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NATIONAL MINORITIES OF UKRAINE IN THE CONTEXT OF THE EUROPEAN STANDARDS

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НАЦІОНАЛЬНІ МЕНШИНИ УКРАЇНИ В КОНТЕКСТІ ЄВРОПЕЙСЬКИХ СТАНДАРТІВ

В статті йдеться про місце і роль національних меншин в українському суспільстві, їхній правовий, політичний і культурний статус в державі, національно-культурне відродження в новій Україні. Все це розглядається через призму міжнародного права, європейських вимог і традицій щодо національних меншин.

At the turn of the 20 and 21 centuries the problem of national minorities became one of the considerable factors of peace, justice, stability and democracy in the world. This is particularly shown by the constant attention of the UNO, Council of Europe, OSCE, and other international organizations to this problem. Thus one of the Council of Europe Parliamentary Assembly's documents states: "Persons belonging to a national minority shall not be denied the right, in community with the other members of their group, and as far as compatible with public order, to enjoy their own culture, to use their own language, to establish their schools and receive teaching in the language of their choice or to profess and practise their own religion"¹. The OSCE (till 1995 CSCE) already in its first document – Final Act – noted that the participating states would afford national minorities the full opportunity for the actual enjoyment of human rights and fundamental freedoms². These ideas were developed in the OSCE Charter of Paris for a New Europe. It confirms that ethnic, cultural, linguistic and religious identity of the national minorities will be protected and the persons belonging to national minorities have the right to freely express, preserve and develop that identity without any discrimination and in full equality before the law³.

The Committee of Ministers of the Council of Europe established Special Committee for the Protection of National Minorities (SCPNM) to implement these provisions. With its active participation during the first half of the 1990s the Framework Convention for the Protection of National Minorities was worked out. It was adopted in the end of 1994⁴ and opened for signing by the state-members of the Council of Europe on the 1 February 1995⁵. It became a legal basis to provide effective protection of the national minorities and persons belonging to those minorities.

The Framework Convention emphasizes that the effective protection must be ensured within the rule of law, respecting the territorial integrity and national sovereignty of states. It is important to underline as well that the provisions of the Framework Convention are not directly applicable. They leave to the interested states certain possibility to act on their own fulfilling the tasks they undertook to resolve and allow them thus to take into account concrete circumstances. The Convention is not concerned with the law and practice of the Parties in regard to the reception of international treaties in the internal legal order⁶.

Thus the Framework Convention has become the first obligatory multilateral document dedicated to the question of protection of national minorities in general. Its main aim is to determine legal principles, which the states would be obliged to respect for ensuring the protection of national minorities. The Council of Europe has realized with this document the call of the Vienna Declaration (Annex II) to concretize, as far as possible, political undertakings adopted by the Council for Security and Cooperation in Europe in the legal obligations. (Ukraine signed the Convention on the 15 September 1995 in the city of Strasbourg. The Verkhovna Rada of Ukraine ratified it on 9 December 1997).

It was promoted as well by the establishment in accordance with the OSCE Helsinki Decisions, adopted in July 1992, of the post of the High Commissioner on National Minorities (HCNM) as the instrument to prevent conflicts, connected with the national minorities, at their earliest stage⁸. The HCNM Mandate was established first of all as the reaction to the situation in the former Yugoslavia, which, as somebody was afraid, could recur anywhere in Europe, especially in the countries in transition towards democracy and could undermine prospects of peace and prosperity envisaged by the Charter of Paris for a New Europe. It was supported by the majority of the countries-members of the CSCE including Ukraine⁹. It is worth mentioning that despite all width of the credentials the High Commissioner cannot act effectively without the political support of the OSCE states. The principle of confidentiality is of great importance as well. It means that the High Commissioner acts by the methods of quiet diplomacy. On the other hand it recognizes the need of the participating states to be informed of his activity¹⁰. The non-governmental Inter-Ethnic Relations Foundation was established in 1993 to conduct concrete activity directed at the provision of aid in the activity of the High Commissioner.

The problem of the national minorities in Ukraine is one of the most actual both from the point of view of imperial heritage and of the necessity to work out and implement effective ethnic policy, finishing the formation of political nation. The longstanding policy of compulsory russification, ethnic assimilation and ethno-cultural marginality, sometimes plain ethnocide, deportation of the whole nations conducted by the tsarist and soviet empires caused the complex ethnopolitical situation in Ukraine.

