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Case Note

THE PROTECTION OF THE RIGHTS OF NATIONAL MINORITIES AND INDIGENOUS PEOPLES IN UKRAINE: THEORY AND PRACTICE

Yevhenii Tkachenko, Iryna Dakhova and Zoriana Zazuliak

ye.v.tkachenko@nlu.edu.ua

0000-0003-2510-5362

i.i.dakhova@nlu.edu.ua

0000-0003-3252-2017

zoriana.m.zazuliak@lpnu.ua

0000-0002-0098-9424

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THE PROTECTION OF THE RIGHTS OF NATIONAL MINORITIES AND INDIGENOUS PEOPLES IN UKRAINE: THEORY AND PRACTICE

Yevhenii Tkachenko

PhD (Law), Assoc. Prof., Department of Constitutional Law of Ukraine,
Yaroslav Mudryi National Law University, Kharkiv, Ukraine
ye.v.tkachenko@nlu.edu.ua
0000-0003-2510-5362

Dakhova Iryna

PhD (Law), Assoc. Prof., Department of Constitutional Law of Ukraine,
Yaroslav Mudryi National Law University, Kharkiv, Ukraine
i.i.dakhova@nlu.edu.ua
0000-0003-3252-2017

Zoriana Zazuliak

PhD (Political Science), Assist. Prof., Department of Political Science
and International Relations, Lviv Polytechnic National University, Ukraine
zoriana.m.zazuliak@lpnu.ua
0000-0002-0098-9424

Abstract This note is focused on the problems of ensuring the rights of national minorities and indigenous peoples in Ukraine. These issues are considered in accordance with theoretical approaches in the social sciences, as well as the practice of protecting the rights of national minorities and indigenous peoples in Ukraine. Court decisions on discrimination against the rights of these vulnerable groups are analysed. The research is aimed at the scientific search for ways to improve the legal regulation of national-ethnic relations to ensure the rights of national minorities and groups. In accordance with a comprehensive theoretical and practical approach, an analysis of Ukrainian legislation and case-law on the protection of the rights of national minorities and indigenous people is given. Problems of ensuring the rights of national minorities and indigenous peoples are revealed. Some promising legislative improvements are proposed to eliminate violations and ensure the rights of these groups.

Keywords: national-ethnic relations, national minorities, indigenous peoples, citizenship, judicial protection of rights

1 INTRODUCTION

Having declared itself a democratic and legal state at the constitutional level, Ukraine seeks to create conditions for equal development and full, active participation of all nationalities in the social, economic, political, spiritual, and cultural life of citizens of Ukraine. A democratic state must not only respect the ethnic, linguistic, and religious identity¹ of any person

1 E Clark, D Vovk, 'Legal Reform in Uzbekistan: Prospects for Freedom of Religion or Belief and Covenantal Pluralism (The Review of Faith & International Affairs Volume 18, 2020 - Issue 4: Beyond Tolerance: Exploring Possibilities for Covenantal Pluralism) Pages: 35-48 <<https://www.tandfonline.com/doi/abs/10.1080/15570274.2020.1834976>> (accessed 10 September 2021)

belonging to a national minority but also create conditions that allow for the expression and preservation of such identity.

Since Ukraine is a multinational country in the process of state formation, it is important for national authorities not only to ensure the rights of the titular nation but also to guarantee the rights of all national groups of Ukraine, which is an important prerequisite for social harmony. At present, the problem of finding a legislative balance between ensuring the need for consolidation and development of the Ukrainian nation, its historical consciousness, traditions, and culture, as well as the development of the ethnic, cultural, linguistic, and religious identity of all indigenous peoples and national minorities of Ukraine is still relevant.

The article is aimed at the scientific search for ways to improve the legal regulation of language relations in the field of education in Ukraine. In accordance with the comprehensive theoretical and practical approaches, the analysis of the language situation and language legislation of Ukraine is carried out.

2 THE LEGAL STATUS OF NATIONAL MINORITIES IN UKRAINE

Our state is a multinational and multilingual country that is at the stage of state formation; thus, it is important for state power not only to consolidate and ensure the rights of the titular nation but also to guarantee the rights of all national minorities in Ukraine. Each state should be a common home for all ethnic, religious, and linguistic minorities living in it so that they will be truly equal to other members of society, and none of them will be in the position of 'second class' citizens. However, the solution to the problem of minorities cannot and should not be the creation of a mono-ethnic country or semi-state for each ethnic group. The state cannot be the 'exclusive property' of any national or linguistic group, neither a majority group nor a minority one. The state's recognition of national minorities gives it certain responsibilities, in particular, the obligation to enshrine in law the rights of national minorities and guarantee them accordingly.

According to the last Ukrainian census of 2001, the largest national minorities of Ukraine include Russians at 8,334.1 thousand people (17.3% of the population), Belarusians at 275.8 thousand people (0.6% of the population), Moldovans at 258.6 thousand (0.5% of the population), Crimean Tatars at 248.2 thousand people (0.5% of the population), Bulgarians at 204.6 thousand people (0.4% of the population), Hungarians at 156.6 thousand people (0.3% of the population), Romanians at 151.0 thousand people (0.3% of the population), Poles at 144.1 thousand people (0.3% of the population), Jews at 103.6 thousand people (0.2% of the population), Armenians at 99.9 thousand people (0.2% of the population), Greeks at 91.5 thousand people (0.2 population), Tatars at 73.3 thousand people (0.2% of the population), Roma at 47.6 thousand (0.1% of the population), Azerbaijanis at 45.2 thousand people (0.1% of the population), Georgians at 34.2 thousand people (0.1% of the population), Germans at 33.3 thousand people (0, 1% of the population), Gagauz at 31.9 thousand people (0.1% of the population), and others. The smallest ethnic groups are the Karaites (according to the results of the Ukrainian census of 2001, 1,196 Karaites lived in Ukraine) and the Krymchaks (according to the 2001 census, 406 Krymchaks lived in Ukraine)².

