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Human Rights Platform "Uspishna Varta"

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LANGUAGE POLICY AND MEDIA IN UKRAINE

Recommendations to the state of Ukraine

While supporting initiatives to improve the legal regulation of issues of state language policy, in order to develop and strengthen the status of the Ukrainian language as the state language, attention should also be paid to the need to improve existing legislation to ensure and respect the language rights of national minorities in Ukraine.

The solution of issues concerning improving the state language policy in Ukraine should be as balanced as possible. In particular, it is necessary to take into account the unacceptability of any decisions that may lead to a narrowing of the existing rights of national minorities, the exacerbation of contradictions in society on this basis, and the possible complication of interstate relations with other countries.

According to the findings of the European Commission for Democracy through Law (Venice Commission) dated December 11th 2017 in relation to the "language article" of the Law on Education, a less favourable attitude to the Russian language (and other languages that are not official languages of the European Union) in this law is not justified in terms of the principle of non-discrimination. The Commission concluded that, given the special place of the Russian language in Ukraine, its more limited use when compared with the official languages of the EU member states is clearly problematic. According to the commission, the historical factor and political context cannot justify a less favourable attitude to the Russian language in the legislation of Ukraine.

Law No. 2704-VIII, adopted on April 25th 2019, "On ensuring the functioning of the Ukrainian language as the state language" contains similar discriminatory norms and violates Ukraine's international obligations enshrined in the European Charter for Regional and Minority Languages (ratified in May 2003), the Framework Convention for the Protection of National minorities of 1995 (ratified by Ukraine in 1997), as well as the 2014 Association Agreement with the European Union and its member states, in which Ukraine also assumed to protect national minorities and their culture, identity and language diversity, as well as to develop intercultural dialogue.

In addition, the provisions of this law violate the International Covenant on Civil and Political Rights (Article 27), the European Convention on Human Rights (Article 14 "Prohibition of Discrimination"), and contradict the resolution of the Parliamentary Assembly of the Council of Europe (PACE) "Protecting and promoting the languages of national minorities in Europe",

adopted on January 23rd 2018. This resolution recommends that states refrain from enforcing restrictive legal and political measures, such as subtitle/translation obligations and mandatory quotas for programs in the state language, in the media sphere.

Thus, the new law does not ensure compliance with the key principles necessary for the implementation of international and constitutional obligations of the state. The entry into force of this law will lead to the disproportionate interference of the state in the existing rights of persons belonging to national minorities as a whole. In the media sphere, the law creates discriminatory practices and the unlawful interference of the state in the freedom of enterprise and self-regulation of the media.

In this regard, we recommend:

- Conduct a wide public discussion about the implementation of the new language law in the media sector with participants of the media market itself, representatives of relevant associations, as well as representatives of national minorities and all interested parties.

By making appropriate changes to the legislation:

- Mitigate the requirements for mandatory language quotas on the air of Ukrainian TV and radio organizations as being contrary to Ukraine's international obligations in the field of protection of the rights of national minorities, as well as freedom of speech and media.
- Abandon the requirements for compulsory language quotas for print media in Ukrainian and stimulate the development of the Ukrainian-language press by providing tax and other preferences to publishers.
- Stop the practice of blocking and restricting access to Russian online resources and social networks and concentrate on increasing the competitiveness of Ukrainian online content.
- The issue of language policy for online media outlets (including websites and social networks) is left to the discretion of the publications themselves, based on the editorial policy and audience of the media.

LANGUAGE POLICY AND MEDIA IN UKRAINE

1. Law of Ukraine No. 2494 on National Minorities in Ukraine from June 25th 1992 stipulates that the state guarantees the right to national and cultural autonomy for all national minorities, in particular to use and study in their native languages, develop national cultural traditions and use national symbols, celebrate national holidays, and practice their religions. However, during 2014-2019 the language policy of the state of Ukraine was aimed at placing artificial obstacles in front of the functioning of the Russian language, which is used by at least 49% of citizens. The restrictive measures taken by the government were justified by referring to the armed conflict in the Donbass and were discriminatory in relation to Russian-speaking citizens.

