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The right to education in the mother tongue for Ukrainian refugees in Romania according to international and national law

1. Introduction

Since the outbreak of the Russian invasion in February 2022, millions of Ukrainian citizens have entered Romania. According to the UN Refugee Agency, approximately a quarter of a million Ukrainians remain in Romania as of the writing of these lines (URL1). Romanian government data indicate that by the end of April 2024, this number stood at 154,617, among whom approximately 50,000 are children aged 3–18 who require education (URL2). Before the war, the Romanian state had already provided extensive language rights in education for its approximately 40,000 Ukrainian-speaking citizens. This study seeks to answer the question of what language rights were afforded to the Ukrainian minority of Romania in public education before February 24, 2022, and whether these rights also apply to the Ukrainian-speaking refugees who have fled to Romania.

2. Constitutional guarantees for the protection of national minorities in Romania

The minority rights regime in Romania is primarily based on individual rights and, to some extent, on *de facto* collective rights. This legal framework is founded on the rejection of assimilation policies, wherein the state commits to protecting and promoting national minority identities distinct from the Romanian national identity, as recognized by the Constitution. Accordingly, the state acknowledges and guarantees the preservation, development, and expression of the ethnic, cultural, linguistic, and religious identities of individuals belonging to national minorities (Constitution of Romania, Art. 6, par. 1–2). The right to preserve, develop, and express identity breaks with state assimilation strategies based on the idea of a

homogeneous society and formal equality resulting *de facto* inequalities.¹ In this spirit, the Romanian Constitution recognizes the right of individuals belonging to national minorities to i) learn their mother tongue and receive education in their mother tongue (Constitution of Romania, Art. 32, par. 3), ii) use their mother tongue in both written and oral communication with local administrative institutions and decentralized authorities (Constitution of Romania, Art. 120, par. 2), iii) express themselves in their mother tongue in the judicial system (Constitution of Romania, Art. 128, par. 2), iv) additionally, the Constitution allows members of national minorities to establish organizations that pursue ethnic and minority policies in the Parliament. Through these organizations, the community is officially guaranteed a full representative seat in the Romanian Parliament (Constitution of Romania, Art. 62, par. 2). Although the Constitution recognizes these rights, the precise extent of these rights is determined by the laws regulating each specific area. For instance, the Constitution does not specify the conditions for using one's mother tongue in administrative procedures. Nor does it detail the subjects and educational levels for mother tongue instruction. These specifics are determined by the relevant legislation. Before examining statutory regulations, it is important to review Romania's international commitments. These commitments establish the baseline standards for national minority rights in Romania since the relationship between international law and domestic law is characterized by the primacy of international law over national legislation in the field of human rights (Constitution of Romania, Art. 11–20).

3. The right to education in the mother tongue in international law

The issue of the languages of national minorities and their education in their mother tongue has not escaped the attention of the international community. Initially addressed by the United Nations (UN) and subsequently by organizations such as the Organization for Security and Co-operation in Europe (OSCE), the

¹ Real or effective equality goes beyond formal equality and acknowledges that individuals in different situations need to be treated differently to achieve true equality. This idea of real or effective equality was recognised through several documents. See: International Convention on the Elimination of All Forms of Racial Discrimination, Art. 1, par. 4; Committee on the Elimination of Racial Discrimination: General Recommendation No. 32. The meaning and scope of special measures in the International Convention on the Elimination of Racial Discrimination. 24 September 2009, UN Doc., CERD/C/GC/32; United Nations – Commission on Human Rights. Sub-Commission on Prevention of Discrimination and Protection of Minorities: Definition and Classification of Minorities. 27 December 1949, UN Doc., E/CN.4/Sub. 2/85, 27; Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE Art. 31; Framework Convention for the Protection of National Minorities, Art. 4; CDL-MIN(1998)001rev, Summary Report on Participation of members of minorities in public life, Introduction, §1.1., 2.1., 2.2.; CDL(2000)79rev, Opinion on the draft constitutional law on the rights of minorities in Croatia, §6.

Council of Europe, and indirectly the European Union (EU), this issue has garnered significant attention.

