

Ensuring Person's Language Rights in the Educational Sphere in Ukraine

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ABSTRACT

The article considers the category of language rights of a person in the educational field and the problems of their provision in Ukraine. This concept is considered in accordance with the theoretical approaches in the social and legal sciences, as well as the practice of applied legal norms. This study indicates that one of the key issues of state language policy in Ukraine in the field of education is still the problem of finding a legislative balance between the need to ensure the use and development of Ukrainian as a state language, and on the other - guaranteeing the right to learn or study native language of minority. It is noted that the legal guarantee for teaching in the mother tongue by members of national minorities is narrower than the constitutional guarantee, as it is limited only to the levels of preschool and primary education. At the same time, individuals belonging to the indigenous peoples of Ukraine are guaranteed the right to study in their native language in public educational institutions for general secondary education.

Keywords: *language relations, language rights, ethnic minorities, education, language policy, indigenous peoples.*

1. INTRODUCTION

The relevance of the article is to consider the theoretical and practical problems of language rights provision in the educational field at the present stage in Ukraine.

The purpose of the language policy of the state in a multiethnic society is to create conditions for the full language rights protection of each person. Ukraine, having declared itself a democratic and legal state at the constitutional level, seeks to create conditions for equal development and active full participation in the social, economic, political and spiritual and cultural life of Ukrainian citizens of all nationalities. A democratic state must not only respect the ethnic, linguistic and religious identity of any person belonging to a national minority, but also create conditions that allow to express and preserve of such an identity. Thus, an important element of the state language policy is the legal status of ethnic minority languages and their language rights.

As Ukraine is a multinational and multilingual [1] country in the process of state formation, it is important for national authorities not only to ensure the functioning of the state language, but also to guarantee the language rights of all national groups in Ukraine, which is an important prerequisite for social harmony. At present

stage in the educational sphere of Ukraine there is a problem of finding a legislative balance between the goal of the state language policy to ensure the use and development of the Ukrainian language as the state, and on the other hand - to guarantee the right to learn and study the mother tongue by minorities [2].

1.1. The aim of Article

The article is aimed at the scientific search for ways to improve the legal regulation of language relations in the field of education in Ukraine. In accordance with the comprehensive theoretical and practical approaches, the analysis of the language situation and language legislation of Ukraine is carried out. Problems of ensuring language rights in the field of education of citizens of Ukraine are revealed. Some promising legislative improvements have been proposed to eliminate violations of the right to use and develop the native language by members of ethnic minorities in Ukraine.

1.2. The novelty of the article

This article is aimed to establish theoretical aspects of understanding the right to use the native language, in particular in education. The problems of ensuring the language rights of ethnic minorities in the educational

field at the present stage in Ukraine are analyzed. We have substantiated that the rules of the national "educational" law seriously reduce the opportunities provided to persons belonging to national minorities to study in their languages. In addition, the analysis [3] of domestic language legislation shows that Ukraine has adopted only one law regulating the use and protection of the state language. At the same time, the procedure for the use of national minority languages in Ukraine is not regulated, the development, use and protection of which are guaranteed by the state and prescribed in the Constitution of Ukraine.

2. THEORETICAL CONDITIONS

Theoretical principles of language relations legal regulation in the educational field are based on different views of scholars, whose scientific works are devoted to the problems of language relations legal regulation in the field of education, issues of ensuring the linguistic rights of ethnic minorities.

The theoretical aspects of ensuring a person's language rights in the field of education are as follows.

Language is a tool and at the same time a product of culture. It is known that without a common language there can be no sense of national identity, belonging to a nation, which ensures its unity as a subject of state formation. Language is one of the main characteristics of the national-ethnic community, one of the main means of existence of its spirituality and development of its culture, a factor of national identification and consolidation.

Linguistic relations are social relations, the content of which is the relationship between the subjects of these relations - individuals, national minorities, indigenous peoples, ethnic groups, public authorities, arising from the preservation, use and dissemination of national languages.

The diversity of the subjects of linguistic relations emphasizes the existence of the diversity of linguistic relations themselves.

