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The state and the people-building process: the Ukrainian official-language legislation case

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Abstract

The article focuses on the Ukrainian official language policies and their impact on Ukrainian people-building, claiming the state promotion of Ukrainian as an exclusive language of public life and the ethnically-based understanding of the Ukrainian people, inevitably lead to the exclusion of non-Ukrainian communities from participation in democratic processes, politicise the already problematic language situation and risk undermining the role of Ukrainian as an official language.

For such an analysis, and a conceptualisation of how the state can shape the nature of the people, the article proposes a new theoretical understanding of the people as an organisational system, based on a functional adaptation of Niklas Luhmann's social systems theory and Charles Taylor's social imaginary.

Keywords: constitutional theory; social systems theory; official language; imaginary; people; Ukraine

Every democratic state needs its people¹, as there can be no democracy based solely on a population passively accepting the rule of the state. Therefore, the questions of who the people is, how it is constituted and what role the state plays in the people-building process are at the core of any study of modern democracy, including those from a socio-legal point of view.

In this article, I claim that language policies are one of the most effective tools of the state to shape the people either in a more inclusive and participatory democratic self-governing collective or to exclude some groups in society – ethnic/language minorities, groups with socio-economic disadvantages lacking access to education – from the democratic participation. Therefore, using the Ukrainian state language legislation as a case study, I argue that the language policies are – from the constitutionalist point of view – not only a matter of linguistic (minority) rights but a matter of democracy as a system of government itself.

Consequently, to be able to analyse the impact of the language policies on the self-governing people, I argue that we must carefully navigate between the equally dangerous concepts of the people as a pre-constitutional subject and the people as a group of *real* persons, as both of them are dead ends in terms of people-seeking. The former leads us to the duality of *pouvoir constituant* and *pouvoir constitué*, within which the people of an already established democracy are always subjugated to the constituted power of the state as it is merely a shadow of the pre-constitutional people, that is, the constitutive power. In such a setting, the people can never be more than what the state decides it is – citizens and voters. The latter misguides us towards looking for the ‘true’

¹I am using singular form throughout the article to stress the singular, collective nature of the people.

and fixed identity of the people, something inherent to it that makes one people different from all others, something unique to that particular group of people – an understanding that tends to push pluralism away from a democratic self-governance. I argue that, as I shall discuss later, the people is nothing more than its self-imaginary; it does not have inherent traits, values or characteristics but is constituted by its everyday practice.

In other words, what I am proposing – discussed in more detail in part one of this article – is to consider people as an *autopoietic* organisational system constituted by the popular imaginary; in other words, to functionally apply Niklas Luhmann's (1995) communication-centred social systems theory and connect it with Charles Taylor's (2004) imaginaries and Benedict Anderson's (2006) imagined communities. Such interconnection should enable us to analyse the *actual* people within democracy independently of the state and, subsequently, to build democratic legitimacy at the same time upon the rule of the people and the rule of law.

The second part of this article deals with the above-mentioned impact of the Ukrainian language policies on the Ukrainian people-building process during the current war with Russia² – that is, the exclusion of the Russian-speaking communities from the Ukrainian people, the de-pluralisation of the popular imaginaries and a danger of deterioration of the Ukrainian democracy itself.³ All of these questions are even more pressing considering the opening of EU accession negotiations with Ukraine, as at some point the compliance of Ukraine with the EU values of democracy and rule of law will have to be resolved, including the question of exclusion of Russian-speaking population from the democratic processes and the public life in general.

1 People as imagined organisational system

First and foremost, when we think about the people, we must abandon any idea of 'real' persons of which the collective people is supposed to be constituted, or any pre-existing values that form the basis of the people. What we should be interested in are not the persons but the communication, as it is the only phenomenon we can successfully analyse (Lévi-Strauss 1963, p. 83; Moeller 2006, p. 5). The focus on (systemic) communication brings us to Niklas Luhmann and his social systems theory – more precisely, to autopoietic organisational systems.⁴

The term *autopoiesis*, although an ominous-looking one, has, in fact, a rather simple rationale: the autopoietic organisational system is such that it can reproduce itself using only its own operations and, by doing so, maintains its operational closure. In other words, the organisational system can process only its own operations, and any external interference must be translated into them in order to be processed.

The organisational system is, according to Luhmann (2018, p. 41), a type of social system that is defined by its membership and a special kind of communication – decisions. The decisions are the way in which the organisational system's self-understanding and self-perception are articulated. Moreover, organisational systems can operate within multiple functional systems. Let us consider an example of the state – a very easily imaginable case of an organisational system. It operates within the functional systems of law (by creating and enforcing legislation), politics (by institutionalising power and the struggle over it), economy (by redistributing wealth,

²It should be noted that, even though the article focuses on the current state irritation of the Ukrainian people-building process, it also takes into account state decisions that have been made since the 1990s if still relevant (such as, example.g., the Constitution of Ukraine). Moreover, the article deliberately leaves aside the Ukrainian martial law in its aim to picture the current state of the inclusion/exclusion of the Russian-speaking communities from the Ukrainian people as an outcome of a long-term process rather than of the current war.

³The article does not deal with the minority rights or linguistic rights themselves but focuses on the language policies affecting the democratic participation. For works on the minority language rights in Ukraine from various perspectives, see, for example, (Fiala-Butora 2020; Pina and Pentassuglia 2023).

⁴For a more comprehensive introduction to the interrelationship of Luhmann's social systems theory and Taylor's social imaginary within the boundaries of sociology of constitutions and political science, see, (Červinka 2024).

investing, taxing) and many others. The same applies to the organisational system of the people, which operates within multiple functional systems and, as such, must be able to distinguish itself from them⁵; it simply cannot be understood as a legal category (voters/citizens), political category (expression of collective power) or, for example, economic category (taxpayers/consumers).⁶ Therefore, such an organisation is operationally closed but causally open; that is, it still has to deal with the irritation from its environment.

The decision-based nature of the people also leads to an inevitable conclusion of its ever-changing nature. In other words, as no decision is final but must always leave space for some matter to be decided next time (Luhmann 2018, p. 29), the nature of the people is always open to change. There is no essential nature of the people, no inherent trait or quality; there is no fixed identity that should simply be discovered. Quite to the contrary, the people's identity is formed by its systemic communication and is open to change, as it is created by the people's self-recognition and self-understanding. This constructivist understanding of people's identity is based upon Charles Taylor's (2004, p. 23) concept of social imaginary of:

'By social imaginary, I mean something much broader and deeper than the intellectual schemes people may entertain when they think about social reality in a disengaged mode. I am thinking, rather, of the ways people imagine their social existence, how they fit together with others, how things go on between them and their fellows, the expectations that are normally met, and the deeper normative notions and images that underlie these expectations. [...] I adapt the term imaginary (i) because my focus is on the way ordinary people 'imagine' their social surroundings, and this is often not expressed in theoretical terms, but is carried in images, stories, and legends. It is also the case that (ii) theory is often the possession of a small minority, whereas what is interesting in the social imaginary is that it is shared by large groups of people, if not the whole society. Which leads to a third difference: (iii) the social imaginary is that common understanding that makes possible common practices and a widely shared sense of legitimacy.'

