

A Historical and Legislative Enquiry into the Regulation of the Rights of National Minorities and Indigenous Peoples in Ukraine from 1989 to 2024

Abstract: The issue of the state language, minority languages, and minority rights in general is extensively covered in Ukrainian literature. This study summarizes the developments from the passing of the first Ukrainian language law in 1989 to the end of 2024. It provides a detailed overview of how the content of all basic concepts and legislation has evolved, thereby dispelling many misunderstandings and correcting misinterpretations in propaganda. The issues are examined in both the Ukrainian and international contexts, with examples relating to the Hungarian minority.

Keywords: Ukraine; national minorities; indigenous peoples; legislation

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International Overview

Even today, it is difficult to imagine a region of the world without some degree of ethnic, cultural, or religious conflict. The 770 million inhabitants of Europe today represent more than 100 ethnic groups of all sizes in fewer than 50 countries, with one in seven belonging to a minority (Pan-Pfeil-Videsott 2018: 3–4, 8). Even in a democracy, the law of the majority always prevails, and the protection of minorities is not automatically a guaranteed right (Pan-Pfeil-Videsott 2018: 6).

Over the past century or more, neither war nor peace has resolved the question of nationality. The question of minority rights was raised by the Versailles Peace Treaty at the end of the First World War, because the small nation states it created in place of the great empires were not ethnically homogeneous. The nation-states of Central and Eastern Europe were obliged to sign treaties on the protection of minorities, but in practice these were not implemented. Rather, they were seen as interfering in the nation-

states' internal affairs and restricting their sovereignty, and this attitude has in many respects remained unchanged to this day. The League of Nations was set up as an external body, but it functioned as a kind of "complaints bureau" without effective legal protection, and it ceased to exist formally during the Second World War. In 1945, it was replaced by the United Nations (UN) to promote cooperation between its member states. From 1975 it was supported by the Conference on Security and Cooperation in Europe (CSCE), which had mainly an observer status and was institutionalized in 1992 as the Organisation for Security and Cooperation in Europe (OSCE; Szalayné Sándor 2003: 80–81; Eiler 1997: 64–91).

There is still no international legal status for national minorities, no uniform definition of the term "minority," and no specific clarification of minority rights. Instead, at most there are only political guidelines without sanction mechanisms (see, among others, the 1990 OSCE Copenhagen Act, the 1992 UN Declaration on the Rights of Minorities, the 1992 Council of Europe European Charter for Regional or Minority Languages, and the 1995 Framework Convention for the Protection of National Minorities; Vizi 2018: 4). The UN International Covenant on Civil and Political Rights (1966) made the right of self-determination of "peoples" the basis for access to rights, without defining "peoples" (Article 1[1]) and made the free exercise of culture an individually exercisable right for all members of ethnic, religious, and linguistic minorities (Article 27[1]). The Charter of Paris for a New Europe (1990), which is not an international treaty but part of customary law, offered the continent a democratic model based on cooperation and conflict prevention (Majtényi–Vizi 2003: 193).

In the euphoria of the end of the Cold War, Fukuyama argued that humanity had reached the end of history in terms of political systems, especially after the fall of the Soviet Union, and that there was no alternative to modern societies based on liberal democracy and market-driven economic systems (Fukuyama 1992). Huntington, who polemicized with him, stressed the irreconcilable, eternal struggle of civilizations, which inevitably leads to war conflicts time and again, but at the same time he explicitly pointed out that, from a civilizational point of view, the possibility of a Russo-Ukrainian war was minimal (Huntington 1996). These theories did not prove to be a universal approach, just as international instruments could not provide uniform protection.

Nation and Minorities in Ukraine

The relationship between the state and national minorities is asymmetrical, according to the authors of the Handbook of European National Minorities. Examples include the former Yugoslavia, the Caucasus, Chechnya, the Palestinian and Kurdish issues, and Ukraine.

The problem of the redistribution of power lies at the vertex of the relations between states and national minorities. Because the granting of rights of protection to national minorities means that the states must relinquish certain positions of power, while conversely the minorities gain new positions of power as a result of specific rights of protection. A situation of contrary interests consequently exists between states and minorities because it has to do with positions of power which each of the two parties maintains and which neither of the two parties wants to relinquish. (Pan-Pfeil-Videsott 2018: 7)

At the regional level in Ukraine, the minorities with at least 10% of the population are Russians, Hungarians, Romanians, and Crimean Tatars. All other nationalities are either less visible or a significant proportion of the ethnic group consider their mother tongue to be a language other than their national language. According to the only census to date, in 2001 the combined proportion of Ukrainians and Russians was 95.10%, which constituted 96.42% of the Slavic population. By nationality, 77.8% of the population of Ukraine identified themselves as Ukrainian and 17.3% as Russian. At the same time, 67.5% said that their mother tongue was Ukrainian and 29.6% Russian, with Russian dominating in the public sphere (State Statistics Committee of Ukraine 2001).