3.1. *The UNESCO Convention against Discrimination in Education and non-binding international documents*

Following the establishment of the UN, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, operating under the UN Commission on Human Rights, conducted two seminal studies in 1949: “The Main Types and Causes of Discrimination” (URL³) and “Definition and Classification of Minorities” (URL⁴). Although these studies were not legally binding, they provided relevant observations on the issue we are examining, which have subsequently shaped the discourse on the rights of national minorities in Europe. The study about the main types and causes of discrimination found that “*Protection of minorities is the protection of non-dominant groups which, while wishing in general for equality of treatment with the majority, wish for a measure of differential treatment in order to preserve basic characteristics which they possess and which distinguish them from the majority of the population. [...] The protection of minorities, on the other hand, although similarly inspired by the principle of equality of treatment of all peoples, requires positive action: concrete service is rendered to the minority group, such as the establishment of schools in which education is given in the native tongue of the members of the group. Such measures are of course also inspired by the principle of equality: for example, if a child receives its education in a language which is not its mother tongue, this might imply that the child is not treated on an equal basis with those children who do receive their education in their mother tongue. The protection of minorities therefore requires positive action to safeguard the rights of the minority group, provided of course that the people concerned (or their parents in case of children) wish to maintain their differences of language and culture*”. As we can see, from the beginning of modern international law, it became clear that the protection of national minority rights goes beyond the general prohibition of discrimination or formal legal equality. The legal developments within the UN and Europe maintained this direction throughout the 20th century.

The General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO), meeting in Paris from 14 November to 15 December 1960, at its eleventh session adopted the UNESCO Convention against Discrimination in Education. The convention’s initial two articles define what constitutes discrimination and what does not. Articles 2(b) and 2(c) of the convention allow linguistic communities to attend separate educational institutions where instruction is in their mother tongue and open the possibility of expanding public education to meet the needs of minorities. Article 5, 1 (c) recognises “*the right of members of national minorities to carry on their own*

educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language". Romania ratified it in its Official Bulletin No. 5 from April 20, 1964.

On 18 December 1992, the United Nations General Assembly adopted, without a vote, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Through the Declaration Romania assumed to take appropriate measures that "*where possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue*" (URL5, Art. 4, par. 3).

In 1990, the representatives of the participating States of the Conference on Security and Co-operation in Europe (CSCE) including Romania participated to the Conference on The Human Dimension of The CSCE in Copenhagen. The concluding document of the conference affirmed that "*[T]he participating States will endeavour to ensure that persons belonging to national minorities, notwithstanding the need to learn the official language or languages of the State concerned, have adequate opportunities for instruction of their mother tongue or in their mother tongue, as well as, wherever possible and necessary, for its use before public authorities, in conformity with applicable national legislation.*"

In the context of the teaching of history and culture in educational establishments, they will also take account of the history and culture of national minorities" (URL6, par. 34).

On February 1, 1993, the Parliamentary Assembly of the Council of Europe adopted Recommendation 1201 on the Additional Protocol to the European Convention on Human Rights concerning Minority Rights, which was never ratified. In Article 8 of the recommendation, the Parliamentary Assembly affirmed the right to education in the mother tongue, stating: "*Every person belonging to a national minority shall have the right to learn his/her mother tongue and to receive an education in his/her mother tongue at an appropriate number of schools and of state educational and training establishments, located in accordance with the geographical distribution of the minority*". This recommendation underscores the Council of Europe's commitment to protecting the linguistic rights of national minorities, emphasizing the importance of education in the mother tongue as a fundamental aspect of minority rights. Despite the Additional Protocol not being adopted, Recommendation 1201 reflects the Assembly's stance on promoting and safeguarding minority language education within member states.

3.2. Bilateral Treaty on the Relations of Good Neighbourliness and Cooperation between Romania and Ukraine

Neither the concluding document from Copenhagen (CSCE), nor the Minority Declaration of the UN, nor the Recommendation 1201 (1993) are legally binding on

their own. Yet, the Treaty on the relations of good neighbourliness and cooperation between Romania and Ukraine adopted in 1997 confers them legally binding force. The first paragraph of article 13 of the treaty concludes that “[I]n order to protect the ethnic, cultural, linguistic and religious identity of the Romanian minority in Ukraine and Ukrainian minority in Romania, the Contracting Parties shall implement the international norms and standards defining the rights of persons belonging to national minorities, as they are stipulated in the Framework Convention of the Council of Europe on the Protection of National Minorities, as well as in: the Document of the Copenhagen Conference on the human dimension of the organization for Security and Cooperation in Europe, June 29, 1990; the Declaration of the United Nations, General Assembly on the rights of persons belonging to national, ethnic, religious or linguistic minorities (Resolution 47/135), December 18, 1992; and Recommendation 1201 (1993) of the Parliamentary Assembly of the Council of Europe on an Additional Protocol on the rights of national minorities to the European Convention of Human Rights, with the understanding that the above mentioned Recommendation does not refer to collective rights nor does it oblige the Contracting Parties to grant those persons the right to a special status of territorial autonomy based on ethnic criteria”.

