

КОНСТИТУЦІЙНЕ ТА МУНІЦИПАЛЬНЕ ПРАВО

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**CONSTITUTIONAL LAWMAKING ON THE PROTECTION OF THE RIGHTS OF NATIONAL
MINORITIES IN THE WEST UKRAINIAN PEOPLE'S REPUBLIC****Abstract**

The problem of national minorities rights protecting of over the time does not lose its relevance. For the European continent, this problem is actualized by powerful migration processes, including the influx of large numbers of irregular migrants who, over time, gain legal status in the country of residence and appeal for the protection of their national rights. For Ukraine, this problem is actualized by the aggressive actions of the Russian Federation, which tries to extradite part of the sovereign territory of Ukraine to protect the rights of the Russian-speaking national minority. It is remarkable that a similar situation took place a hundred years ago, when new states were formed on the ruins of the Russian and Austro-Hungarian empires, including the Ukrainian one. Therefore, the experience of finding legal models of securing inter-ethnic harmony and protecting the rights of citizens of different nationalities in the territory of a multinational state is interesting in the current political and legal realities.

The purpose of the article is to analyze the norms on the protection of the rights of national minorities in the Constitutional Acts of WUPR.

The scientific novelty is to analyze draft Constitutional Acts of WUPR as a multinational state in terms of securing the rights of national minorities and establishing a peaceful coexistence of representatives of different nationalities in one state.

Conclusions. State building on West lands during the Ukrainian Revolution in the 1917–1921 was accompanied by the development of constitutional acts and other basic laws that were supposed to regulate both the basic principles of the state system and the rights and freedoms of citizens. Constitutional acts and drafts of the WUPR Basic Law, drafted by S. Dnestryansky, granted broad rights to national minorities. They included not only the right to use their mother tongue in everyday life and to teach their children, but also the right to use their mother tongue in public institutions, including the courts, in which case civil servants were required to speak three languages – Ukrainian, German and Polish, as well as the right to national autonomy and own national representation in parliament.

It is significant that a number of norms proposed by S. Dnestryansky were already included in the Universal Declaration of Human Rights, proclaimed by the General Assembly of the United Nations on December 10, 1948, and other international human and international human rights instruments after the Second World War. The relevant provisions for the protection of the rights of national minorities are now guaranteed by the current Constitution of Ukraine and developed in other national laws.

Key words: WUPR, constitution, law, national minorities, human rights.

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**КОНСТИТУЦІЙНА ПРАВОТВОРЧІСТЬ ЩОДО ЗАХИСТУ ПРАВ НАЦІОНАЛЬНИХ МЕНШИН
У ЗАХІДНОУКРАЇНСЬКІЙ НАРОДНІЙ РЕСПУБЛІЦІ****Анотація**

Проблема захисту прав національних меншин з плином часу не втрачає своєї актуальності. Для європейського континенту ця проблема актуалізується потужними міграційними процесами, у тому числі й напливом значної кількості нелегальних мігрантів, які з часом отримують у країні перебування визначений правовий статус та апелюють до захисту своїх національних прав. Для України ця проблема актуалізується агресивними діями Російської Федерації, яка анексію частини суверенної території України намагається видати за захист прав російськомовної національної меншини. Характерно, що подібна ситуація мала місце і сто років тому, коли на руїнах Російської й Австро-Угорської імперій утворювалися нові держави, зокрема й Українська. Тому тогочасний досвід пошуку правових моделей забезпечення міжнаціональної злагоди і захисту прав громадян різних національностей на території багатонаціональної держави є цікавим і в нинішніх політико-правових реаліях.

Метою статті є аналіз норм щодо захисту прав національних меншин у конституційних актах ЗУНР.

Наукова новизна полягає в аналізі проектів конституційних актів ЗУНР, як багатонаціональної держави, з точки зору забезпечення прав національних меншин та налагодження мирного співіснування представників різних національностей в одній державі.

