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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**UKRAINE**

**FOLLOW-UP OPINION  
TO THE OPINION  
ON THE LAW ON NATIONAL MINORITIES (COMMUNITIES)  
(DRAFT LAW #9610)**

**Adopted by the Venice Commission  
at its 136<sup>th</sup> Plenary Session  
(Venice, 6-7 October 2023)**

**on the basis of comments by**

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## I. Introduction

1. By letter of 5 September 2023, Mr Ruslan Stefanchuk, President of the Verkhovna Rada of Ukraine, requested an urgent follow-up opinion of the Venice Commission to the Opinion on the Law on National Minorities (Communities) ([CDL-AD\(2023\)021](#), hereinafter “the Opinion”). By letter of 15 September 2023, the Chairman of the Monitoring Committee of the Parliamentary Assembly made a similar request, concerning draft amendments to the Law on National Minorities (Communities) (draft law #9610, [CDL-REF\(2023\)043](#), hereinafter, “the draft amendments”).
2. Ms Bílková, Ms Kiener, Ms Otálora Malassis and Mr Velaers acted as rapporteurs for this follow-up opinion.
3. On 14 September 2023, a delegation of the Commission held an online meeting with members of the Verkhovna Rada (Parliament) of Ukraine, the State Service of Ukraine for Ethnopolitics (DESS), the General Director of the Government Office for the Coordination of European and Euro-Atlantic Integration and the Office of the Deputy Prime Minister. The Commission is grateful to the Ukrainian authorities and to the Council of Europe office in Kyiv for the excellent organisation of this meeting.
4. On 21 September 2023, the Verkhovna Rada adopted a revised version of the draft Law on amending the Law on National Minorities (Communities) (No. 9610) in the second reading ([CDL-REF\(2023\)047](#), hereinafter, [the revised Law](#)). As requested by the Ukrainian authorities, the Opinion as adopted assesses the revised Law.
5. This opinion was prepared in reliance on the English translation of the draft amendments, the revised Law and the previous version of the Law ([CDL-REF\(2023\)019](#)). The translation may not accurately reflect the original version on all points.
6. This opinion was drafted on the basis of comments by the rapporteurs and the results of the meetings on 14 September 2023. Following an exchange of views with Mr Ihor Lossovskiy, Deputy Head of the State Service of Ukraine for Ethnic Affairs and Freedom of Conscience, and Mr Oleksandr Ilkov, Director General of the Government Office for Coordination of European and Euro-Atlantic Integration of Ukraine, it was adopted by the Venice Commission at its 136<sup>th</sup> Plenary Session (Venice, 6-7 October 2023).

## II. Background and scope of the Opinion

7. At its 135<sup>th</sup> Plenary Session on 9-10 June 2023, the Venice Commission adopted the opinion on the Law of National Minorities (Communities) of Ukraine, [CDL-AD\(2023\)021](#). The Opinion welcomed the adoption of a new law on national minorities and noted that this law “*provides a number of guarantees in conformity with international standards*” (paragraph 78). It however also noted that “*to ensure full conformity with such standards, a number of provisions of that Law should be reconsidered*” (paragraph 78).
8. The key recommendations in paragraph 79 were:
  - A. To extend the right to organise events in minority languages to all persons (Article 10(3));
  - B. To remove the obligation in Article 10(3) to provide for interpretation into Ukrainian of information on public events at the request of visitors (spectators), or at least to reconsider it in the light of the principle of proportionality;
  - C. To reconsider the obligations related to publishing books and to bookshops (Article 10(5)), in the light of the principle of proportionality;
  - D. To ensure more legal certainty regarding the possibility to have official inscriptions (Article 10(7)) and general information (Article 10(8)) translated in a minority language;

- E. To revise Article 10(10) by providing in the Law itself criteria for the adoption of the methodology, in order to ensure the use of minority languages in contact with administrative authorities in conformity with Article 10 FCNM and with the undertakings ratified by Ukraine under Article 10(2) and 10(4) ECRM.

9. In addition, the Venice Commission made the following recommendations on other laws relating to the status of national minorities (paragraph 80):

- F. To reconsider the provisions in other laws containing limitations of the freedom to use the minority language and differential treatments of the minority languages, in the light of the previous Opinions of the Venice Commission;
- G. To ensure the right to access to mass media in minority languages (Article 10(4)) by removing quotas provided for in point 7(24)(c) of the final and transitional provisions of the Law on the State language and in Article 40 of the Law of Ukraine on the Media of December 13, 2022;
- H. To further postpone the gradual transformation of the minority language school-system and to reconsider it in the light of the 2017 Opinion the Venice Commission.

