8. Ukraine's long and winding road to the European Charter for Regional or Minority Languages

Bill Bowring and Myroslava Antonovych

1. Introduction

This paper tackles the paradoxical role played by the European Charter for Regional or Minority Languages (ECRML) both in the formulation of government policy, and in the turbulent politics of Ukraine, and the vexed question of the status of the Russian language in the country. The authors contend that the charter has achieved great symbolic significance in Ukraine. However, the actual content of its ratification remains the subject of confusion. That is, ratification and implementation of the charter have become strictly political rather than policy objectives, not only leading to surprising reversals in the ratification process (Ukraine has ratified it not once but twice), but also to implementation in forms not anticipated in the charter itself.

It is ironical that the ECRML was designed:

> ... [to allay] the fears of governments, who would have reacted negatively to anything seen as posing a threat to national unity of the territorial integrity of the state, but which were more open to accepting the existence of cultural and linguistic diversity on their territories.[1]

In Ukraine the ECRML has played a very different role. This "symbolic capital" of the charter is explored in the following account and analysis of its history in Ukraine from 1996 to the present.

The paper is organised as follows. The authors start with the unintended consequences of Ukraine's ratification of the ECRML and next proceed to an exploration of the interplay of the linguistic and political history of Ukraine. These sections are followed by explorations of the demo-

1. Donall O Riagain, "The Charter: an Overview", in Francois Grin *Language Policy Evaluation and the European Charter for Regional or Minority Languages* (Basingstoke: Palgrave MacMillan, 2003), p. 56.

graphics of Ukraine as well as the opinions of Ukrainians. The authors next examine Ukraine's membership of the Council of Europe, and the extraordinary history of Ukraine's signature of the charter in 1996, two very different laws on ratification in 1999 and 2003, the deposit of its instrument of ratification at Strasbourg in 2005, and - at last - publication of the instrument in spring 2007. There is then some reflection once more on the underlying issues of language policy as embodied in the antagonistic politics of late 2006. The conclusion seeks to make some very tentative prognoses.

2. The unintended consequences of ratification

On 19 September 2005, Ukraine's instrument of ratification was finally deposited in Strasbourg and, on 1 January 2006, the ECRML at last came into force for Ukraine. The symbolic capacity of the charter was almost immediately exploited, especially by Russophones, to the full.

Within a few months of ratification, a number of Ukraine's regions announced that, on the basis of the charter, they would give the Russian language "regional" status. One example is Kharkiv, where the 2001 census showed that 44.3% of the region's population consider Russian their mother tongue and 83.1 % have a perfect command of the language. Of the 150 deputies of the Regional Council, 107 voted for the resolution.[2] Kharkiv was followed by the Donetsk, Luhansk, Mykolayiv and Zaporizhia regional administrations and the Sevastopol, Dnipropetrovsk and Kryvyi Rih municipalities.[3] According to a survey in June 2006, the majority of Ukrainians supported the decisions of the local authorities.[4]

These decisions were followed by prosecutors' protests, court cases and a Legal Interpretation by the Ministry of Justice on "Regional Languages" with respect to the status and rules governing the use of

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2. "Ukrainian Region Makes Russian Official Language", *Moscow News,* 3 June 2006, at http://www.mosnews.com/news/2006/06/03/officiallanguage.shtml.
3. See, for a vigorously pro-Russian account, Ivan Sernik, "Russian folk tales in Ukrainian and the orange newspeak", 4 July 2006, at: http://www.regnum.ru/english/664801.html, and http://listserv.linguistlist.org/cgi-bin/wa?A2=ind0607&L=lgpolicy-list&O=A&P=3009; and for a pro-Ukrainian account see Yevhen Khodun, "The integrity of the Ukrainian linguistic-cultural environ ment and minority rights", 27 October 2006, regular bulletins "Prava Ludyny" point of view, at http://www.khpg.org/en/index.php?id=1161983522.
4. Poll by the Research and Branding Group: 52% largely supported (including 69% of population of eastern *oblasts* and 56% of southern regions), 34% largely did not support the decisions, 9% answered "partially support and partially not", 5% had no opinion. See http://www.ura-inform.com/ru/print/politics/2006/07/17/resultati_oproso.

the Russian language within the boundaries of those regions.[5] The conclusion was that neither the Constitution of Ukraine, nor the Law of Ukraine on Local Self-Govemment in Ukraine, nor any other Ukrainian laws include provisions on the basis of which the local administration bodies could claim jurisdiction to decide the legal status of languages which are used in the work of these bodies or which are used within their borders. On the other hand, on 15 October 2006, Kharkiv judge Serhij Laziuk upheld the validity of granting Russian the status of a "regional language".[6] This process continues. On 6 April 2007, it was reported in the Russian electronic media that the Odessa City Council had voted, by 82 to 6, to give the Russian language the status of "second state language" in the city, using this formulation to avoid the controversies surrounding the creation of "regional languages".[7]

According to one report,[8] the Council of Europe immediately put the "separatists"[9] in their place. Hasan Bermek of the secretariat of the ECRML was reported by the newspaper *Ukrainskaya Pravda* as declaring - in the capacity of a "senior official" - that the charter had nothing to say about acts of regional bodies: language status was a matter for the central government only. Moreover, in Bermek's reported view, the charter did not envisage situations similar to that of Ukraine, where a language other than the state language was used more than the state language. He said: "Most of the charter articles concern the languages traditional to the territory but used less than the state language or languages."

One thing is clear. Russian cannot become an official language of Ukraine, as Prime Minister Yanukovych acknowledged on 11 August 2006.[10] Such a decision could only be made by a constitutional majority

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5. Legal Interpretation of the Ministry of Justice on "Regional Languages", UKL Documents http://www.ukrainianstudies.uottawa.ca/ukraine_list/ukl391_5.html.
6. Raman Mamcyc, "Ukrainian legislation and the 'regional language' problem", 15 October 2006, at http://www.praunik.org/en/naviny/582.
7. See "Russkii yazyk v Odesse utverzhden vtorym gosudarstvennym, nemostrya na vedro feka-lii" [The Russian language in Odessa is confirmed as second state language despite the bucket of faeces] at http://www.newsru.com/world/06apr2007/katsapkamovavodesse.html.
8. "Europe rebukes language separatists", *Ukrainska Pravda,* at http://www.orangerevolution.us/blog/_archives/2006/7/24/2158488.html.
9. The suggestion is that regions or towns adopting the Russian language are seeking to sepa rate from Ukraine, although there is no evidence of this.
10. "Ukraine PM downplays Russian language status hopes", *RIA Novosti,* 11 August 2006, at http://en.rian.ru/world/20060811/52534842.html.

in the Verkhovna Rada (Parliament) or through a national referendum: the necessary majority for the former could not be assured by his Party of the Regions, and the latter is under the control of President Yushchenko. Of course, the political configuration after elections in September 2007 is wholly unpredictable.