The untenability of the stereotypes and myths promoted by Russian policy that Ukraine and Ukrainians are more loyal to the “Russian world” than to Ukraine and Ukrainian patriotism has become clear (Kuzio 2019: 297–309), especially since Russia’s full-scale war against Ukraine. Moscow expected the Russian nationality and the Russian-speaking population, regardless of their nationality, to respond positively or at least neutrally to the Russian invasion. This expectation was based on the view, shared by many Western politicians and analysts, that Ukraine was deeply divided, particularly between Ukrainians and Russians, with native Russian speakers of other ethnicities also closer to Russia than native Ukrainians and consequently opposed to the pro-Western and nationalizing policies of the Ukrainian state. However, experience has shown the opposite to be true, especially as the Russian occupation has affected the eastern and southern parts of Ukraine, where Russian speakers predominate. There are increasing signs that Ukrainian identity is no longer a characteristic of a particular ethnic group but is now emerging as a national identity that appears to be society wide (Kulyk 2022b: 299–323).

The First Law on Minorities and the Constitution of Ukraine

The rise of nationalist sentiment in Ukrainian society in the period before the collapse of the Soviet Union declined significantly after independence, mainly because of the economic collapse that followed (Shulman 2003: 217). This was a problem that all the successor states had to face, and the ways in which they dealt with it gave rise to the different state models. In 1991, only Azerbaijan, Georgia, Kyrgyzstan, Tajikistan, and

Uzbekistan were poorer than Ukraine in the region. The economy shrank year after year until the turn of the millennium. Ukraine's main problem was that, alongside a political system based on democratic elections, the post-Soviet nomenclature and new owners had created an oligarchic economic system, which, however, managed to turn the economy around after the millennium and increasingly claimed a place in politics. With the Orange Revolution of 2004 (the first Majdan), and even more so with the Revolution of Dignity of 2013–2014 (the second Majdan), social pressure forced a decisive choice between Russia, which covertly and then increasingly openly challenged the existence of a sovereign, nation-state Ukraine, and Europe, which identified itself with the European Union.

Despite the difficulties, early legislation was based on broad democratic foundations. The Law of Ukraine No. 2494-XII of 1992 on Ethnic Minorities (1992 Law on Ethnic Minorities) introduced the concept of “national minorities” in place of the previous concept of “nationalities,” defining them in Article 3 as citizens who are not ethnic Ukrainians but feel a sense of national identification and affinity with each other.

The law, which underwent few changes during its period of application, guaranteed, *inter alia*, equal political, social, economic, and cultural rights and freedoms for all citizens; promoted the development of national consciousness; protected the sovereignty and territorial integrity of the State, the language, culture, traditions, customs, and religious affiliation of the Ukrainian people and all national minorities; and ensured the right to use names in accordance with national traditions, the prohibition of discrimination on grounds of nationality, and the recognition of the exercise of national rights at both the individual and the collective levels. The legislation considered minority rights as part of fundamental human rights (Article 1) and guaranteed the right of all national minorities to national and cultural autonomy (Article 6). This included the use of the mother tongue and learning in the mother tongue or learning the mother tongue in state educational institutions or through national cultural associations, the development of national cultural traditions, the use of national symbols, the celebration of national holidays, the practice of religion, literature, art, mass media, the establishment of national cultural and educational institutions, and any other activity not contrary to the law in force. The law did not, however, provide for the creation of “national administrative units,” the much-vaunted territorial autonomies (Filippini 2022: 113). In accordance with the law, a separate Ministry of Nationalities was established in 1993 to deal with minority affairs, which was reorganized as a state committee in 1996 and placed under a rotating ministry as of 2014 (Csernicskő–Tóth 2021: 14).

The Constitution of Ukraine, adopted in 1996, recognizes three categories of ethnicity, unchanged since then: the Ukrainian nation, indigenous peoples, and national minorities. Article 11 states that “the state shall promote the consolidation and development

of the Ukrainian nation, its historical consciousness, traditions and culture, as well as the development of the ethnic, cultural, linguistic and religious identity of all indigenous peoples and national minorities of Ukraine.” The category of “indigenous peoples” had not been included in any other legislation apart from the Constitution until 2014.

Language Laws

States around the world have different ways of regulating language rights. The creation of a separate language law is a feature of Central and Eastern Europe. Examples of such laws exist in Poland, Slovakia, Estonia, Latvia, Lithuania, Belarus, Russia, Moldova and, of course, Ukraine.

The ethnic composition of Ukrainian society can be considered typical of Central and Eastern Europe, where different ethnic groups have intermarried for many centuries and fairly large minority groups have emerged in the new nation-states created after the First World War. In the territory of today’s Ukraine, in addition to the clear Ukrainian majority, several minorities have been living in the same area for centuries, more or less concentrated in a defined area, with Moldovans, Bulgarians, Hungarians, and Romanians among the more than 100,000 minorities living in the area bordering their motherland. Two other ethnic groups, Poles and Jews, historically formed much larger communities, but their numbers have declined dramatically over the centuries as a result of deportations, ethnic cleansing, and emigration. At the same time, many ethnic groups in the former Soviet Union, particularly Russians, have increased significantly as a result of migration encouraged by the Soviet regime.