The problem is complicated by the quantity of the approaches, as it is in the world community, to the interpretation of the term "national minorities" itself both in official documents and various publications. In particular article 3 of the Law of Ukraine about the National Minorities in Ukraine" states: "The national minorities include the groups of the citizens of Ukraine, which are not ethnic Ukrainians, express the feeling of the ethnic self-consciousness and unity among themselves"¹¹. This determination is very general and could embrace wide enough number of communities.

Such approaches, we believe, somewhat differ from the international law determining only conceptual grounds in this question. In particular, the "national minorities" purposely are not determined in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities adopted by the UNO General Assembly on the 18 December 1992¹² and in the UNO Commission on Human Rights resolution "Rights of the persons belonging to national or ethnic, religious and linguistic minorities" of 5 March 1995¹³. Paragraph 2 of Explanatory Report to the already mentioned Framework Convention for the Protection of National Minorities states: "the framework Convention contains no definition of the notion of "national minority". It was decided to adopt a pragmatic approach, based on the recognition that at this stage, it is impossible to arrive at a definition capable of mustering general support of all Council of Europe member States"¹⁴.

In the international law they, avoiding clear definition of this term, limit themselves to the enumeration of the characteristics included by it. For example in Article 1 of the European Council Document 1201 the expression "national minority" refers to a group of persons in a state who: a) reside on the territory of that state and are citizens thereof; b) maintain longstanding, firm and lasting ties with that state; c) display distinctive ethnic, cultural, religious or linguistic characteristics; d) are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state; e) are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language¹⁵.

The basis or one of the variants of such pragmatic approach could be, as to our point of view, the

determination of professor T. Kyyak: "To the national minorities belong the groups of citizens of Ukraine of non-Ukrainian nationality... traditionally living on its territory who recognize the Constitution of Ukraine and the laws of Ukraine, are less by number than total quantity of the citizens of Ukrainian nationality in the state, are concentrated in the separate settlements or regions, have their ethnic, cultural, linguistic and religious originality and are ready to preserve and develop it voluntarily"¹⁶. Such approach to the national minorities would substantially lessen their quantity in Ukraine and, correspondingly, the quantity of the problems.

Joining the international organizations, particularly the OSCE as an independent state, Ukraine undertook all obligations and responsibility contained in all their documents including those dedicated to the problems of national minorities and declared its intentions to act in accordance with them¹⁷.

Already the first steps of the independent Ukrainian state were the adoption of the Declaration of the Rights of Nationalities of Ukraine (1 November 1991) and then the Law about the National Minorities in Ukraine (25 June 1992). Article 6 of this Law guarantees the rights to national and cultural autonomy to all national minorities: usage and education in native language or studying the native language in the state educational institutions or with the help of the national cultural societies, development of the national cultural traditions, use of the national symbolism, celebration of the national holidays, profession of their own religion, satisfaction of the needs in the literature, arts, media, establishment of national cultural and educational institutions or any other activity notwithstanding the current legislation¹⁸.

After the adoption of the Constitution in 1996, article 24 of which guarantees freedom of free development of ethnic originality of each citizen and article 10 – free development, use and protection of Russian and other languages of national minorities etc., modern political and legal basis for regulation of the ethnonational processes was established in Ukraine. It properly ensures taking into consideration, combination and search for the optimal balance of interests of the different ethnic groups on the basis of the international law principles. And it improves constantly. Let us note that in the legislation of Ukraine, in particular in article 66 of the Criminal Code, the legal norms protecting the national minorities are envisaged including prohibition of the discrimination.

Corresponding institutions were established at the state level for the implementation of the national minorities' rights: the Committee on Human Rights, National Minorities and Interethnic Relations in the Verkhovna Rada of Ukraine, corresponding constantly reformed bodies of the executive central and local power, the Department of National Minorities' Cultures exists in the Ministry of Culture of Ukraine, corresponding structures in the Ministry of education and Science, the departments of national minorities are functioning in several scientific and research institutes of the National Academy of Sciences of Ukraine, the Cultures of National Minorities of Ukraine Development Foundation was established according to the Decree of the President of Ukraine, special journal about the culture and education of national minorities is published etc.