2. According to the 2001 census, 48.457 million people lived in Ukraine, representing more than 130 national minorities - speakers of 79 languages¹. The Ukrainian language was considered as native by 67.53% of the population of Ukraine. Ethnic Russians were the largest national minority living in Ukraine - 8.3 million people (17.3% of the population of Ukraine). 29.6% of Ukrainians said that their native language is the Russian language (15% of who are Ukrainians, 96% Russians, and 31% representatives of other ethnic communities). After 2001, a census was not conducted in Ukraine. Accordingly, there is no exact data for both the number of the population and its composition, including in the context of national minorities and the language situation. The State Statistics Service as of January 1st 2019 estimates the population of Ukraine at 42.153 million people. Various indirect indices (for example, the “bread index”)² indicate that the real population of Ukraine is about 20-25 million people.

3. According to a “Kantar TNS Online Track” poll from May 2019³, **most Ukrainians consider that Ukrainian is their native language and support its status as the only state language, although it is bilingual in everyday life.** Thus, for the majority of respondents, the Ukrainian language is their native language (63%), **while one third of respondents consider Russian to be their native language (35%).** At home and in the family circle, **approximately the same proportion of respondents usually communicate in Russian and Ukrainian (49% each).** The Ukrainian language dominates in the field of formal communication - in educational institutions (53%), while **Russian dominates in informal communication - with friends, acquaintances (52%), and on the Internet (56%).** It is expected that the Ukrainian language is more often used in the West and in the Center, as well as in small towns, while Russian is more common in the East and South, as well as in large cities.

4. Despite the fact that at least 35% of Ukrainians consider the Russian language to be native, **after the events of 2014 the state policy was focused on its targeted restriction and exclusion from the public sphere. Such measures were discriminatory in relation to Russian-speaking citizens of Ukraine and were justified by the leadership of the state as a factor of Russian aggression in the East of Ukraine and the situation with Crimea.**

5. In particular, **starting in 2014 Ukraine has also started to gradually displace the Russian language from the media sphere.** Between 2016 and 2017 mandatory language quotas for TV and radio were introduced, and Russian television channels, websites, and social networks were blocked. The new language law adopted in April 2019 (No. 2704-VIII) under the auspices of the

¹ <http://www.ukrcensus.gov.ua/>

² In 2016, Ukraine produced 112,300 tons of bakery products of all kinds. With a consumption rate of 44 kg per year, this amounts to 25.5 million people. In 2018, the consumption of the main types of bread fell by another 10%.

³ “Kantar TNS Online Track” is a project founded in 2014 at the initiative and funding of “Kantar Ukraine” for the monthly measurement and analysis of public opinion regarding the main events of Ukraine. The survey represents the urban population of Ukraine, which uses the Internet, aged 18-55 by gender, age, type of settlement, region (Internet penetration in this group is 84%). The sample size is 1000 respondents.

protection and development of the state language also introduces mandatory language quotas for print media, online media, and their pages on social networks. Such a governmental policy is not only discriminatory in relation to Russian-speaking Ukrainians, but also significantly limits the freedom of entrepreneurship and the development of the media sphere as a business. Until 2014, the language policy of the media sphere was not actually regulated by law. The relevant laws suggested that the media could be published both in the state language and in other languages⁴. The language issue in relation to the media was regulated at the discretion of the founders and editorial staff of the media, taking into account consumer demand.

6. **Since 2014, the state policy in Ukraine has been aimed at the systematic introduction of the Ukrainian language** in all spheres of public life, including in the field of media, through the introduction of mandatory language quotas. In addition, under slogans about the need to confront Russian propaganda, Russian media resources were blocked. Thus, in 2014, the National Council on Television and Radio Broadcasting banned the broadcasting of Russian television channels in Ukraine. During 2017-2018, by decree of President Petro Poroshenko, a number of popular Russian websites and social networks were blocked, including "Odnoklassniki" and "VKontakte".

7. On February 5th 2015, the Verkhovna Rada imposed a **ban on broadcasting films of the Russian Federation** produced after January 1st 2014⁵. Since the imperfection of the wording of the law allowed TV channels to circumvent the ban with the help of corrected documents on the date of production of the series or film, on March 29th 2016 the law was finalised. The ban also extended to works created and (or) first published (put on display) after January 1st 2014⁶. Assessing the adoption of this law, the OHCHR noted, "Although this measure is insignificant, it and other similar measures indicate a tendency to further restrict the free exchange of information"⁷.

