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LEGAL STATUS OF THE INDIGENOUS PEOPLES OF UKRAINE (Thesis)

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The increasing of the institutions of the democratic, social, legal state and the citizen society in Ukraine makes the Objective need for the legal providing of the status and creating the premises for a development of the Indigenous Peoples of Ukraine (IPU) as the nonseparable units of the multinational Ukrainian People. Problem of the constitutional legal status of the IPU, as the adequate guarantee of their collective rights and rights and freedoms of the citizens of Ukraine, which are representatives of the IPU, stipulates for the science researches in this sphere.

Constitution of Ukraine in the 1996 improved the instimte of IPU into the national constitutional law. So as it is old in the article 11, the state guarantees the ethnic, culture, linguistic and religious distinctivenesses development of the ill the IPU, item 3 of the article 92 tells that the IPU's rights may be determined by the Ukrainian laws only; in the item 3 if the article 119 is noticed that the local state administrations on the pointed territory provides the execution of the Programs of the IPU's national culture development in the places of their compact settlement.

Unfortunately, the legislation which would develop and give concrete meaning of the noticed constitutional positions, is not adopted yet. The rights of some ethnic groups, which live in Ukraine, can't be provided with the recent legislation about the national minorities for the historic, social, culture and politic factors, appeared from the authohtone origin of these communities.

Problems of the IPU's status determination was investigated by the politologists -N. Belitzer, V. Vasilchenko, J. Zinchenko, S. Jefimovich, A. Malgin, historians - I. Achkinazy, J. Peysah, J. Polcanov. It was touched by the politics - L. jrach, M. Jemilev, R. Chubarov. Among the Uki^ainian lawyers the IPU's status was studied by N. Bekirov, O. Kartunov, S. Kitzenko, P. Mutzky, etc. O. Bykov and L. Ryaboshapko studied it in the connection with the national minorities' problem. The works of the Russian authors - A. Abashidze. A. Ananidze, L. Andrychenko, I. Blytchenko, N. Bogdanova, Martynenko and of the others foreign scientists - B. Bouring, D. Webber, F. Catoporly, etc - played the great role in he IPU's rights investigation.

In spite of the wide discussing about the IPU's legal status' problem in the media, demands of some ethnic groups' Representatives in this area, law projects about the legal status of some ethnoses promotioning, noticed problem is not nvestigated enough. There are no fundamental researches of the IPU's constitutional legal status in the Ukrainian cience. That is why the problem of determination of some ethnic groups of Ukraine ranking among the IPU and offering them the adequate legal status demands for the complex investigation. Actuality of this problem for Ukraine as for the Jnitarian state with the polyethnic population is determined by the indefinite legal status of the Crimean Tatars, by the nenace of the disappearing of non-numerous Crimean peoples - Karaites and Krymchaks, by other historic, ethnic, legal ind politic peculiarities, stipulated for the origin of pointed and some other ethnic communities.

Determination of the IPU's constitutional legal status is connected, first of all, with the creafing the list of ithnoses, which may be acknowledged as the indigenous peoples by some legal criterias and with the grounding of their iiversities from other ethnic groups, in particular from the national minorities. Secondly, it is connected with the ietennination of the system of

IPU's collective rights as the subject of the constitutional law, with creating and adopting the legislation about the IPU's status. It is also associated with the need of establishing the effective mechanisms of IPU's collective rights providing, which would guarantee as the realization of these rights, so the equality of rights and freedoms of citizens of Ukraine unlook the nationality and the inviolability of territorial unity and state sovereignty of Ukraine. It would improve the development of international relations and of all the citizen society of Ukraine.

The aim of researches in this area are the constimtional legal status of the IPU determination, creation the list of ithnoses which may be acknowledged as the IPU, legal argumentation of their diversity from the national minorities and other ethnic groups, grounding the legal position of the IPU in the Ukrainian constitutional law, elaboration the mechanisms of providing their collective rights, taking into consideration the ethnic legal situation of any of these peoples. So it is possible to make:

- studying of the peculiarities of processes of the ethnic, politic, culture and legal development of certain ethnic groups, arisen in Ukraine, which give the possibility of adopting these ethnoses as IPU;

- determining of the term 'indigenous Peoples of Ukraine', creating the full list of ethnoses which may be acknowledged as IPU;

- analyse of the recent legal situation among these ethnoses, taking to account the demands of its national organizations' representatives: analyses of legal acts and its projects, devoted to the IPU problem;

- studying the constitutional legal experience of some states in sphere of determining and providing the indigenous rights with pointing the level of its possible using in the constitutional law of Ukraine;

- studying of indigenous peoples' problem in the international law and responding the international standards and ethno-political reality of Ukraine, determining the possibility of international experience adoption;

- analyse of the forms of ethnic self-organization of ethnoses. aspiring for their acknowledgement as IPU, their political and legal demands and mechanisms of realization their culture, politic, social, economic rights and freedoms;

- elaborating of the propositions about the improving of the legal status of IPU by the creating of certain law project and common basis of IPU's programs of development.