Current legislation of Ukraine envisages the protection of the rights of national minorities by international treaties. Cooperating with the European organizations Ukraine supported and signed the following international legal documents on national minorities: the Framework Convention of the Council of Europe for the Protection of National Minorities, European Charter for Regional or Minority Languages¹⁹, etc. It is worth mentioning that if the international treaty of Ukraine envisages the norm different from the one contained in its legislation on national minorities, the norm of international treaty is applied. In this case the Verkhovna Rada of Ukraine must ratify this treaty and then it is incorporated into the national legislation of Ukraine.

There are various forms of consultations in Ukraine between central and local power and with the national minorities on the questions they are concerned in. One of them is the activity of the Council of the Representatives of Non-governmental Organizations of National Minorities (there are 1067 of them in Ukraine: 33 have the national status, 322 – oblast', 628 – city, 84 – regional)²⁰. It functions within the State Committee of Ukraine on Nationalities and Migration. Council of the Representatives of Non-governmental Organizations of National Minorities having regular meetings discusses the most actual questions of the development of national minorities in Ukraine. That was the case in particular with the draft law about the Order of Enforcement of the Law of Ukraine about the National Minorities in Ukraine, draft Plan of Complex Measures on the Development of National Minorities Cultures in Ukraine till 2001, draft Concept of the State Ethnonational Policy of Ukraine etc. President and Government of Ukraine engage in those questions regularly.

There are as well other forms of consultations with the national minorities. We should mention first of all the participation of the representatives of all level executive authorities in various events (meetings, conferences, round tables, national holidays etc.) and ensuring the methodical and material aid in their conducting, the departments of letters and citizens reception in respective state bodies where the applications and propositions of the national minorities representatives are considered etc.

According to article 16 of the Law of Ukraine about the National Minorities in Ukraine special assignments are envisaged in the state budget for the development of national minorities, in particular – for the financing of the needs of national and cultural societies of the national minorities. Conditionally these costs can be divided in two parts. The first part of the costs is distributed among oblast's and the Autonomous Republic of Crimea (ARC) for the financing of cultural and educational measures of regional public associations. These costs are transferred to oblast' state administrations. At that the quantity of the national minorities' representatives and legally registered national and cultural societies in the oblast' are taken into account. The second part of the costs is meant to support the centralized measures conducted by the public associations of the national minorities having national status. Apart from that certain part of the costs for satisfaction of the spiritual needs of national minorities is allocated from the local budgets as well.

The Law of Ukraine about the National Minorities in Ukraine ensures the right to the citizens of Ukraine belonging to national minorities to be elected or appointed at the equal basis to any posts in the legislative, executive, juridical, local and regional authority, army, on the enterprises, in the establishments and organizations (article 9). National minorities are represented at different levels in the executive power. There are representatives of Crimean Tatars, Russian, Hungarian, Jewish, Armenian, Georgian national minorities. The representatives of national minorities are elected to local self-government organs in the territories of their compact residence. In particular in Chernivetska Oblast' 19 of 104 members of the Oblast' Council are Romanians, in Zakarpatska Oblast' 12,1% of all-level deputies are Hungarians²¹.

Persons belonging to national minorities have equal with all other citizens of Ukraine right to access to the media (radio, television, and press). National press is the efficient instrument to preserve and distribute the ethnic information, highlight the historic traditions, variety of cultural and artistic life of the national minorities. The press editions in ethnic languages or meant for the national minorities reach 188²². They showed themselves as stable and popular editions of the national minorities. The state political course directed to consolidation of the ideas of inter-ethnic peace and concord in the society is consecutively developed on their pages, the questions of spiritual revival of the ethnic communities are highlighted. Total annual scope of broadcasting in the languages of national minorities is about 1229 hours on the television and about 1988 hours on the radio²³.

In the context of the implementation of the Concept of the Development of the national minorities cultures, corresponding laws of Ukraine the new network of cultural and artistic establishments of the national minorities of Ukraine is established and the old one is expanded. 85 centers of culture, houses of folk arts, centers of folklore and ethnography, 8967 national amateur collectives function supported by the state²⁴. 22 thousand libraries with the general fund of 48 million samples are to their services only within the system of the Ministry of Culture and Arts of Ukraine. The General Editorial Office of Literature in the Languages of National Minorities functions since 1992. 10 state publishing houses print the literature with its coordination. The holes of the national minorities are opened in many museums of Ukraine, there are thousands historic and architectural monuments connected with the national minorities. Apart from numerous Ukrainian and Russian theatres the ethnic cultural and artistic traditions are represented by the Jewish theatres Mazltov and Shtern (Kyiv), Gypsy theatre Romans (Kyiv), the theater of the Crimean Tatars in Simferopol, Hungarian theatre in Beregove of Zakarpatska Oblast', Polish folk theatre in Lviv, professional Moldavian and Crimean Tatar variety collectives. More than 1800 collectives are united by the amateur art activities of the national minorities. They participate in the national festival "All of us are your children, Ukraine"²⁵.