The part that is subject to legal regulation is singled out from the sphere of national-language relations. This is primarily a public language relationship. That is, relations that are related to the activities of the state, its bodies and officials, state enterprises, institutions and organizations; relations in which public authorities are obligatory participants. These relations are formed in the field of justice, official records, lawmaking, the activities of public authorities and administration, the work of public research institutions and educational institutions, public media, the armed forces and more. The peculiarity of the legal regulation of language relations in the field of education, culture, science, book publishing and information is that, on the one hand, the state must ensure national interests - the predominance of the state

language in these areas; on the other hand, to ensure the citizens of all national groups the right to education in their national language, to the development of their personality through the use of their native language and to receive information [4] regardless of its language. State and legal regulation of language relations in the private sphere is not carried out at all or occurs through the legislative enshrinement of general human language freedoms [5, p. 22]. Therefore, in contrast to civil law, a wide range of relations between citizens as individuals actually falls out of the sphere of constitutional and legal regulation.

We believe that one of the main personal freedoms is the freedom of everyone to choose the language of communication in private language relations. In a democratic state governed by the rule of law, a country that strives for European human rights standards, there should be no privileges, restrictions or obstacles based on language. No one has the right to force a person to use a certain language in private. The state must ensure the realization of this freedom of citizens, not to interfere in the sphere of "personal" life and not to establish rules for the use of languages in private spheres of human life. Every member of a civilized society may justly be coerced if it is necessary in order to prevent from him/her such actions which are harmful to other people - the personal well-being of the individual, physical or moral, is not a sufficient basis for any interference in his actions [6, p. 295-296; 7, 200-202]. V. fon Humboldt also noted that the state should not take any step further than necessary to ensure the safety of citizens from each other and from external enemies, for no purpose can it restrict personal freedoms [8, p. 49].

Thus, in the early twentieth century O. Kolesnikov, revealing the meaning of Art. 23 of the Belgian Constitution of 1831 on the right to language, stated: "The essence of this right is that the individual has the right to use his native language and require public institutions not to interfere in this regard in the field of individual independence; if state institutions did so, any citizen whose right is guaranteed by the constitution would be violated could complain to the courts" [9, p. 95]. All citizens, regardless of ethnic origin, have the right to use their native language. Well-known Mexican lawyer D. Valades notes that the right to language is the right of all. In our case, Spanish and the local languages spoken in Mexico are part of the national cultural heritage, and everyone has the right to cultural autonomy. This kind of autonomy, carried out individually or collectively, allows the use and development of a freely chosen language, constantly or in individual cases. Cultural autonomy of individuals and groups is another expression of freedom, possible only in a constitutional state [10, p. 108].

The purpose of the language policy of the state in a multiethnic society is aimed at creating conditions for the

full observation of language rights by each person. Ukraine, declared a democratic and legal state at the constitutional level, seeks to create conditions for equal development and active full participation of Ukrainian citizens of all nationalities in the social, economic, political and spiritual and cultural life. A democratic state must not only respect the ethnic, linguistic and religious identity of any person belonging to a national minority, but also create conditions that allow for the expression and preservation of such identity. Thus, an important element of the legal regime of languages is the legal status of ethnic minority languages and their language rights.

As Ukraine is a multinational and multilingual country, it is important for the state authorities not only to ensure the functioning of the state language, but also to guarantee the language rights of all national minorities in Ukraine, which is an important prerequisite for social harmony.

That is why the Constitution of Ukraine establishes guarantees for the language rights of national minorities and indigenous peoples of Ukraine. In particular, Part 3 of Art. 10 declares that Ukraine guarantees the free development, use and protection of Russian and other languages of national minorities in Ukraine. Art. 11 stipulates that the Ukrainian state promotes the consolidation and development of the Ukrainian nation, its historical consciousness, traditions and culture, as well as the development of ethnic, cultural, linguistic and religious identity of all indigenous peoples and national minorities of Ukraine. In addition, in accordance with Part 2 of Art. 24 prohibits discrimination on the grounds of ethnic origin and language. Also, the Basic Law emphasizes the guarantees of the rights of national minorities to study or learn their native language (Part 5 of Article 53 of the Constitution of Ukraine).

3. STATEMENT OF FACTUAL MATERIAL

The policy of Russification of education, pursued by the Soviet authorities in Ukraine in the second half of the XX century, led to the reduction of schools with instruction in the Ukrainian language. The processes of Russification in the field of education manifested themselves primarily in the right of voluntary choice of languages, which was enshrined in the legislation of the USSR of December 24, 1958 and the USSR of April 17, 1959. In particular, in Art. 10 of the Law "On strengthening the connection between school and life and further development of the system of public education in the Ukrainian SSR" stated that education in schools of Ukraine was carried out in the native language of students. Parents chose the language of instruction for their children. Of course, most parents sent their children to a Russian-language school, as their knowledge enabled them to achieve a higher position in society, to ensure their social status and material living conditions [11, p. 20]. At the same time, a new thesis was being imposed