### III. Analysis

#### A. Recommendations followed

10. The Venice Commission appreciates the efforts of the Ukrainian authorities to implement the recommendations contained in its opinion and to bring its new Law on National Minorities (Communities) in line with international standards. This is indeed, as rightly indicated in the Explanatory Report, necessary to “*create conditions for the proper exercise of the rights and freedoms of persons belonging to national minorities (communities)*”. At the same time, having the legislation on national minorities fully in line with international standards is also important for Ukraine to be able to join the European Union, as indicated in the recommendations of the European Commission.

11. The Venice Commission welcomes several of amendments, which implement the recommendations of the Venice Commission.

12. The revised **Article 1** consists in the deletion of the term “traditionally” from the definition of national minorities (communities). This addresses the concern expressed by the representatives of national minorities, who saw it as too vague and open for excessively restrictive interpretation. The deletion of the term is thus welcome.

13. The revised **Article 3(4)** incorporates into the Law the relevant, and important, provision of the Framework Convention on National Minorities (FCNM) that the State should take measures to achieve the equal treatment of people belonging to national minorities in the social spheres (Article 4 (2) of the FCNM)<sup>1</sup> and is welcome.

14. The revised **Article 5** revises the limitation clause of the Law, adding to it a list of legitimate aims under which rights contained in the Law can be restricted. The list is in line with the recommendation in paragraph 30 of the Opinion.

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<sup>1</sup> Article 4 (2): The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.

15. As was done for Article 3(4), **Article 9** of the Law was aligned with the Framework Convention for the Protection of National Minorities (FCNM), in accordance with the recommendation in paragraph 35 of the Opinion.

16. **Article 10(2)** refers to “public events (...) organised *for* persons belonging to national minorities (communities)”, and not any more to “public events organised and held *by* national minorities (communities)”, in line with the recommendation of the Venice Commission, that persons not belonging to a minority are not prevented from organising public events for persons belonging to a minority. **Article 10(3)** refers to events “organised and held *by* persons belonging to the national minority (community) *or for* persons belonging to a national minority”. These amendments are welcome and seem to respond to recommendation A.

17. As recommended in paragraph 43 of the Opinion, the revised **Article 10(3)** specified the term “accompaniment” of an event. The extension of the time to make such a request from 48 to 72 hours before the event is positive, as is the addition of events organised and held “for persons belonging to the national minority (community)”. However, for the minimum number of participants entitled to requesting simultaneous translation of the event into the state language, see below III.B.

18. The insertion in **Article 10(5)** of the definition of the terms “specialised bookstore” follows the recommendation of paragraph 50 of the Opinion. However, for the procedure to determine these bookstores, see below III.B.

19. The revised **Article 10(6)** replaces “acceptable” by “understandable”. This is positive and follows the recommendation made in paragraph 51 of the Opinion.

20. The revised **Article 10(10)** provides, in line with key recommendation E (see paragraph 59 of the Opinion), criteria for the adoption of the methodology that should specify the modalities of the use of minority languages in contact with administrative authorities.

21. The revised Law introduces a new **Article 10(12)** which stipulates that “*the procedure for determining the list of settlements in which persons belonging to national minorities (communities) traditionally reside or in which such persons constitute a significant part of the population shall be determined by the Cabinet of Ministers of Ukraine.* These conditions – if not the very use of the terms “traditionally lived” - should not prevent the implementation of the FCNM and of the ECRML, in particular of the provisions ratified under Article 10, to all minority languages protected by Part III of the ECRML, in the different relevant geographical areas. The Venice Commission recommends defining in the Law the minorities which benefit from the rights under Article 10 (7)-(11), on the basis of objective criteria.

22. The revised **Article 11** introduces a new rule on the free provision of textbooks to schools belonging to national minorities. This is fully in line with the recommendation formulated in the opinion (paragraph 65). The other recommendations related to the right education remain unimplemented, however (see Section B below). They should be addressed in the planned revision of the Law “On Education”.

23. The revised **Article 13** introduces a new provision which determines as one of the aims of the state policy in the field of national minorities “*providing state support to endangered languages*”. This is fully in line with the recommendation formulated in the opinion (paragraph 67). It is also positive that the list of such languages will be elaborated “on the basis of international standards”.

24. The revised **Article 19** brings a number of improvements. It defines the powers and tasks of the centres. It unifies the terminology used with respect to settlements traditionally inhabited by persons belonging to national minorities.

## B. Recommendations not or only partly followed

25. Some recommendations of the Venice Commission have not or only partly been implemented by the revised Law. This is the case of the following provisions:

26. The revised Law does not change **Article 5(7)** of the Law. Therefore, the recommendation made in paragraph 31 of the Opinion to introduce these provisions in specific legislation (relating to the Russian aggression against Ukraine) is not met. These provisions are of a criminal nature and therefore should apply to all persons and not only to members belonging to national minorities (communities).