It is worth mentioning that Ukraine implementing its undertakings before the OSCE and CE, State Program of Revival and Development of the Education of the National Minorities as well as using the experience of development of the education of national minorities in the 1920 – 1930s has reached much success in this sphere too. Thus according to the figures of the Ministry of

Science and Education in 2002 – 2003 academic year the quantity of the schools with Russian language of education was 1732 (more than 804 thousand pupils), with Romanian – 94 (more than 25 thousand pupils), Hungarian – 69 (more than 16.5 thousand pupils), Crimean Tatar – 13 (about 4 thousand pupils), Moldavian – 9 (about 4 thousand pupils), Polish – 4 (more than 1 thousand pupils). Besides that in the same time there were 2242 general educational institutions with two or more languages of education. Finally there are 156 Sunday schools with about 5 thousand pupils studying in the languages of national minorities in Ukraine²⁶.

Ukraine successfully resolves as well the problem of the deported peoples, especially Crimean Tatars. The stability not only in Crimea and in Ukraine but also in the whole Black Sea Region depends on their successful integration into the Ukrainian society. The Ukrainian and Crimean authorities conducted the consistent and considered policy towards them. Thus the Council of the Representatives of the Crimean Tatar People attached to the President of Ukraine works on the regular basis. The President gives corresponding directions to the executive authorities according to the results of its meetings. The implementation of these directions allowed to improve substantially the resolution of the many questions of the repatriates settling. According to the Council of Ministers of the Autonomous Republic of Crimea Resolution since June 2000 such councils were organized attached to regional state administrations. The parliamentary hearings “Problems of Legislative Regulation and Realization of the State Policy as to Ensuring the Rights of the Crimean Tatars and the National Minorities, which were Deported and Return to Ukraine Voluntarily” were conducted in the Verkhovna Rada of Ukraine in April 2000. The Recommendations of these hearings to the authorities was the first legislative act in this sphere. The new edition of the Law about the Citizenship of Ukraine was adopted in the January 2001. The simplified order of gaining the Ukrainian citizenship for the persons originating from the territory of Ukraine is envisaged by this law. It allowed to eliminate the problem of gaining the Ukrainian citizenship by the repatriates almost completely²⁷.

Separate provisions of the Decrees of the Ukrainian Government on these questions of 1995, 1996 and 1999 were included into the Program of Adaptation and Integration of the Deported Crimean Tatars and Persons of the Other Nationalities into the Ukrainian Society, Revival and Development of their Culture and Education approved by the Cabinet of Ministers of Ukraine in January 2002²⁸ and the Program of Promotion of the Social Formation and Adaptation of the Crimean Tatar Youth for 2002–2005²⁹. These documents include the experience of the past years, when those questions were resolved with great difficulty.

The Crimean authorities participated in resolution of the problems of the deported peoples as well. Thus in the ARC the decision of the Verkhovna Rada of the Autonomy About the Measures on Regulation of Inter-ethnic Relations and Realization of the Programs of Social and Economic and Ethnic and Cultural Development of Earlier Deported Persons and Their Descendants in the ARC is implemented. The program on the questions of settling the earlier deported persons approved by the Verkhovna Rada of the ARC works as well. Besides that the Crimean authorities promote the realization of the Special UNO Program on the development and integration of Crimea, the Recommendations of the Council of Europe Parliamentary Assembly on the repatriation and integration of the Crimean Tatars etc. Only owing to the Program of the International Renaissance Foundation “Integration into the Ukrainian Society of the Crimean Tatar People, Bulgarians, Armenians, Greeks, Germans who were Deported” 255 projects for the total amount of 1 million 307 thousand US dollars were brought about³⁰.

