

## INTERNATIONAL LAW AND INTERNATIONAL RELATIONS

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### **PROGRAM LEGAL REGULATION AND RIGHTS OF INDIGENOUS PEOPLES: EXPERIENCE OF UKRAINE**

Authors determine the role of legal program regulation for the provision, securing and defense the indigenous peoples` rights on example of Ukrainian situation in 2014-2017. They researched the national programs and action plans to achieve the ends of the UN Declaration on the Rights of Indigenous Peoples about the current situation in Ukraine. They watched the essential details on the development and implementation of the National Human Rights Strategy and Action Plan of its realization.

The development, implementation, monitoring and evaluation of those Strategy and Action plan were researched by authors, also as the information on how stakeholders participated in these processes, in particular national human rights institutions, indigenous peoples and civil society.

Authors proved that majority of measures of the National Human Rights Strategy Action Plan, devoted to the ethnic issues, prescripts the same actions regarding to the issues of national minorities and indigenous peoples and a lot of Action Plan measures establish guarantees only for minorities not the indigenous peoples of Ukraine.

Authors proved that the elaboration of the draft of Law on statute of the indigenous peoples of Ukraine was the key measure of the coherent chapter «Provision of the Indigenous Peoples` and National Minorities` Rights» of the National Human Rights Strategy and the Action Plan, where the measures and implementation strategies to achieve the ends of the UN Declaration, 2007 might be used.

They researched the legislative processes such as elaboration the Draft of Law «On the Statute of the Crimean Tatar People in Ukraine» № 6315 on April 7, 2017, prepared under aegis of the Ministry of Culture of Ukraine and registered in the Ukrainian Parliament just as the form of realization of this measure of the Action Plan.

There is proved in the article that this project was drafted in common without recognition the measures and implementation strategies to achieve the UN standards for the indigenous peoples` rights, without implementing the majority of those indigenous peoples` rights, reflected in the UN Declaration, 2007. Also authors researched other legal drafts that were elaborated by non-governmental organization of indigenous peoples.

The materials of the article were used by Crimean Tatar Resource Center to prepare the answers for the Office of the High Commissioner on Human Rights on the Questionnaire in relation to national action plans to achieve the ends of the UN Declaration on the Rights of Indigenous Peoples about the current situation in Ukraine.

**Key words:** indigenous peoples, legal regulation, Crimean Tatars, Crimean Karaites (Karays), Krymchaks, Ukraine.

The interest of the international community on issues of the indigenous peoples` rights and legal program regulation is extremely strong as for those phenomenons separately so for their conjunction in modern national and international practice. For example, the Office of the UN High Commissioner for Human Rights and the UN Department of Economic and Social Affairs are currently drafting a guidance note on national action plans to achieve the ends of the UN Declaration on the Rights of Indigenous Peoples (UN DRIP). Elaborating the national examples in the guidance note those UN bodies prepared the special

questionnaire seeking to collect examples from indigenous peoples for this purpose. This questionnaire has been provided to national human rights institutions so as to facilitate easy comparison in responses and generate ideas for partnerships between them, States and indigenous peoples<sup>1</sup>.

Authors of this article prepared the answers on this questionnaire describing the situation in Ukraine in 2014-2017 for legal program regulation in area the indigenous peoples` rights; those answers were sent to the Office of the UN High Commissioner for Human Rights and were elaborated by the Indigenous Peoples and Minorities Section of its Rule of Law, Equality and Non-Discrimination Branch. As those materials may be interesting for the scientific purposes also authors present them in this article.

Achieving the above pointed goal of describing the situation in Ukraine in 2014-2017 for legal program regulation in area the indigenous peoples` rights authors solved some tasks. They watched the mechanisms of development and implementation of the National Human Rights Strategy (NHRS) of Ukraine and Action Plan of its realization in part of the provision, securing and defense the indigenous peoples` rights on example of Ukrainian situation in 2014-2017. They researched the role of those documents in achieving the ends of the UN DRIP in Ukraine, also they watched the issues of free, prior and informed consent of indigenous peoples of Ukraine for those processes.

Ukraine recognized for the Crimean Tatar People the statute of the indigenous people, according to the relevant UN standards, by adopting the Parliament Statement on March 20, 2014 and by further coherent commitment made by Ukraine before the UN in May, 2014.<sup>2</sup> Also the statute of the indigenous peoples, according to the relevant UN standards, is de-facto recognized by Ukraine for Crimean Karaites and Krymchak Peoples; drafts of coherent statements were registered in Ukrainian Parliament in 2015 and 2016<sup>3</sup>.

Recognizing the fact of residing the indigenous peoples in Ukraine, fixing their rights in the articles 11 and 92 of Ukrainian Constitution, 1996, recognizing the role of the UN DRIP in the Statement on March 20, 2014, Ukraine still did not drafted and developed any special National Plan of Actions or National Strategy on indigenous peoples` issues. It is caused by some reasons.

Positions of absolute majority of the government service men and of the representatives of almost all the scientific and expert organizations of Ukraine in areas of ethnic, linguistic and cultural policy are grounded traditionally on the system of values and approaches formed during the Soviet times. This system of values foresees the special rights of the indigenous population for tribal and traditional peoples only.

The relation for the non-titular ethnic groups` rights in such conditions may ground basically on framework of their defense guaranteed by the common treaty obligations Ukraine in areas of the elimination racial discrimination, defense the national minorities` rights, human rights, regional and minority languages. That is why the defense of the indigenous peoples` rights in Ukraine is reflected in the national programs and strategies, devoted to the human rights` issues

Also the illegal occupation and annexation of the Crimean peninsula (Crimea) by Russian Federation (Russia) since 2014 is the important circumstance, as the Crimea is the historic native land and traditional residing region of three pointed indigenous peoples of Ukraine – Crimean Tatars, Crimean Karaites (Karays) and Krymchaks. So the providing the indigenous peoples` rights in Ukraine on national level is bounded tightly with the issue of the deoccupation of the Crimea and with coherent counteractions for the Russian aggression against Ukraine.

