2001 significantly broadens the scope for the use of languages of non-majority ethnic communities. The Ohrid

[1] The Agreement was signed between the President of the Republic of North Macedonia, and the political leaders of four main political parties in North Macedonia: two from the Albanian political block (Democratic Party of Albanians and

Framework Agreement envisages a number of measures and mechanisms aimed at improving the situation of non-majority communities in terms of use of their languages and their participation in public life. These are: a more equitable representation of persons belonging to non-majority communities in the central and local administration; decentralisation of state power; introduction of special voting procedures in favour of non-majority communities (double majority rule); establishment of a Committee for Inter-Community Relations; and legal guarantees for the non-majority communities in the fields of education, use of languages, and expression of identity. The political parties representing the Albanian community regard the Language Law as the final step required for the implementation of this Agreement.

7. The Agreement included a number of constitutional amendments which were adopted by Parliament and published in the Official Gazette of 16 November 2001. Most of the provisions on the use of non-majority languages are incorporated into Article 7 of the Constitution, which reads as follows:

> "(1) The Macedonian language, written using its Cyrillic alphabet, is the official language throughout the Republic of Macedonia and in the international relations of the Republic of Macedonia.
> (2) Any other language spoken by at least 20 percent of the population is also an official language, written using its alphabet, as specified below.
> (3) Any official personal documents of citizens speaking an official language other than Macedonian shall also be issued in that language, in addition to the Macedonian language, in accordance with the law.
> (4) Any person living in a unit of local self-government in which at least 20 percent of the population speaks an official language other than Macedonian may use any official language to communicate with the regional office of the central government with responsibility for that municipality; such an office shall reply in that language in addition to Macedonian. Any person may use any official language to communicate with a main office of the central government, which shall reply in that language in addition to Macedonian.
> (5) In the organs of the Republic of Macedonia, any official language other than Macedonian may be used in accordance with the law.
> (6) In the units of local self-government where at least 20 percent of the population speaks a particular language, that language and its alphabet shall be used as an official language in addition to the Macedonian language and the Cyrillic alphabet. With respect to languages spoken by less than 20 percent of the population of a unit of local self-government, the local authorities[2] shall decide on their use in public bodies."

8. Article 8 of the Constitution recognises the principle of "equitable representation of citizens that belong to all communities in public bodies at all levels and in other areas of public life", as a fundamental value of the constitutional order of the Republic.

9. Article 48 of the Constitution guarantees the right of members of non-majority communities to freely express, foster and develop their identity and to use their community symbols. The members of non-majority communities have the right to establish institutions to that end and, alongside instruction in the State language, the right to instruction in their language in primary and secondary

Party for Democratic Prosperity) and two from the Macedonian block (VMRO-DPMNE and SDSM). The conclusion of the Agreement was witnessed by two external actors: the representatives of the European Union (EU) and the United States of America. The Agreement brought to an end the armed hostilities between the state security forces and ethnic Albanian insurgents.

[2] According to Article 90 (2) of the Law on Local Self-Government the municipal council is the competent body within a unit of local self-government to take such a decision.

education. The State has an obligation to guarantee the protection of the ethnic, cultural, linguistic and religious identity of all communities.

10. In addition to the constitutional amendments, the Ohrid Framework Agreement requires the adoption of a new legislation regulating the use of languages in the organs of the State. Consequently, the 2008 Language Law was adopted in July 2008. This Law regulated the use of languages of non-majority communities in several areas: in the Assembly (Article 3), in citizen communication with the ministries (Articles 4 and 18 (2)), in judicial proceedings (Articles 5-14), in the judicial institutions (Articles 15 and 17), in the general administrative procedure (Article 18), in execution of sanctions (Article 19), by the ombudsman (Article 20), in the electoral process and the forms of direct democracy (Articles 21-28), in personal documents (Articles 29-30), in civil registries (Article 31), by the police authorities (Article 32), in broadcasting services (Articles 33-39), in the name of streets, squares, bridges and other infrastructure objects (Articles 40), by the local self-government (Articles 41-43), in financial and economic activities (Articles 44-47), in education and science (Articles 48-53), in cultural activities (Articles 54-56), in the process of free access to public information (Article 57), and in the publishing of legal acts (Article 58).

11. The Ohrid Framework Agreement also contains rules applicable to judicial proceedings. Its point 6.7 stipulates that "[i]n criminal and civil judicial proceedings at any level, an accused person or any party will have the right to translation at State expense of all proceedings as well as documents in accordance with the relevant Council of Europe documents".

12. Additionally, a number of legislative texts contain provisions regarding the use of languages. This is in particular the case of the Criminal Code, the Law on Criminal Procedure, the Law on Civil Procedure, the Law on Primary and Secondary Education, the Higher Education Act, the Law on the publication of the laws and other regulations and acts in the Official Gazette, the Law on the Assembly, the Law on Local Self-Government, the Law on Identity Card, the Law on the Use of the Macedonian language, etc.

13. North Macedonia has ratified international treaties on the protection of human rights, which prohibit discrimination on the ground of language, and which protect minority rights (notably Article 14 of the European Convention on Human Rights (ECHR) and its Protocol 12, Articles 26 and 27 of the International Covenant on Civic and Political Rights, the Framework Convention for the Protection of National Minorities (hereinafter: "the Framework Convention")[3]). Ratified international agreements are part of the internal legal order of North Macedonia and cannot be changed by law (Article 118 of the Constitution).

14. The fulfilment of these international obligations is monitored by the specific supervisory bodies of the Council of Europe (CoE) – the Advisory Committee on the Framework Convention for the Protection of National Minorities[4] (hereinafter: "ACFC"), the European Commission against

[3] North Macedonia signed the European Charter for Regional and Minority Languages (hereinafter: "the Charter") in 1996 but has not ratified it.

[4] See ACFC/OP/IV(2016)001, Fourth Opinion on "the former Yugoslav Republic of Macedonia", adopted on 24 February 2016.

Racism and Intolerance[5] (hereinafter: "ECRI") and the CoE Commissioner for Human Rights[6] – and has led to the adoption of recommendations by the Committee of Ministers of the CoE.[7]

15. The fulfilment of international obligations relating to minority rights has also been monitored by specific supervisory bodies of the United Nations[8] and the European Union.[9]

B. Linguistic situation in North Macedonia and implementation of the 2008 Language Law

16. Data related to the size of the population and its various groups is drawn from the results of the last census, conducted in November 2002. According to the 2002 census, the overall population accounted for 2,022,547, of which 1,297,981 or 64.17% self-declared as Macedonian; 509,083 or 25.17% self-declared as Albanian; 77,959 or 3.85% as Turk; 53,879 or 2.66% as Roma; 35,939 or 1.77% as Serb, 17,018 or 0.84% as Bosniak and 9,695 or 0.47% indicated ethnic Vlach affiliation.[10] Some 20,993 persons or 1.03% indicated as "other".[11]

17. In 30 out of 80 municipalities – in addition to Macedonian – a *de jure* official language is the language, written in its alphabet, of the ethnic community which makes up at least 20% of the population in the municipality. In 26 of these municipalities, including the capital city (Skopje), the official language in addition to Macedonian, is Albanian, in four municipalities it is Turkish, and in one municipality it is Serbian and Romani. In 18 of these 30 municipalities, the non-majority communities make up more than 50% of the population at the local level and, based on the data from the 2002 census, 832.184 citizens (41.14% of the population) live in municipalities with more than one official language.[12]

18. As to the implementation of the legislation on the linguistic rights, the partial enforcement of the 2008 Language Law has been criticized by CoE bodies. When the ACFC for the first time dealt with the 2008 Language Law, it noted with regret that, in practice, the possibilities to use minority languages other than Macedonian in relations with the administrative authorities remained limited on account of the lack of qualified interpreters and translators and insufficient language skills of civil servants. Therefore, the ACFC recommended to put in place conditions necessary for the use of languages of national minorities in dealings with administrative authorities in all municipalities where the Law is applicable and to provide financial means necessary for the employment of more qualified interpreters and translators and additional support to civil servants to acquire more skills in the minority languages.[13]

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[5] See ECRI(2016)21, Report on "the former Yugoslav Republic of Macedonia" (fifth monitoring cycle), adopted on 18 March 2016.

[6] See Press release on 2 February 2018 "Invest in education and language acquisition to build a cohesive society" as well as Report by the CoE Commissioner for Human Rights, on his visit to "the former Yugoslav Republic of Macedonia" from 26 to 29 November 2012, April 2013.

