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REGULATORY AND LEGAL FRAMEWORK OF THE ETHNO-NATIONAL POLICY OF UKRAINE

In the current Ukrainian society the problem of legal and normative regulation of ethno-national relations is one of the fundamental areas of ethno-political scientific research. It should be noted that the state policy aimed at establishing and consolidating the economic, social, political and cultural cooperation of nations, ethnic entities, satisfying their fundamental interests, and democratizing the processes of development of national consciousness reflects the essence of ethno-national policy. In a democratic state ethno-national policy is set up on the basis of constant, timely and clear account of the national-specific interests of particular nationalities and ethnic groups, their harmonization with the national interests and development of comprehensive legal and regulatory framework. Therefore, one of the most relevant and important areas of state policy is the management of national processes, especially the problematic issues of interethnic conflicts.

Keywords: ethno-national policy, ethno-national relations, ethnic groups, national minorities, indigenous people, regulatory and legal framework.

Establishment of the regulatory and legal framework for the ethno-national relations in the Ukrainian society as of today is one of the key problems of ethno-political scientific research.

Ethno-national policy is the state policy on establishment and enhancement of economic, social, political and cultural cooperation among nations or ethnic groups, meeting their key interests, democratization of the processes of national identity development for prevention and effective resolution of ethnic conflicts within the defined regulatory and legal framework. Ethno-national policy in the democratic state is based on regular, timely and efficient follow up on the specific interests of nationalities and ethnic groups, their correlation with state interests and development of the comprehensive and up-to-date regulatory and legal framework.

Current ethno-political processes are studied through the prism of political science, law, sociology, history, philosophy, conflict resolution studies etc. Inter-ethnic relations are a popular subject of research both in Ukraine and abroad. Ukrainian and foreign scientists have contributed with their work to the development of terminology and academic basis for multi-faceted study of the paradigm of inter-ethnic relations. This article is based on the research of V. Yevtukh, O. Kartunov, I. Kresina, I. Kuras, O. Malynovska, A. Popko, O. Rafalsky, Y. Rymarenko, V. Skurativsky, V. Troshchynsky, L. Shklyar etc.

The purpose of this research is a complex analysis of the ethno-national policy that is realized through the regulatory and legal framework. The choice of the problem is supported by its scientific, social and political significance, as well as by existing research on it.

Regulation of the national processes, in particular problematic issues of the ethnic conflicts is one of the key directions of the state policy. Abrupt changes of the ethno-national processes after the collapse of the former USSR required streamlined regulatory and legal framework and constant interference from the state and its institutions.

Upon declaration of independence Ukrainian state has faced a set of inter-ethnic problems within the borders defined by the Declaration of State Sovereignty as of 16 July 1990¹. Apart from the definition of the sovereignty of Ukraine this document also contained a number of legal norms that formed the current legislation on the ethno-national relations. The Declaration stated that “citizens of the republic of all nationalities are the nation of Ukraine”. This document is one of the first legal acts of the independent state that defined multi-ethnicity and national diversity of Ukraine. This legal act also guaranteed equality before the law for all citizens of Ukraine regardless of their race and national identity and “right for national and

¹ Декларація прав національностей України 1991 (Верховна Рада України). Офіційний веб-сайт Верховної Ради України. <<http://zakon0.rada.gov.ua/laws/show/1771-12>>.

cultural development for all nationalities on the territory of the republic”¹. The next legal act on the inter-ethnic relations was the Declaration on the Rights of the Nationalities of Ukraine adopted by the Verkhovna Rada of Ukraine on 01 November 1991².

This legal act set the key principles of state policy against discrimination and privileges of individuals and ethnic groups on the basis of nationality within the territory of Ukraine. The Declaration on the Rights of the Nationalities of Ukraine entailed state guarantees to all nationalities:

- Equal political, economic, social and cultural rights (article 1);
- Right to keep traditional areas of settlement;
- Right to administrative units on the national basis;
- Establishment of the favorable conditions for the development of national languages and cultures;
- Right to free use of minority languages in all areas of social life, including education, manufacturing, media;
- Right to practice the religion, use national symbols, celebrate traditional holidays and follow the customs;
- Right to establish cultural centers, societies, communities and unions³.

Due to social significance of the poly-ethnic nature of Ukraine, state institutions addressed this issue and tried to regulate this kind of social relations. Still the abovementioned Declarations required the clear regulatory and legal clarifications as the declared guarantees were not supported by the mechanisms and tools for their implementation.

