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THE ADJUDICATION OF THE LANGUAGE OF EDUCATION CASE IN THE CONSTITUTIONAL COURT OF UKRAINE – A COMPARATIVE ANALYSIS WITH ECTHR JURISPRUDENCE

Introduction. On 6 October 2017 the Constitutional Court of Ukraine registered the constitutional submission of 48 People's Deputies of Ukraine on the compliance of the Law of Ukraine 'On Education' dated 5 September 2017 with the Constitution of Ukraine (*constitutionality*) (hereinafter – the petition, alternatively – the constitutional submission)¹.

In the introductory part of the Petition the subject of the right to a constitutional submission stated that the Law of Ukraine 'On Education' of 5 September 2017 (hereinafter – the Law on Education of 2017)², does not generally correspond to the Constitution of Ukraine and is discriminatory. However, in 3 out of 5 parts of the Petition, the subject of the right to a constitutional submission (hereinafter – the Petitioner) proved the unconstitutionality of Article 7 'Language of Education' of the Law on Education 2017, which contains the basic requirements that determine the language of education. That is, the efforts of the Ukrainian state to secure the status of the Ukrainian language as a state language, in particular, in the field of education, caused a negative reaction of part of the Ukrainian political establishment and claims of discrimination against national minorities of Ukraine.

The case for this constitutional proceeding lasted from April 2017 to July 2019. On 16 July 2019, the Constitutional Court of Ukraine announced the judgment on the compliance of the Law on Education with the Constitution of Ukraine. However, this does not mean that the Ukrainian citizens will not be able to lodge lawsuits to the ECtHR in violation of (*hypothetically*) their right to education in their mother tongue. So, our aim is to find out if the Law on Education of 2017 violates Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as 'the Convention'). We also need to find out whether such actions by citizens of Ukraine to the ECtHR can be maintained, since Ukrainian courts have already faced lawsuits on the right to education on their mother tongue³.

When forming legal positions in support of Article 7 of the Law on Education 2017 and represented in the Constitutional Court during the constitutional proceeding we certainly have taken into account the legal positions of the ECtHR in such cases.⁴ This is, in particular, the *Belgian linguistic case* (1966),⁵ *Juta Mentzen*, also known as *Mencena v. Latvia* (2004)⁶, *Case of Catan and others v. Moldova and Russia* (2012)⁷.

Literature review.

The coherence of national constitutional courts' case law and the jurisprudence of the European Court of Human Rights has been the subject of review of several legal academics, such as S. Shevchuk (2011)⁸, E. Marzano (2017)⁹,

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I. Toronchuk and V. Markovskiy (2018)¹⁰ and R. Malko (2020¹¹). Some of the abovementioned academics commented upon the criticism of the Venice Commission concerning the Ukraine's law on Education. Stanislav Shevchuk, the ex-ad hoc judge of the European Court of Human Rights (from Ukraine) claimed that the jurisprudence of constitutional courts has to be coherent with the case law of the European Court of Human Rights. Upon this issue, he said, that "Albeit the courts of general jurisdiction, headed by the Supreme Court of Ukraine are more accustomed to apply the case law of the European Court of Human Rights (as there is a link to the trial facts of the European Court's judgments, which bear a direct impact on the validity and obligatoriness of its jurisprudence), the Constitutional Court has to possess a paramount role in the adjustment of the European Court's case law and its implementation into the legal system of Ukraine being guided by the principles of subsidiarity and supremacy of Ukraine's Constitution¹². E. Marzano (2016) hallmarked the inconsistency of the Venice Commission, which seems to be repetitive, coming to a conclusion that there is very little consecution in the EU language policy. Such an inference was made, inter alia, owing to the fact that the language equality status and a multi-lingual regime in the European Union were settled as a recognition of the cultural standalone of the member-states. At the same time, the internal agreements practically presuppose a limited set of "working" languages, that is, far not all EU languages are the "working" languages of its official bodies. Hence, only such languages, as French, English and German are used. This author has also analyzed the most outstanding court judgments concerning the language-related relationships in the EU states.¹³ The paper of I. Toronchuk and V. Markovskiy (2018) analyzed the recommendations of Venice Commission concerning the application of language rights of minorities in the sphere of education¹⁴. Another publication by R. Malko criticizes the conclusion of the Venice Commission concerning the Ukraine's "Law on the fulfillment of Ukrainian language operation as the state language" of 25.04.2019. This author claims they lack consequence and have not considered the Ukrainian context, literally: "... in the style of morbid European discomposure and tolerance"¹⁵.

Aim of the scientific paper.

The purpose of the article is the analysis of the participants' arguments of the Petition relating to the compliance of the Constitution of Ukraine (constitutionality) with the Law on Education; the analysis of the legal positions of the Constitutional Court of Ukraine in this trial and their conjunction with the relevant ECtHR case law.

Main body.

Historical Background.

The language policy of the Ukrainian authorities, which has been conducted from 1991 to 2014 on securing the rights of national minorities to receive education in their mother tongue, has hardly drawn criticism from the EU institutions. The same issue concerns the neighboring countries whose national minorities reside in Ukraine and have the opportunity to receive education in their mother tongue, such as Hungary or Russia.

However, the Russian aggression, which began in February 2014 clearly testified that Ukraine was deprived of its jurisdiction over precisely those territories where the schools with the state (Ukrainian) language of instruction were the least. This also applies to the Crimea and the individual eastern regions of the Luhansk and Donetsk regions. Thus, the Ukrainian authorities received a very negative experience of language policy, the basic principle of which was the possibility of using minority languages in different spheres of public relations instead of the state language. These include areas of social relations, such as education, the activities of local governments, television, radio and information space.

The reservations made by the Constitutional Council of France, in the case of ratification of the European Charter for Regional or Minority Languages on the threat to the principle of the integrity of the republic by extending the use of minority languages in the public sphere no longer seem groundless¹⁶. Similar reservations on the integrity of the state occurred to the Belgian Government in relation to the treatment of the complaints by the French-speaking Belgians in the ECtHR concerning the 'discriminatory' provisions of the Act, 1963.¹⁷ We hope these facts will encourage the stateholders and the judges of the ECtHR to take into account these circumstances when adjudicating trials involving the use of national minority languages in public relations.

The Russian aggression which outbroke in 2014 and natural attention in such circumstances to European practice prompted the Ukrainian authorities to change their approaches to the formation of language policy in the field of education, compared to the one conducted by the pro-government Party of Regions led by its leader and former President V. Yanukovich (currently accused in high treason) from 2010 to 2014. An instrument of such policy was the Law of Ukraine 'The grounds of State language Policy' of 3 June 2012¹⁸ (hereinafter – Law on Language Policy 2012). This law was declared unconstitutional in accordance with the judgment of the Constitutional Court of 2 February 2018 No. 2-р/2018¹⁹. The constitutional proceedings lasted from October 2014 to February 2018, and it was the rules of this Law that the Petitioner referred to while contesting the provisions of Article 7 of the Law on Education 2017. It is important to understand that the constitutional proceeding of the Law on Education had started before the Law on Language Policy 2012 was declared unconstitutional under the judgment of the Constitutional Court of Ukraine dated 28 February 2018.

The Parliament of Ukraine has passed a number of legislative acts that would reduce the scope of the use of Russian language (which is under the Constitution of Ukraine the language of the national minority) in the information space, as well as increase the sphere of the use of the Ukrainian language as a state language on radio and television²⁰. Although the state's reaction to Russia's military and information aggression was delayed, the realization of the need for a change in language policy resulted in the introduction of laws that would diminish the possibility of informational influence of any propaganda that threatens Ukraine's sovereignty during the war.

The next step was the adoption by the Parliament of the Law on Education in 2017 containing Article 7 'Language of Education' that caused such significant public resonance. Subsequently, on 25 April 2019 the Parliament adopted the Law 'On Ensuring the Functioning of the Ukrainian Language as the state language'²¹ which enshrines the provisions of Article 7 of the Law on Education 2017.