Legal regulation of the status of national minorities in Ukraine is carried out by the Constitution of Ukraine, the Law of Ukraine 'On National Minorities' of 25 June 1992, as well as the following international documents to which our state is a party: the Framework

2 Ukrainian census of 2001 p. <http://2001.ukrcensus.gov.ua/results/general/nationality/> (accessed 10 September 2021)

Convention for the Protection of National Minorities of 1 February 1995 and the European Charter for Regional or Minority Languages of 5 November 1992.

According to Art. 3 of the Law of Ukraine 'On National Minorities' of 25 June 1992, national minorities are groups of citizens of Ukraine who are not Ukrainians by nationality and show a sense of national self-awareness and community among themselves. That is, the definition of 'national minority' by the legislator includes the criterion of citizenship, the criterion of origin, the criterion of cultural characteristics, as well as the subjective criterion – the manifestation of feelings of national self-awareness and community.

The definition of 'national minorities' should be based on a comprehensive approach aimed at comprehensive coverage of the concept of minorities, which includes all types of diversity of ethnic minorities. This is: 1) the quantitative criterion, i.e., ethnic minorities include groups that are smaller in number compared to the rest of the population of the country, i.e., the titular nation; 2) the criterion of non-dominance, i.e., in public and state-power relations, this group does not occupy a dominant position; 3) the criterion of discrimination – this criterion is optional and means that in the state there is a well-founded threat to members of this group, sufficient to consider it possible for them to become or that they have become victims of discriminatory policies or forced assimilation by public authorities; 4) the criterion of citizenship, i.e., national minorities include citizens of this state. In some European countries, including Ukraine, national minorities should also include stateless persons. For example, national minorities should include members of the Roma ethnic group who are stateless and permanently resident in a particular state; 5) the qualitative criterion – this group is characterised by certain cultural characteristics, primarily language, historical origin, and cultural traditions; 6) the subjective criterion, the so-called 'individual attitude (self-identification)', which means the manifestation of feelings of national self-awareness and community with each other.³

The legislation of Ukraine recognises the following specific rights for citizens belonging to national minorities: the right to choose and restore nationality; the right to preserve national and ethnic identity by national surname, name, and patronymic; the right to preserve the living environment in places of their historical and actual settlement; the right to the creation of national public organisations, such as national-cultural societies, cultural centres, fellowships, and other organisations; the right to use and study in their native language or to learn their native language in state and municipal educational institutions or through national cultural societies; the right to the development of national cultural traditions; for the use of national symbols; to celebrate national holidays; the right to profess their religion; the right to meet the needs of literature, art, and media; the right to establish national cultural and educational institutions; the right to be elected or appointed on an equal basis to any position; the right to freely establish and maintain contacts with persons of their nationality and their associations outside Ukraine; the right to any activity that does not contradict the law. At the same time, the Constitution of Ukraine does not provide for the right of a separate part of the citizens of Ukraine (including national minorities) to unilateral self-determination, as a result of which the territory of Ukraine as a unitary state will change. The issue of changing the borders of Ukraine must be decided in an all-Ukrainian referendum appointed by the Verkhovna Rada of Ukraine in accordance with Art. 73, para. 2 of part one of Art. 85 of the Basic Law of Ukraine (see CCU Decision of 20 March 2014 no. 3 – rp).

The language rights of national minorities can be singled out: the right to use the language in the sphere of activity of local self-government bodies in places of compact ethnic residence; the right to disseminate information and ideas in the native language; the right to create and use mass media; the right to use the language of their minority freely and unhindered,

³ Ye Tkachenko, *Legal protection of ethnic and linguistic minority rights* (FOP Golembowska OO 2018) 71-72.

privately and publicly, orally and in writing; the right to use one's mother tongue in court; the right to learn and study in their native language.⁴

Ukrainian constitutional law guarantees that the right of citizens belonging to national minorities to study in their mother tongue or to learn their mother tongue in state and municipal educational institutions or through national cultural societies may be exercised through the establishment of appropriate educational institutions in which the language is taught in a national minority or by ensuring the study of the national language as a separate discipline. At the same time, the educational policy on strengthening the state language and its proficiency by all citizens violated these constitutional guarantees of the linguistic rights of national minorities, as the new rules of the educational law seriously reduce the opportunities for persons belonging to national minorities to learn their languages. The analysis of domestic language legislation shows that Ukraine has adopted only a law regulating the use and protection of the state language. At the same time, the procedure in Ukraine is not regulated for the use of national minority languages, the development, use, and protection of which are guaranteed by the state and enshrined in the Constitution of Ukraine. In addition, Ukraine has committed itself to complying with the provisions of such international instruments on the legal status of ethnic and national minorities. That is, at present, in Ukraine, there is an urgent need to develop and adopt a separate law that would establish the procedure for the use of national minority languages in public spheres of public life and guarantee their language rights.⁵

The problems of protection of Roma rights in Ukraine should be discussed separately. According to various data, between 40,000 and 400,000 Roma live in Ukraine. The peculiarity of their situation in Ukraine is a certain social isolation from the local population, low level of education, miserable living conditions, extreme poverty, poor health, a sceptical attitude of the population towards members of the Roma national minorities, lack of representatives in public authorities, violence against Roma, and lack of protection by law enforcement agencies. In addition, a significant number of Roma in Ukraine are generally stateless. All these factors highlight the need for special attention from the state authorities to create conditions for the socialisation and protection of Roma rights in Ukraine.