⁴ Law of Ukraine "On the print media (press) in Ukraine", 1993, Article 5. "The print media in Ukraine is published in the state language, as well as in other languages". <https://zakon.rada.gov.ua/laws/show/2782-12>

The Law of Ukraine "On News Agencies", 1995, Article 3. "News agencies, in accordance with the legislation of Ukraine on languages, distribute their products in the state language, Russian, other regional or minority languages, as well as in other languages, adhering to generally recognized moral standards usage". (Article 3 as amended by Law No. 5029-VI from 03.07.2012) <https://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=74%2F95-%E2%F0&p=1217856518710949>

Law of Ukraine "On Television and Radio Broadcasting" <https://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=3759-12&p=1217856518710949>, from 1994 - until the amendment of 2016-2017.

⁵ Law of Ukraine No. 1317 "On Amending Certain Laws of Ukraine Concerning the Protection of the Information Television and Radio Space of Ukraine" http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=52781

⁶ Law of Ukraine No. 3359 "On Amending the Law of Ukraine 'On Cinematography' (regarding films of the aggressor state)" http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=56877

⁷ Report on the human rights situation in Ukraine, 16 February to 15 May 2016 (No. 14) http://www.ohchr.org/Documents/Countries/UA/Ukraine_14th_HRMMU_Report.pdf

8. **Mandatory language quotas for the media** were introduced in June 2016 by Law No. 1421-VIII⁸, which established that the national audio-visual product should be **at least 50% of the total broadcast volume of each broadcasting organisation**. This law introduced **language quotas for radio** concerning the share of songs in the Ukrainian language - at least 35% (for radio broadcasting under license in the official languages of the European Union - at least 25%). The quota for airing programs, including news and analytical segments and entertainment programs, in Ukrainian amounted to at least 60%. In addition to introducing language quotas, on May 17th 2016 the Parliament adopted another restrictive law - No. 2766⁹, designed to exclude the Russian audio-visual product from the European product quota on television and radio (except satellite broadcasting).

9. Law No. 2054-VIII from May 23rd 2017¹⁰ introduced **language quotas for television**: at least 75% of broadcasts in Ukrainian for national channels and at least 60% for local channels. For television and radio organisations broadcasting in the languages of the indigenous peoples of Ukraine, a preferential quota of the Ukrainian language was set at 30%.

10. The language policy of Ukraine, including the issue of introducing language quotas on TV and radio, and the law “On Education” (September 2017) was condemned by the *PACE resolution “Protection and development of regional or minority languages in Europe” from January 23rd In 2018*. The Assembly expressed concern that “some projects are aimed at reducing the current rights of national minorities”. PACE recommended that Ukraine “refrain from applying restrictive legal and political measures, such as subtitle/translation obligations and mandatory quotas for programs in the official language”.

11. A number of restrictive measures on the work of the media and free expression of opinions are also contained in draft laws submitted to the parliament in 2018, which are **aimed at actually banning the Russian language and culture in Ukraine**. Thus, against the backdrop of active anti-Russian rhetoric on the eve of the electoral campaign, on October 18th 2018 the parliament included **two more draft laws on the agenda that prohibit the promotion of the “Russian world” and the “imperial ideology of the aggressor state” in Ukraine** (draft laws No. 9139¹¹ and No. 9200¹², respectively). According to the lawyers of the “Uspishna Varta” human

⁸ Law No. 1421-VIII from 16.06.2016 <https://zakon.rada.gov.ua/laws/show/1421-19#n17>

⁹ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=54998

¹⁰ <https://zakon.rada.gov.ua/laws/show/2054-19#n14>

¹¹ Draft law No. 9139 On Introducing Amendments to the Law of Ukraine “On Condemning the Communist and National Socialist (Nazi) Totalitarian Regimes in Ukraine and Prohibiting the Propaganda of Their Symbols” (regarding the condemnation and prohibition of the “Russian world” in Ukraine. It was submitted to parliament on September 28th by deputies from the “Ukrop” party (Aleksandr Shevchenko). http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64706