Criticism of Article 7 of the Law on Education 2017 in the EU and Russian Federation.

This paragraph analyzes the legal positions of the entities that could impact the judges of the Constitutional Court of Ukraine in this proceeding, in particular, the legal positions of the Council of Europe and the European Commission for Democracy through Law (hereinafter referred to as the *Venice Commission*), politicians of other countries, including Hungary and Russia. The fact is that the EU's critical remarks and the political statements of Hungary and Russia were used by the Petitioner in the relevant constitutional submission which is under our analysis. However, it was the attempt to enforce the legal basis of political statements that became the weakest link in the constitutional submission, which will be mentioned later.

We should remind that on 10 October 2017 the Parliamentary Assembly of the Council of Europe (hereinafter – PACE) held a discussion of Article 7 ‘Language of Education’ of the Law on Education 2017. The PACE Resolution No.2189 (2017) contained a critical observation, the essence of which is that Article 7 of the Education Language of the Education Act allegedly creates an inappropriate balance between the official language and the languages of national minorities and ‘causes a significant reduction in the rights previously recognized by national minorities in respect of their own language of instruction’²².

Soon after, on December 11, 2017, the Venice Commission published its own opinion No. 902/2017 on the provisions of the Law on Education of 5 September 2017.²³ Considering the fact that we already analyzed the legal positions of the Venice Commission relating to legislative acts of Article 7 of the law on Education²⁴, we will mention only those provisions which were also observed by the Petitioner.

Therefore, the Venice Commission Opinion contains a number of reservations to Article 7 of the Law on Education, namely: 1) different legal regimes for indigenous peoples and national minorities (paras 40, 41); 2) different legal regimes for different categories of minorities (paras no. 42, 43, 48); The Venice Commission's opinion on the Ukrainian Law on Education referred to unequal treatment of national minorities and non-respect of the principle of non-discrimination against the Russian minority (paras 106–115)²⁵. This opinion is found in the English text of the Ukrainian legislation on the rights and guarantees of national minorities, including the positions of the Constitutional Court of Ukraine concerning the procedure of the use of languages in public relations.

The opinion of the Venice Commission also noted the collision of legal provisions that arose between Article 20 ‘Language of Education’ of the Law on Language Policy 2012 (expired on 28 February 2018 based on the judgment of the Constitutional Court of Ukraine) and Article 7 ‘Language of Education’ of the Law on Education. Therefore, the experts of the Venice Commission have hypothesized that Article 7 of the Law on Education 2017 is contrary to the provisions of Article 22 of the Constitution of Ukraine, since it reduces the level of protection guaranteed by Article 20 of the Law on Language Policy 2012. At the same time, the Venice Commission emphasized that ‘The Venice Commission is not in a position to take a firm stance on this issue, as it does not have at its disposal the necessary relevant material (such as case law, doctrinal comments) on the interpretation of this provision, and this is not within its mandate’ and this problem will be solved by the Constitutional Court of Ukraine²⁶.

This hypothesis on the inconsistency of Article 7 of the Law on Education and Article 22 of the Constitution of Ukraine was taken as the basis and used by the authors of the petition as an argument for proving the unconstitutionality of the Law on Education 2017. In their view, this should serve as the main proof of narrowing of the language rights of minorities in comparison with the previous practice that is contrary to Article 22(3) of the Constitution. This is, in particular, specified in the *2nd part* of the Petition.

As it turned out, this method of attacking the prescriptions of the Law on Education 2017 proved to be inappropriate, since during the constitutional procedure the Law on Language Policy 2012 was declared unconstitutional in accordance with the judgment of the Constitutional Court dated 28 February 2018²⁷.

Summarizing the criticism of Article 7 of the Law on Education, its opponents agreed that the amendments to this law taper the rights of national minorities, compared with the legal provisions of Article 20 ‘Language of Education’ of the Law on Language Policy 2012 (defined as unconstitutional on 28 February 2018). One of the main arguments that criticized the article of the Law on Education was the allegation of the violation of the rights of minorities, which, in their opinion, was due to the unequal treatment of minorities and the introduction of a bilingual model of education in schools where the educational process has previously been exclusively in minority languages.

Such situation in Ukraine was used by Russia and Hungary as a pretence for pressure and proclamation of political statements meaning the interference in the internal affairs of Ukraine under the pretext of protecting the rights of national minorities.* On 27 September 2017 the Russian State Duma declared that Ukrainian legislation violates the rights of Russian-speaking minorities in Ukraine and the Law may become an ‘*act of ethnocide*’. The resolution also called on the United Nations, the OSCE and the Council of Europe to take steps to protect national minorities in Ukraine.²⁸ Such statements by the Russian authorities encourage Ukrainian historians to make analogies with the problem of the Sudeten Germans, who wanted to ‘protect’ Hitler with the purpose of annexation of part of Czechoslovakia. Soon an imaginary nazi *Führer* used the protection of a german minority for pressure on Poland and a start for the war actions against this new victim.

But if Russia's accusations of the victims of own aggression in a ‘incorrect’ or even ‘nazi’ national policy are no longer a surprise, then the Hungarian Foreign Ministry's statements appeared as a surprise to the Ukrainian authorities. Thus, on 1 March 2018 the Hungarian Foreign Minister P. Siarto stated that ‘Hungarian-language schools which currently number 71 should be closed within 4-years period’²⁹. However, these statements do not comply with the language policy pursued by the Ukrainian authorities under Article 7 of the Law on Education. No Hungarian school has been closed and is not going to do this, and there are no lawsuits concerning the violation of the language rights of the Hungarians including the field of education according to the state register of court cases of June, 2019.

* This aspect of our problem is a part of hybrid war waged by Russia against Ukraine.

For the national minorities of Ukraine, the Russian, and partly the Hungarian propaganda campaigns had a considerably negative effect. We assume that the Constitutional Court of Ukraine judges were also forced to take into account public opinion in Ukraine in this particular case, since the possibility of being subjected to such external pressure could have extremely negative consequences for this institution, in particular, causing mass protests by Ukrainian citizens that was not for the first time. In particular, one can mention the protests against the pro-Russian President Yanukovich (accused of treason) who through the ruling Party of the Regions promoted the Language Policy Act of 2012 with gross violations of the procedure for adopting the laws defined by the Constitution³⁰.

Positions of the participants in the constitutional proceeding.

This part deals with the positions of the Petitioner expressed in the constitutional submission on the unconstitutionality of the Law on Education and the positions of the participants of the constitutional proceeding, in particular, the Government. We will not analyze absolutely all the parts of the petition, as some of them touch upon the issues of terminology of the law and legislative procedure.

Concerning the first part of the petition which refers to the inconsistency of the Law of Ukraine "On Education" of 5 September 2017 of Articles 8, 10, 11, 24 and 53 of the Constitution of Ukraine.

The first part of the petition substantiates the positions of the Petitioner and asserts that Article 7 of the Law on Education does not comply with Article 53 of the Constitution of Ukraine since it violates the language rights of national minorities of Ukraine to education in their mother tongue. In the petition they complain that the legislator 'permitted the abolition of the guaranteed natural right of persons belonging to national minorities of Ukraine to study in their native tongue at communal establishments of general secondary education'³¹. The previous page of the petition used the term 'tapering of the right'³².

Firstly, it should be emphasized that the Petitioner has testified to his own misunderstanding of the essence of natural human inalienable rights according to the preamble to the International Pact on Civil and Political Rights of 16 December 1966. The Petitioner unjustifiably identifies the inalienable right of a person to use mother tongue in accordance with Article 27 of the International Pact on Civil and Political Rights³³, and the positive obligation of the State under Article 2 of Protocol No. 1 of the Convention. The ECtHR's legal positions contained in Belgian language cases state: 'The right to education guaranteed by the first sentence of Article 2 of the Protocol (P1-2) by its very nature calls for regulation by the State which may vary in time and place according to the needs and resources of the community and of individuals'³⁴.