The need for greater attention on the part of the Ukrainian state to the protection of Roma rights is evidenced by the decisions of the European Court of Human Rights (ECtHR) on the violation of their rights. Thus, the first such decision is the decision of the Court in *Fedorchenko and Lozenko v. Ukraine*, adopted on 20 September 2012. It concerns an attack on a Roma family on 28 October 2001. Their homes were burned down, and four of the family members were killed, including two six-year-old children. The ECtHR found that the violations by the authorities were limited to basic procedural steps. In addition, the ECtHR noted that none of the six suspects (except N.) had been found. Given the widespread acts of violence and discrimination against Roma in Ukraine, the Court did not rule out that the decision to set houses on fire was further reinforced by ethnic hatred. However, there is no evidence that the authorities examined xenophobic motives for the attack. The ECtHR found it unacceptable that in these circumstances, no significant steps had been taken in the course of the investigation, which had lasted for more than 11 years, to identify and convict the perpetrators. Ukraine was ordered to pay the applicant EUR 20,000 in respect of non-pecuniary damage.⁶

4 Ye Tkachenko, *Constitutional and legal regulation of language relations* (FINN 2010).

5 Ye Tkachenko, T Slin'ko, 'Ensuring Person's Language Rights in the Educational Sphere in Ukraine' (Papers of the participants of the International Conference on Economics, Law and Education Research (ELER 2021) Advances in Economics, Business and Management Research, volume 170 p. 99-105 <<https://www.atlantis-press.com/proceedings/eler-21/125954391>> (accessed 10 September 2021)

6 *Fedorchenko and Lozenko v Ukraine*, Decision no 387/03 (ECtHR, 20 September 2012, App date 10 September 2020) <https://zakon.rada.gov.ua/laws/show/974_933#Text> (accessed 10 September 2021).

There also is the decision of the ECtHR in *Burlyya and Others v. Ukraine*, adopted on 6 November 2018. The events took place in September 2002 in the village of Petrivka, Odessa region. The Court concluded that there had been a violation of the right to respect for private and family life, housing, and correspondence (Art. 8 of the European Convention on Human Rights) and the prohibition of discrimination (Art. 14), as well as the prohibition of torture and degrading treatment (Art. 3). According to the ECtHR, the damage caused to the applicants' homes amounted to serious and unjustified interference with the applicants' right to respect for their private and family life and home. The ECtHR has ordered Ukraine to pay 5 million hryvnias in compensation to the victims in the Roma camp in the Odessa region.⁷

In 2021, another decision of the ECtHR was adopted, which established the violation of Roma rights by the state of Ukraine, namely, the decision in *Pastrama v. Ukraine* of 1 April 2021 concerning an attack on a Roma settlement. On 30 May 2012, at about 12:00 noon, police officers in civilian clothes arrived at a Roma tent settlement where 73 Roma lived. Among them was a district police officer whom the Roma knew personally, as he had often visited them before. Police began removing Roma from tents and setting fire to tents. Eventually, the tents burned down completely, with the things, documents, and money that were there. One of the policemen shot a dog belonging to the Roma and fired six shots into the air. The children were crying, and the Roma were running in different directions and shouting. The police told them to go away because it was Euro 2012, and they had an order to remove them all. The precinct officer told them that if they did not leave immediately, they would be 'taken away'. The burning of Rita Pastra's Roma home in Kyiv before Euro 2012 was assessed by the ECtHR as a violation of the right to privacy (Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms).⁸

3 RIGHTS OF NATIONAL MINORITIES AND ISSUES OF CITIZENSHIP

One of the problems with the legal status of national minorities who are the citizens of Ukraine is the inability to legally have both Ukrainian citizenship and citizenship of the state of their ethnic origin. The legislation of Ukraine enshrines the principle of unified citizenship (Art. 4 of the Constitution of Ukraine, Art. 2 of the Law 'On Citizenship of Ukraine' of 18 January 2001). One of the aspects of this principle is due to the unitary nature of the state, namely, that the possibility of the existence of citizenship of administrative-territorial units of Ukraine is excluded. A second is related to the position of the state on multiple citizenships. And in this case, we should not talk about the ban but about the non-recognition of dual citizenship. As noted by Yu. Boyars, the quite legitimate enshrinement in the legislation of many states of the so-called principle of non-recognition of dual citizenship means only non-recognition of the legal consequences of bipatriism.⁹ The principle under consideration is formulated by the Ukrainian legislator as follows:

If a citizen of Ukraine has acquired the citizenship (citizenship) of another state (states), then in legal relations with Ukraine he is recognized only as a citizen of Ukraine. If a foreigner has acquired the citizenship of Ukraine, then in legal relations with Ukraine he is recognized only as a citizen of Ukraine.

This means that the state does not take into account the existence of such a person's citizenship of another state and treats the person only as its own citizen, giving him or her all the rights

7 *Burlyya and others v Ukraine* App no 3289/10 (ECtHR, 6 November 2018, final 6 February 2019) <https://zakon.rada.gov.ua/laws/show/974_d65#Text> (accessed 10 September 2021).

8 *Pastrama v Ukraine* App no 54476/14 (ECtHR, 1 April 2021) <<https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-208889%22%5D%7D>> (accessed 10 September 2021).

9 Yu Boyars, *Citizenship issues in international law*. (International Relations 1986) 19.

of a citizen and imposing on him or her all the relevant responsibilities. However, one of the conditions for losing the citizenship of Ukraine is the Law (para. 1, part 1 of Art. 19) concerning the voluntary acquisition of citizenship of another state by a citizen of Ukraine after reaching the age of majority. Thus, a citizen of Ukraine may lose Ukrainian citizenship on the condition of voluntary acquisition of citizenship of another state (states). And despite the practical absence in Ukraine of a mechanism for a person to lose citizenship under the condition of multiple citizenships, such precedents exist.

It is believed that bipatrim promotes the development of international culture and international relations and helps individuals to realise their separate ethnicity and national identity. That is, dual citizenship is seen as a factor in the integration of foreigners living in the state into the state's social and political life,¹⁰ aimed at ensuring the protection of national minorities in the state of their citizenship. Moreover, it is noted that multiple citizenships is more advantageous for bipatrides than for states,¹¹ as the presence of citizenship of two states can facilitate business, allow visa-free entry to the country of their ethnic origin, provide the right to reside in two states, etc.