The people's identity is a condensation of its (popular) imaginary, of how the people perceive and understand itself now, by considering (or putting into a sequence of a narrative) the current understanding of its past – following Beiner's concepts of social memory (Beiner 2009) and social forgetting (Beiner 2018) – and current dreams, hopes and fears of its future.

Nevertheless, it is easy to say there is no way to analyse the people's will (*Volkswille*) or the people's spirit (*Volksggeist*) but through the people's decisions; the real challenge is to identify the actual decisions of the people. Benedict Anderson, in his famous book *Imagined Communities*, speaks about the 'calendrical movement of community' (Anderson 2006, p. 35) – that is, activities in which the members of the community participate, knowing the others are doing the same. Anderson (2006, p. 35) gives an example of newspaper reading. However, our interest is limited to the people – that is, we are interested in the decisions concerning the self-governance of the people as a collective: decisions articulating its own will to live and to matter (Kaufmann 2000, p. 198), those decisions by which the people articulate its self-recognition as a self-governed collective, its goals, values or social demands; and, as I argue, there are four groups of such decisions:

1. electoral decisions and referenda,
2. demonstrations, strikes, and revolutions,

⁵On the importance of the self-recognition as a way of distinguishing itself from its environment, see also (Bourdieu 1985, p. 730).

⁶However, it should be noted that even though my conception of the people is grounded in Luhmann's social systems theory, I apply it functionally rather than following Luhmann's own understanding of the people as a semantic aspect of the functional system of politics – see, (Moeller 2012, pp. 88–104).

3. public holiday celebrations,
4. cultural-product appropriation.

The foremost decisions of the people are, without a doubt, the electoral and referenda decisions, as they are the most regular and most powerful articulations of the existence of the people – or, as Hans-Georg Moeller (2012, chap. 8, par. 16) has put it, ‘the people, as a unit, is a fiction produced by the quasi-magical event of the election process’. Nevertheless, it is important to clarify that by the electoral and referenda decisions, I do not mean their results but the political campaigns preceding them and the voting itself. That is, while the results are determined by the state – it is the decision of the state how the votes are translated into mandates, what electoral system is used and how is the referenda voting interpreted (necessary majorities, its [non-]binding nature, and so on) – the popular imaginary is articulated, on the one hand, by the topics of the political campaign and the social demands associated with them and, on the other, by the decision of the people to participate in the voting.

The most vivid example of the significance of electoral decisions can be demonstrated in those groups excluded from participation therein. For example, African-Americans have been excluded from the US political people for centuries – among other ways – by being excluded from electoral decisions since the Declaration of Independence, through the centuries of slavery and later apartheid, until the late twentieth century and the removal of the so-called Jim Crow laws. Electoral decisions, as evident from the example of US history, are not only the most powerful articulation of the existence of the people but, at the same time, also the most vulnerable in terms of state influence over the people-building process. It is, simply put, too easy for the state to exclude some groups of society from participating in electoral debates or from voting itself.⁷

Another group of people’s decisions – demonstrations, strikes and revolutions – also articulate the popular imaginary concerning various social demands, be it an end to corruption, higher wages, guarantees of decent living and working conditions or for the removal of some politician or magistrate from office. However, whereas electoral and referenda decisions are taken knowing that they will be taken again – that is, that the matter in hand is not yet resolved once and for all – demonstration, strikes and revolutions are one-off decisions; they are supposed to be definitive.

The celebration of public holidays is a good example of how the people is shaped by its imaginary of its past decisions – in other words, how the process of popular memory and popular forgetting, adapting Beiner’s terms of social memory (Beiner 2009) and social forgetting (Beiner 2018), defines which past decisions are forgotten and which are remembered, and how those remembered are interpreted. The form, or even the legal nature, of those holidays and their celebrations is irrelevant; it might easily be a nationwide celebration (Italian Republic Day) or a military parade (the French Bastille Day). What is important is the process of reinterpretation of the past decisions and re-shaping the popular imaginary of the people.

The last type of people’s decisions is the cultural-product appropriation, by which the people imagines itself, its role and its qualities. We may find powerful cultural products of all sorts – be it a piece of literature (Kyrgyz epos of *Manas*), a song (Italian *Bella ciao*), a map (as explained by Anderson (2006, pp. 176–78) in the example of Indonesia) or even a piece of legislation (the US Constitution). The nature or form of the cultural product may vary; what matters is the appropriation of it by the people who imagines itself through it. Therefore, it does not matter if, for example, most Americans have never read the US Constitution, as long as they consider it to be an expression of the identity of the American people. In other words, the *real* content of the US Constitution and its normative power has nothing to do with the popular imaginary, and there is no point in analysing it when looking for the popular identity of the American people. What

⁷For the examples of the restrictions and barriers for the African-American voters in the US at the beginning of the twentieth century, see African American Pamphlet Collection 190?.

matters is the perception of the US Constitution by the American people and its understanding of how the US Constitution articulates its nature, role, values and so on.

So far, I have been discussing the people's decisions but not by whom and how they are made. According to Luhmann (2018, p. 35), the continuation *autopoiesis* of an organisational system is ensured by its structure, which makes decision-making possible by reducing the infinite number of possibilities. However, to think about the organisational structure, rather mundane questions – already mentioned above – will do: Who makes the decisions? How are the decisions made? The integrative theory of Rudolf Smend⁸ might be very well adapted and applied to our understanding of organisational systems, as his integration processes are similar to our inner-organisational operations that bring together various particularities – that is, integrate them into a manifested unity of decisions. In other words, when Smend speaks about the personal, procedural and value elements that foster the integration through external manifestation, this is close to the systemic communication in our case. Therefore, the personal and procedural elements might be the answer to the questions: *Who makes the decisions?* and *How are the decisions made?* Nevertheless, the decisions are not unconnected, ignorant to each other; quite the opposite: 'every operation has to presuppose recursion to and anticipation of other operations' (Luhmann 2018, p. 31). Therefore, a third group of elements of the organisational structure is needed, the value elements, which establish the connectivity between the individual decisions, express the meaning of one decision to another, the motives and consensuses of the organisational system (Luhmann 2018, p. 66ff).