This interstate conflict is not finished; central authorities of Ukraine have no now any strategic vision of solving the problem of the Crimea and they are tied by a huge volume of the non-public obligations with the Russia and with own external politic partners. That`s why it is hard to wait any effective strategic steps from the government of Ukraine for ensuring and defending the rights of the indigenous peoples residing in the Crimea.

Now the NHRS is the basic program legal act adopted in Ukraine and reflecting the issues of indigenous peoples` rights. NHRS was developed by the Ministry of Justice and was approved by

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<sup>1</sup> *Questionnaire in relation to national action plans to achieve the ends of the United Nations Declaration on the Rights of Indigenous Peoples 2017.* (OHCHR). Home \_ United Nations. <[https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2017/06/Indigenous-peoples\\_QuestionnaireENG\\_.pdf](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2017/06/Indigenous-peoples_QuestionnaireENG_.pdf)> (2017, June 22)

<sup>2</sup> *Про Заяву Верховної Ради України щодо гарантії прав кримськотатарського народу у складі Української Держави 2014.* (Верховна Рада України). Офіційний сайт Верховної Ради України. <<http://zakon2.rada.gov.ua/laws/show/1140-18>> (2017, June 22)

<sup>3</sup> *Проект Постанови про Заяву Верховної Ради України щодо збереження в Україні самобутності та культурної спадщини кримських караїмів (караїв) та кримчаків 2016.* (Верховна Рада України). Офіційний сайт Верховної Ради України. <[http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=59430](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59430)> (2017, June 22)

the Decree of the President of Ukraine № 501/2015 on August 25, 2015<sup>1</sup>. The development and drafting of the NHRS was done for execution the provisions of the Decree of President of Ukraine № 811/2014 on November 15, 2014. This Decree provided the incorporation the «heading domestic scientists and international experts with usage the international experience»<sup>2</sup> for the NHRS draft development.

Project of UN Development Program «Democratization, Human Rights and Civil Society Development in Ukraine» gave the technical aid and the Ministry of Foreign Affairs of Denmark made support for drafting the NHRS. During 2015 NHRS draft development was reflected in the special web-link, created and administered with support of the Ministry of Justice of Ukraine<sup>3</sup>.

NHRS contains the chapter «Provision of the Indigenous Peoples' and National Minorities' Rights», where the «duty for legislative regulation the indigenous peoples' statute» is recognized. The «establishment of the effective system of the provision and defense the indigenous peoples' and national minorities' rights, the support and development of the tolerated interethnic relations in the society» were determined as coherent chapter's strategic goal.

NHRS determined such expected results of this goal:

- establishment the effective mechanism of provision and defense the indigenous peoples' and national minorities' rights;

- realization the complex measures for ensuring the duties for social and other services of citizens of Ukraine, that belong to the indigenous peoples and national minorities;

- establishment the effective mechanism of participation the indigenous peoples' and national minorities' representatives in the procedures of adopting the decisions by the state and municipal bodies in issues, related to the indigenous peoples' and national minorities' rights.

Executing the NHRS, the Government (Cabinet of Ministers) of Ukraine approved by the Prescript № 1393-p on November 23, 2015 the Action Plan for Realization the NHRS till 2020; this Action Plan also contains the chapter «Provision of the Indigenous Peoples' and National Minorities' Rights» and its above-mentioned goal<sup>4</sup>.

The Action Plan was drafted under aegis of the Ministry of Justice of Ukraine during Summer-Autumn 2015; all the measures of chapters of this Plan were discussed with a wide involvement of the civil society and human rights structures. But the participation of organizations, defending the indigenous peoples' rights, in the Action Plan drafting was minimal; it may be also explained by the situation of the interstate conflict and illegal occupation of the Crimea. The directions of the Action Plan's chapter, devoted to the indigenous peoples' issues, were proposed as by the experts in area of the indigenous peoples' rights, so by the common human rights non-governmental organizations.

The Action Plan established the ways of its measures' realization, the terms of realization and the responsible entities. Neither NHRS, nor the Action Plan do not foresee any additional financial support from the state or municipal budgets; they do not fix any international technical aid or other external material sources. De-facto these documents envisaged their executing by the state power authorities in the framework of their common usual functions, and – by some other structures, as volunteers. That is why we can not determine the NHRS and the Action Plan as documents with a high level of effectiveness.

Some measures of coherent Action Plan's chapter covers the national minorities' interests only, and it is unjustifiedly and discriminative for the interests of the indigenous peoples of Ukraine. Inter alia such discriminative provisions 4-9 of article 112 of the Action Plan envisaged:

- the legal drafting on national minorities' requirements for education by the native languages,
- development the methodic plans in common schools where education is held by national minorities' languages,

- differentiation the independent external appraisal for scholars taught there,

- implementation the school programs of history for those national minorities' scholars,

- improving the educational capacity of the common schools for satisfaction the needs of national minorities.

<sup>1</sup> Про затвердження Національної стратегії у сфері прав людини 2015. (Президент України).

Офіційний сайт Верховної Ради України. <<http://zakon3.rada.gov.ua/laws/show/501/2015>> (2017, June 22)

<sup>2</sup> Про розроблення Національної стратегії у сфері прав людини 2014. (Президент України).

Офіційний сайт Верховної Ради України. <<http://zakon2.rada.gov.ua/laws/show/811/2014>> (2017, June 22)

<sup>3</sup> Національна стратегія в сфері прав людини 2015. <<http://hrstrategy.com.ua/>> (2017, June 22)

<sup>4</sup> Про затвердження Національної стратегії у сфері прав людини 2015. (Президент України).

