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FOREIGN EXPERIENCE ADOPTION OF SPECIAL LEGISLATIVE ACTS AIMED AT PROTECTING THE RIGHTS OF REPRESENTATIVES OF NATIONAL MINORITIES

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Abstract:

The article analyzes the following main directions of legal regulation of the participation of national minorities in political life: the system of granting advantages when participating in elections, quotas of seats in parliament, the establishment of proportions of representation of various ethnic groups in parliament, voting in parliament taking into account the opinions of ethnic groups, the adoption of special legislative acts aimed at protecting the rights of representatives of national minorities, establishment of institutions of commissioners for the rights of national minorities, granting special privileges to autonomies, giving compatriots the opportunity to participate in elections, supporting national diasporas abroad.

Keywords: national mechanisms, incentives for participation, representatives of national minorities, electoral process

Direct-acting laws aimed at protecting the rights of representatives of national minorities have been adopted in a number of post-socialist States. As an example, the Law of the Republic of Lithuania "On National Minorities" of January 29, 1991, the Constitutional Law "On Human Rights and Freedoms and the Rights of Ethnic and National Communities or Minorities in the Republic of Croatia" of May 8, 1992, the Law of Ukraine "On National Minorities in Ukraine" of June 25, 1992, Law of the Republic of Hungary No. LXXVII "On the Rights of Citizens Belonging to National and Ethnic Minorities" of August 3, 1993, Law of the Republic of Moldova "On the Rights of Persons Belonging to National Minorities, and the legal status of their organizations dated July 19, 2001 No. 382-XV, etc. [1].

The laws define the concept of a national minority. Thus, in accordance with Article 1 of the Law of the Republic of Moldova "On the Rights of Persons Belonging to National Minorities and the Legal Status of their Organizations dated July 19, 2001 No. 382-XV: "Persons belonging to national minorities in this Law are persons permanently residing in the territory of the Republic of Moldova, who are its citizens, having ethnic, cultural, linguistic and religious characteristics that distinguish them from the majority of the population – Moldovans, and aware of themselves as persons of a different ethnic origin." [2].

Most laws contain guarantees of respect for the rights of representatives of national minorities. Thus, in accordance with Article 1 of the Law of Ukraine "On National Minorities in Ukraine" of June 25, 1992 [4]: "Ukraine guarantees equal political, social, economic and cultural rights and freedoms to citizens of the republic regardless of their national origin, supports the development of national identity and self-expression. All citizens of Ukraine enjoy the protection of the State on an equal basis. When ensuring the rights of persons belonging to national minorities, the State proceeds from the fact that they are an integral part of universally recognized human rights." Or another example, in accordance with Article 4. – (1) of the Law of the Republic of Moldova "On the Rights of Persons Belonging to National Minorities and the Legal Status of their Organizations of July 19, 2001 No. 382-XV: "The State guarantees persons belonging to national minorities the right to equality before the law and equal protection by the law. (2) Any discrimination on the basis of belonging to a national minority is prohibited." [3].

Hungary's experience is interesting in this regard. It is a multinational State, and during the perestroika processes of 1989/1990, the question of a new policy and a new legal regulation of the status of national and ethnic minorities became acute. By this time, minority generations had forgotten their language and traditions as a result of the assimilation policy, and a gap in cultural development and lifestyle had formed. It took a whole range of solutions in different spheres of life. As a result of the efforts undertaken, an institutional system for the protection of the rights of national and ethnic minorities has been established in Hungary. According to paragraph 1 of § 68 of the Hungarian Constitution, "national and ethnic minorities living in the Republic of Hungary participate in the exercise of power

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and are a State-forming part of the Hungarian people." [4].

The rights of national and ethnic minorities are regulated in a number of laws, among which the central place (after the relevant constitutional norms) is occupied by the 1993 Law: LXXVII "On the rights of citizens belonging to national and ethnic minorities". In addition, the norms of the Criminal Code, the 1993 Law: LXXIX on Public Education, the 1996 Law: I on Radio and Television, etc. are of great importance. Hungary has ratified a number of international conventions on minority rights. The provisions of the Law on the Rights of Citizens Belonging to National and Ethnic Minorities cover national (Armenians, Bulgarians, Germans, Greeks, Poles, Romanians, Rusyns, Serbs, Slovaks, Slovenes, Ukrainians and Croats) and ethnic (Roma) minorities who have equal legal status. There is a commission in Parliament, special bodies in the system of executive power and at the level of local self-government dealing with minority issues. There is no territorial autonomy in Hungary, but the Constitution grants national and ethnic minorities the right to establish local and all-Hungarian self-government bodies (paragraph 4 § 68). [5].