The most serious legacy of the Soviet empire was the large-scale linguistic and cultural Russification of the titular nation in the post-Soviet states, including Ukraine (Kulyk 2002a: 10–11). In this context, ethnopolitics, especially language, has always been a divisive issue in Ukraine, where Ukrainian and Russian have coexisted in a precarious balance. Already in the 1990s, many people saw the choice between Russian and Ukrainian as a symbol of two political and cultural cleavages: belonging to Russia and belonging to Europe and the West. The promotion of the Ukrainian language—no legislation in the country has ever deviated from Ukrainian being the sole state language—was intended to counterbalance its historical subordination to Russian (Bilaniuk–Melnyk 2008: 340–372). Linguistic diversity continued to play a crucial role after the country gained independence in 1991, as the development of the language, its place, and its role in the state was a matter of debate not only for minorities but also for the titular nation (Csernicskó–Fedinec 2016: 560–582).

The Law of the Ukrainian Soviet Socialist Republic No. 8312-XI of 1989 on Languages of the Ukrainian SSR, adopted during the Soviet period, was considered the first lan-

guage law, and while it did not contain a specific list, it protected the languages of “all” national minorities. The law defined Ukrainian as the state language and Russian as the language of inter-ethnic communication. Moreover, it guaranteed the use of the mother tongue and any other language and the freedom to choose the language of education and upbringing. It also allowed the use of the languages of national minorities alongside the state language in regional and local government administration in territories of administrative units where the representatives of the national minority concerned constitute a majority (subject to a 50% threshold).

The language laws include the ratification of the European Charter for Regional or Minority Languages (conditionally the laws on second and third languages). Parliamentary Assembly Opinion 190 (1995) on the accession of Ukraine to the European Union stipulated, *inter alia*, the need to ratify the European Charter for Regional or Minority Languages (1992), which was done in 1999 by Law No. 1350-XIV of 1999. However, a group of parliamentarians appealed to the Constitutional Court, which annulled the law for unconstitutionality in its decision No. 9-rp/2000 of July 12, 2000. The charter was ratified again by Law No. 802-IV of 2003 on the Ratification of the European Charter for Regional or Minority Languages but did not enter into force until 2006. In it, Ukraine made fewer commitments than in 1999 but placed the languages of the same 13 national minorities (Jewish, Belarusian, Bulgarian, Gagauz, Greek, Crimean Tatar, Polish, Hungarian, Moldovan, German, Russian, Romanian, and Slovak) under the same protection as in the previous, repealed law (Bowring-Antonovych 2008: 157–182).

The fourth piece of legislation, the Law of Ukraine No. 5029-VI of 2012 on the Principles of the State Language Policy (2012 Law of Language), lists 18 minority languages (Belarusian, Bulgarian, Gypsy, Gagauz, Greek, Yiddish, Karaite, Crimean Tatar, Crimean Tatar, Polish, Hungarian, Moldovan, German, Russian, Armenian, Romanian, Ruthenian, and Slovak). The list also included Ruthenian, although Ruthenians have never been recognized as a separate nationality by Ukraine, and Gypsy, which is not a separate language but a summary category. This is the only legislation that has granted regional rights to minority languages whose speakers exceed 10% of the population in a given region. However, the law has been the subject of much international criticism. Among others, the OSCE High Commissioner on National Minorities has called the law “deeply divisive,” because it disproportionately favors Russian while “removing most of the incentives to learn or use Ukrainian” (Human Rights Watch World Report 2013). The Venice Commission Opinion on the Draft Law on Languages in Ukraine (CDL-AD [2011] 008) issued a preliminary opinion on the legislation, essentially stating what the opposition has consistently argued: that the draft is unbalanced because it disproportionately strengthens the position of Russian without supporting Ukrainian as a state language, which is an important means of social integration.

On February 22, 2014, President Viktor Yanukovich fled the country, and the next day the parliament voted to repeal the language law. However, there was also a strong Ukrainian sentiment in society that protested against what they saw as an undemocratic move, and in accordance with the constitution, the acting president, the speaker of the Ukrainian Parliament, Oleksandr Turchynov, did not sign the document and it did not come into force. However, preparations for a new language law have begun, without success (Fedinec–Csernicskó 2020a: 137–142). The legislation (the 2012 Law of Language) was eventually annulled by the Constitutional Court of Ukraine in its decision No. 2-R/2018 of February 28, 2018, on formal grounds related to the circumstances of its adoption. This has created a legal vacuum until the next language law is adopted.

