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## PUBLIC GOVERNANCE IN NATIONAL MINORITY RIGHTS PROTECTION

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### **Kovalyshyn O. Public governance in national minority rights protection.**

The article is devoted to the analysis of public administration in the field of national minorities rights protection. The author analyzes the system of authorities aimed at protecting the national minorities interests and nationalities in Ukraine.

The Committee on Nationalities under the Cabinet of Ministers of Ukraine was the first ukrainian central state body of the executive power, entrusted with the functions of ensuring ethno-national policy and protecting the national minorities interests.

It is emphasized that the structure of public authorities protecting the rights of national minorities was not limited exclusively to the activities of the specialized central executive body. The positions of Advisor to President on ethno-national problems of Crimea and Advisor to President on the affairs of the Ukrainian diaspora were introduced. At the regional (oblast) level, the Republican Committee for Nationalities and Deported Citizens of the Autonomous Republic of Crimea operates, as well as the relevant subdivisions at the local level – nationalities and migration departments of regional state administrations.

The situation changed with the switch of the state policy vector from pro-Russian to pro-European. This was not least due to the recommendations of the OSCE and the need to converge with the *acquis communautaire* of the European Union.

National minorities rights protection has been in focus since the independence of Ukraine. Establishing and functioning of the relevant Ministry (Committee) on National Minorities is a direct confirmation of this thesis. This issue was always in focus of the Ukrainian governments besides the period of the rule of the pro-Russian government (2010-2014), when most of the state institutions for the protection of national minorities were liquidated. This fact determined the revolutionary events of the Euromaidan (2014) to some extent.

As of today, Ukraine fulfills its obligations regarding the protection of the national minorities rights. The current central authority (State Service of Ukraine for Ethnic Policy and Freedom of Conscience, DESS) was formed in accordance with the recommendations of the OSCE and taking into account the experience of the EU member-states. Its status is lower in the executive power hierarchy. However, its scope of competence and its actual activity best serves the interests of the national minorities.

**Key words:** national minorities, indigenous people, legal protection of rights, public administration, system of bodies for the protection of national minorities.

### **Ковалишин О.Р. Публічне управління в сфері захисту прав національних меншин.**

Стаття присвячена аналізу публічного управління у сфері захисту прав національних меншин. Автор аналізує систему органів влади спрямованих на захист інтересів національних меншин та народностей в Україні. Відзначається, що першим в Україні центральним державним органом виконавчої влади, на який покладено функції забезпечення етнонаціональної політики та захисту їх інтересів, був Комітет у справах національностей при Кабінеті Міністрів України.

Наголошується, що структура органів державної влади стосовно захисту прав національних меншин не обмежувалася виключно діяльністю профільного центрального органу виконавчої влади. Функціонували посади Радника президента з етнонаціональних проблем Криму та Радника пре-

зидента у справах української діаспори. На регіональному (обласному) рівні діяв Республіканський комітет у справах національностей і депортованих громадян АР Крим, а на місцевому рівні відповідні підрозділи – відділи у справах національностей та міграції облдержадміністрацій.

Особливої ваги набуває питання захисту прав національних меншин в аспекті інтеграції України до Європейського Союзу. Автор відзначає, що питання захисту прав національних меншин перебувало від самого початку існування української держави у фокусі. Створення та функціонування відповідного Міністерства (Комітету) з питань національних меншин є прямим підтвердженням тому. Лише в період правління проросійського уряду (2010-2014) більшість державних профільних інститутів.

Станом на сьогодні Україна виконує взяті на себе зобов'язання щодо правової охорони прав національних меншин. Центральний орган влади сформований у відповідності з рекомендаціями ОБСЄ та з урахуванням досвіду країн Європейського Союзу. В статті підкреслюється, що не настільки важливим є статус профільного органу захисту національних меншин в системі органів виконавчої влади як реальне виконання покладених на нього функцій з урахуванням перманентного процесу міграції національних меншин та одночасною необхідністю забезпечення інтересів суверенітету України.