Офіційний сайт Верховної Ради України. <<http://zakon3.rada.gov.ua/laws/show/501/2015>> (2017, June 22)

Also such discriminative provisions 3, 4 of article 113 of the Action Plan regulated procedures of informing the national minorities only (not the indigenous peoples) about the state social employment services, also as of informing the personnel of state medical entities on national mentality of the national minorities' representatives. The provision 1 of article 114 of the Action Plan also foreseen the analysis of national minorities' right only on participation in public and social-economic life and established the duty for development the coherent pilot mechanism for municipal authorities.

But at the same time this chapter of the Action Plan contains some measures for defense both the national minorities' and indigenous peoples' same rights. Provision 1 of article 112 of the Action Plan foreseen the determination of the central executive power authority in area of ethnic policy with a coherent institutional potential to execute functions in this area, including prophylactic and monitoring for the respect of indigenous peoples' and national minorities' rights. But till now this functions are still executed by the Ministry of Culture of Ukraine and the special state body is still not determined by the Government of Ukraine.

Provision 2 of article 112 of the Action Plan foresees the duty of the legal drafting the Concept of State Ethnic-National Policy of Ukraine, including the development of coherent terminology, elaboration the national informational strategy of multiculturalism etc. But this programmed draft of Law in common has any practical significance for vindication the rights of the indigenous peoples of Ukraine. Projects of such Concept were proposed, discussed and drafted repeatedly by the bodies of Government of Ukraine during last 25 years. All those drafts are distinctive by the absence of strait action norms, by the overloading by the abstract theoretic constructions, by the ignorance for the international standards for indigenous peoples', national minorities' and linguistic rights. Permanent governmental legal drafting for such Concept may be determined as the conscious simulation of solving the problems of the indigenous peoples and other ethnic groups by the Ukrainian Government.

Article 115 of the Action Plan contains some more important practical common measures, such as:

- thematic TV and radio programs for issues of life of the indigenous peoples and national minorities,
- establishment the educational projects for national minorities' and indigenous peoples' non-governmental organizations,
- exhibitions in museums, devoted to the historic and spiritual heritage of the national minorities and indigenous peoples,
- promotion for raise the TV and radio broadcast by national minorities' and indigenous peoples' languages, improvement the state support mechanism for this media;
- inclusion the ethnic groups' representatives to the Supervisory board of the National civil TV and Radio Company of Ukraine.

Provisions 1, 2 of article 113 of the Action Plan establish measures, tightly connected with a situation of the illegal occupation of the Crimea by Russia. Such measures cover the duty for special hearings in the Parliamentary Committee, on issue of regulating the legal statute and replacement of the indigenous peoples' and national minorities' representatives, residing in the temporal occupied territory of Ukraine. Also those measures foresee the duty for adoption the normative legal act on aspects of former deported Crimean Tatars' and other ethnic groups' arrangement, as they turned back before 2014 to native lands in Ukraine from Central Asia, after the criminal Soviet deportation, and after 2014 they were forced to resettle from the Crimea, occupied by Russia, to others regions of Ukraine.

But those measures of the Action Plan covered as indigenous peoples' so national minorities' rights. Only one measure of the Action Plan was devoted to the indigenous peoples' issues without regard to the national minorities' problems. Such provision 10 of the Action Plan's article 112 determined the Ministry of Culture, together with uncertain «international experts» and «non-governmental organizations», as responsible ones for the preparing the draft of Law, regulating the statute of indigenous peoples, also as for its presenting to the Ukrainian Government; this measure were planned for execution till the last quarter of 2016<sup>1</sup>.

At the same time there any special preliminary research for preparing the NHRS, also as the Action Plan, including the drafting measures of their chapters «Provision of the Indigenous Peoples' and National Minorities' Rights», was not made in Ukraine.

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<sup>1</sup> Про затвердження плану дій з реалізації Національної стратегії у сфері прав людини на період до 2020 року 2015. (Кабінет Міністрів України). Офіційний сайт Верховної Ради України. <<http://www.kmu.gov.ua/control/uk/cardnpd?docid=248740679>> (2017, June 22)

Anyway in 2015-2017 the dissertation research «UN Standards Related to the Indigenous Peoples' Rights»<sup>1</sup> was made in the Institute of Legislation of Verkhovna Rada of Ukraine, with special attention to the issues of realization those UN standards in the Ukrainian legislation. Both the Crimean Tatar Resource Center and the Foundation for Research and Support of the Indigenous Peoples of Crimea used the results of this dissertation research for the elaboration of the draft of Law «On Indigenous Peoples of Ukraine», executing the coherent prescripts of the NHRS and of the Action Plan.

After the final text of the Action Plan official promulgation some non-governmental entities, defending the indigenous peoples' rights in Ukraine, started the development of the draft of Law of Ukraine «On Indigenous Peoples of Ukraine» (it were firstly the Crimean Tatar Resource Center и Foundation for Research and Support of the Indigenous Peoples of Crimea). This draft was grounded on the Crimean Tatar activists' elaborations of times 2007-2013; the text of this draft, supported by the Crimean Tatar Resource Center, got the experts' evaluation and constructive comments, accounted for further work. This draft also grounded on the propositions of the UN Permanent Forum on Indigenous Issues' representatives; the draft was proposed for attention of the World indigenous peoples' community, of the independent experts and state delegations during the 9<sup>th</sup> Session of the Expert Mechanism on the Rights of Indigenous Peoples. Later this draft of Law also was discussed during the OSCE Human Dimension Implementation Meeting in October 2016.<sup>2</sup>

Such elaborated draft of Law not only referred to the UN DRIP, but implemented mostly its prescripts. This draft of Law proposed to determine the indigenous peoples of Ukraine as one deported indigenous people (Crimean Tatar People) and the endangered indigenous peoples (Crimean Karaite and Krymchak Peoples).

