

Minority Rights – Gateway for Ukraine to the EU

Introduction

In early November, the European Commission adopted the 2023 enlargement reports and recommended to open accession negotiations with Ukraine. The European Commission, however, admits that protecting the rights of national minorities is still not resolved. Recently Ukraine prepared a draft legislation that would restore the rights of national minorities in relation to languages that are official languages of the EU. This may be the solution to resolve the issue that has been a ground for criticism in relation to Ukraine since 2017.

European Commission Requirements for Accession

In June 2022, the European Commission recommended granting Ukraine the EU candidate status, while it simultaneously announced a list of requirements and conditions that must be fulfilled by Ukraine to start the negotiations with the EU on accession.¹

According to the European Commission, in Ukraine, the decision to grant EU candidate status created a powerful reform dynamic, despite the ongoing war, and the Ukrainian government and Parliament demonstrated resolve in making substantial progress on meeting the 7 steps of the European Commission Opinion on Ukraine's EU membership application. Ursula von der Leyen affirmed: Ukraine has established a transparent pre-selection system for the Constitutional Court judges, reformed the judicial governance bodies, further developed its track record of high-level corruption investigations and convictions, while it has taken positive steps in a wider and systemic effort to address the influence of oligarchs. The country has also demonstrated its capacity to make progress in aligning with the EU acquis.²

¹ European Commission 2022.

² European Commission 2023a.

Under the accession criteria defined by the European Council back in 1993 ('Copenhagen criteria'), countries wishing to join, need to have, among other requirements, stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.

In line with this, the 7th accession requirement towards Ukraine is to finalise the reform of the legal framework for national minorities currently under preparation as recommended by the Venice Commission. The European Commission's accession report, however, underlines that even though Ukraine made great progress in several aspects, the legal framework for national minorities still needs to be improved.³

Venice Commission on the Rights of National Minorities

The most recent opinion of the Venice Commission adopted on the plenary sitting of the advisory body on 6–7 October, that analyses the amendment of the Act on National Minorities adopted in September 2023, emphasises that while Ukraine has taken positive steps, the recommendations of the Venice Commission are still not fully implemented in many aspects.⁴

This is the fourth Venice Commission opinion that comes to such a conclusion in the past six years. In 2017, the Ukrainian parliament passed the amendment of the law on education,⁵ and two years later, it amended the state language law.⁶ These legal changes restricted the existing rights of national minorities. The Venice Commission found in both cases that Ukrainian laws do not align with Ukraine's international obligations for the protection of national minorities, as they did not establish a proper balance between the legitimate goal of strengthening the Ukrainian language and adequate protection of minority language rights.⁷ In December 2022, the Ukrainian parliament adopted the law on national minorities (communities).⁸ In its opinion in June 2023, the Venice Commission stated that, although the law made progress in several areas, there are still numerous issues where the legal framework for national minorities

³ European Commission 2023b.

⁴ Council of Europe Venice Commission 2023a.

⁵ Council of Europe Venice Commission 2017a.

⁶ Council of Europe Venice Commission 2019a.

⁷ Council of Europe Venice Commission 2017b; 2019b.

⁸ Council of Europe Venice Commission 2023b.

is not in line with Ukraine's international obligations and minority protection standards.⁹

In September, the Ukrainian parliament adopted amendments to the law, stating their intention to fulfill the Venice Commission's recommendations, thus removing all obstacles to the country's EU accession.¹⁰ The Venice Commission subsequently adopted its earlier cited follow-up opinion,¹¹ claiming that in many cases, the new amendments only partially or not at all responded to the earlier proposals. Therefore, the amended law does not comply with the international requirements for the protection of minorities.

Solution on the Horizon

In its opinion adopted in June 2023 (point 41) and October 2023 (point 39),¹² the Venice Commission outlined a solution for Ukraine to resolve the situation that lines in making a legal distinction between official languages of the EU (Bulgarian, Greek, German, Polish, Romanian, Slovak, and Hungarian) and other minority languages (Russian, Belarusian). According to the Venice Commission, such a distinction could be legally justified, considering the ongoing Russian aggression against Ukraine. While the Ukrainian constitution includes a guarantee for the protection of the Russian language, due to the Russian aggression, Ukraine could temporarily suspend this provision, allowing for differentiation between the two types of minorities.

It seems that Ukraine is now determined to resolve the issue, and apply the solution implicitly suggested by the Venice Commission. On 24 November, Ukrainian Prime Minister Denys Shmyhal presented a new draft law to the representatives of national minorities in Ukraine that would restore the language rights of national minorities who speak an official language of the EU.¹³ Thus, the modifications would only apply to national minorities speaking one of the official languages of the EU, the restrictions towards the Russian speaking population would remain.

Under the new draft legislation, distinctive minority rights would be granted to communities whose members make up at least 15% of the local population

⁹ Council of Europe Venice Commission 2023c.

¹⁰ Council of Europe Venice Commission 2023d.

¹¹ Council of Europe Venice Commission 2023a.

¹² Council of Europe Venice Commission 2023a; 2023c.

¹³ Verkhovna Rada of Ukraine 2023.