[7] Resolution CM/ResCMN(2019)5 on the implementation of the Framework Convention for the Protection of National Minorities by the Republic of North Macedonia, adopted on 27 March 2019.

[8] See CCPR/C/MKD/CO/2, Concluding Observations of the Human Rights Committee on "the former Yugoslav Republic of Macedonia", adopted on 3 April 2008 and CERD/C/MKD/CO/7, Concluding observations of the Committee on the Elimination of Racial Discrimination on "the former Yugoslav Republic of Macedonia", adopted on 7 March 2007.

[9] See 2019 report of the European Commission on North Macedonia and 2018 report of the European Commission on North Macedonia.

[10] The Constitution refers, in the preamble, to those ethnic groups but the list is not limitative.

[11] See Census of Population, Household and Dwellings in the Republic of Macedonia, Final Data, pp. 34-35.

[12] See Report (2015) "Ohrid Framework Agreement Review on Social Cohesion", pp. 52, 70, 138-139.

[13] ACFC/OP/III(2011)001, Third Opinion on "the former Yugoslav Republic of Macedonia", adopted on 30 March 2011, §§119-121

19. Similarly, the ACFC in its fourth Opinion (2016)[14] concluded that the implementation of some provisions of the 2008 Language Law varied greatly at the level of ministries and at the local level. The ACFC, criticizing the lack of transparency and legal clarity, called on the authorities at the central and local levels to ensure that the legislative framework for the use of languages would be consistently implemented in line with the Constitution. According to the ACFC, the recruitment of public servants with appropriate language skills and the employment of interpreters remained an issue to be solved.

20. Following up on that Opinion, in March 2019, the CoE Committee of Ministers[15] recommended North Macedonia to monitor and ensure the effective implementation of the Language Law at central and local levels, e.g. with regard to the display of minority languages on topographical signs, and to encourage the use of minority languages in the public sphere where possible and refrain from relying exclusively on the 2002 census.

21. In a similar vein, ECRI, in its report of 2010 on North Macedonia,[16] criticized the lack of competent professional interpreters and translators in the minority languages. It recommended the authorities to take steps to ensure that the right to interpretation and translation at all stages of civil and criminal proceedings was effectively guaranteed.

22. These findings of the CoE monitoring bodies are supported by the reports on the implementation of the Ohrid Framework Agreement[17] and by non-governmental organizations.[18] In fact, the inconsistencies in the implementation of the 2008 Language Law are presented in the explanatory note to the Language Law as one of the main reasons for the adoption of the new Law. According to the information gathered by the delegation of the Venice Commission during its visit to Skopje, in spite of the efforts made by the State authorities, the implementation of the linguistic rights remain partial due to the lack of financial and human resources.

23. Even if it is outside the scope of the present opinion, the situation concerning the education in non-majority languages merits some attention due to its importance for effective implementation of the Language Law. Although the Constitution (Article 48) and the Law on Primary and Secondary Education (Articles 4 and 9) recognises the right to instruction of persons belonging to ethnic communities in their languages at primary and secondary level, instruction in non-majority languages is provided at primary and/or secondary level only in Albanian, Serbian and Turkish and in a few schools in Bosnian. As for higher education, the Higher Education Act obliges the State to provide

[14] ACFC/OP/IV(2016)001, *op. cit.*, §§60-64. According to that report, Albanian is used by some ministries on equal terms with Macedonian while other Ministries provide public information in Macedonian and English or in Macedonian only. This sporadic implementation is the case almost in all the areas where the legislation provides for bi- or multilingualism. For instance, in Skopje since the Albanian language is the official language in addition to the Macedonian language, all streets and buildings that are under the competence of the City of Skopje should display bilingual signs and names. This, however, is not the case. While particularly in almost all mono-ethnic minority municipalities, the use of a minority language in official communication is ensured simply by the fact that public servants are themselves fluent, most municipalities which are multilingual in character function on the basis of interpretation services provided at the municipal office. Given budgetary restraints, however, the positions of interpreters are reportedly often not filled, resulting in ad hoc solutions with bilingual bystanders and, ultimately, in a situation where the use of minority languages, even if legally accepted for official use, becomes too cumbersome and lengthy a process to actually take place. See §§60, 62 and 65.

[15] Resolution CM/ResCMN(2019)5, *op. cit.*

[16] ECRI(2010)19, Report on "the Former Yugoslav Republic of Macedonia" (fourth monitoring cycle), adopted on 28 April 2010, §§61-63.

[17] See Report (2015) "Ohrid Framework Agreement Review on Social Cohesion", pp. 27-30 and 146-150.

[18] See in particular Centre for Regional Policy Research and Cooperation "Studiorum": Effective Political Participation Of The Small(Er) Ethnic Communities In Local Self-Government In The Republic Of Macedonia. Skopje, 2011, pp. 55-57.

minority language education wherever the language is spoken by at least 20% of the country's population. This provision in practice applies only to the Albanian language.[19]

24. As regards the teaching of Macedonian, the ACFC notes, in its fourth opinion on North Macedonia, that Albanian students commence the study of the Macedonian language only in the third grade, for two hours per week, and as of the sixth grade for three hours per week. The ACFC states that this is insufficient to gain proficiency. That is all the more so as there are only few opportunities in daily life for Albanian students to use and practise their Macedonian-language skills.[20] This is due, among other reasons, to the separation in schools between Macedonian and Albanian students, which is a longstanding major problem in the country.[21]

C. Scope of the present opinion

25. The Prime Minister requested the opinion of the Venice Commission on the Language Law and the alternative to its Article 8 "from the aspect of their alignment with European standards and principle of the rule of law". The Venice Commission has, therefore, assessed the texts in the light of the European standards applicable to the protection of linguistic rights of national minorities, as laid down in particular in the Framework Convention and the Charter as well as in the light of the principle of the rule of law as explained in the Rule of Law Checklist.[22] The Commission has also taken into account, in its examination, the obligations deriving from the non-discrimination provisions, as enshrined in the ECHR and its Protocol 12, and other international texts.

26. The Commission is aware of the existence of several other laws in North Macedonia regulating the use of the non-majority languages in specific areas (see §11). The Commission had no access to those texts on account of language barriers and, due to the limited scope of the request, has not examined the overall legal framework of North Macedonia in the field of language protection. Therefore, the present opinion refers to the provisions in other laws on linguistic rights only when it is necessary for the assessment of the Law under examination. In fact, many areas regulated by the 2008 Language Law are excluded from the scope of the current Language Law, especially education, broadcasting, culture, economy, etc. There is only a very general reference to those areas in Article 2 (3). Those matters are thus outside the scope of the present opinion, which is limited to the assessment of the provisions of the Language Law and the alternative to its Article 8.

27. The Commission is also aware that the Language Law has been challenged before the Constitutional Court for its non-compliance with the Constitution, including with its Article 7 on the use of non-majority languages (see §7), Articles 98 and 106 requiring a two-thirds majority for adoption of certain laws in the field of judiciary[23] and Article 75 on the promulgation of the laws by the President of the Republic.[24] The Commission is not in a position to take a stance on the

[19] See ACFC/OP/IV(2016)001, *op. cit.*, §75.
[20] See *Ibid.*, § 77.
[21] For more details on this issue, see in particular ECRI(2016)21, *op. cit.*, §50; 2018 report of the European Commission on North Macedonia, pp. 32-33; Statement by the CoE Commissioner for Human Rights, Nils Muižnieks, on 2 February 2018; Report by the CoE Commissioner for Human Rights, on his visit to "the former Yugoslav Republic of Macedonia" from 26 to 29 November 2012, April 2013.
[22] CDL-AD(2016)007, Rule of Law Checklist.
[23] According to Article 98 "[t]he types of courts, their spheres of competence, their establishment, abrogation, organization and composition, as well as the procedure they follow are regulated by a law adopted by a two-thirds majority vote of the total number of Representatives". Pursuant to Article 106 "[t]he competences, establishment, termination, organization and functioning of the Public Prosecutor's Office is stipulated by law adopted by a two-thirds majority vote of the total number of MP's."
[24] On 11 January 2018, the Assembly of North Macedonia adopted the Language Law by a simple majority. Since the President of the Republic refused to sign the decree promulgating the Language Law, the latter was adopted on 14

constitutionality of the Law, as this is the competence of the Constitutional Court and the Commission does not have at its disposal the necessary relevant material (such as the preparatory work of the 2001 constitutional amendments, the case-law of the Constitutional Court, doctrinal comments, etc.) on the interpretation of the relevant provisions of the Constitution.