This draft of Law proposed the possible recognition the other ethnic groups as the indigenous peoples of Ukraine by the adoption of the parliamentary statement and by further notification about it the relevant UN bodies on indigenous issues by Ukrainian authorities. Noticed draft of Law regulated particularly the issues of correlation the indigenous peoples' and human rights, of indigenous peoples' legal subjectivity and institutionalism, of indigenous peoples' rights on being, identity, sustainable development in Ukraine, also as of indigenous peoples' and their representatives' cultural, educational, linguistic and informational rights in Ukraine<sup>3</sup>.

In parallel with this process till 2015 the Department of the maintenance of activities the Commissioner of the President of Ukraine on the Crimean Tatar People Issues initiated the legal drafting on the indigenous peoples' issues together with some invited experts<sup>4</sup>. Soon the representatives of the Commissioner initiated the separation this work on two drafts of Laws – on the non-numerous indigenous peoples and on statute of the Crimean Tatar People<sup>56</sup>.

Such two Drafts of Laws, prepared by working group under the aegis of the Commissioner, were discussed on Round table on June 11, 2015 in the Institute of Legislation of Verkhovna Rada of Ukraine, devoted to the issues of the international standards of protection and realization the indigenous peoples' rights, to the problems of those standards' implementation to the legislation of Ukraine, to the coherent legislative drafting process and the present foreign experience.

During the Round table the Vice-Chair of the UN Permanent Forum on Indigenous Issues Mr. Oliver Loode analyzed both drafts of Laws of Ukraine on indigenous peoples' issues («On the Non-Numerous Indigenous Peoples of Ukraine» and «On the Statute of the Crimean Tatar People»). Mr. Loode noticed that

<sup>1</sup> Приходько, А. (2017). *Стандарти ООН стосовно прав корінних народів* <<http://dspace.onua.edu.ua/handle/11300/7868>> (2017, June 22)

<sup>2</sup> *Legislative Defence of the Rights if Indigenous Peoples of Ukraine 2016*. (Foundation for Research and Support of the Indigenous Peoples Crimea). *Organization for Security and Co-operation in Europe \_ OSCE*. <<http://www.osce.org/ru/odihr/266981>> (2017, June 22)

<sup>3</sup> *Дев'ятьма сесія Експертного механізму з прав корінних народів 2016*. Херсонський національний технічний університет. <<http://kntu.net.ua/index.php/ukr/content/view/full/35732>> (2017, June 22)

<sup>4</sup> *Агенство «Крымские новости» 2016*. <<http://qha.com.ua/ru/politika/status-quo-status-krimskih-tatar-kak-korenного-naroda/160395/>> (2017, June 22)

<sup>5</sup> *Експерти закликають Верховну Раду законодавчо врегулювати статус корінних народів 2015*. Українська Гельсінгська спілка з прав людини. <<https://helsinki.org.ua/articles/eksperty-zaklykayut-verhovnu-radu-zakonodavcho-vrehulyuvaty-status-korinnyh-narodiv/>> (2017, June 22)

<sup>6</sup> Бабін, Б. *Права корінних народів. Брехня, «відверта брехня» та політика 2017*. (ІзбірКом). *Ізбірком \_\_ Комитет избирателей Украины*. <[https://www.izbirkom.org.ua/news/Politika-8/2017/Prodovjuyuchi-diskusiyu-na-IzbirKomi-Prava-korinnih-narodiv\\_-Brehnya\\_-vidverta-brehnya-ta-politika-11126](https://www.izbirkom.org.ua/news/Politika-8/2017/Prodovjuyuchi-diskusiyu-na-IzbirKomi-Prava-korinnih-narodiv_-Brehnya_-vidverta-brehnya-ta-politika-11126)> (2017, June 22)

«proposed in these acts classification of peoples onto the «indigenous» and «non-numerous indigenous peoples» is not in compliance with the international standards, as all the indigenous peoples, despite of their quantity, are equal with other peoples and have right to be free from any kind of discrimination during realization own rights».

Round table recommendations fixed the duty to finish the development of the draft of Law «On Indigenous Peoples of Ukraine», grounding on the maximal implementation the UN DRIP's provisions, on the execution the Constitution of Ukraine with wide civil and expert engagement, in conditions of free, prior and informed consent of the indigenous peoples' representative institutions and organizations with provisions of this draft.

Round table recommendations proposed also to embrace by this draft all the indigenous peoples of Ukraine, being in compliance with UN standards, – Crimean Karaites, Crimean Tatar and Krymchak peoples. It proposed to consider the practical duties of those ethnic groups, including appeared in situation of illegal occupation of their native land and internally displacement of their representatives. Also recommendations proposed to execute the official translation on Ukrainian and official publication in Ukraine UN DRIP<sup>1</sup>, that was done further<sup>2</sup>.

Crimean Tatar Resource Center and Foundation for Research and Support of the Indigenous Peoples of Crimea, executing the provision 10 of Action Plan's article 112, proposed in August, 2016 the draft of Law of Ukraine «On Indigenous Peoples of Ukraine» to the Ministry of Culture of Ukraine<sup>3</sup> for its contemplation as a possible basis for the next legislative procedures.

Alas Ministry of Culture of Ukraine ignored totally as this draft of Law so the coherent propositions for further cooperation with Foundation and Crimean Tatar Resource Center. At that time Ministry of Culture tried to develop own draft of Law of Ukraine – «On Support the Karaites and Krymchak Peoples' Originality in Ukraine», promulgated on the official web-site of Ministry on December 1, 2015 for civil discussion.