One point of critical departure for this paper is the following provocative suggestion by the prominent but controversial scholar Volodymyr Kulyk.[11] In his view:[12]

> ... [the government] should immediately stop pretending that there is no language problem in Ukraine, and in particular, a problem with the Russian language. This problem arises from the large discrepancy between the legal status of this language, and its frequency of use caused by the preference of a large part of the population, which a democratic country should not try to change but should respect to the extent that it doesn't conflict with the preferences of other parts.

Thus, he has the following to say about the application of the ECRML:

> ... although in some regions the Russian language is used much less than Ukrainian, it doesn't need to be protected and supported as a minority language, because I repeat, this language's problem is the inappropriateness of the state's policy given its significantly non-minority usage. Thus for this language, the charter is not an adequate instrument, because what matters here is not the protection of the language, but securing the rights of its speakers. In parallel with the use of Ukrainian as the state and group language, this issue should be the subject of a new language law that is long overdue.

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11. He is Senior Research Fellow, Institute of Political and Ethnic Studies, National Academy of Sciences of Ukraine; and Jacyk Visiting Professor of Ukrainian Studies, Columbia University. He serves as an expert in the EU INTAS Project on Language Policy in Ukraine in which Prof Bowring also participates.
12. Volodymyr Kulyk, "Not Much Has Changed on the Language Front", *Krytyka,* No. 6, June 2006, at http://www.ukrainianstudies.uottawa.ca/ukraine_list/ukl392_7.html.

3. The Ukrainian language before independence

Ukraine has been described as the "unexpected nation".[13] Andrew Wilson has stated that:

> In the modern era, an independent Ukrainian polity has existed only briefly in the late seventeenth century and in 1917-20, but in neither period was it a secure entity, with firm control over all the territory in present-day Ukraine.[14]

However, it is also argued that Kyivan Rus, which lasted from about 880 to the middle of the 12th century, was in fact the first independent Ukraine. The reigns of Volodymyr the Great (980-1015) and his son Yaroslav the Wise (1019-54) constitute the Golden Age of Kyiv, which saw the acceptance of Orthodox Christianity and the creation of the first East Slavic written legal code, the *Ruska Pravda.*

The present day source of the most radical Ukrainian nationalism is Galicia. Its capital, Lviv, was a Polish city from the 13th century, then from 1772, as Lemburg, the capital of an Austrian kingdom. It is a microcosm of Ukrainian complexity.[15]

According to Tatiana Zhurzhenko,[16] controversially reviewing in 2002 the ten years of Ukraine's independence,[17]

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13. Andrew Wilson, *The Ukrainians: Unexpected Nation* (New Haven: Yale University Press, 2000).
14. Andrew Wilson, *Ukrainian Nationalism in the 1990s. A Minority Faith* (Cambridge: Cambridge University Press, 1997), p. 1.
15. The city is first mentioned in the *Halych-Volhynian Chronicle* from 1256. In 1356, Casimir III of Poland granted the city "Magdeburg rights" which implied that all city issues were to be solved by a city council, elected by the wealthy citizens. As a part of Poland (and later Polish-Lithuanian Commonwealth) Lviv became the capital of the Ruthenian Voivodeship. As it grew, Lviv became religiously and ethnically diverse. The 17th century brought invading armies of Swedes and Cossacks to the city's gates. In 1772, following the First Partition of Poland, the city, thenceforth known as "Lemberg", became the capital of the Austrian Kingdom of Galicia and Lodomeria. During the Second World War, the city was captured by the Russian army in September 1914, but was retaken in June of the following year by Austria-Hungary.
16. Dr Tatiana Zhurzhenko of Kharkiv National University in Ukraine has published widely in English and other languages. See also Tatiana Zhurzhenko: "Cross-border cooperation and transformation of regional identities in the Ukrainian-Russian borderlands: towards a Euroregion 'Slobozhanshchyna'?" Part 1 *Nationalities Papers,* 2004, No. 1, pp. 207-232.
17. This view is controversial. Professor Antonovych, the co-author of this paper, strongly contests the assertion that Ukrainian is "young".

> Compared to Russian, the Ukrainian language is very young. Leaving apart the debates about its historical origins, the process of shaping the modern literary Ukrainian language started at the end of last [i.e. 19th] century and was complicated by the lack of an independent state and of territorial unity and also by the economic backwardness of the country. At the turn of the 19th century the territories with Ukrainian population were divided between three countries: Russia, Austria and Hungary, and they were therefore ruled by three different laws regulating the rights of Ukrainian language.[18]

She points out that in the Russian Empire, in which 85% of Ukrainians lived, Ukrainian language rights were strictly limited. Education in Ukrainian was forbidden, and the language of the judicial system and local administration was Russian. She also remarks that:

> To some extent the language reflected the state of the Ukrainian society as a mainly agricultural one: Ukrainian was the language of the peasants and of those very narrow strata of intelligentsia which came from the peasants and served their interests: priests, teachers, sometimes doctors. "Capitalism in Ukraine spoke Russian": the bourgeoisie and the new technical intelligentsia were mainly alienated from Ukrainian and this caused the lack of not only state but also economic support for national cultural development.

The period 1917 to 1921 of the Ukrainian People's Republic and Western-Ukrainian People's Republic, following the collapse of the Tsarist Empire, gave the Ukrainian language its "first historical chance" as a state language, but was characterised by great instability, culminating in the imposition of Soviet rule over the eastern part of the country, with the west under Polish control. From 1925 to 1932 there was a policy of "Ukrainisation", imposed from the top, and designed to bolster the USSR's role in supporting the anti-imperialist struggle, and to prove that it had solved the "nationalities question".[19] This was brought to an abrupt and brutal end in the 1930s: the Ukrainian Party leader, Mykola Skrypnyk, a supporter of the previous policy, committed suicide in 1933. A new Ukrainian cultural renaissance did not take place

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18. Tatiana Zhurzhenko, "Language and Nation Building Dilemmas of Language Politics in Contemporary Ukraine", *Tr@nsit online,* No. 21/2002, at http://www.iwm.at/index.php?option=com_content&task=view&id=322&Itemid=486.
19. Yuri Shevelov, *Ukrainian Language in the First Part of the 20th Century (1900-1941)* Suchasnist, 1987, p. 137.

again until the 1960s under Khrushchev and Shelest, and even then fell victim to the policy of Russianisation espoused by Khrushchev's former protege Leonid Brezhnev.

4. Ukraine's complex road to statehood

Based on the foregoing, it should be no surprise that the legal fact of Ukrainian statehood was established in a process which lasted several years. On 22 July 1990, while the USSR was still very much in existence, the Verkhovna Rada (Supreme Soviet) of the Ukrainian SSR proclaimed the Declaration on State Sovereignty of Ukraine.[20] This had the following key aims: "expressing the will of the people of Ukraine; striving to create a democratic society; acting on the need for all-encompassing guarantees of the rights and freedoms of the human being; respecting the national rights of all nations... having as a goal the affirmation of the sovereignty and self-rule of the people of Ukraine."

