

Law in a Linguistic Battlefield: The Language of the New State Versus the ‘Language of the Oppressors’ in Ukraine

Bill Bowring *Professor of Law, Birkbeck College, University of London*

Abstract

Article 10 of the 1996 Ukrainian Constitution proclaims that “The state language of Ukraine shall be the Ukrainian language” but continues: “Free development, use, and protection of Russian and other languages of national minorities of Ukraine shall be guaranteed in Ukraine.” Consolidating the position of the state language was at the centre of the “Orange Revolution”, but President Yanukovich, elected in February 2010, has committed himself to a defence of the Russian language, as a regional language of Ukraine, and the battle is on to replace the Law on Languages of the Ukrainian SSR of 1989, which is still in force. Ukraine has ratified the Council of Europe’s European Charter for Regional or Minority Languages. This article reflects on the relation between language and law, and endeavours to bring clarity to a situation which at times resembles an overheated kettle about to explode.

1. Introduction

In this article I analyse the linguistic battlefield which now characterises Ukraine, with particular reference to the Constitution and the relevant laws. Despite the fact that the Ukrainian language has been spoken in the territory of contemporary Ukraine for many centuries, Ukraine became an independent state, arguably for the first time in history, on the collapse of the USSR in late 1991. In a further irony, the region where Ukrainian is strongest, Lviv Oblast, historically part of Galicia, was not part of Ukraine until the Soviet period, having previously been a Polish, an Austro-Hungarian, and a Lithuanian city. The fate of the Russian language in Ukraine, and indeed of the Ukrainian language itself in Ukraine, has been at the centre of heated political debates ever since independence.

My approach is based on my experience over many years as a scholar and legal expert – for the EU, Council of Europe, and OSCE—with regard to Ukraine (see Bowring 1998, 1999, 2002, 2005, 2006, 2008, 2008a).

I start with the current situation, and continue with a brief account of the differences between the Ukrainian and Russian languages, and Ukraine’s linguistic complexity. I next turn to the Constitution, followed by an examination of the 1989 (!) Law on Languages. I place this in the context of the most relevant of Ukraine’s international legal commitments,

the 1992 *European Charter for Regional or Minority Languages*. I analyse some of the factors tending to exacerbate the language situation in Ukraine, including the justified fears of the new state's elite that the Ukrainian language might disappear altogether, the fears of leaders of the Russian speakers, and finally the much more contentious question of genocide – or the “*holodomor*” as it is termed in Ukraine.

2. The current situation

More than two years ago, on 14 February 2010 Viktor Yanukovich, who is in fact ethnic Belorussian, won the Ukrainian presidential elections, beating Yulia Tymoshenko by just 3.48 percentage points (Polityuk & Balmforth, 2010). Despite having campaigned on a promise to make Russian the second official language of Ukraine, in March 2010 President Yanukovich recognised that awarding Russian official status would be very difficult, and would require an amendment to the 1996 Constitution. Instead, he stressed the importance of implementing the Council of Europe's 1992 *European Charter for Regional or Minority Languages*. Boris Kolesnikov, the deputy head of the Party of Regions was reported as saying “*Taking the European Charter of Languages as a guide, we have prepared a very good law, which the President will present in the next 15-20 days. In that draft law, we give the regions certain rights [in relation to the Russian language]. If, in certain regions, they don't want to implement that, then it's up to them.*” (Masalkova, 2010)

To date, no such law has been adopted, an issue to which I return below. Indeed, on 24 March 2011, Aleksey Ostrovskiy, Chairman of the Committee on CIS Affairs of the Russian State Duma, told a round table meeting on “The Russian and Russian language movement in Ukraine” that Russia was waiting for President Yanukovich to fulfil his pre-election promise on the status of the Russian language. [1]

3. The differences between the Russian and Ukrainian languages

Ukrainian, Belarussian and Russian are the three East Slavic languages (Sussex & Clobberley 2006), and all are descended from the language spoken in the 10th century in Kievan Rus. However, Russian and Ukrainian have grown apart, and Ukrainian now contains many words quite different from their Russian equivalents. To take one significant example, Independence Square in Kyiv is *ploshchad nezavisimosti* in Russian, but *maidan nezalezhnosti* in Ukrainian. The author of this chapter is fluent in Russian, but understands the TV news in Ukrainian only by focusing very hard. He can understand the gist of a conversation in Ukrainian, but, in common with most Russians, could not join in even if he wished to do so.

Although many Ukrainian words have Polish roots, the theory of “Polonisation” of an original common Slavic language is largely discredited. The most convincing explanation of the difference between Ukrainian and Russian is as follows. In the 13th century, eastern parts of Rus (including Moscow) were subjugated by the “Mongol Tatars” (the “Tatar yoke”, 1240-1480) until their unification under the Muscovy, whereas the south-western areas (including Kyiv) were incorporated into the Grand Duchy of Lithuania. For the following

four centuries, the languages of the two regions evolved in relative isolation from each other. Direct written evidence of the existence of the Ukrainian language dates to the late 16th century (Zizaniy 1596). The most noticeable difference is that the hard “g” in Russian becomes “h” in Ukrainian. This is how Russians identify Ukrainians, although the “h” is also to be heard in the Kuban and elsewhere in southern Russia.