In addition, in the case of *Catan and Others v. Moldova and Russia* (2012) the ECtHR acknowledges the right to education is not absolute despite its concordance and could be subjected to restrictions. Provided the very substance of this right is not prejudiced, these restrictions are indirectly permitted, since the right to access 'by its very nature requires regulation by the state'³⁵.

Therefore, the position of the Constitutional Court of Ukraine was also quite concise and clear, indicating to the discretion of the state regarding the legal regulation of the language of the educational process: 'The problem of educational levels for the instruction of national minorities in their native tongue, the number of teaching hours or the period for mastering a certain language is a prerogative of the legislator since under the Basic Law of Ukraine he is endowed with the relevant powers in this field (Part 5 of Article 53, items 4,5 of Part 1 of Article 92)³⁶.

During the oral hearing one of the co-authors of the article (V. Markovsky) draw the Court's attention to the inconsistency of the argument raised by the Petitioner in an attempt to justify the incompatibility of Article 7 to the Law on Education of the Constitution.³⁷ In arguing its position, the Petitioner on p. 5 asserts that the provisions of Article 7(1) 'Language of Education' of the Law on Education 2017 'restricts the constitutional right to study in the language of national minorities in communal educational establishments for general secondary education guaranteed by Part 5 of Article 53 of the Constitution of Ukraine'³⁸.

Further, in the last paragraph of the first part of the constitutional submission the Petitioner insists on the 'abolition of the guaranteed natural right' to study in mother tongue, namely: 'the legislator violated the provisions of Articles 8, 10, 11, 24, 53 of the Constitution of Ukraine and allowed revocation of the guaranteed natural right to study in communal educational establishments of general secondary education in the language of the respective national minority along with the state language'³⁹.

However, the Petitioner's allegation that the legislator in Article 7 of the Law on Education 2017 allowed the revocation of the right guaranteed by Part 5 of Article 53 of the Constitution of Ukraine (the right to education in mother tongue) is contrary to the truth. Paragraph 3 of Part 1 of Article 7 of the Law on Education 2017 states: 'Persons belonging to national minorities of Ukraine are guaranteed the right to study in educational establishments for pre-school and primary education in the language of the respective national minority along with the state language'⁴⁰.

In view of the above-stated, we consider the claim of the Petitioner on the abolition in Article 7 of the Law on Education of the right of national minority to study in mother tongue guaranteed by Part 5 of Article 53 of the Constitution of Ukraine to be unfounded.

In addition, paragraph 5 of Part 1 of Article 7 of the Law on Education 2017 contains a legal provision according to which all national minorities are guaranteed the right to study in mother tongue at all levels of education⁴¹, which corresponds to Part 5 of Article 53 of the Constitution of Ukraine.

Furthermore, the provisions of Part 4 of Article 7 of the Law on Education 2017 state that educational establishments may, in accordance with the educational program, to teach one or more disciplines in two or more languages – the official language, English and other official languages of the European Union⁴². According to this provision of the Law, educational establishments of Ukraine at all levels provide for the possibility of teaching several official disciplines in the official languages of the European Union countries, whose national minorities reside in Ukraine. For example, chemistry and biology can be taught at Ukrainian educational institutions simultaneously in Polish and Ukrainian, or in Hungarian and Ukrainian. We will not dispute the appropriateness of such a new Law,

but it significantly extends the rights of minorities in the field of education compared to Part 1 of Article 7 of the Law. That is, the legal norm of Part 1 of Article 7 The Law on Education 2017 that the persons belonging to national minorities are guaranteed the right to study in their mother tongue along with the state language for pre-school and primary education, is not a dogma and does not provide for the exclusion of minority languages from the educational process on the second and the third level of secondary education. Therefore, this provision (Part 4 of Article 7) of the Law on Education 2017 is fully capable of eliminating any criticism in Ukraine's attempt to narrow the scope of linguistic rights of national minorities in the field of education.

The Position relating to discrimination.

The first part of the constitutional submission also substantiates the position of the Petitioner indicating that the Law on Education concerning national minorities of Ukraine does not observe the principle of non-discrimination. In particular, it is noted that the legislator allowed 'discriminatory advantages (*privileges*) on the grounds of language and ethnic origin in relation to the right to study at communal educational establishments for general secondary education in the language of the indigenous people of Ukraine along with the state language, in comparison with persons belonging to national minorities of Ukraine'⁴³.

In other words, the introduction of diversified approaches to legislative regulation of language rights of national minorities and indigenous peoples in the field of education is interpreted by the Petitioner as 'discriminatory advantages on the basis of linguistic and ethnic origin'⁴⁴. The question is about a possibility of the Crimean Tatars⁴⁵ under Article 7 of the Law on Education 2017 to study in their mother tongue at all three levels of school education: elementary (1–4 grades), basic secondary education (5–9 grades) and at the level of profile secondary education (10–12 grades). The model of education for indigenous people envisaged by paragraph 4 of Part 1 of Article 7 of the Law on Education 2017 is also bilingual, since teaching at school should be conducted upon the native language for the Crimean Tatars alongside with the state language.

It follows from the ECtHR's legal position that jurisprudence under the Convention does not prohibit the establishment of a legitimate 'differentiation' in the enjoyment of guaranteed rights and freedoms: 'Article 14 does not prohibit distinctions in treatment which are founded on an objective assessment of essentially different factual circumstances and which, being based on the public interest strike a fair balance between the protection of the interests of the community and respect for the rights and freedoms safeguarded by the Convention'⁴⁶.

In such cases the Ukrainian legislator used the term 'Positive action'. According to paragraph 5 of Part 1 of Article 1 of the Law of Ukraine 'On the Principles of Prevention and Combating Discrimination in Ukraine' of 6 September 2012, there is a possibility of applying the so-called affirmative actions by the state against certain groups of persons in proper cases⁴⁷. The above-stated provision of the Law, in our view, reiterates the ECtHR's legal position in the Belgian linguistic case, in which the Court does not consider the decisions of the state to apply different legal solutions as law violation. The principle of equality is violated in cases when the difference does not have an objective and reasonable justification⁴⁸.

We should mention that in connection with Russia's occupation of certain territories of the Donetsk and Luhansk regions, as well as of the Crimean peninsula, Ukraine has to take such positive actions against certain groups of persons, in particular, the school-leavers from the Crimea and the occupied territories of Donbass who can enter Ukrainian higher educational institutions without compulsory Independent External Evaluation⁴⁹.

Due to the fact that the Russian occupiers closed part of the schools with the Crimean Tatar language of education⁵⁰, the Ministry of Education and Science of Ukraine, formulating the legal requirements of Article 7 of the Law on Education 2017, proceeded from the fact that they did not have their own country to support their culture and traditions. Thus, Tatars as indigenous peoples should be given the opportunity to study in their mother tongue alongside with the state language at all levels of secondary education.

It is doubtless that the conditions for the national and cultural development of the Crimean Tatars since 2014 have significantly deteriorated, first of all, due to the numerous violations of the rights of the Crimean Tatar people taking place in the Autonomous Republic of Crimea occupied by Russia⁵¹. This is also indicated in paragraph 110 of the Venice Commission's opinion on the provisions of the Law on Education⁵². Therefore, we assume the possibility and expediency of positive actions with regard to the Crimean Tatars as the indigenous people of Ukraine on the issue of securing their linguistic rights in the field of education.

Certain positive actions towards indigenous peoples that create a special position for them are also specified by *international acts*. Articles 13 and 14 of the UN Declaration on the Rights of Indigenous Peoples also require a special approach to indigenous peoples' rights to education in their own language⁵³. Considering the fact that the international law makes distinctions between indigenous peoples and national minorities, it is appropriate to assume the difference in the regulation of their legal status.