The 5th paragraph of Article 13 of the bilateral treaty redundantly reiterates Recommendation 1201, affirming the right of Ukrainian and Romanian minority members “[...] to be instructed in their mother tongue in an appropriate number of public schools and institutions for education and specialization, located accordingly to the geographic distribution of the respective minorities [...]”.

It is particularly noteworthy in our inquiry that according to the definition in the Treaty on good neighbourliness, individuals who hold Romanian citizenship and identify with the Ukrainian minority are considered part of that minority. This definition is consistent with Recommendation 1201, which also regards citizenship as a defining criterion for minority status.

3.3. The two European conventions on the rights of minorities

3.3.1. Framework Convention for the Protection of National Minorities

The Framework Convention for the Protection of National Minorities (hereinafter: Framework Convention) was adopted on November 10, 1994, by the Ministerial Committee. It was opened for signature on February 1, 1995, and as of the present writing, 39 states have ratified it. Belgium, Greece, Iceland and Luxembourg have signed but not yet ratified the Framework Convention. The adoption and widespread ratification of the Framework Convention represent the pinnacle of the Council of Europe’s efforts in codifying minority protection. Politically, this is evidenced by the fact that among the 222 treaties developed and opened for

signature under the auspices of the Council of Europe, the Framework Convention ranks second in terms of the number of ratifications, following the Convention for the Protection of Human Rights and Fundamental Freedoms (Szalayné Sándor, 2017, p. 43). From the perspective of minority protection, it further underscores its significance as the sole comprehensive international minority rights treaty with legally binding force in the European legal space (Szalayné Sándor, 2017, p. 44). Romania ratified the treaty through Law no. 33 of April 29, 1995, on the ratification of the Framework Convention for the Protection of National Minorities, published in the Official Gazette, no. 82, on May 4, 1995.

Article 1 of the Framework Convention clearly states that “[T]he protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation”. The Framework Convention dedicates three articles to the matters of education, namely Articles 12, 13, and 14. None of the 3 articles recognises the undisputed right of the members of national minorities to get an education in their mother tongue. Article 12 (1) encourages contracting states to promote knowledge of the culture, history, language, and religion of both national minorities and the majority and to provide equal access to education at all levels for persons belonging to national minorities. Article 13 grants the right to set up and manage minority educational and training establishments without the right to get public funding for that. Article 14 is the most relevant one for our inquiry. In its first paragraph, it recognises the right of persons belonging to a national minority to learn their mother tongue. The Explanatory Report of the FCNM specifies that there can be no exception to this and that this is “one of the principal means by which such individuals can assert and preserve their identity” (URL7, Art. 14, par. 1). The second paragraph of the same article concerns the possibility of teaching of and instruction in a minority language: “In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language” (URL7, Art. 14, par. 2). As the Explanatory Report explains, “[T]he obligation to endeavour to ensure instruction of or in minority languages is subject to several conditions; in particular, there must be “sufficient demand” from persons belonging to the relevant national minorities. The wording “as far as possible” indicates that such instruction is dependent on the available resources of the Party concerned. The text deliberately refrains from defining “sufficient demand”, a flexible form of wording which allows Parties to take account of their countries’ own particular circumstances. Parties have a choice of means and arrangements in

ensuring such instruction, taking their particular educational system into account” (URL7, Art. 14, par. 2).

As we saw, Romania interpreted this extremely permissive norm to the favour of linguistic minorities, since it recognised the right to receive instructions in the mother tongue of national minorities on a constitutional level.

The human rights classification of the rights recognised in the Framework Convention implies that these rights are available not only for the protection of the state’s citizens but also for any person under the state’s jurisdiction (Eide, 2009, p. 122). Hence, Ukrainian citizens arriving in Romania as refugees should enjoy these rights to the same extent as Romanian-born citizens. If Romania commits to ensuring the educational language rights outlined in Article 14 to the fullest extent, then these rights should be available for anyone under Romanian authority.

3.3.2. The European Charter for Regional or Minority Languages

The other relevant international treaty to our analysis is the European Charter for Regional or Minority Languages, a legal instrument of the Council of Europe adopted in 1992. The issue of language has never been foreign to the codification of human rights. The UN Charter, the Universal Declaration of Human Rights, the European Convention on Human Rights, and the International Covenant on Civil and Political Rights all prohibit language-based discrimination. The European Charter for Regional or Minority Languages (hereinafter referred to as the Language Charter or Charter) is a particular document of European minority protection. Firstly, unlike the previously mentioned human rights treaties, it focuses not only on the negative obligation (prohibition of discrimination) of states, but rather on positive obligations. Secondly, the Language Charter is also distinctive in that it designates protection not to speakers of languages or language minorities, but to the languages themselves (URL8, par. 11).