The most recent, the (State) Language Law of 2019, Law of Ukraine No. 2704-VIII of 2019 on Ensuring the Functioning of the Ukrainian Language as the State Language (2019 Law on [State] Language), did not list the languages of indigenous peoples and national minorities but distinguished between them, creating a legal loophole, as previous laws did not define these terms. This law, unlike previous ones, cannot be considered a general language law but rather a law on the protection of the state language, which provides for the exclusive use of the state language in state administration, public life, culture, and sport, with the exception of private conversations and church ceremonies, and restricts the use of minority languages in mass media and education. This gave legal form to an approach to the state language that had previously only been consistent in the practice of the Constitutional Court of Ukraine (Fedinec–Csernicskó 2020b: 85–110). This legislation was subsequently evaluated by the Venice Commission Opinion (CDL-AD [2019] 032), which stated that it fully recognized that the legitimate aim of every state is to strengthen the state language, but that a fair balance must be struck between the preservation and promotion of the state language as a means of social integration on the one hand and the protection of the linguistic rights of persons belonging to national minorities on the other, and that measures must not unduly restrict the linguistic rights of persons belonging to national minorities. However, the commission also pointed out that it takes note of the decision of the Constitutional Court of Ukraine No. 1-r/2021 of July 14, 2021, in which the constitutional court ruled that preferential treatment of languages in favor of languages of national minorities that are also official languages of the European Union does not constitute discrimination contrary to the Ukrainian Constitution.

Laws on Education

On September 5, 2017, a few days after the entry into force of the EU-Ukraine Association Agreement on September 1, the Ukrainian Parliament voted on the Law of Ukraine No. 2145-VIII of 2017 on Education (2017 Law on Education), which was signed by the President of Ukraine later than usual on September 25 and entered into

force on September 27. The framework law provided for a general reform of education, the content of which was barely discussed by experts and the public, with the focus of interest being Article 7, the language article, which was amended just before the final vote so that the deputies themselves could not see it, and which did not correspond to the version of the text that had been agreed with the representatives of the nationalities. The law states that “the language of the educational process in educational institutions shall be the State language” (Article 7[1]). In addition, it establishes four categories of persons concerned: the titular nation, indigenous peoples, national minorities (“which are official languages of the European Union”), and a fourth, unspecified category that the other categories imply is for Russians. The distinction is not only symbolic but also factual, as the law grants different rights to each category (Csernicskó 2021: 137–152).

The Parliamentary Assembly of the Council of Europe, in its urgent resolution 2189 (2017) of October 12, 2017, on the Ukrainian law on education, noted, *inter alia*, the need to revise the language article of the law to provide for the non-discriminatory treatment of all members of indigenous peoples and national minorities. The resolution states:

Knowledge of the official language(s) of a State is a factor of social cohesion and integration, and it is legitimate for States to promote the learning of their official language(s) and to require that the State language(s) be the language(s) of education for all. (Point 4)

When States take measures to promote the official language(s), these must go hand in hand with measures to protect and promote the languages of national minorities. If this is not done, the result will be assimilation, not integration. (Point 5)

In addition, it refers to the principle of non-discrimination (Point 6). On this basis, the law “does not appear to strike an appropriate balance between the official language and the languages of national minorities” (Point 7), and the law deprives national minorities of acquired rights in the language of education, which does not favor the concept of “living together” based on the above principles of the Council of Europe’s Framework Convention for the Protection of National Minorities.

Similarly, the Venice Commission’s Opinion of December 11, 2017, on the law states that the language article of the Education Act (CDL-AD [2017] 030) differs significantly from the draft law agreed with minorities and constitutes a disproportionate interference with the existing rights of persons belonging to minorities. The finding on the indigenous issue is particularly noteworthy for the subject of our analysis:

the Law distinguishes between ‘national minorities’ and ‘indigenous peoples’ of Ukraine [...] During the visit to Kyiv, the Venice Commission delegation was given to understand that “indigenous peoples of Ukraine” are those minorities which do not have a kin-state.

Specific reference was made to the Crimean Tatar, Karaïm and Krimchak minorities, but this category would presumably also include the Gagauz and the Roma minorities.

The 2017 Law on Education is a framework law, the details of which are set out in sectoral laws. Article 5 of Law No. 463-IX of 2020 on Complete General Secondary Education, entitled “Language of Instruction in General Secondary Schools,” contains a detailed explanation of Article 7 (Language Article) of the 2017 Education Law. The law distinguishes three models of nationality education. Indigenous peoples have the right to receive all general secondary education in the language of the respective indigenous people (monolingual [mother tongue] education model). National minorities can study in their mother tongue in primary education, but in primary and secondary education (from grade 5) an increasing number of subjects are taught in the official language: 20% in grade 5, 40% in grade 9, and 60% in the upper grades. For “persons belonging to ethnic minorities of Ukraine whose languages are not official languages of the European Union” (i.e., Russians), the rate is 80% (the latter two are the bilingual education model). Exceptions are the private institutions, where the right of free choice of the language of the educational process exists.