It is stated in the motivational part of the judgment the Constitutional Court of Ukraine that due to the lack of a proper protection of their ethno-cultural identity, the indigenous peoples of Ukraine are usually in a less favorable and more vulnerable position and, therefore, need protection from the state in which they reside⁵⁴.

Concerning the second part of the petition on the inconsistency of the Law on Education 2017 of Article 22 with the Constitution of Ukraine.

The second part of the petition asserts that the legislator in Article 7 of the Law on Education 2017 'allowed the narrowing of the content and scope of existing natural rights and freedoms consisting in abolishing existing rights' to study in native language of indigenous peoples and national minorities of Ukraine, which allegedly violated the provisions of Article 22 of the Constitution of Ukraine⁵⁵.

That is, according to the Petitioner, the provisions of Article 7 'Language of Education' of the Law on Education 2017 narrows the scope of minority rights to education in their native language compared to the provisions of Article 20 'Language of Education' of the Law on Language Policy 2012⁵⁶.

The above-stated argument is used by anyone who has criticized and proceeds with criticizing the language article of the Education Act, both on the part of the EU and by internal opponents of this version of Article 7 of the Law on Education 2017. The Petitioner believes that an increase in the educational process in the state language will lead to the 'narrowing of the existing right' of minorities. But then the question arises: 'What level of protection will the state language have if at present the educational process is 90 % in the minority language?'. Similar arguments were used by Russia against the Republic of Lithuania in 2011⁵⁷.

It was important for the supporters of the constitutionality of the law of Ukraine to prove that the increase in the use of the Ukrainian state language is neither discrimination nor the narrowing of minority rights in the Ukrainian situation and has a legitimate, well-founded objective in public interests. In our opinion, they succeeded in proving this.

Consequently, the question aroused before the Constitutional Court of Ukraine if the increase in the volume of the educational process in the state language really meant the narrowing of the rights of national minorities to education in their mother tongue, in particular, considering the fact that until then, the educational process in minority schools was in their own language.

The decrease in the scope of the educational process in the languages of national minorities is regarded by the Petitioner as a violation of the right to education. In fact, the Petitioner aimed to prevent the increase of the use of the state language in the educational process of the schools with children of minority representatives, and the educational process was conducted in the languages of these minorities⁵⁸. That is, in such schools the state language (*national language*) is studied only as a discipline, and the educational process occurs in minority languages by about 90 %. Such wish of the minorities status-quo has its historical grounds and is connected with russification hold by the Soviet power of Ukraine⁵⁹. It was on the basis of the legal rules of the Law on Language Policy 2012 that the legal regime of languages was created, which was finally declared unconstitutional on 28 February 2018.

The above-stated resulted in some negative consequences for the national minorities since this led to a certain segregation of the young generation of Hungarians and Romanians of Ukraine, who are not able to fully integrate into Ukrainian society due to insufficient knowledge of the state language⁶⁰.

The participant of the constitutional submission Ex-Minister of Education and Science of Ukraine, Liliya Hrynevych also emphasized on this fact (2016–2019). In her opinion, this is just a violation of the rights of national minorities to education and contradicts the main provisions of the Hague Recommendations on the Rights of National Minorities for Education. She denoted that 'The situation we have today at schools where education is taught only in minority languages and the state is studied as a subject does not meet the interests of the society or the interests of children who are citizens of Ukraine. This is clearly evidenced by the results of the Independent External evaluation in the Ukrainian language and literature. In places of compact residence of the Romanian community this year 63 % of school graduates did not overcome the threshold 'passed' – 'failed to pass', 67.5 % – for the Hungarian community and 57 % – in the Berehovo region'⁶¹. So, the opportunities to receive higher education for school-leavers of Ukraine are essentially de-facto restricted. They are forced either to continue education in neighbour countries or to deny the very idea of such practice. All experts involved in the Constitutional Court of Ukraine in this proceeding in one way or another supported this position of the Ministry of Education and Science of Ukraine.

This was an argument which all the participants in the constitutional proceedings referred to (excepting the Petitioner) when they argued for the need to introduce the state language in the educational process (bilingual model of education). Therefore, strengthening of the measures aimed at increasing the level of proficiency of children of national minorities in the national language not only raise their opportunities for integration into Ukrainian society, but also inreach the amount of constitutional rights that they can realistically and fully enjoy in public life, in particular, the right to 'free choice of place of residence' (Article 33 of the Constitution of Ukraine), 'to participate in the management of state affairs, to freely choose and be elected to state authorities and local self-government bodies, to work as officials of these bodies' (Article 40 of the Constitution of Ukraine), 'the right to work' (Article 43 of the Constitution of Ukraine)⁶². The stated legal position of the Minister of Education and Science Liliya Hrynevych was supported and reproduced in the motivational part of the judgment of the Constitutional Court of Ukraine⁶³.

The document prepared by the President of Ukraine for the Constitutional Court of Ukraine states that its norms are not designed to impede the study of languages of national minorities or indigenous peoples, since its provisions are aimed at creating conditions for mastering the Ukrainian language in order to provide further opportunities for professional activity in the chosen field with the use of the state language⁶⁴.

The Constitutional Court of Ukraine took into account the abovegiven arguments and stated as underwritten: 'With the adoption of the Law on Education the state created conditions for full realization of the relevant rights of national minorities, including indigenous peoples of Ukraine, to study their native language, as well as to receive education in the state language regardless of their origin, to fully implement the rights defined by the Constitution of Ukraine'⁶⁵.

In our opinion the Constitutional Court of Ukraine took into account the ECtHR's positions formulated in Belgian Language case asserting that the right to education would be meaningless if a person does not fully benefit from this education. Lack of knowledge of the state language will constrain its ability to exercise the scope of constitutional rights⁶⁶.

Another conceptual disadvantage of the constitutional submission is that the Petitioner did not take into account the official interpretation of Article 10 of the Constitution of Ukraine in the judgment of the Constitutional Court of Ukraine of 14 December 1999 *No. 10-rp / 99* in the case of the use of the Ukrainian language.

The *second item* of the resolute part of the above judgment clearly reads: 'Based on the provisions of Article 10 of the Constitution of Ukraine and the laws of Ukraine on guaranteeing the use of languages in Ukraine, including the educational process, the language of education in pre-school, general secondary, vocational and higher state and

communal educational institutions of Ukraine is Ukrainian. National and communal educational establishments, *alongside with the state language*, may, in accordance with the provisions of the Constitution of Ukraine, in particular Article 53(5), and the laws of Ukraine, use and study the languages of national minorities in the educational process⁶⁷.

It is clear that Article 53(5) of the Constitution of Ukraine legally establishes bilingualism in minority schools. In our opinion it means that the educational process at school must be carried out in the state language, and that the languages of national minorities and indigenous peoples may be used in the educational process only alongside with the state language and not instead. Therefore, it is a real *bilingual model of education* for national minorities and indigenous peoples of Ukraine.

In our view, there is a fairly clear position of the ECtHR on the issue raised in the second part of the constitutional submission – the meaning of the state language cannot be offset or in any way limited to the benefit of a minority. In the case of *MENCEN A against Latvia*, the ECtHR stated the following: ‘The Court recognizes that the State language for these states is one of the fundamental constitutional values similar to territory, state system and national flag. Language is in no way an abstract concept. It is indissolubly connected to how it is actually used by native speakers. Thus, by making the language official, the state is in principle obliged to guarantee its citizens the right to use this language both for transmission and for receiving information without interference not only in their personal lives but also in communication with the authorities. From this point of view, the Court suggests it is necessary to take into account measures aimed at protecting a particular language’⁶⁸.