The abortive Moscow "putsch" of August 1991 forced the issue for advocates of Ukrainian independence, and on 24 August 1991, the Verkhovna Rada proclaimed independence. This date is now celebrated as Ukrainian Independence Day. On 1 September 1991, the Verkhovna Rada more formally declared "the independence of Ukraine, and the creation of an independent Ukrainian State - Ukraine". According to the preamble, this was done "... in view of the mortal danger surrounding Ukraine in connection with the state coup in the USSR on August 19, 1991, continuing the thousand-year tradition of state-building in Ukraine, based on the right of a nation to self-determination in accordance with the Charter of the United Nations and other international legal documents, and realising the Declaration on State Sovereignty of Ukraine".[21]

It has been widely recognised that Ukraine's Act of Independence in 1991 was a direct cause of the collapse of the USSR in December 1991. Nevertheless, Ukraine only managed to adopt a constitution after five years, on 28 June 1996.[22] Part of the reason for this long delay was the fact that the Act of Ukrainian Independence in August 1991 and the collapse of the USSR in December 1991 were answered by a series of attempts by the Crimean Russians to assert their own interests.[23]

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20. English translation at http://www.ukrweekly.com/Archive/1990/299002.shtml.
21. See http://snake76.by.ru/texts/doLua.html.
22. For a translation into English, see http://www.rada.kiev.ua/const/conengl.htm.
23. It should be noted that this long delay gave all interested parties and groups the maximum opportunity to debate the new constitutional order.

5. The demography of Ukraine

The shifting demography of Ukraine is a crucial factor in understanding the fate of the ECRML. The results of the census which took place in December 2001[24] pointed not only to a startling decline in the population of Ukraine as a whole (a 6.1% decline, or 3 million people, from 51 706 700 in 1989, the last census, to 48 457 100) but a sharp fall - a drop of 5% - in the numbers describing themselves as Russians.[25] There was a corresponding rise in the numbers describing themselves as Ukrainian and as speaking the Ukrainian language. Taras Kuzio pointed out that today's Ukrainian (77.9%) and Russian (17.3%) ethnic shares have reversed the trend of the Soviet period, and returned Ukraine to the position recorded in the 1959 census. The fact that 70% of education is now delivered in Ukrainian returns schools to the levels of the 1950s prior to the mass "Russification" campaigns of Nikita Khrushchev and Leonid Brezhnev.[26] The number of ethnic Russians has declined by 3 million: a 5% fall in their share of the population, but a 27% decline in their absolute numbers.

In contrast, at the time of the 1989 census, the population of Ukraine included 37.4 million (72.7%) Ukrainians, 11.4 million (22.1%) ethnic Russians, 486 300 Jews (0.9%), and significant numbers of Belarusians, Moldovans, Bulgarians, Poles, Hungarians, Romanians, Greeks, Germans and Slovaks. The population began to decline from 1993 and, on 1 January 1999, there were an estimated 50.1 million people in Ukraine. However, the relative proportions have remained largely the same.

The Russian-speaking population is concentrated in eastern Ukraine, where the city of Donetsk has a majority of Russians and Kharkiv has 63% Ukrainians, 35% Russians and 4% others. In Lviv, in western Ukraine, there are only 7% ethnic Russians. Given that the "voluntary" union of Russia and "Left Bank Ukraine" (that is, the

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24. See Oleh Wolowyna, "2001 Census results reveal information on nationalities and language in Ukraine", *Ukrainian Weekly,* at www.ukrweekly.com/Archive/2003/020302.shtml.
25. See also Askold Krushelnycky, "Ukraine: first Post-Soviet Census Results Sparking Contro versy", 14 January 2003, at www.referl.org/nca/features/2003/01/140120033155934.asp.
26. Taras Kuzio, "Census: Ukraine, More Ukrainian", *Russian and Eurasia Review,* Vol. 2, Issue 3, 4 February 2003, at http://russia.jamestownorg/pubs/view/rer_002_003_003.htm.

eastern part on the left bank of the Dnieper river), the "Pereyaslav Treaty", took place in 1654, ethnic Russians and Russian-speakers have been living in the territory which comprises modern Ukraine for centuries.

However, there are more people who might identify themselves as "Russians" than the figures above would suggest. Surveys carried out in February 1998 showed that 31% of all inhabitants of Ukraine considered themselves to be to some extent Russian, including 11.5% of inhabitants of Ukraine who claimed to be Russian, 5% more Russian than Ukrainian, and 14.5% equally Russian and Ukrainian. Read another way, the survey showed that only half of "census" Russians claimed to be ethnic Russian. More significantly still, 55% of all inhabitants of Ukraine preferred to use Russian as their everyday language - a fact which is immediately apparent in many Ukrainian cities.[27] This is confirmed by more recent research. According to a 2004 survey by the Kyiv International Sociology Institute, the number of people using the Russian language at their homes considerably exceeds the number of those who declared Russian as their native language in the census. According to the survey, Russian is used at home by 43-46% of the population of the country (in other words a similar proportion to Ukrainian) and Russophones are a majority of the population in eastern and southern regions of Ukraine.[28] Another survey carried out in 2004 by Larysa Masenko shows that the Russian language dominates in informal communication in Kyiv.[29]

Surprisingly for some observers, Russians were for the most part in favour of Ukrainian independence. On 1 December 1991, an All-Ukrainian Referendum took place, and as many as 90.3% of Ukraine's inhabitants voted in favour of independence.

Ukrainians express a wide range of views. Wilson has identified one end of the spectrum:[30]

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27. Survey carried out by the Kyiv Center of Political Research and Conflict Resolution, 24 Febru ary 1998, summarised at http://www.ddcm.umd.edu/inscr/mar/chronology.asp?groupId=36905.
28. http://www.analitik.org.ua/researches/archives/3dee44dO/41ecefOcad01e/.
29. http://www.ji.Iviv.ua/n35texts/masenko-mov_syt.htm.
30. A. Wilson, footnote 14, p. 149.

> Ukrainian nationalists,[31] however, tend to deny that Ukraine is a multinational state at all. Moreover, their arguments draw on three of the same concepts that underlie Baltic and other forms of ethno-nationalism: namely the idea of "homeland" and the special rights of the indigenous people, the right to cultural self-preservation and (to a much lesser extent) the notion of forcible integration into the Soviet Union and the consequent illegitimacy of subsequent changes to national demography or patterns of language use.