27. The revised **Article 10(3)** has also extended the period when requests for the provision of interpretation of the accompaniment (entertainment) into the state language must be made prior to the event (previously 48 hours, now 72 hours). This extension is welcome. The minimal number of participants who need to file a request for interpretation has now been established at ten (instead of two). Even if this is a step in the right direction, this remains a low number, which could result in a high financial and logistical burden for organisers. Article 10(3) is therefore not yet in conformity with Articles 5 and 10(1) FCNM and the letter and spirit of Article 7(1) of the European Charter for Regional or Minority Languages. The key recommendations A and B are therefore not fully implemented.

28. The deletion of the word “mass” from the concept of “mass media” in **Article 10(4)** does not address the recommendation made in paragraph 46 of the Opinion, since there are no measures that guarantee freedom of expression and the right of minorities to enjoy their own culture and to use their own language. It is necessary to provide for concrete measures to ensure adequate access of persons from national minorities to the media, which implies that Article 10(4), and possibly other applicable provisions, should be reformulated.

29. The revised **Article 10(5)** adds, in line with the recommendation of the Venice Commission, a definition of “specialised bookstore”. This definition however stipulates that “*the procedure for establishment and functioning of specialised bookstores established for the exercise of the rights of national minorities (communities) shall be determined by the central executive body responsible for the formation of the state policy in the information and publishing sphere*”. This provision leaves a large discretion to the relevant central executive body (unspecified in the draft) and it remains also unclear why setting up a specialised bookstore should be subject to a different procedure than setting up any other bookstore in the first place. Moreover, the revised Law does not change the obligations related to publishing books and to bookshops. The revised Law adds that “[t]he State shall promote the implementation of measures aimed at the development of specialised bookstores established for the realisation of the rights of national minorities (communities)”. While welcome, this amendment does not implement Recommendation C.

30. Concerning **Article 10(7)** (on official inscriptions, which was not amended), the Venice Commission was informed about the draft methodology, which is intended at clarifying the content of this provision, without however, apparently, providing precise criteria for authorising such inscriptions.

31. There is no amendment proposed to **Article 10(8)**, thus going against Recommendation D.

32. There are no amendments to **Article 10(9)**, which was analysed by the Venice Commission in paragraph 55 of the Opinion, concluding that the requirement of having election campaign materials in both Ukrainian and minority languages represented a disproportionate restriction to freedom of expression. Therefore, this recommendation has not been addressed. The Ukrainian authorities informed the Venice Commission that this could only be possible through the

(ongoing) revision of the Law "On Ensuring the Functioning of the Ukrainian Language as the State Language".

33. The revised Law introduces a new **Article 10(11)**, which provides that *"in the settlements traditionally inhabited by persons belonging to national minorities (communities) or where such persons constitute a significant part of the population, it is allowed to distribute internal and external advertising, as well as advertising in the relevant audio and audiovisual media of the local category, in the state language and dubbed in the languages of the respective national minorities (communities). In this case, the text of dubbing in the language of a national minority (community) should not be larger in volume and font than the text in the state language. The font size requirements are not mandatory for the names of goods, legally protected trademarks (marks for goods and services) and commercial names. Objects of intellectual property rights shall be advertised in accordance with the requirements set forth in part two of Article 6 of the Law "On Advertising"*.

34. Despite the fact that this provision is new, it can be analysed in the light of the comments made on Article 10 (7) and (8) in paragraph 54 of the Opinion related to inscriptions in a minority language. The use of both the language of national minorities and the official language in advertising must be analysed on the basis of the principle of proportionality, taking into account whether an excessive burden is being imposed. The conclusions reached by the Venice Commission with respect to Article 10(7)-(8) as summed up in Recommendation D apply here as well.

35. In **Article 11**, apart from the issue of textbooks, the recommendations on education (paragraphs 61 and following of the Opinion) are not addressed. According to the authorities, this should be done in the – ongoing – revision of the "Law on Education".

36. In **Article 19**, most recommendations have been implemented, except concerning the composition of the centres (paragraph 70).

37. The draft amendment to the **Final and Transitional Provisions** introduces a new provision by means of which *"the provisions of parts two, three, eleven of Article 10 of this Law shall not apply to the state (official) language of a state recognised by the Verkhovna Rada of Ukraine as an aggressor or occupying state from the moment of such recognition by the Verkhovna Rada of Ukraine and within five years from the date of adoption by the Verkhovna Rada of Ukraine of a decision to cancel such status"* (paragraph 4).

38. That means that the Russian language will not be allowed to be used in public events, cultural, artistic and entertainment events as well as in advertising, for a protracted period of time, even after the end of the war of aggression by the Russian Federation against Ukraine.