The Constitutional Court of Ukraine was more concise here: ‘The state must ensure the full development and functioning of the Ukrainian language in all spheres of public life throughout Ukraine. Thus, Ukrainian as a state language is obligatory throughout the territory of Ukraine in the public sphere, as well as in social life, including the sphere of education’⁶⁹.

The second and the third parts of the petition also refer to the collision of legal provisions that arose in connection with the adoption of the Law on Education, which, in turn, will result in narrowing the scope of the rights of national minorities.

The petition stated that the previous Education Law of 1991, which had expired on 27 September 2017 contained a blanket standard according to which the language of education was determined in accordance with Article 20 of the Law on Language Policy 2012. Obviously, as of 6th October 2017 (the date of the submission to the Court of the Petition on the constitutionality of the Law on Education), the question was about the conflict between the legal norms of the Law on Language Policy 2012 (Article 20 ‘Language of Education’) and the Law on Education 2017 (Article 7, ‘Language of Education’)⁷⁰.

However, in accordance with the judgment of the Constitutional Court of Ukraine No. 2-r/2018 of February 28, 2018 the said Law on Language Policy 2012 was declared unconstitutional.⁷¹ The motivating part of the court’s judgment No. 2-r/2018 of February 28, 2018 states that the legislator violated the procedure for considering and adopting draft Law No. 9073 defined by the provisions of Part 3 of Article 84 and Part 1 of Article 93 of the Constitution of Ukraine during its adoption at the plenary sitting on 3 July 2012.

In other words, the legal consequence of the aforementioned judgment of the Constitutional Court of Ukraine No. 2-r/2018 dated 28 February 2018 is the recognition of the unlawfulness of the jurisprudence of applying an unconstitutional legislative act. The judgment has already become a *Ratio decidendi* (precedential) for the courts of general jurisdiction. In particular, on the basis of the judgment of the Constitutional Court of Ukraine of 28 February 2018 No. 2-r/2018 concerning the unconstitutionality of the Law on the Principles of State Language Policy of 16 July 2018 the Mykolayiv district administrative court made its own judgment to declare the resolution on the introduction of Russian language as a regional language of the Mykolayiv regional Council of 7 September 2012 No. 4 ‘On the implementation of the requirements of the law of Ukraine Law on Language Policy 2012 in the Mykolayiv region’ unlawful and invalid⁷².

Therefore, the legal basis for a large part of the constitutional submission has disappeared, in particular, the statement where the Petitioner refers to the Law on the Principles of State Linguistic Policy (the third part of the petition on the collision of legal provisions)⁷³.

It should be noted that the Constitutional Court of Ukraine did not in any way mention this aspect in its judgment, although we paid attention to it during the constitutional proceeding. This approach seemed to be strange to us in view of the obviousness of such legal facts.

Conclusions. So, the application of the right to education in the person’s mother tongue is impossible without certain special actions of the state implemented on the basis of the law. Accordingly, the scope of the educational process carried out in the minority’s native language is set by a national legislator (non-international-legal acts or under the pressure of a neighbour country or groups of states). In our view, this position does not contradict the jurisprudence of the ECtHR formulated in Belgian Linguistic case or case *Mencena v. Latvia (Mentzen v. Latvia)* (2004).

This position is supported by all participants of the constitutional proceeding (except the Petitioner) and the Constitutional Court of Ukraine, since Article 92 of the Constitution states that the order of the use of languages in Ukraine is determined solely by laws. The Constitution of Ukraine does not contain any reservations on the legislator’s powers to detail the constitutional right of citizens belonging to minorities to study in mother tongue or to learn it.

At the same time the discretion of the legislator is limited by the constitutional guarantee of the ‘right to study in mother tongue’. The amendments to Article 7 of the Law on Education enshrine the principle of bilingualism in the education of national minorities (official language and the language of a relative minority or the indigenous peoples) and do not deny the right of minorities to education in their native language.

According to the Constitutional Court’s position the question is about the attempts to achieve a certain equitable balance between a compulsory learning and knowledge of the state language and preserving the peculiar national identity of the minorities.

The provisions of this law only increase the use of the state language in the educational process, which aims to improve the legal capacity of minorities and the indigenous people in Ukraine. In other words, the legislative changes are aimed specifically at eliminating discrimination against representatives of national minorities by enhancing their ability to participate in the political life of Ukraine. This legal position became fundamental in proving the constitutionality of the legal norms of the Law on Education 2017 by all participants of the constitutional proceedings (except the Petitioner).

The above-stated position was taken by the Constitutional Court of Ukraine as a basis while hearing the case. The legal positions of the Latvia's Constitutional Court in the trial on the education reform constitutionality are analogous, which is aimed at enlarging the volume of the state language and slightly decrease the specific weight of the use of the minorities' languages in the school educational process.

An absurd situation when national minorities can not speak the state language properly should be changed and balanced on the basis of Article 7 'The language of education' of the Law on Education 2017. The specified Article 7 of the Law on Education 2017 introduces bilingualism in the system of public education for national minorities and indigenous peoples in Ukraine, where part of the educational process for minorities in the state language cannot be less than 50 %. It should be noted here that there is only one state language in Ukraine according to Article 10 of the Constitution. Other languages are the languages of national minorities.

As for the indigenous people, for example, the Crimean Tatars, the possibility of introducing different approaches (different legal solutions) to the education of national minorities of Ukraine and the Crimean Tatars as indigenous people is aimed at eliminating the actual inequality associated with the discrimination of the Crimean Tatars and the Russian occupation of the Crimea. In this case, the Ukrainian state has not only the right to fully support its citizens, who are oppressed because of their ethnicity, but also have to do so because the language of the Crimean Tatars has been threatened by the closure of schools with this language. Therefore, the state's additional obligations in the field of indigenous education cannot be regarded as discrimination against national minorities.

In our view, this does not contradict the legal positions of the ECtHR in such trials in view of the legality of the goal set by the Ukrainian legislator, which was literally to enable the Crimean Tatars to study in their respective mother tongue alongside with the state language at all levels of school education.

¹ Concerning the conformity of the Constitution of Ukraine (constitutionality) with the Law of Ukraine "On Education" of 05.09.2017 No. 2145-VIII: Constitutional submission of 48 People's Deputies of Ukraine of 6 October, 2017 No. 17100046861. <www.ccu.gov.ua/sites/default/files/3_4072.pdf>, visited 21 September 2019.

² The Verchovna Rada of Ukraine. On Education: Law of Ukraine of 5 September 2017 № 2145-VIII. <[www://zakon.rada.gov.ua/laws/show/2145-19](http://zakon.rada.gov.ua/laws/show/2145-19)>, visited 12 October 2019.

³ See. Donetsk District Administrative Court (Ukraine) 11 March 2019, Judgment no. 243/10706/18 Cases on disputes related to the implementation of state policy in the field of education, science, culture and sports. (Admin). <<http://reyestr.court.gov.ua/Review/80627587>>, accessed 12 October 2019.

⁴ One of the authors of the paper, Markovskiy V., was involved by the Constitutional Court of Ukraine to participate in this constitutional proceeding. He sent a scientific expert opinion to this Court, which contained the counter-arguments on the constitutional submission of 6 October 2017. See Case File No. 1-75/2018 (4072/17) to the judgment of the Constitutional Court of Ukraine, No. 10-r/2019 <<http://www.ccu.gov.ua/dokument/10-r2019>>, visited 12 October 2019.

⁵ ECtHR 23 July 1968, No. 1474/62;1677/62;1691/62;1769/63;1994/63;2126/64, Case 'relating to certain aspects of the laws on the use of languages in education in Belgium' v. Belgium (Merits).

⁶ ECHR 7 December 2004, No. 71074/01, Jura Mentzen, also known as Mencena v. Latvia.

⁷ ECtHR 19 October 2012, No. 43370/04, 8252/05 & 18454/06, Catan and others v. Moldova and Russia.