**Ключові слова:** національні меншини, корінний народ, захист прав, публічне управління, система органів захисту національних меншин.

**Formulation of the issue.** Declaration of the Rights of Nationalities in Ukraine (1991) [1] was the first document of independent Ukraine aimed at protecting the national minorities interests. 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.

One year later the Law of Ukraine «On National Minorities» (1992) was adopted, according to which Ukraine guaranteed to all nationalities on its territory the equal political, social, economic and cultural rights and freedoms, supported the development of national self-awareness and self-expression regardless of their national origin. However, this Law did not define the state body that is responsible for the implementation of ethno-national policy and the protection of the national minorities rights.

It should be noted that the effective interaction of public authorities, fulfilling their duties according with the international standards require a coordinating governmental mechanism. The OSCE mission notes that over the past 25 years, the development of international relations, based on the relevant European standards, has never been identified as a priority for the Ukrainian authorities, as a result of which the system of protection of national minorities is fragmented, institutional responses are situational, and a thorough integration policy is absent [2].

**State of problem solving.** Separate aspects of the national minorities protection are studied mainly in Ukrainian science in the manuscripts on political science, ethnography and sociology. The scholars in the field of law regarding the national minorities rights protection are not so much. Among the latter, it is worth to mention about L. Ryaboshapka, O. Kotlyar, O. Bykov, Yu. Kovny and others.

**Objective Setting.** The aim of the article is to clarify the system of bodies whose competence includes the protection of the national minorities rights in Ukraine.

**Materials presenting.** The *Committee on Nationalities* (1992) under the Cabinet of Ministers of Ukraine was the first ukrainian central state body of the executive power, entrusted with the functions of ensuring ethno-national policy and protecting the national minorities interests. The Committee was entrusted with the following tasks: 1) creation the conditions for the revival and development of national cultures, languages and traditions in Ukraine; 2) promotion of personnel policy aimed at ensuring the representation of Ukrainian citizens of various nationalities taking into account their business and professional qualities [3].

Considering the importance of ensuring the national minorities rights, the Ukrainian government raised the status of the above-mentioned public authority and the Committee was reformed into the *Ministry of Nationalities and Migration* (1993) [4]. A year later, the competence of the Ministry was expanded by including in its powers issues of religions protection in Ukraine. The Ministry was renamed into the *Ministry of Nationalities, Migration and Cults* (1994). However, after some time, the mentioned combination of the functions of managing ethno-national politics and religions was recognized as erroneous. The Ministry's competence narrowed, and the issue of religions was excluded

from the Ministry's authority scope. Its main tasks were: 1) preparation of proposals for the formation of state policy in the field of international relations, ensuring the rights of national minorities, state migration policy; 2) ensuring the rights of national minorities to free development; 3) coordination of the state executive authorities activities regarding the satisfaction of needs, revival, preservation and development of cultures, languages and traditions of national minorities in Ukraine [5].

The competence of the Ministry was not limited to issues of ensuring the national minorities' interests. That is why there were a number of other structural divisions that managed issues related to the ethno-national policy of the state, namely: department of ethno-national processes in Ukraine and the affairs of the Ukrainian diaspora; department of deportees; refugee and migration department; department of situational analysis and information support; department of legal support.

The ministry existed until 1996, when it was replaced by a lower-level executive body – the State Committee for Nationalities and Migration. During the next years several insignificant reorganizations took place, which, however, did not significantly affect its competence.

The structure of public authorities protecting the rights of national minorities was not limited exclusively to the activities of the specialized central executive body. The positions of *Advisor to President on ethno-national problems of Crimea* and *Advisor to President on the affairs of the Ukrainian diaspora* were introduced [6, c. 51]. Such specific attention highlighted the issue of protection of national minorities and the Crimean indigenous people as a separate area of governmental activity.