III. Analysis

A. Procedure of the adoption of the Language Law

28. The process of adoption has drawn strong criticism in North Macedonia as a shortened parliamentary procedure was chosen to pass the new Law. According to the explanatory note, this option was chosen as the Language Law is considered a part of the European integration process due to its link to the implementation of the Ohrid Framework Agreement. Article 170 of the Rules of procedure of the Assembly states that a draft law may be adopted with a shortened procedure if it is "non-complex or non-extensive", if the draft law is about the termination of validity of a law or particular provisions of a law or if it is a "non-complex or non-extensive" draft law of harmonisation with the EU legislation.

29. As a result, the draft law on the use of languages was examined by the Committee on European Affairs instead of the Committee on Political System and Relations Among the Communities. For the same reason, the Committee on European Affairs had only three working days to discuss the amendment proposals.[25] Consequently, out of around 80 amendment proposals made by the opposition only few were discussed before the Committee.

30. Furthermore, the law-making process was, reportedly, conducted in the absence of inclusive and sufficiently effective public consultations due to the decision of the Assembly not to trigger the special public consultation, a specific procedure provided by Articles 145-148 of the Rules of procedure of the Assembly for law proposals of broad public interest. The votes on the Language Law on 11 January and 14 March 2018 were held in the absence of the members of Parliament of the then largest opposition party VMRO-DPMNE[26] and without debating their amendment proposals,[27] which raised fierce public reactions followed by demonstrations.

31. The Commission does not find it necessary for the present opinion to take a stand on the question whether the Language Law should be considered as a law of harmonisation with the EU legislation or whether it is truly linked to the EU integration process. Nevertheless, given the

March 2018, for the second time, by a simple majority. However, the President again refused to sign the decree for its promulgation. On 14 January 2019, the Law was published in the Official Gazette with only the signature of the President of Parliament. In the Act for its enactment, a footnote was added stating the reasons for publication of the Law without the signature of the President of the Republic.

[25] According to Article 171 A and C of the Rules of procedure of the Assembly, in case a shortened procedure is applied to a law proposal, the general review of the proposal and the second reading in the working bodies and the legislative committee shall last no more than three working days and a member of the working body or the committee or a member of Parliament can take the floor several times in total duration of no more than twenty minutes during the general review and only once in duration of ten minutes during the second reading.

[26] According to the information provided by a recent report ("Impact assessment of the regulation on the use of languages in Macedonia", report prepared by Josipa Rizankoska and Jasmina Trajkoska for DIALOGUE – Center for Deliberative Democracy, Prilep, 2018, pp. 19-20), on 11 January 2018, at the 27th session of the Assembly, the Language Law was passed, with 69 votes in favor, out of 69 members of Parliament present at the session, in the absence of the opposition. Finally, on 14 March 2018, for the second time, with 64 votes "for" and none "against" and/or "abstained", the Language Law was voted in the Parliament.

[27] It has been decided not to consider over 35 000 amendment proposals submitted by the opposition during the debate at the Assembly on the ground that they are not constructive but a blocking move by the opposition. See *Ibid.*, p. 50.

importance of the Law, the Commission has doubts whether this can be a valid reason to justify the use of a shortened procedure. The Law cannot be considered as "non-complex or non-extensive" as it regulates an area which in fact affects the society as a whole. In the view of the Venice Commission, the Language Law falls within the category of law proposals with a broad public interest for which a public debate in accordance with the Rules of procedure of the Assembly should have been organised. It is regrettable that a law entailing such a major, and politically sensitive, reform of language policy was passed in such manner, even if questions of language use have consistently been in the focus of attention and public debates in the country.

32. Some interlocutors explained that the Law was prepared as part of a coalition agreement between two political parties (SDSM and DUI) without a proper analysis of the shortcomings of the 2008 Language Law and without consultation with the representatives of the smaller ethnic communities. Since the explanatory note underscores the inconsistencies in the application of the 2008 Language Law as the main rationale behind the adoption of the new legislation, the Commission finds it difficult to understand why the preparation of the draft law was not preceded by an analysis of the causes of the reported inconsistencies (financial capacity, qualified human resources, unwillingness of the employees, absence of interest in the non-majority communities for rights following from the law, etc.), and by an impact assessment of the future law in terms of budget and human resources to be mobilized for a full implementation. As stated in the Venice Commission's Rule of Law Checklist, "[o]bstacles to the effective implementation of the law can occur not only due to the illegal or negligent action of authorities, but also because the quality of legislation makes it difficult to implement. Therefore, assessing whether the law is implementable in practice before adopting it […] is very important."[28]

33. The Venice Commission has always been highly critical of rushed adoption of acts of Parliament, regulating complex and sensitive matters or having a major importance for society, without consultations with the opposition, experts and civil society and without necessary impact assessment.[29] For a law such as the Language Law, it is particularly important that all the linguistic communities affected by the Law be consulted[30], which reportedly did not happen. In the opinion of the Commission, a broad and inclusive consultation could have improved the material quality of the Language Law, enhanced its legitimacy and made it easier to enforce.[31]

B. Analysis of the content of the Language Law

[28] CDL-AD(2016)007, *op. cit.*, §54.

[29] See CDL-AD(2019)014, Opinion on Emergency Ordinances GEO No. 7 and GEO No. 12 amending the Laws of Justice of Romania, §11; CDL-AD(2012)026, Opinion on the compatibility with Constitutional principles and the Rule of Law of actions taken by the Government and the Parliament of Romania in respect of other State institutions and on the Government emergency ordinance on amendment to the Law N° 47/1992 regarding the organisation and functioning of the Constitutional Court and on the Government emergency ordinance on amending and completing the Law N° 3/2000 regarding the organisation of a referendum of Romania, §74; CDL-AD(2018)017, Opinion on draft amendments to Law No. 303/2004 on the Statute of Judges and Prosecutors, Law No. 304/2004 on Judicial Organisation, and Law No. 317/2004 on the Superior Council for Magistracy of Romania, §§33 and 34; CDL-AD(2017)022, Opinion on Article XXV of 4 April 2017 on the Amendment of Act CCIV of 2011 on National Tertiary Education of Hungary, §54; CDL-AD(2011)001, Opinion on three legal questions arising in the process of drafting the New Constitution of Hungary, §§16-19.

[30] Article 15 of the Framework Convention requires parties to create conditions for the effective participation of persons belonging to national minorities to public affairs, in particular those affecting them. Pursuant to the Explanatory Report to the Framework Convention, this involves inter alia consultation with these persons when States are contemplating legislative or other measures likely to affect them directly, as well as involving them in the assessment of the possible impact that planned measures might have on them. See p. 22, §80.

[31] See CDL-AD(2010)017, Opinion on the Draft Law on Normative Legal Acts of Azerbaijan, §46.

1. Scope of the Language Law

34. Article 1 (3) implies that Albanian, in addition to the Macedonian language, is also an official language "in all organs of the central government in the Republic of Macedonia, central institutions, public enterprises, agencies, directorates, institutions and organizations, commissions, legal entities that discharge public authorities in accordance with the law and other institutions". Article 2 implies that all these organs and institutions have the responsibility to enable the use of those official languages by the citizens in any proceedings and to conduct, under certain circumstances, those proceedings bilingually. The Albanian language should be used in the communications of the citizens with the public institutions (Article 6), in the communications between civil servants of those public institutions (Article 3), and in the work of Parliament, the Government, and the State Election Commission (Articles 4, 5 and 15). All laws, bylaws, decisions and adverts of these organs and institutions shall be published in Macedonian and Albanian (Article 17). Their websites (Articles 6 (4) and 9 (6)), names (Article 7 (1) and (2)), stamps (Article 7 (3)), payment forms, fiscal reports, and invoices (Article 8 (2)) have to be bilingual.

35. Additionally, in Skopje and in the units of local self-government in which at least 20% of the citizens speak Albanian, the civil registries shall be kept in Macedonian and Albanian, all the decisions, certificates and other acts of civil registries issued for Albanian speakers including their ID cards and passports shall be bilingual (Article 12). The name of streets, squares, bridges, and other infrastructure objects, road signs (Article 16), police, firefighter, healthcare worker uniforms (Article 8 (3)) shall also be in both official languages.