⁸ Shevchuk, Stanislav, The coherence of the case law of the European Court of Human Rights and the Constitutional Court of Ukraine. The Ukraine's Constitutional Court Reporter (Vistnyk Constitutsijnogo Sudu Ukrainy). Vol. 2011, No. 4-5. p.p. 122–130, at p. 124.

⁹ Erica Marzano, The European Union Policy: Are they All One and the Same, The Legal Framework of EU Policies MEIS – II Year (2016/2017), MAT: 182079.

¹⁰ Ivan Toronchuk, Volodymyr Markovskiy. The implementation of the Venice Commission recommendations on the provision of the minorities language rights in the Ukrainian legislation // European Journal of Law and Public Administration. 2018. Vol. 5, № 1. P. 54–69.

¹¹ Malko, Roman, The Phantom of the Revision. Who, how and for what reason swings the language question, 6 March 2020, in "Tyzhden.ua" (URL: <https://tyzhden.ua/Politics/241213>), accessed 08.03.2020.

¹² Shevchuk, Stanislav, The coherence of the case law of the European Court of Human Rights and the Constitutional Court of Ukraine. The Ukraine's Constitutional Court Reporter (Vistnyk Constitutsijnogo Sudu Ukrainy). Vol. 2011, No. 4-5. p.p. 122–130, at p. 124.

¹³ Erica Marzano, The European Union Policy: Are they All One and the Same, The Legal Framework of EU Policies MEIS – II Year (2016/2017), MAT: 182079.

¹⁴ Ivan Toronchuk, Volodymyr Markovskiy. The implementation of the Venice Commission recommendations on the provision of the minorities language rights in the Ukrainian legislation // European Journal of Law and Public Administration. 2018. Vol. 5, № 1. P. 54–69.

¹⁵ Malko Roman. The Phantom of the Revision. Who, how and for what reason swings the language question, 6 March 2020, in "Tyzhden.ua" (URL: <https://tyzhden.ua/Politics/241213>), accessed 08.03.2020.

¹⁶ Conseil Constitutionnel, Decision no. 99-412 DC du 15 Juin 1999 (on the European Charter for regional or minority languages) at para. 10.

¹⁷ ECtHR COURT (PLENARY) 9 February 1967, No. 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64, Case 'relating to certain aspects of the laws on the use of languages in education in Belgium' v. Belgium (Merits), See para. 6. <<http://hudoc.echr.coe.int/eng?i=001-57524>>, visited 21 September 2019.

¹⁸ Verchovna Rada of Ukraine. The Law of Ukraine 'On the Principles of the State Language Policy' of 3 Jul. 2012 № 5029-VI. Official Bulletin of Ukraine. 2012 Aug. 20, Vol. 61: pp. 9-23. (The law has been declared unconstitutional upon the judgment of the Constitutional Court of Ukraine No. 2-r/2018 dated February 28, 2018).

¹⁹ Judgment of the Constitutional Court of Ukraine 28 February 2018 No. 2-r / 2018, in the case on the constitutional petition of 57 People's Deputies on the compliance of the Law of Ukraine 'On the Principles of State Language Policy' with the Constitution of Ukraine (constitutionality). Bulletin of the Constitutional Court of Ukraine, 24 April 2018; Vol. 2: pp. 102–111.

²⁰ Such legislative acts were: the Law of Ukraine 'On Civil Service' of 10.12.2015 and the Law of Ukraine 'On Amendments to Certain Laws of Ukraine on the Language of Audiovisual (Electronic) Mass Media' of 23.05.2017, which established mandatory (minimum) volume of broadcasting in the state language for broadcasting organizations of different categories. The law on the civil service is enforced by the mandatory use of the Ukrainian language by government officials in their professional activities.

²¹ Verchovna Rada of Ukraine. The Law of Ukraine 'On Ensuring the Functioning of the Ukrainian Language as the state language of 25 April 2019 № 2704-VIII. <<https://zakon.rada.gov.ua/laws/show/2704-19>>, visited 21 September 2019.

²² The Parliamentary Assembly of Council of Europe (PACE), Resolution 2189 (2017), 12 October 2017, Report of the Committee on Culture, Science, Education and Media, <<https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24218&lang=en>>, visited 12 October 2019, paras. 8–9.

²³ CDL-AD (2017) 030, Opinion 902/2017, 11 December 2017.

²⁴ I. Toronchuk, V. Markovskiy, The Implementation of the Venice Commission recommendations on the provision of the minorities language rights in the Ukrainian legislation. *European Journal of Law and Public Administration* 2018, Volume 5, Issue 1, pp. 54–69.

²⁵ CDL-AD (2017) 030, Opinion 902/2017, 11 December 2017.

²⁶ Ibid., paras. 91–93.

²⁷ Judgment of the Constitutional Court of Ukraine No. 2-r / 2018 dated February 28, 2018 in the case on the constitutional petition of 57 People's Deputies on the compliance of the Law of Ukraine 'On the Principles of State Language Policy' with the Constitution of Ukraine (constitutionality). Bulletin of the Constitutional Court of Ukraine. April 2018 24; Vol. 2: pp. 102–111.

²⁸ State Duma of the Federal Assembly of the Russian Federation. Resolution of the State Duma of the Federal Assembly of the Russian Federation of September 27, 2017 No. 2296-7 of the DG 'On the inadmissibility of violation of the fundamental right of indigenous peoples and national minorities of Ukraine to study in their native languages', <<http://docs.cntd.ru/document/456095518>> visited 16 October 2019.

²⁹ Embassy of Hungary in Kyiv, Protest Against New Ukrainian Law on Language: Website. < kijev.mfa.gov.hu/ukr/news/tiltakozas-az-uj-ukran-oktatasi-toerven-yellen >, visited 16 October 2019.

³⁰ The judgment of the Constitutional Court of Ukraine No. 2-r / 2018 dated February 28, 2018.

³¹ Concerning the conformity of the Constitution of Ukraine (constitutionality) with the Law of Ukraine "On Education" of 05.09.2017 No. 2145-VIII: Constitutional submission of 48 People's Deputies of Ukraine of 6 October, 2017 No. 1710061, See the last para. of p.6. <www.ccu.gov.ua/sites/default/files/3_4072.pdf>, visited 21 September 2019.

³² Ibid., See para. 7, p. 5.

³³ International Covenant on Civil and Political Rights of 16 December 1966.

³⁴ ECtHR 23 July 1968, No. 1474/62;1677/62;1691/62;1769/63;1994/63;2126/64, Case 'relating to certain aspects of the laws on the use of languages in education in Belgium' v. Belgium (Merits), See 3. Decision of the Court, para. 7, at p. 30.

³⁵ ECtHR 19 October 2012, No. 43370/04, 8252/05 & 18454/06, Catan and others v. Moldova and Russia, See para 140.

³⁶ The judgment of the Grand Chamber of the Constitutional Court of Ukraine No. 10-r/2019 dated July 16, 2019 in the case on the constitutional petition of 48 People's Deputies of Ukraine on the compliance of the Law of Ukraine "On Education" with the Constitution (constitutionality), <<https://zakon.rada.gov.ua/laws/show/v010p710-19>>, visited 16 October 2019.

³⁷ Markovskiy V. Scientific and expert opinion on the constitutional submission of the 48 People's Deputies of Ukraine on compliance with the Constitution of Ukraine (constitutionality) of the Law of Ukraine "On Education" of September 5, 2017. See Case File No. 1-75/2018 (4072/17) to the judgment of the Constitutional Court No. 10-r/2019 <<http://ccu.gov.ua/dokument/10-r2019>>, visited 12 October 2019.

³⁸ Concerning the conformity of the Constitution of Ukraine (constitutionality) with the Law of Ukraine "On Education" of 05.09.2017 No. 2145-VIII: Constitutional submission of 48 People's Deputies of Ukraine of 6 October, 2017 No. 1710061. <www.ccu.gov.ua/sites/default/files/3_4072.pdf>, visited 21 September 2019., See para 6 of p. 5.