Висновки. Державне будівництво на західноукраїнських землях під час Української революції 1917–1921 років супроводжувалося розробленням конституційних актів та інших базових законів, які мали урегулювати як основні засади державного ладу, так і права та свободи громадян. Конституційні акти та проекти Основного Закону ЗУНР, розроблені С. Дністрянським, надавали широкі права національним меншинам. Вони включали не лише право послуговатися рідною мовою в побуті та навчати нею дітей, а й право користуватися рідною мовою в державних установах, зокрема судах, у зв'язку з чим державні службовці були зобов'язані володіти трьома мовами – українською, німецькою та польською, а також право на національну автономію та власне національне представництво в парламенті.

Покажемо, що ряд норм, запропонованих С. Дністрянським, уже після Другої світової війни були включені до Загальної декларації прав людини, проголошеної Генеральною Асамблеєю Організації Об'єднаних Націй 10 грудня 1948 року, та інших міжнародних актів ООН щодо захисту прав людини і національних меншин. Відповідні положення щодо захисту прав національних меншин сьогодні гарантуються чинною Конституцією України та розвинуті в інших національних законах.

Ключові слова: ЗУНР, конституція, закон, національні меншини, права людини.

Problem statement. The problem of protecting the rights of national minorities is one of those that is commonly called eternal. In chronological terms, it has been relevant at least since the emergence of the first empires to this day. Geographically, it is also difficult to find a state where there are no representatives of national minorities who want clear legal guarantees. For the European continent, this problem is actualized by powerful migration processes, including the influx of large numbers of irregular migrants who receive legal status in the country of residence and appeal for the protection of their national rights over time. For Ukraine, this problem is actualized by the aggressive actions of

the Russian Federation, that tries to take the annexation of the part of the sovereign territory of Ukraine for the protection of the Russian-speaking national minority rights. It is remarkable that a similar situation took place a hundred years ago, when new states were formed on the ruins of the Russian and Austro-Hungarian empires, including the Ukrainian one. Therefore, the experience of finding legal models of securing inter-ethnic harmony and protection of the rights of citizens of different nationalities in the territory of a multinational state is relevant today.

Analysis of recent research and publications. In course of the years of Ukrainian independence the law-making activity of

the Western Ukrainian National Republic has already become the subject of special scientific research. This problem was investigated by Velykochyi V. S. [1], Hnatyshyn I. M. [2], Kobyletskyi M. M. [3], Pavlyshyn O. J. [4], Savchak A. V. [5], Stetsiuk P. B. [6] and others. At the same time, constitutional lawmaking on the protection of the national minorities rights in the West Ukrainian National Republic requires a separate comprehensive study.

The purpose of the article is to analyze the norms about protection of the rights of national minorities in the Constitutional Acts of WUNR.

Presenting main material. An important role in the system of state formation and the formation of a new legal field of any early state play the necessary state legal experience of its leading figures. In this context, the Western Ukrainian lands, which were under the Austro-Hungarian Empire for a long period, were favorably different from the Ukrainian lands under the reign of the Russian monarchy. The fact that since the mid-19th century Western Ukrainians participated in the Austrian Parliament, Galicia and Bukovyna Regional Seimas, where they consistently defended the right to self-determination of the Ukrainian people, and had the opportunity for legal political activity, contributed to the formation of the stratum of nationally conscious elite and became decisive in creating their own state structures and the formation of the necessary legal framework for ensuring social life in limited terms [7].

Ukrainian MPs in the Austrian Parliament have accumulated considerable experience in the parliamentary struggle for the rights of Ukrainians and the representatives of other national minorities. They also maintained close relations with members of other national minorities and often coordinated their own actions. It is also significant that after the signing the Manifesto on the formation of national-territorial autonomies by the Austrian Emperor Charles I in October 1918 in, the Ukrainian and Romanian parliamentarians from Bukovina agreed to divide the territory of the region according to the national principle on the basis of the 1910 census. The head of the Romanian parliamentary club K. Isopescu-Grek said that in case of the necessity of separation of the Ukrainian counties of Bukovina for inclusion in the Ukrainian administrative territory, Romanians will uphold their decision [2, p. 12–13].