36. Compared to the 2008 Language Law, the new Law greatly extends the use of the Albanian language. The extension of the use of minority languages is in principle a positive decision to be encouraged. However, this should be done in compliance with the Constitution. In the context of North Macedonia this extension raises the question whether the Law and more specifically its large scope of application complies with Article 7 of the Constitution, which provides that a language spoken by at least 20% of the population can also be an official language, "*as specified below*" (see §7). As this constitutional issue is currently being examined by the Constitution Court, the Venice Commission has to respect the *sub judice* principle and will, therefore, abstain from further commenting on this and other issues of constitutionality that the Law may raise (see §§44, 50, 82, 84-86).

2. Lack of clarity and precision

a. Ambiguity regarding the term "language spoken by at least 20% of the citizens"

37. Many provisions of the Law require further clarifications and precisions. That need emerges starting from the first Article of the Law. This Article states, in its first paragraph, that "throughout the territory of the Republic of Macedonia and its international relations, the official language is Macedonian in its Cyrillic script". Its second paragraph stipulates that "other language spoken by at least 20% of the citizens (Albanian language) and its alphabet is also the official language". The second paragraph links the abstract definition "language spoken by at least 20% of the citizens" to a concrete language, that is, "Albanian language".[32] Besides a very short reference in Article 18 (3), Article 1 (2) is the only provision that explicitly mentions the Albanian language. Throughout the

[32] However, for the sake of conciseness, in the present opinion the terms "Albanian" or "Albanian language" are sometimes used instead of the term "a language other than Macedonian which is spoken by at least 20% of the citizens" wherever it is clear that the latter term refers to the Albanian language.

whole text it is the term "language(s) spoken by at least 20% of the citizens" which is repeatedly used.

38. The choice to refer to a specific language or to a neutral term is up to the legislator. Both choices are acceptable. Nevertheless, if the main goal of the Language Law is to clarify and assure the implementation of Article 7 of the Constitution (as it is stated in the explanatory note), and since the Language Law is conceived by its Article 23 as a reference text in respect of the linguistic rights of the non-majority communities with which the other legislative texts should be harmonized, the obligations and rights deriving from the Law in respect of all the non-majority languages should be clearly defined. This is all the more important as the Language Law affects the fundamental rights of all the non-majority communities, which – taken together – constitute a significant percentage of the Macedonian society (see §16), and imposes on the public institutions and their employees obligations coupled with severe pecuniary sanctions in case of non-compliance. Not least, the clarity and precision of the Law are of paramount importance because the textual ambiguities are likely to complicate its implementation, monitoring and evaluation.

39. However, the Language Law clearly does not fulfil the legal clarity requirements. First of all, the way the term "language(s) spoken by at least 20% of the citizens" and other similar terms ("the official language spoken by the citizen" in Article 12 (1) and (2); "an official language other than Macedonian" in Article 12 (1)) are used in the Law makes it sometimes difficult to understand in which provisions the Law refers to Albanian only and in which ones it refers to other non-majority languages (Turkish, Vlach, Serbian, Bosnian, Romani, etc.) as well. This is, for instance, the case of Article 9 (6) which regulates the use of non-majority language(s) for the names of the institutions in Skopje and in the units of local self-government where at least 20% of the citizens speak an official language other than Macedonian.[33]

40. In light of the above observations, the Venice Commission recommends to revise the Law so as to provide sufficient clarity with regard to its scope of application. It should be clear for everyone which provisions of the Law apply only to Albanian and which ones also apply to other non-majority languages.

b. Ambiguities regarding the areas and legal entities covered by the Law

41. The textual ambiguity also stems from other terms used in the Language Law. Article 1 (3) lists a number of institutions (all organs of the central government, central institutions, public enterprises, agencies, directorates, institutions and organisations, commissions) where Albanian is considered as an official language. This paragraph uses the term "legal entities that discharge public authorities in accordance with the law and other institutions". It is not clear if this provision also includes private companies which exercise state power in accordance with the law in order to provide public services, such as postal services, transportation companies, hospitals, kindergartens, media outlets, and so on. On the other hand, Article 2 (3) provides a different list of institutions while referring to the use of languages in communication and proceedings. The different wording creates unnecessary confusion and should therefore be reconsidered.

[33] The same ambiguities arise also with regard to Articles 7, 8 (3), 12-14 and 16. Many provisions refer to the "language spoken by at least 20% of the citizens in the Republic of Macedonia" (Articles 9 (7), 10, 11 (1), 18 (1), 19) while some refer to the term "language spoken by at least 20% of the citizens" (without the term "in the Republic of Macedonia". See Articles 11 (2), 12 (1) and (3), 16 and 17). Such formulations first give the impression that the former wording refers only to the Albanian language whereas the latter wording refers to a language spoken by at least 20% of the citizens at the local level. Although such an interpretation makes sense in some provisions (e.g. Article 11), a closer examination of the Law shows that this interpretation is not always correct. For instance, Articles 12 and 17 use the term "language spoken by at least 20% of the citizens" but the Venice Commission delegation was told that those provisions apply only to the Albanian language.

42. It should also be noted that the scope of Article 2 (3), enumerating the areas where the proceedings of citizens before the public institutions can be conducted in both Macedonian and Albanian language, is extremely broad ("electoral process, education, science, healthcare, culture, in the discharge of police authorizations, broadcasting activities, notary work, enforcement, infrastructure objects, civil registry, personal documentation, finances, economy, as well as in other areas"). This contributes to the lack of clarity of the Law and poses many questions, in particular with regard to the use of the Albanian language by private companies. Articles 1 (3) and 2 (3) should be reworded in order to clearly define the areas and legal entities covered by the Language Law. This is all the more necessary as there are many references to these two provisions in other Articles of the Language Law.

c. Ambiguity regarding the use of the word "shall" and the right to free self-identification

43. The use of the word "shall" in many provisions of the Law (Articles 4-6, 9-10, 12) (and the word "will" in Article 5 (3)), which indicates an obligation to use a non-majority language, contribute to the general ambiguity of the Law:

► Article 4 (2) and (3) stipulates that a member of Parliament, an elected or appointed official of Parliament speaking a language other than Macedonian which is spoken by at least 20% of the citizens (that is, Albanian language) "shall" speak in that language at the sessions of Parliament and its working bodies and "shall" use that language when chairing those sessions.

► Article 5 (4) states that "an elected and appointed official speaking" Albanian "shall" speak in that language at the sessions of the Government and its commissions and the General Collegium of State Secretaries. These sessions "will" be chaired in Albanian if they are chaired by an elected and appointed official speaking Albanian (Article 5 (3)).

► Article 6 (3) stipulates that an elected or appointed person working for the public institutions and speaking Albanian "shall" write his or her name in the "native language and alphabet" in the decisions and other acts of the concerned institutions.

► According to Article 9 (2) and (3), 10 (2), and 11 (1), all judicial and administrative proceedings "shall" be conducted in Albanian and Macedonian if one of the participants (a judge, a public prosecutor, a party or another participant) speaks Albanian.

► Article 12 (3) states that personal and travel documents of persons speaking another official language "shall be issued *ex officio*" in both Macedonian and the language spoken by the citizen concerned.

44. On the occasion of the visit of the Venice Commission, the authorities explained that Articles 4 and 5 of the Law do not impose an obligation on Albanian speakers to use the Albanian language in the sessions of Parliament and Government and their working bodies. However, they acknowledged that the Law should have been clearer on this point. Some other provisions expressly refer to the right of the citizens (Article 2 (1) and (2)) or the possibility (Articles 10 (1), 13 (2), 14) to use a non-majority language. In this regard, it should be noted that some members of Parliament had proposed, in the process of the adoption of the Language Law, the replacement of the terms "will" in Article 5 (3) and "shall" in Article 4 (3) by the word "may". This reinforces the impression that the Law is not sufficiently clear on this point. In the opinion of the Commission, Article 7 of the Constitution conceives the use of a non-majority language as an individual right rather than an obligation since it stipulates, in paragraph 4, that "[a]ny person may use any official languages to communicate" with the institutions of central government. This ambiguity should be removed.

45. In the discussions with the Venice Commission delegation, the authorities acknowledged that Article 12 of the Law *obliges* Albanian speakers to have their personal and travel documents issued in Macedonian and Albanian and that in practice, the Law is implemented in this manner. However, the persons belonging to the smaller ethnic communities can opt for a bilingual or monolingual ID card or passport (Articles 13 and 14).

