

Ukrainians and their language The Act on the State Language of Ukraine

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On 25 April, the Supreme Council of Ukraine passed a law guaranteeing the role of the Ukrainian language as the state language. The act was passed with a significant majority (278 in favour, 38 against), and was signed into law by President Petro Poroshenko on 15 May. This is not an act on the state's language policy, but the role of the official language in the life of the country. The act is clearly aimed at eliminating Russian from as many spheres of community life in Ukraine as possible, especially from education and the media. The other, equally important task is to ensure development, standardisation, and modernisation of the Ukrainian language where there are currently shortcomings.

The act, which was originally intended to be an instrument in Petro Poroshenko's presidential campaign, will be used in the campaign for the early parliamentary elections of 21 July by the former president's party and other groupings that form the broad anti-Russian camp. Opponents of the new act will probably contest it before the Constitutional Court, but rulings cannot be expected before the election.

For the moment, it is unclear what position President Volodymyr Zelenskiy will take on the new act. It is possible that he will wish to amend some provisions. On one hand, during the presidential campaign, he frequently stated that the rights of the Russian-speaking population had to be guaranteed, while on the other his supporters include a large number of proponents of radical Ukrainization, whose support will be important to Zelenskiy in the parliamentary election.

Ukrainian laws on language

Art. 10 of the Ukrainian Constitution of 1996 states that "Ukrainian is the state language of Ukraine, and the state shall ensure comprehensive development and functioning of the Ukrainian language in all spheres of community life, (...) free development, use, and protection of Russian and other languages of national minorities shall be guaranteed". Although the Constitution provides for the enactment of a separate act on the "use of languages in Ukraine", for a long time the state's policy on language was defined by the Act on Languages in the Ukrainian Socialist Soviet Republic, passed in 1989.

This act made the state language of the Ukrainian Socialist Soviet Republic Ukrainian, but it guaranteed Russian the status of a "language of contact between nationalities", and guaranteed that a bilingual system would be used in all spheres of community life (which in practice meant that Russian was the prevailing language in public offices and government; in many areas it was the sole language).

Work on laws to regulate language issues has been undertaken a number of times, with a series of legislative proposals being submitted. Some of these were aimed at displacing Russian as the language used in state affairs, and even community life, while others were aimed at

guaranteeing Russian the maximum presence in state and community life, or *de facto* introduction of a bilingual system (the Constitution unequivocally prohibits a *de iure* bilingual system). As there are no general laws in this regard, particular aspects of the state's language policy (such as the language used in education, in court procedures, government office procedures, etc.) were regulated in detailed statutes and normative acts of lower status; a large portion of these led to restriction of use of Russian.

The new act is aimed at eliminating Russian from the life of the country and reducing its use in community life, and is also intended to ensure development, standardisation, and modernisation of the Ukrainian language.

It was not until 2012, when Viktor Yanukovich was in office, that a new act on language was successfully pushed through, enabling, among other things, an official bilingual system to be introduced in particular districts and low-level administrative units. This act only came into force in a formal way, and was commonly considered as a sanctioning of the *status quo*. In particular, no attempts were made to introduce a bilingual system at regional level. When Yanukovich was removed from office, the Supreme Council of Ukraine repealed the 2012 act, in the midst of a rise in patriotism, but this decision did not become legally effective. It was not until 2018 that the Ukrainian Constitutional Court repealed that act, and the Supreme Council began work on new legislation. In turn, in 2017, a new Education Act was passed which restricted the use of Russian and languages of national minorities as a language of instruction. Towards the end of 2018, a new bill was proposed and passed in the first reading, defining the role of the official language in state and community life.

2082 changes to this act were submitted. Some remedied major shortcomings in the bill, while most were intended to prevent the bill being passed before the presidential election. The Supreme Council rejected all of the suggested changes, forcing the architects to take a measure that was at best questionable from a formal point of view: immediately after the last of the changes was rejected, parliamentary committee representative Mykola Kniazhytskyi submitted a motion for 56 of the amendments to be voted upon again, due to them "wrongly" being rejected, as this was contrary to committee recommendations. The wording of the changes was not discussed – the parliamentary committee representative only listed the numbers. A vote was held in which the changes were approved *en bloc*, and next the act was passed in its entirety, "including the corrections made to the transcript".

Following more attempts by opponents to stop it (a number of proposals for resolutions annulling the vote of 25 April were submitted), on 14 May the Supreme Council speaker was able to sign the bill and present it to the president (it was signed by Petro Poroshenko on 15 May). The act itself – subject to numerous *vacatio legis*, some lasting as long as three years – will come into force on 16 July this year.