from the Moscow center that the functions of the Russian language in the USSR were no longer limited to the role of a means of interethnic communication; it was proclaimed the second native language of the non-Russian peoples of the USSR. At first, this thesis was spread in linguistic literature and journalism, and in 1961 it was canonized by M. Khrushchev, who included it in the text of his report at the XXII Congress of the CPSU [12, p. 27]. According to A. Korzh, the decline in the status of the national language during this period led to the fact that it eventually became an attribute of peripherality, losing the incentives for self-development. In general, a person who insistently used the Ukrainian language could arouse suspicion of political unreliability [13, p.439]. For example, Soviet investigators took the statement of one of the witnesses to the poet Vasyl Stus with great confidence: "I immediately understood that Stus was a nationalist because he always spoke Ukrainian" [14, p. 653]

To ensure the acceleration of the study and introduction of the Russian language in public life, dozens of laws and regulations were issued. On May 25, 1983, the Central Committee of the CPSU and the Council of Ministers of the USSR adopted a joint Resolution № 473 "On Secondary Schools and Other Educational Institutions of the Union Republics." This document provided for a sharp increase in Russian schools and preschools, a 15% surcharge for Russian language teachers compared to teachers who taught their native language [15, p. 114]. Therefore, it is not surprising that, for example, in Donetsk, one of the largest cities in Ukraine, the last school with Ukrainian as the language of instruction was closed by 1989 [16, p. 260]. For example, in the 1988/89 school year, the number of students enrolled in schools with Ukrainian as the language of instruction was 47.4%. Therefore, the authorities of independent Ukraine faced the issue of returning the positions of the state Ukrainian language in the field of education.

To this end, numerous bylaws have been adopted and are being adopted. The Resolution "On the Procedure for Enacting the Law of the Ukrainian SSR" On Languages in the Ukrainian SSR "stated the need to develop and adopt a" State Program for the Development of Ukrainian and Other National Languages in the Ukrainian SSR for the period up to 2000". This program, which was adopted on February 12, 1991, contains a special section "State Ukrainian language and languages of other nationalities in the system of public education". In particular, it was planned to restructure the educational process on the basis of deep knowledge of the Ukrainian language by children and youth, expanding the functioning of the Ukrainian language in educational institutions; to create conditions for ensuring the constitutional right of citizens to teach children in their native language, to bring the network of educational institutions in line with the national composition and needs of the population; to

ensure compulsory study of Ukrainian and Russian languages in secondary schools, etc.

At present, the use of languages in education is regulated by the Constitution of Ukraine (Articles 10, 53), the Law of Ukraine "On Ensuring the Functioning of the Ukrainian Language as a State Language" (Article 21), the Law of Ukraine "On Education" (Article 7), the Law of Ukraine "On higher education" (Article 48), etc. In particular, in Art. 7 of the Law of Ukraine "On Education" establishes that the language of the educational process in educational institutions is carried out in the state language. The state guarantees every citizen of Ukraine the right to receive formal education at all levels (preschool, general secondary, professional (vocational), professional higher and higher), as well as extracurricular and postgraduate education in the state language in state and municipal educational institutions.

An important component of the state language and ethno-national policy is to ensure the rights of ethnic minorities to study and study their native language in state educational institutions. That is why, in Part 5 of Art. 53 of the Basic Law stipulates that citizens belonging to national minorities are guaranteed by law the right to study in their mother tongue or to learn their mother tongue in state and municipal educational institutions or through national cultural societies. The use in this legal construction of the conjunction "or" allows a fairly broad interpretation of the possibilities inherent in this rule. That is, in some cases, education in educational institutions in the language of a national minority may be provided, and in others, the language of a national minority may be studied as a separate discipline. Moreover, both training and study can be carried out in any state and municipal institutions (because neither the Constitution of Ukraine nor the current legislation contains a restrictive list of such institutions). The phrase "guaranteed right" means that the state must take measures to ensure this right, that is to create appropriate educational institutions in which education is provided in the language of a national minority, or to ensure the study of the national language as a separate discipline (teacher training, textbooks in the national language of minorities, etc.). According to V. Kolisnyk, in the absence of educational institutions where education is conducted in the language of a national minority, this right can be exercised in the form of studying the language of a national minority as a separate discipline in an educational institution where other disciplines are taught in state or Russian (language (based on the real language situation that has developed due to numerous subjective and objective reasons) [17, p. 85].