Analysis of Ministry's draft of Law shows its total incompliance as to the Parliamentary Statement on March 20, 2014, so to the abovementioned propositions of the Vice-Chair of the UN Permanent Forum on Indigenous Issues, also as – to the UN DRIP, 2007. It is enough to point that Ministry's draft of Law guaranteed to the Crimean Karaites and Krymchak Peoples three rights only: on preservation the linguistic originality, on the religious originality and on composing own self-governing institutions. This draft of Law has extremely low level of legislative techniques and contains numerous mistakes<sup>4</sup>.

Further Ministry of Culture of Ukraine become a partner to the legal drafting working group established by initiative of the Commissioner of the President of Ukraine on the Crimean Tatar People Issues. During this partnership two seminars were organized under aegis of the Ministry – «Legislative Provision of Indigenous Peoples' Rights in Ukraine» on September 30, 2016 and «Indigenous Peoples: Politic Representation and Solving Disputes» on April 5-6, 2017.

Neither indigenous peoples' representatives, nor leading Ukrainian experts on indigenous issues were invited for participation in both of those events. European experts, invited for seminar on April 5-6, 2017 (Mr. Alexander Ksentaki and Ms. Elizabeth Naucler) were neither experts in area of indigenous peoples' rights, nor the indigenous peoples' representatives.

Such position of the Ministry of Culture of Ukraine became the object of sharp critics on the Hearings in the Parliamentary Committee for Human Rights, National Minorities and Inter-Ethnic Relations. This Hearings were devoted to the realization the NHRS just in part of providing and protection the indigenous peoples' and national minorities' rights in Ukraine. Experts told on Hearings that Ministry of Culture did not elaborate own draft of Law on statute of the indigenous peoples, and refused to analyze

<sup>1</sup> *Імплементация Україною міжнародних стандартів захисту та реалізації прав корінних народів 2015.*

Інститут законодавства Верховної Ради України.

<<http://instzak.rada.gov.ua/instzak/doccatalog/document;jsessionid=D0FC3C907136CF56B124F8FFFDB88CC7?id=83991>> (2017, June 22)

<sup>2</sup> *Декларація Організації Об'єднаних Націй про права корінних народів 2007.* (Голос України). *Голос України – газета Верховної Ради України.* <<http://www.golos.com.ua/rus/article/260484>> (2017, June 22)

<sup>3</sup> *Legislative Defence of the Rights of Indigenous Peoples of Ukraine 2016.* (Foundation for Research and Support of the Indigenous Peoples of Crimea). *Organization for Security and Co-operation in Europe – OSCE.*

<<http://www.osce.org/ru/odihr/266981>> (2017, June 22)

<sup>4</sup> *Проект Закону України "Про підтримки самобутності караїмського і кримчацького народів в Україні" 2015* (Міністерство культури України). *Офіційний сайт Міністерства культури України.*

<[http://mincult.kmu.gov.ua/control/publish/article?art\\_id=245026010](http://mincult.kmu.gov.ua/control/publish/article?art_id=245026010)> (2017, June 22)

the draft, proposed by the Foundation for Research and Support of the Indigenous Peoples of Crimea and Crimean Tatar Resource Center<sup>1</sup>.

Also we should point on the Parliamentary Hearings «Strategy of the Reintegration of the Temporal Occupied Territory of Autonomous Republic of Crimea and Sevastopol City: Problem Questions, Ways, Methods and Approaches» on June 15, 2016. The Recommendations of this Hearings, adopted by Resolution № 1602-VIII on September 22, 2016, proposes to the President of Ukraine to prepare draft of Laws on Constitutional and legislative changes for recognition the Crimean Tatars, Crimean Karaites and Krymchaks as the indigenous peoples of Ukraine<sup>2</sup>.

Later, on April 7, 2017 group of Ukrainian parliamentarians (including the Head of the Mejlis of the Crimean Tatar People Mr. Refat Chubarov and Leader of the Crimean Tatar People Mr. Mustafa Djemilev) registered in Parliament the draft of Law of Ukraine «On the Statute of the Crimean Tatar People in Ukraine» № 6315. This draft of Law was developed both by servicemen of Religion and Nationalities Department of the Ministry of Culture of Ukraine and non-governmental structures' representatives.

This draft mentions in preamble the UN DRIP, proposing to «be guided» by its norms, also as the ILO Convention № 169, proposing to «consider» its provisions. Practically this draft of law is devoted not to the determination the indigenous people's rights, but is concentrated on issues of the activities of representative bodies of this people, such as the Mejlis of the Crimean Tatar People. Also this draft of law regulated the establishment the ethnic electoral quotas for the Crimean Tatar People for election the Ukrainian Parliament, the legislature of the Crimean autonomy and the local councils.

The draft of Law № 6315 determines the «indigenous Crimean Tatar people», as the «holistic ethnos that was formed on the territory of the Crimean peninsula, that preserved and attempted to transfer the collective ethnic cultural identity for future generations, that is being the carrier of the distinctive language and culture, that has own traditional social, cultural and politic institutions, that formed developed system of the own self-governing bodies, with its self-consignness as the indigenous people of Ukraine and without any own or ethnically native state abroad of Ukraine»<sup>3</sup>.

This draft of Law regulated nothing for statute of the Crimean Karaites and Krymchaks, it did not contain or regulate the majority of the indigenous peoples' rights, guaranteed by the UN DRIP. Inter alia the draft of Law № 6315 did not contain norms about: indigenous peoples' rights on citizenship, on self-determination of the identity, on restitution of the material vectors of the native culture, on special statute of the religious and cultural significant places, on creation the own systems of education and on control over such systems, on own media on indigenous languages, on development own development strategies and on participation in development the coherent state strategies and programs, on participation in protection the environment and land fertility, on consultation for military activities on own residing territories, on international technical aid. This absence and some technical drawbacks of the draft № 6315 turned it to an object of the sharp expert critics<sup>45</sup>.