Main aim of the new act

The new language act has two goals, which are to eliminate Russian from official state affairs and restrict its use in community life, and to guarantee development, standardisation, and modernisation of the Ukrainian language where there are shortcomings. The last of these is to be achieved by the creation of a new central authority, the National Committee for the Status of the State Language. The committee will be responsible among other things for adjudicating on questions of proper usage and spelling (similar to the powers of the Council for the Polish language).

Despite the fact that the preamble refers to people “colonising and occupying” (using the plural form) Ukraine, the law is clearly directed towards Russia and the Russian language, because it allows, in almost every area, parallel use of Ukrainian and “official EU languages”, which means that this includes Polish, Hungarian, Slovakian, and Romanian. The act explicitly prohibits an interchangeable bilingual system, i.e. use of Russian instead of Ukrainian, and only permits a parallel bilingual system, i.e. use of two languages of equal status on signs and in texts, etc.

The act is poorly drafted and contains many loopholes and ambiguities, and will need official interpretations and amendments. At the same time, it is extraordinarily detailed and casuistic. Even worse, it explicitly prohibits issuance of secondary, implementing legislation.

The rules specified in the act do not apply to private contact, religious practices, cultural events with a defined number of participants (unclear expression), and the language used in performance of songs, opera performances, etc. Laws on cultural establishments only mention publicly run and municipal establishments, and private institutions are exempt from the relevant regulations. The act confirms the regulations in effect to date in judicial procedure codes, regarding use of languages other than the state language. In relations with consumers, patients, etc. (but not petitioners) it is permitted to use a language “convenient to both parties” which gives some leeway to Russian speakers, but also to Hungarians, who make up the majority in part of the Transcarpathian region.

The act prohibits the screening of films (regardless of the form in which they are screened) without dubbing or voiceover. Subtitles are treated as a special form (which is established

practice in Ukraine). In unusually detailed regulations on use of the state language in the media, culture, sport, advertising, etc., a lot remains unclear. Ukrainization of the media has now largely been assured under earlier, sectorial regulations.

Criminal provisions in the act only provide for administrative liability; the act does not make any additions to the criminal code. The coming into force of these provisions has been deferred for three years because most of the norms for which punitive measures are intended are due to come into force at a much later time.

The act is poorly drafted and contains many loopholes and ambiguities, and will need official interpretations and amendments. At the same time, it is extraordinarily detailed and casuistic. Even worse, not only does it not delegate powers to issue secondary, implementing legislation, in fact it prohibits such actions – the status of the official language is to be regulated solely in statutes, down to the tiniest detail. In terms of quality and casuistics, the act is no different in fact to Ukrainian laws.

Status of the Ukrainian language

The act requires Ukrainian citizens to be able to speak the state language. For people who are Ukrainian citizens this does not have any implications, while the appropriate examination will be introduced for people applying for citizenship (a system used in many countries). This will not take effect until two years after the act comes into force, due to the need to determine the standards of command of the language and devise the language proficiency tests. Due to this last necessity, a similar *vacatio legis* was introduced for many other provisions, including a requirement for public officials to have a command of the language¹.

¹ Noticeably, the reduction in the final changes of requirements for those officers: they are only required to “have a command of the state language”, and not use it with ease/fluently as in the original proposal.

Many provisions in the act are intended to ensure the appropriate quality of the Ukrainian language, its development and normalisation, and combat borrowings from other languages and vulgarisms (a large portion of Ukrainian vulgarisms are taken from Russian), but also preserve dialects. A notable amount of attention is paid in the act to development of Ukrainian sign language.

The act gives people of foreign origin the right to demand acknowledgement of the special national spelling of their names (for example Kowalski, not Kowalskyj). It also explicitly prohibits translation of first names and surnames. In the case of surnames, this has occurred in the past, for example the Russian surname Skworcow being recorded in state registers as Szpakow (both names are derived from the word for starling). In official documents in which the Latin alphabet is used, on the other hand, surnames of this kind are to be transcribed from Ukrainian and not left in the original Latin form.

The act only allows instruction in national minority languages in primary schools, and this must be in addition to instruction in Ukrainian. This poorly drafted law will lead to controversy and conflict.