The European Charter for Regional or Minority Languages was ratified by Romania through Law no. 282 of October 24, 2007, for the ratification of the European Charter for Regional or Minority Languages (URL9). Article 2 of Law no. 282/2007 specifies that Romania has committed to applying the provisions of the Charter with varying levels of protection for 20 minority languages used within its territory, including Ukrainian (Article 2, letter “ş”) and Rusyn (Article 2, letter “o”).

In the field of education (under Article 8 of the Charter), Romania has undertaken commitments regarding the Bulgarian, Czech, Croatian, German, Hungarian, Russian, Serbian, Slovak, Turkish, and Ukrainian languages among the 20 minority languages through the ratification law of the Language Charter. Regarding the Ukrainian language, Romania has committed to:

- Article 8, par. 1, a), (i) to make available pre-school education in Ukrainian;
- Article 8, par. 1, b), (i) to make available primary education in Ukrainian;

- Article 8, par. 1, c), (i) to make available secondary education in Ukrainian;
- Article 8, par. 1, d), (iv) to make available fully or a substantial part of technical and vocational education in Ukrainian or to provide, within technical and vocational education, for the teaching of the Ukrainian language;
- Article 8, par. 1, e), (iii) to encourage and/or allow the provision of university or other forms of higher education in Ukrainian or of facilities for the study of Ukrainian language as university or higher education subjects;
- Article 8, par. 1, f), (iii) if the public authorities have no direct competence in the field of adult education, to favour and/or encourage the offering of Ukrainian language as subjects of adult and continuing education;
- Article 8, par. 1, g) to make arrangements to ensure the teaching of the history and the culture which is reflected by the Ukrainian language;
- Article 8, par. 1, h) to provide the basic and further training of the teachers required to implement those of paragraphs a to g;
- Article 8, par. 1, i) to set up a supervisory body or bodies responsible for monitoring the measures taken and progress achieved in establishing or developing the teaching of the Ukrainian language, and for drawing up periodic reports of their findings, which will be made public.

We must note that through the provisions of the Language Charter concerning education, Romania has undertaken a lower level of protection for the Ukrainian language compared to Hungarian or German. For these languages, Romania has committed to making available technical and vocational education (Article 8, par. 1, d) and university and other higher education (Article 8, par. 1, e) in these languages.

Considering that refugees coming from Ukraine have not always settled in traditionally Ukrainian-inhabited areas, the commitments in Article 8, paragraph 2 of the Charter are particularly significant: *“With regard to education and in respect of territories other than those in which the Ukrainian language is traditionally used, the Parties undertake, if the number of users of a regional or minority language justifies it, to allow, encourage or provide teaching in or of the regional or minority language at all the appropriate stages of education”*.

The Language Charter does not guarantee rights, which on one hand means it cannot be considered a human rights treaty, and on the other hand, it means there is no question about who is entitled to the rights prescribed in the Charter. The Charter and the ratifying law answer the question of which languages the state commits to. The commitments regarding the Ukrainian language therefore do not imply any connection to who benefits from these commitments. Immigrants and

refugees are equally entitled to enjoy the benefits of the commitments made in the Charter as citizens born within the state's territory.

Seemingly contradicting this, however, are the preamble² and Article 1³ of the Charter (URL10), both indicating that the Language Charter does not intend to protect languages spoken by immigrant communities that are traditionally not used in the country. This is also supported by the official Explanatory Report attached to the Charter (URL8).⁴ Nevertheless, this does not mean that immigrants or refugees wishing to use traditional minority or regional languages cannot enjoy the benefits of protection provided for these languages. This is exactly the case with Ukrainian children settling in Poland due to the ongoing conflict in Ukraine, some of whom enrol in schools teaching in the Kashubian language, which is close to Ukrainian and serves the needs of the Kashubian community (Oszmiańska-Pagett–Crnić–Grotić, 2022).

3.3.3. Preliminary conclusions

Romania has made extensive commitments to guarantee the rights of national minorities. From the UNESCO Convention, the UN Declaration on Minorities, the Copenhagen Document, Recommendation 1201, and the Romania–Ukraine bilateral agreement make evident that Ukrainians in Romania have the right to education in their mother tongue. However, these agreements do not imply Romania's obligation to extend language rights to newly arrived Ukrainian refugees who reside in Romania and hold Romanian citizenship. In contrast, rights enshrined in the Framework Convention explicitly extend to every individual under Romanian jurisdiction due to their human rights nature. Furthermore, Ukrainian refugees can benefit from the provisions of the Language Charter because the Charter does not guarantee rights specifically to the members of the Ukrainian minority holding Romanian citizenship but summarizes state commitments to language use. Therefore, we can assert that Romania's international commitments imply the right of Ukrainians arriving in Romania to education in their mother tongue.