At the same time just this draft of Law of Ukraine «On the Statute of the Crimean Tatar People in Ukraine» № 6315 was determined already by the Ministry of Culture and by other state agencies of Ukraine as the «adequate form» of realization the provision 10 of article 112 of Action Plan for NHRS, concerning the issue of legal statute the indigenous peoples of Ukraine.

It is important to determine how the Ukrainian state ensured that indigenous peoples had the opportunity to participate in above mentioned processes.

<sup>1</sup> Стенограма комітетських слухань на тему: «Стан реалізації Національної стратегії у сфері прав людини щодо забезпечення та захисту прав корінних народів і національних меншин України та законодавчі ініціативи щодо створення ефективних механізмів такого захисту» 2017 (Верховна Рада України).

Комітет з питань прав людини, національних меншин і міжнародних відносин.

<[http://kompravlud.rada.gov.ua/kompravlud/control/uk/publish/article?art\\_id=57642&cat\\_id=46332](http://kompravlud.rada.gov.ua/kompravlud/control/uk/publish/article?art_id=57642&cat_id=46332)> (2017, June 22)

<sup>2</sup> Беліцер, Н. (2017). *Кримські татари як корінний народ. Історія питання і сучасні реалії*. Міністерство інформаційної політики України – офіційний веб-сайт. <[http://mip.gov.ua/files/pdf/blicer\\_pro\\_krimtat.pdf](http://mip.gov.ua/files/pdf/blicer_pro_krimtat.pdf)> (2017, June 22)

<sup>3</sup> *Проект Закону про статус кримськотатарського народу в Україні 2017*. (Верховна Рада України) Офіційний сайт Верховної Ради України. <[http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=61537](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61537)> (2017, June 22)

<sup>4</sup> Бабін, Б. *Питання статусу національної автономії та корінних народів не має бути предметом політичних спекуляцій 2017*. (ІзбірКом). *Ізбирком \_\_ Комітет виборців України*. <[https://www.izbirkom.org.ua/publications/Zaschita-grajdanskih-prav-12/2017/Pitannya-statusu-natsionalnoi-avtonomii-ta-korinnih-narodiv-ne-mae-buti-predmetom-politichnih-spekulyatsiy\\_---odeskiy-profesor-5957](https://www.izbirkom.org.ua/publications/Zaschita-grajdanskih-prav-12/2017/Pitannya-statusu-natsionalnoi-avtonomii-ta-korinnih-narodiv-ne-mae-buti-predmetom-politichnih-spekulyatsiy_---odeskiy-profesor-5957)> (2017, June 22)

<sup>5</sup> Бабін, Б. *Права корінних народів. Брехня, «відверта брехня» та політика 2017*. (ІзбірКом). *Ізбирком \_\_ Комітет виборців України*. <[https://www.izbirkom.org.ua/news/Politika-8/2017/Prodovjuyuchi-diskusiyu-na-IzbirKomi-Prava-korinnih-narodiv\\_-Brehnya\\_-vidverta-brehnya-ta-politika-11126](https://www.izbirkom.org.ua/news/Politika-8/2017/Prodovjuyuchi-diskusiyu-na-IzbirKomi-Prava-korinnih-narodiv_-Brehnya_-vidverta-brehnya-ta-politika-11126)> (2017, June 22)

Illegal occupation and annexation the Crimea, as territory of traditional indigenous peoples' residing, by Russia in 2014, complicated the indigenous representative structures activities' significantly. So the possibility to execute the strict democratic consultations between the state bodies and indigenous peoples' assignees since 2014 decreased sharply. The Crimean Tatar People created the democratic formed system of ethnic self-regulation before occupation of the Crimea, including the national congress – Kurultay the Crimean Tatar People, executive body of congress – Mejlis of the Crimean Tatar People (Mejlis), regional and local Mejlises in towns and districts of the Crimea and other regions of Ukraine and third countries<sup>1</sup>.

Also High Council (Ulu bolic) of the Crimean Karaites People functioned before the occupation of the Crimea as representative body of this ethnic group.

Russian prosecutors office in annexed Crimea made the «proclamation on ban the activity of civil entity» for the Mejlis on February 15, 2016 on grounds of the Federal law of Russia «On Counteraction for Extremist Activities». Contradicting against such «administrative claim» on ban the Mejlis, its defense grounded own position on norms of the articles 1, 2, 4, 5 of ILO Convention № 169 and of the articles 5, 18, 20, part 2 of article 33, part 1 of the article 37 of the UN DRIP, with guarantees of the Mejlis' activities as representative body of the indigenous people, with personal membership and elected by the Crimean Tatar People via Kurultay of the Crimean Tatar People, not by themselves, and not being the civil entity according to the legislation of Russia.

Soon after «Supreme Court of the Republic of Crimea» made decision dated March 26, 2016 that determined the Mejlis as an «extremist organization» and established «prohibition of its activities». Arguments of defense were not researched by this «court». This prohibition covered not only the Mejlis but also the activities of Kurultay the Crimean Tatar People, its Audit Commission and Central electoral commission, local and regional Mejlises. Defense of the Mejlis appellated this decision of occupation authorities to the Supreme Court of Russia.

It must be noticed that Russian «State Committee on issues of Interethnic Relations and Deported Citizens of the Republic of Crimea» mentioned in the document with contradictions against the Mejlis appellation. There was declared that «now there are more then 30 civil entities defending rights and interests of the Crimean Tatar People, that are constructive in cooperation with the state power bodies». This document of Russian occupation powers de-facto recognized the real reason of ban the Mejlis, that was in its «non-constructive» position relating to the occupation power Russia<sup>2</sup>.