46. The imposition of the use of Albanian or any other non-majority languages on individuals (whether in their dealings with the public administration, in the administrative or judicial proceedings they take part in or in their personal documents) constitutes a violation of the right to freedom of expression (especially in respect of Articles 4 (2) and 5 (4) of the Language Law) and the right to free self-identification. The latter, which implies the right to freely choose to be treated or not to be treated as a person belonging to a national minority, is enshrined in Article 3 of the Framework Convention for the Protection of National Minorities. As clarified by the ACFC "free self-identification implies the right to choose on a situational basis when to self-identify as a person belonging to a national minority and when not to do so. In practice, this means that each person belonging to a national minority may freely decide to claim specific rights contained in the Framework Convention, while under certain circumstances or with respect to certain spheres of rights, he or she may choose not to exercise these rights".[34] This also implies that "[p]ersons belonging to national minorities may for instance choose to have their name officially recognized in a minority language but in parallel not use their minority language in contact with local administrative authorities."[35]

47. The Law should be revised in order to make clear that the citizens have a right and not an obligation to use non-majority languages.

d. Ambiguity regarding the use of the term "speaking"

48. In most provisions, the Law gives the right (or imposes the obligation) to use the non-majority languages only to individuals "speaking" those languages. For instance, Article 5 (3) stipulates that "when the sessions of the government […] are chaired by an elected or appointed official speaking a language other than Macedonian" they will be chaired in that language (see also Articles 3-6 and 9-14).

49. The authorities explained to the rapporteurs that the term "speaking" refers to the belonging of a person to an ethnic/linguistic minority and not to the capability of a person to express him/herself in a specific language. For the stake of textual clarity, this definition should be clearly stated in the Law.[36] Another question in this regard is how to identify a person as a member of an ethnic/linguistic community. Even though a bilingual ID card gives an indication, a non-bilingual ID card does not always mean that the holder does not belong to a non-majority community and a bilingual ID does not necessarily mean that its holder speaks both languages.

50. In the opinion of the Commission, it would be preferable if the Law does not link the right to use non-majority languages in accordance with the Law to the ethnic/linguistic belonging of the person. This approach would be more in conformity with the spirit and the letter of the Constitution which states, in its Article 7 (4), that "[a]ny person […] may use any official language to communicate with the regional office of the central government […] [and] […] with a main office of the central

[34] ACFC, Thematic Commentary n°4, 2016, §§ 11-12.
[35] *Ibid.*, Footnote 17. For the ECtHR's approach on the right to free self-identification, see *Molla Sali v. Greece* [GC], no. 20452/14, § 157, 19 December 2018.
[36] The concept of "speaking the language" was previously criticised by the Venice Commission in its opinion CDL-AD(2011)008, Opinion on the Draft Law on languages in Ukraine, §88.

government, which shall reply in that language in addition to Macedonian". Under the current Language Law, the use of a non-majority language automatically relates the person concerned to an ethnic/linguistic community. This is hardly reconcilable with the right to free self-identification set out in Article 3 of the Framework Convention.

51. Article 3 of the Law makes the use of the Albanian language by the institutions mentioned by Article 1 (3) and 2 (3) conditional upon the presence of one of the elected or appointed officials speaking that language. The authorities explained that this provision is only about the official communication between and within the public institutions. This should be clearly stated in that provision.

52. As regards the correspondence between and within the public institutions, the authorities explained that in practice, if the sender or the receiver of a correspondence is an Albanian speaker, the correspondence is written in Macedonian and translated into Albanian language or vice-versa. Some interlocutors also complained that it was not always possible to know if the receiver is an Albanian speaker or not; usually, they decide on the basis of the name of the receiver if the correspondence should be translated into Albanian before being sent and it may happen that they send a Macedonian letter with Albanian translation to a person who is actually not an Albanian speaker. There would be no such problems if the Law would allow any person to use the Albanian language in communication between/within central public institutions. In this case, each civil servant would simply decide if they want to use bilingual correspondence and if they use it, they would then receive a bilingual answer to their correspondence.

53. Another point to be clarified in respect of Article 3 is whether the term "official communication" also covers the verbal communication. This point should be given a serious consideration, as bilingual verbal communication with Albanian speakers would require the allocation of considerable financial and human resources and might affect the efficiency of public administration.

e. Need of precision regarding the population census

54. The 20% threshold which determines the status of the non-majority languages at the national and local levels is based on the results of the last census, conducted in November 2002. However, this is not stated in the Law. In the view of the Commission, it would be useful to clarify in the Law that the 20% threshold is determined by the most recent population census.

55. As regards the census of 2002, the ACFC noted in its fourth opinion (2016) on North Macedonia that the reliability of its results is widely viewed as doubtful for a variety of reasons: the overall population is considered to have substantially decreased in recent years owing to large-scale emigration, unawareness of the significance of ethnic affiliation in order to gain access to minority rights, lack of information as for the possibility to indicate multiple affiliations, etc.[37] Some representatives of the non-majority communities that the Venice Commission delegation met in Skopje expressed doubts regarding the accuracy of the results of the 2002 census, too.

56. The Venice Commission is, therefore, pleased to learn that the authorities established a working group in order to set the principles and method for conducting a new population census, which is expected to take place in 2020. The Venice Commission wishes to highlight the importance of having reliable data on the ethnic composition of the population for the implementation of the Language Law. Accuracy of those data is crucial especially wherever the enjoyment of minority rights

[37] ACFC/OP/IV(2016)001, *op. cit.*, §§13-14.

is dependent on census-based thresholds as it is the case in North Macedonia.[38] The Commission urges the authorities and all other actors to take into consideration the recommendations of the relevant international organizations, especially the principle of free self-identification, when organizing the new population census.

3. Linguistic rights of the small(er) non-majority communities

57. Pursuant to the Constitution (Article 7 (6)) and the Language Law (Article 1 (4)), in the units of local self-government the language and the alphabet used by at least 20% of the citizens/population is the official language in addition to the Macedonian language and the Cyrillic alphabet. As regards the languages spoken by less than 20% of the citizens/population of a unit of local self-government, it is up to the municipal council to decide on their use in public bodies.

58. As explained above, it is not always clear which provisions of the Law refer to Albanian as the language spoken by at least 20% of the citizens at the national level and which ones also apply to other non-majority languages. This textual ambiguity makes it difficult to understand how the linguistic rights of the persons belonging to the small ethnic communities (those constituting less than 20% of the citizens at the national level, such as Turks, Serbs, Roma, Bosniaks, Valchs, etc.) fit into the structure of the Language Law.

59. In fact, the only provisions expressly dealing with the rights of the persons belonging to the small ethnic communities are Articles 13 and 14 of the Law, regulating the personal and travel documents. However, it follows from the discussions held in Skopje that Articles 7 (name of central institutions), 15 (sessions of the municipal election commissions), and 16 (names of streets, squares, bridges, and so on) are also applicable to the languages spoken by at least 20% of the citizens at the municipal level. These provisions should be redrafted accordingly.

60. The margin of discretion of the municipal councils when deciding on the use of languages spoken by less than 20% of the citizens at the local level is another point to be clarified in the Law. Article 7 of the Constitution allows the local authorities to decide on the use of those languages "in public bodies". However, in practice, in three municipalities, the municipal councils have declared languages spoken by less than 20% of citizens at the local level as local official languages without determining in which areas at the local level those languages can or shall be used. This practice shows that there is a need to define in the Law more clearly the margin of discretion of the municipal councils in this matter.

61. In the opinion of the Commission, leaving the use of minority languages solely to the discretion of the municipal councils is not in compliance with the Framework Convention when this implies that a community which should enjoy the protection from the Framework Convention is not protected at the municipal level. Moreover, the total discretion left to the municipal councils in this area may result in a very inconsistent implementation of the Framework Convention, which can hardly be deemed to be in compliance with the principle of non-discrimination. The ACFC regretted, in its 2016 opinion on North Macedonia, "the lack of unified practice as it sends an ambiguous signal about the interpretation of the constitutional and legislative provisions with respect to the use of languages, that is not conducive to transparency and legal clarity."[39]

62. The Venice Commission, therefore, recommends that the Language Law lay down some guidelines or criteria based on which a municipal council should decide on the use of a non-majority

[38] On this issue, see also CDL-AD(2012)011, Opinion on the Act on the Rights of Nationalities of Hungary, §§40-45.
[39] ACFC/OP/IV(2016)001, *op. cit.*, §17.

language at the local level. It should, however, be underlined that these guidelines or criteria should not create arbitrary and unjustified distinctions and the need for the protection of persons belonging to the national minorities in light of each provision of the Framework Convention should be the first guideline.