² See: "Considering that the protection of the historical regional or minority languages of Europe, some of which are in danger of eventual extinction, contributes to the maintenance and development of Europe's cultural wealth and traditions".

³ See: "[...] regional or minority languages means languages that are: i) 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 ii) different from the official language(s) of that State [...]".

⁴ See: Explanatory Report, par. 31: "The purpose of the charter is not to resolve the problems arising out of recent immigration phenomena, resulting in the existence of groups speaking a foreign language in the country of immigration or sometimes in the country of origin in case of return".

To fully understand the conditions and the extent to which this right can be exercised, we will now review the relevant provisions of national law.

4. The right to education in the mother tongue on the subconstitutional internal legislation

The constitutional protection of the separate identity of national minorities in Romania indirectly means that Romania does not consider the identity-preserving efforts of national minorities as a matter of national security. The expectations and aspirations to get education in the mother tongue, to enjoy administrative services, judicial proceedings and to have public signage in the mother tongue are all legitimate.

Currently, Romania ensures minority rights equally for 18 national minorities, including: Armenians, Bulgarians, Croats, Czechs, Germans, Greeks, Hungarians, Italians, Jews, Macedonians, Poles, Roma, Russian Lipovans, Serbs, Slovaks, Turks, Tatars, Ukrainians. Accordingly, all 18 communities are entitled to the same language rights under certain conditions, regardless of whether the community has a kinstate or whether the language is official in another country. The only area where differences can be observed is in university education, as discussed earlier. These differences can primarily be attributed to political-historical and demographic reasons. In higher education, alongside Romanian-language instruction, state institutions provide Hungarian-language and German-language education in certain faculties. In addition to these two minority languages, education is also conducted in international languages like French and English. The establishment of Hungarian-language higher education dates back to the Austro-Hungarian Monarchy period and, except for the interwar period, has been present throughout Transylvania (see: Bethlendi-Ilyés, 2020). Considering that the Hungarian minority currently constitutes the largest linguistic minority in Romania and the community's political representation clearly expresses its demand to maintain higher education in Hungarian, it is understandable why post-1989 democratic Romania decided to widely ensure education in Hungarian. The existence of German-language higher education is less explainable by demographic arguments, as the communist Romania-supported emigration policy reduced the formerly 700,000-strong German-speaking population to a less than 30,000 German minority in the country (see: Boia, 2015). The existence of German-language higher education is much more attributable to the historical characteristics of the Transylvanian region and the specific consequences of political agreements between the representatives of the Hungarian minority and the Romanian majority. Following World War II, the consolidated laws regulating education allowed education in minority languages. The use of national minority languages in public education varied between 1945 and 1989. Following the

democratic political transformation after the 1989 revolution and Romania's NATO and EU accession efforts, the use of minority languages in public education increasingly reflected the needs of minority communities. It can now be stated generally that national minorities in Romania receive education in their mother tongue from preschool to high school graduation according to their own needs and their demographic potential.

The current Law 198/2023, which regulates pre-university education, includes among its defining principles *“the principle of recognition and guarantee of the rights of persons belonging to national minorities to preserve, develop, and express their ethnic, cultural, linguistic, and religious identity”* (URL11, Art. 3h). The law clearly formulates the right of members of national minorities to have pre-university education (from kindergarten to high school graduation) conducted at every level and in every form of education in their mother tongue (URL11, Art. 59, par. 1). For participants in mother tongue education, with the exception of Romanian language and foreign languages, all subjects must be taught in their mother tongue (URL11, Art. 60, par. 1). There are two types of institutions where mother tongue education is possible: i) institutions where all the classes are taught in their respective minority language, ii) institutions where classes are conducted in parallel, with some in the state language and others in the minority language. There is no education which offers bilingual or linguistically mixed education. In classes taught in the minority language, the state language must be taught using textbooks and a specialized methodology developed specifically for members of the respective minority. The development of textbooks and methodology must involve experts proficient in the minority language (URL11, Art. 60, par. 2). As an exceptional case, the legislation allows for Romanian language and literature to be taught based on textbooks intended for the majority society, according to the methodology of Romanian-language education, upon request from parents, minority representation organizations in the Romanian Parliament, or – in the absence of parliamentary representation – the minority parliamentary group (URL11, Art. 60, par. 3). The subjects of minority language and literature, minority history, and music must also be taught according to curricula compiled with the participation of experts knowledgeable about minority cultures for participants in mother tongue education (URL11, Art. 60, par. 4). The state provides free access to textbooks prepared in the mother tongue for students studying in minority languages (URL11, Art. 93, par. 4). At the end of various educational stages, examinations must be conducted in the language of instruction for all subjects (URL11, Art. 60, par. 7). Members of the minority must take examinations in the state language based on the curriculum developed for the respective minority (URL11, Art. 60, par. 11).