Institute of Commissioners for the Rights of National Minorities. Of particular note is the practice of the emergence of the institution of Commissioners for the rights of national minorities. In order to protect the political and other rights of minorities, Hungary has introduced the institution of the Commissioner of the State Assembly for the Rights of National and Ethnic Minorities, who, on the proposal of the President, is elected by the State Assembly with two-thirds of the votes of its deputies. According to part 2 of §32 of the Hungarian Constitution, the task of the Commissioner of the State Assembly for the Rights of National and Ethnic Minorities is to investigate or instruct to investigate violations that have become known to him in connection with the rights of national and ethnic minorities and to take the initiative to take general or individual measures to eliminate these violations. Every citizen can take the initiative to initiate a case being investigated by the Commissioner of the State Assembly. The introduction of such a "variety" of human rights commissioners is especially appropriate where the problems of national minorities have been ignored for a long time.

Stimulating the political representation of national minorities in federal States.

The structure of most federations is based on the territorial principle (Australia, Austria, Brazil, Mexico, USA, Germany, etc.). However, in some countries, all or part of the subjects of the federation are organized taking into account the national, ethnic, religious, and linguistic composition of the population. So, in Canada, 9 provinces are English—speaking, and one (Quebec) is French-speaking. In India, the system of states is based on the so-called linguistic principle, on the basis of which monolinguistic, bilingual and multilingual states were formed. Belgium consists of communities and regions, with three communities (French Community, Flemish Community and German-speaking Community), three regions (Walloon region, Flemish region, Brussels region). Along with them, there are four linguistic regions (the French language region, the Dutch language region, the bilingual Brussels-capital region and the German language region). [6].

The peculiarities of the Swiss federation, which is formally based on the territorial principle, allow us to take into account its national composition: the population of the country speaks four languages, while there are 23 cantons in the country, but the national composition of the cantons, as a rule, is quite homogeneous. The high degree of independence of the Swiss cantons, combined with guarantees of representation at the federal level and taking into account the interests of all national groups, made possible what is called the unique Swiss "miracle of intergroup harmony".

The collapse of the USSR, Yugoslavia and Czechoslovakia, which at one time served as examples of the implementation of the socialist concept of a federal state built on the national principle, caused many scientists and politicians to criticize the very concept of building a federation taking into account the national-ethnic factor. However, the experience of the federation created in Belgium, as well as some African countries where democratization is possible precisely in the context of federalization on a national-ethnic basis (for example, Ethiopia), shows that the resources of this state-legal instrument for solving national-ethnic problems have not been exhausted. The state-legal instruments of political participation developed by world practice protect the rights of national minorities to one degree or another under any more or less democratic regime. Naturally, the more democratic the country's political regime is, the more developed the culture of tolerance and respect for human rights in society, the more effectively ethno-national conflicts are prevented and resolved. In this case, the use of legal means becomes not only a way to protect the rights of national minorities, but also provides alternative political solutions, increases the flexibility of the public administration system and thereby multiplies its effectiveness. This means that by ensuring the rights of minorities, including by legal means, the state acquires a new modern quality that meets the challenges of the time.

Support of national diasporas abroad. In countries with a large diaspora, for example in France, compatriots living abroad enjoy the right to vote in separate districts during national elections, and have a quota of seats in parliament. The National Council of the

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French Abroad at special assemblies elects its representatives to the members of the Senate of France. A similar order exists in Italy.

A specific form of support for representatives of the Jewish diaspora living abroad is being tested in the State of Israel, so on January 9, 2006, President Moshe Katsav received Jewish parliamentarians from different countries of the world who arrived in Israel.

The Congress of Jewish Parliamentarians was organized by the Jewish Agency, the World Jewish Congress, the Ministry of Tourism and the Knesset.

Legislators from 28 countries discussed methods of combating anti-Semitism and poverty, as well as ways to establish a dialogue with representatives of other faiths.

On the eve of their arrival, a study was conducted, according to the results of which the number of Jewish deputies in different countries of the world is 214 people (not counting the Israeli Knesset).

The largest number of Jewish parliamentarians live in Great Britain - 61 legislative posts in the United Kingdom belong to representatives of this ancient people. Out of the total number of members of Parliament, 7 people have the title of baron and 37 are lords.

The second place in this indicator is occupied by the United States – 37 Jewish legislators, 11 senators and 26 congressmen. France and Ukraine share the third place and each have 15 Jewish MPs. There are 11 such people in Brazil, and there is one Jewish parliamentarian in the Dominican Republic.

One Jew also sits in the Parliament of the Islamic Republic of Iran, within the quota for representatives of religious minorities. Autonomy as a means of ensuring the rights of national minorities. Numerous legislative acts aimed at realizing the special collective rights and interests of individual peoples adopted in different countries indicate a tendency to recognize ethnonational heterogeneity. The most important direction of reforms covering all aspects of the ethnic problem is decentralization, in its various forms: autonomization, regionalization or federalism. Although this way, involving the redistribution of competence vertically on the basis of a certain territorial organization, does not guarantee getting rid of ethno-national conflicts, it is considered in world theory and practice one of the most important means of solving them and ensuring the rights of national minorities. [7].