This chapter deliberately does not deal with other minority languages in Ukraine: these comprise 4.9% of the population. I have been specially concerned with the Crimean Tatars since the early 1990s, but the list of ethno-linguistic communities includes (Council of Europe 2010) 275,800 Belorussians; 258,600 Moldovans; 248,000 Crimean Tatars; 240,000 Bulgarians; 156,600 Hungarians; 151,000 Romanians; 144,100 Poles; 103,600 Jews; 99,900 Armenians; 91,500 Greeks; 73,300 Tatars; 47,600 Roma; 45,200 Azerbaijanians; 34,200 Georgians; 33,300 Germans; and 31,900 Gagauz.

4. Ukraine’s linguistic complexity

There is a wide discrepancy between declared ethnicity (Russian, Ukrainian or other), and actual language use. Ukraine may be unique in this regard. In 1995, Dominique Arel wrote that Ukraine is a basically a bi-ethnic state, with 37.4 million inhabitants describing themselves as Ukrainian, and 11.4 million as Russians. (Arel 1995, 598). In 2002, he commented that: “Any visitor to Kyiv or heavily urbanized Eastern Ukraine can attest to the fact that the Ukrainian language is seldom used in the streets. Reliable survey opinion polls conducted throughout the past decade have indicated that approximately one out of three ethnic Ukrainians in the whole of Ukraine prefers to use Russian at home. In Eastern Ukraine, the proportion is nearly one out of two.” (Arel 2002, 238)

The 2001 Census showed that between the Soviet census of 1989 and the Ukrainian census of 2001, Ukraine’s population declined from 51,706,600 to 48,457,020, a loss of 2,926,700 people or 5.7% of the 1989 population. Of these, 37,541 693 described themselves as Ukrainians, and 8,334,141 as Russians. Of the ethnic Ukrainians, 31,970,728 reported that Ukrainian was their “native language” and 5,544,729 reported that it was Russian. Of the ethnic Russians, 7,993, 832 reported that Russian was their “native language”, and 328,152 reported Ukrainian. As I show below, this is not a report of actual language use. More than half the population of Ukraine use Russian on a daily basis. It is the experience of this author that many people switch from one language to the other without hesitation or even conscious decision.

When the first post-Soviet census was conducted in 2001, ten years after the collapse of the USSR, 77.8% of those living in Ukraine responded that their ethnic origin was Ukrainian, as against 17.3% Russian, and 4.9% other. It should be recalled that in the USSR “nationality” (or ethnicity) was fixed by the nationality of one’s parents, and endorsed on the internal passport which every Soviet citizen was required to carry. The number of “Russians” fell by 25% in comparison with the last Soviet census of 1989. It should also be noted that according to the CIA Factbook the (shrinking) population is now 45,415,596, a considerable further fall.

The Council of Europe's Committee of Experts, considering in 2008 Ukraine's Initial Report for the *European Charter for Regional or Minority Languages* (Languages Charter), reported that 77.8% of census respondents state they are ethnically Ukrainian, while 17.3% say they are Russian. (Council of Europe, 2010, 5) But this does not reflect the real numbers of Ukrainian and Russian speakers. Thus, according to the 2001 census (Ukraine 2001), 5.6 million (15.8%) of the (self-declared) ethnic Ukrainians identified Russian as their mother tongue, and 0.3 million ethnic Russians (3.9%) identified Ukrainian as their mother tongue (in fact the census used the phrase "native tongue"). 67.5% of all inhabitants of Ukraine declared Ukrainian as their mother tongue, and 29.6% for Russian. Some 99.5% of ethnic Russians consider Russian to be their mother tongue.

5. Law and constitution on the language question in Ukraine

At this point I turn to issues of law and constitution in Ukraine. Article 10 of the 1996 Constitution of independent Ukraine provides:

The state language of Ukraine is the Ukrainian language. The State ensures the comprehensive development and functioning of the Ukrainian language in all spheres of social life throughout the entire territory of Ukraine. In Ukraine, the free development, use and protection of Russian, and other languages of national minorities of Ukraine, is guaranteed.

This provision was interpreted in the decision of the Ukrainian Constitutional Court, delivered on 14 December 1999, clarifying Article 10 of the Constitution. (Constitutional Court of Ukraine, 1999). Ukrainian is stated in Article 10 to be the state language. Controversially, the view of the majority of judges went further. They found that the Ukrainian language was the "compulsory means of communication for officials of government bodies and local self-government structures, and in other spheres of public life" including education. In this decision, it is also stated that "local government bodies, bodies of Crimean Autonomous Republic and local self-government bodies may use Russian and other languages of national minorities along with the state language".

There was one strong dissent, by Judge Mironenko (Mironenko, 1999). According to him, the Court had paid too little attention to an important sentence of Article 10: "In Ukraine, the free development, use and protection of Russian, other languages of national minorities of Ukraine, is guaranteed".