Therefore, to think about the organisation's decisions means to think about the organisational structure that enables them and, consequently, about an overarching link connecting particular integrative elements that serve as focal points for the organisational structure. However, such a link is not a single relation between two elements of an organisational structure but rather a bundle of such relations (Lévi-Strauss 1963, p. 211).

1.1 Personal elements

'The will of the people can manifest itself only through individual personalities and in individual personalities; only there can its multitude of inherent possibilities take concrete form and can it become an acting will' (Kaufmann 2000, p. 198). In other words, the popular imaginary of the people is articulated, and the decisions are made by its personal elements. Therefore, taking into account the possible people's decisions, the popular imaginary is articulated by:

1. political parties, politicians and *ad hoc* revolutionaries;
2. intelligentsia and its organisations:
 - a. traditional intelligentsia (scholars, priests, etc.);
 - b. organic intelligentsia (trade unionists, civil society leaders, etc.).

The political parties and politicians are vital for any articulation and shaping of the popular imaginary (Smith 2003, pp. 4–5). They play a central role in electoral decisions, within which they set up the topics and tone of the electoral campaigns, and in the public holiday celebrations, as they articulate the popular memory and forgetting. They (re-)interpret the past decisions and their significance and meaning for the contemporaneity. Smith gives an example of Kyrgyzstan president Akayev and his use of the epos *Manas* to create Kyrgyz people (Smith 2003, pp. 5–7). The *ad hoc* revolutionaries articulate the popular imaginary through revolutionary decisions, in a similar manner to how politicians do in the case of electoral decisions and referenda. They articulate the popular imaginary of various social demands, dissatisfaction with the current status quo and the longing for change – for a 'proper' representation of the popular imaginary and of the people itself.

⁸In English, see (Landecker 1950).

The intelligentsia are those who interpret the world to the people (Mannheim 1954, p. 9) and remain ‘remote from everyday political battles’ (Mannheim 1954, p. 10). Or better said, taking into account our context, those who interpret the nature of the people to the people itself, while remaining out of everyday politics. It consists of intellectuals by trade – such as scholars, teachers, scientists, priests, magicians, professional experts, journalists etc. – the traditional intelligentsia (Gramsci 1992, p. 5); and those whom Antonio Gramsci (1992, p. 5) called organic intelligentsia – such as trade unionists, civil society leaders and students – who provide the people with a sense of ‘homogeneity and an awareness of its own function’ (Gramsci 1992, p. 5). However, it should be noted that I do not understand those groups in a class framework, as Gramsci did, but within the conceptual framework of the social systems theory.

The intelligentsia is involved in all types of people’s decisions; however, I shall add only a short example of the electoral decision of the Hungarian 2022 general election, during which the journalists and media, in general, were able to shape the popular imaginary of the Hungarian people in a very alarming way. They were able to present the ‘true’ nature of the Hungarian people and its ‘right’ personal elements. Consequently, not even the joint force of the whole opposition was able to challenge Prime Minister Orbán and stop him from (re)gaining a constitutional majority in parliament and, more importantly, from strengthening the conservative narrative of the Christian and exceptionalist nature of the Hungarian people.

1.2 Procedural elements

The purpose of the procedural elements is to ensure the (re)production of the organisational system of the people by regulating the decision-making process and limiting the infinite number of possible decisions; that is, to enable the personal elements to articulate the popular imaginary of the people. Consequently, what we are looking for are the means that allow the people to engage in a collective popular imaginary and to participate in the communication that leads to the articulation of the imaginary by personal elements. Such collective communication requires not only a common language but also an awareness of the social context – that is, an understanding the social facts as information (Luhmann 1995, p. 205).

The common language is, quite understandably, an absolute necessity for the people to engage in any form of popular imaginary (Anderson 2006, pp. 81–82) and to create a collective identity (Caviedes 2003, p. 250). In other words, ‘[m]uch the most important thing about language is its capacity for generating imagined communities [...]’ (Anderson 2006, p. 133).

However, the common language on its own is not sufficient to enable the popular imaginary to be articulated by the people’s decisions, as social reality ought to be understood not only as a factual context but also as an informational one. It is – simply put – not enough to know the language common to the people to be able to participate in its popular imaginary; social context awareness is necessary as well. However, if the language is easy to learn, social context awareness can be acquired only by living within the social space of the political people in question. The reason is that awareness is built continuously throughout the whole life of every individual member of the political people, but the core of it is acquired during institutionalised education. It is precisely during this time – especially during secondary education – that we acquire the awareness of the informational value of our social reality – of course, not only concerning the popular imaginary.⁹ It is particularly during secondary education that we get involved in the process of popular memory and popular forgetting, a process having such a tremendous impact on

⁹Here we encounter one of the most probable reasons for the existence of the excluded communities – that is, communities not being part of the people. When we segregate some communities outside of the education system – either by denying them the right to education at all or by creating special schools for them – we cast them outside of the process of the popular imaginary as has happened with the African-American community in the US, Indigenous communities in Australia or Canada, or with the Roma community in Czechia.

the formation of the narratives of the popular identity (French 1995, p. 9). This is a process that is neither entirely spontaneous nor under the control of the state machinery (Anderson 2006, pp. 201–203), yet is inherent to any imagined community as it interprets the social facts and gives them their informational value.

1.3 Value elements

The value elements of the people determine which decisions will be remembered and connected into a series of decisions, and which will be forgotten. To simplify the vast complexity of social reality, I shall follow Smith's (2003, p. 60ff) categories of people's narratives – that is, a group of value elements:

1. economic narratives,
2. political power narratives,
3. ethically constructive narratives.

1.3.1 Economic narratives

Smith's understanding of economic narratives is limited to the people's notion that belonging to one people brings economic benefits to its membership (Smith 2003, p. 60); however, I argue that all economic-related values should be included, as the economic system is one of the dominant social forms shaping modern social imaginary (Taylor 2004, p. 69). Economic narratives bring us to the paradox of an individuals-only imagined social space (Taylor 2004, p. 76) that leads to a collective popular imaginary. However, even though the values of economic narratives transform the social space into the economic relations of individuals, they are still sources of collective imaginary, as 'the ambition to transform what is lived just *an sich* into something assumed *für sich*, to use the Hegel-Marx terminology, is ever-recurring' (Taylor 2004, p. 81, emphasis original). That is, even the value of private profit – probably the most individualistic economic value we can ever imagine – has its collective imaginary potential, as it can stimulate popular imaginary of either admiration or resentment to those acquiring it, the former based on the illusion of individual merits, the latter on prioritisation of private profit over wider societal benefits.

The best example of a popular imaginary based on economic narratives is the EU people. However, as we all know, there is no EU people, since no economic narrative is strong enough on its own to stimulate the popular imaginary and build the notion of a collective identity.