According to Article 48 of the Law of Ukraine No. 1556-VII of 2014 About Higher Education, as amended by Law No. 2704-VIII of 2019 (2019 Law on [State] Language) and Law No. 392-IX of 2019 on Amendments to Certain Laws of Ukraine on Improvement of Educational Activities in the Field of Higher Education, the language of higher education is the state language (i.e., Ukrainian), but higher education institutions have the right to decide whether to teach one, several, or all subjects in English. As the Law on Higher Education did not provide for any exceptions for privately run institutions, a special situation arose for the Ferenc Rákóczi II Transcarpathian Hungarian College of Higher Education, which was maintained by a charitable foundation “in support of the Transcarpathian Hungarian College” (in fact the Hungarian kin-state). While the college was an accredited higher education institution in Ukraine, it operated with Hungarian as the language of instruction.

The ethnic categorizations in the 2017 Law on Education and the 2019 Law on (State) Language were in clear contrast to the 1992 Law on Ethnic Minorities, which was replaced by two new laws on indigenous peoples and national minorities (communities).

The Law on Indigenous Peoples

For a long time, only four countries in Europe (Finland, Sweden, Norway, and Russia) were considered indigenous (Kent 2014), and only one country, Ukraine, has a specific law on indigenous peoples. The Crimea enjoyed autonomy within the Russian Federation until the end of the Second World War, when this separate status was abo-

lished after the Crimean Tatars were deported to the Asian territories of the Soviet Union on charges of collaborating with the Germans. The peninsula itself was annexed to the Ukrainian SSR in the February 5, 1954, Decree of the Presidium of the RSFSR Supreme Soviet, "considering the commonality of the economy, the territorial proximity, and the close economic and cultural ties between the Crimean Oblast' and the Ukrainian SSR" (Yumashev et al. 1956: 35).

The return of Crimean Tatars to the peninsula, deported at the end of World War II, began in the late 1980s and dragged on for more than a decade, as they were not granted resettlement benefits and were not subject to any alien registration procedures. On November 12, 1990, the Supreme Council of Crimea passed the declaration on the state and legal status of the peninsula, declaring the right of the Crimean peoples to restore their statehood in the form of an autonomous republic, and a local referendum on this issue was held on January 20, 1991. This was the first referendum in the history of the Soviet Union to date, which resulted in a decision by the Kyiv parliament to restore autonomous status. The separate status of Crimea was incorporated into the Constitution of Ukraine adopted in 1996, which is still in force today, and the Constitution of the Autonomous Republic of Crimea was adopted in 1998. The adoption of the Crimean constitution was hailed by the Ukrainian government and some domestic and foreign observers as a solution to the "Crimean problem" (i.e., to prevent Russian separatist attempts to secede from Crimea, to confirm the peninsula's status as an integral part of Ukraine, and at the same time to grant the region autonomy in a number of areas; Shevel 2001: 109–129).

In addition to the state system, the Crimean Tatars maintained the Qurultay of the Crimean Tatar People, which is a national congress and the supreme representative plenary body of the Crimean Tatar people, and the Mejlis of the Crimean Tatar People, which is the supreme executive representative body of the Crimean Tatars in the period between sessions of the Qurultay, elected by its members, as well as its local organisations. The Mejlis is a representative body that has developed over more than two decades and bears the hallmarks of personal national self-government and national self-determination, based on the principle that Crimean Tatars in Crimea, and in Ukraine in general, are not a national minority but an indigenous people under international law, and as such they are entitled to self-determination in their homeland. Kymlicka also pointed out that the term "indigenous" has been used to refer to peoples such as the Crimean Tatars, Roma, Abkhazians, Chechens, Tibetans, etc. (Kymlicka 2007: 265). Despite considerable efforts by Crimean Tatar elites and their supporters abroad, mainly in Turkey, neither the system of separate representation nor the indigenous status has been recognized on the international stage.

The change was brought about by the events of Euromajdan (Revolution of Dignity) in 2013 and 2014. Crimean Tatars supported the revolution in defence of European values and in protest against the Russian occupation and annexation of the peninsula. The Russian authorities began persecuting Crimean Tatar activists on trumped-up terrorism charges, and in 2016 the Russian Supreme Court branded the Mejlis an extremist organization and officially banned it (Sadovskaya–Pfeilschifter 2020). Moreover, in Ukraine, which could no longer exercise jurisdiction over the peninsula, where almost 100% of the approximately 250,000 Crimean Tatars lived, proactive legislation against the Crimean Tatars was initiated.

On March 24, 2014, the Verkhovna Rada, the Parliament of Ukraine, adopted Resolution No. 1140-VII of March 20, 2014, on the Statement of the Verkhovna Rada of Ukraine Regarding the Guarantee of the Rights of the Crimean Tatar People as Part of the Ukrainian State. According to the resolution, Ukraine guarantees the preservation and development of the ethnic, cultural, linguistic, and religious identity of the Crimean Tatar people as an indigenous people and of all national minorities of Ukraine and the protection and realization of the inalienable right of self-determination of the Crimean Tatar people; recognizes the Mejlis and the Qurultay; recognizes the UN Declaration on the Rights of Indigenous Peoples; and calls on the government to immediately submit to parliament a bill defining and confirming the status of the Crimean Tatars as an indigenous people.