An act on Indigenous and Minority Languages is to be passed to complement the act. To date, a bill has not been submitted and it will not be possible for it to be passed during this parliamentary session². Significantly, nothing is being said about the currently applicable Act on National Minorities of Ukraine of 1992;

² The name given to this bill contains a misrepresentation which is now used commonly in Ukraine. This is not a question of indigenous languages (i.e. languages of which there are no speakers, including elsewhere than Ukraine) in the plural. It only concerns the Crimean Tatar language. The two other indigenous languages (Karaitic and Krymchak languages) were spoken in 1989 (recently available data) by 114 and 150 respectively

in a reference to an act on “measures to realise the rights of indigenous nations and national minorities”, inserted during the most recent changes, it is unclear whether this means the 1992 act or the new, forthcoming legislation.

Languages of minorities in education

Art. 21 of the act, which is the only article that addresses education issues, states that “persons belonging to national minorities in Ukraine are guaranteed a right to learn at municipal education establishments in order to gain a preschool and primary school education in addition to the state language in the language of the relevant national minority in Ukraine. This right is realised by creating, as provided for by law [the Act on the Education System and, as applicable, special acts in the future – OSW] separate classes (groups) with instruction provided in the language of the relevant national minority of Ukraine, together with the state language, and this does not extend to classes (groups) in which instruction is given in the state language”. This poorly drafted provision should be seen as allowing, in preschool and primary schools (but not secondary schools) bilingual classes with instruction in the official language and in the minority language as well. Experience shows (for example in Poland between the first and second world wars, when this was very common) that bilingual instruction gives rise to numerous conflicts regarding the share of the two languages in teaching, and makes it necessary for state authorities to intervene in the teaching process. For indigenous nations, this right is extended to secondary school, but for these as well, it is not permitted to provide education solely in the minority language.

Further on, this article guarantees persons belonging to indigenous nations and national minorities the right to learn their language” in municipal comprehensive secondary school establishments or through national and cultural societies”. This provision does not mention the

teaching of particular subjects in the minority language, only the teaching of that language as a subject. This could be seen as prohibiting the teaching of history and culture of a minority community as a separate subject, or that it requires that subject to be taught in Ukrainian. There is some leeway in this provision, allowing local government authorities to shift responsibility for teaching languages of minorities on to national minority societies.

The overall intention behind this education legislation is to abolish as quickly as possible schools in which instruction is in Russian, limit teaching of Russian as a subject as much as possible, and mitigate criticism on the part of Hungary, Poland, and Romania by deferring the date of ultimate Ukrainization of secondary schools in which instruction is given in the language of those nations.

The article also states further that “educational establishments, in particular vocational (vocational technical establishments, and pre-higher and higher education vocational establishments, shall provide obligatory teaching of the state language to an extent enabling work in an occupation in a particular branch using the state language”. A little further on, the article reads “At the request of persons attending vocational training (vocational technical) and pre-higher and higher vocational training, educational establishments shall offer the opportunity for them to learn the language of their indigenous nation or language of a national minority of Ukraine as a separate subject”. Although this is ambiguous wording, there is no doubt that the right to learn a minority language in those schools is not as well protected as in primary schools and comprehensive secondary schools: there is no mention of guarantees, only creation of opportunities.

Point 5(21) states that “in educational establishments, according to the teaching curriculum, one or more subjects can be taught in two or more languages: in the state language, in English, and in other official languages of the European Union”. This provision allows the existence of schools in which instruction is partially in a bilingual system (in general, secondary schools run by foreign firms) as well as leeway for national minorities to maintain or create bilingual private schools and fight to retain the currently existing method of teaching in public “minority” schools. This provision also applies to all educational establishments regardless of ownership.

The act abolishes the requirement to take a secondary school-leaving examination (external, independent assessment) and preliminary examinations for universities in languages other than Ukrainian, except for foreign language examinations. Detailed rules on use of various languages in education are to be specified in special acts, not the Act on the Educational System.

Art. 21 will come into force two months after the act is signed, but interim provisions postpone enactment of the amendment concerning school-leaving examinations until 2030 (according to the original draft of the bill – until 2025). Students of comprehensive secondary schools who belong to national minorities, who commenced education in a minority language on or before 1 September 2018, will continue studying according to the present rules up to no later than 1 September 2020, but “with a gradual increase in the number of subjects taught in Ukrainian”. However, if a particular minority language is also an official language of the European Union, this deadline will be extended until 1 September 2023.