For them, only one people have lived on the territory since time immemorial - the Ukrainian people (in Crimea - Ukrainian and Crimean Tatar). Nevertheless, it is the Ukrainian language which is in need of protection. President Kuchma himself has noted that Russia publishes per head of the population 2.3 times more books than Ukraine, so that it is not surprising that Russian books predominate in bookshops, even in Lviv.[32]

Contrary, perhaps, to expectations, a study[33] has shown that people more often identify themselves with their region rather than with the Ukrainian state or a Ukrainian or Russian ethnos. The great majority of Russians in Ukraine support Ukrainian statehood. Even in Crimea, irredentist movements by Russians have been short-lived and sparsely supported. Most important, Hans van Zon[34] points out[35] that:

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31. It should be noted that Wilson's use of the term "nationalist" is controversial, and that Ukrainian politics are complex and dynamic, especially as concerns those most anxious to preserve Ukrainian statehood. See also: A. Wilson, "Ukraine: two presidents and their powers", pp. 67-105 in R. Taras, *Postcommunist Presidents* (Cambridge: Cambridge University Press, 1997); A. Wilson, "Politics in and around Crimea: A Difficult Homecoming", in E. A. Allworth, *The Tatars of Crimea: Return to the Homeland* (Durham: Duke University Press, 1998), pp. 281-322; A. Wilson, *The Ukrainians: Unexpected Nation* (New Haven: Yale Nota Bene, 2002).
32. *Kyiv Post,* 10 November 2000.
33. In 1997-98, 43% of respondents in a poll identified themselves primarily with the locality or regions where they lived, 41% with Ukraine, 6% with the former Soviet Union, 7% cosmopolitan, and 3% did not mention a preference, see R. Munz, R. Ohliger, "Die Ukraine nach der Unabhangigkeit - Nationsbildung zwischen Ost und West", *Berichte des Bundesinstituts fur ostwissenschaftliche und Internationale Studien,* 1999, 5, p. 18, cited in Hans van Zon, "Ethnic Conflict and Conflict Resolution in Ukraine", *Perspectives on European Politics and Society,* 2002, 2 (2), pp. 221-240.
34. Professor van Zon is Research Professor at the University of Sunderland and University of Amsterdam; and was one of the experts, with Prof Bowring, assembled by the former OSCE High Commissioner on National Minorities, Max van der Stoel, to consider issues of citizenship in Ukraine.
35. Hans van Zon, footnote 33, at p. 227.

> ... ethnicity usually ranks low among other forms of social identity. A 1999 study showed that only 8% of secondary school students attach significant meaning to their ethnicity.[36] There is a high degree of tolerance between Russians and Ukrainians.[37]

However, the Russian speakers of Ukraine as a whole - or more accurately their leaders, whose vociferous protests do not match the mood of most Russians - have had many complaints. Not the least of these is that Ukrainian is required for entry to higher education as well as state employment. Furthermore, the three ethnic Russian groups in Ukraine, the "Russian Movement of Ukraine", the "Russian-Ukrainian Union", and "For a Single Rus", fear that the number of Russian language schools is steadily diminishing.

In September 2001 these three groups stated that the Ukrainian Government had, over the last decade, changed the language of instruction in 1 300 schools from Russian to Ukrainian, and as a result only 10% of schools in the country are now conducted in Russian. The Russian groups have noticed a dramatic change. In 1987, at the end of Soviet rule, 72% of the schools in Ukraine taught in Russian, 16% in Ukrainian, and 12% used a mixed curriculum.[38] The cause of the new state of affairs may well be that Russian parents wish their children to have the best chances later in life.

These leaders also feared - somewhat unreasonably, when Russian print and broadcast media are still dominant in Ukraine - that the Russian language and culture might be forced out. More trivially, perhaps, Russian names are now changed to their Ukrainian versions on official documents, for example passports and driving licences. Thus, A. S. (Aleksandr Sergeyevich) Pushkin becomes O. S. (Oleksandr Serhiyovych) - a cause of some trauma.

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36. Olga Fillippova, "Ukrainians and Russians in Eastern Ukraine; Ethnic Identity and Citizenship in the light of Ukrainian Nation-Building", paper prepared for the conference Nationalism, Identity and Minority Rights, (Bristol: September 1999), p. 3.
37. Nevertheless, the noisy events of November 2003 concerning Russian construction works at Tuzla Island in the Kerch bay (Azov Sea), were accompanied by evidence that a stronger Ukrain ian civic - or even ethnic - consciousness is emerging. See, for example, http://www.unian.net/ eng/news/news-45691 .html.
38. The Romyr Report "Factors of the Russification of Ukraine: Changes and Influences since 1991" (Kyiv, winter 2000).

For all these reasons, these leaders have pinned their hopes of protection on a Council of Europe instrument which has not received much attention in the rest of Europe - the ECRML.

6. Ukraine and the Council of Europe

Ukraine has had an uneasy relationship with the Council of Europe. On acceding to the Council of Europe in 1995, it committed itself to a long list of obligations, including ratification of the main Council of Europe treaties. Ukraine has been threatened more than once with exclusion from the Council of Europe for non-compliance with the obligations it undertook.

One of the conventions Ukraine ratified reasonably promptly was the Council of Europe's 1995 Framework Convention for the Protection of National Minorities (the "Framework Convention"), which it signed on 15 September 1995; it was ratified by the Verkhovna Rada on 9 December 1997 and entered into force on 1 May 1998. According to Article 9 of the 1996 Constitution, the Framework Convention is now part of Ukrainian law. Ukraine submitted its first periodical report on implementation of the provisions of the Framework Convention to the Council of Europe in November 1999. This report provides a baseline for monitoring future developments. While there is a notable reluctance to mention Russian-speakers, especially in matters of education, the report did note that, according to the data relating to 1998/1999 of Ukraine's State Committee on Statistics, of 21 246 schools, 16 032 had Ukrainian as the language of instruction (4.5 million pupils), and 2 561 had Russian (nearly 2.5 million pupils. Five other languages[39] were the language of instruction in some schools, and there were 2 500 schools with mixed instruction.

The Advisory Committee of the Framework Convention anticipated in its opinion that the ECRML would soon be ratified.[40] Ukraine's second report, due in 2004, was received on 8 June 2006.[41] According to this

39. Romanian, Moldovan, Hungarian, Crimean Tatar (6 schools) and Polish.
40. ACFC/INF/OP/I(2002)010 at http://www.coe.int/t/e/human_rights/minorities/2._framework_convention_%28monitoring%29/2._monitoring_mechanism/4._opinions_of_the_advisory_committee/1 ._country_specific_opinions/1 ._first_cycle/PDF_1 st_OP_Ukraine.pdf.
41. See http://www.coe.int/t/e/human_rights/minorities/2._framework_convention_%28monitoring%29/2._monitoring_mechanism/3._state_reports_and_unmik_kosovo_report/2._second_cycle/PDF_2nd_SR_Ukraine_eng.pdf.

report the number of Russian schools had fallen, over a period of some six years, from 2 561 to 1 345, with the number of pupils attending them falling from 2 313 901 to 525 260, less than a quarter of the previous total.