Today in European countries, there is a tendency to change the approach to multiple citizenships from its complete denial to official recognition. Thus, according to Part 1 of Art. 3 of the Law of the Republic of Poland 'On Polish Citizenship', a Polish citizen who simultaneously has the citizenship of another country, has the same rights and obligations in relation to the Republic of Poland as a person who has only Polish citizenship (unlike the previous version of the Law, in which dual citizenship was prohibited). Most of Ukraine's neighbours allow multiple citizenships at the legislative level. In particular, in Poland (which previously enshrined the principle of single citizenship) on 15 August 2012, a new law on citizenship came into force, according to which a Polish citizen may have the citizenship of another state. In addition, a *voivode* (similar to the head of the regional state administration in Ukraine) can recognise a Polish citizen as a person who has been in the country legally for at least three years, has a permanent income and housing, and speaks Polish without requiring renunciation of previous citizenship. Also, one of the most important points of the new law is that the head of state can now grant Polish citizenship to all foreigners regardless of their period of residence in the country, whereas previously, the president granted citizenship only in exceptional cases. These innovations may also affect the status of citizens of Ukraine permanently residing in Poland, who may in fact become bipatrides wishing to obtain citizenship of the country of residence. According to the Polish Administration for Foreigners (UDSC), at the beginning of 2019, 196,000 citizens of Ukraine were issued 196,000 residence permits in Poland. Moreover, the head of state can now grant Polish citizenship under a simplified procedure to foreigners of Polish origin. Thus, according to paragraph 7 of Part 1 of Art. 30 of the Law on Polish Citizenship,¹² a foreigner who has been permanently residing in the territory of the Republic of Poland for at least two years on the basis of a settlement permit obtained in connection with Polish origin may be admitted to Polish citizenship (whereas, as a general rule, residence should be 10 years). At the same time, the absence of a requirement to terminate a person's previous citizenship should be considered a positive of the new version of the law. It is expedient to raise the issue of enshrining similar provisions in the legislation of Ukraine on citizenship, which currently provides for the need to renounce previous citizenship after acquiring Ukrainian citizenship.

10 R Bedriy, *Constitutional and legal bases of citizenship of Ukraine* (Lviv State University of Internal Affairs 2006) 124.

11 K Santayan, 'Problems of dual citizenship in international law and practical ways to eliminate them' (Abstract on PhD dissertation, NAN of Ukraine, Institute of State and Law, 1996) 10.

12 USTAWA z dnia 2 kwietnia 2009 r. o obywatelstwie polskim <<http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20120000161/T/D20120161L.pdf>> (accessed 10 September 2021).

It should also be borne in mind the requirement of Art. 16 of the European Convention on Nationality, which states that a state may not make the acquisition or retention of its nationality a waiver of another nationality or its loss if such renunciation or loss is impossible or reasonably required.

In addition, since 2008, Poland has been issuing the so-called 'Polish card', primarily to citizens of the former Soviet Union. The card can be claimed by a person who has direct ascending kinship with a Pole (father, mother, grandmother, grandfather, or two great-grandparents), or provide a written certificate from a Polish organisation confirming active participation in the Polish language and culture or Polish national minority for at least the last three years. Persons holding a Polish card have the following additional rights: to obtain a long-term national visa free of charge, which entitles them to cross the Polish border multiple times without providing additional documents (invitations, work permits, etc.); to work legally in the territory of Poland without obtaining a special work permit; to engage in entrepreneurial activity in the territory of Poland on the same grounds as Polish citizens; in emergencies, to seek free emergency medical care on the same terms as Polish citizens; to enjoy a free education system on the territory of Poland on the same grounds as Polish citizens. As we can see, although those who have a Polish card do not have the benefits of obtaining Polish citizenship, they receive favourable conditions from the state for the earliest possible integration into Polish society.

The Hungarian Citizenship Act 2011 stipulates that any person who was a Hungarian citizen before 1920 and during 1941-1945 or is a descendant of such a person and speaks Hungarian may apply for Hungarian citizenship, even if such the person permanently resides outside its territory. As of 2019, all residents of Transcarpathia, which from 1939 to 1945 was under Hungarian jurisdiction, had the opportunity to acquire Hungarian citizenship under a simplified procedure and receive scholarships to study in Hungary, social benefits, pensions, and more. As of the beginning of 2019, there were more than 100 thousand citizens of Ukraine in Transcarpathia who received a passport as a resident of Hungary. The 'map' of Transcarpathia has periodically been played out in the political 'games' of Eastern Europe and 'speculations' about the acquisition of a special status in this region for the last 25 years. For example, in late March 2017, during the European People's Party congress in Malta, incumbent Hungarian Prime Minister Viktor Orban invited Ukraine to discuss signing a dual citizenship agreement for those ethnic Hungarians living in Ukraine (the issue remained 'open' and during 2018 because, according to the Ukrainian authorities, it was not so much about the protection of national minorities but about the promotion of 'latent separatism', which threatens the national security of Ukraine).¹³

The Law of the Czech Republic 'On Citizenship' of 1 January 2014 also abolishes the provision on the loss of Czech citizenship in the case of obtaining the citizenship of another state of one's own volition, as well as the requirement to renounce previous citizenship in the case of acquiring Czech citizenship.

The European Convention on Nationality of 6 November 1997 states that each state can decide for itself what consequences the fact of acquiring another citizenship or belonging to another citizenship will have in its domestic law. According to Art. 15 of the Convention, its provisions do not limit the right of each state to establish in its domestic law: a) its nationals who acquire or possess the nationality of another state shall retain or lose their nationality; b) whether the acquisition or retention of his or her nationality is linked to the renunciation or loss of another nationality. Thus, the European Convention on Nationality in Art. 15 (a) gives states parties the right to determine for themselves the admissibility of multiple nationalities.¹⁴

13 I Sofinska, *Philosophical and legal doctrine of citizenship* (Thesis, Doctor of Sciences, philosophy of law, Lviv Polytechnic National University, 2019).

14 I Dakhova, 'The principle of unified citizenship in the legislation and practice of Ukraine and foreign countries' (2013) 26 *State Building and Local Self-Government* 95-110.