This is clearly contradictory: on one hand the current rules are to remain in place until 2020/2023, while on the other the number of subjects taught in a minority language is to be decreased, which means that the rules are to be changed. The act does not specify which

subjects can be taught solely in a minority language (usually these are the minority language itself, the history and culture, and study of religion in school, where provided). At the same time, the fact that the education minister cannot perform an interpretation of the act means that the task of resolving these doubts falls to local government authorities (as the founding authorities), if not on headteachers directly. This means that a uniform state policy cannot be formed in this respect, and this will lead to numerous local conflicts.

Over the last five years, the young generation in central and eastern Ukraine have spoken out firmly in favour of maintaining the integrity and constitutional governance of the country, and this includes the part played by the official language.

The overall intention behind this provision is clear, and that is to abolish as quickly as possible schools in which instruction is in Russian, to limit teaching of Russian as a subject as much as possible, prevent these processes being hampered if there is a change of government, and to mitigate criticism on the part of Hungary, Poland, and Romania by deferring the date of ultimate Ukrainization of secondary schools in which instruction is given in the language of those nations.

The social context of the act

The new language act is being enacted in a society that is significantly different to that of 1989, and even 2012. The view that the Ukrainian population is divided into two large groups, Ukrainian-speaking (presumably knowing Russian) and Russian-speaking (presumably unable to speak Ukrainian) is no longer true. After almost thirty years of functioning of a state that mainly uses (and to an ever-increasing extent)

Ukrainian, as well as an education system that gives all students at least an elementary command of Ukrainian, there is now practically nobody who does not understand the state language.

While there are no credible statistics concerning the current percentage of people who speak Ukrainian and Russian at home and in their social and professional life, or the ability to read and write in those languages, ordinary observation suggests a significant increase in the role played by the Ukrainian language in the lives of Ukrainian citizens.

One of the most important aspects of the fight for Ukrainization of community life is measures to make Ukrainian the dominant, if not only, language used in the media, from the press and book market through cinema, the stage, and television, to advertising. This is not only a question of dominance in political and cultural affairs: this involves the interests of artists and media companies, and this translates into large amounts of money. This is why previous attempts at Ukrainization of these sectors are so controversial. The changes made in this respect in the act are not ground-breaking; they only make previously existing requirements stricter.

Over the last five years, the young generations in central and eastern Ukraine have spoken out firmly in favour of maintaining the integrity of the country, and this includes the role of the official language. There is a notable desire to learn that language and use it in official situations. Even those who do not agree with the western Ukrainian view that Ukrainian serves as the very jewel of national identity acknowledge that a command of the language is an important element of civil identity.

On the other hand, the role played in community life by the elder generation and the layers of the least educated people (among whom the percentage of people who do not speak and are incapable of learning Ukrainian is considerable) continues to decrease. With the loss of control over the Crimea and part of the

Donbas, the number of active Ukrainian citizens refusing to speak Ukrainian for ideological (political) reasons has decreased significantly. All of this combined will mean that the new language act should be accepted without a great deal of resistance.

Political implications

The intention of making the new language act the driving force in Poroshenko's election campaign was unsuccessful. This is not only due to obstruction in parliament, forcing the bill to be passed after the presidential election. It is also due to Poroshenko's loss of popularity being too great. On the other hand, seeing the matter through to the end will be an attribute for him and his supporters, as well as his rivals in the patriotic camp, in the parliamentary campaign, which will determine not only the former president's political future, but also that of Prime Minister Volodymyr Hroysman and parliament speaker Andriy Parubiy and their supporters. Prior to his inauguration, President Volodymyr Zelenskiy did not take a definitive stance on the subject of the act, suggesting only that it needed to be determined whether it was constitutional. His priority and that of his milieu is now to win the early parliamentary elections, which will mean charming all of the elements

of his diverse electorate. Zelenskiy also must be aware that his spectacular success in the central and western parts of the country was due to the massive support that he also received from proponents of a dominant role of the Ukrainian language.

The error made by people in the senior posts in the Supreme Council, which was that it did not announce, at the same time as the Act on the State Language, the Act on National Minority Languages, may give the new president the option of taking other action. The bill on minority languages, which will be drafted by his office could significantly modify certain key principles of the new language policy, and even make amendments to the May act. It cannot be ruled out that he will wish to use the issue in his party's election campaign. However, everything will depend on which political groups gain a decisive influence over the new president, and who will formulate his views and in what way.

The international implications of the new language act being passed will be harmful to Kyiv. It is clear that Hungary will not stop fighting to maintain the current rights of its minority in Ukraine and will block Kyiv's cooperation with NATO. Romania and Bulgaria will also be sceptical about the new law. Russian will certainly use this act to undermine Ukraine's "democratic credibility".

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