Supreme Court of Russia rejected on September 29, 2016 the appellate arguments of the Mejlis' defense concerning its ban, and ignored the majority of defense's arguments. But in this decision Supreme Court analyzed the norms of UN DRIP as act covering the Mejlis statute<sup>3</sup>. This decision started some claims to the European Court of Human Rights concerning the ban of the Mejlis – as from the Mejlis and its members, so from local and regional Mejlises and their members, from executives of Audit Commission and Central electoral commission of Kurultay of the Crimean Tatar People<sup>4</sup>.

In situation of the illegal detentions of members of the Mejlis in the Crimea, of forced displacement of other members of the Mejlis from the Crimea, – now, from April 26, 2016 the Mejlis and all system of the national self-organization of the Crimean Tatar People works in the extraordinary regime on the mainland of Ukraine. The location of the Mejlis' central office was determined the Kyiv city. The coordination of the Mejlis' activities during the extraordinary regime was laid on the Special session of the Mejlis including the Leader of the Crimean Tatar People Mr. Mustafa Djemilev, the Head of the Mejlis, and eight members of the Mejlis, permanently residing on the mainland of Ukraine<sup>5</sup>.

<sup>1</sup> *Меджлис крымскотатарского народа 2017. Меджлис крымскотатарского народа. Официальный сайт.* <<http://qtm.org/>> (2017, June 22)

<sup>2</sup> *Документы, на основании которых власти РФ запрещают деятельность Меджлиса 2016. 15 минут.* <<http://15minut.org/article/dokumenty-na-osnovanii-kotoryh-vlasti-rf-zapreshhayut-deyatelnost-medzhliisa-foto-2016-02-15-19-18-31>> (2017, June 22)

<sup>3</sup> *Апелляционное определение 127-АПГ16-4 2016. (Верховный суд РФ). Официальный сайт Верховного Суда Российской Федерации.* <[http://www.supcourt.ru/stor\\_pdf.php?id=1487872](http://www.supcourt.ru/stor_pdf.php?id=1487872)> (2017, June 22)

<sup>4</sup> *Меджлис крымских татар подал жалобу в Европейский суд 2017. (Мемориал). Правозащитный центр «Мемориал».* <<https://memohrc.org/news/medzhliis-krymskih-tatar-podal-zhalobu-v-evropeyskiy-sud>> (2017, June 22)

<sup>5</sup> *О введении чрезвычайного режима деятельности органов национального самоуправления крымскотатарского народа в условиях временной российской оккупации Крыма 2016. (Меджлис крымскотатарского народа). Меджлис крымскотатарского народа. Официальный сайт.* <<http://qtm.org/новости/5212-распоряжение-председателя-меджлиса-крымскотатарского-народа>> (2017, June 22)

In such hard situation the Crimean Tatar People's representatives are included quite actively to the system of the state power and governance of Ukraine. Mr. Mustafa Djemilev and the Head of the Mejlis Mr. Refat Chubarov, as deputies of Parliament of Ukraine, are the members of Parliamentary Committee for Human Rights, National Minorities and Inter-Ethnic Relations.<sup>1</sup> Crimean Tatar People's representatives also are (in June, 2017) the Vice-Ministers of Information Policy of Ukraine<sup>2</sup> and of Temporal Occupied Territories and Internally Deported Persons of Ukraine<sup>3</sup>. Also the apparatus of the Commissioner of the President of Ukraine on the Crimean Tatar People Issues works in Kyiv<sup>4</sup>. And some non-governmental organizations of the Crimean Tatar and the Crimean Karaites also act on the mainland of Ukraine.

So such representation is not completely enough for procuring the free, prior and informed consent of the indigenous peoples of Ukraine, and the illegal occupation and annexation of the Crimea by Russia is the main reason for such insufficiency.

We must pay special attention for the development, implementation, monitoring and evaluation of NHRS and the Action Plan. National human rights organizations took part in drafting the chapter «Provision of the Indigenous Peoples' and National Minorities' Rights» of those acts<sup>5</sup>. Ministry of Justice of Ukraine did not limit the access of the interested structures and experts for processes of drafting the Action Plan.

Representatives of the indigenous organizations were limited in participation for the drafting the NHRS and the Action Plan, also as in the drafting the projects of laws on statute of the indigenous peoples during 2015-2017. It may be explained not by the counteraction of Ukrainian state bodies or by the indigenous peoples' positions, but firstly – by the occupation and annexation of the Crimea by Russia.

Alas the provisions of the NHRS and the Action Plan do not establish the clear mechanisms of monitoring their execution. At the same time Ministry of Justice of Ukraine makes the common monitoring of such execution and manifests the quarterly reports. Till the second quarter of the 2017 the above-pointed measures the Action Plan about the indigenous peoples' rights are not reflected in those reports as executed or being in execution ones<sup>7</sup>.

Also the Ukrainian Parliament Commissioner for Human Rights (Ombudsman) makes monitoring the execution of the NHRS and the Action Plan. The measures of the Action Plan concerning the indigenous peoples' rights are not reflected in the Ombudsman's reports, as executed or being in execution ones<sup>8</sup>.

Also the Hearings in the Parliamentary Committee for Human Rights, National Minorities and Inter-Ethnic Relations on March 22, 2017 may be determined as the form of such monitoring. This Hearings were devoted to the realization the NHRS just in part of providing and protection the indigenous peoples' and national minorities' rights in Ukraine also as for the legislative initiatives on establishment the effective measures for such protection; anyway the Hearings did not lead to any certain result.

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<sup>1</sup>Склад Комітету VIII скликання 2017. Комітет Верховної Ради України з питань прав людини, національних меншин і міжнаціональних відносин.