1.3.2 Political power narratives

The most widespread narratives of all the peoples within modern democracies are, without a doubt, political power narratives, built on a belief that the existence of the people ensures that everyone can participate in the exercise of political power. Nevertheless, even though the mere existence of the people is a manifestation of the majoritarian principle of the people's rule, it does not automatically mean the political power narratives are always the core value elements of every people. We can still find examples of peoples who are reserved, or even hostile, to the idea of 'power to the people' and who consider the collective nature of the people as dangerous or undemocratic – or simply 'populist' – and preferring ethically constitutive narratives.

1.3.3 Ethically constitutive narratives

Ethically constitutive narratives are those claiming that the people is based on some primordial qualities – such as culture, religion, ethnicity, race, language, history, or gender – and that those qualities are constitutive of the very existence of the people or that their experiencing is

constitutive (Smith 2003, p. 64). Examples might be not only the ‘standard’ ethnically based peoples but also the religious-based people of Israel. Other examples might be current Poland and Hungary, where we can see the building of a (particular vision of) Christian-religion-based narrative of the people. Moreover, in the EU, we might see the tendency to promote a narrative of a European people based on the ‘European way of life’ – that is, putting aside language and ethnicity and promoting some shared values of how we in Europe live (whatever that might actually be).

Ethically constitutive narratives demonstrate a very interesting aspect of the popular identity – even though it is constituted by the popular imaginary and not by any pre-existing quality, the imaginary itself might be based on the understanding of the people as being constituted by exactly those pre-existing qualities; which is, in the end, an ultimate power of the imaginary: being able to create our identity through an experience that denies any relevance to our experiencing of it.

2 Ukrainian people-building

In the first part of this article, I discussed the concept of the people from the social systems theory point of view – that is, who is the people and how it is constituted. I have said that the people is an imagined community that can be analysed only through its decisions and, subsequently, the study of its organisational structure. Moreover, I have also said that the people is an autopoietic organisational system, which means that it is (re)produced only by its very own processes – its own popular imaginary. Nevertheless, it might create the impression that I am claiming the people is free of any influence from its environment and that its nature is not affected by it, which could scarcely be an idea as any organisational system is affected by its own environment and other organisational systems. In the case of the people, the organisational system that exerts the strongest influence over the popular imaginary and its articulation is, without a doubt, the organisational system of the state. Moreover, the relationship between the people and the state is also important to democratic legitimacy, as it is precisely the nature of this relationship that gives any democratic régime its legitimacy (alongside the other source, which is the rule of law).

In this part, therefore, I shall put the theoretical vision of the people into a very practical, one could say ‘real-world’, context. I shall discuss how the Ukrainian state influences various elements of the organisational structure of the Ukrainian people; namely, how it uses its official-language policies to incentivise the transformation of the multilingual nature of the Ukrainian people into a Ukrainian-language-only identity and, subsequently, to affect the personal elements of the Ukrainian people excluding the Russian-speaking ones.

2.1 State language: integration or exclusion?

I am fully aware that any paper discussing the ‘de-Russification’ in Ukraine during the current Russian aggression against the country is skating on very thin ice. However, the long-term efforts of the Ukrainian state to shape the Ukrainian popular imaginary and to shape the popular identity of the Ukrainian people are a perfectly fitting example of the people-building process incentivised by the state.

As I have said already, no democratic state can exist without its people and, therefore, it is only natural that every single democratic state has an innate interest in ensuring that not only does such a people exist but, more importantly, that such a people is vital, cohesive and has a healthy relationship with the state. In other words, every state tries to influence the nature of its people and supports its inner stability. Ukraine is no exception.

When talking about Ukraine, it is vital to understand the highly multi-ethnic and multilingual nature of its population and, more importantly, the fact that these two groups do not necessarily overlap. That is, for various reasons, there are Ukrainian-speaking Ukrainians and Russian-speaking Ukrainians. As shown in Table 1, ethnic Russians make up less than one-fifth of the

Table 1. Ethnicity and mother tongue in Ukraine

	Ethnicity (per cent)	Mother tongue (per cent)
Ukrainian	77.8	67.5
Russian	17.3	29.6

Data source: 2001 Ukrainian Census. Available online at: <https://2001.ukrcensus.gov.ua/eng/results/general>. (Accessed June 2022).

population in Ukraine, but almost one-third of the population speaks Russian as their mother tongue. Consequently, language(s) is not only a vital procedural element that can potentially unite or divide the Ukrainian people but also a powerful tool of the state to influence the nature of the people as an organisational system. A tool that has been used in various ways – to promote linguistic plurality or one-language dominance – by both the Soviet state and the Ukrainian state. Nevertheless, even though it is natural, legitimate and – in the Ukrainian case – understandable that the Ukrainian state uses its language policies to overcome the Soviet-era domination of the Russian language in public life, two points should be noted regarding the Ukrainian people-building based on the Ukrainian language.

First, as I have just said, it is natural and legitimate that the state tries to shape its political people. This is, after all, the whole point of the structural coupling between the organisational systems of the state and the people. Consequently, there is no reason why language policies should not be considered a valid way to consolidate or re-shape the political people,¹⁰ as articulated, for example, by the Venice Commission Opinion No. 960/2019, §30:

‘It is a legitimate and commendable aim for States to promote the strengthening of the State language and its command by all citizens, and to take action for its learning by all, as a way to address existing inequalities and to facilitate more effective integration of persons belonging to national minorities into society.’

However, such people-building via the promotion of the state language must, in the end, be inclusive. In other words, the state, by promoting one state language, should facilitate easier integration of various groups within the society and their inter-group communication, and boost the participation of various groups in public life and the popular imaginary. However, at the same time, such a promotion should not lead to the exclusion of some groups of society – for example, through insistence on the state language in situations when its proficiency is extremely low within some groups or territories of the state. Similarly, the promotion of the state language should not intertwine the state language with ethnic identity to force ethnicity as a value element of the people built around the common language.

The second point closely follows the first one. State policies affecting the popular imaginary should focus on the promotion of the state language as a common medium of communication and integration – not as a vanguard of a broader set of values.¹¹ Shifting our attention back to Ukraine, it would be highly unfortunate to understand the Ukrainian language, and its promotion as a state language, as a symbol of Ukrainian resistance to Russian imperialism. The state language, if it is supposed to be an inclusive factor, must remain strictly a procedural element and not a value one. That is, when we link the Ukrainian language with democratic sentiments and human rights adherence, we are, inevitably, linking the language with its

¹⁰For various perspectives on the interrelation between language, people and state-building, see, for example, (Safran 1992) and (Wright 2012).