The disintegration of the Austro-Hungarian Empire was the main impetus for developing the ideas of protecting the rights of national minorities and presenting them to the public. Under these conditions, Ukrainian politicians created the Ukrainian National Council in Lviv on October 18, 1918, as the Constituent of the Ukrainian people. It consisted of the Ukrainian members of both chambers of the Austrian Parliament, the Ukrainian deputies of the Seimas of Galicia and Bukovina, as well as three representatives from all political parties represented in the country, and top spiritual hierarchs. E. Petrushevych was elected as the President of the Council (Doctor of Law, Member of the Austrian Parliament, Head of the Ukrainian Parliamentary Representation). Researchers also note that the representatives in the Ukrainian National Council had a rather high professional level (42 % of approximately 200 MPs obtained higher education, 55 % – legal education, and 52 % – doctor degree (35 % – in law, 10 % – in philosophy, 4 – in theology, 3 – in medicine). [4] That is, from the first day of functioning, a capable and authoritative legislative body was formed, composed of experts with considerable experience in lawmaking and political activity.

It should be noted that the first steps of the Ukrainian National Council were aimed at creating an independent Ukrainian state. Thus, according to the Charter of the Ukrainian National Council, adopted on October 18, 1918, the duties of the representative body were as follows: a) fulfilling the right of the Ukrainian people to self-determination; b) take all measures of a representative, legislative and administrative nature to put this decision into action [8]. On October 19, the Ukrainian National Council proceeded to practical work. It was on this day that they appealed to the people, outlining the boundaries of the Ukrainian territory (Eastern Galicia, Lemkivshchyna, northwestern Bukovina and the Ukrainian part of northeastern Hungary), stating that the territory was constituted as the Ukrainian state [9].

On November 1, 1918, the Ukrainian National Council issued a recall to the people, which reported the formation of the Ukrainian state and the transfer of power to the hands of Ukrainians [10]. At the same time, the citizens of the state of all nationalities were guaranteed equal rights. Active work on the creation of government bodies began. Thus, on November 9,

the State Secretariat (Government) was formed, during the first decade of November the formation of the Ukrainian authorities on the ground began, the Ukrainian National Council had diplomatic missions to other countries and a delegation to the Paris Peace Conference, etc.

Proclaiming their own statehood on the ruins of the Austro-Hungarian Empire, Ukrainians – the members of the Ukrainian National Council were clearly aware of the need to ensure civil peace and tranquility in the country and to guarantee the rights of all peoples living in Ukraine. Thus, the Proclamation stated that all national minorities in the Ukrainian region, including Jews, obtained the right to their own representation in the Ukrainian National Council in proportion to the size of their own population, while having to independently appoint their representatives to the Council [9]. It is noteworthy that the representatives of national minorities could enter any governmental organization of the WUNR, provided they took an oath of allegiance to the state. However, the Poles ignored the very process of Ukrainian state-making because of the Polish-Ukrainian conflict, the local Jews and Austrians declared their neutrality in the war and, for these reasons, also did not rush to work in public authorities. A separate paragraph (fourth) of the Proclamation stated that the Ukrainian National Council would develop a constitution that would guarantee universal, equal, secret electoral rights with proportional representation, the right of national and cultural autonomy for national minorities, etc. [9].

The Provisional Fundamental Law on the State Independence of the Ukraine – the part of the Former Austro-Hungarian Monarchy, adopted by the Ukrainian National Council on November 13, 1918, was concise in volume (5 articles in total) and did not contain a statement of the fundamental rights and freedoms of WUNR citizens, including national minorities rights. According to the article 1 there only was the right of peoples to self-determination, which justified the declaration of independence WUNR. In addition, according to article 4 of the Fundamental Law, the people were recognized as the main bearer of power, which was to be exercised through a representative body, elected on the basis of universal, equal, direct secret and proportional right to vote without sex discrimination [11]. More specifically, the rights of WUNR citizens were to be determined by separate laws.

In general, the process of state-formation and the creation of its own legal framework of WUNR had a number of features in common with the processes in Dnieper Ukraine, and the Ukrainian National Council in some way followed some steps of state formation and tried to avoid the mistakes of the Kyiv government. In particular, the law of the Ukrainian National Council on the provisional administration of the regions of the Western Ukrainian People's Republic, adopted in November 16, 1918, confirmed the validity on the Austrian territory of WUNR, if it did not contradict the purpose of the development of the Ukrainian state (such a law on the validity of the legislation of The Ukrainian People's Republic, however, was not as clear as the norms of the relevant WUNR act).

