A brief comment on: Bill Bowring, "Law in a Linguistic Battlefield" (Language & Law, vol. 1, 2012)

Michael Moser *Vienna – Munich – Piliscsaba*

In his interesting article in *Language and Law* (vol. 1, 2012) Bill Bowring, a Professor of Law from Birkbeck College at the University of London and one of the leading experts on Ukrainian language legislation, presented several theses, particularly with regard to the Ukrainian *"Law of the Ukrainian Soviet Socialist Republic on Languages in the Ukrainian Soviet Socialist Republic" from* 1989. Although this law has recently been replaced with the "Law On Principles of the State Language Policy", [1] Professor Bowring's article requires some comments. On the one hand, some of his statements are very strong, and their implications extend far beyond the language law from 1989. On the other hand, his claims, most of which have in fact been put forward before, [2] do not seem to be quite correct.

For instance, according to Bill Bowring, the preamble to the above-mentioned law reads, "The Ukrainian language is one of the important factors of the national authenticity of the Ukrainian people". As Bowring argues,

> *"The second paragraph of the Preamble contains a phrase not often used in a legal context, 'National authenticity'. This formulation directly contradicts the first sentence of the preamble of the Constitution, which refers to 'the Ukrainian people – citizens of Ukraine of all nationalities'. The preamble to the 1989 Law therefore refers only to a part of the 'Ukrainian people' as defined in the Constitution. As to the reference to 'authenticity', this is 'samobytnost' both in Ukrainian and in Russian."*

Although the author is perfectly aware of the fact that his criticism is directly linked with a problem of translation and argues that, "In my view, 'authenticity' is a better translation than the usual 'originality'", one should note that Bill Bowring's criticism is not justified for the simple fact that the translation is wrong: As confirmed by Ukrainian dictionaries, Ukrainian *samobutnist'*/*самобутність* focuses on the original or independent character of something or somebody and not at all on "authenticity", [3] and the same holds, by the way, for Russian *samobytnost'*/*самобытность*. Professor Bowring's further argument that "the use of this term is also highly questionable politically, since it

DOI: 10.14762/jll.2013.019

tends to essentialise both ethnic Ukrainians and the Ukrainian language" is thus very questionable, too, as is his conclusion that "it also places an extraordinary burden on the preservation of the Ukrainian language".

The following polemics seems to be even less in place:

> *"Of course, the parlous state of the Irish language makes Ireland no less independent. It has become an enthusiastic – often a leading – member of the EU (of which Irish is now one of the official languages). However, for those who believe that each nation must have its language, and that this language expresses the 'national authenticity (samobytnost)' of the nation (as in the Preamble to the 1989 Law 'On languages of the Ukrainian SSR'), the Irish example gives real cause for concern".*

First, this remark has in fact little to do with the true content of the preamble of the language law from 1989, as emphasized above. Second, it is not easy to understand why precisely Ireland should serve as a role model for Ukraine in terms of language politics. The fact that Ireland is a wonderful country does not change the disastrous situation of the Irish Gaelic language.

In the same vein, Professor Bowring argues with regard to the third paragraph of the preamble of the 1989 language law that

> *"the development of the spiritual creative forces of citizens of Ukraine of all nationalities cannot be supported by vesting just one language with the status of the state language."*

This, however, is barely more than an expression of Bowring's personal views as long as the non-state languages of a country are protected by the law (and precisely this has been the case in Ukraine even based on the 1989 law). How Professor Bowring came to the far-reaching conclusion that "the third paragraph of the Preamble also violates the Constitution, or it is self-contradictory" is thus not clear either.

One more problem concerns Professor Bowring's criticism of the fourth sentence of the Preamble of the law from 1989 stipulating that

> *"The development of the understanding of the social value of the Ukrainian language as the state language of the Ukrainian Soviet Socialist Republic and the Russian language as the language of the interethnic communication of peoples of the Union of Soviet Socialist Republics among citizens regardless of their national affiliation shall be the duty of the state, party and public bodies and mass media of the Republic. The choice of the language of the interpersonal communication among citizens of the Ukrainian Soviet Socialist Republic shall be an inalienable right of citizens themselves".*

DOI: 10.14762/jll.2013.019

The British law expert finds that "it is very hard to make any juridical sense" of this paragraph because it is in his view "not clear what is meant by the 'social value' of Ukrainian and Russian". Although one can immediately agree that the characterization of Russian as "the language of interethnic communication of peoples of the USSR" is in fact "hard to understand" in Ukraine in 2012, the fact that a state language does have a certain social value has been aptly described, e. g., by OSCE High Commissioner Knut Vollebaek in his "Assessment and Recommendations on National Minorities on the Draft Law 'On Languages in Ukraine' from 20 December 2010:

> *"The State language can be an effective tool in ensuring cohesion. Consequently, promoting the use of the State language constitutes a legitimate State interest. Moreover, knowledge of the State language is also beneficial to persons belonging to national minorities. Having a command of the State language increases the opportunities for effective participation in society at all levels" (paragraph 13). [4]*

A final problem – and it is a major one – concerns Professor Bowring's allegation that "article 3" of the 1989 law allegedly "deals with the 'use of languages of other nations' in Ukraine", that "this appears to assume that there are distinct 'nations' (on an ethnic basis) in Ukraine and that each has its own language", and that "such an assumption would contradict the Constitution and the international commitments of Ukraine". What is obvious from this statement is the fact that Professor Bowring did not study the original version of the law, but merely dealt with a bad translation (ibid.): In fact, the original version employs the word "національності" ("nationalities"), whilst the word "нація" ("nation") does not occur in this paragraph at all [!].

Apart from several other problems that shall not be addressed in this brief comment, Professor Bowring's article impressively demonstrates that any law expertise that is not based on an authentic version must remain questionable from the outset.

[1] This law entered into force on 10 August 2012, although it had received negative assessments not only by Ukrainian national institutions, but also by the Venice Commission and the OSCE High Commissioner. When the law was adopted in the Ukrainian Parliament between May and July 2012, several rules of the procedure were violated. See: Ukrainian American Bar Association Statement Regarding the Ukrainian Law "On the Principles of Language Policy". [In English and Ukrainian]. 06-07-2012. http://www.uaba.org/Resources/Documents/Blog Docs/12-07-06 UABA STATEMENT ON THE UKRAINIAN LAW ON THE PRINCIPLES OF NATIONAL LANGUAGE POLICY.pdf .

[2] See Bill Bowring: Language Policy in Ukraine – International Standards and Obligations, and Ukrainian Law and Legislation. In: Language Policy and Language Situation in Ukraine. Analysis and Recommendations. INTAS Project „Language Policy in Ukraine:

Anthropological, Linguistic and Further Perspectives“. Ed. by Juliane Besters-Dilger. Frankfurt am Main etc.: Peter Lang 2009: pp. 57–100).See also my review of the volume in Zeitschrift für Slawistik 55, 2010/3: pp. 369–372.

[3] See *Slovnyk ukrayins'koji movy*. Hol. red.: I. Bilodid. Vol. 9. Kyjiv 1978, p. 29.

[4] Assessment and Recommendations of the OSCE High Commissioner on National Minorities on the Draft Law "On Languages in Ukraine" (No. 1015-3). OSCE. The Hague. 20 December 2010. http://portal.rada.gov.ua/control/uk/publish/article/news_left?art_id=235755&cat_id=37486 .

DOI: 10.14762/jll.2013.019