But there are problems here as well. The adoption by the Verkhovna Rada of Ukraine of the draft laws about the Rehabilitation and Ensuring the Rights of the Persons Belonging to the National Minorities who were Subject to Repression and Deportation from the Territory of Ukraine and about the Status of the Crimean Tatar People, worked out as early as within the period between the 1992 and 1994, is delayed³¹. For today the legal status of the Crimean Tatars remains unclear. They are officially considered as the national minority and thus equated with the other national minorities living on the territory of Ukraine and having their historic motherland outside it. In this case the moment that the Crimean Tatars were turned into the national minority (in numbers) in its historic motherland by the mass repressions, several deportations and genocide, committed by USSR.

Thus Ukraine reached considerable success in the context of the European standards concerning national minorities. As shown by the research, three of five basic rights of the national minorities

admitted in the world are implemented in Ukraine: right to existence; to usage and development of the language and culture; to establishment and ensuring the functioning of the schools and other educational institutions. The right to political representation in executive and legislative authority is realized in the law about The National Minorities in Ukraine. The right to autonomy is completely realized in the variant of national and cultural autonomy.

- ¹ Look: Відродження. – 1998. – № 5. – Р. 11.
- ² Заключительный Акт Совещания по безопасности и сотрудничеству в Европе. Хельсинки 30 июля – 1 августа 1975 г. – М., 1985. – С. 9–10, 70.
- ³ Общеввропейская встреча в верхах. Париж. 19 – 21 ноября 1990 г. Документы и материалы. – М., 1991. – С. 6.
- ⁴ Look: Пояснювальна доповідь до Рамкової конвенції про захист національних меншин // Відродження. – 1998. – № 5. – С. 11–13.
- ⁵ Рамкова конвенція про захист національних меншин // Відродження. – 1998. – № 5. – С. 7–11.
- ⁶ Ibid. – С. 7.
- ⁷ Відомості Верховної Ради. – 1998. – № 14. – С. 56.
- ⁸ Гельсінкські рішення. Верховний комісар НБСЕ у справах національних меншин // Політика і час. – 1993. – С. 71.
- ⁹ Historic and Archive Department of the Ministry of Foreign Affairs of Ukraine (further: HAD MFA). – General fund, file 760, p. 65.
- ¹⁰ Гельсінкські рішення. Верховний комісар НБСЕ у справах національних меншин // Політика і час. – 1993. – № 5. – С. 72
- ¹¹ Відомості Верховної Ради України. – 1992. – № 36. – 8 вересня.
- ¹² Відродження. – 1999. – № 2. – С. 37–38.
- ¹³ Ibid. – С. 38–39.
- ¹⁴ Ibid. – 1998. – № 5. – С. 12.
- ¹⁵ Євтух В., Трошинський В., Попок А., Швачка О. Українська діаспора. Соціологічні та історичні студії. – К., 2003. – С. 42–43.
- ¹⁶ Кияк Т. Об'єднаймо зусилля. – Урядовий кур'єр. – 1999. – 19 листопада.
- ¹⁷ HAD MFA. – General fund, file 6861, p. 119
- ¹⁸ Відомості Верховної Ради України. – 1992. – 8 вересня.
- ¹⁹ Look: Відродження. – 1998. – № 5. – С. 7–11; Відродження. – 1999. – № 2. – С. 29–35.
- ²⁰ Вісник Держкомнацміграції України: кварталний інформаційний журнал. – 2003. – № 2–4. – С. 8.
- ²¹ Ibid. – С. 9.
- ²² Етно-національна структура українського суспільства: Довідник. – К., 2004. – С. 16.
- ²³ Чилачава Р. Национальные меньшинства в демократическом пространстве // Відродження. – 1999. – № 2. – С. 13.
- ²⁴ Вісник Держкомнацміграції України: кварталний інформаційний журнал. – 2003. – № 2–4. – С. 10.
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- ²⁷ Урядовий кур'єр. – 2001. – 1 березня. – № 39.

²⁸ Кримські студії. Інформаційний бюлетень. – 2002. – № 1–2. – С. 4–8.

²⁹ Ibid. – С. 9–15.

³⁰ Ibid. – С. 18.

³¹ Білуха Ю., Власенко О. Розвиток етнополітичної ситуації в Криму та вирішення проблем кримськотатарського народу // Кримські студії. Інформаційний бюлетень. – 2002. – № 1–2. – С. 53.