4. Use of languages on the banknotes, coins, official uniforms, postal stamps, payment forms, fiscal reports and banderoles

63. Article 8 (1) provides that the banknotes, coins and postal stamps shall contain symbols representing the cultural heritage of the citizens speaking the Macedonian language and the citizens speaking the Albanian language. Its second paragraph provides for bilingualism on postal stamps, payment forms, fiscal reports, invoices and banderoles. Pursuant to the third paragraph, police, firefighter and healthcare worker uniforms in the municipalities where at least 20% of the citizens speak an official language other than Macedonian shall be written in Macedonian and the language spoken by at least 20% of the citizens in the Republic of North Macedonia.

64. The authorities provided an alternative text for Article 8. The alternative broadens the scope of Article 8 by providing additionally for bilingualism on "banknotes, coins, and securities" and adding the "uniform of defense" to the third paragraph.

65. In the view of the Commission, both Article 8 of the Language Law as well as the alternative text go beyond the minimum standards of minority protection laid down in European and international documents. Not even the very detailed Charter contains regulations concerning banknotes, coins, postal stamps and uniforms.[40]

66. That being said, the use of more than one language on banknotes, coins, and stamps is not completely unprecedented, as e.g. Article 3 of the Constitution of the Republic of Cyprus states that the two official languages (Greek and Turkish) shall be used on coins, currency notes and stamps. In Canada and Bahrein, banknotes are bilingual (in Canada they are in French and English and in Bahrein they are in Arabic and English). In Israel they are trilingual (Hebrew, Arabic and English). In Switzerland, written information on banknotes is in all four national languages (German, French, Italian, Romansh). In Serbia both Latin and Cyrillic letters figure on both, banknotes and coins. As for Euro, the name of the currency appears on both sides of the banknotes, written in the Latin, Greek and Cyrillic alphabets. The initials of the European Central Bank appear on the front of the banknotes written in all European languages. However, the practical application of such provisions may encounter some problems in practice as, especially on coins and stamps, there is limited space. Also for that reason, Switzerland uses the Latin name "Helvetia" on coins and stamps.

67. As for the official uniforms, it is rare to find more than one language on them (whether it be police, military, firefighter or healthcare worker uniforms). In Canada for instance, shoulder badges of the military must reflect the official language of the unit, i.e. for English-language or French-language units, the language used in the unit. In bilingual units, a French or English badge is used at the discretion of the person concerned. In Switzerland, as a rule, the uniforms of cantonal and city police forces and healthcare workers are in the language of the cantons concerned.

[40] The Charter only contains a provision (Article 13 (2) a) stating that the parties undertake, within the territory in which the regional or minority languages are used, and as far as this is reasonably possible to include in their financial and banking regulations provisions which allow, by means of procedures compatible with commercial practice, the use of regional or minority languages in drawing up payment orders (cheques, drafts, etc.) or other financial documents.

68. As the relevant international legal standards do not regulate these issues, there is no conflict between Article 8 (and its alternative) and international conventions. Given the clear numerical superiority of the Albanian minority over the smaller ethnic communities, the provision is not to be considered as discriminatory. The European standards (e.g. Framework Convention and the Charter) do not impose an obligation on the State authorities to grant an identical protection to every single minority group.[41]

5. Citizenship criterion

69. The Language Law recognises the right to use a non-majority language only for the citizens of the Republic of North Macedonia. By contrast, pertaining to Article 7 of the Constitution, "any person […] may use any official language to communicate" with public institutions. The term "any person" a priori includes non-citizens as well.

70. In the opinion of the Venice Commission, the reservation of the right to use a non-majority language only to the citizens, excluding the non-citizens, has to be justified in the light of the principle of non-discrimination The Commission wishes to recall that in a number of opinions it expressed itself on the issue of the citizenship requirement with regard to legislation protecting national minorities. In this context, the Commission stressed that "a new, more dynamic tendency to extend minority protection to non-citizens has developed over the recent past." In many opinions, the Commission recommended States not to limit the rights for national minorities to citizens but to add the reference to citizenship only to the specific clauses relating to rights specifically reserved to citizens, such as certain political rights (e.g. participation in elections at the national level), access to civil service or right to return to the country after having left it.[42] Those rights that can be reserved to the citizens are not within the scope of the Language Law.

71. Following the abovementioned trend, the Commission recommends to remove citizenship as a condition for the enjoyment of the rights spelled out in the Language Law.[43] Also, the Commission wishes to draw the attention of the legislator to the judgments of the Court of Justice of the European Union in the cases *Rüffer* (2014) and *Bickel and Franz* (1998) where the Court concluded that there would be discrimination if a EU State allows only its citizens – and not the citizens of other EU States – to use a minority language in judicial proceedings. In case and when North Macedonia becomes member of the EU it would, therefore, be necessary to broaden the scope of the Language Law in order to include EU citizens who speak the languages spoken by non-majority communities in North Macedonia.

6. Difficulties related to the implementation of the Language Law

a. Use of the Albanian language in dealings with and within the central administration

72. The 2008 Language Law was, reportedly, not implemented comprehensively. Its application in practice suffered in particular from the lack of civil servants speaking the non-majority languages,

[41] See CDL-AD(2011)008, *op. cit.*, §108.

[42] CDL-AD(2004)013, Opinion on Two Draft Laws amending the Law on National Minorities in Ukraine, §§16-22; CDL-AD(2004)026, Opinion on the Revised Draft Law on Exercise of the Rights and Freedoms of National and Ethnic Minorities in Montenegro, §§31-36; CDL-AD(2004)036, Opinion on the draft Law on the status of indigenous peoples in Ukraine, §§25-26; CDL-AD(2005)026, Opinion on the draft Law on the status of national minorities living in Romania, §§24-30 and 36.

[43] This was recommended by the ACFC as well in its third Opinion on North Macedonia, ACFC/OP/III(2011)001, §§34 and 35.

the lack of qualified interpreters and translators, the lack of financial means and the lack of political will. In order to ensure its full and effective implementation, the new Law establishes a new agency and inspectorate, as well as superiority of the Language Law over the other legislation in the area of the use of non-majority languages and imposes pecuniary sanctions for non-compliance with the Law. However, the use of the Albanian language in public bodies is extended in such a manner that despite these measures the implementation of the new Law appears to be very complicated.

73. Under the 2008 Language Law, only the Albanian speaking citizens who live in areas where 20% of the citizens speak Albanian have a right to use their own language in communication with the ministries and with their district units located in the respective areas and receive a reply in Albanian (Article 4).[44] The Language Law extends this right to all Albanian speaking citizens regardless of their place of residence, and to all central institutions (Articles 2, 6 and 11). All the administrative proceedings before central institutions (Parliament, President of the Republic, Government, Ombudsman, State Election Commission, Ministries, and other institutions) will be conducted in both Macedonian and Albanian on condition that an Albanian speaking citizen who participates in the proceedings so requests. In this case, all the decisions, acts, and other documents shall be issued in both languages (Articles 2, 6 and 11). The Albanian language shall be used in internal and interinstitutional communication by the officials of the central institutions located in Skopje and other municipalities where Albanian is spoken by at least 20% of the citizens on condition that at least one of those officials is an Albanian speaker (Article 3).[45]

74. Those provisions go beyond the European standards. Both the Framework Convention (Article 10 (2)) and the Charter (Article 10) impose an obligation on the State parties to ensure, "as far as possible" and only "in areas inhabited by persons belonging to national minorities traditionally or in substantial numbers"[46] the use of the minority languages in relations between the persons belonging to national minorities and the administrative authorities. The extension of the right of Albanian speakers to use their language in relations with administrative authorities is positive as it will promote their participation in public affairs by contributing to more effective communication between Albanian speakers and the authorities. The Commission encourages the authorities to make the necessary efforts to ensure effective implementation of this right.

75. Nevertheless, the use of the Albanian language by civil servants in all communication within and between public institutions may adversely and severely affect the functioning of the public administration, especially if this provision is interpreted as covering also verbal communication between civil servants.