In fact, the Constitutional Court's judgment has made little difference on the ground, but the majority's opinion significantly raised the temperature of relations between the Ukrainian authorities and Russian speakers.

6. The anachronism of the "Law on Languages"

Ukraine has a law governing the use of the Ukrainian and other languages. This is the Law of the Ukrainian Soviet Socialist Republic "On Languages" of 1989, as amended in 1995, (Ukraine 1989), which not only pre-dates the Constitution, but is still in force (so far as it

does not contradict the Constitution). Despite the presentation of many drafts to the Ukrainian parliament, there has as yet been no viable replacement. The great significance of this law, adopted in the USSR, was the promotion of Ukrainian to the position of state language of Ukraine – even as the Ukrainian SSR. It is worth reproducing the Preamble in full.

The Ukrainian Soviet Socialist Republic acknowledges the vital and societal value of all national languages and guarantees the national cultural and linguistic rights to its citizens without reservation, assuming that only the free development and equal standing of national languages, the high linguistic culture are the basis of the mutual spiritual understanding, reciprocal cultural enrichment and strengthening of the friendship between people.

The Ukrainian language is one of the important factors of the national authenticity of the Ukrainian people.

The Ukrainian Soviet Socialist Republic vests the Ukrainian language with the status of the state language in order to support the comprehensive development of spiritual creative forces of the Ukrainian people and guarantee its sovereign national state future.

The development of the understanding of the social value of the Ukrainian language as the state language of the Ukrainian Soviet Socialist Republic and the Russian language as the language of the interethnic communication of peoples of the Union of Soviet Socialist Republics among citizens regardless of their national affiliation shall be the duty of the state, party and public bodies and mass media of the Republic. The choice of the language of the interpersonal communication among citizens of the Ukrainian Soviet Socialist Republic shall be an inalienable right of citizens themselves.

The first paragraph of the Preamble refers to “all national languages” and to “free development and equal standing of national languages”. These formulations are not at all clear. If the word “national” is used with the same sense as in the phrase “national minority”, then it may be presumed that “national” in this context means “ethnic”. However, what it should mean is “all the languages actually spoken on the territory of Ukraine.”

The second paragraph of the Preamble contains a phrase not often used in a legal context, “National authenticity”. This formulation directly contradicts the first sentence of the preamble of the Constitution, which refers to “the Ukrainian people — citizens of Ukraine of all nationalities”. The preamble to the 1989 Law therefore refers only to a part of the “Ukrainian people” as defined in the Constitution. As to the reference to “authenticity”, this is “*samobytnost*” both in Ukrainian and in Russian. In my view, “authenticity” is a better translation than the usual “originality”.

The use of this term is also highly questionable politically, since it tends to essentialise both ethnic Ukrainians and the Ukrainian language. It also places an extraordinary burden on the preservation of the Ukrainian language. If “the Ukrainian people” has the same meaning as in the Constitution, then the third paragraph of the Preamble also violates the Constitution, or it is self-contradictory. The development of the spiritual creative forces of citizens of Ukraine of all nationalities cannot be supported by vesting just one language with the status of the state language. It is very hard to make any juridical sense of the fourth sentence of the Preamble. It is not clear what is meant by the “social value” of Ukrainian and

Russian.

And the formulation concerning Russian as “the language of interethnic communication of peoples of the USSR”, even in the Law as amended in 1995, is not only redundant but also hard to understand.

Several provisions of the Law not only refer to the former USSR, but are in some cases, as already pointed out, inconsistent with the Constitution. Article 1 refers to “Ukrainian and other languages used by the population of the Republic”, rather than to ethnicity or mother tongue. In this regard it is fully compliant with international standards. Article 2 declares that the Ukrainian language is the state language of Ukraine, and this is entirely proper. Ukraine’s right to decide on its state language is its right in international law. The third paragraph states, commendably, that all citizens will have the means to learn Ukrainian; hopefully that means free of charge. Every Ukrainian citizen must of course learn Ukrainian. However, Article 3 deals with the “use of languages of other nations” in Ukraine, and to use of the “national languages”, as well as “citizens of another nationality”. This appears to assume that there are distinct “nations” (on an ethnic basis) in Ukraine and that each has its own language. Such an assumption would contradict the Constitution and the international commitments of Ukraine.

It should be noted that the scheme of the FCNM and the Languages Charter, as well as the OSCE commitments, is that there are “national minorities”, membership of which is a matter of individual choice rather than an ethno-political decision; and that members of national minorities may use their languages. This of course does not exclude that several languages may be used by one person.

Article 4 specifies that in the Ukrainian SSR, Ukrainian, Russian and other languages will be the languages of inter-ethnic communication. Furthermore, the state will provide for the free use of the Russian language as the language of inter-ethnic communication for the peoples of the USSR. Article 5 provides for the right of citizens to “use” their “national” or any other languages. Citizens are entitled to address state and other public bodies in Ukrainian or Russian; and decisions must be issued in Russian if a citizen so decides. This provision must have been superseded by the Languages Charter, and the specific level of implementation of Article 10 upon which Ukraine decides. Article 6 requires all public officials as well as officials of “institutions and organisations” to be or to become fluent in both Ukrainian and Russian, and, if necessary, in another “national” language. This too should be superseded by implementation of the Languages Charter.