The Parliament attempted to reconcile the existing legislation with the declared principles and guarantees through targeted changes of legislation. Some of the provisions from the Declarations were codified in the Law of Ukraine “On the Freedom of Conscience and Religious Organizations” as of 23 April 1991. In accordance with the law, all persons on the territory of Ukraine and not only its citizens have the right to freedom of ideology and religion. Article 21 states that religious organizations have the right to establish and retain freely accessible places of worship or religious gatherings and places respected in their religion (places of pilgrimage)⁴. The importance of this legal act is in the clear definition of the procedure and mechanisms of the realization of the right to freedom of ideology and religion. In accordance with this Law, any ethnic group could realize the right to freedom of conscience, national identity and ability to practice the religion of the ancestors and to conduct the worship service.

The Law of Ukraine “On Education” as of 23 May 1991 states that all citizens of Ukraine regardless of sex, race, nationality and religion have the right to free education in all public educational institutions. In accordance with the article 56 teachers have to cultivate in the students the respect to cultural, national and historical values of the state of residence and the state of origin, state and social order, to prepare the students to the life in the spirit of mutual understanding, peace and accord among all nations, ethnic, national and religious groups. Article 59 states that parents have to instill in their children the respect to mother tongue, culture, family, and national, historical and cultural values of other nations⁵.

A few provisions on the legal status of national groups were included into the Law of Ukraine “Fundamentals of Legislation of Ukraine on Culture” as of 14 February 1992. This Law is no longer valid but it is important to include it into this research to reflect the dynamics of the development of regulatory and legal framework of the ethno-national policy of Ukraine. Article 8 defines the cultural rights of national minorities. In accordance with this law, the state has to create conditions for the cultural development of all national minorities on the territory of Ukraine and to engage them into the common process of cultural values creation⁶.

¹ Декларація прав національностей України 1991 (Верховна Рада України). Офіційний веб-сайт Верховної Ради України. <<http://zakon0.rada.gov.ua/laws/show/1771-12>>.

² Декларація про державний суверенітет України 1990 (Верховна Рада Української РСР). Офіційний веб-сайт Верховної Ради України. <<http://zakon3.rada.gov.ua/laws/show/55-12>>.

³ Декларація про державний суверенітет України 1990 (Верховна Рада Української РСР). Офіційний веб-сайт Верховної Ради України. <<http://zakon3.rada.gov.ua/laws/show/55-12>>.

⁴ Закон про свободу совісті та релігійні організації 1991 (Верховна Рада України). Офіційний веб-сайт Верховної Ради України. <<http://zakon4.rada.gov.ua/laws/show/987-12>>.

⁵ Закон про освіту 1991 (Верховна Рада України). Офіційний веб-сайт Верховної Ради України. <<http://zakon3.rada.gov.ua/laws/show/1060-12>>.

⁶ Закон про Основи законодавства України про культуру 1992 (Верховна Рада України). Офіційний веб-сайт Верховної Ради України. <<http://zakon2.rada.gov.ua/laws/show/2117-12>>.

This article also defined the rights of citizens of all nationalities for conservation, development and propaganda of their culture, language, traditions, customs and rituals, establishment of national cultural societies and centers, art and culture institutions, educational institutions, media and publishing houses¹.

All abovementioned legal acts were adopted to regulate the issues related to the multinational nature of newly declared state but they did not include the clear-cut definition of the “national minority” and its legal status. In order to address this gap the Verkhovna Rada of Ukraine has adopted the Law of Ukraine “On the National Minorities in Ukraine” on 25 June 1992². This legal act set political and legal fundamentals of the state policy on inter-ethnic relations regulation and legal status of national minorities.

Article 3 contained the definition of the “national minority” for the first time since the declaration of independence. In accordance with the law, national minorities are groups of citizens of Ukraine who are not Ukrainians by nationality; bear the sense of national self-identification and commonality with others within the group³. By this definition national minorities share certain features.

First of all, they are citizens of Ukraine who are not Ukrainians by nationality.

Secondly, they have the sense of national self-identification but it is not clear how this legally significant feature is measured.

Thirdly, they have the commonality with others within the group but the law does not state how this commonality is legally acquired. Should be noted, that this law corresponded to the level of legal culture and legal awareness of that time but nowadays certain provisions require amendments in order to correspond to the international standards.

This progressive legal act also contains more clear regulations and guarantees for the citizens of Ukraine regardless of their nationality at the level of political, social, economic and cultural rights and freedoms, support for the development of the national identity and its manifestation.

This provision is further developed in Article 6: “the state guarantees to all national minorities the rights for national cultural autonomy, use of mother tongue and education in mother tongue or ability to learn the language in state educational institutions or in national cultural societies, development of national cultural traditions, use of national symbols, celebration of national holidays, practicing of religion, satisfaction of needs in literature, art and media, establishment of national cultural and educational institutions and any other activities that do not contradict to the acting legislation”⁴. Articles 9 and 15 provide guarantees of political and other rights to the citizens belonging to national minorities, guarantees to the national civil society organizations to nominate their candidates during the elections in accordance with the Constitution of Ukraine, laws on elections of the members of Parliament of Ukraine and members of the local councils.