The base of the methodology of the investigation is the common theoretic methods and principles in the sphere of determining the legal status of IPU, which ensure as the trustworthy of the obtained science knowledge, so the deciding of purposes and tasks of the investigation. The dialectic method was used for the studying the categories "indigenou peoples", "Indigenous Peoples of Ukraine", "Ukrainian people", "Ukrainian nation", "national minorities", "peoples" "deported peoples", "non-numerous peoples", their common and the distinctive specialties in the relationship with this state, legal and politic processes and phenomena; the logistic, comparative and historic legal methods were used for investigation the certain legal acts and their position which regulated the status of the indigenous peoples and the IPU in past and now. The methods of prognoses and modulation were used for the elaboration of the science model of the legal status of the IPU and propositions for the fjiture Ukrainian legislation in regulation and legal improving of the IPU status and international relations. The systematic method was used for the determining the IPU criterias and classification of their rights and rights of their representatives. With the help of the historic method was studied the developing of legal status of ethnoses, aspiring for the IPU status from the period of finishing of their ethnogenesis to the modem time. The politologyc methods were used for the evaluation of demands of the representatives of these ethnoses and analyzing the certain aspects of Ukrainian legislation processes in this sphere.

The investigation was made in the framework of measures of the International Decade of the Indigenous People of the World, announced by the UN General Assembly, according to the Conception of the Development of Ukrainian Legislation for the period of 1997-2005. It is made on Ukrainian, so needs of correct translation of it on English and of it publication forsee financial expences which are inaccessible for author. Any help is welcome - babinb@ukr.net (Di Bab in B.V.).

Here are the short content of my investigation:

1. The Historical Grounds of the Constitution Legal Status Specialties of the Certain Ethnoses of Ukraine.

1.1. The Historical Grounds of the Constitution Legal Status Specialties of the Crimean Tatar People.

This part of work contains the material about the historic specialties of this ethnos' development on the territory of modern Ukraine since the XIII century P.D. and the science ideas about its ethnogenesis and ethnic distinctiveness. There the political-legal development of the Crimean Tatars in their national state - Crimean Khanate (XV-XVIII centuries P.D.) is analyzed and their specialties, based on the past own state being, are noticed.

The periods of the Crimean Tatars living in the Russian Empire and the USSR are investigated in the subchapter. The main attention is pointed on the periods of the religious and culture autonomy of the Crimean Tatars in XVIII-first half of XX centuries and to the growth of their national self-consciousness in the XX century. The periods of the Crimean Tatars' aspires for the creation of the national self-government, autonomy or the national state are watched more detailed. The main constitutional projects, executed for the decision of the pointed problems of those periods (first of all the project of the Crimean Republic Constitution by 1917) are analyzed. The constitutional legal status of the Crimean Autonomous Soviet Socialistic Republic in 1921-1945 is analyzed. It is proved that the Crimean ASSR was the multinational autonomous state, where the Crimean Tatars ethnos realized its own politic rights in the wide volume. At the same time the non-expedience of the territorial national autonomy creation for the ettnos, which is the minority on this territory, is pointed.

The normative acts of the USSR, regulated the Crimean Tatars status, and the politic-legal situation with this ethnos during the deportation period of 1944-1991 are investigated. The aspects of the Crimean Tatars representative; struggle for the rehabilitation of their collective rights and the processes of the repatriation of the Crimean Tatars to the historical homeland in Ukraine are looked at. The processes of the creation in the Crimea the system of the nation; Crimean Tatars self-government, the status of the Crimean Tatars, according to the constitutional and other legal acts of Republic of Crimea existed in 1992-1995, and the relationship between regional power and Crimean Tatars organizations are investigated separately. The absence of the analogies of the modern system of the national Crimean Tatars self-government before the beginning of the XX century and the integrity of the Crimean Tatars to the modern society are noticed at subchapter. The culture, linguistic, religious distinctivenesses of the Crimean Tatars, their consciousness as the separate ethnos and as the indigenous population of Ukraine, and their acknowledgement as one of the "peoples" by the legislations of the Russian Empire, of the USSR, Crimean ASSR and Republic of Crimea are proved in the subchapter.

1.2. The Specialties of the Development of the Legal Status of the Non-numerous Crimean Peoples (Karaites and Krymchaks) and Other Ethnic Groups.

Here the specialties of the legal status development of the ethnic groups of Ukraine (except the Crimean Tatars), which status was discussed earlier as the possible IPU status, are looked at. The main aspects of the ethnogenesis, the political-legal development and ethno-social situation of the Crimean Karaites (Karays) and Krymchaks during the Crimean Khanate period and in the periods of the Russian Empire and the USSR are noticed. The appearing of these ethnic groups in the Crimea in the beginning of the Middle Ages and their close connection with this territory of Ukraine are proved. There is noted about the institutes of the ethnic self-government of these ethnoses before the XX century and is investigated their national-culture autonomy in the Crimean ASSR during 1921-1945.