The official representative body of the Crimean Tatars in Ukraine is currently the Council of Representatives of the Crimean Tatar People [7] by the President of Ukraine. It includes the members of the Mejlis. The *Council of Representatives of the Crimean Tatar People* acts in order to participate in the implementation of measures to solve political-legal, socio-economic, cultural and other problems related to the return, accommodation, adaptation of the deported Crimean Tatar people and their integration into Ukrainian society; as well as participation in the development of draft acts of Ukrainian legislation and state programs on issues related to the return to Ukraine, accommodation, adaptation of the deported Crimean Tatar people, their integration into Ukrainian society, preservation of ethnic, cultural, linguistic and religious identity.

The Human Rights Commissioner of the Verkhovna Rada of Ukraine (Ombudsman) plays an important role in the system of protection of minority rights, whose first report also concerned the problems of the status of national minorities, meeting their needs in various spheres of public life.

At the regional (oblast) level, the *Republican Committee for Nationalities and Deported Citizens of the Autonomous Republic of Crimea* operates, as well as the relevant subdivisions at the local level – nationalities and migration departments of regional state administrations.

Public organizations are definitely not part of the public governance system. However, they often act together with representatives of state authorities in order to represent national interests. One of such bodies was the Council of Representatives of National Public Organizations of Ukraine (1997), which acted as an advisory body on a public basis under the State Committee of Ukraine on Nationalities and Migration. Within its competence, the Council could, in particular, participate in the development of draft laws and other normative acts on issues of international relations, the development of cultures, languages and traditions of national minorities, in the practical implementation of state programs in the field of education, culture, ensuring the rights and freedoms of national minorities. After its liquidation the *Advisory Council of Representatives of Public Organizations of National Minorities under the President of Ukraine* was established (2000), which included exclusively representatives of national minorities without official representatives of state institutions and departments. The council was created with the purpose of preparing proposals regarding: promoting the formation of tolerance and harmony in international relations; improvement of Ukrainian legislation on national minorities and mechanisms for its implementation; ensuring the rights of national minorities, the needs of their ethno-cultural development; development of ethno-cultural and humanitarian ties of public organizations of national minorities of Ukraine with the countries of their ethnic origin.

However, every election of the next Ukrainian President followed by reorganization of the state authority body responsible for the ethno-national politics. The Advisory Council of Representatives of Public Organizations of National Minorities was subsequently reformed into the *Council on Ethno-National Policy* (2006) [8], which included representatives of the majority of national minorities. With the election of the pro-Russian president Viktor Yanukovich the Council on Ethno-national Policy stopped its activities [9]. The governmental actions were aimed at curtailing the national minorities

protection policy. In fact, national minorities were left without their representatives in the authorities consequently definitely harming their interests. The Committee on Nationalities and Religions was completely liquidated and its competence transferred to the level of a department in the Ministry of Culture. Thus, for the first time since the independence of Ukraine a specialized body in the government was absent.

The situation changed with the switch in the vector of state policy from pro-Russian to pro-European (2014). This was not least due to the recommendations of the OSCE and the need to converge with the *acquis communautaire* of the European Union. The *Advisory Committee of the Framework Convention* called on states to create appropriate governmental structures on ethnopolitics and protection of national minority rights. The OSCE High Commissioner for National Minorities has repeatedly noted that the establishment or appointment of a relevant public authority aims to achieve three goals:

First, it contributes to the strengthening of stability in Ukraine. Issues related to national minorities, identity and language have always been subject to frequent use and abuse to achieve political goals. A decent institutional mechanism of interethnic relations will facilitate the participation of the state in its ongoing dialogue with national minorities and attempts to address long-term grievances on the part of national communities. This, in turn, will help prevent tension and misunderstandings between communities and make it difficult for other parties to destabilize the situation in the country.

Secondly, it contributes to the advancement of Ukraine on its way to the implementation of relevant European and international obligations. Ukraine is a member state of the Framework Convention on the Protection of the Rights of National Minorities of the Council of Europe (Framework Convention) and the European Charter of Regional or Minority Languages. Ukraine has also undertaken obligations within the framework of the implementation of the Neighborhood Policy of the European Union (EU), which includes respect for the rights of national minorities. Having chosen this path, Ukraine demonstrated its intention to embrace European standards for the protection of minority rights, in particular, by creating the necessary mechanism for their implementation. The latter cannot be achieved without solving the existing institutional shortcomings in the field of inter-ethnic relations.