The models, goals and results of decentralization vary from country to country, but this is a general trend and its overall scale is very significant. So, in Europe, when the European Union was formed, there were only 14 autonomous intra-state units within its framework, and in the 90s there were more than 70 of them. Although they are created for various reasons (not always of a national-ethnic nature), these data show the general direction of development.

Territorial units in which national minorities make up a significant proportion of the population may be granted a special autonomous status, often defined as national-territorial autonomy. Such autonomy is enjoyed, for example, by the Aland Islands inhabited by Swedes in Finland, island and border regions of Italy, autonomous units inhabited by non-Han peoples in China, Greenland - an island with an Eskimo population in Denmark, etc. The models of national-territorial autonomy are tied to specific conditions and differ significantly, so we will give some of them as examples.

According to Article 2 of the Law on the Autonomy of the Aland Islands, which are one of the provinces of Finland, the Alanders have the right to exercise self-government through their own institutions. The Aland Islands have constitutional guarantees of their territorial integrity, their parliament and their Government with clearly defined and guaranteed competence, their citizenship. According to Article 1 of the Law on Autonomy, the borders of an autonomous territory can be changed only with the consent of the Aland Parliament. Therefore, when in 1987 Finland and Sweden tried to "fix" the border between the two countries a little, it turned out that this international legal issue affects the interests of the Alands and it cannot be resolved without the consent of the Alan parliament. It should be noted that a certain independence of the Alands in international legal aspects (not only concerning the territory) is no exception. For example, the autonomous Greenland withdrew from the European Economic Community in 1985, and Denmark, of which Greenland is a part, continued to maintain its membership**.** In Great Britain, until recently, the autonomy of Scotland, which was formed at the beginning of the XVIII century, was distinguished by a significant peculiarity. Scotland had its own legal and judicial system, but it did not have its own legislative and executive bodies. Participation in political decision-making was intended to ensure representation on a general basis in the House of Commons and special representation in the House of Lords. As a result of the constitutional reforms, Scotland has acquired its own parliament and government, and its autonomy has a more modern outline. [8].

Significant autonomy to certain territorial entities was guaranteed by the post-war constitutions in Italy and Spain, while in Italy this process began to develop "in depth" (perhaps due to the fact that for a long time the provisions on autonomy "remained on paper", there was a chronic delay in filling them with real content) and is currently moving in the direction of federalization.

To solve the national issue in the PRC, an administrative form of autonomy has been applied. Compactly living national minorities (Uighurs, Tibetans,

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Zhuans, Hui, Manchus, Mongols, Bui, etc.) can create three types of autonomous entities: autonomous region, autonomous district, autonomous county. Areas of national autonomy are considered as an integral part of a unitary State. The bodies of autonomous entities carry out the usual functions of local authorities of the appropriate level and at the same time are the self-governing bodies of this autonomous entity. The legal status of autonomous entities is regulated in Section Y1 of Chapter W "Self-government bodies in Areas of national Autonomy" of the Constitution of the People's Republic of China of 1982 and the Law of the People's Republic of China on National Regional Autonomy adopted on its basis by the second session of the National People's Congress on May 31, 1964, as well as Provisions on each type of autonomy adopted by the autonomous entities themselves.

The decision on the creation of autonomous entities, their borders and names is taken by a higher authority together with the relevant local authorities and after "comprehensive consultations" is submitted for approval by the State Council. The name of an autonomous entity, except in special cases, is established by its local name, nationality, administrative status (e.g. Tibet Autonomous Region, Inner Mongolia Autonomous Region, Guangxi Zhuang Autonomous Region, etc.). In addition to territorial autonomy, which binds the granting of certain self-governing rights, the idea of extraterritorial autonomy has been developed and implemented to a certain extent. However, its application to national minorities in theory is often assessed negatively as a manifestation of racism. The experience of extraterritorial autonomy is considered justified in relation to a certain part of minorities who are so-called "indigenous peoples" (i.e., they are native, settled before anyone else, indigenous to this territory and leading a traditional way of life) [9].

From the standpoint of modern legal regulation, they are allocated to a special category with an appropriate legal status, to some extent compensating for the historical injustice of colonization of their territories. The institutions of extraterritorial autonomy include, in particular, the creation of Sami parliaments, first in Norway, and then, following its example, in other Scandinavian countries. Persons belonging to the indigenous people have the right to vote in these bodies, regardless of whether they live compactly or scattered. The creation of such bodies makes it possible to more effectively solve the problems of indigenous peoples and provide them with State support.

The state-legal instruments of political participation developed by world practice protect the rights of national minorities to one degree or another under any more or less democratic regime. Naturally, the more democratic the country's political regime is, the more developed the culture of tolerance and respect for human rights in society, the more effectively ethno-national conflicts are prevented and resolved. In this case, the use of legal means becomes not only a way to protect the rights of national minorities, but also provides alternative political solutions, increases the flexibility of the public administration system and thereby multiplies its effectiveness. This means that by ensuring the rights of minorities, including by legal means, the state acquires a new modern quality that meets the challenges of the time.

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