³⁹ Ibid., See p. 6.

⁴⁰ The Law on Education 2017.

⁴¹ Ibid., See para. 5 Art.7(1).

⁴² Ibid., See Art.7(4).

⁴³ The Constitutional submission, <www.ccu.gov.ua/sites/default/files/3_4072.pdf>, accessed 21 September 2019, See p. 6.

⁴⁴ Ibid., See p. 6.

⁴⁵ Only Crimean Tatars have the status of indigenous people in Ukraine. See: Decree of the Verkhovna Rada of Ukraine of 20 March, 2014 No 1140-VII guaranteeing the rights of the Crimean Tatar people in Ukraine <<https://zakon.rada.gov.ua/laws/show/1140-18>>, visited 12 October 2019.

⁴⁶ ECtHR 23 July 1968, No. 1474/62;1677/62;1691/62;1769/63;1994/63;2126/64, Case 'relating to certain aspects of the laws on the use of languages in education in Belgium' v. Belgium (Merits). See 3. Decision of the Court, para 7, p. 40.

⁴⁷ See Art.1 (1) (5) of the stated Law: 'Positive actions are special temporary measures that have a legitimate, objectively justified purpose, aimed at eliminating legal or factual inequality in opportunities for a person and / or group of persons to realize on equal grounds the rights and freedom granted to them by the Constitution and laws of Ukraine', <<http://zakon.rada.gov.ua/laws/show/5207-17>>, visited 21 October 2019.

⁴⁸ ECtHR 23 July 1968, No. 1474/62;1677/62;1691/62;1769/63;1994/63;2126/64, Case 'relating to certain aspects of the laws on the use of languages in education in Belgium' v. Belgium (Merits), See B. Interpretation adopted by the Court, para. 10 at p. 32: 'The competent national authorities are frequently confronted with situations and problems which, on account of differences inherent therein, call for different legal solutions; moreover, certain legal inequalities tend only to correct factual inequalities. ... It is important, then, to look for the criteria which enable a determination to be made as to whether or not a given difference in treatment, concerning of course the exercise of one of the rights and freedoms set forth, contravenes Article 14 (art. 14). On this question the Court, following the principles which may be extracted from the legal practice of a large number of democratic States, holds that the principle of equality of treatment is violated if the distinction has no objective and reasonable justification'.

⁴⁹ Ministry of Education and Science of Ukraine. The procedure for obtaining higher and vocational education of persons residing in the temporarily occupied territory of Ukraine, approved by the order of the Ministry of Education of Ukraine of May 24, 2016 No. 650.

⁵⁰ ECHR 173 (2018) 09.05.2018 (application no. 20958/14) Ukraine v. Russia (on Crimea).

⁵¹ The Parliamentary Assembly of Council of Europe (PACE), Resolution 2231 (2018), 28 June 2018, <<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24994&lang=en>>, visited 17 October 2019.

⁵² CDL-AD (2017) 030, Opinion 902/2017, 11 December 2017.

⁵³ United Nations Declaration On the Rights Of Indigenous Peoples General Assembly Resolution 61/295, 13 September 2007.

⁵⁴ The judgment of the Grand Chamber of the Constitutional Court of Ukraine No. 10-r/2019 dated July 16, 2019 in the case upon the constitutional petition of 48 People's Deputies of Ukraine on the compliance of the Law of Ukraine "On Education" with the Constitution (challenging the constitutionality of the said law), <web.ccu.gov.ua/en/docs/2541?order=created&sort=desc>, visited 16 October 2019.

⁵⁵ Concerning the conformity of the Constitution of Ukraine (constitutionality) with the Law of Ukraine 'On Education' of 05.09.2017 No. 2145-VIII: Constitutional submission of 48 People's Deputies of Ukraine of 6 October, 2017 No. 1710061. <www.ccu.gov.ua/sites/default/files/3_4072.pdf>, visited 21 September 2019.

⁵⁶ Verchovna Rada of Ukraine. The Law of Ukraine 'On the Principles of the State Language Policy' of 3 Jul. 2012 № 5029-VI. The law has expired in accordance with the judgment of the Constitutional Court of Ukraine No. 2-r / 2018 dated February 28, 2018.

⁵⁷ Criticizing the changes to the educational law of the Republic of Lithuania from 2011, the Ministry of Foreign Affairs of the Russian Federation considers that the increase in the volume of the educational process that takes place in the Lithuanian language in the national minority schools means 'the actual displacement of other languages from the educational process'. Report of the Ministry of Foreign Affairs of Russia 'On the situation of human rights in several countries of the world'. See site of Ministry of Foreign Affairs of Russia, <http://www.mid.ru/web/guest/foreign_policy/humanitarian_cooperation/-/asset_publisher/acpY620dyC5B/content/id/175922>, visited 26 October 2019.

⁵⁸ The question is about a group of people's deputies who form the basis of the Russian lobby in Ukraine, the former Party of Regions headed previously by Ukraine's 4th President, Viktor Yanukovich. Today, most deputies of this group are members of the "Opposition Platform for Life" headed by Victor Medvedchuk, the godfather of Vladimir Putin, the acting President of Russian Federation.

⁵⁹ Due to russification, only Ukrainian schools in the Ukrainian SSR were required to study Ukrainian, at the same time Russian was a compulsory subject at all educational institutions of the USSR. As a subject of study the Ukrainian language was not included in the curricula of schools with the national language of instruction (i.e. in minority schools). See *Rafal Lemkin: Soviet Genocide in Ukraine*.

⁶⁰ The Hungarian and Romanian languages are much more different from the Ukrainian language; instead, the Russian language is closer to the Ukrainian one, which greatly facilitates its study by the Russian national minority.

⁶¹ The position of the Ministry of Education and Science of Ukraine relating to the constitutional submission of the peoples' deputies of Ukraine on the compliance of the Constitution of Ukraine (constitutionality) with the law of Ukraine 'On Education' dated 5 September 2017. See Case file № 1-75/2018 (4072/17) of the decision of the CCU № 10-p/2019 <ccu.gov.ua/dokument/10-r2019>, visited 12 October 2019.

⁶² The Constitution of Ukraine on June 28, 1996 <www.legislationline.org/download/id/8233/file/Ukraine_Constitution_am2019_EN.pdf>, visited 16 October 2019.

⁶³ See para 1, p. 10 of the judgment of the Grand Chamber of the Constitutional Court of Ukraine No. 10-r/2019 dated July 16, 2019 in the case upon the constitutional petition of 48 People's Deputies of Ukraine on the compliance of the Law of Ukraine 'On Education' with the Constitution (constitutionality), <http://ccu.gov.ua/dokument/10-r2019>, visited 16 October 2019.

⁶⁴ Concerning the constitutional submission of the People's Deputies of Ukraine on compliance with the Constitution of Ukraine (constitutionality) of the Law of Ukraine 'On Education' of September 5, 2017 No. 2145-VIII: Position of the President of Ukraine of July 4, 2018 See Case Files No. 1-75/2018 (4072/17) to CCS Decision No. 10-r / 2019 <http://ccu.gov.ua/dokument/10-r2019>, visited 12 October 2019.

⁶⁵ See para 1, p.10 of the judgment of the Grand Chamber of the Constitutional Court of Ukraine No. 10-r/2019 dated July 16, 2019 in the case upon the constitutional petition of 48 People's Deputies of Ukraine on the compliance of the Law of Ukraine 'On Education' with the Constitution (constitutionality), <http://ccu.gov.ua/dokument/10-r2019>, visited 16 October 2019.

⁶⁶ ECtHR 23 July 1968, No. 1474/62;1677/62;1691/62;1769/63;1994/63;2126/64, Case "relating to certain aspects of the laws on the use of languages in education in Belgium" v. Belgium (Merits), See para 41, p. 80.