Article 25 is highly important, declaring that the “free choice of the language of education shall be the inalienable right” of Ukrainian citizens. It goes on that the right of each child to upbringing and education in the national language shall be guaranteed, and protected by the establishment of state schools with upbringing and teaching in Ukrainian and “other national languages”. This right is further explained in the following articles. For example, Article 27 provides that “in places of compact residence of citizens of other nationalities” the state will establish secondary schools for children “in their national or another language”. Furthermore, the study of Ukrainian and Russian is mandatory. Implementation of this provision would mean a substantially higher level of implementation of Article 8 of the Languages Charter than presently appears in Ukraine’s

Instrument of Ratification. It is a splendid aspiration, but requires detail as to the level of demand required to trigger minority language or bi-lingual education. Furthermore, attention should be given to the proven cognitive and educational advantages of bi-lingual education.

In 1995 Dominique Arel wrote (Arel 1996, 599) :

The Ukrainian language law, passed in October 1989, was a defensive reaction of the communist old guard, which could no longer justify the status quo, since eight Soviet republics had enacted language laws earlier in that fateful year. It was adopted by the old Soviet Ukrainian parliament, which meant that deliberations during the preparation of the draft law remained secret. Public debate was lively, although it was restricted mostly to intellectual circles, and could be expressed only in a few glasnost '-breaking outlets, since the conservative authorities still maintained a tight control on the media.

The robustly independent political scientist Volodymyr Kulyk has interpreted the 1989 law in the following way. On the one hand, “Russian was to retain its legitimacy in virtually all social practices as the language of inter-ethnic communication”; on the other hand proclamation of Ukrainian as the state language, to be enshrined in the 1996 Constitution, instituted a “nation-state programme”, supported by Galicia and similar regions. Nevertheless, the 1989 Law has set the boundaries and the tone for all subsequent developments. As Kulyk observes (Kulyk 2006, 291), its apparent ambiguity is the direct result of Soviet policy, which while promoting Russian as the accepted language of public and private communication, at the same time ensured that

... the Ukrainian language was by no means illegitimate. Not only was its existence as a separate language unequivocally accepted, which in itself constituted a tremendous change in comparison with the Tsarist policy of treating it as a dialect of Russian and banning its use in most public domains.

Kulyk also points out that Ukrainian was seen as a natural “native language” of ethnic Ukrainians. His own conclusion is that this provided the “common-sense” basis for “highly contradictory ideological messages” with regard to the relationship between Ukrainian nation-building and the continued presence of the Russian language in so many spheres of life, which in turn “discouraged the perception of ethnolinguistic matters in terms of human rights and adherence to the law”. (Kulyk, 2006, 310)

7. What is the language of legislation?

According to paragraph 377, page 50, of the Committee of Experts' Report of 2008 (Council of Europe 2010):

Pursuant to a Decree of the President dated December 1996 No. 1207/96 ‘On publishing legislative acts of Ukraine in the news-bulletin Official Bulletin of the Verkhovna Rada’, the Ministry of Justice of Ukraine was instructed to ensure that laws and other regulatory legal acts of Ukraine were also published in the Russian language. Therefore, any law signed by the President of Ukraine, as well as the laws that have been officially made public by the Chairman of the Verkhovna Rada, are published in Ukrainian and Russian.

In fact, this statement is somewhat misleading. The web-site of the Verkhovna Rada publishes summaries of legislation in English, but there are no such summaries in Russian. Russian translations of Ukrainian laws are nowhere to be found on the web-site. Russian translations of Ukrainian laws are only to be found through private, commercial web-sites, for example *SoyuzPravoInform* (<http://www.spinform.ru/>) which translates the legislation of all CIS countries. The site explains that “normative documents in Ukraine are published in the state (Ukrainian) language.”

The author has not been able to find any internet source for Russian translations of Ukrainian laws, and in his experience these are hardly to be found in bookshops. The absence of reliable, authoritative translations puts Russian speakers at a serious disadvantage.

8. What is the Council of Europe’s Languages Charter?

The 1992 European Charter for Regional or Minority Languages (Languages Charter) has already enjoyed a complex and contradictory history in Ukraine (Bowring & Antonovych, 2008). It was ratified twice, in 1999 and 2003. However, Ukraine’s Instrument of Ratification did not reach Strasbourg until 19 September 2005, and came into force for Ukraine on 1 January 2006. Almost immediately, a number of Ukraine’s regions enacted legislation declaring Russian to be their “regional language”; and defects in the translation of the Charter into Ukrainian meant that the Instrument of Ratification will in due course be revised. Ukraine’s Initial Periodical Report was dated 2 August 2007 (Ukraine 2007), but the publication of the Opinion of the Charter’s Committee of Experts although adopted on 27 November 2008, was blocked by disagreement for a considerable period, and was finally published on 7 July 2010 (Council of Europe, 2010).

