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GENESIS OF LAW ON NATIONAL MINORITIES IN UKRAINE

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INTRODUCTION

Formulation of the issue. Effective participation of national minorities in public life is an essential component of a peaceful and democratic society. Experience in Europe and elsewhere has shown that, in order to promote such participation, governments often need to establish specific arrangements for national minorities.

Ukraine is a multinational state with a significant share of national minorities. According to the All-Ukrainian Population Census (2001) there are representatives of more than one hundred different nations in Ukraine, among which the most numerous are Hungarians, Poles, Slovaks, Moldovans, Bulgarians, Romanians, Greeks, Tatars, Russians, Belarusians, Armenians and others. National minorities make up 10 million 757 thousand people, which is 22.2 % of all citizens. To satisfy their national interests near 800 national and cultural societies were created in Ukraine, of which 28 have all-Ukrainian status. The most numerous of them are: Jewish, Polish, Hungarian, Greek, Bulgarian etc. All of them are members of the Association of National and Cultural Associations of Ukraine, the purpose of which is to ensure the rights of national minorities at the level of European and international standards [1].

State of problem solving. Such minorities' diversity demands the comprehensive and balanced legislation for the effective regulation of rights of above mentioned groups. And achieving this aim is impossible without researching the legal roots and background. Partly the issue was researched by Caterina Filippini, O. Fedun, N. Papish, M. Antonovych and others. Nevertheless there is a lack of comprehensive research.

Objective Setting. The purpose of this research paper is to determine the main stages of the legislation on national minorities.

Background and first steps (1991-1996)

Materials presenting. Since Ukraine gained independence (1991) a new legislation of the independent country has been starting to develop. The issue of protection of national minorities was immediately included in the agenda, considering the significant number of national minorities in Ukraine.

Declaration of the Rights of Nationalities in Ukraine (1991p.) [2] was the first document of independent Ukraine aimed at protecting the interests of national minorities. Ukraine guaranteed equal political, economic, social, and cultural rights to all peoples, national groups and citizens of Ukraine living on its territory and prohibited any discrimination based on nationality, manifestations of which were to be punished by law. By giving all national groups the right to freely use their native languages in all spheres of social life, the state took on the responsibility of creating appropriate conditions for the development of all national languages and cultures.

According to the provisions of the declaration, Ukrainian citizens of any nationality are guaranteed the right to practice their own religion, use national symbols, celebrate national holidays, and participate in traditional ceremonies of their peoples (art. 4). They also have the right to create cultural centers, societies, associations and direct their activities to the development of national culture; to have national newspapers, magazines, publishing houses, museums, art groups, theaters, film studios (art.4). Nevertheless the Declaration just expressed the governmental attitude to the issue of national minorities but that was insufficient to satisfy practical implementation of their rights.

Therefore, the Law of Ukraine «On National Minorities» (1992) was adopted, which did not contain a closed list of national minorities and did not introduce any restrictive criteria such as the number or time of residence on the territory of Ukraine. The Law declared that Ukraine guarantees equal political, social, economic and cultural rights and freedoms to all citizens of the republic regardless of their national origin, supports development of national self-consciousness and self-expression.

The definition of a national minority was formulated as «a group of Ukrainian citizens who are not Ukrainians by nationality, but show a sense of national self-awareness and community among themselves.» That is, the law recognized the status of a national minority for any ethnic groups that had a common identity. It is worth noting that in most neighboring countries there are stricter criteria for granting the status of a national minority to an ethnic community. European states, as a rule, establish an exhaustive list of such communities at the legislative level, sometimes even in the Constitution [3].

The Law granted to all national minorities the right to national cultural autonomy: speaking and studying in native language, learning native language at the state universities or through national cultural communities, development of national cultural traditions, use of national symbols, celebration of national holidays, practicing their religion, satisfaction of needs in literature, art, mass media, creation of national cultural and educational institutions and any other activity that does not run counter with the current legislation [4]. It should be mentioned that declarativeness was a significant drawback of the Law. Its text did not contain mechanisms and tools that should guarantee the observance of the rights of persons belonging to national minorities.

Nevertheless, due to this Law Ukraine succeeded in its efforts to avoid serious internal conflict between its Ukrainian majority and minority populations, and between the national minority groups themselves. The state avoided a problem which appeared in the most of the other post-soviet states. And that was an achievement in which the Ukrainian government and people may feel a certain degree of pride [5].