¹¹Caviedes (2003, p. 252) speaks in this context of a ‘language planning’, through which the state aims to facilitate the communication within the society and warns of the potential risks of exclusion of some groups from the job market, access to justice, exercising of some rights etc.

speakers and are shifting the language-based Ukrainian people into the ethnicity-based Ukrainian people where the language is only one of the symbols of the ethnicity. Moreover, when taking into consideration the Ukrainian situation, connecting the state language with the above-mentioned values going beyond common communication and integration, effectively means denouncing Russian speakers as ‘the other’ – that is, as anti-democratic and pro-Russian. This, especially in the time of war (which has been present in Ukraine in various forms since 2014), excludes Russian speakers from the Ukrainian people, even though the vast majority of them supported Ukrainian independence in the 1991 Referendum – the population of all regions in Ukraine was in favour of independence, including the regions of Russian-speaking majorities: Luhansk Oblast (83.85 per cent), Donetsk Oblast (83.90 per cent), Sevastopol City (57.07 per cent) and the Crimean Autonomous Republic (54.19 per cent).¹²

Consequently, if the state is to be considered democratic, it must respect the plurality within society, including the plurality of the popular imaginaries. The state language policies cannot aim to shape the people upon the ethnic principle of exclusivity; it cannot promote one ‘true’ version of the people that does not tolerate any alternatives and leaves some parts of the society outside of the people – excluded from the possibility to participate in the public life of the society, in the popular imaginary of the people.

The Constitution of Ukraine accents very well those potential risks of people-building through the language policies in Article 10, which states the Ukrainian language is the only state language of Ukraine but, at the same time, it guarantees the protection, free usage and development of minority languages, with the Russian language being expressly named.¹³ However, as interpreted by the Constitutional Court of Ukraine in its Decisions No. 10-pn/99 of 14 December 1999 (Case No. 1-6/99), the free usage of other languages can be limited by statutory legislation and, more importantly, they can be used only alongside the Ukrainian language, as the Ukrainian language is ‘a mandatory mean of communication throughout the territory of Ukraine in the exercise of the powers of both the state and local authorities [...] as well as in other public spheres of the social life as determined by the statutory legislation’.¹⁴ Such an interpretation was heavily criticised by Justice Oleksandr Myronenko in his dissenting opinion to the judgment as being not only overly legal-positivist but also contradictory to the text and spirit of the Ukrainian Constitution.¹⁵ As Justice Myronenko argued, the Constitutional Court should never have heard the case as the necessity of interpretation of Article 10 of the Ukrainian Constitution was baseless. Even if Article 10 had been truly disregarded by some local authorities or educational institutions, as argued by the plaintiffs, it was not the role of the Constitutional Court to step in and enforce the Constitution, but of the Prosecutor General or the ‘ordinary’ court system.¹⁶ In fact, the Constitutional Court adopted a very particular ideological vision of the Ukrainian language by prescribing – in contradiction to the Ukrainian Constitution itself – the use of the Ukrainian language not only as the primary communication tool of the state but of all public life. In other words, the Constitutional Court aimed to enforce the linguistic hegemony of the Ukrainian

¹²TsDAVO of Ukraine, F.1, Op. 38, Case 144, Ark. 6 of December 1, 1991. Available online at https://old.archives.gov.ua/Sections/15r-V_Ref/index.php?11.

¹³The Constitution of Ukraine follows earlier Declaration of State Sovereignty of Ukraine of 16 July 1990, in which the people of Ukraine were expressly defined as comprising of citizens of all nationalities (Article II, par. 1), and all the nationalities living in Ukraine were guaranteed the right to free national and cultural development (Art. VIII, par. 1), with the Ukrainian nation and language being guaranteed full national and cultural recovery – but not supremacy or exclusivity (Article VIII., par. 2). See, official translation in English at https://static.rada.gov.ua/site/postanova_eng/Declaration_of_State_Sovereignty_of_Ukraine_rev1.htm.

¹⁴Constitutional Court of Ukraine, Decision No. 10-pn/99 of 14 December 1999, Case No. 1-6/99, par. 1 of the Decision.

¹⁵Dissenting Opinion to the Decision No. 10-pn/99 of the Constitutional Court of Ukraine, par. 1.

¹⁶Interestingly, only a year before the 1999 Decision, the Constitutional Court rejected a petition based on similar grounds in the case concerning the Advertisement Act and Printed Media Act as groundless. See, Decision of the Constitutional Court of Ukraine No.36-u/98 of 10 July 1998, Case No. 2-25/98.

language in the whole public life of Ukrainian society even when no state (or local) authority is involved. Such an interpretation of the state language is deeply problematic in any democratic society, as it imposes the state language over any non-private activities – such as public meetings or demonstrations – and activities of non-state organisations (and even organisations that ought to be independent of the state) such as media, trade unions, political parties, educational institutions or religious organisations. It goes without further explanation that such extensive interpretation of the state language makes the existence of a civil society independent of the state authorities impossible. Moreover, it also severely limits the plurality of the popular imaginary, as it aims to promote linguistically based people which – particularly in the context of the European nation-states, and especially in multiethnic and multilingual Ukrainian society – is nothing more than a promotion of ethnically based people.

The promotion of adequate knowledge of the Ukrainian language throughout the society, as set out, for example, by the 1993 State National Programme ‘Education’ (‘21st Century Ukraine’),¹⁷ the 2002 National Doctrine of Education Development¹⁸ or the 2013 National Strategy for Development of Education in Ukraine for the period until 2021¹⁹ – is only understandable from the Ukrainian state’s point of view, as a way to develop a common means of communication and understanding that could over time replace the Russian language dominating in the public discourse. Moreover, all of the above-mentioned education strategies and policies enabled education to be carried out in minority languages as long as a proper education of the Ukrainian language was guaranteed – a point which must be interpreted in the light of the Constitutional Court interpretation of the Article 10 of the Ukrainian Constitution, according to which the use of Ukrainian language is mandatory at all levels of education, including pre-school, and other languages might be used only alongside it.²⁰

If, on the one hand, the promotion of the Ukrainian language through education might be a potentially inclusive move, beneficial, among others, to the democratic processes within Ukrainian society, the aim of the Ukrainian state to establish the Ukrainian language as an exclusive and mandatory language of public life in general is, on the other hand, a dangerous way to exclude non-Ukrainian speakers from the public life and to alienate them from the Ukrainian state and its (democratic) values. Nevertheless, it must be noted that, notwithstanding the actions of the state to promote the Ukrainian language as the exclusive language not only of the state but of public life in its entirety, the Russian language remained widely used throughout Ukrainian society, as reflected in the 2014 report of the Committee of Experts on the European Charter for Regional or Minority Rights.²¹ The widespread use of the Russian language in the public life of Ukrainian society – even by those commanding the Ukrainian language as a mother tongue – is also one of the reasons why the Ukrainian state has always perceived this question as a matter of Ukraine’s sovereignty, national security or the survival of the Ukrainian nation, and tried to ‘legalise’ it, as is obvious from, among others, the 2010 Conception of the State Language Policy²²:

‘Despite the declaration of the state status of the Ukrainian language, the analysis of the language situation in the country indicates the existence of political speculations regarding its use, which is contrary to the interests of Ukraine’s national security and endangers its sovereignty. To eliminate such a threat, it is necessary to expand the scope of the Ukrainian language, to stimulate the formation and protection of the national language-cultural and language-informational space. The state must ensure the unconditional implementation of

¹⁷Resolution of the Cabinet of Ministers No. 896 of 3 November 1993.