The UN General Assembly's 2007 Declaration on the Rights of Indigenous Peoples, which did not include a definition of indigenous peoples, now recognizes indigenous peoples not only as individuals but also as a collective subject. While the second ILO Convention (1989) focused on integration, the UN Declaration emphasized the protection of the specificity of indigenous groups (Körtvélyesi 2009: 10–30). The UN Declaration is part of international soft law (i.e., it is not binding for states unless they incorporate it into their domestic legal systems; Toki 2018: 78–79). The final text of the document was adopted by the UN General Assembly on September 13, 2007, with 143 votes in support, 11 abstentions, and four votes against. The abstention at that time included Ukraine (as well as Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russia, and Samoa; Toki 2018: 71).

By recognizing the UN Declaration on the Rights of Indigenous Peoples through a parliamentary resolution, Ukraine has made the UN Declaration on the Rights of Indigenous Peoples part of its internal legal order (i.e., binding on itself). Since the declaration interprets the concept of indigenous peoples in accordance with the definition in existing international law, it can be assumed that Ukraine has based its definition of indigenous peoples on the provisions of the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169). According to Article 1(1), the convention applies to

(a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community and whose status is determined in whole or in part by their own customs or traditions or by special laws or regulations; (b) peoples in independent countries who are considered to be indigenous by reason of their descent from the populations who inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or of the establishment of the present State boundaries, and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

However, the parliamentary resolution itself did not define the term “indigenous.” The parliamentary resolution is subordinate to the law, and according to the constitution, only the law can provide for the rights of indigenous peoples and national minorities (Article 92 [3]).

Shortly after the above-mentioned parliamentary resolution, on April 17, 2014, the parliament adopted the Law of Ukraine No. 1223-VII of 2014 on the Restoration of the Rights of Persons Deported on National Grounds. The law defines the concept of deportation as the “forcible transfer of peoples, national minorities and persons on the grounds of nationality from their permanent place of residence on the basis of decisions of the state authorities of the former USSR or the federal republics” (Article 1). Persons covered by the law may be “representatives of the Crimean Tatar people [or] other nationalities (citizens of the former USSR)” who meet the conditions listed in the law (Article 4).

Although the above-mentioned parliamentary resolution of March 20, 2014, instructed the government to prepare the law on indigenous peoples “without delay,” the concept of indigenous peoples has appeared in several pieces of legislation since the relevant parliamentary resolution, on the basis of an unwritten “customary law,” as mentioned above, for example in the 2012 law on education.

In the final stage of the relevant legislation, President of Ukraine Volodymyr Zelenskyy submitted the Draft Law No. 1616-IX of 2021 on the Indigenous Peoples of Ukraine as a matter of urgency on May 18, 2021, the day of commemoration for the deportation of the Crimean Tatar people in 1944. The bill was registered in parliament on the same day. The explanatory memorandum to the draft law, signed by Deputy Head of the Presidential Office Oleksii Dniprov, points out that there is no legislation in Ukraine that expands the concept of indigenous peoples and that such legislation is therefore necessary—in accordance with the constitution, a law that includes the rights of indigenous peoples, justified by the desire to domesticate international standards, to guarantee the right of indigenous peoples to self-determination and to give them the opportunity to decide independently on their political status.

The draft was commented on by the Ministry of Finance, the Ministry of Education and Science, the State Commissioner for the Protection of Languages (casually referred to as the “language ombudsman”), the Parliamentary Commissioner for Human Rights, the Central Scientific Expert Office of the Verkhovna Rada of Ukraine, and the Committee of the Verkhovna Rada on Questions of Environmental Policy. The Parliamentary Committee on Human Rights, De-occupation and Reintegration of the Temporarily Occupied Territories of Donetsk, Luhansk and the Autonomous Republic of Crimea, National Minorities and Interethnic Relations, which was responsible for the final expert opinion, in its minutes of June 16, 2021, summarized the positive opinions of the above-mentioned institutions and suggested minor clarifications not affecting the substance and the insertion of Article 7(3) (which was done). The law was adopted by parliament on July 1 and signed by the Speaker of the Verkhovna Rada of Ukraine on July 8 and the President of Ukraine on July 22. Thereafter Law of Ukraine No. 1616-IX of 2021 on Indigenous Peoples of Ukraine came into force. The law contains a definition of indigenous peoples, the most important element of which is that it defines an ethnic minority within the Ukrainian population that possesses a distinctive language and culture, has traditional social, cultural, or representative structures, considers itself native to Ukraine, and does not have its own state entity beyond Ukraine (Article 1 [1]). An innovation in the Ukrainian legal order is that self-determination also provides the right to determine political status and the right to economic autonomy and income generation, in addition to socio-cultural development (Fedinec 2023a: 56).