It can be argued that today in Ukraine, certain steps are being taken to introduce the institution of dual citizenship. Thus, according to the Decree of the President of Ukraine no. 594/2019,¹⁵ persons who are citizens of the Russian Federation and are persecuted due to political convictions in the country of their citizenship and apply for Ukrainian citizenship are exempted from the obligation to terminate foreign citizenship. In this case, individuals are required to submit a declaration of renunciation of foreign citizenship. The same applies to persons who serve in the Armed Forces of Ukraine and who have outstanding merits before Ukraine or whose acquisition of Ukrainian citizenship is in the state interest (who took or are participating in the implementation of measures to ensure national security and defence or repulse and deter armed aggression of the Russian Federation in Donetsk and Luhansk regions) and apply for Ukrainian citizenship.

In addition, the Verkhovna Rada of Ukraine registered Bill no. 2590 dated 12 December 2019, which provides for amendments to the Law of Ukraine 'On Citizenship of Ukraine', including on issues related to the presence of dual citizenship. Thus, the law revises the grounds for loss of citizenship of Ukraine, namely, it excluded from the grounds for loss of citizenship of Ukraine voluntary acquisition of citizenship of another state by an adult citizen of Ukraine.

On the other hand, the existence of dual citizenship can cause many conflicts and difficulties both for persons with two nationalities and for the states of which they are nationals, as each state may require a person to perform his or her duties. For example, a person may be obliged to serve in the military in two states, even at the same time, or to pay taxes to two states, etc., which is natural from the standpoint of international law. Art. 3 of the Convention for the Regulation of Certain Matters Relating to the Conflict of Nationality Laws of 12 April 1930 stipulates that 'a person who holds one or two nationalities may be considered a citizen by any State of which he is a national'. However, it should be noted that today, the issue of military service is regulated by Art. 5 of the Convention on the Reduction of Multiple Nationality and Conscription in Cases of Multiple Nationality, which states that persons possessing the nationality of two or more states are required to perform their military duty in respect of only one of those states, and forms the application of this provision may be established by special agreements between any states.¹⁶

The criterion for determining the citizenship of bipatrides is domicile. The legal doctrine of most states is based on the concept of the stability of citizenship and the actual connection of a person with the state. Regarding the issue of 'communication with the state', international courts have made a number of decisions, the most famous of which was the decision in the *Canevaro* case. The latter acquired Italian citizenship by 'blood law' and Peruvian citizenship by 'soil law'. The Permanent Chamber of International Justice ruled in 1912 that *Canevaro* was a Peruvian citizen and had been appointed consul general in the Netherlands. The court thus established the concept of so-called 'active, or effective, state affiliation'. Criteria for effective citizenship are permanent residence or the most frequent stay; place of work, military or civil service; a place where a person actually enjoys his or her civil and political rights; sometimes, the location of real estate.¹⁷

In our opinion, citizens in Ukraine should be allowed to have dual ('multiple') citizenship for the following reasons.

15 Issues of simplification of acquisition of Ukrainian citizenship by foreigners and stateless persons who took part in the implementation of measures to ensure national security and defense of Ukraine, and citizens of the Russian Federation who were persecuted for political beliefs: Decree of the President of Ukraine no 594/2019 of 13 August 2019 <<https://www.president.gov.ua/documents/5942019-29065>> (accessed 10 September 2021).

16 Convention on the Reduction of Multiple Nationality and Conscription in Multiple Nationality, 6 May 1963 <<http://uapravo.net/akty/postanowa-main/akt8phnq9g.htm>> (accessed 10 September 2021).

17 Yu Boyars (n 8) 19.

First, as we have pointed out in our study, the purpose of enshrining the principle of single citizenship in Art. 4 of the Constitution of Ukraine was primarily to prevent the introduction of so-called regional passports, i.e., citizenship of individual administrative-territorial units, as well as ensuring a single equal treatment by the state to all citizens of Ukraine, regardless of whether they have foreign citizenship. This understanding of the principle of single citizenship is indicated in Art. 2 of the Law of Ukraine 'On Citizenship of Ukraine'. If a citizen of Ukraine has acquired citizenship (citizenship) of another state or states, then in legal relations with Ukraine, he or she is recognised only as a citizen of Ukraine. If a foreigner has acquired the citizenship of Ukraine, then in legal relations with Ukraine, he or she is recognised only as a citizen of Ukraine. The current legislation of Ukraine, although formally prohibiting this, does not in fact limit the possibility of Ukrainian citizens obtaining foreign citizenship. The legislation provides only for the possibility of losing Ukrainian citizenship in the case of voluntary acquisition of foreign citizenship, which is very difficult to apply in practice.

Incidentally, in 1978, the Constitution of the USSR separately enshrined the principle of single citizenship (Part 1 of Ar. 31), but citizens of Ukraine were given the opportunity to have dual citizenship if it was provided by interstate agreements (Part 3 of Art. 31). The draft Constitution of Ukraine of 1992 separately enshrined the principle of unified citizenship (Part 1 of Article 15), and certain provisions prohibited citizens of Ukraine from simultaneously having the citizenship of another state.

At present, a significant number of Ukrainian citizens have foreign citizenship. According to A. Haidutsky, in 2017, more than 100 thousand Ukrainians became citizens of other countries. So, 85,000 received citizenship in Russia, 19,000 in the EU, and 7,000 in the United States. In 2017, Ukrainians in the United States received almost 11% of all citizenships issued to Europeans and 1% among immigrants from around the world.

In the EU, Ukrainians are also gradually rising in the ranking of donor countries for new EU citizens. In 2017, the greatest number of citizenships were granted to Ukrainians, in particular, Germany (18%), Italy (14%), Romania (13%), and Poland (12%). In 13 of the 28 EU member states, Ukrainians are already in the top five in terms of the number of people who have received EU citizenship.¹⁸

Secondly, the processes of globalisation, the development of trade and economic relations between countries, cross-border cooperation, and intercultural relations between people have significantly strengthened modern migration processes in countries.¹⁹ This has led to fundamental changes in the content of the institution of citizenship, which is primarily manifested in the differences between the borders of the state and the borders of citizenship. And since citizenship characterises not only legal affiliation but also socio-cultural affiliation, i.e., membership of an individual in a particular community, it should be noted that today these two dimensions of citizenship are increasingly divergent. Citizenship, which is characterised as 'membership', ceases to coincide with the territory of the states in which citizens live. This fact is discussed in political theories and philosophies in terms such as 'transnationalism', 'economic citizenship', 'corporate citizenship', 'cultural citizenship', and so on.