¹⁸Decree of the President of Ukraine No. 347/2002 of 17 April 2002.

¹⁹Decree of the President of Ukraine No. 344/2013 of 25 June 2013.

²⁰See par. 2 of the Decision No. 10-pn/99 of the Constitutional Court of Ukraine.

²¹Report of the Committee of Experts on the European Charter for Regional or Minority Rights, 15 January 2014, ECRML (2014) 3, pp. 153–62.

²²Decree of the President of Ukraine No. 161/2010 of 15 February 2010.

the constitutional norm on the comprehensive development and functioning of the Ukrainian language in all spheres of public life throughout the territory of Ukraine.²³

While the Ukrainian language and ethnic revival at the expense of language and national minorities in Ukraine is highly problematic on its own, an even greater danger lies in confusing such revival with state interests, as demonstrated by the quote from the 2010 Conception of the State Language Policy, making Ukraine the state of Ukrainian speakers and, consequently, the usage of other languages in public life un-Ukrainian, and their speakers behaving against the interests of the Ukrainian state and Ukrainian society. The danger of such imaginary increased manifold and gained new dimensions of toxicity after the 2014 Maidan Revolution and the subsequent illegal annexation of Crimea and military incursion into eastern Ukrainian regions by Russia. Since then, the Russian language has come to be seen as the language of invaders and, thus, associated with anti-patriotic and treacherous sentiments – pushing this part of the Ukrainian society either out of public life and the imagined community of the Ukrainian people or ‘de-Russifying’ it.

The Ukrainian state, unfortunately, not only tolerates the depiction of the Russian language as a sign of disloyalty in a time of war but also actively promotes it.

In 2019, the new Law on Supporting the Functioning of the Ukrainian Language as the State Language (hereinafter referred to as ‘Ukrainian Language Act’)²⁴ continued the state’s efforts to promote the Ukrainian language in all spheres of public life as an exclusive means of communication. However, in the light of possible EU accession talks and the much needed European support, it included notable exceptions for English and other official languages of the European Union, and languages of the indigenous peoples of Ukraine – Crimean Tatar, Krimchak and Karaite.²⁵ It is not without interest that the Russian language (or any other national minority language) is never listed within those exceptions, effectively creating a discriminatory hierarchy of languages – with Ukrainian at the top, followed by the official languages of the EU, the languages of indigenous people and, at the bottom, the languages of national minorities. Furthermore, even though the Ukrainian Language Act regulates the use of national minority and indigenous languages, none of these groups were consulted during the preparation of the law.²⁶ This only demonstrates that the Ukrainian state understands the state language policies not as a way to promote inclusion and communication, but as a tool of Ukrainian language dominance.

Through this law, the Ukrainian state is trying to shape the popular imaginary of future generations by restricting the education at the schools – both public and private – to the Ukrainian language (Article 21);²⁷ by prescribing that at least 50 per cent of all books offered in any bookshop ought to be in Ukrainian (Article 26(2)); and that all scientific publications ought to be in Ukrainian, with some exceptions given to English and other EU official languages (Article 22). It also regulates any articulation of the popular imaginary by the intelligentsia, particularly journalists and scholars, by imposing a quota requiring that 90 per cent of content broadcast by national television or radio companies (including the private ones) be in Ukrainian (Article 24),²⁸ and by prescribing that all

²³Part one, par. 2 of the Decree of the President of Ukraine No. 161/2010 of 15 February 2010.

²⁴Law No. 2704-VIII, 25 April 2019, BVR 2019 No. 21, Art. 81. Official English translation: <https://zakon.rada.gov.ua/laws/show/en/2704-19#Text>.

²⁵Concerning the indigenous people of Ukraine, see, Article 1 (2) of the Law on the Indigenous People of Ukraine, No. 1616-IX, 1 July 2021, BVR 2021 No. 38, Art. 319.

²⁶See, Venice Commission Opinion on the Law on Supporting the Functioning of the Ukrainian Language as the State Language, CDL-AD(2019)032, 9 December 2019, §27.

²⁷Teaching in the languages of national minorities is allowed at the preschool and primary school level, within separate classes and alongside teaching in the Ukrainian language only. For more on the negative impact of the Ukrainian language policies in the education sector, see, (Fiala-Butora 2020) on Law on Education No. 2145-VIII, 5 September 2017.

²⁸More detail on language requirements in media, see, Articles 40 of the Law on Media, No. 2849-IX, 13 December 2022, BVR 2023 No. 3, Art. 205.

print media must either be in Ukrainian or have a Ukrainian translation of the same size, format and substance as the original version (Article 25). Moreover, the non-Russian intelligentsia is effectively cast out of society by the requirement of Ukrainian language proficiency in a wide range of professions, including, among others, all deputies of local councils and self-governing bodies, lawyers and notaries, education and academic workers and officials of all state and community-owned enterprises.²⁹ All of this severely restricts Russian speakers' access to public life, communication, the experience of the people and the expression of the popular imaginary.

Moreover, the Ukrainian Language Act prescribes the use of the Ukrainian language within electoral campaigns. For example, all leaflets distributed by the political parties must be in Ukrainian, with the possibility of a side-by-side translation into other languages in specified regions (Article 18). This presents significant costs for the political parties targeting Russian-speaking voters and curtails their political rights.³⁰ Similarly, all internal regulations and decisions of the political parties must be in Ukrainian (Articles 37 and 38), thereby restricting the active participation of Russian speakers unless they also have sufficient command of the Ukrainian language.