(this category includes the vast majority of Hungarian settlements in Transcarpathia). Moreover, regardless of the territorial concentration, the new law shall allow the rights of national minority communities to be extended to those who have lived in the region for 100 years.¹⁴

The draft law shall also deregulate the provisions of the controversial amendment of the law on education that would have gradually switched to teaching subjects in Ukrainian for minority pupils from the fifth grade onwards. The new draft law therefore ensures that minorities can learn in their mother tongues until graduation, and thus, the Hungarian elementary and secondary schools could remain in Transcarpathia, too. Yet, the issue of higher education is not settled in the new document.

The draft law would also amend the state language law to allow cultural and other events to be held in the language of the minority, with state language interpretation only required if one fifth of the guests, or at least 20 people, do not understand the mother tongue of the national community. It would be possible to place advertisements and signs in the minority language, as well as to carry out political activities in this language during election campaigns. The written press would not be obliged to translate the minority language content into Ukrainian and to distribute it in its original number of copies, and the language quota for broadcast media would be favourably modified, too.

According to the legislative schedule, the Ukrainian parliament could pass the new draft law on 8 December, and thus, the new legislation could enter into force before the European Council meeting in December.

What's Next?

There are two critical concerns with the new legislation, though. Firstly, it would still constitute discrimination on ethnic basis towards the Russian speaking population which remains a problem from a human rights perspective. Even though the Venice Commission implied that the distinction between the official languages of the EU and other minority languages could be justified due to the ongoing Russian aggression of Ukraine, this is only a temporary solution. The Venice Commission's opinions also imply that once the war ends, Ukraine cannot discriminate against its Russian speaking citizens. However, at this point it is hard to imagine that Ukraine would soon restore the rights

¹⁴ Hungary Today 2023.

of ethnic Russians in Ukraine given that the main reason for the Ukrainian restrictive minority policy was to tackle Russian influence in the country.

Secondly, even if the Ukrainian parliament passes this new legislation as a necessary step in the EU accession process, it does not mean that these rights will be upheld after Ukraine joins the EU. Even though the EU requires the respect for and protection of minorities from candidate states, the EU law does not pose such a requirement toward Member States. Several EU Member States which adopted legal acts for the protection of minorities in the accession process, have or are now deregulating these guarantees (Lithuania, Estonia, Latvia). Therefore, long-lasting, constitutional guarantees are needed in the Ukrainian law for national minorities whose rights are now being restored – as it is the case with the protection of the Russian language.

Since the amendment of the education law in 2017, Budapest has consistently been criticising Kyiv for depriving national minorities, particularly the somewhat 140,000 ethnic Hungarians in Transcarpathia, of their previously entitled rights. Hungarian foreign minister Péter Szijjártó said on the issue that “Hungary will never be able to support Ukraine’s transatlantic and European integration as long as Hungarian schools in Transcarpathia are at risk”.¹⁵

The new draft law, however, seems to be in line with the opinions of the Venice Commission of 2023, and thus, seems to comply with the accession requirements set by the European Commission. The Venice Commission is likely to review the new legislation after its adoption and provide an important opinion that would affect Ukraine’s EU accession process.

4 December 2023

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¹⁵ Kovács 2023.

Minority Rights – Gateway for Ukraine to the EU

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További uniós szakpolitikák



Lengyel–magyar vétó: pillanatkép az uniós migrációs politika reformjáról

Bevezetés

Jogi nem, csak politikai viták övezhetik a Tanács azon migrációval kapcsolatos döntéshozatalait, amelyekkel szembement az állam- és kormányfők által kitűzött céllal. Az elfogadott dokumentumok azonban még csak az első előtti szakaszát jelentik az uniós jogalkotásnak.

Informális európai tanácsi (EiT) ülést tartottak október 6-án az uniós állam- és kormányfők Granadában. Az Európai Politikai Közösség harmadik ülését követő csúcstalálkozó legfőbb témái az erős és versenyképes Európa megteremtése, illetve az ahhoz szükséges intézkedések voltak.¹ Az ülés mégsem az eredményei miatt vált jelentős eseménnyé, hanem azért, amivel kapcsolatban végül nem hoztak közös döntést a tagországok vezetői. A migráció ügye nem csupán a tárgyaláson, de már a csúcstalálkozót megelőzően is megosztotta a politikusokat. Lengyelország és Magyarország a korábban elfogadott európai tanácsi következtetésekre hivatkozva bírálta a Tanács korábbi döntéseit,² és emiatt határoztak végül úgy, hogy vétójogukkal élve olyan nyilatkozatot fogadnak csak el a múlt heti európai tanácsi ülésen, amelyben nem említik a migrációt.³

Döntéshozatal a Tanácsban: nem etikus, de jogszerű?

A magyar és a lengyel kormány által hivatkozási alapul szolgáló 2016. decemberi,⁴ 2018. júniusi és 2019. júniusi európai tanácsi következtetésekből az állam- és kormányfők megállapodtak abban,⁵ hogy „konszenzust kell elérni a dublini

¹ MISZLIVETZ 2023.

² EUrologus 2023.

³ Európai Tanács 2023a.

⁴ Európai Tanács 2016.

⁵ Európai Tanács 2018; Európai Tanács 2019.