7. The "first ratification" of the ECRML

Ukraine signed the ECRMLon 2 May 1996. However, the ECRML, unlike the Framework Convention, sets out to protect and promote regional or minority languages, not linguistic minorities or their members.[42]

Ratification of the charter was immediately preceded by the advisory decision of the Ukrainian Constitutional Court, delivered on 14 December 1999, clarifying Article 10 of the constitution.[43] 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, somewhat contradictorily, 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. 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". Unfortunately, the judgment was (mis)interpreted in a circular immediately sent out by a government source. This stated that officials must use only Ukrainian, lack of knowledge of the language could lead to dismissal and higher education must be in Ukrainian only, thus seeking to bring forward radically a hitherto gradual process.[44]

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42. As the explanatory note to the ECRML makes clear, "[f]or this reason, emphasis is placed on the cultural dimension and the use of a regional or minority language in all the aspects of the life of its speakers. The charter does not establish any individual or collective rights for the speakers of regional or minority languages. Nevertheless, the obligations of the parties with regard to the status of these languages and the domestic legislation which will have to be introduced in compli ance with the Charter will have an obvious effect on the situation of the communities concerned and their individual members." ECRML, Explanatory Report, ETS No. 148.
43. Rishennia Konstytutsiinoho Sudu Ukrainy, 14 December 1999, Ns 10-pn/99.
44. Document, obtained during his visit with the OSCE High Commissioner on National Minorities, Max van der Stoel, in the possession of Professor Bowring.

However, 10 days later, on 24 December 1999, the Verkhovna Rada ratified the charter in a version which "provided, in effect, for the regional (under Ukrainian law, 'official' and 'state' languages are synonyms) status of Russian on nearly half of Ukraine's territory".[45] The Law on Ratification set out precise percentages of minority population, for each level of the charter to come into effect. It was proclaimed that in regions with a minority population of at least 20%, the minority languages would gain "regional status" (that is, languages to which articles of Part III of the charter are applied). Enactment of this law by the parliament was welcomed by the Russian community leaders, who had long been pressing for ratification of the charter.[46]

However, ratification was strongly opposed by a group of people's deputies in the Verkhovna Rada, as well as by the President. It was not possible to use the President's veto, because the relevant Ukrainian law on international treaties provided that ratification instruments were not subject to the President's signature. The only way to block the law was to go to the Constitutional Court and, on 12 July 2000, the court declared unconstitutional the relevant provision of the Law on Treaties and, as a result, the law on ratification of the charter.[47]

8. How the High Commissioner on National Minorities helped to prevent conflict

The fact that no serious conflict developed in the aftermath of these reversals was to a significant extent due to the "quiet diplomacy" of the OSCE's then-High Commissioner on National Minorities (HCNM), the former Dutch Foreign Minister Max van der Stoel.[48] Following a seminar on linguistic and educational rights held in Odessa in September 1999,

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45. Volodymyr Kulyk, "Revisiting a success story: Implementation of the recommendations of the OSCE High Commissioner on National Minorities to Ukraine, 1994-2001" in W. Zellner, R. Oberschmidt, C. Neukirch (eds), *Comparative Case Studies on the Effectiveness of the OSCE High Commissioner on National Minorities,* Hamburg: CORE (CORE Working Paper No. 6), 2002, p. 112.

46. This temporary euphoria was reflected in a conference held in Kharkiv on 26 February 2000 entitled The European Charter of Regional Languages or Minority Languages (1992) as a Legisla tive Base for Guaranteeing Human Rights in the Cultural and Language Spheres of the Ukrainian Society. See the working papers of the conference, 26 February 2000, Kharkiv 2000 (in Russian); *Russian-Ukrainian Bulletin,* No. 6/7, April 2000, Moscow/Kyiv 2000 (in Russian).

47. Rishennia Konstytutsiinoho Sudu Ukrainy, 12 July 2000.

48. His role, according to his mandate, is that of a fire-fighter, an early warning and early action mechanism to prevent conflict from turning into violence.

with representatives of Russian, Romanian and Hungarian minorities, and the Ukrainian and Crimean governments,[49] the HCNM acted. He received requests from the Russian Government to investigate the situation of Russian language education in Ukraine, and a similar request from the Ukrainian Government to make an investigation of Ukrainian language education in the Russian Federation.[50] From 19 to 26 June 2000, he travelled to Ukraine and flew to Kharkiv, Lviv, Odessa, Simferopol and Kyiv.[51]

The visit turned out to be especially timely. On 28 May 2000, the Ukrainian composer Ihor Bilozir tragically died, some five weeks after being beaten by two youths after an argument in an open-air cafe in central Lviv. The brawl erupted when he complained about the loud playing of Russian pop music by the cafe's loudspeakers.[52] In response to Bilozir's death and subsequent demonstrations, the Lviv city and *oblast* administrations passed resolutions on 19 and 20 June 2000 that sought to limit the use of the Russian language in the region, including encouraging vigilantes to stamp out the sale of books in Russian and forbidding the playing of "low quality" music in public places. It was plain, on enquiry, that what was meant was Russian pop music.[53] The Russian Government complained noisily about more discrimination against Russian minorities,[54] and President Kuchma responded when in a speech on 27 July 2000 in Sevastopol he criticised the lack of Russian Government support for the development of the Ukrainian culture in the Russian Federation. He said: "Please give me an example from Russia where more than 10 million Ukrainians reside - of at least one school, one newspaper, one radio or TV program in the Ukrainian language".[55]

The HCNM was able to intervene effectively, persuading the Ukrainian Foreign Minister to make a statement and ensuring, by a second visit to

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49. The seminar was organised by the Foundation on Inter-ethnic Relations.
50. Walter Kemp (ed.), *Quiet Diplomacy in Action: The OSCE High Commissioner on National Minorities* (Kluwer Law International: The Hague, 2001), p. 228.
51. Professor Bowring had the honour to be one of two experts who accompanied the HCNM.
52. This is the version of events related to Professor Bowring by the cafe owner and other wit nesses on the occasion of his visit to Lviv with the HCNM.
53. When the HCNM asked city officials, he was told that the playing of Russian 19th century "romances" would be permitted.
54. See "2000: The Year in Review", *The Ukrainian Weekly,* at http://www.ukrweekly.com/Archive/2001/010116.shtml.
55. Ibid.

Lviv, that the resolutions were not implemented. On his recommendation, the Ukrainian Government repeated its commitment to implementation of Article 10 of the Ukrainian Constitution guaranteeing the free development, use and protection of the Russian language in Ukraine.[56] The second phase of this work comprised a visit to the Russian Federation in August 2000. The HCNM and his team visited Moscow, St Petersburg and Tyumen (in Siberia - many Ukrainians work there in the oil and gas industries).[57] On 12 January 2001, he wrote to the foreign ministers of both Ukraine and the Russian Federation with his recommendations on minority language education. In respect of Ukraine, he recommended retaining parental choice of language of instruction; a clear threshold of eight to ten children for setting up a Ukrainian language class in a Russian language school or vice versa; and ratification of the Council of Europe's charter[58] as soon as possible. In respect of the Russian Federation, he recommended setting up more Ukrainian language classes in Russian schools; providing a clear threshold; increasing funds for national-cultural autonomies;[59] and also ratification of the charter. Both the Ukrainian and Russian governments responded positively.[60] This intensive confidential work by the HCNM played a significant role in preventing the outbreak of serious violence.