The Ukrainian Language Act was challenged as unconstitutional by fifty-one Ukrainian MPs in 2019. The petitioners argued, among other things, that the law discriminates against the Russian-speaking minority by prioritising some non-state languages over others and by requiring Ukrainian language proficiency from persons standing for or applying to some offices, without clear justification for why those specific offices were included in the list. The Constitutional Court of Ukraine deemed the Ukrainian Language Act constitutional³¹ and, in its reasoning, followed its interpretation of Article 10 of the Ukrainian Constitution.³² It argued that the Ukrainian language, thanks to the nationalistic principle embedded in it, is a fundamental constitutional value of the Ukrainian constitutional identity, and that its task is to ensure unity and monolithicity of Ukrainian society.³³ It repeated the toxic equation between threatening the Ukrainian language and threatening the national security of Ukraine and defined the Ukrainian language as the 'code of the nation, and not just a means of communication'.³⁴ It portrayed the Ukrainian language as a tool of societal communication and integration, as a way to access the common goods by everyone, including the minorities. At the same time, however, it stressed the mandatory proficiency of the Ukrainian language by the members of the national minorities serves as a guarantee for the Ukrainian speakers that they can enjoy their right to freely use the state language in any area of public life throughout Ukraine. In other words, the mandatory usage of state language not only in the state–citizen/people communication but in every dimension of public life – such as a meeting of a hobby group in a local community centre – serves not the purpose of integration, but the protection of the Ukrainian-speaking majority against the possible need to speak with their fellow citizens and to care about their language.³⁵

The Constitutional Court defended the constitutionality of the Ukrainian State Language Act not only on the grounds of the interconnection between the Ukrainian language and the Ukrainian statehood but, also on the grounds of the subjective rights of every citizen to receive information (i.e. to communicate with others) in the state language.³⁶ Hence, the Constitutional Court defended the mandatory use of state language in all spheres of public life as a legal protection of the citizens not being forced to use any other language than the state one. The Court

²⁹Article 9 of the Law on Media.

³⁰For more detail analysis of this provision in light of the freedom of expression, see, §65 and §66 of the 2019 Venice Commission Opinion.

³¹Constitutional Court of Ukraine, Decision No. 1-r/2021 of 14 July 2021, Case No. 1-179/2019.

³²The Decision No. 10-pp/99 of the Constitutional Court of Ukraine.

³³The Decision No. 1-r/2021 of the Constitutional Court of Ukraine, par. 4.1.

³⁴*Ibid.*

³⁵*Ibid.*

³⁶The Decision No. 1-r/2021 of the Constitutional Court of Ukraine, par. 4.10.

went even further than the law itself by stating that even mere bilingualism in a public sphere – such as broadcasting in both Ukrainian and another language – constitutes a violation of the Constitution, as it violates the right of the citizen to receive information in the state language only and also narrows the communication space of the Ukrainian language, which shall inevitably lead into decay and distortion of the Ukrainian language.³⁷

However, the most disturbing argument of the Constitutional Court – if one may say so – was its refusal to review the claimed discrimination against the Russian-speaking minority on the grounds of its non-existence:

‘In the context of the issue raised in the constitutional submission, it is essential that the “Russian-speaking citizens” of Ukraine do not constitute a single-purpose social unit – such that a group of persons (circle of persons) has the right to legal protection as an ethnic or linguistic unit (group), but is a political construct, and not a legal category to which the regime of legal protection guaranteed by the relevant provisions of the Constitution of Ukraine and instruments of international law may apply. The phrase ‘Russian-speaking citizens’ is an expression from the sphere of political rhetoric that has passed into everyday use, but it lacks not only legal but also semantic certainty.’³⁸

The Constitutional Court used the linguistic plurality of the Ukrainian society and its members against them by stating that most of the citizens of Ukraine speak Russian and a significant part of those using mainly Russian language can also speak Ukrainian. Therefore, it argued, it is impossible to define who is the Russian-speaking minority and hence, it is not under the protection of the Constitution of Ukraine. In other words, the Court effectively denied the minority – or at least language – rights to nearly one-third of the population and cast it out of the constitutional order of Ukraine.

When considering all those restrictions on the usage of other languages, it is evident that the Ukrainian state is trying to affect both the procedural elements of the Ukrainian people – the common language(s) – but also its value and personal elements. That is, by linking the state language as a means of communication and integration with the Ukrainian ethnicity and with the Ukrainian state interests on the one hand, and curbing the growth of the Russian-speaking intelligentsia and political parties on the other. It deliberately links the Russian language with the anti-Ukrainian policies of the Russian Federation, making the Russian-speaking Ukrainian citizens traitors in all but name. This is evident, for example, in the 2022 Law on Media, which restricts the linguistic rights of those Ukrainian citizens who speak a language, which is an official language of the state that was declared an aggressor or occupant by the Ukrainian Parliament.³⁹ Another example is the Law on National Minorities (Communities) of Ukraine,⁴⁰ which, on the one hand, guarantees various minority rights (on education, use of their language etc.), but on the other hand, circumvents them by links to the restrictions set up by other laws, as discussed above. The Law on Minorities also prescribes a ‘pledge of loyalty’ from national minorities to:

‘Comply with the Constitution and laws of Ukraine, to defend the state sovereignty and territorial integrity of Ukraine, to respect the language, culture, traditions, customs, and religious identity of the Ukrainian nation and all national minorities (communities) and

³⁷Ibid.

³⁸The Decision No. 1-r/2021 of the Constitutional Court of Ukraine, par. 5.

³⁹Article 40 of the Law on Media.

⁴⁰Law on National Minorities (Communities) of Ukraine No. 2827-IX, 13 December 2022, as amended by Act No. 3389-IX, 21 September 2023.

indigenous people of Ukraine, as well as promote the integration of the national minority (community) into Ukrainian society.’⁴¹

The wording of this ‘pledge’ is highly unusual, as it more closely resembles an oath of allegiance taken within the process of naturalisation of foreigners into citizens than a requirement to respect the law by its own citizens. Moreover, it clearly defines Ukraine as the state of an ethnically based Ukrainian nation, with its language, culture and religion, and not the whole Ukrainian people living in Ukrainian lands for centuries, voting for Ukrainian independence in 1991, and fighting for it as we speak.

Such endeavours by the Ukrainian state are balancing it on edge (or probably even falling over it) of what is compatible with the democratic plurality of popular imaginaries.

3 Conclusion

Every democratic state must respect – or more precisely, enable – pluralism not only of ideas, political views or religious beliefs, but also of popular imaginaries. The hegemonic struggle of alternative understandings of the people is a *sine qua non* of any democratic society; without it, we are left with a totalised people that, inevitably, leaves some parts of society unrepresented, excluded from public life as their collective imaginaries are not recognised as legitimate agonistic alternatives. The agonistic nature of the relationship between the various popular imaginaries is vital, as Chantal Mouffe explains in *The Democratic Paradox*:

‘[...] I propose to distinguish between two forms of antagonism, antagonism proper—which takes place between enemies, that is, persons who have no common symbolic space—and what I call ‘agonism’, which is a different mode of manifestation of antagonism because it involves a relation not between enemies but between ‘adversaries’, adversaries being defined in a paradoxical way as ‘friendly enemies’, that is, persons who are friends because they share a common symbolic space but also enemies because they want to organise this common symbolic space in a different way’ (Mouffe 2009, p. 13).