Ukrainian Constitution and a new level of national minority rights protection (1996-2012)

In 1996, the UN established that a «minority» is a group of people who permanently live on the territory of a state, are a numerical minority in relation to the rest of the population of this state, that is, make up less than half of its population, have national, ethnic, religious, linguistic, as well as other related characteristics, culture, traditions and which differ from the corresponding characteristics of

the rest of the population, and which shows a desire to preserve the existence and identity of such a group.

Simultaneously, the Constitution of Ukraine (1996) was adopted, which took into account the key aspects of the UN framework documents. It is rather difficult to overestimate the importance of the constitutional norms in the legislative development of the national minorities legal status. The Preamble emphasized that the Verkhovna Rada of Ukraine (Parliament of Ukraine) acted on behalf of citizens of all nationalities which formed the Ukrainian people. Many other articles of the Constitution provided for certain principles of the legal status of national minorities, as a component of the state's ethno-national policy. In particular, the issue of their legal status was considered to some extent in many regulations, for example, in the Articles 10–11, 24, 53, 92, 119.

Citizens of Ukraine of all nationalities shall obliged to observe the Constitution and other laws, to protect its state sovereignty and territorial integrity, to respect the languages, cultures, traditions, customs, and religious identity of the Ukrainian people and all national minorities (art. 2). Citizens of Ukraine who belong to national minorities have the right to be elected or appointed on an equal basis to any positions in the bodies of legislative, executive, judicial power, local self-government, in the army, at enterprises, in institutions and organizations (art. 9). Ukrainian citizens have the right to freely choose and restore their nationality (art. 11). Citizens belonging to national minorities are free to choose the scope and forms of exercising the rights granted to them by the current legislation, and exercise them personally, as well as through relevant state bodies and establish public associations (art. 13). State bodies promote the activities of national public associations that operate in accordance with current legislation (art. 14). In addition, the national minorities rights are also enshrined in the art. 10 (language rights of the Ukrainian nation, indigenous peoples and national minorities in Ukraine), art. 53 (the right of national minorities to study in their native language or to study their native language in state and communal educational institutions or through national cultural societies).

Despite a certain progressive nature of the legislation regarding the rights of national minorities, its shortcoming was the lack of

mechanisms for their implementation. For example, the Law of Ukraine «On National Minorities in Ukraine» establishes that the national public associations have a right to nominate their candidates for deputies in the elections of state authorities in accordance with the Constitution of Ukraine, laws on elections of people's deputies of Ukraine and deputies of local councils (art. 14). However, the election laws did not provide for this right of national public associations, and no national minority could appeal to the court or the legislature itself on this issue. Ukrainian legislation was criticized for insufficient guarantees concerning political representation of national minorities. However, the parliamentary elections of 2001 proved that political parties formed on the national principle did not have the support of voters. They did not pass the minimal barrier in any of the Ukrainian regions. This was an appropriate indicator that, in general, national minorities protection was at a sufficiently high level.

In 1997 the Ukrainian parliament adopted the Law [6] «On the ratification of the Framework Convention on the Protection of National Minorities» (1995) [7]. The obligation was taken to ensure that persons belonging to national minorities, in the areas where they traditionally or in significant numbers live, have adequate conditions to learn the language of their minority or to be educated in this language. Ukraine introduced such a norm into the national legislation without hesitation.

The period of the 1990s-2000s is characterized by the consolidation of the basic rights of national minorities at the constitutional level. However, the Law on National Minorities did not undergo any changes, while significant dynamic was an immanent feature of changes in other areas of Ukrainian legislation.

Language politics issue and EU Association Agreement as main triggers of changes (2012-2023)

By ratifying the Law «On Ratification of the European Charter of Regional or Minority Languages» (1999) Ukraine assumed serious obligations regarding the languages of national minorities living on its territory, in particular, to the languages of the following nationalities: Hungarians, Slovaks, Poles, Czechs, Jews, Belarusians, Russians, Moldovans, Romanians, Crimean Tatars, Bulgarians, Greeks, Germans,

Gagauzians regarding the application of the provisions of the European Charter depending on the number of persons who belong to them and permanently live compactly within the relevant administrative-territorial unit. It was the adoption of this document that led to the first significant changes (2012) to the Law on national minorities, and was lobbied by the pro-Russian parliament and government. They related to the revision of the state language policy principles and the guarantee of national minorities non-discrimination and their ability to be elected or appointed to any positions in authorities. These changes were made by separate laws «On the principles of state language policy» (2012) and «On amendments to some legislative acts of Ukraine regarding the activities of the Ministry of Justice, the Ministry of Culture of Ukraine, other central executive bodies whose activities are directed and are coordinated through the relevant ministers, as well as the State Space Agency of Ukraine» (2012).