The commitment of the Romanian state to education in minority languages is further evidenced by the fact that the state reimburses the travel expenses of students for whom education in their mother tongue is not available in their local area (URL11, Art. 59, par. 5).

In institutions where education is conducted in minority languages, the school principal must also be the speaker of the minority language. If education is not exclusively in the minority language, then the principal or deputy principal must be chosen from among teachers who instruct in the minority language (URL11, Art. 59, par. 7). In both types of schools, teachers conducting classes in the minority language and auxiliary staff (such as speech therapists, counsellors, etc.) must demonstrate proficiency in the minority language (URL11, Art. 59, par. 9). Within these institutions, communication in the minority language among educators, students, and parents is permitted. It is mandatory to label common areas and communicate messages intended for students and teachers in both Romanian and the minority language (URL11, Art. 59, par. 11).

Regarding enrolment minimums, the law is permissive towards national minorities, allowing schools to operate below the legally required minimum enrolment numbers upon request from the school management or the organization representing the minority in parliament (URL11, Art. 23, par. 4b). Any restructuring, establishment or closure of institutions conducting education in minority languages can only occur with the approval of both the Ministry of Education and the organization representing minority interests (URL11, Art. 23, par. 4c).

The Law 198/2023 regulating pre-university education, besides education in the mother tongue, allows members of national minorities enrolled in Romanian-language classes to study their mother tongue, history, and music under a separate curriculum (URL11, Art. 60, par. 5).

Regarding national regulations, it can be concluded that Romania meets its international commitments and sets high standards internationally by providing education in minority languages or education about minority languages in a manner that meets the needs of the respective communities. It is important to emphasize that the state provides one or the other form of education for minorities depending on their preferences. It is also significant that members of minorities are guaranteed by law to participate in the preparation of textbooks and educational methodologies for minorities, as well as in the management of educational institutions themselves. Particularly noteworthy is the right of minorities, ensured by law, that their organization representing parliamentary representation effectively holds veto power over the establishment, reorganization, and closure of educational institutions teaching in minority languages. This high standard of minority language rights is beneficial even to refugees who speak the language of one of the minorities without holding

Romanian citizenship. In accordance with the previously discussed provisions of international law, the Romanian Education Law explicitly states that legally residing foreign minors in Romania have non-discriminatory access to all forms – including minority languages – of public education (URL11, Art. 9).

5. The usage of the Ukrainian language in Romanian public education

According to the 2021 census data, the Ukrainian minority in Romania numbers 40,861 individuals, showing a 20% decrease compared to 2011 when there were 50,900 Ukrainians recorded. The latest Romanian periodical report on the Language Charter submitted to the Council of Europe Secretary General indicates that during the 2018-2019 school year, 6,673 students were studying Ukrainian in some form. Out of these, 1,025 were enrolled in Ukrainian-language education, while 5,897 studied Ukrainian language and literature as a subject in Romanian-language classes (URL12, p. 64). Data from the Union of Ukrainians in Romania for the same school year shows that the Ukrainian language was taught in 64 educational institutions across counties such as Maramureş, Suceava, Timiş, Caraş-Severin, Arad, Botoşani, Satu Mare, and Tulcea (URL13). The distribution of students by county was as follows: Arad – 74 students, Botoşani – 115 students, Caraş-Severin – 167 students, Maramureş – 3,145 students, Satu Mare – 120 students, Suceava – 1,937 students, Tulcea – 62 students, Timiş – 536 students. In counties like Maramureş, Suceava, Timiş, Caraş-Severin, and Satu Mare, there are also educational institutions where Ukrainian is the language of instruction (URL14). In the 2019 FCNM state report, Romania reported the development of 6 new Ukrainian-language school textbooks. However, upon examining the list of textbooks published by the Ministry of Education, it appears that while the legal framework seems to guarantee comprehensive Ukrainian-language education, there is a shortage of textbooks that fully enable this. For grades 1-8, only 7 Ukrainian-language textbooks are available for the Ukrainian language and literature subject from 1st to 7th grade. In secondary education, only a chemistry textbook for 9th and 10th graders is available in Ukrainian (URL15).