However, a people built upon an ethically constitutive narrative of ethnicity is strictly antagonistic; it does not tolerate any alternative.

The Ukrainian state language policies, as I argue, constitute precisely such ethnically based understanding of the Ukrainian people, with the Ukrainian language as its signifier, which exclude all ethnic non-Ukrainians from the popular imaginary of the people and cast them out as minority outsiders who are allowed to remain within the state of Ukraine as long as they remain loyal to it, but without any participation on the shaping of the nature of the Ukrainian people and, consequently, the Ukrainian state. My claim is that even though the promotion of a single state language is a legitimate tool of the state to make the integration of various groups into a single self-governed people possible, it must remain strictly on the procedural level. That is, the state language must always remain only a tool facilitating state–citizen/people communication and never be a carrier of values as those would inevitably be the values of the ethnic group using the language within the state as a mother tongue. Therefore, once the state promotes the state language as a manifestation of the values of an ethnic group, the integrative and inclusive nature of the state-language policies transforms into an exclusionary one – as is, unfortunately, the case in Ukraine, where such policies not only promote the Ukrainian language as a means of communication between the state and the people, but also deliberately target the Russian minority by hindering its ability to participate in the popular imaginary, or, more precisely, to imagine alternatives to the popular imaginary of the ethnically based Ukrainian people – justice of the

⁴¹Article 5.5 of the Law on Minorities.

Constitutional Court of Ukraine Myronenko even speaks about an aim ‘to artificially Ukrainise society by the means of legal coercion, unnatural, violent legal normalisation’.⁴²

However, the possibility of alternative popular imaginaries is essential to any democratic pluralism, to any democratic society, and to any state that is based upon democratic values. Of course, it is impossible to ignore the wide-ranging impact of the years-long war in Ukraine on the Ukrainian people and the Ukrainian state. However, not only do state language policies go way back to the 1990s and the formation of the independent state of Ukraine, but, more importantly, they aim to ‘normalise’ the linguistic situation in Ukraine by forcing the Russian speakers to use the Ukrainian language instead.⁴³ In other words, the Ukrainian state considers the usage of non-Ukrainian languages in public life – and Russian language in particular – as a problem that needs to be solved by coercive means⁴⁴, as ‘in the conditions of a market economy, the realities of an open society, a noticeable reduction in the population of the rural areas and the foreign linguistic and cultural expansion, the processes of de-Ukrainisation of the linguistic, cultural, and informational space are intensifying, which leads to a massive violation of the linguistic rights of Ukrainians’.⁴⁵

Consequently, the state language policies threaten to have severe consequences on, in particular, the Russian-language intelligentsia in Ukraine since the Russian language has, more or less, been pushed out of politics, science, education, media, public meetings and literature, which seriously hinder not only the viability of the Russian language as a means of public-life communication but also the social contextual awareness of the Russian-speaking minority in Ukraine.

In other words, there are some warning signs that the future of the Ukraine’s democratic transformation is at risk, and that winning the war might still mean losing democracy – to paraphrase the title of an article by Sergiy Panasyuk (2022) at IACL-AIDC Blog. The question is whether the state policies of promotion of the ethnically based Ukrainian people are mitigating those risks or increasing them. This article claims that, unfortunately, the latter is the answer. Even though we may hold sympathies with the Ukrainian national revival⁴⁶ and its struggle to remedy the Soviet-era Russification of the Ukrainian society⁴⁷ and make the Ukrainian language publicly spoken in Ukraine again, this does not change the exclusionary, discriminatory and undemocratic nature of the chosen methods. The Ukrainian language policies go way beyond the common regulation of the state language, which focuses mostly on the state–citizen and state–society communication, and regulate the public life of the Ukrainian society, from politics and civic movements to art, literature or education. They force a multilingual society into uniformity, pushing any non-Ukrainian imaginary into private lives.

Furthermore, considering the opening of EU accession talks with Ukraine, it is hard to imagine that the systemic exclusion of the Russian-speaking population from the public life in Ukrainian society will not pose a problem for Ukrainian accession to the EU. The EU not only stands on the values of equality and plurality, including linguistic pluralism⁴⁸, but also on the values of

⁴²Dissenting Opinion to the Decision No. 10-пн/99 of the Constitutional Court of Ukraine, par. 28.

⁴³See, for example, the Decree of the President of Ukraine No. 161/2010, part ‘Analysis of the Causes of the Language Problem and Justification of the Need to Solve it’.

⁴⁴Opposite opinion, warning against coercion in the linguistic matters of the society, can be found in the Separate Opinion of justice S. V. Sas to the Decision No. 1-r/2021 of the Constitutional Court of Ukraine, par. 3.

⁴⁵The Decree of the President of Ukraine No. 161/2010, part ‘Analysis of the Causes of the Language Problem and Justification of the Need to Solve it’. par. 4.

⁴⁶See, (Kuzio 1998) and (Brubaker 2011).

⁴⁷It should be noted that the practice of using the Russian language as a political tool to centralise power and diminish (linguistic/ethnic) minorities did not stop with the fall of the Soviet Union but continues in Russian Federation even today. See, for example, (Kraeva and Guermanova 2020; Krouglov 2021).

⁴⁸See, for example, the Article 2 of the Treaty on European Union, the Article 21(1) of the Charter of Fundamental Rights of the European Union prohibiting non-discrimination based on language or ethnic origin, the European Parliament Resolution of 7 February 2018 on protection and non-discrimination with regard to minorities in the EU Member States (2017/2937(RSP)) and the European Parliament resolution of 17 December 2020 on the European Citizens’ Initiative ‘Minority SafePack – one million signatures for diversity in Europe’ (2020/2846(RSP)).

democracy and inclusion.⁴⁹ Moreover, the heavy market regulation regarding, in particular, the publication of books and journals or television broadcasting in languages other than Ukrainian or EU official languages, is incompatible with the EU's internal market and its social market economy. Unfortunately, the long-term view of the Ukrainian state authorities seems to ignore the negative impact of its language policies on Ukrainian society and democracy as indicated by the Law on the Ratification of the European Charter of Regional or Minority Languages, in which Ukrainian state language policies are expressly described as not to be considered as those 'that hinder or create a threat to the preservation or development of languages' protected by the Charter of Regional or Minority Languages.⁵⁰ In other words, the end justifies the means.

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⁴⁹See, for example, Article 2 and 3 of the Treaty on European Union.

⁵⁰Article 5 of the Law on Ratification of the European Charter of Regional or Minority Languages No. 802-IV, 15 May 2003, VVR 2003 No. 30, Article 259.

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