The Temporary Administration Act also regulated the procedure for establishing and operating of local authorities. Thus, the secretary of state appointed a county commissioner for each county, who had the right to dissolve local public councils and appoint new elections, and was also responsible for complying with state interests and public order. To this end, county military commanders and gendarmerie commanders subordinated to the county commissioner. In addition, the county commissioner approved the community commissioners, elected by local community councils. However, in wartime, public commissioners were often appointed by county commissioners. The local authority belonged to public councils [7].

It is noteworthy that the first draft of the Structure of the Galician State (the draft of temporary basic laws) was developed by S. Dnistriansky before the declaration of the independence of WUNR [12]. It recognized and guaranteed the rights of national minorities. According to Art. 2 other peoples, except the Ukrainian, living in the territory of the Galician State, in particular the Polish, Jewish and German, were granted the right of self-government, which had to be consistent with the right of the Ukrainian people to self-determination [6, p.158–160]. They were also entitled to have proportional representation in the Ukrainian National Council.

These ideas were developed in the electoral legislation, in particular, embodied in the norms of the Laws on the Election to the Seimas of the Western Region of the Ukrainian People's Republic and the Convening of the Seimas

of the Western Region of the Ukrainian People's Republic. In general, the WUNR electoral legislation is characterized by its democracy in the protection of the rights of national minorities. The Seimas should consist of 226 ambassadors, selected on a proportional basis by individual nationalities. (160 were Ukrainians, 33 Poles, 27 Jews, and 6 Germans). These norms generally corresponded to the representation of these peoples on the territory of WUNR.

National rights of citizens were guaranteed by other articles of the draft Constitution of S. Dnistriansky. Thus, civil servants pledged «to do their utmost to serve the people without regard to nationality». In addition, national minorities had access to public office in proportion to their population [12].

The official language of the draft Constitution was the Ukrainian language, which was to be kept in the paperwork management and other internal documentation. At the same time, Article 3 of the draft gave the minorities the right to use their national language, including in accordance with Art. 15 and in public institutions. At the same time, all civil servants had to speak three languages – Ukrainian, Polish and German, which should be a guarantee of respect for the right and respect for national minorities [12]. The right to use the national language was also entrenched in the Law on the Use of the Language in the Internal and External Governments of State Authorities, Governments, Public Institutions and State Enterprises in the Western Region of the Ukrainian People's Republic February 15, 1919. Thus, according to § 3, «legally recognized national minorities are deprived of their freedom to use both verbally and in writing their mother tongue in governmental relations with state authorities and governments, public institutions and state enterprises» [13, p. 103–104].

It is worth noting that the Ukrainian National Council did not manage to adopt the declared law on national and personal autonomy. However, the analysis of some WUNR legal acts, including the electoral legislation, gives grounds for asserting consistent compliance with the principles of respect and protection of the rights of national minorities. This was especially noticeable in relation to Jews. (The position of the authorities regarding the Poles was to some extent determined by the conditions of the Polish-Ukrainian war.) M. Gon points out that the order issued to Ukrainian district commission-

ers on April 1, 1919, contained a warning «not to interfere with the political aspirations of Jews. Organizations», the authority of local Jewish councils (protection of the rights of the Jewish community, fulfillment of duties that were previously within the competence of their religious communities, taxation of their members), the authority of the Jewish community and the national council of Eastern Galicia as the supreme institution of autonomous Jewish authority were confirmed. The author was also unable to ignore the fact that WUNR managed to avoid the extreme form of intolerance against Jews – the constrainings that took place in the Dnieper Ukraine [14, p. 11]. It is also a kind of confirmation of the effectiveness of S. Dnistriansky's ideas and the law of WUNR as a whole.

Later S. Dnistriansky continued to work on improving his own draft constitution. The corresponding project, entitled «The Constitution of the Western Ukrainian People's Republic» [15] was promulgated in 1920, after the Western Ukrainian People's Republic lost its independence. This project also guaranteed the rights of national minorities. In particular, according to Art. 14 every citizen had the right to preserve and develop his or her nationality and language. According to Art. 41 The Ukrainian people exercised national authority in their national territory. However, «other peoples residing in Western Ukraine were entitled to national government in accordance with the right to self-determination of the Ukrainian people. Thus, every nation resident in the state was an independent subject of law and had independent national rights in school, institutions and public life» [15].