In response to the refugee influx from Ukraine, the Romanian Minister of Education stated on March 3, 2022, that Ukrainian-language education is provided in 45 primary schools and 10 high schools. He emphasized the importance of ensuring access to education for Ukrainian children when they desire it (URL16). As of April 2024, Romanian government data indicates that a total of 41,751 Ukrainian refugees participated in preschool (16,460), primary (10,826), or secondary education (14,465) (URL2). However, the report does not specify the language of instruction for these students. Reports on the challenges surrounding the education of Ukrainian refugee children suggest that these children are

currently integrated into Ukrainian-language education programs to a limited extent or not at all.

In conclusion, while there are efforts to provide Ukrainian-language education in Romania, challenges remain regarding the availability of Ukrainian-language textbooks and the integration of Ukrainian refugee children into education programs conducted in their native language.

6. Conclusions

The primary objective of this study was to assess, from a legal standpoint, whether the educational language rights accorded to the Ukrainian minority in Romania under international law, as well as Romanian national law, also apply to the Ukrainians who have sought refuge in Romania. The examination of international legal agreements, notably the Framework Convention and the Language Charter, indicates a fundamental principle: if a national minority is assured education in their mother tongue by the state, the same right should not be denied to immigrant or refugee communities speaking the same language. Romanian national law explicitly ensures equal treatment under Article 9 of the Education Law for legally residing minors in the country. Given that Romania has established an exemplary legal framework for education in the languages of national minorities, these provisions should also be accessible to the Ukrainian refugees, who outnumber the Ukrainian minority. However, during the Ukrainian refugee crisis, it was observed in this study that the Romanian Minister of Education aimed to integrate Ukrainian minors flowing into the country into Ukrainian-language educational institutions.

This study only briefly addressed the challenges of the practical application of the current legal framework. Further sociological research is needed to explore the implementation of Ukrainian-language education to the benefit of the Ukrainian refugees, which was beyond the scope of this study. Nevertheless, Romania possesses all the necessary legal elements to serve as a truly best practice model in Europe for organizing and ensuring good quality education in the mother tongue for Ukrainian refugees.

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The right to education in the mother tongue for Ukrainian refugees in Romania according to international and national law

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Since the outbreak of the Russian invasion in February 2022, millions of Ukrainian citizens have sought refuge in Romania, with a significant number of people still remaining in the country as of the latest reports. Romanian government data indicate that by April 2024, approximately 154,617 Ukrainian refugees, including 50,000 school-aged children, were residing in the country. Before this crisis, Romania had established robust educational language rights for its Ukrainian minority of around 40,000 citizens. This study rigorously examines these pre-existing language rights within Romania's legal framework, focusing on public education provisions. Central to the inquiry is whether the comprehensive language rights afforded to Romania's Ukrainian minority could be extended to the Ukrainian-speaking refugees.

The study begins with an introduction contextualizing the refugee crisis and outlining the existing legal framework for minority language rights in Romania. The legal analysis covers constitutional and sub-constitutional provisions, alongside with an examination of international agreements such as the bilateral treaty between Romania and Ukraine, the Framework Convention for the Protection of National Minorities, and the European Charter for Regional or Minority Languages. Special emphasis is placed on education provisions, including curriculum design, textbooks, language of instruction, and decision-making.

By addressing these pivotal questions, this study contributes to the theoretical discourse around the personal scope of minority language rights in Europe and offers a nuanced insight into Romania's legal framework on minority language education. It also seeks to elucidate how Romania's legal commitments accommodate both established minority communities and newly arrived refugees with similar linguistic and cultural backgrounds. Further sociological research is needed to explore the implementation of Ukrainian-language education to the benefit of the Ukrainian refugees, which was beyond the scope of this study. Nevertheless, Romania possesses all the necessary legal elements to serve as a truly best practice model in Europe for organizing and ensuring good quality education in the mother tongue for Ukrainian refugees.

Keywords: *minority language rights, refugee language rights, linguistic discrimination, Framework Convention for the Protection of National Minorities, European Charter for Regional or Minority Languages.*

Право на освіту рідною мовою для українських біженців у Румунії відповідно до міжнародного та національного законодавства

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Від початку російського вторгнення мільйони громадян України знайшли притулок у Румунії, і, згідно з останніми відомостями, значна частина з них залишається там донині. За даними румунського уряду, станом на квітень 2024 року в країні перебувало близько 154 617 українських біженців, зокрема 50 000 дітей шкільного віку. До війни Румунія гарантувала стабільні мовні права у сфері освіти близько 40 000 громадянам української меншини.