That is why the Ukrainian authorities cannot but react to the current migration processes taking place in the world and introduce multiple citizenships, which will significantly improve the legal status of citizens with multiple citizenships. Also, the liberalisation of citizenship policy will allow millions of Ukrainian citizens who, due to various circumstances, left Ukraine and received citizenship from another country but still want to keep in touch with their homeland, to be kept in the national space.

18 V Kravchenko, 'Is bipatrie so terrible as it is painted?' <https://dt.ua/internal/ne-takiy-strashniy-bipatriid-yak-yogo-malyuyut-327407_.html> (accessed 10 September 2021).

19 R Sharma, *The rise and fall of countries. Who will win and lose on the world stage* (Our format 2018).

Thirdly, we should agree with the former Deputy Prime Minister for European and Euro-Atlantic Integration D. Kuleba that the state's tolerant attitude to the second citizenship will solve the issue of tens of thousands of Ukrainians having Polish, Hungarian, and Romanian passports, which most received only in order to move peacefully in the EU. By and large, this should remove one of the acute problems in Ukraine's relations with neighbouring countries.²⁰

But this rule should not apply to the right of dual citizenship with the Russian Federation as long as it has the status of an aggressor country. Restrictions on positions in public authorities should also be introduced for citizens of Ukraine who have Russian citizenship. This prohibition should also apply to citizens who have foreign citizenship if they apply for positions in public authorities related to state secrets.

Also, the rule of multiple citizenships will allow successful foreign Ukrainians to be involved in work for the benefit of the state as representatives of Ukrainian diasporas in the world.

4 PROBLEMS OF THE LEGAL STATUS OF INDIGENOUS PEOPLES AND SUB-ETHNIC GROUPS

A separate issue that deserves scientific research is the issue of the legal status of indigenous peoples and sub-ethnic groups in Ukraine. Thus, if we turn to the analysis of the legal status of indigenous peoples in foreign countries, we must first consider the legislation of South America. Their peculiarity is that their population includes representatives of indigenous (aboriginal) peoples, but their fate is different: in Bolivia and Guatemala, indigenous peoples make up two-thirds of the total population, in Peru and Ecuador – about 40%, in most other countries – from 5 to 20%, in Brazil – less than 1%. Influenced by Indian movements and international law, the constitutions of these countries have included rules on the rights of these indigenous peoples, including rules on the status of their languages. The Constitution of Panama (1972), the first of the Latin American constitutions, enshrined the provision of regional autonomy for several groups of Indians and recognised their right to study in two languages. Later, Argentina and Peru developed laws at the subregional level, which also recognised the right of Indians to territory, language, and culture.²¹ Thus, in Peru, Quechua, Aymara, and other Aboriginal languages are official in the areas where they predominate (Art. 44 of the Constitution). In the constitutions of Colombia, Ecuador, and Venezuela, the languages and dialects of ethnic groups are recognised as official in their territory.

The Constitution of the Federative Republic of Brazil of 1988 declares Portuguese to be the official language of the country (Art. 13). In addition, the constitutional level stipulates that the state undertakes to promote the manifestations of folk Indian, Afro-Brazilian, and other cultures that participate in the national cultural process (Art. 215). A separate chapter (VIII) of the Brazilian Constitution is specifically devoted to the legal status of Indians. It includes two articles. Indians are recognised for their social organisation, customs, languages, beliefs, and traditions, as well as their original rights to the land they traditionally occupy. Indigenous rights legislation also exists in Canada, Australia, Malaysia, and other countries. Separately

20 D Kuleba, 'Ukrainians from the diaspora can get dual citizenship' (Dzerkalo tuzhnya October, 25, 2018) <https://dt.ua/POLITICS/ukrayinci-z-diaspori-mozhut-otrimuvati-podviyne-gromadyanstvo-kuleba-327351_.html> (accessed 10 September 2021).

21 A Abashidze, F Ananidze, *Legal status of minorities and indigenous peoples* (Publishing House of the Russian University of Friendship of Peoples 1997) 154.

in Finland, Sweden,²² and Norway, rights in the field of culture, language, education of such indigenous peoples as the Sámi are enshrined at the constitutional and legislative level.²³ Thus, according to the Constitution of Finland, the Sami, as the oldest inhabitants of the country (as well as Roma and other groups), have the right to preserve and develop their language and culture. The right of Sami to use their language in public bodies is regulated by law. In 1991, the Sámi Language Act was adopted in Finland, according to which Sámi living in the province of Lapland may use their mother tongue in central government bodies and institutions, in courts, in contacts with ombudsmen when considering issues affecting their interests. According to the Children's Institutions Act (1978), municipalities must ensure that children have the opportunity to attend children's institutions where they speak their mother tongue - Finnish, Swedish, and Sámi.²⁴ For example, in the Russian Federation, in accordance with the Law 'On Guarantees of the Rights of Indigenous Peoples of the Russian Federation' of 16 April 1999, indigenous peoples are peoples living in the territories of the traditional settlement of their ancestors, preserving the traditional way of life (the number of which in Russia is less 50,000 people), and those who are aware of themselves as independent ethnic communities.²⁵