The Charter is a unique instrument, which does not protect minority groups, or even members of minority groups, but rather languages as such. The underlying philosophy of the Charter is the protection of cultural and linguistic diversity. It was believed by its drafters that ratification would pose no difficulties for those countries such as Turkey and France which do not recognise the existence of any minority on their territory. However, Turkey has not even signed the Charter, and the French *Conseil Constitutionnel* blocked France’s ratification. Furthermore, the complexity of ratifying the Charter may be illustrated by Ukraine’s neighbour, Russia, which has signed the Charter, and is working on ratification, assisted by a €3m joint programme of the EU and Council of Europe, in which the present author an expert. Russia has over 100 languages other than Russian, and 35 of them are taught in schools. There are a number of schools in Russia where Tatar is the language of instruction: the Tatars are the largest minority, some 5.5 million strong. But the second largest minority, the Ukrainians, have no schools, This is a source of considerable resentment, when there are still over a thousand schools in Ukraine with Russian as the language of instruction.

Since the issue of language policy is so politicised in Ukraine, the instruments and mechanisms to which Ukraine has now committed itself have also acquired specific political

significance and symbolic weight. Reeta Toivanen, in her article “Linguistic Diversity and the Paradox of Rights Discourse.” (Toivanen, 2007) provides a useful analysis of these problems (Bowring 2008). The issue with which she engages is as follows (Toivanen, 2007, 101):

... whether language rights presuppose a *fixed* conception of such rights, applying to potentially homogenous and static groups, whose ‘genuine’ language needs protection. Upon examination... it becomes apparent that many of the groups treated as ‘language minorities’ are actually seeking official recognition of either their cultural distinctiveness or their difference, while language is only one element – often of varying importance – of their group identity.

She wishes to show that language is “an instrumental symbol, which can easily be put to serve some of the political purposes of the minority, relying on the generalised belief diffuse in our societies that language, as one’s mother tongue, is a natural sign of one’s ethnic identity.” (Toivanen, 2007, 105) This is strongly associated with the belief that “one nation speaks one language”. This project has shown in various ways that Ukraine is manifestly a space in which there are several “nations”, and that none of them has a unique language.

She cites Pierre Bourdieu (Bourdieu 2007) to good effect, insisting that language boundaries, real or imagined, can easily be exploited politically – as in Ukraine! (Toivanen 2007, 106-7) Bourdieu observes the “phenomenon of the performative character typical of ethno-political entrepreneurs, who may live ‘off’ as well as ‘for’ ethnicity. By invoking groups, they seek to evoke them, summon them, call them into being. It has been the author’s own observation over the years since his first working visit in 1992 that the concerns and demands voiced by ethno-nationalist leaders (sometimes self-appointed) frequently bear little or no relation to the lived reality of the people they claim to represent. For the most part the mass of the people inhabit a multi-lingual world without too much stress.

As regards Ukraine’s treaty obligations, Toivanen notices that many of the existing minority rights instruments – like the 1994 Framework Convention on Protection of National Minorities (FCNM) and the Languages Charter – “treat minority groups as homogenous and static groups carrying a distinct and genuine language as a permanent feature.” (Toivanen 2007, 107) This essentialising of both ethnicity and language use is – see above—a significant feature of Ukrainian legislation, especially the 1989 law “On languages of the Ukrainian SSR”.

She also points out that the Languages Charter “relates mainly to those language groups whose protection and promotion may contribute to the furthering of democracy in Europe, without however jeopardising national sovereignty and territorial integrity”, to use the words of the Preamble. (Toivanen 2007, 109) Her impression after reading the FCNM is that its provisions taken together carry the message that “a nation, even one in a minority position, speaks one language.” (Toivanen, 2007, 109-110)

It is manifestly the case in Ukraine that ethnic or “national” groups do not speak one language. There is, however, a strong view held by many political actors that they ought to.

The Council of Europe’s Committee of Experts for the Languages Charter, in their 2008

Report, noted that several local and regional authorities had invoked the Charter “as a basis for recognising the Russian language as ‘regional in the sense of the [Charter]’.” The Committee understood

that this issue is at the heart of an intense public discussion... There is clearly a gap between those who consider that Russian is just one minority language among many others, and those advocating that Russian must continue to play an important role as being the language spoken by a very high proportion of the Ukrainian population and having traditionally been the language of inter-ethnic communication in Ukraine.”

The Committee reminded itself that the status of a language is a matter of internal policy, with no clear guidance from the Charter. The Committee would not challenge the Ukrainian legislation so long as Russian receives “the necessary protection”. “However, given the number of Russian speakers in Ukraine, it is clear that the Russian language must be accorded a special position.” (Council of Europe, 2010, 13)

9. Is the Ukrainian language in danger?

The Ukrainian language is very widely spoken in Ukraine, but many Ukrainians, rightly proud of their country and the fact that it has at last achieved independence, are dismayed by the example of the Irish Republic (Eire). This fear has been voiced by a number of the author’s interlocutors in Ukraine (Bowring 2008). The Irish (Gaelic) language suffered long persecution by England and then Great Britain, and was for centuries suppressed even more fiercely than was Ukrainian in either the Tsarist Empire or the Soviet Union. Irish is of course a Celtic language, which has no connection whatsoever with English.