⁶⁷ The judgment of the Constitutional Court of Ukraine No. 10-rp / 99 dated December 14, 1999 in the case of the use of the Ukrainian language, <https://zakon.rada.gov.ua/laws/show/v010p710-99>, visited 16 October 2019.

⁶⁸ ECtHR 7 december 2004, No. 71074/01, Jura Mentzen, also known as Mencena v. Latvia, p. 27.

⁶⁹ See para. 4, p. 4 of the Judgment of the Grand Chamber of the Constitutional Court of Ukraine No. 10-r/2019 dated July 16, 2019 in the case upon the constitutional petition of 48 People's Deputies of Ukraine on the compliance of the Law of Ukraine 'On Education' with the Constitution (constitutionality), <http://ccu.gov.ua/dokument/10-r2019>, visited 16 October 2019.

⁷⁰ See p. 9 and p. 15 of the petition.

⁷¹ The Judgment of the Constitutional Court of Ukraine 28 February 2018 No. 2-r / 2018, in the case on the constitutional petition of 57 People's Deputies on the compliance of the Law of Ukraine 'On the Principles of State Language Policy' with the Constitution of Ukraine (constitutionality). Bulletin of the Constitutional Court of Ukraine, 24 April 2018; Vol. 2: pp. 102–111.

⁷² Mykolaiv District Administrative Court (Ukraine), July 16, 2018, No. 814/1222/18 Cases on disputes relating to the enforcement of a person's constitutional rights. <http://reyestr.court.gov.ua/Review/75589065>, visited 20 October 2019.

⁷³ See para 2, p. 15 of the petition.

Резюме

Макарчук В.С., Марковський В.Я., Демків Р.Я., Литвиненко А.А. Розгляд справи про мову освіти в Конституційному Суді України – порівняльний аналіз із практикою ЄСПЛ.

Зміни в мовній політиці України у сфері освіти були піддані жорсткій критиці з боку Угорщини, Румунії, а також ПАРС, починаючи з 2017 року. Критики заявляли, що через прийняття та запровадження відповідного законодавства, Україна звужує гарантовані в її Конституції мовні права національних меншин у частині права на освіту рідною мовою. Відповідно, Венеціанська Комісія, а згодом і Конституційний Суд України надали свої висновки і, відповідно, рішення, стосовно Закону України «Про освіту» від 05.09.2017 р. щодо питання, чи порушує цей Закон права національних меншин, гарантовані Конституцією України. Таким чином, стаття зосереджена на висвітленні правових позицій учасників конституційного провадження з питання відповідності Конституції Закону України «Про освіту» 2017 року.

Також проаналізовані юридичні позиції Конституційного Суду України, на підставі яких вказаний Закон був визнаний конституційним. Розглядаючи справу, Конституційний Суд прийняв до уваги позицію Міністерства освіти і науки України, відповідно до якої держава має право імплементувати різні підходи до національних меншин та корінних народів у контексті законодавчого регулювання права на освіту рідною мовою. У той же час, обов'язок національних меншин вивчати та користуватися державною мовою не можна розглядати як дискримінацію чи порушення їхнього права на навчання рідною для них мовою. На думку авторів, результати порівняльного аналізу позицій органу конституційної юрисдикції України та Європейського Суду з Прав Людини дають підстави стверджувати про узгодженість рішень КСУ та ЄСПЛ у подібних справах. До того ж, Консти-

туційний Суд Литовської Республіки у 2018–2019 рр. розглядав аналогічну справу, і його рішення є підтвердженням законодавчої практики збільшення обсягу використання державної (литовської) мови в освітньому процесі нацменшин.

Ключові слова: мова освіти, мовні права, національні меншини, корінні народи, державна мова, правові позиції, справедливий баланс.

Резюме

Макарчук В.С., Марковский В.Я., Демкив Р.Я., Литвиненко А.А. Рассмотрение дела о языке образования в Конституционном Суде Украины – сравнительный анализ с практикой ЕСПЧ.

Изменения в языковой политике Украины в сфере образования поддаются критике со стороны Венгрии, Румынии, а также и ПАСЕ, начиная с 2017 года. Критики утверждают, что при помощи принятия и имплементации соответствующего законодательства, Украина сужает права национальных меньшинств, гарантированные ее Конституцией, в части права на образование на родном языке. Соответственно, Венецианская Комиссия, а спустя некоторое время, и Конституционный Суд Украины приняли свои заключения, и, соответственно, решения по вопросу, нарушает ли Закон Украины «Об образовании» (2017 г.) права национальных меньшинств, гарантированных Конституцией Украины. Таким образом, в статье проанализированы позиции участников конституционного судопроизводства по вопросу о соответствии Конституции Закона Украины «Об образовании» (2017 г.).

Также проанализированы и юридические позиции Конституционного Суда Украины, на основании которых указанный Закон был признан конституционным. Рассматривая дело, орган конституционной юрисдикции Украины принял во внимание позицию Министерства образования науки Украины, согласно которой государство имеет право использовать различные подходы к национальным меньшинствам и коренным народам в контексте законодательного урегулирования их права на образование на родном языке. В то же время, обязанность национальных меньшинств изучать и пользоваться государственным языком нельзя рассматривать, как дискриминацию, или нарушения права на обучение на родном языке.

Ключевые слова: язык образования, языковые права, национальные меньшинства, коренные народы, государственный язык, правовые позиции, справедливый баланс.

Summary

Volodymyr Makarchuk, Volodymyr Markovskiy, Roman Demkiv, Anatoliy Lytvynenko. The adjudication of the language of education case in the Constitutional Court of Ukraine – a comparative analysis with ECtHR jurisprudence.

The changes in the Ukraine's state language policy in the sphere of education were subjected to Hungarian, Romanian and PASE criticism since 2017 (wherein the critics claimed that Ukraine, by adopting and implementing the appropriate legislation tapered the linguistic rights of national minorities in the part of their right to education by using the mother tongue). Therefore, the Venice Commission, and then, the Ukraine's Constitutional Court have delivered its conclusions and decisions if the new Law on Education of 2017 violates the linguistic rights of the minorities, ensured by the Ukraine's Constitution. Hence, the paper focuses on highlighting the position of the parties of the constitutional proceedings concerning the constitutionality of Ukraine's Law "On Education" of 2017.

The authors have also analyzed the legal positions of the Constitutional Court of Ukraine, upon which the abovementioned law was recognized as constitutional. While adjudicating the case, the Constitutional Court adopted the position of the Ministry of Education and Science of Ukraine, upon which the state has a right to implement various approaches to national minorities and the indigenous people concerning the legal regulation of the right to education conducted by the mother tongue; at the same time, the obligation of the national minorities to learn and dispose the state language should not be treated as a kind of discrimination or a violation of their right to education by using the mother tongue.

Key words: language of education, language rights, national minorities, indigenous peoples, state language, legal positions, a fair balance.

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МЕТА, ЗАВДАННЯ ТА ФУНКЦІЇ КОНСТИТУЦІЙНО-ПРАВОВОЇ ВІДПОВІДАЛЬНОСТІ: ПИТАННЯ ЕФЕКТИВНОСТІ РЕАЛІЗАЦІЇ

Постановка наукової проблеми. Конституційно-правова відповідальність, на відміну від загальнотеоретичного розуміння юридичної відповідальності, незважаючи на сформовані в спеціальній літературі підходи до розуміння її сутності, цілей, завдань, принципів, соціальної ролі і виконуваних функцій при застосуванні конституційно-правових норм, залишається дискусійною тематикою і проблемою як з позицій матеріально-правових обґрунтувань її існування, так і з точки зору процесуально-правового механізму реалізації. В юридичному плані (на рівні спеціальних категорій конституційного права, предмета конституційно-право-