The UN Declaration on the Rights of Indigenous Peoples of 13 September 2007, although it does not contain a definition of 'indigenous peoples', declares their collective and individual rights separately: the right to self-determination; the right to autonomy or self-government in matters relating to their internal and local affairs; the right to preserve and strengthen their distinctive political, legal, economic, social, and cultural institutions; the right to citizenship; the right to life, physical and mental integrity, liberty, and security of person; the right not to be subjected to forced assimilation or destruction of their culture – indigenous peoples may not be forcibly evicted from their lands or territories; the right to observe and revive their cultural traditions and customs; the right to discover, practice, develop, and transmit their spiritual and religious traditions, customs and rites; the right to revive, use, develop, and pass on to future generations their stories, languages, oral folk traditions, philosophies, writing systems, and works of literature; the right to establish and exercise control over their educational systems and educational institutions with their mother tongue in a manner consistent with their cultural tradition of teaching and learning; the right to start their own media in their own language and have access to all types of media that do not belong to indigenous peoples, without any form of discrimination; the right, without any form of discrimination, to improve their economic and social living conditions, including, *inter alia*, areas such as education, employment, vocational training and retraining, housing and a safe environment, health and social security, and others.²⁶

The Constitution of Ukraine also mentions the rights of indigenous peoples. Art. 11 establishes that the state promotes the development of the ethnic, cultural, linguistic, and religious identity of all indigenous peoples of Ukraine. But the current legislation does not establish the definition, status, or rights of the indigenous peoples of Ukraine. There is also no consensus among scholars as to which peoples and nationalities should be considered indigenous. Some researchers even argue that Crimean Tatars are not an indigenous people in Crimea.²⁷ Other authors, on the contrary, propose to refer to the indigenous peoples

22 M Isaev, Basics of constitutional order of Sweden (Moscow State University of International Relations of the Ministry of Foreign Affairs of Russia, Department of Constitutional Rights 2008) 187-189.

23 T Vasilieva, 'Legal status of ethnic minorities in Western Europe' (1992) 8 State and Law 140.

24 I Peshperova, *Rights of national minorities and their protection within the Organization for Security and Co-operation in Europe (OSCE)* (Publishing and Trading House 'Summer Garden' 2001) 79.

25 On guarantees of the rights of indigenous peoples of the Russian Federation <<http://duma.consultant.ru/doc.asp?ID=60305>> (accessed 10 September 2021).

26 United Nations Declaration on the Rights of Indigenous Peoples 13 September 2007 <<http://www.golos.com.ua/article/260484>> (accessed 10 September 2021).

27 V Alekseev, V Terekhov, 'Crimean Tatars - aborigines or aliens' (1997) 44 Journalist 4.

as Russians, Belarusians, Hungarians, Slovaks, Moldovans, Crimean Tatars, Karaites, and Krymchaks, as well as those who moved to uninhabited areas of southern Ukraine in the 18th-19th centuries and live on the lands where they have settled, i.e., Bulgarians, Greeks, Albanians, Serbs, and Gagauz.²⁸ The most common point of view among experts is that the indigenous peoples of Ukraine should include the Crimean Tatar (according to the All-Ukrainian census of 2001, there are about 250 thousand people), Karaite (according to the All-Ukrainian census of 2001, 1,196 Karaites lived in Ukraine) and Krymchaks (according to the 2001 census, 406 Krymchak people lived in Ukraine).

During independence, only in the difficult period of 2014 (March 20) did the Verkhovna Rada of Ukraine adopt Resolution no. 1140-VII 'On the Statement of the Verkhovna Rada of Ukraine on guarantees of the rights of the Crimean Tatar people within the Ukrainian state', which guaranteed the preservation and development of the ethnic, cultural, linguistic, and religious identity of the Crimean Tatar people as an indigenous people. At present (1 July 2021), the Verkhovna Rada of Ukraine, in the second reading, adopted the bill 'On Indigenous Peoples of Ukraine',²⁹ which establishes the features of the legal status of these subjects of public relations. In particular, the document defines the category of 'indigenous peoples' – an indigenous ethnic community formed in Ukraine, a carrier of original language and culture, a group that has traditional, social, cultural, or representative bodies, or self-aware indigenous people of Ukraine that is an ethnic minority in the composition of its population and does not have its own state formation outside Ukraine (Art. 1 of the draft). The project also identifies the indigenous peoples of the Crimean Peninsula – Crimean Tatars, Karaites, and Krymchaks. Of course, numerous criminal cases against members of the Crimean Tatar people in Crimea show significant violations by the Russian Federation of the fundamental rights and freedoms of Ukrainian citizens, including indigenous peoples living in the Autonomous Republic of Crimea and the city of Sevastopol. However, in our opinion, the law should have singled out not only the indigenous peoples of the Crimean Peninsula but also named which ethnic groups in all of Ukraine belong to indigenous peoples because the project does not understand the criteria and mechanism for defining a particular ethnicity as 'indigenous people of Ukraine'. In addition, such legal categories as 'autochthonous ethnic community' (Art. 1 of the draft), 'forced assimilation or forced integration in any form', 'ethnic identity', and 'original peoples' (Art. 3 of the draft) need additional legal certainty, as did 'Original ethnic communities' (Art. 6 of the draft). The law also guarantees the right to legal protection from any actions aimed at: 1) deprivation of signs of ethnicity and integrity as original peoples or deprivation of cultural values; 2) eviction or forcible transfer from places of compact residence in any form; 3) forced assimilation or forced integration in any form; 4) encouraging or inciting racial, ethnic, or religious hatred against them (Art. 3 of the draft). However, the disadvantage of the project is the lack of a mechanism to ensure these provisions (forms of preventive control, legal liability, etc.). In addition, the document establishes cultural rights (Art. 4 of the draft), educational and linguistic rights (Art. 5 of the draft), information rights (Art. 6 of the draft) of the indigenous peoples of Ukraine, and their right to sustainable development (Art. 7 of the draft), which provides for the activities of their representative bodies to represent their interests in cooperation with state and local authorities. But the analysis of the bill shows that the authors of the documents did not define the legal nature of the representative bodies of indigenous peoples, their competence, and legal characteristics. Thus, in connection with the above, we believe that the legislative regulation of the rights of the indigenous peoples of Ukraine is very important, but the above proposals should be taken into account when preparing the bill.

28 V Petkov, S Petkov, 'Issues of scientific development of the problem of the legal status of national minorities in Ukraine' (1998) 2 *Bulletin of the Luhansk Institute of Internal Affairs* 56.