Eire only achieved independence in 1922 following the abortive Dublin Uprising of 1916, and then several years of bloody warfare. The Irish Constitution of 1937 provides in Article 8:

1. The Irish language as the national language is the first official language.
2. The English language is recognised as a second official language.
3. Provision may, however, be made by law for the exclusive use of either of the said languages for any one or more official purposes, either throughout the State or in any part thereof.

No such law has yet been enacted.

The Irish language is taught to all school-children. All official signs are written in both languages, and there is broadcasting in Irish. However, outside the Gaeltacht, the small coastal areas and islands where the inhabitants are effectively paid to speak Irish, the Irish language is rarely heard, with only 7% of the population stating in the last census that they use Irish on a daily basis. English language, popular culture and media dominate. Nic Shuibhne (1999) observed as follows:

It is a common feature of linguistic minorities that they strive to achieve the version of official recognition that they have not been accorded. The Irish language is unique in that its constitutional status goes far beyond mere recognition and confers upon it the privileged position of national and first official language of the State. But its *de facto*

minority status has been largely ignored.

Of course, the parlous state of the Irish language makes Ireland no less independent. It has become an enthusiastic – often a leading–member of the EU (of which Irish is now one of the official languages). However, for those who believe that each nation must have its language, and that this language expresses the “national authenticity (*samobytnost*)” of the nation (as in the Preamble to the 1989 Law “On languages of the Ukrainian SSR”), the Irish example gives real cause for concern. Many of the laws and policies of post-independence governments which Russian speakers find so threatening are responses to the not unreasonable fears referred to above.

This author in common with many Russian-speakers in Ukraine is firmly of the view that Ukraine is entitled to its state language, and that every citizen of Ukraine, even if educated in another language, must acquire a good command of the state language. Furthermore, the requirement that entrants to higher education should be able to demonstrate competence in Ukrainian appears to be perfectly reasonable.

10. The complaints of (leaders of) the Russian speaking community

One of the most prolific advocates for the Russian language in Ukraine is Vadim Kolesnichenko, a Verkhovna Rada deputy and chair of the NK “Russian-speaking Ukraine”. In July 2010, when the Report of the Committee of Experts for the Languages Charter was published, he and his assistant Ruslan Bortnik wrote (Kolesnichenko & Bortnik, 2010) with regard to the period from 17 May 2007 to 18 May 2008: “... the policy of the state of Ukraine regarding regional or minority languages assumed even more threatening forms and the character of notorious suppression and extrusion of these language from all spheres of life of the society” and “The list of egregious facts of discrimination and annihilation of regional or minority languages in Ukraine also grew drastically.”

Here is an example:

On 25 December 2007 the Minister of Education of Ukraine signed Order No. 1171 regarding external testing of school leavers (graduates of comprehensive schools) wishing to enter higher educational institutions in 2008. The Order requires the tests to be taken exclusively in Ukrainian (with a 2 year suspension)! The pupils who lacked knowledge of Ukrainian for taking tests were offered some small glossary with the translation of basic terms.

Herein, currently in Ukraine the pupils are taught in Crimean Tatar, Moldovan, Romanian, Hungarian, Polish, Russian and other languages, i.e. the languages protected by the Law of Ukraine “On Ratification of European Charter for Regional or Minority Languages Fulfillment” No. 802-IV, dated 15 May 2003, and the schools that teach pupils in regional or minority language make up a network of more than 1,500 schools with more than 500,000 pupils. Consequently, the pupils taught in regional or minority languages in Ukraine are actually deprived of the right to higher education and discriminated on the basis of language spoken, since they are put into knowingly unequal competitive conditions of entering the university compared with pupils who are taught in the state language.

There have indeed been dramatic changes. In 1987, in the late Soviet period, 72% of schools taught in Russian, only 16% in Ukrainian, and 12% were mixed. By 2001 1,300 schools had switched from Russian to Ukrainian. By 8 June 2006, the second Ukrainian Report to the Advisory Committee of the Council of Europe's Framework Convention for the Protection of National Minorities (FCNM), the number of Russian schools had fallen from 2,561 to 1,345, and the number of pupils in Russian language education from 2,313,901 to 525,260.

But in the view of the author, there are perfectly practical reasons why even Russian-speaking parents send their children to Ukrainian language schools. Volodymyr Kulyk (2006, 2010), as well as Anna Wylegała writing on Lviv (Wylegała 2010) and Margrethe Søvik on Kharkiv (Søvik, 2010) showing that the reality in most of Ukraine is of bilingualism. This was also the experience of the author in 2009 visiting Kyiv, Donetsk, Lviv and Simferopol with the OSCE's High Commissioner on National Minorities.