The abovementioned law duplicates the guarantees defined by the acting Constitution of Ukraine and it is not clear whether it is reasonable. The Constitution of Ukraine sets the guarantees of rights to the citizens of Ukraine regardless of nationality, religion, ideology etc. Though part 2 Article 14 of the Law contains guarantees to the national civil society organizations to nominate their candidates during the elections in accordance with the Constitution of Ukraine, laws on elections of the members of Parliament of Ukraine and members of the local councils, the mechanism of implementation of this norm is absent. Moreover, at the time when the Law of Ukraine “On National Minorities in Ukraine” was adopted, none of the legal acts of the election legislation considered “national civil society organizations” to be subjects of election process. This discrepancy was addressed by the Law of Ukraine “On Amendments to the Legal Acts of Ukraine on the Ministry of Justice of Ukraine, Ministry of Culture of Ukraine, and Other Central Executive Bodies Coordinated by the Relevant Ministers and State Space Agency of Ukraine” as of 16 October 2012, by which the norm was excluded from the Law⁵.

¹ Закон про Основи законодавства України про культуру 1992 (Верховна Рада України). Офіційний веб-сайт Верховної Ради України. <<http://zakon2.rada.gov.ua/laws/show/2117-12>>.

² Закон про національні менишини в Україні (Верховна Рада України). Офіційний веб-сайт Верховної Ради України. <<http://zakon4.rada.gov.ua/laws/show/2494-12>>.

³ Закон про національні менишини в Україні (Верховна Рада України). Офіційний веб-сайт Верховної Ради України. <<http://zakon4.rada.gov.ua/laws/show/2494-12>>.

⁴ Закон про національні менишини в Україні (Верховна Рада України). Офіційний веб-сайт Верховної Ради України. <<http://zakon4.rada.gov.ua/laws/show/2494-12>>.

⁵ Закон про внесення змін до деяких законодавчих актів України щодо діяльності Міністерства юстиції України, Міністерства культури України, інших центральних органів виконавчої влади, діяльність яких

Adaptation of legislation on ethno-national policy to the international standards has been gradual and it went in parallel with the establishment of regulatory and legal framework in Ukraine. Some regulations on ethno-national processes were included into the legislation on other state-building and social issues in Ukraine, e.g. the Law of Ukraine “On Printed Media (Press) in Ukraine” as of 16 November 1992 imposed direct prohibition on use of printed media for kindling racial, national or religious hatred¹. In this way the national minorities have the opportunity to protect their interests regarding the information in the printed media that somehow kindles national hatred, promotes violence and atrocities against ethnic groups etc.

The Constitutional Agreement between the Verkhovna Rada of Ukraine and the President of Ukraine on state authorities and local governance until the adoption of the Constitution of Ukraine as of 08 June 1995 contains only Article 18 on the issues related to this research². This legal act was one of the stages of the constitutional process in Ukraine, the process of defining rights and freedoms of the citizens of the state that has just started to establish its social and political system. Article 18 became the blueprint for the future constitutional norms on ethno-national policy.

The Constitution of Ukraine was adopted on 28 June 1996. It is the main legal act on ethno-national policy of Ukraine. There is no separate chapter on the ethno-national relations in the Constitution but the whole set of provisions of the Main Law is dedicated to inter-ethnic relations and state policy in this area, e.g. Articles 10, 11, 12, 24, 37, 53, 92 and 119³.

All these constitutional norms can be grouped as follows: guarantees of rights of the national minorities, norms that define rights and duties of the subjects of ethno-national processes, regulations and imperative norms (prohibitions). Guarantees related to the ethno-national processes are the following:

- freedom of development, use and protection of Russian language and other minorities languages (Art. 10);
- use of international languages in Ukraine (ст.10);
- right to education in the mother tongue or to learning the mother tongue in state and municipal educational institutions or in the national cultural societies (Art. 53).

In addition to the abovementioned guarantees of the rights of national minorities, the state promotes development of language identity of all indigenous people and national minorities of Ukraine (Art. 11).

Article 24 of the Main Law belongs to the constitution norms that define rights and duties of the subjects of ethno-national processes. It states that citizens have equal constitutional rights and freedoms and are equal before the law regardless of their race, skin color, political, religious or other beliefs, sex, ethnic or social origin, level of income, place of residence, language or other features⁴. Part 2 Article 53 of the Constitution of Ukraine that has been mentioned above in the guarantees is also relevant here.

Regulative norms on ethno-national relations in the Constitution of Ukraine have the following provisions:

- satisfaction of national, cultural and language needs of Ukrainians living abroad (Art. 12);
- only laws of Ukraine define citizenship, legal personality of the citizens, status of foreigners and stateless persons, rights of indigenous people and national minorities and regulate the use of languages (Art. 92);
- local state administrations implement state and regional programs on social, economic and cultural development, environmental protection, and national and cultural development of indigenous people and national minorities in the places of their residence on the relevant territories (Art. 119).