However, the Law of Ukraine «On the Principles of State Language Policy» contradicted the Constitution. First, it gave local councils the right to recognize the regional languages, while the use of languages is a matter of nationwide importance and not of local importance, and is determined exclusively by laws.

Secondly, the Law was discriminatory in relation to the languages of that national minorities, which were not included in the list of 18 languages that can claim the status of regional or national minority languages.

Thirdly, the Law was adopted with significant gross procedural violations. In particular, part of the deputies, whose votes were counted for the law, de-facto was absent. In fact some deputies were abroad (outside Ukraine) according to the information of the Ukrainian State Border Service. A number of other violations also occurred: lack of draft Law discussion in the second reading; deprivation of deputies concerning the right to consider amendments and proposals submitted by the parliament.

Due to deficiencies in the content and numerous procedural violations 57 deputies of the Verkhovna Rada appealed to the Constitutional Court to declare the Law «On the Basics of State Language Policy» unconstitutional. After lively discussions the

Constitutional Court ruled that the Law of Ukraine «On the Basics of State Language Policy» is unconstitutional, and it loses its validity from the date of judgment adoption (2018) [8].

Contrary to the aforementioned law, the new parliament adopted the Law «On ensuring the Functioning of the Ukrainian Language as the State Language». The law contained a number of norms aimed at protecting the interests of national minorities. In particular, the relevant provisions were contained in the electoral law. The distribution of election campaign materials printed in the languages of the national minorities is allowed (art. 18). Essential rights were granted in the field of education. The citizens belonging to the national minorities are guaranteed the right to study in communal educational institutions for preschool and primary education, using the language of the relevant national minority (art. 21).

However, despite the wide range of rights for national minorities in the field of use of their languages, the Law was criticized by the Venice Commission. In accordance with the Conclusion of the European Commission for Democracy through Law (Venice Commission) «On the Law on Ensuring the Functioning of the Ukrainian Language as a State Language» (2019), European experts expressed certain comments. In particular, the Venice Commission experts indicated that the current Law on National Minorities contains only general provisions regarding the language rights of persons belonging to national minorities.

The language issue was the main, but not the only, trigger for changes in the legislation on national minorities. The signing of the Agreement on the Association of Ukraine with the EU is of no less importance. In 2014, the Cabinet of Ministers of Ukraine established the Government Commissioner for Ethnonational Policy. Its competence included ensuring the interaction of the Cabinet of Ministers of Ukraine with executive authorities and institutions of civil society in order to ensure the national minorities protection, the preservation of international unity and harmony in Ukrainian society [9]. However, less than a year later, the Government Commissioner for Ethnonational Policy was liquidated and the functions of the commissioner were transferred to the Secretariat of the Cabinet of Ministers.

Recommendations were given to Ukraine regarding establishing a separate governmental body responsible for the implementation of national minorities protection legislation. That is why the State Service of Ukraine for Ethnopolitics and Freedom of Conscience (SESS) was created (2019), which till nowadays is the central body of the executive power, whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine and which ensures the formation and implementation of state policy in the field of international relations, religion and the protection of the rights of indigenous peoples and national minorities [10]. The main tasks of DESS are: 1) implementation of state policy in the field of international relations, religion and protection of the rights of indigenous peoples and national minorities in Ukraine; 2) submission the proposals on the formation of state policy in the field of international relations to the Cabinet of Ministers of Ukraine, religion and the protection of the rights of indigenous peoples and national minorities [11].