The main factors, caused the shorting of the quantity of these ethnoses during the 1941-1990 years are named - they are the nazi genocide over the Krymchaks, destroying the system of the national religious self-government of the ethnoses in the USSR, absence of the official activities for saving these ethnic groups from the disappearing. Special attention is given to the processes of the growth of the national activities of these ethnoses in 1989-1992 and to the measures of the Crimean power for saving their distinctiveness, as their legal acknowledgement as the "Non-numerous Crimean Peoples". The ethnic, culture, linguistic, religious distinctivenesses of these ethnic groups, their non-numerosity and integration to the Ukrainian society, their consciousness as the separate ethnoses and as the indigenous populations of Ukraine are proved in the subchapter. These ethnoses, as it is shown in the investigation, were named in the legal acts of the Russian Empire, of the USSR, Crimean ASSR and Republic of Crimea as the "peoples", recognized by these powers as the indigenous communities and had the specialties of their collective legal status.

Among the other ethnic groups, noticed by the legal doctrine of Ukraine an connection with the IPU problem, the Gagauses and Urums are investigated in the subchapter as for the processes of their ethnogenesis, ethno-social and politic development, [it is noticed that these

ethnic groups have the culture and linguistic distinctivenesses, differing them from the title nation, but some of their specialties do not let recognize them as the IPU. There is shown in the subchapter that Urums, as the ethnic group, which appeared in the Crimea from the persons of various nationalities (among them were the Crimean Greeks) and was resettled in the XVIII century to the northern coast of Azov Sea, recognize themselves not as the separate ethnos, but as the part of the Greek diaspora of Ukraine. Urums held the culture and social-politic contacts with the Greece and do not aspire for the IPU status.

As it is noticed in the subchapter, Gagauses are the ethnic group, appeared and formed on the Balkan peninsula and territory of modern Romania. Gagauses resettled to the territory of modern Moldova and south of Odessa region of Ukraine together with other ethnic groups (Bulgarians, Russians) during the XIX century. Majority of the Gagauses lives in Moldova, where their national autonomy Gagaus-Yery exists. So the Gagausian diaspora of Ukraine has no autochthonic origin and connects the national rebirth first of all with the Gagaus-Yery, that can be recognized as the state national formation of this ethnos. So there is proved in the investigation that Gagauses and Urums are not able to be recognized as the IPU during the modern ethno-political situation in Ukraine and in its recent boards.

There pointed in subchapter that ethnos, having the own states (for example, Byelomssians, Poles, Russians) can not be recognized as the IPU and must be acknowledged as the national minorities even if some parts of these ethnos has the autochthonic origin for Ukraine. The subchapter contains the idea about impossibility of recognizing the certain ethnographic groups of the title nation (for example, the Gutzuls) and of any national minority (for example, the Crimean Armenians) as the IPU. The absence of such separate nationalities and the ethnic distinctivenesses of those groups cause it. The parts of the world diasporas of the ethnic groups, which have no any own national state or state-like formation and did not formed in Ukraine (for example, the Assyrians, the Gypsies (Roma)), are not be able to be recognized as IPU.

2. The International Legal Standards and Constitutional Legal Experience of Some Countries, which May be Used for the Decision of the IPU Problem.

This chapter contains the investigation of the appearing and development processes of the "Indigenous Peoples" international legal institute and of the recent international legal acts, projects and declarations, determining the meaning of the noticed term. The constitutional legal experience of certain states in the sphere of the indigenous rights' providing is watched separately; the main attention was pointed to the legal acts of the states which critically receipted the international experience and executed own distinctive constitutional legal institutes. The possibility of the international and foreign constitutional legal experience implantation into the Ukrainian law was investigated in the chapter.

2.1 The Origin and Recent Situation with the Indigenous Problem in the International Law.

Here the aspects of the appearing, acknowledgement and deciding of the international legal indigenous problem are investigated. The attention is pointed on the processes of the appearing of the modern terminology in this sphere, the legal acts of the various international organizations about the indigenous population are analyzed. Investigation of the League of Nations, UNO, International Labor Organization acts let us to establish the main stages of the international legal institute of the indigenous peoples. It is noticed in the subchapter that the international law has no commonly recognized determination of the indigenous peoples, and its modern legal doctrine mostly deny the possibility' of the official adopting of the commonly used "Indigenous Peoples" term determination. There is investigated the content of the indigenous collective rights, having a large volume relatively to the international legal acts and projects.

Ukraine had not ratified any legal act on indigenous issues, making any obligations for the constitutional relations in our country. There is noticed in the subchapter about the participation of the Ukrainian and its ethnic groups' representatives (as the Crimean Tatars) in the international forums on the indigenous problems.