Thirdly, Ukraine is on its way of carrying out the structural reforms that should significantly change the governance style. The process of decentralization is the most decisive of the changes, which will have a significant impact on national communities. That is why it is important for the state to have a developed institutional mechanism that will ensure the protection of the rights of national minorities and involve national communities in this process at the national, regional and local levels [10].

To implement these recommendations, Ukraine recognized the need to strengthen the institutional mechanism responsible for conducting constructive inter-ethnic relations and protecting the rights of national minorities. This course is enshrined both in the National Strategy on Human Rights for 2016-2020 and the corresponding Action Plan [11] for the implementation of the Strategy, as well as in the conclusions of the parliamentary hearings on the topic «The role, importance and influence of civil society on the formation of ethno-national unity policy in Ukraine» (2015) [12].

Simultaneously, attention to the protection of the national minorities rights at the level of ensuring the interests and rights of indigenous peoples and bilateral relations with neighboring countries has increased significantly. A number of bodies aimed to protect the national minorities interests were established. In particular, the position of the *Plenipotentiary of the President of Ukraine for the Affairs of the Crimean Tatar People* appeared. The newly created *State Service for the Affairs of Crimea and the city of Sevastopol* (2015) was given a mandate to resolve the issues of the minorities of the Crimean Peninsula, including the Crimean Tatar people. The government created an Interdepartmental Working Group on Roma (2015) on issues of implementation of the action plan for the implementation of the Strategy for the Protection and Integration of the Roma National Minority into Ukrainian Society for the period until 2020. The Government of Ukraine also announced (2016) the resumption of bilateral commissions on the rights of national minorities (Hungarian-Ukrainian, Romanian-Ukrainian and German-Ukrainian) [13].

However, along with the revitalization of activities at the level of bilateral relations, the question of the existence of a specialized central authority remained open. Establishing a special independent authority was included to the agenda with a purpose to act as an effective and independent mechanism for the protection of minority rights, including through the consideration of complaints, response to offenses and deficiencies at the national, regional and local levels. In accordance with one of the

proposals, it was proposed to create the position of deputy for minority issues within the office of the Commissioner of the Verkhovna Rada of Ukraine for human rights.

To meet the requirements of the OSCE, the *State Service of Ukraine for Ethnic Policy and Freedom of Conscience (DESS)* [14] was established. As for today this public authority 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 in Ukraine. Its competence covers preservation and development of the identity of indigenous peoples and national minorities in Ukraine, satisfaction of their cultural, linguistic and informational needs, implementation of measures aimed at the development of the ethnic identity of indigenous peoples and national minorities in Ukraine; strengthening of international understanding and harmony in Ukrainian society. In addition, DESS contributes to the expansion of international cooperation with the states from which indigenous peoples and national minorities in Ukraine originate; takes measures within its competence to: prevent manifestations of international, racial, inter-religious and inter-denominational conflicts and enmity; ensuring the realization of the rights of persons belonging to indigenous peoples and national minorities in Ukraine; develops measures to preserve and ensure the cultural and linguistic development of indigenous peoples and national minorities in Ukraine.

**Conclusions.** The issue of national minorities rights protection has been in focus since the independence of Ukraine. Establishing and functioning of the relevant Ministry (Committee) on National Minorities is a direct confirmation of this thesis. This issue was always in focus of the Ukrainian government besides the period of the rule of the pro-Russian government (2010-2014), when most of the state institutions for the protection of national minorities were liquidated. This fact determined the revolutionary events of the Euromaidan (2014) to some extent.

As of today, Ukraine fulfills its obligations regarding the protection of the national minorities rights. The current central authority (State Service of Ukraine for Ethnic Policy and Freedom of Conscience, DESS) was formed in accordance with the recommendations of the OSCE and taking into account the experience of the EU member-states. Its status is lower in the executive power hierarchy. However, the scope of competence and its actual activity serves the national minorities interests better.

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