9. The second ratification of the ECRML

Ukraine's signature of the ECRML, which took place on 2 May 1996, was, despite two attempts, not transformed into ratification until 2006. On 15 May 2003, the Ukrainian Parliament (Verkhovna Rada) once again voted to ratify the ECRML.[61] One of the reasons for the delay in

56. Constitution of Ukraine, adopted at the Fifth Session of the Verkhovna Rada of Ukraine on 28 June 1996, Article 10(3).
57. Professor Bowring again served as one of the two experts accompanying the HCNM.
58. The ECRML is intended to ensure, as far as is reasonably possible, that regional or minority languages are used in education and in the media, to permit and encourage their use in legal and administrative contexts, in economic and social life, for cultural activities and in transfrontier exchanges.
59. For a critical analysis of this phenomenon, see Bill Bowring, "Burial and Resurrection: Karl Renner's Controversial Influence on the 'National Question' in Russia", in Ephraim Nimni (ed.), *National-Cultural Autonomy and its Contemporary Critics* (Routledge, London, 2005), 191-206; and Bill Bowring, "Austro-Marxism's Last Laugh? The Struggle for Recognition of National-Cultural Au tonomy for Rossians and Russians", *Europe-Asia Studies,* March 2002, 54(2), 229-250.
60. The reports, recommendations and responses are to be found at: http://www.osce.org/documents/hcnm/2001 /04/2761_en.pdf (Ukraine), and http://www.osce.org/documents/hcnm/2001/01/2746_en.pdf (Russia).
61. http://www.unpo.org/news_detail.php?arg=20&par=1745; Ns 802-IV.

the ratification was apparently the fear amongst Ukrainian speakers that the charter would primarily promote Russian (as the major minority language in Ukraine) or that the linguistic rights of Ukrainophones living in eastern Ukraine and Crimea would be ignored.[62] A group of deputies appealed to President Kuchma to veto the ratification because, in their opinion, it was aimed against the Ukrainian language and protects languages that do not need any protection, namely Russian, Hungarian and Bulgarian.[63]

The 2003 Ratification Law applied the provisions of the ECRML to the languages of 13 national minorities in Ukraine: Byelorussian, Bulgarian, Gagauz, Greek, Jewish, Crimean Tatar, Moldovan, German, Polish, Russian, Romanian, Slovak and Hungarian.[64] It should be noted that the instrument of ratification, published, at last, in spring 2007, contains the same list. This is discussed below.

However, it is submitted that "regional or minority languages" is a different concept than "languages of national minorities". According to paragraph 11 of the Explanatory Report to the ECRML, "The charter sets out to protect and promote regional or minority languages, not linguistic minorities.... The charter does not establish any individual or collective rights for the speakers of regional or minority languages".[65] Under Article 1 of the charter, "regional or minority languages" means languages that are traditionally used within a given territory of a state by nationals of that state who form a group numerically smaller than the rest of the state's population and are different from the official language(s) of that state. In the Explanatory Report, paragraph 18 indicates that the adjective "regional" denotes "languages spoken in a limited part of the territory of a state, within which, moreover, they may be spoken by the majority of the citizens". The adjective "minority" in the charter refers only to the quantitative aspect of the speakers who are not concentrated "on a specific part of the territory of a state in

62. Professor Bowring participated as an expert at a Council of Europe seminar "Helping Ukraine to Ratify Regional or Minority Languages Charter" held in Kyiv on 16-17 October 2002; for com mentary see Taras Kuzio, "Charter on minority languages a subject of debate in Europe", at http://www.ukrweekly.com/Archive/2002/500204.shtml.

63. http://www.us-english.org/foundation/research/olp/viewResearch.asp?CID=23&TID=7; and *Mercator News,* June 2003, http://www.ciemen.org/mercator/index-gb.htm.

64. There are mistakes even in the mere names of some of these languages - there is no Greek, but New Greek, and no Jewish but Yiddish in Ukraine. On the other hand, Crimean Tatars and Gagauz are not national minorities, but indigenous peoples in Ukraine.

65. ECRML: Explanatory Report, ETS No. 148.

one specific area of a state", or who constitute a lower number of individuals in a specific area compared to that of the other individuals who speak "the majority language of the state".[66]

On the basis of the analysis of the declarations made at the moment of the signature and the ratifications/adhesion of the ECRML, Alain Viaut has provided interesting information with regard to the use made by the states as a response to the expression "regional or minority languages". Among the expressions used there are such as "regional or minority languages" (Spain, Finland, Slovakia, Slovenia, Sweden), "minority languages" (Germany, Armenia, Austria, Denmark), "regional languages" (Germany, for Low German; France); and "lesser-used official languages" (Switzerland). Germany is the sole country that has established a distinction between the notion of "regional language", applied to Low German and that of "minority language", reserved to six other languages.[67] Ukraine seems to be the only state which has used a term, "languages of national minorities", which does not correspond to the general typology of the charter.

The Draft Law on amendments to the 2003 Charter Ratification Law sought to correct the Ukrainian translation of the charter. As will be seen below, the draft law was not enacted.

A further problem is that of "threshold". The ECRML is unclear as to the number of speakers of a language sufficient for it to be protected. One may find this uncertainty in a number of articles. For example, "territory in which the regional or minority language is used" means the geographical area in which the said language is the mode of expression "of a number of people justifying the adoption of the various protective and promotional measures provided for in the charter" (Article 1 (b)). There are also provisions like these: "to apply one of the measures... at least to those pupils whose families so request and whose number is considered sufficient" (Article 8(1 .a.iii)). Thus, it is left for the state to decide what numbers justify the provision of additional teaching facilities, judicial, administrative authorities and public services, and so forth.[68]

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66. Ibid.
67. Alain Viaut, "The European Charter for Regional or Minority Languages: Sociolinguistic Particularities and the French Configuration", *Mercator Working Papers 15* (CIEMEN Publisher, 2004) pp. 25-27, at http://www.ciemen.org/mercator/pdf/wp15-def-ang.PDF.
68. *Eds:* see Iulen Urbiola Loiarte's contribution to this collection on the territorial aspect.

The 2003 Ratification Law did not recognise any threshold for the application of measures of support required by the charter. Before the Ukrainian Parliament ratified the ECRML in 2003, Dominique Arel wrote that the key issue with the ratification of the charter would be the statistical threshold that would allow Russian speakers legally to demand that Russian be used in official public interactions on a given territory. He stated that the threshold had been 20% in the Austro-Hungarian lands (and was currently at that level in Macedonia), was lower in Finland and higher in Quebec and Estonia.[69] However, the issue of threshold has never appeared after the charter was ratified in Ukraine and this fact has not made the charter legally unenforceable. What is really an obstacle to its enforcement is the absence of a languages policy in Ukraine, a matter which is still to be codified in law. On 18 June 2003, the Ukrainian Deputy Foreign Minister told an OSCE conference that the President had recently signed the law, but no instrument of ratification was deposited.[70] On 23 March 2005, the Council of Europe's parliamentary monitors hoped that the new government would speed up final accession to the charter.[71]

The "National Commission for Strengthening Democracy and Asserting the Rule of Law", established under the Ministry of Justice, was tasked with preparing changes to the 2003 law, which would be an amended instrument of ratification. It approved a concept of state language policy and changes to the bill on ratification of the charter in July 2006.[72] The session resolved to create a national council for language policy under the President of Ukraine and a language policy department under the Justice Ministry.