спрямовується та координується через відповідних міністрів, а також Державного космічного агентства України 2012 (Верховна Рада України). Офіційний веб-сайт Верховної Ради України.
<<http://zakon0.rada.gov.ua/laws/show/5461-17/page>>.

¹ Закон про друковані засоби масової інформації (пресу) в Україні 1992 (Верховна Рада України). Офіційний веб-сайт Верховної Ради України. <<http://zakon5.rada.gov.ua/laws/show/2782-12>>.

² Конституційний договір між Верховною Радою України та Президентом України про основні засади організації та функціонування державної влади і місцевого самоврядування в Україні на період до прийняття нової Конституції України 1995 (Верховна Рада України). Офіційний веб-сайт Верховної Ради України. <<http://zakon0.rada.gov.ua/laws/show/1к/95>>.

³ Конституція України 1996 (Верховна Рада України). Офіційний веб-сайт Верховної Ради України. <<http://zakon3.rada.gov.ua/laws/show/254к/96-вр>>.

⁴ Конституція України 1996 (Верховна Рада України). Офіційний веб-сайт Верховної Ради України. <<http://zakon3.rada.gov.ua/laws/show/254к/96-вр>>.

Constitutional imperative norms related to this research require special attention:

- there can be no privileges or restrictions based on the race, skin color, political, religious or other beliefs, sex, ethnic and social origin, level of income, place of residence, language or other features (Art. 24)
- it is prohibited to establish and maintain political parties and civil society organizations that aim to liquidate the independence of Ukraine, change the constitutional order in a violent way, infringe on the sovereignty and territorial integrity of the state, undermine its security, illegally seize the state power, promote war and violence, kindle ethnic, racial and religious hatred, encroach on the human rights and freedoms and public health (Art. 37)¹.

It is also worth mentioning the Law of Ukraine “On the Local Governance in Ukraine” as of 21 May 1997 that sets the direct prohibition of any restrictions of the rights of the citizens of Ukraine to participate in the local governance regardless of their race, skin color, political, religious or other beliefs, sex, ethnic and social origin, level of income, time of residence on the relevant territory, language or other features².

As of today, there is a draft Concept of the Ethno-National State Policy of Ukraine. Approval of the Concept will stimulate further legislation in this new for our state branch of national and international law. Unfortunately, the author has to admit that the draft remains the draft despite the ethno-national conflicts that are being utilized within the current state-building processes. Draft Law “On the Concept of Ethno-National State Policy of Ukraine” has been submitted for review by the Verkhovna Rada of Ukraine on 4 July 2013. The draft law contained common understanding of principles, aims and directions of ethno-national state policy. The purpose of the concept was to resolve the discrepancies in laws and legal acts, avoid arbitrary interpretation of the state policy on the national majority and minorities by the local authorities. This draft law has been revoked and currently there is no concept of ethno-national state policy of Ukraine. This issue remains the area of scientific concern.

Therefore, to sum up the results of this research, it is necessary to mention that development of democratic institutions in Ukraine determine the need for the establishment of the legal framework for the ethno-national policy of Ukraine and its further enhancement.

Regulatory and legal framework of the ethno-national policy of Ukraine has passed a number of stages in its development: first stage is the establishment of basic notions of ethno-national relations such as citizenship, poly-ethnicity, national diversity, state guarantees to the nationalities, national minority etc; second stage are the constitutional guarantees of the rights of national minorities and adaptation of the acting legislation on ethno-national policy to the international standards; third stage is the adoption of the Concept of the Ethno-National State Policy of Ukraine which is not yet completed.

Acting Ukrainian legislation on ethno-national relations contains a set of rights and freedoms for the citizens who identify themselves as national minorities: right to choose and restore citizenship; to maintain national and ethnic identity; to have national name, surname and patronymic; to establish national civil society organizations; to use the mother tongue and to receive education in the mother tongue or to learn the language in state and municipal educational institutions or in national cultural societies; to develop national cultural traditions; to use national symbols; to celebrate national holidays; to practice the religion etc.

This research is based on the analysis of regulatory and legal framework on the ethno-national policy of Ukraine. It does not cover international legal mechanisms on this issue. Therefore, this research is not comprehensive and needs further elaboration and analysis.

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¹ Конституція України 1996 (Верховна Рада України). *Офіційний веб-сайт Верховної Ради України*. <<http://zakon3.rada.gov.ua/laws/show/254к/96-вр>>.

² Закон про місцеве самоврядування в Україні 1997 (Верховна Рада України). *Офіційний веб-сайт Верховної Ради України*. <<http://zakon5.rada.gov.ua/laws/show/280/97-вр>>.

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