By the way, the right to learn or study the native language by members of national minorities is also contained in the constitutions of some foreign countries. For example, Art. 20 of the Constitution of Albania provides representatives of national minorities with the

right to education in their mother tongue and to study their mother tongue. Representatives of nationalities in Macedonia have the right to study in their own language in primary and secondary schools in accordance with the procedure established by law (Article 48 of the Constitution of Macedonia). In Romania, members of national minorities are also guaranteed the right to study and learn in their mother tongue (Article 32 of the Constitution). In Slovakia (in the Constitution) and in the Czech Republic (in the Charter of Fundamental Rights and Freedoms), a separate section enshrining the rights of national minorities guarantees citizens belonging to national minorities and ethnic groups the right to education in their own language and the right to use their language in official language relations. According to Art. 30 of the Indian Constitution, all minorities, both religious and linguistic, have the right to open and manage educational institutions due to their choice. The state should not discriminate against such educational institutions.

The constitutional guarantees for assuring the language rights of national minorities are in line with the international obligations of the Ukrainian state. In particular, in the Universal Declaration of Human Rights (Articles 2, 26), the International Covenant on Civil and Political Rights (Article 27), the International Covenant on Economic, Social and Cultural Rights (Article 13), the Convention on the Rights of the Child), The UNESCO Convention against Discrimination in Education (Article 5), the Copenhagen Meeting of the CSCE Conference on the Human Dimension (paragraph 34), the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Article 5), the European Framework Convention for the Protection of National Minorities (Article 14), etc. Article 2 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms states that no one may be denied the right to education. The State, in the performance of any functions undertaken by it in the field of education and training, shall respect the right of parents to provide such education and training in accordance with their religious and ideological beliefs. Although the rule does not mention anything about the language of education, the European Court of Human Rights, when considering the issue of linguistic rights in Belgium, stated that "this right loses its meaning... if it does not provide... the right to receive education in the national language, depending on the circumstances" [18, p. 236]. The premise of this case was that the Flemish population in Belgium had long been in a state of "Frenchization" and could not effectively resist the process of narrowing the scope of the mother tongue. Attempts to change the situation by introducing Flemish as the language of education did not yield positive results, as it provided for the right to choose the language of education. Of course, parents, wishing a successful future for their children, chose the main

language of the country - French. Therefore, the authorities took strict administrative measures and in 1930 introduced compulsory education in Flemish in the Flemish population and in French in the territory of the Francophones [19], effectively abolishing the constitutional right to use the native language.

The "educational" rules of the European Charter for Regional or Minority Languages ratified by Ukraine state that the state should take one of the following measures: i) provide for the possibility of providing secondary education in the relevant regional or minority languages; or (ii) provide for the possibility of providing a substantial part of secondary education in the relevant regional or minority languages; or (iii) provide for the teaching of relevant regional or minority languages within the secondary education system as part of the curriculum; or (iv) apply one of the measures provided for in subparagraphs (i) to (iii) above, at least to those pupils who themselves or, where appropriate, their families wish so and the number of which is considered sufficient (Article 8).

All the above provisions of the European Charter for Regional or Minority Languages on education must be enshrined in the law on languages of national minorities and indigenous peoples. In addition, a body should be established or designated to oversee measures for the use and development of minority languages in education.

The mechanism for exercising the language rights of national minorities is enshrined in Art. 7 of the Law of Ukraine "On Education". According to which persons belonging to national minorities of Ukraine are guaranteed the right to study in communal educational institutions for pre-school and primary education, along with the state language, also the language of the respective national minority. This right is exercised by creating in accordance with the legislation separate classes (groups) with education in the language of the respective national minority along with the state language and does not apply to classes (groups) with education in the Ukrainian language.

Persons belonging to the indigenous peoples of Ukraine are guaranteed the right to study in communal educational institutions for pre-school and general secondary education, along with the state language, the language of the respective indigenous people. This right is exercised by creating in accordance with the law separate classes (groups) with education in the language of the relevant indigenous people of Ukraine along with the state language and does not apply to classes (groups) with education in the Ukrainian language.

Persons belonging to indigenous peoples, national minorities of Ukraine, are guaranteed the right to study the language of the respective indigenous people or national minority in communal institutions of general

secondary education or through national cultural societies.

Thus, the legal guarantee for teaching in the mother tongue by members of national minorities is narrower than the constitutional guarantee, as it is limited only to the levels of preschool and primary education. At the same time, persons belonging to the indigenous peoples of Ukraine are guaranteed the right to study in their native language in public educational institutions for general secondary education.