<[http://kompravlud.rada.gov.ua/kompravlud/control/uk/publish/article?art\\_id=45133&cat\\_id=44833](http://kompravlud.rada.gov.ua/kompravlud/control/uk/publish/article?art_id=45133&cat_id=44833)> (2017, June 22)

<sup>2</sup>Перший заступник Міністра 2017. (Міністерство з питань інформаційної політики України). Офіційний сайт Міністерства з питань інформаційної політики України. <<http://mip.gov.ua/ru/content/dzhaparova-emine.html>> (2017, June 22)

<sup>3</sup>Перший заступник Міністра 2017. (Міністерство з питань тимчасово окупованих територій та внутрішньо переміщених осіб України). Офіційний сайт Міністерства з питань тимчасово окупованих територій та внутрішньо переміщених осіб України. <<http://mtot.gov.ua/pershij-zastupnik/>> (2017, June 22)

<sup>4</sup>Уповноважений Президента України у справах кримськотатарського народу 2017. (Президент України). Офіційний сайт Президента України. <<http://www.president.gov.ua/administration/apu-structure/upovnovazhenij-prezidenta-ukrayini-u-spravah-krimskotatarsko>> (2017, June 22)

<sup>5</sup>Про затвердження Національної стратегії у сфері прав людини 2015. (Президент України) Офіційний сайт Верховної Ради України. <<http://zakon3.rada.gov.ua/laws/show/501/2015>> (2017, June 22)

<sup>6</sup>Про затвердження плану дій з реалізації Національної стратегії у сфері прав людини на період до 2020 року 2015. (Кабінет міністрів України). Офіційний сайт Верховної Ради України. <<http://zakon2.rada.gov.ua/laws/show/1393-2015-p>> (2017, June 22)

<sup>7</sup>Виконання Плану дій щодо реалізації Національної стратегії у сфері прав людини 2017. (Міністерство юстиції України). Офіційний сайт Міністерства юстиції України <<http://old.minjust.gov.ua/section/548>> (2017, June 22)

<sup>8</sup>Національна стратегія у сфері прав людини 2017. (Уповноважений Верховної Ради України з прав людини). Офіційний сайт Уповноваженого Верховної Ради України з прав людини <<http://www.ombudsman.gov.ua/ua/page/secretariat/docs/natsionalna-strategiya-u-sferi-prav-lyudini/>> (2017, June 22)

The representatives of indigenous peoples' organizations (Crimean Tatar Resource Center и Foundation for Research and Support of the Indigenous Peoples of Crimea) were present on the Hearings but they did not have time to have speech as the very limited time schedule of the Hearing<sup>1</sup>.

So we may propose some conclusions for the level of measures and implementation strategies in Ukraine to achieve the ends of the UN DRIP through current NHRS and the Action Plan and national development frameworks. Ukraine recognized the duty of the UN DRIP by the Parliamentary Statement on March 20, 2014<sup>2</sup>. In 2015 the official translation of the UN DRIP onto the Ukrainian and the Crimean Tatar languages was published in the official edition of the Parliament of Ukraine – in the newspaper «Voice of Ukraine»<sup>3</sup> and it was placed on the official web-site of the Parliament of Ukraine<sup>4</sup>.

The elaboration of the draft of Law on statute of the indigenous peoples of Ukraine was the key measure of the coherent chapter «Provision of the Indigenous Peoples' and National Minorities' Rights» of the NHRS and the Action Plan, where the measures and implementation strategies to achieve the ends of the UN DRIP, 2007 might be used.

Draft of Law «On the Statute of the Crimean Tatar People in Ukraine» № 6315 on April 7, 2017<sup>5</sup> was prepared under aegis of the Ministry of Culture of Ukraine and registered in the Ukrainian Parliament just as the form of realization of this measure of the Action Plan. But this project was drafted in common without recognition the measures and implementation strategies to achieve the UN standards for the indigenous peoples' rights, without implementing the majority of those indigenous peoples' rights, reflected in the UN DRIP, 2007.

Crimean Tatar Resource Center и Foundation for Research and Support of the Indigenous Peoples of Crimea prepared the draft of Law «On Indigenous Peoples of Ukraine»<sup>6</sup> executing the provisions of the NHRS and the Action Plan. These organizations made the huge work for application practices regarding measures and implementation strategies to achieve the ends of the UN DRIP. This draft of Law of Ukraine reflects and contains the majority of the indigenous peoples' rights, guaranteed by UN DRIP, 2007.

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<sup>1</sup> Стенограма комітетських слухань на тему: «Стан реалізації Національної стратегії у сфері прав людини щодо забезпечення та захисту прав корінних народів і національних меншин України та законодавчі ініціативи щодо створення ефективних механізмів такого захисту» 2017 (Верховна Рада України). Комітет з питань прав людини, національних меншин і міжнаціональних відносин.

<sup>2</sup> Про Заяву Верховної Ради України щодо гарантії прав кримськотатарського народу у складі Української Держави 2014. (Верховна Рада України). Офіційний сайт Верховної Ради України. <<http://zakon2.rada.gov.ua/laws/show/1140-18>> (2017, June 22)

<sup>3</sup> Декларація Організації Об'єднаних Націй про права корінних народів 2007. (Голос України). *Голос України – газета Верховної Ради України*. <<http://www.golos.com.ua/article/260484>> (2017, June 22)

<sup>4</sup> Декларація Організації Об'єднаних Націй про права корінних народів 2007. (Верховна Рада України). Офіційний сайт Верховної Ради України. <[http://zakon3.rada.gov.ua/laws/show/995\\_156](http://zakon3.rada.gov.ua/laws/show/995_156)> (2017, June 22)

<sup>5</sup> Проект Закону про статус кримськотатарського народу в Україні 2017. (Верховна Рада України) Офіційний сайт Верховної Ради України. <[http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=61537](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61537)> (2017, June 22)

<sup>6</sup> *Legislative Defence of the Rights of Indigenous Peoples of Ukraine 2016*. (Foundation for Research and Support of the Indigenous Peoples of Crimea). *Organization for Security and Co-operation in Europe \_ OSCE*. <<http://www.osce.org/ru/odihr/266981>> (2017, June 22)

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