Most observers, including the author, are struck by the way that Ukrainian and Russian co-exist at street level. Shumlianskyi (2010) argues that conflicts arise not in the practice of language use but rather in the presentation of abstractions by political leaders. In a recent analysis of language in the mass media, Kulyk observed (Kulyk 2010, 96). that

On the one hand, Ukrainian appears in media discourse on language matters as the language of the state and society, the one which citizens (should) identify with and which, accordingly, the state rightly supports. On the other, Russian is presented as an acceptable language of virtually all social practices both by the non-problematizing portrayal of its use by various actors and by the language use of the media itself.

Since independence, there has been a constant tension between the notion of “mother-tongue”, and language actually used in private and in public. Arel reported an example from the 2001 census campaign, of a Kyiv student who was fluent in Ukrainian but preferred to use Russian at home and with his friends. He had been brought up in Russian. Arel pointed out that by any definition, Russian was his mother tongue. Yet the 2001 census enquired about “native language” rather than “mother tongue”, and the student chose Ukrainian, on the grounds that “I am not Russian” (Arel, 2002, 240). And Kulyk reported in 2008:

Given that native language is often considered to be the language of one's nationality rather than one's own use, many people speaking mostly or even exclusively Russian still declare their native language to be Ukrainian. Accordingly, this declaration does not determine the respondent's policy preference, as it may result from different patterns of everyday use and different cultural orientations... Even more ambiguous is the declaration of one's Ukrainian nationality, which encompasses not only different language practices but also different language identifications (in our sample, 30 per cent of those defining themselves as Ukrainians declared their native language to be Russian or both).

And Laada Bilaniuk (2010) has analysed the phenomenon also frequently noted by the present author, of television programmes and interviews in which a question is asked in Ukrainian and answered, quite un-selfconsciously and without provoking any comment, in Russian. Given the rather feverish debate as to language policy in Ukraine she was struck by “... the prevalence of a practice I call ‘non-accommodating bilingualism’: speaking one's preferred language, Ukrainian or Russian, when this is not the language spoken by one's

interlocutor, thereby maintaining a conversation in two languages.” (Bilaniuk 2010, 105). This leads her to a rather optimistic conclusion (Bilaniuk, 2010, 114):

The acceptability of the practice of non-accommodating bilingualism facilitates the growing presence of Ukrainian in domains where it was previously unacceptable and marginalized, without the drastic shift that would require everyone to change established language habits. Those people who feel so inclined can choose to speak Ukrainian in spheres previously dominated by Russian, such as science, politics, and popular culture, even if others around them speak Russian.

11. Politicising Ukrainian-Russian relations—the Holodomor or Genocide of the Ukrainian people

Unfortunately, the politicisation of the language question in Ukraine is augmented by the discourse concerning the pre-WW II genocide or *holodomor* of the Ukrainian people.

The author became familiar with this discourse when teaching at the National University “Kyiv-Mohyla Academy” in Kyiv. The history of the Academy is an exemplar of the history of Ukraine. It was originally founded by the Metropolitan of Kyiv Petro Mohyla in 1615, and enjoyed its golden age during the reign of Hetman Ivan Mazepa (from 1687 to 1709). It was closed by the authorities of the Russian Empire in 1817 following Aleksandr I’s victory over Napoleon, and re-opened only following the collapse of the USSR in 1991. It considers itself to be “truly Ukrainian”, and it “... strives to make the modern Academy the intellectual symbol of Ukraine in modern times.” It is rated the one of the two best universities in Ukraine. The languages of instruction are Ukrainian and English, and the author was required to submit to a vote before he was permitted to address the Academic Council of the Law Faculty in Russian. However, he observed that many if not most of the students speak Russian, as do most inhabitants of Kyiv, outside the classroom.

The term “genocide” was coined in 1943 by Rafael Lemkin, and developed in his 1944 book *Axis Rule in Occupied Europe: Laws of Occupation—Analysis of Government—Proposals for Redress*. It was identified as a crime in the UN’s 1948 *Convention on the Prevention and Punishment of the Crime of Genocide*, which also contains a legal definition which is now, for example, part of the Statute of the International Criminal Court.

In 1953 Lemkin wrote *Soviet Genocide in the Ukraine* (Lemkin 1953, 2008), in which he distinguished four characteristics: 1) the annihilation of the Ukrainian intelligentsia, the ‘national brain’; 2) the liquidation of the Ukrainian Orthodox Autocephalous church, the ‘national soul’; 3) the “*holodomor*” of the Ukrainian peasantry, the repository of the tradition, folklore and music, the national language and literature, the national spirit, of Ukraine—between 1932 and 1933, 5,000,000 Ukrainians starved to death; and 4) the fragmentation of the Ukrainian people at once by the addition to Ukraine of foreign peoples and by the dispersion of the Ukrainians throughout Eastern Europe. For Lemkin, this all led to “the systematic destruction of the Ukrainian nation, in its progressive absorption within the new Soviet nation.”