We believe that such requirements of the Law provide discriminatory advantages (privileges) on the basis of language and ethnic origin only to persons belonging to indigenous peoples. After all, Part 2 of Art. 10 and Art. 11 of the Constitution of Ukraine states precisely the guarantees of the use of the languages of all national minorities and indigenous peoples of Ukraine, and in no way emphasizes the "special" rights of any ethnic group. Also in this aspect there is a question of violation of Art. 24 of the Constitution (discrimination and violation of the principle of equality), because privileges are granted only to representatives of indigenous peoples of Ukraine compared to representatives of national minorities (according to the 2001 All-Ukrainian Census, more than 130 nationalities live in Ukraine). It should also be emphasized that representatives of the Bulgarian, Hungarian, Greek, Polish, Romanian, Russian and other national minorities live compactly in Ukraine [20, p. 93-94], and therefore their language rights in the field of education and other spheres of public life must also be protected. Therefore, as already mentioned, there is currently an urgent need to develop and adopt a law on the use of indigenous languages and languages of national minorities in Ukraine, which eliminated this legal vacuum and some violations of national legislation in the field of education.

By the way, the Venice Commission in its Opinion of December 8, 2017 also points to the restriction of the rights of national minorities by the new "educational" law. Namely, it points out that although the comprehensive reform of the Ukrainian education system seems to be generally welcomed, the new Law on Education also proposes new principles for the use of languages for education and languages as a subject. In particular, Article 7 of the new law, by reducing the amount of education in minority languages, especially after primary school, has provoked strong criticism and protests both domestically and internationally. This criticism is largely justified, for a number of reasons. However, the version of the article that was approved differs significantly from the draft on which minorities were consulted. Article 7 contains important ambiguities and does not appear to ensure compliance with the key principles necessary to implement the framework law in the application of the country's international and constitutional obligations. At the same time, it contains

certain guarantees for education in minority languages, but is mostly limited to primary education. The exact scope of such guarantees is not as clear as it should be in law. The approved version really allows to radically change the previous language regime, at least in secondary education, bringing it to a system focused on the mandatory use of the Ukrainian language as the language of instruction.

If this happens, it will seriously reduce the opportunities provided to persons belonging to national minorities to study in their languages, which is a disproportionate interference with the existing rights of persons belonging to national minorities. In addition, the short implementation period of the new rules raises serious concerns about the quality of education [21].

According to Part 5. Art. 21 of the Law "On ensuring the functioning of the Ukrainian language as the state language" in educational institutions in accordance with the educational program one or more disciplines may be taught in two or more languages - the state language, English, other official languages of the European Union.

Although this provision does not mention the rights of any ethnic groups, at the same time in this aspect it is necessary to mention the Conclusion of the Venice Commission of December 8, 2017 on the provisions of Art. 7 of the Law of Ukraine "On Education", which states that a similar paragraph contained in the Law "On Education" does not provide a solution for languages that are not official languages of the EU, in particular for Russian, as the most widely used language in Ukraine together with Ukrainian. Less favorable treatment of these languages is difficult to justify, and therefore raises the question of its discrimination. In view of these considerations, the correct solution would be to amend Article 7 to replace this provision with a more balanced and clear one. This once again confirms our thesis that based on the provisions of Part 5 of Art. 53 of the Constitution and international obligations of Ukraine, the law on the use of languages of national minorities and indigenous peoples should define a clear and uniform for all ethnic groups of Ukraine the procedure for studying in minority languages.

4. CONCLUSION

Ukrainian constitutional law guarantees the right of citizens belonging to national minorities to study in their mother tongue or to learn their mother tongue in state and municipal educational institutions or through national cultural societies, may be exercised through the establishment of appropriate educational institutions in which the language is taught in a national minority or by ensuring the study of the national language as a separate discipline. At the same time, the educational policy on strengthening the state language and its proficiency by all citizens violated these constitutional guarantees of the linguistic rights of national minorities, as the new rules

of the "educational" law seriously reduce the opportunities for persons belonging to national minorities to learn their languages. Analysis of domestic language legislation shows that Ukraine has adopted only a law regulating the use and protection of the state language. At the same time, the procedure for the use of national minority languages in Ukraine is not regulated, the development, use and protection of which are guaranteed by the state and enshrined in the Constitution of Ukraine. In addition, Ukraine has committed itself to complying with the provisions of such international instruments on the legal status of ethnic and national minorities. That is, at present in Ukraine there is an urgent need to develop and adopt a separate law that would establish the procedure for the use of national minority languages in public spheres of public life and guarantee their language rights.

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