39. The Venice Commission highlights that the restrictions are the result of the Russian aggression, nevertheless, guarantees must be provided in order to avoid discrimination, stereotypes and ethnic or linguistic persecution. Those restrictions may be legitimate, despite the provision of Article 10 of the Constitution. Yet, prohibiting the use of the (still) most widespread minority language in the country for a period lasting several years after the end of the war of aggression, is unlikely to meet the conditions of lawful restrictions. The choice of the restricted rights as well as the time period (five years) also seem somewhat arbitrary. The Venice Commission recommends not to introduce this extended period into the Law. A shorter period could at any rate be extended if necessary.

40. The final provisions of the revised Law provide that "The Cabinet of Ministers of Ukraine within six months from the date of entry into force of this Law" (will) "prepare and submit to the Verkhovna Rada a draft law of Ukraine aimed at taking into account the expert assessment of the Council of Europe and its bodies on the right of national minorities (communities) in certain

areas". The Venice Commission welcomes this amendment and hopes that this will lead to amending the Law on Education, the Law on Media and the Law on the State Language in conformity with its previous recommendations.

#### IV. Conclusion

41. The Venice Commission welcomes numerous improvements in the revised Law on National Minorities (Communities), submitted to the Verkhovna Rada as draft law #9610. The Venice Commission appreciates the efforts of the Ukrainian authorities to implement the Venice Commission's recommendations and to bring the Law on National Minorities (Communities) in line with international standards.

42. These improvements concern notably:

1. the definition of national minorities (communities) – deletion of the term "traditionally" (Article 1);
2. the inclusion of provisions from the Framework Convention on National Minorities (Articles 3(4) and Article 9);
3. the limitation clause of the Law, adding to a list of legitimate aims under which rights contained can be restricted (Article 5);
4. the possibility for non-minority members to organise public events for persons belonging to a national minority (Article 10(2) and (3));
5. the definition of "accompaniment" of an event and extension of the deadline to request simultaneous translation of the event into the state language, as well as the increase in the number of people needed to impose interpretation (Article 10(3));
6. the insertion of a definition of "specialised bookstores" and the support to such bookstores (Article 10(5));
7. the reference to the use of an "understandable" language in emergency situations (Article 10(6));
8. the criteria for the adoption of the methodology for the use of minority languages in contact with administrative authorities (Article 10(10));
9. a new procedure for determining the list of minority settlements (Article 10(12));
10. the free provision of textbooks to schools belonging to national minorities (Article 11);
11. the state support to endangered languages (Article 13);
12. the definition of the powers and tasks of the centres of national minorities, as well as terminology used with respect to settlements traditionally inhabited by persons belonging to national minorities (Article 19).

43. Nonetheless, the Venice Commission notes that a number of key recommendations have not or only partly been followed. This concerns notably:

1. Article 5(7) - moving provisions of a criminal nature to specific legislation applicable to all persons;
2. Article 10(3) - a still low number of participants who need to file a request for simultaneous interpretation;
3. Article 10(5) – too wide discretion for defining a "specialised bookstore" and no change as concerns obligations related to publishing books and to bookshops;
4. Articles 10(7) and (8) – absence of certainty regarding official inscriptions and general information translated in a minority language;
5. Article 10(11) - excessive burden concerning advertising in minority languages;
6. Article 10(12) - absence of criteria for determining minority settlements, even if the issue should be settled in the "methodology";
7. Article 19 – absence of precise formulation regarding the composition of the centres of national minorities;
8. Final and Transitional Provisions – legitimate limitations for the use of the Russian language extended for a too long period.



44. According to the Final provisions of the revised Law, the Cabinet of Ministers will within six months prepare and submit to the Verkhovna Rada a draft law aimed at taking into account the expert assessment of the Council of Europe and its bodies. The following pieces of legislation should be revised in order to implement these recommendations:

- Law of Ukraine "On Ensuring the Functioning of the Ukrainian Language as the State Language" (from April 25, 2019, No. 2704-VIII)
  - Law of Ukraine "On Media" (from December 13, 2022, No. 2849-IX)
- Law of Ukraine "On Education" (as of September 5, 2017, No. 2145-VIII).

45. The Venice Commission therefore reiterates the following key recommendations of the Opinion, which have to be implemented when revising these laws, concerning:

- the absence of measures that guarantee freedom of expression and the right of minorities to enjoy their own culture and to use their own language in the realm of mass media (cf. Article 10(4) of the Law)
- the obligation to provide election campaign materials in both Ukrainian and minority languages (Article 10(9) of the Law);
- apart from the issue of textbooks, the recommendations on education.

46. While recognising that the Ukrainian authorities have made steps in the right direction, the Venice Commission concludes that a number of key recommendations have not or not fully been followed and expresses the hope that the legislation will be further improved to take into account the key recommendations made in Opinion [CDL-AD\(2023\)021](#).

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