¹² Draft law No. 9200 On Amending the Law of Ukraine “On Condemning the Communist and National Socialist (Nazi) Totalitarian Regimes in Ukraine and Prohibiting the Propaganda of Their Symbols” (regarding the condemnation and prohibition of the imperial ideology of the aggressor state in Ukraine. It was introduced to parliament on October 16th by deputies from the “Bloc of Petro Poroshenko” faction (Aleksandr Briginets, Refat Chubarov) and the “People’s Front” faction (Andrey Teteruk and Sergey Vysotsky). Refat Chubarov also, as we

rights platform, the adoption of these draft laws will pave the way for a groundless **ban on the use of the Russian language** and culture, as well as a ban on the Orthodox faith, citing alleged ideas of involvement and commitment to Russia, which contradicts the norms of the Constitution of Ukraine and international judicial practice¹³.

12. The so-called “**moratoriums on the Russian-language cultural product**” adopted by the regional councils in October-December 2018 in the *Lvov, Zhytomyr, Ternopol, Ivano-Frankovsk, and Volyn* regions have a negative impact on freedom of speech and opinion. According to the experts of “Uspishna Varta”, these moratoria contradict Article 10 of the Constitution of Ukraine and the Law on Culture. The initiative of the deputies does not have any legal basis and is, at maximum, of a recommendatory nature. Nevertheless, the regional councils not only recommend by their decision, but also plan to control their unconstitutional decision. For example, an interdepartmental working group is being set up in the Lvov region to carry out “explanatory work” concerning the specified moratorium.

13. The language issue became one of the key points of the electoral program of the then current President Petro Poroshenko during the 2019 election¹⁴. As part of this thesis, on the eve of the electoral campaign (in October 2018), the **draft law “On ensuring the functioning of Ukrainian as the state language”** (draft law 5670-d), which was called “**the law on total Ukrainisation**” by experts, was adopted at the first reading. The draft law was adopted at the second reading and signed by President Poroshenko immediately after his defeat in the presidential election and before the dissolution of parliament. According to experts, the adoption of this law was important for Poroshenko’s political campaign in the upcoming parliamentary election, which was originally supposed to be held in October 2019¹⁵.

14. The **new language law**, received after the adoption of Law No. 2704-VIII, **entered into force on July 16th 2019**¹⁶. The law stipulates the complete Ukrainisation of all spheres of state and public life, except interpersonal communication. Violations of the requirements of the law entail administrative liability in the form of fines. The law stipulates the establishment of the National Commission for State Language Standards, which will be engaged in the approval of language standards, spelling, and methods and procedures for checking the level of proficiency in the state language. The law also introduces the institution of an authorised representative for the protection of the state language, which is appointed by the government and ensures the

recall, is the chairman of the Mejlis of the Crimean Tatar people http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64796

¹³ <https://uspishna-varta.com/ru/novyny/zakonoproekty-po-zapretu-russkogo-mira-protivorechat-normam-nacionalnogo-i-mezhdunarodnogo-prava-yuristy>

¹⁴ The key slogan of the presidential campaign of Petro Poroshenko in 2019 was “Army. Language. Faith”.

¹⁵ After the dissolution of the Verkhovna Rada of Ukraine by the new President Vladimir Zelensky, an early parliamentary election was scheduled for July 21st 2019.

¹⁶ <https://zakon.rada.gov.ua/laws/show/2704-viii>

protection of the Ukrainian language and the rights of citizens in the language sphere (including considering complaints and applying penalties).

15. In accordance with the adopted law, **new requirements are also introduced for the media sector, which will have a significant impact on the Ukrainian media market.** Thus, in the field of television and radio broadcasting, language quotas are maintained at the levels of 75% and 35%, respectively, enacted by the laws of 2016-2017. Printed media in other languages (including Russian-language ones) will also be required to appear in Ukrainian, with the same circulation and content in both versions. The founders of the Russian-language **print media** should be able to subscribe to the same publication in Ukrainian. The law also stipulates that publications in the state language at each place of distribution should comprise at least 50% of the names of print media. The new rules come into force for the national and regional press 30 months after the law enters into force (*from January 2022*), for the print media of the local distribution sphere - after 60 months (*in July 2024*).