The changes were not limited only to changes of an institutional nature. A number of adopted legal acts were aimed to provide comprehensive protection for the small national minorities. The Decree of the Cabinet of Ministers of Ukraine approved the Strategy for Facilitating the Realization of the Rights and Opportunities of Persons Belonging to the Roma National Minority in Ukrainian Society for the Period Until 2030 [12]. The implementation of the strategy will make it possible to provide Roma (Romani people) with documents, provide legal protection, education, health care services, employment and improve social protection. It is also about the need to overcome negative stereotypes about the Roma.

The State national and cultural program «Unity in diversity» (2023) was approved for the period until 2034. The program is aimed at realizing the rights of persons belonging to national minorities (communities) [13]. In particular, it will contribute to the formation of effective tools for ensuring the implementation of linguistic, educational, cultural and informational rights, as well as to the improvement of international relations in Ukraine.

New law on national minorities: a step or a stumbling block for further European integration (2023)

In its Resolution CM/ResCMN(2013)8 the Committee of Minister recalled again the Ukrainian authorities to «take all necessary steps to develop without delay and in close consultation with national minority representatives a comprehensive and consistent legislative framework pertaining to national minority protection and the status and restoration of rights of formerly deported persons, including as regards access to land» [14].

That is why in 2019, when adopting the law on the state language, the Parliament obliged the government to submit a new draft law on the rights of national minorities within six months. In reality, the process of drafting the law lasted almost three years. And it probably would have lasted even longer, but the European Commission identified the adoption of a new law on national minorities as one of the 7 prerequisites for the start of negotiations on Ukraine's membership in the EU, which significantly accelerated the process. Two years later revision of the legal framework concerning national minorities rights was stressed also by the European Union [15].

Therefore, in 2022, a new Law of Ukraine «On National Minorities (Communities)» [16] was adopted. Its enacting was determined by several factors. First of all, Ukraine undertook the relevant obligations on the path of integration with the European Union. Accordingly, the legislation regarding minorities, including national ones, should be brought into line. Secondly, more than thirty years have passed since the adoption of the first Law on national minorities. During this time, the emphasis and approaches to the protection of the minorities have changed at the international level. If earlier international documents were almost exclusively about the inadmissibility of discrimination, bans on the use of language and other assimilation policies, in the last thirty years the emphasis shifted to the positive obligations aimed at supporting the cultures of ethnic communities.

A person belonging to a national minority has the right on self-identification, use of the language of the minority, preservation of cultural identity, education in the native language, and other rights. Each citizen decides for himself whether to consider himself a member of a national minority or even several minorities. No one can be forced to declare their status as a person belonging to a national minority. If

a person needs to exercise the rights guaranteed to minorities, it is enough for him just to express such a desire. The norm of the law on secondary education is duplicated, which gives the right to private schools founded by organizations or representatives of national minorities to independently determine the language of the educational process, if the school does not receive public funds. At the same time, such schools are obliged to ensure that the pupils learn Ukrainian language in accordance with the state standards.

A Center for National Minorities with appropriate premises shall be established in each oblast, and such centers can be established at the level of territorial communities if desired.

However the law contains strict restrictions related to the protection of Ukraine from external aggression. When exercising the rights of national minorities, it is forbidden to popularize or carry out propaganda of Russia, its bodies and officials, justify Russian aggression or occupation of Ukrainian territory.

CONCLUSIONS

The adoption of the new Law on National Minorities was caused by: 1) the change in the political vector of Ukraine (2014) and a reorientation exclusively on the values of a democratic society; 2) the change in the approaches to the protection of national minorities issue at the international level: from the simple inadmissibility of discrimination, the ban on the use of language and other assimilation policies, to the positive obligations of the state aimed at supporting the cultures of ethnic communities.

Certain limitations, or rather inconsistencies of the Law with international standards for the national minorities protection, derive from: 1) the need to ensure national security, especially in the context of the current Russian-Ukrainian War; 2) the risk for Ukrainian language to lose its dominant status in Ukraine; 3) the desire of the Ukrainian government to preserve some slack for «bargaining» in the process of further rapprochement with the European Union.

The minorities' diversity in Ukraine demands the comprehensive and balanced legislation for the effective regulation of the rights of minorities with a primatus of Ukrainian national security, peace and state sovereignty.

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Oleksandr KOVALYSHYN, Volodymyr ROZVADOVSKYI. Genesis of law on national minorities in Ukraine

The article is dedicated to the genesis of law on national minorities in Ukraine. The authors argue that the minorities' diversity demands the comprehensive and balanced legislation for the effective regulation of the rights of above mentioned groups with a primatus of national security, peace and state sovereignty.