76. The Venice Commission recalls that granting language rights to individuals implies assuming positive obligations on the part of the State, which has to provide the personnel to facilitate linguistic services in administration, justice and so on. The implementation of the provisions on bilingualism in communications and proceedings of the citizens requires a considerable amount of financial resources. Adding to this the bilingualism in communications between civil servants will seriously increase expenses of the public authorities. Even if the State mobilises sufficient financial resources, the institutions would need to recruit a sufficient number of highly qualified interpreters/translators in both Macedonian and Albanian, that North Macedonia does not seem to have. Many interlocutors of

[44] Under the 2008 Language Law (Article 18) it is not clear whether or not the use of the Albanian language in administrative proceedings of the citizens before public authorities is limited to the areas where Albanian is spoken by at least 20% of the citizens.

[45] According to the information provided by the authorities around 19.6% of the employees of the public administration belong to the Albanian community.

[46] The exact formulation used by Article 9 of the Charter is "within the administrative districts of the State in which the number of residents who are users of regional or minority languages justifies the measures specified below".

the Venice Commission expressed doubts about the capacity of the central institutions to implement all provisions of the Language Law and some authorities complained of unavailability of the necessary means in the current situation in terms of finance, staff and training possibilities for the enforcement of their legal obligations regarding the use of non-majority languages. The Venice Commission delegation was informed that most of the public institutions are still waiting for the allocation of additional budget in order to recruit translators/interpreters.

77. Article 23 foresees one year as from the date of entry into force of the Law (which means until 14 January 2020) for all the competent institutions to enact the necessary bylaws for the implementation and start implementing the Law (Article 23). This period seems too short. In fact, the Venice Commission delegation was informed that only little had been done in terms of the enactment of bylaws.

78. Given the broad scope of the Law and the insufficient number of interpreters, translators and bilingual staff currently available to fulfil the need of the public institutions, even with a strong political will, North Macedonia would probably need several years for a full implementation of the Law. Until all the necessary conditions for bilingualism are met, the Language Law risks being implemented incompletely as it was the case of the 2008 Language Law even ten years after its adoption. The Commission recalls that a proper implementation of the law is a crucial aspect of the Rule of Law. "[T]he very essence of the Rule of Law would be called in question if law appeared only in the books but were not duly applied and enforced."[47]

79. In light of the above observations, the Commission recommends either to revise Article 3 of the Law, e.g. by limiting its scope to written official communication, or to postpone its entry into force until proper implementation of this provision appears realistic.

b. Use of the Albanian language in judicial proceedings

80. Pursuant to the Language Law, all judicial proceedings (civil, criminal, pre-investigative, investigative, misdemeanour, litigation, non-litigation proceedings, etc.) before courts – including the high courts – and public prosecutors (no matter where the institution is located) will be conducted in Macedonian and Albanian if this is requested by one of the participants of the proceedings (parties, judges,[48] prosecutors, etc.) who is an Albanian speaker.[49] This entails that all the decisions, written submissions and other documents and materials related to the proceedings should be issued in both languages and simultaneous/consecutive interpretation for all the presentations, statements, hearings pertaining to the conduct of the proceedings should be assured (Articles 2, 6, 9 and 11).

81. The Law is, without doubt, very ambitious. Even if a proceeding was conducted before a first instance court only in the Macedonian language, the whole file should be translated into Albanian at the stage of appeal if this is requested by a judge of the appeal court who is an Albanian speaker. Likewise, even if all the parties agree on the monolingual conduct of proceedings or they are simply

[47] CDL-AD(2016)007, *op. cit.*, §§25 and 53. The need for ensuring proper implementation of the legislation is often underlined by the Venice Commission: see, among many others, CDL-AD(2014)003, Joint Opinion on the draft Law amending the electoral legislation of Moldova, §11 and CDL-AD(2014)001, Joint Opinion on the draft Election Code of Bulgaria, §85.

[48] According to the information provided by the authorities there are 506 judges in North Macedonia and 24.1% of them belong to the non-majority communities, mainly to the Albanian community.

[49] It is not clearly stipulated in the Law that there must be a request. However, the authorities explained that the fact that an Albanian speaker takes part in the proceedings would not be sufficient; he or she should request a bilingual conduct of the proceedings.

not Albanian speakers, due to request of an Albanian speaking judge, prosecutor or lawyer, the proceedings should be conducted in both languages.

82. The use of non-majority languages in judicial proceedings does not seem to have an explicit constitutional basis. In no provision, the Constitution expressly refers to a right to request bilingual conduct of judicial proceedings. As for the Ohrid Framework Agreement, the constitutional amendments that it required do not explicitly address the issue of the judiciary. The only reference to be found in the Agreement on this issue limits the use of non-majority languages in judicial proceedings to the minimum standards enshrined in the Council of Europe documents (see §11) in the interest of the private persons involved in judicial proceedings. The Agreement clearly does not require the use of a language other than Macedonian if one of the judges, lawyers or prosecutors speaks that language.

83. The Language Law goes far beyond the European standards. Under the Charter (Article 9) – which contains the highest European standards for the use of minority languages in judicial proceedings –, the parties undertake to provide that the courts shall conduct the proceedings in the regional or minority languages, only "in respect of those judicial districts in which the number of residents using the regional or minority languages justifies [those] measures", and on condition that this is requested by one of the parties and this "is not considered by the judge to hamper the proper administration of justice".[50] Unlike the Charter, under the Language Law, the use of the Albanian language is not limited to the proceedings taking place in some districts only and bilingual conduct of proceedings can be requested not only by the parties to the proceedings but all the participants (judges, prosecutors, lawyers, etc.).

84. This may raise an issue of constitutionality of the provisions regarding the use of the Albanian language in judicial proceedings. Another issue of constitutionality closely related to the judiciary may be raised by Article 23 of the Language Law. This provision gives the legislator one year as from the entry into force of the Law (until 14 January 2020) to harmonise the other laws with the Language Law. Otherwise, the competent institutions are required to apply the provisions of the Language Law. The Venice Commission delegation was informed that only few laws had been harmonised with the Language Law. As for other laws, the provisions of the Language Law will, therefore, prevail in respect of the use of non-majority languages.

85. The Commission draws the attention of the authorities to the fact that some of the laws to be harmonised with the Language Law were adopted by a two-thirds majority while the Language Law was adopted by a simple majority. This is especially the case of the laws regulating the judiciary such as the Law on Criminal Procedure, the Law on Civil Procedure, the Law on Extrajudicial Procedure, the Law on Administrative Disputes, the Law on General Administrative Procedure, the Law on Public Prosecutor's Office, which contain a number of provisions in respect of the use of languages that should be harmonised with the Language Law.

86. Giving superiority to the Language Law over those Laws would amount to amending the latter laws by a simple majority, which risks being considered as a breach of Articles 98 and 106 of the Constitution (see §27). These constitutional provisions provide expressly for a two-thirds majority for the laws governing certain areas of the judiciary. This also raises the question whether the Language Law itself should not have been adopted by a two-thirds majority since it contains

[50] As for the Framework Convention, its Article 10.3 only stipulates that every person belonging to a national minority has the right during criminal proceedings to be informed of the reasons of the arrest and of the nature and cause of any accusation brought against him or her in a language he or she understands and to defend himself or herself in this language, if necessary with the free assistance of an interpreter. These rights are also guaranteed by Articles 5 and 6 of the ECHR.

provisions regulating the use of non-majority languages in judicial proceedings. For the reasons explained above (§27), the Venice Commission, however, is not in a position to take a stance on these issues. It will be up to the Constitutional Court to assess the conformity of the Language Law with the Constitution.

87. Article 9 (5) states that "failure to ensure translation of all necessary documents and materials, i.e. failure to ensure simultaneous interpretation throughout the proceedings shall be considered a substantive violation of the proceedings", which will, as confirmed by the authorities, constitute a ground for reversal of a judicial decision.

88. This provision risks seriously hampering the functioning of the judiciary in North Macedonia. The European Commission, in its progress report of 2019 on North Macedonia,[51] expressed concern that the implementation of the Language Law may affect the efficiency in courts and public prosecutor's offices. This concern was expressed by many interlocutors in Skopje as well.

89. In the opinion of the Venice Commission, the Language Law imposes very onerous and costly obligations on the judicial authorities, which require many years of preparation to be fully enforced. The Law does not give enough time for the preparation and the judicial authorities are obviously not in a position to fully meet these linguistic obligations in the near future. It seems that currently there is no issue of backlog of cases in courts in North Macedonia. However, should the Law be fully implemented, it would considerably slow down the proceedings, bringing along the risk of seriously infringing the procedural guarantees set out in the ECHR, notably the right to a fair trial enshrined in its Article 6.