16. There should also be **online media representations** in Ukrainian (including websites, social media web pages). The version of the Internet representation in the official language should be no less in volume and content than the foreign language versions, and should be loaded by default for users in Ukraine. Mobile media applications must also have a state language user interface version. To implement these requirements, the law provides a three-year deferral (July 2022).

17. Control over the observance of the law on television and radio, like now, will be carried out by the **National Council on Television and Radio Broadcasting**. The penalties for violating the mandatory proportion of the state language will remain the same (5% of the license fee, or about 400,000 hryvnia). Violation of the requirements for the use of the official language by the **print media** entails a **fine** from 6,800 to 8,500 hryvnia or a warning if the violation is committed for the first time. For a violation of the language in the field of cinema, advertising, books, and **online media**, a fine of 3,400 to 5,100 hryvnia is imposed or a warning is issued. Repeated violations during the year entail a fine of 8,500–11,800 hryvnia.

18. The new language law preserves the **preferential conditions for the Crimean Tatar language** (the so-called “indigenous language”) and the **official languages of the EU** (Bulgarian, Greek, German, Polish, Romanian, Slovak, and Hungarian)¹⁷. For media published in their languages, the requirements listed in the law are not mandatory. Based on the wording of the law itself, it can be concluded that, as a result of such legislative policy, **other national minorities, primarily the most numerous, Russian-speaking, are discriminated against in comparison with**

¹⁷ For the first time, the concept of “indigenous language” was introduced in the Law on Education, adopted in 2017. The Venice Commission, in conclusion to this law, drew attention to the fact that the term “indigenous peoples of Ukraine” is not defined either in the Law “On Education” itself or in any other regulatory legal acts. During a visit to Kiev, delegations of the Venice Commission made it clear that the “indigenous peoples of Ukraine” are those minorities that do not have their own state (a kin-state). A special reference was made to the Crimean Tatar, Karaites, and Crimean minorities, however this category will probably also include the Gagauz and Romani communities.

indigenous peoples or those national minorities whose languages are the official languages of the EU.

19. Accurate statistics on the number of Crimean Tatars living in Ukraine (other than in Crimea) do not exist. According to the 2001 census, in Ukraine there were 248,200 people who classified themselves as Crimean Tatars. From these, 245,291 people (or 98.8%) lived in the Crimea. According to the census in Crimea, conducted by the Russian Federation in 2014, 232,340 Crimean Tatars lived there (4.1% less than in 2001). According to the statements of the Ukrainian Foreign Ministry, after 2014 about 20,000 Crimean Tatars left Crimea. **Thus, even taking into account migration and other demographic factors, the number of Crimean Tatars living in Ukraine (excluding the non-controlled Crimea) is about 20,000-25,000 people.** Accordingly, the law on the state language for a small ethnic group creates preferential conditions. Such a state policy is dictated to a greater extent by the factor of political expediency than by the principles of equal observance of rights and freedoms in Ukraine. At the same time, the **rights of the Russian-speaking population, which is a much larger group, are significantly limited and discriminated against.**

20. As of 2019, **television and radio** channels voluntarily exceed the language quotas established by law, which took effect from October 2018. The volume of Ukrainian broadcasting on the air of television channels is almost the same in relation to the general broadcast - from 92% to 100% (with a quota of 75%). The overall average share of audio content in Ukrainian on the radio is 57% (the required norm in the law is 35%). At the same time, a significant outflow of the audience for 2018 was observed precisely on those channels that initially focused on the Russian-speaking audience and significantly reduced the share of the Russian-language product in accordance with the requirements of the law ("Inter", TRK "Ukraine"). The viewership of on-air Ukrainian TV channels is expected to continue to decline, and the outflow of the audience to alternative channels (to the Internet and satellite) will increase.