It is explained that due to the Law on National minorities (1992) Ukraine succeeded in its efforts to avoid serious internal conflict between the national minority groups themselves. The state avoided a problem which appeared in the most of the other post-soviet states. And that was an achievement in which the Ukrainian government and people may feel a certain degree of pride

The period of the 1990s-2000s is characterized by the consolidation of the basic rights of national minorities at the constitutional level. However, the Law on National Minorities did not undergo any changes, while significant dynamic was an immanent feature of changes in other areas of Ukrainian legislation.

The Law of Ukraine «On the Principles of State Language Policy» (2012) contradicted the Constitution. First, it gave local councils the right to recognize the regional languages, while the use of languages is a matter of nationwide importance and not of local importance, and is determined exclusively by laws. Secondly, the Law was discriminatory in relation to the languages of that national minorities, which were not included in the list of 18 languages that can claim the status of regional or national minority languages.

The adoption of the new Law on National Minorities (2022) was caused by: 1) the change in the political vector of Ukraine (2014) and a reorientation exclusively on the values of a democratic society; 2) the change in the approaches to the protection of national minorities issue at the international level: from the simple inadmissibility of discrimination, the ban on the use of language and other assimilation policies, to the positive obligations of the state aimed at supporting the cultures of ethnic communities.

Certain limitations, or rather inconsistencies of the Law with international standards for the national minorities protection, derive from: 1) the need to ensure

national security, especially in the context of the current Russian-Ukrainian War; 2) the risk for Ukrainian language to lose its dominant status in Ukraine; 3) the desire of the Ukrainian government to preserve some slack for «bargaining» in the process of further rapprochement with the European Union.

Keywords: EU integration, harmonization of law on ethno-politics, national security, national minority, ethnic minority, legal regulation in Ukraine

Олександр КОВАЛИШИН, Володимир РОЗВАДОВСЬКИЙ. Генезис закону про національні меншини в Україні

Стаття присвячена генезису законодавства про національні меншини в Україні. Автори стверджують, що розмаїття меншин вимагає комплексного та збалансованого законодавства для ефективного регулювання прав вищезазначених груп на основі примату національної безпеки, миру та державного суверенітету.

Обґрунтовується, що завдяки Закону про національні меншини (1992 р.) Україні вдалося уникнути серйозного внутрішнього конфлікту між самими групами національних меншин. Держава уникла проблеми, яка виникла в більшості інших пострадянських держав. І це було досягнення, яким українська влада і народ можуть певною мірою пишатися.

Період 1990-2000-х років характеризується закріпленням на конституційному рівні основних прав національних меншин. Однак Закон про національні меншини не зазнав жодних змін, тоді як динамічні зміни була невід'ємною рисою в інших сферах законодавства України.

Закон України «Про засади державної мовної політики» (2012) суперечив Конституції. По-перше, він надав місцевим радам право визнавати регіональні мови, а використання мов є питанням загальнодержавного, а не місцевого значення, і визначається виключно законами. По-друге, Закон був дискримінаційним по відношенню до мов тих національних меншин, які не увійшли до переліку 18 мов, які можуть претендувати на статус регіональних або мов національних меншин.

Прийняття нового Закону про національні меншини (2022) було зумовлене: 1) зміною політичного вектору України (2014) та переорієнтацією виключно на цінності демократичного суспільства; 2) зміна підходів до питання захисту національних меншин на міжнародному рівні: від простої неприпустимості дискримінації, заборони використання мови та іншої асиміляційної політики до позитивних зобов'язань держави, спрямованих на підтримку культур, етнічних спільнот.

Певні обмеження, а точніше невідповідність Закону міжнародним стандартам захисту національних меншин обумовлені: 1) необхідності забезпечення національної безпеки, особливо в контексті поточної російсько-української війни; 2) запобіганням ризику втрати українською мовою домінуючого статусу в Україні; 3) прагнення уряду зберегти певний «люфт» для «торгу» в процесі подальшого зближення з Європейським Союзом.

Ключові слова: євроінтеграція, гармонізація права з питань етнополітики, національна безпека, національна меншина, етнічна меншина, правове регулювання в Україні