The law was greeted with outrage from Russia, with President Vladimir Putin describing the introduction of the indigenous category as dividing society into first, second, and so on ranks. On June 8, 2021, the State Duma condemned the adoption of this law as “an insult to historical memory and a blatant provocation aimed at escalating tensions and conflicts in Ukraine and abroad” (Terzyan 2022: 8). Hungary’s official criticism was mainly that it limits the scope of indigenous (in the Hungarian interpretation: autochthonous) minorities, does not recognize Hungarians, Romanians, Russians, etc. as indigenous, and tries to circumvent the state’s commitment to internationally recognized minority rights instruments by referring to “communities” instead of “minorities” (Terzyan 2022: 8; Hungarian Human Rights Foundation, 2021). However, a blanket recognition as indigenous would not change the scope of access to rights; other laws grant additional rights to the indigenous population and deprive national minorities of (acquired) rights. This in turn undoubtedly raises unanswered questions about the equal treatment and protection of minorities (Terzyan 2022: 8).

The Law on National Minorities (Communities)

Ukrainian President Volodymyr Zelenskyy announced in July 2021 that a new law on minorities would be prepared in parallel with the law on indigenous peoples. The head of state made special reference to the terminology:

We are actively working on a law on national communities in Ukraine. Not minorities, but communities! Because no nationality in Ukraine should feel like a minority, less important, less protected or less happy. No one can be a minority, because we are all citizens of Ukraine [...]. (Roshchenko 2021)

Ukrainian Verkhovna Rada Commissioner for Human Rights Dmytro Lubinets (Ombudsman since July 1, 2022) made a similar argument.

They are communities, not minorities. [...] The main idea is that no one should be in a minority living on the territory of Ukraine and having Ukrainian citizenship. We are all equal on our land and in our homeland, Ukraine. Therefore, an important step will be to change the legal concept of national minorities to national communities. (Lubynets 2021)

In August 2022, Volodymyr Kulyk, one of the most respected experts, launched a scathing attack on the draft in the press, for both its conceptual inconsistency and its intangible standards. He described the fuss about minorities or communities as a meaningless juggling of words and complained that the draft had not been sent to the relevant research institutions, including the Institute of Political and Ethnic Studies of the National Academy of Sciences of Ukraine, adding that the representatives of minorities should be told honestly “which of their wishes the state is ready to meet and which are not, instead of creating a false impression of ‘good for all’” (Kulyk 2022b).

The Law of Ukraine No. 2827-IX of 2022 on National Minorities (Communities) was submitted to parliament on November 24, 2022, where it was adopted during the first reading on December 1 and the second reading on December 13. The document was signed by the President of Ukraine on December 29 and published in the official gazette on December 31.

The title of the law itself makes it clear that the debate on the concept of “national minority” or “national community” has not been settled; the law applies both in the same sense. As mentioned above, the constitution uses the term “national minority.” The 1992 and 2022 minority laws do not differ in substance as regards the definition of the term, although the latter is much broader. The law refers to the Declaration of the Rights of Nationalities of Ukraine No. 1771-XII of 01.11.1991. Specifically, it mentions, among other things, the guarantee of the preservation of the traditional place of resi-

dence and the organization of the administrative unit on a national basis (Article 2) and the use of the national language in compact nationality areas on an equal footing with the state language but omits the concept of cultural autonomy. The novelty of the law compared to the previous one is that it incorporates the relevant provisions of the 2017 Law on Education and the 2019 Law on (State) Language. With regard to the former, it confirms that privately run educational institutions can continue to provide education in minority languages, and with regard to the latter, it makes concessions on publishing (Fedinec 2023b: 10). It is important to note that the 2019 Law on (State) Language has of course led to amendments or new sectoral laws in all the areas concerned, which are not discussed here (e.g., laws about film, press, etc.).

The Venice Commission Venice Opinion (CDL-AD [2023] 021) explicitly emphasized that the key concept of the law is the “integration of society,” addressing both majority and minority segments of society in order to achieve integration, while also referring to its opinion on previous laws concerning minorities in Ukraine, which explicitly recommended, *inter alia*, that education reform be considered in this light. It is noteworthy that the commission referred to its 2020 opinion on the amendments to the Legislation on Education in Minority Languages of Latvia (CDL-AD [2020] 012-e), in which it accepted the differential treatment of EU and non-EU languages. However, a key difference is that the Latvian Constitution does not explicitly provide for the protection of any minority language, whereas the Ukrainian Constitution provides such protection for Russian. The commission believes that in the light of the brutal aggression against Ukraine, it would be legally justifiable for Ukraine to suspend this constitutional provision for a period of time. This is also interesting because the Baltic states, which have been members of the EU and NATO since 2004 and which Ukraine sees as an example, are the least permissive in the post-Soviet space on the issue of the Russian minority. The manifestations of the Kremlin’s revisionist policy prove that all the instruments of the political strategy chosen by the Baltic states in 1991 are correct and effective (Jundo-Kaliszewska–Włodarska-Frykowska 2021: 179).