In a careful recent legal analysis, Zemlyanska (2009) does not consider that the facts

amounted to genocide by the Soviet Union, especially since many of those who executed the policy of elimination of the peasantry were Ukrainians. This was in her view, however, a crime against humanity. This was also the view of the European Parliament in its resolution of 23 October 2008, which “recognizes the Holodomor (the artificial famine of 1932-1933 in Ukraine) as an appalling crime against the Ukrainian people, and against humanity.” The Parliament deliberately did not use the term “genocide”.

The discourse within Ukraine is quite different. On 28 November 2006 the Verkhovna Rada, enacted the Law “On the Holodomor of 1932-1933 in Ukraine” (No.376-V). The law established that the Holodomor was genocide against the Ukrainian People, and that public negation of the Holodomor dishonours the memory of millions of the Holodomor victims and humiliates the dignity of the Ukrainian People, and shall be deemed illegitimate. In March 2007 President Yushchenko submitted a draft law “On Amendments to the Criminal and the Procedural Criminal Codes of Ukraine” for consideration by the Verkhovna Rada, envisaging prosecution for public denial of the Holodomor as genocide of the Ukrainian people, and of the Holocaust as genocide of the Jewish people. The proposed punishment for public denial and production and dissemination of materials containing a denial was a fine of 100 to 300 untaxed minimum salaries, or imprisonment for up to two years. This draft never became law.

On 27 April 2010 the Our Ukraine party accused President Yanukovich of “holodomor denial” after he told the spring session of the Parliamentary Assembly of the Council of Europe (PACE) that the famine could not be considered genocide as it was “a common tragedy of the Soviet people.” The draft PACE resolution on the famine says it was caused by “the cruel and deliberate actions and policies of the Soviet regime” responsible for the deaths of “millions of innocent people,” not only in Ukraine, but also in Belarus, Kazakhstan, Moldova and Russia.

Pyotr Romanov (2008) shared the view of many Russians when he wrote “[i]nstead of blaming the Russian nation, Kiev ought to condemn Marxism and Stalinism.” Indeed, there are texts which seek to implicate Russia in genocide. A handout for students recently produced by the Ukrainian Genocide Famine Foundation states that “Russia and the Soviet Union wished to eradicate the Ukrainian people as a separate ethno-cultural entity.” (Ukrainian Genocide Famine Foundation, 2009) If this was the desire of “Russia”, then for ultra-nationalists this becomes the desire of Russians, and the Russian language itself is implicated as the bearer of genocide. The author has heard just such sentiments expressed by Ukrainian ultra-nationalists.

12. Conclusion

It should be no surprise that Mr Kolesnichenko is a strong supporter of the new draft Law on Languages prepared by Yevgeniy Kushnaryov of the ruling Party of the Regions (Draft Law 2010), and submitted on 7 September 2010 to the Verkhovna Rada by Aleksandr Yefremov of the Party of the Regions, Petro Simonenko the leader of the Communist Party of Ukraine, and Sergey Grinevitskiy of the “Litvin Bloc”. On 8 September 2010 Mr

Kolesnichenko argued that the draft would not only comply with the requirements of the Languages Charter, but would also define

...proactive measures in order to implement the status of regional languages for each of the regional languages in Ukraine and to secure the possibility for regional or minority language speakers in Ukraine to be able to use their language in the spheres of public life. In particular the draft bill removes the existing threshold for official use of for the Russian language in all major areas of public life—television, advertising, film industry, local administration, courts and education.

In the Russian media the draft was hailed as “Ukraine legalises the Russian language” (Sinelnikov, 2010). The opposition were outspoken. According to the opposition deputy Vyacheslav Kirilenko on 20 September 2010, the draft law if enacted would split Ukraine: “Parents will be compelled to send children to Russian-language classes. Higher education entities will set up for small groups for Ukrainian-speakers, and all other students will be forced to attend Russian-language groups.” Not only the Kyiv-Mohyla Academy but the Ukrainian Academy of Sciences opposed the draft.

Despite the fact that this draft was in essence that referred to by President Yanukovich shortly after his election (see above), on 11 November 2010 the Rada Committee on Culture and Religion recommended that the draft be rejected, and on 19 November the Verkhovna Rada returned the draft to its authors without considering it. Nevertheless, on 28 December 2010 Mr Kolesnichenko expressed his conviction that the draft would be adopted in the summer of 2011.

However, both the Venice Commission (2011) and the OSCE’s High Commissioner on National Minorities, Mr Knut Vollebaek (HCNM, 2010), have provided highly critical opinions on the draft. This brought forth a predictable reaction from the Romanian, Hungarian, Jewish and Russian national minority leaders in Ukraine, on 18 March 2011 accusing Mr Vollebaek of double standards. [2]

Replacement of the 1989 Law is just one of many highly controversial reforms presently stuck in the Ukrainian legislative process.

In conclusion, I tentatively agree with Volodymyr Kulyk and with the Languages Charter’s Committee of Experts that the Charter cannot provide the solution to the vexed question of the status of the Russian language in Ukraine. On the contrary, the Constitution of Ukraine and the relevant legislation should provide for rights which reflect the actual position of the Russian language, that is, the very large number of persons who choose to speak Russian and to use it in so many spheres of everyday life.

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