У статті розглянуто чинні права щодо використання мови в румунській нормативно-правовій системі, при цьому основну увагу приділено положенням, які стосуються системи освіти. Ключовим питанням дослідження є те, чи можна було б поширити всебічні мовні права, надані українській меншині в Румунії, на біженців, які є українцями за походженням. У вступі контекстуалізовано кризу біженців і окреслено чинну законодавчу базу для мовних прав меншин у Румунії. Правовий аналіз охоплює конституційні та неконституційні положення, а також міжнародні конвенції, такі як: двосторонній договір між Румунією та Україною, Рамкова конвенція про захист національних меншин та Європейська хартія регіональних мов або мов меншин. Особливу увагу приділено освітнім положенням, включаючи навчальні програми, підручники, мову навчання та ухвалення рішень.

У висновках подано відповіді на ключові питання щодо досліджуваної проблеми, здійснено таким чином внесок у теоретичний дискурс про особисту сферу мовних прав меншин у Європі та чітко окреслено правові рамки освіти мовами меншин у Румунії. З'ясовано, як правові механізми Румунії адаптуються до громад меншин і новоприбулих біженців з аналогічним мовним і культурним корінням.

Вважаємо, що необхідні подальші соціологічні дослідження для детального ознайомлення з впровадженням освіти українською мовою в інтересах біженців з України, що виходило за рамки цього дослідження. Румунія володіє усіма необхідними правовими елементами для того, щоб стати зразком передової європейської практики організації та забезпечення якісної освіти рідною мовою для біженців з України.

Ключові слова: мовні права меншин, мовні права біженців, мовна дискримінація, Рамкова конвенція про захист національних меншин, Європейська хартія регіональних мов або мов меншин.

Az ukrán menekültek anyanyelvi oktatáshoz való joga Romániában a nemzetközi és nemzeti jog szerint

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Az orosz invázió kitörése óta ukrán állampolgárok milliói kerestek menedéket Romániában, a legfrissebb jelentések szerint az emberek jelentős száma máig az országban maradt. A román kormány adatai szerint 2024 áprilisáig körülbelül 154 617 ukrán menekült, köztük 50 000 iskoláskorú gyermek tartózkodott az országban. A válság előtt Románia szilárd oktatási nyelvi jogokat biztosított mintegy 40 000 ukrán kisebbségi állampolgárnak. Jelen tanulmány ezeket a már meglévő nyelvi jogokat vizsgálja Románia jogrendszerén belül, a közoktatási rendelkezésekre összpontosítva. A vizsgálat központi kérdése az, hogy a romániai ukrán kisebbségnek biztosított átfogó nyelvi jogokat ki lehetne-e terjeszteni az ukrán ajkú menekültekre is.

A tanulmány bevezetője kontextusba helyezi a menekültválságot, és felvázolja a romániai kisebbségi nyelvi jogok törvényi kereteit. A jogi elemzés kiterjed az alkotmányos és az alkotmányon kívüli rendelkezésekre, valamint olyan nemzetközi egyezmények vizsgálatára, mint a Románia és Ukrajna közötti kétoldalú szerződés, a Nemzeti Kisebbségek Védelméről szóló Keretegyezmény, valamint a Regionális vagy Kisebbségi Nyelvek Európai Chartája. Különös hangsúlyt kapnak az oktatási rendelkezések, beleértve a tantervek tervezését, a tankönyveket, az oktatás nyelvét és a döntéshozatalt.

E sarkalatos kérdések megválaszolásával a tanulmány hozzájárul az európai kisebbségi nyelvi jogok személyi hatókörével kapcsolatos elméleti diskurzushoz, és árnyalt betekintést nyújt Románia kisebbségi nyelvi oktatásának jogi keretébe. A kutatás azt is igyekszik megvilágítani, hogy Románia jogi kötelezettségvállalásai miként alkalmazkodnak a már kialakult kisebbségi közösségekhez és az újonnan érkezett, hasonló nyelvi és kulturális háttérű menekültekhez. További szociológiai kutatások szükségesek az ukrán nyelvű oktatás megvalósításának feltárásához az ukrán menekültek számára, amely túlmutat jelen tanulmány keretein. Ennek ellenére Románia rendelkezik a szükséges jogi kerettel ahhoz, hogy egy bevált gyakorlati modellként szolgálhasson Európában az ukrán menekültek minőségi anyanyelvi oktatásának megszervezése és biztosítása terén.

Kulcsszavak: *kisebbségi nyelvi jogok, menekültek nyelvi jogai, nyelvi diszkrimináció, Nemzeti Kisebbségek Védelméről szóló Keretegyezmény, Regionális vagy Kisebbségi Nyelvek Európai Chartája.*