21. After the introduction of language quotas, the crisis trends in the **print press market** are expected to intensify. According to the State Committee for Television and Radio Broadcasting of Ukraine, compared to 2014 the number of publications by Ukraine in 2018 decreased by 20% (from 2169 to 1736), and the number of print runs - by 33% (from 2.7 to 1.8 billion). The requirements for the print media stipulated in the law on the state language will primarily affect large daily Ukrainian newspapers, glossy publications and magazines, as well as the regional press of the South-eastern regions of Ukraine. According to the market players, the requirements of the law on ensuring equal circulation in the Ukrainian and Russian languages will lead to significant financial losses at these publications, a reduction in circulation, and even the possible closure of certain newspapers.

22. Against the background of the outflow of audience from television and the stagnation of the print press market, it is **online media** and **social networks** that are becoming increasingly popular among Ukrainians. At the same time, Ukrainian consumers choose higher-quality content on online resources, regardless of the language and country of production. Thus, from

the top 10 most popular videos in the Ukrainian segment of YouTube in 2018, only 3 are in Ukrainian. Their total share of views was only 9.2% of the total number of views for these 10 videos. In total, in the top 20 most popular Ukrainian YouTube channels, 79% of all views (19.5 billion) relate specifically to Russian-language videos and only 10% to Ukrainian-language videos. In the top 35 Ukrainian political and news YouTube channels, only four are fully Ukrainian-language, their share of views is only 2%. Thus, Ukrainian YouTube is predominantly Russian-speaking.

23. Analysis of the top 30 search queries of 100 sites in the News and Media category in Ukraine (desktop data) according to the Similarweb service for April 2019 shows that at least 63% of all queries were made by Ukrainians in Russian (excluding identical words in Ukrainian and Russian). According to Google Ukraine, in 2018 all of the top 10 queries in the “questions” category (e.g. why?) were asked by Ukrainian users in Russian. The enquiries of Ukrainians dictate the reality for online media. According to analysis of the top 20 news sites for April 2019, 85% of them contain both Russian and Ukrainian pages. But for 65% of them (13), the start page is the Russian page, and only for 30% is the start Ukrainian page.

24. The policy of blocking Russian Internet resources and social networks, introduced after 2014, proved to be ineffective. Ukrainian users either bypass this blocking through a VPN or continue to consume content through similar Russian-language resources. Thus, in April 2019 visits from Ukraine to the top 10 Russian sites in the News and Media category ranged from 2.2 to 9.1 million hosts each. 15% and 10% of Ukrainians continue to use the social networks “VKontakte” and “Odnoklassniki”, respectively, which have been banned in Ukraine since May 2017 on the basis of a decree of President Poroshenko (according to a survey from February 2019).

25. The Internet audience is more mobile and free to choose their sources of news and communication. As a result, the **Ukrainian Internet is predominantly Russian-speaking**. Seven of the 10 most popular pages on Facebook and the most popular Ukrainian Telegram channels are Russian-language. The introduction of mandatory requirements for the media to maintain their websites and pages in Ukrainian will only lead to an increase in financial costs for editors, but not to an increase in the share of the audience.

26. Thus, **the mandatory requirements for the language of the media contained in Law 2704-VIII “On Ensuring the Functioning of the Ukrainian Language as the State Language” dated April 25th 2019 do not correspond to the realities of the media market and the demand of the Ukrainian audience. In order to eliminate discriminatory norms and comply with the realities of the media market, the language law adopted in April 2019 requires additional discussion with all interested parties and the subsequent introduction of the corresponding appropriate changes.**

This shadow report was prepared **by the All-Ukrainian Association “Uspishna Varta” (“Successful Guards”)**. “Uspishna Varta” is a human rights platform that unites lawyers, public figures, and volunteers to protect the political and civil rights and freedoms of citizens of Ukraine, as well as to provide support for people and organizations that are persecuted for their political beliefs. Our main function is to monitor violations of the rights and freedoms of citizens in Ukraine and to make them public for a prompt response and to defend the affected people and organisations. We collect evidence of violations for the further transfer of these facts to the responsible authorities of Ukraine, and if a reaction does not follow, then they are transmitted to the world community and international organisations.

The UN Economic and Social Council (ECOSOC) at its coordination and management meeting on 23rd July 2019 adopted the recommendation of the Committee on Non-Governmental Organizations (NGOs) to grant special consultative status to AUA “Uspishna Varta”.

More information about our initiative can be found on our website. <https://uspishna-varta.com/>

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