The commission proposed adding to the 13 languages named in the 2003 law three more languages, namely Armenian, Karaim and Romani. A further amendment covered application of the charter norms to the Ukrainian language, particularly in the regions where it is less spoken as compared to other languages, although no charter provision could be a ground for making amendments to the Constitution

69. UKL documents, 21 January 2003, # 5.
70. http://66.102.9.104/search?q=cache:HJsZLklVikEJ:www.osce.org/documents/sg/2003/06/268_en.pdf+ukraine+regional+minority+languages+charter+ratification+challenge&hl=en.
71. http://www.noticias.info/Archivo/2005/200503/20050324/20050324_54156.shtm.
72. "National Commission for strengthening democracy approves concept of state language policy and changes to bill on ratification of Charter for Regional or Minority Language", at http://www.kmu.gov.ua/control/en/publish/news_article?art_id =41528941 &cat_id=32598.

of Ukraine. The leader of the working group, Volodymyr Vasylenko, urged that "[t]he charter contains no provision to serve as grounds to change the status of the languages, spoken in a country". It was anticipated at the time that the concept of state language policy and the draft changes to the bill on ratification of the ECRML would shortly be sent to the President for approval. This plainly did not happen.

This is an appropriate point at which to recall that Ukraine signed the ECRML on 2 May 1996,[73] ratified it for the first time on 24 December 1999, cancelled that ratification on 12 July 2000 and ratified it again on 15 May 2003. However, the instrument of ratification was finally deposited at Strasbourg on 19 September 2005. It had taken two years and four months for the instrument to travel from Kyiv to Strasbourg. This must be a record. The ECRML finally came into force for Ukraine on 1 January 2006. For reasons which have not yet been explained, the declaration contained in the instrument of ratification deposited on 19 September 2005 was not placed on the Council of Europe's website until sometime in the spring of 2007.

10. The instrument of ratification

The starting point in considering this document, so recently made public, must be the declaration made by Ukraine to Article 3 of the ECRML, on 19 September 2005. According to this, the provisions of the charter "shall apply to the languages of the following ethnic minorities of Ukraine: Byelorussian, Bulgarian, Gagauz, Greek, Jewish, Crimean Tatar, Moldavian, German, Polish, Russian, Romanian, Slovak and Hungarian." No additional languages have been added to the list in the 2003 law.

Ukraine further stated that it undertook "obligations under Parts I, II, IV, V of the ECRML except paragraph 5 of Article 7 of Part II." This states:

> 5. The Parties undertake to apply, *mutatis mutandis,* the principles listed in paragraphs 1 to 4 above to non-territorial languages. However, as far as these languages are concerned, the nature and scope of the measures to be taken to give effect to this charter shall be determined in a flexible manner, bearing in mind the needs and

73. http://conventions.coe.int/treaty/Commun/ChercheSig.asp?NT=148&CM=1&DF=&CL=ENG.

> wishes, and respecting the traditions and characteristics, of the groups which use the languages concerned.

The reason for this exclusion is not clear.

What is more significant is that Ukraine declared that "paragraphs and sub-paragraphs of Article 8 to 14 of Part III of the charter shall be applied with respect to each regional language [sic] to which the provisions of the charter shall apply" - namely, equally to all the languages listed above. It will be noted that all of them are described as "regional languages".

On the question of education (Article 8 of the ECRML), Ukraine undertakes to make preschool, primary and secondary education in the "regional language" available to those pupils whose families so request and whose number is considered sufficient, to encourage or allow provision of university education in the regional language or study as a subject, as well as teaching of history and culture, basic and further training of teachers, and to allow, encourage or provide teaching in or of the regional language outside the region.[74]

That is, Russian is in no way privileged, and no numerical threshold has been set. These are minimal undertakings.

As for the media (Article 11), Ukraine's undertaking is minimal: to make adequate provision so that public service broadcasters offer programmes in the "regional language", as well as regular broadcasting of radio and TV programmes in the "regional language", encouraging or facilitating the creation of at least one newspaper in the "regional language".[75]

It appears that this declaration, so long in appearing, is in fact in the form in which it was enacted in the 2003 law.

11. What will happen to Ukraine's belated ratification?

We have already referred in the first section of this paper to the spate of local decisions to declare Russian a regional language, purportedly in accordance with the charter. At the time of writing, political outcomes in

74. ECRML, Article 8, paragraph 1, a.iii, b.iv, civ, d.iv, e.iii, f.iii, g, h, and i, and paragraph 2.
75. Ibid., Article 11, paragraph 1, a.iii, b.ii, c.ii, d, e.i, g, paragraph 2 and paragraph 3.

terms of language policy are once more highly unpredictable pending elections to be held in September 2007.

However, the basic problematic remains much the same. Tatiana Zhurzhenko made the following point, at the conclusion of her 2002 paper:[76]

> Ukraine's policy to ethnic minorities (Crimean Tatars, Turkish Bulgars (Gagauzy), Poles, and Bulgarians) is considered rather effective and democratic in the region and contributes to the "European" image of the state. It shows that the issue of Russian language and the rights of Russian speakers is not an issue of ethnic and linguistic minority rights in Ukraine, but of the very concept of "Ukraineness". Should Ukrainian identity be redefined to include the historical experience, cultural and linguistic differences of Russian speakers as an integral part of the Ukrainian nation? Or for the sake of "historical justice" should one return to the "original" pure Ukrainian identity, and then how far back in history can this starting point be found?

Issues such as these are now more than ever the subject of debate in Ukraine and will be at the centre of the forthcoming election campaigns.

In the opinion of Volodymyr Kulyk, "not much has changed on the language front".[77] It is his view that ratification of the charter "proved to be the most difficult ratification for Ukraine of all the pieces of legislation that were preconditions for the country's integration into European structures". He contends that the intent of the charter itself is to protect threatened or at least seldom used languages, whereas some politicians wanted to use ratification of the charter for the benefit of Russian so as "to secure a greater role than minority usage". He commented that this goal was perfectly understandable, given the impossibility of solving the problem by passing appropriate constitutional amendments or legal standards (which were firmly resisted by the partisans of increasing the use of Ukrainian), but it was obviously inappropriate, given that the intent of the ECRML itself is to protect threatened or at

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76. Tatiana Zhurzhenko, "Language and Nation Building Dilemmas of Language Politics in Contemporary Ukraine", *Tr@nsit online,* No. 21/2002, at http://www.iwm.at/index.php?option=com_content&task=view&id=322&ltemid=486, p. 17.
77. Volodymyr Kulyk, "Not Much Has Changed on the Language Front" *Krytyka,* No. 6, June 2006, at http://www.ukrainianstudies.uottawa.ca/ukraine_list/ukl392_7.html.

least seldom used languages. Thus, he recommended the following re-translation of some key terms of the charter:

> ... that the term "minority languages" used in the English original of the charter [should] be translated as "seldom used" *{malovzhyvani)* or "less often used languages" *(mensh uzhyvani)* instead of the sometimes encountered "minority *{minorytarni)"* or the inadequate rendering that made its way into the official Ukrainian translation of the charter, "the languages of minorities *{movy menshyn),"* which misled the ratification laws to be centred on linguistic rights for minorities in the country, and not on the protection of the languages themselves as cultural values.