The right of national minorities to be represented in parliament should be noted separately. Voting for the Constituent Assembly, which was supposed to approve the Constitution of WUNR, was conducted by nationality. According to Art. 46 the Ukrainian population elected one deputy in each general constituency, and in addition – two deputies in Lviv, one in Chernivtsi, and one in each city constituency. The Polish population elected, on average, eight deputies each in eight general constituencies; in Lviv, three deputies and one deputy in each city constituency. The Jewish population elected, on average, two deputies for every ten general constituencies; in addition, there were two deputies in Lviv and one deputy in each city district. Germans were elected in Lviv, and Romanians in

Chernivtsi elected one deputy. Romanian deputies from Chernivtsi also voted for Romanians who were the residents of other communities. The Germans outside Lviv formed a separate constituency with two deputies. Other nationalities joined with their votes in a free election to one of the above nations [15].

According to the draft constitution, the members of the future parliament had to be divided into three national curiaes according to the draft Constitution: the first curia united all Ukrainians, the second – the Poles, and the third – all other nationalities. In this case, each national curia sent their representatives to the commissions, created to discuss individual cases and make decisions on them. For every four representatives of the first (Ukrainian) curia there was one representative of the second (Polish) and the third curia. Also, individual national curiaes were entitled to protest and appeal either to the State Judicial Tribunal or to the General People's Congress for decision within ten days after the adoption of a law that violates the national rights of individual peoples [15].

In order to amend the Constitution, the President of the State had to convene a National Council by decision of the Parliament or the National Congress. In its creation, it was necessary to adhere to the following normative relations: 4 Ukrainians; 1 Pole; 1 – other nationalities.

It was also significant that all other higher authorities also had to include representatives of national minorities. Thus, a Presidential Board of six members was created under the President, four of whom belong to Ukrainian, one to Polish and one to some other nationality. The supreme central body for internal governance was the State Council, which is also composed of six members. The members of State Council was appointed by the President of the Republic, taking into account the national normative ratio (4: 1: 1) after the experts had given the opinion of the national curia of the Parliament. At the same time, the President of the Republic, the Speaker of the Parliament and the State Council, as well as the Chairman of the State Judicial Tribunal must have been of Ukrainian nationality [15].

According to the right to self-determination, all peoples residing in the state took a proportional part both in the creation and organization of the will of the people and in its realization. According to the draft Constitution,

the three national curias of parliament were indicators of the right of self-determination of individual peoples. The national normative ratio of 4: 1: 1 was based on the proportional ratio of the Ukrainian population (4) with the Polish population (1) and with other nationalities (1). According to the project, it should have been adhered to in the electoral system, in national curias and sections and, where it was possible, in determining the share of representatives of other nationalities in government. Peoples' cultural autonomy was ensured by national sections of the school board [15].

The constitutional draft of S. Dnistryansky also guaranteed the participation of representatives of different nationalities in justice, which should have complied with the national normative ratio. This was especially the case of the Courts of People's Jurors and the Jury and the Administrative Courts, as well as the State Judicial Tribunal. In addition, according to the draft Constitution, every citizen had the right to use his or her native language in institutions and courts. In this regard, officials and judges were required to be fluent in national languages [16].

Conclusions. State building on West lands during the Ukrainian Revolution in the 1917–1921 was accompanied by the development of constitutional acts and other basic laws that were supposed to regulate both the basic principles of the state system and the rights and freedoms of citizens. Constitutional acts and drafts of the WUPR Basic Law, drafted by S. Dnistryansky, granted broad rights to national minorities. They included not only the right to use their mother tongue in everyday life and to teach their children, but also the right to use their mother tongue in public institutions, including the courts, in which case civil servants were required to speak three languages – Ukrainian, German and Polish, as well as the right to national autonomy and own national representation in parliament.

It is significant that a number of norms proposed by S. Dnistryansky were already included in the Universal Declaration of Human Rights, proclaimed by the General Assembly of the United Nations on December 10, 1948, and other international human and international human rights instruments after the Second World War. The relevant provisions for the protection of the rights of national minorities are now guaranteed

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