90. In order to avoid the risk that the enforcement of the Language Law causes unreasonable delays in, or even paralyses, the functioning of the judiciary, the Commission recommends the legislator to abandon for the moment the provisions regarding bilingualism in judicial proceedings. The reintroduction of these provisions, which extend considerably the use of bilingualism in judicial proceedings, may be reconsidered in the future when the country reaches the necessary level in terms of financial capacity and availability of a sufficient number of the skilled interpreters/translators to ensure that such a bilingualism can be applied in judicial proceedings without a risk of hampering the functioning of the judiciary.

91. At the same time, the authorities should intensify their efforts in order to ensure the enforcement of the linguistic requirements of the 2008 Language Law in judicial proceedings.[52] In the view of the Commission, it is crucial that the State invest in forming qualified translators/interpreters.

[51] 2019 report of the European Commission on North Macedonia, p. 18.

[52] The 2008 Language Law recognises the right for Albanian speakers to use their own language in all judicial proceedings throughout the entire country. However, unlike the new Language Law, under the 2008 Language Law, only the parties to proceedings had a right to use their language and could ask, under certain circumstances, for translation/interpretation. According to Articles 5-9 of the 2008 Language Law, in criminal proceedings the parties have a right to use their own languages during the main hearings and other court activities. The Court shall provide for the translation of the written materials which are relevant for the procedure or for the defence. The parties can also have an interpreter, free of charge, if they do not understand the language in which the procedure is conducted. In civil proceedings (Articles 10-12) the parties to proceedings have the right to use their own language. They can ask for an interpreter during the hearings and for the translation of the documents used as proof during the hearings. They have the right to file the lawsuits and appeals in their language and to request that the summons, verdicts and other court writs be issued also in their language.

7. Pecuniary sanctions

92. A fine of 4000 to 5000 Euros in Denar counter value is foreseen by Article 22 for "any violation of the provisions" of the Language Law by the public institutions. Additionally, the official responsible for the violation and the person in charge of the institution will also receive a fine equivalent to 30% of the fine imposed on the institution. The Commission was informed that the pecuniary sanctions will be imposed by an inspectorate on the use of languages, which is to be established as a legal entity within the Ministry of Justice (Article 20). The inspectorate will be responsible for ensuring oversight and full implementation of the Law. At present, the draft law on the establishment of the inspectorate is pending before Parliament.

93. In the view of the Commission, for the enforcement of language laws the States should privilege positive incentives rather than resorting to punitive measures. That said, the Commission can understand that the State wants to propose a legal mechanism to regulate situations where the officials do not execute or obstruct the implementation of linguistic obligations. The citizens should have a possibility to address an authority empowered to impose pecuniary sanctions on the officials refusing, without a valid ground, to enforce the Law. The legal obligations, in the absence of sanctions, run the risk of being ignored. It is also logical that in principle breaches of the Law should be sanctioned.[53]

94. That said, should the Law include pecuniary sanctions, it should, first of all, be amended in order to ensure that the obligations and duties for the civil servants and their institutions be defined with sufficient clarity. As explained above (§§37-54), the Law suffers from textual ambiguities in several regards; under these circumstances it is not advisable to enforce Article 22 on the pecuniary sanctions, in order to avoid the risk of violation of the principle of foreseeability of criminal law provisions enshrined in Article 7 ECHR.

95. Before resorting to sanctions, the State should also ensure that all the public institutions concerned have at their disposal sufficient financial and human resources to fully implement the Law, which is clearly not the case in the current situation in North Macedonia. For a pecuniary sanction to be imposed, the non-enforcement of a provision by an institution must be due to the fault of the civil servant who is entrusted with the implementation of the Law. The unavailability of the financial and human resources is a warranted reason for non-enforcement of the Law.

96. Lastly, according to the information provided to the Venice Commission, compared to pecuniary sanctions foreseen by other laws in North Macedonia, the amounts provided for in the Language Law are considered rather high. Given the financial situation of North Macedonia and the average salary of civil servants, the Commission agrees with these findings. On the other hand, the difference between the minimum and maximum amounts (from 4000 to 5000 Euros) is too small, leaving little room for discretion to determine a sanction in proportionality to the gravity of the violation. The authorities are, therefore, advised to consider reduction of those fines, extend the difference between minimum and maximum amounts, and introduce in the Law the principle of proportionality. To be at fault should be a clear condition for punishment and the decision of the inspectorate should be subject to judicial review.

8. Further remarks

97. On a general note, the Venice Commission would like to recommend that the authorities conduct detailed studies on the causes of the shortcomings in the enforcement of the 2008 Language

[53] See CDL-AD(2010)035, Opinion on the Act on the State Language of the Slovak Republic, §130.

Law and assess the impact in terms of budget and human resources of the amendments that they would like to make in the Language Law. The amendment of the Law should be done in close consultation with all relevant institutions and representatives of the non-majority communities in order to ensure that the Law does not impose unrealistic legal obligations on the public institutions and all the provisions of the Law can be fully implemented as of the date of their entry into force.

98. For a full implementation of the legal obligations on the use of non-majority languages, it is also important that the authorities should reform the educational system in order to provide high-quality Macedonian and minority language education, through the introduction of modern bi- and multilingual teaching methodologies in all schools – as recently recommended by the Committee of Ministers[54] – and to put an end to the separation in schools along ethnic lines.

IV. Conclusions

99. Compared to the 2008 Language Law, the Law of 2018 considerably extends the use of Albanian, as the language spoken by at least 20% of the citizens of the Republic of North Macedonia, in public bodies. Many provisions of the Language Law go beyond the European standards defined especially in the Framework Convention for the Protection of National Minorities and the European Charter for Regional and Minority Languages. This is in principle praiseworthy. The Venice Commission welcomes the willingness of the authorities of North Macedonia to improve the linguistic situation of non-majority communities.

100. Nevertheless, in the opinion of the Venice Commission, in certain areas the Law goes too far by imposing unrealistic legal obligations on the public institutions. This is in particular the case of the provisions providing for the use of the Albanian language in judicial proceedings which are worded in such a broad way that they would certainly require many years of preparation to be fully enforced. Highly onerous and costly obligations that the Law imposes especially on the judicial authorities are coupled with heavy pecuniary sanctions in case of non-compliance (Article 23). Moreover, a failure to ensure translation and interpretation required by the Law throughout the proceedings constitutes a ground for reversal of a judicial decision (Article 9 (5)). Under the current circumstances, should the Law be fully implemented, it would considerably slow down the functioning of the entire judicial system, bringing along the risk of seriously infringing the right to a fair trial guaranteed by the European Convention of Human Rights.

101. The Law contains several uncertainties as to its meaning and scope. It is not always clear which provisions of the Law apply only to the Albanian language, which ones also apply to other non-majority languages (Turkish, Serbian, Bosnian, Vlach, Romani, etc.) and which legal entities are covered by the Law. This textual ambiguity will make the enforcement of the Law even more complicated.

102. Therefore, the Commission invites the legislator to re-examine the Language Law and, in so doing, take into consideration, in consultation with all the parties concerned, in particular the following recommendations:

- to abandon the provisions of the Law regarding the bilingualism in judicial proceedings and to take the necessary measures to ensure an effective implementation of the linguistic requirements of the 2008 Language Law in judicial proceedings;

[54] Resolution CM/ResCMN(2019)5, *op. cit.*

- to either revise Article 3 of the Law – providing for the use of Albanian in internal and interinstitutional communication –, e.g. by limiting its scope to written official communication, or to postpone its entry into force until proper implementation of this provision appears realistic;
- to review and revise the Law in order to provide sufficient legal clarity in the light of the comments made in the present opinion and to consider allowing any person to use non-majority languages instead of referring in the Law only to the persons belonging to those communities;
- to consider removing the reference to citizenship in the Law in order to allow any person to enjoy the linguistic rights recognised by the Law;
- to postpone the enforcement of pecuniary sanctions until the Law is amended to provide legal certainty, and to amend Article 22 in order to reduce the amounts of fines, to extend the difference between minimum and maximum amounts, to introduce the element of fault and the principle of proportionality therein.

103. In the opinion of the Venice Commission, it would be useful if the authorities conduct detailed studies on the causes of the shortcomings in the enforcement of the 2008 Language Law and assess the impact in terms of budget and human resources of the new Language Law. The Commission also recommends legislator not to use the shortened procedure for revising the Language Law.

104. The Venice Commission remains at the disposal of the authorities of North Macedonia, should they ask for further assistance in this matter.