Minority Rights and Ukraine’s Road to EU Accession Talks

Taking all this into account, it is undeniable that, as of the 2017 Education Act, minority rights have been curtailed. The above legislative process, especially bilingual education, has been continuously criticized by the Hungarian government, the most effective tool of which seems to have been the blocking of the NATO-Ukraine Commission, which continued even after the Russian invasion started in early 2022, until the NATO-Ukraine Council was established at the 2023 Vilnius NATO summit to replace the commission. Hungary has continued to stress, primarily through Minister of Foreign Affairs and Foreign Trade Péter Szijjártó, that it will not support any integration efforts by Ukraine until the Hungarians in Transcarpathia have their rights restored. The Hungarian politi-

cians in Transcarpathia stressed, first and foremost, that the Hungarians in Transcarpathia should also be granted the status of autochthonous peoples, and that this would solve the problems (since they are not covered by bilingual education). However, there was a conceptual problem, which confused public opinion in Hungary, in that it was the indigenous peoples who had this right.

On June 23, 2022, the European Council granted Ukraine candidate status and invited the European Commission to monitor the implementation of the reforms necessary for Ukraine to meet the conditions for applying for membership. The seven criteria included a review of legislation on national minorities. On September 15, 2023, Levente Magyar, Parliamentary State Secretary of the Ministry of Foreign Affairs and Trade, told MTI at the meeting of the Joint Committee on Education that “Ukraine’s accession to the EU and NATO and its rapprochement with the EU” can be supported if Ukraine does not restrict the right of the Transcarpathian Hungarians to learn in their native language (Government of Hungary 2023). In an interview published in *La Point* on December 8, following his meeting with French President Emmanuel Macron on Ukraine, the prime minister also said that the rights of minorities in Ukraine should not be negotiated, as this is not a precondition for accession. “Ukrainians should respect them. Not because they want to join the European Union, but because they need to, if only to maintain their relationship with Europe” (Berretta–Sapin 2023).

On December 8, the Ukrainian Parliament voted Law No. 3504-IX on Amendments to Certain Legislative Acts of Ukraine in the light of the expert opinion issued by the Council of Europe and its bodies on the rights of national minorities (communities) in certain areas, which amends the laws on local self-government, higher education, education, the state language, comprehensive general secondary education, national minorities (communities), and the media. These amendments, among others based on the above-mentioned of the Venice Commission Opinion (CDL-AD [2023] 021), extended the wide range of minority rights to minorities whose language is an official language of the EU. It also settled the situation of the Ferenc Rákóczi II Transcarpathian Hungarian College of Higher Education by extending the right of free choice of language to private educational institutions, such as the college, in the Law on Higher Education. The language article of the 2017 education law never came into force, as its introduction in national schools was postponed twice and then adapted to the Venice Commission’s proposals with the 2023 amendments to the law.

As a result, the EU summit on December 14–15, 2023, decided whether Ukraine (and Moldova) can start accession negotiations with the EU. Hungary did not vote on the latter but allowed it to happen in a historic and colorful way: German Chancellor Olaf Scholz took Viktor Orbán out for a “coffee break” (Bettiza 2023). Commenting on the decision, the Hungarian prime minister said that it was a completely pointless, irra-

tional, and wrong decision to open accession negotiations with Ukraine, in which Hungary does not wish to participate, but if 26 other member states insisted on it, then “let them go their own way.” In early 2024, Hungary presented Ukraine with an additional “11-point list” of demands concerning minority rights. Although this list was not made public, it was informally released to the press. This was followed by a long and opaque series of negotiations to turn the demands into reality, from which the public was excluded. By the time I concluded this study in early 2025, no agreement had been reached. Hungary had rejected all constructive proposals from Ukraine, making it clear that the “11 points” were in fact a trap designed to hinder Ukraine’s EU ambitions (Fedinec 2024a; Fedinec 2024b).

Conclusions

In Ukraine after 2014, we have witnessed that minority rights and national security considerations have often come into conflict with each other as Russia’s hybrid warfare has become a systemic problem for Ukraine in particular but also for the whole region (Fiala-Butora 2020: 257; Dumitru 2021: 95–106). Russia has always seen Ukraine (and Belarus) as part of itself, as a guarantee of its integrity. Historically, one of Russia’s most important defence strategies has been “depth” (Bērziņš 2014: 1). It is a fact that Belarus is now overwhelmingly Russian speaking and only formally independent of Russia, while Ukraine has constantly struggled to avoid becoming a Russian province, both politically and linguistically. Russia’s invasion of Ukraine may now make the securitization of the minority issue part of the international law.

At the same time, it should be seen that the rhetorical and political escalation between Ukraine and Russia is only at first glance a conflict between a post-colonial nationalizing state, an ethnic minority, and the external homeland. The military escalation between the two post-Soviet countries predates Ukraine’s post-2014 nationalist laws and policies and is therefore a reaction to, not a cause of, Russian armed intervention (Fedorenko–Umland 2021: 53–82). Ukraine’s commitment to and its policy towards the EU remained unchanged. This was also true throughout the period of full-scale war.

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