29 Draft Law 'On Indigenous Peoples of Ukraine' <http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=71931> (accessed 10 September 2021).

A specific problem is the determination of the legal status of some sub-ethnic Ukrainian groups.³⁰ At present, such groups include the Boyks, Hutsuls, Lemkos, and Ruthenians. Thus, the Ruthenians, according to their leaders, do not agree with the definition of them as a sub-ethnic group and demand the status of an official ethnic group. At a congress held in Uzhhorod in 1999, representatives of Ruthenian communities demanded schools with Ruthenian language of instruction and a department of Ruthenian language at Uzhhorod University.³¹

At present, Ruthenians, or Carpatho-Ruthenians, live in the adjacent territory within the borders of four states: Poland, Slovakia, Ukraine, and Romania. The fact that the Ruthenians are a non-state people has raised and still raises the question of sceptics as to whether the Ruthenians really exist or whether they are some imaginary community, a product of intellectuals.³²

It is known that the first serious scientific research of the Ruthenians, dating from the second half of the 19th century, identified three groups that differ from each other in terms of dialectal speech, material culture, and cultural values. These groups include in the direction from west to east Lemkos, Krainyaks (Kraynyans), Dolynians (Dolyshnyans), and Verkhovyna. Interestingly, with one exception, these terms were not used by representatives of these ethnographic groups as self-identifiers but were given to them by residents of neighbouring territories. The East Slavic population of Carpathian Russia defined their ethnicity as Ruthenians, Rusnaks, or simply people of the Russian faith.

Today, Ruthenians exist in the southern Carpathians and are dispersed in 20 other countries. Therefore, in our opinion, it is legitimate to recognise that there is a Ruthenian people in the world. To confirm this conclusion, we present several arguments.

According to researchers of Ruthenian culture, it is necessary to recognise a separate Ruthenian people who live in the southern Carpathians from those who are dispersed. To support this conclusion, they present the following arguments. Distinctive national features of Ruthenians are: a) historical territory; b) historical memory; c) mass folk culture, traditions, customs, rich folklore, language, clothing, architecture, housing, religious beliefs, life, cuisine, etc.; d) deep legal self-awareness and culture, tolerant attitude to other nationalities; e) national awareness of ethnic community; f) compactness of living (on the southern slopes of the Carpathians; g) state-building traditions: autonomy within Czechoslovakia (1920s–1930s) and Transcarpathian Ukraine (1944–1945) – the lack of statehood outside Ukraine makes Ruthenians, after Ukrainians, an indigenous nation-building people (as well as Crimean Tatars); g) the separate residence of Ruthenians in their enclave historical territory significantly influenced the formation of the Ruthenian mentality; h) intra-ethnic, cultural, spiritual, linguistic and cultural differentiation of Ruthenians.³³

The Ruthenians are considered by the state authorities as a sub-ethnic group of the Ukrainian nation.

The second president of Ukraine, L. Kuchma, in his work *Ukraine is not Russia*, when mentioning the autonomy in Transcarpathia, points out that there are also those in Ukraine who seek to play the 'Ruthenian card' to make a conflict-prone region a peaceful

30 M Pollack, *To Galicia. About Hasids, Hutsuls, Poles and Ruthenians. An imaginary journey through the vanished world of Eastern Galicia and Bukovina* (Books 2017).

31 Report 'Problems of discrimination and inequality in Ukraine: A review' in a collection of materials 'Protection of the rights of national minorities in Europe' prepared for international seminar 'The future role of the European Charter for Regional or Minority Languages' with the support of the Council of Europe and the State Committee for National Migration (2002) 88.

32 P-R Magochiy, *Encyclopedia of the history and culture of the Carpathian Ruthenians* (V Padyak Publishing House 2010) VII-X.

33 Yvan Mygovych, 'Ruthenians in Ukraine: Status, problems and prospects' (2009) 7 *Veche* <<http://veche.kiev.ua/journal/1391/>> (accessed 10 September 2021).

Transcarpathian region. Leaders of a very small part of the population, which tends to identify themselves as Ruthenians, first demanded that Transcarpathia be granted the status of an autonomous republic in 1990. In June 1992, the Transcarpathian Regional Council approved a resolution on the right of the population to 'restore and change their nationality' and asked the Verkhovna Rada of Ukraine to grant the region the status of a special administrative territory with self-government and a free economic zone.

According to Kuchma, although Slovakia does not support the Ruthenian movement, it still brings dissonance to Ukrainian-Slovak relations. The test of autonomy could be conceived as the beginning of a complex series of repercussions. It is possible that the 'Subcarpathian Republican Party' also emerged within the framework of the same plan – only a few people, but with the requirement to 'create an independent, neutral Republic of Subcarpathian Russia like Switzerland'.³⁴

5 CONCLUSION

Ukrainian constitutional law guarantees the rights of national minorities and indigenous peoples in Ukraine. At the same time, the decisions in the sphere of ECtHR show that many problems remain in this area. In particular, there is the problem of legislative determination of the legal status of indigenous peoples and sub-ethnic groups. In addition, Ukraine pays special attention to the creation of conditions for socialisation and protection of the rights of some vulnerable ethnic groups (e.g., Roma). Also, the national educational policy on strengthening the state language and its proficiency by all citizens violated the constitutional guarantees of language rights of national minorities, as the new rules of the educational law seriously reduce the opportunities provided to persons belonging to national minorities to learn their languages. The analysis of domestic language legislation shows that Ukraine has adopted only one law regulating the use and protection of the state language. At the same time, the procedure for the use of national minority languages in Ukraine is not regulated, the development, use, and protection of which are guaranteed by the state and enshrined in the Constitution of Ukraine. In addition, another problem with the legal status of national minorities who are the citizens of Ukraine is the inability to legally have both Ukrainian citizenship and citizenship of a state of their ethnic origin. All this points to the need to update legislation on national minorities and indigenous peoples.

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34 L Kuchma, *Ukraine is not Russia* (Vremya 2003) 21.

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