One of the authors of this chapter, Myroslava Antonovych, in her July 2006 contribution to the "Comments from the NGOs of Ukraine on the Periodic Report of Ukraine to the UN Committee on the Elimination of Racial Discrimination", goes further.[78] She argues that nothing is said in Ukraine's official report about the National Commission on the Enforcement of Democracy and the Rule of Law and its draft (mentioned above) of a Law on Amendments to the 2003 law. In this draft it was recognised that the title of the ECRML had been mistakenly translated into Ukrainian, since it is the "Charter for Regional or Minority Languages", and the Ukrainian translation refers instead to "regional languages or languages of national minorities". Hence, in her view, languages of national minorities (not regional or minority languages) became the object of the 2003 Ratification Act.

Moreover, she argued that due to the fact that the Ukrainian language had been forbidden throughout the history of Ukraine under different empires and constitutes a minority language in some parts of Ukraine, the draft law foresaw the application *mutatis mutandis* of the charter's provisions to the Ukrainian language within such regions as the Crimean AR, Dnipropetrovsk, Donetsk, Zaporizhzhia, Luhansk, Mykolayiv, Odessa, Kharkiv and Kherson regions and the city of Sevastopol.

As noted above, this draft law appears not to have affected in any way the instrument of ratification as it was finally, in spring 2007, published on the website of the Council of Europe.

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78. At www.ohchr.org/english/bodies/cerd/docs/ngos/ngos_ukraine.doc, 31 July 2006.

At the same time, the issue of the status of the Russian language will plainly not go away. On 19 September 2006, a draft law on the official status of the Russian language was registered in the Verkhovna Rada. MPs realistically predicted that if the draft was voted through, President Yushchenko would then veto it. The draft bill, No. 1120, provided that all acts and decrees of the state institutions will be in two languages - Russian and Ukrainian. It also provided for the possibility to use Russian for education, in the cultural sphere, in TV broadcasting, in the legal system and so forth.[79]

A further indication of Russian disquiet is the 89 page "alternative report" prepared for the ECRML's Committee of Experts by the deputy Vadim Kolesnichenko and the NGO Obshchaya Tsel (Common Goal) and dated 28 April 2007. According to this highly politicised report, the official policies of the Ukrainian Government discriminate against the Russian-speaking population; secondary education in Russian has almost disappeared in all central and western *oblasts* and in Kyiv; and the Russian language has disappeared from higher education, including the areas with a Russian-speaking majority.[80]

Ratification of the ECRML has led to some further legislative activity, namely a draft Basic Law of Ukraine on Languages of Ukraine. This draft was promoted by the (Russian-speaking) deputies Yevhen Kushnaryov (now deceased), Vasil Volga and Leonid Grach in late 2006. According to the *"Karta Zakonoproekta"* to be found on the Rada website,[81] this draft was preceded by an earlier draft of 29 November 2006. It was registered on 13 December with number 2634. The draft's explanatory note states that one of the main objects of the draft law was to implement the charter. The phrase "Russian, other regional languages" appears throughout the draft law. This compounds the problem of failure to refer to minority languages by its apparent elevation of the Russian language to a special status. While the draft starts: "This Law, pursuant to the Constitution of Ukraine...", the Constitution of Ukraine nowhere refers to "regional languages", but instead in Article 10 to "Russian, and other languages of national minorities of Ukraine", and in Article 53 to "citizens who belong to national minorities", who "are guaranteed in

79. "The Verkhovna Rada has registered the bill on Official Status of Russian Language in Ukraine", at http://en.for-ua.com/news/2006/09/19/173931.html.
80. Alternative report, "How is the Languages Charter put into effect in Ukraine?", at http://www.from-ua.com/politics/e62743796b72a.html.
81. gska2.rada.gov.ua/pls/zweb_n/webproc4_1?id=&pf3511=28857.

accordance with the law the right to receive instruction in their native language, or to study their native language in state and communal educational establishments and through national cultural societies".

12. Conclusion

Ukraine's extraordinary difficulties in ratifying the ECRML are symptomatic of the highly contested nature of language policy within its territory. Policy makers must grapple with two paradoxical states of affairs. As the National Commission on the Enforcement of Democracy and the Rule of Law has pointed out (above), the Ukrainian language is not only the state language but a vulnerable minority language in a number of regions of Ukraine. At the same time, Russian, which is a minority and a regional language, was also the language of the empire to which Ukraine, on most accounts, unwillingly belonged.

International law recognises Ukraine's right to decide that its state language is Ukrainian and to promote the use of the state language. Despite the fears of some Russophones, there is little evidence that the Russian language is being suppressed. The decline in the number of schools where Russian is the language of instruction is probably the result of the rational choice of parents to have their children educated in the language giving the greatest range of employment opportunities, including in the state sector. Many Ukrainians switch without conscious decision from Ukrainian to Russian and back.

Despite the noise of the debates, there has been very little violence caused by linguistic conflict. Ukraine will continue to have an enormous neighbour to its east, with formidable media, literature and popular music. This will inevitably influence Ukraine. Russian will continue to be the language of a substantial part of Ukraine's population.

Ratification of the ECRML is intended to require the government concerned to place on record its provision for minority or regional languages. This assumes that the government has a coherent and settled policy. Ukraine does not. There are, as Ukraine points out in its reports to the Framework Convention, laws on national minorities in Ukraine, on languages in the Ukrainian SSR and so on. However, the confusion over the charter means that government policy and the laws themselves require amendment.

We referred earlier to the symbolic importance of the ECRML. There is a negative side to this: this paper has shown how politicians can seize on a single word of the charter, for example "regional", or can misinterpret the object and purpose of the charter as a whole. For Russians, in particular, ratification of the charter has provided a substitute for the law on official status which they know they cannot so far obtain. Should Ukraine make use of the charter's provision which allows lesser-used "official" languages to be included under Part III?

Finally, ratification of the ECRML cannot simply impact on the Russian language. A number of the languages specified in the instrument of ratification, especially Crimean Tatar, are threatened by extinction. There can be no question but that Ukraine should add Armenian, Karaim and Romani to the list of 13 contained in its Declaration of 19 September 2005. There is a real danger that in the heat of political struggle, Ukraine could forget the true purpose of the ECRML, the protection of linguistic diversity.