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Legal regulation of ethno-national policies (national minorities, indigenous peoples, multiculturalism)

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Abstract

The current situation of national minorities, indigenous peoples and the policy of multiculturalism needs to be reconsidered from a legal point of view. The purpose of the article was to investigate the legal regulation of ethnonational policy, using the experience of major democratic states. The article used various methods of scientific knowledge such as cognition. On the basis of the analysis, the legal mechanisms of ethnonational policy regulation are examined in detail through the prism of the main trends of indigenous peoples' rights. In the results, special attention was paid to the practices of multiculturalism and observance of the rights of indigenous peoples. In particular, the founding documents of the UN and the Council of Europe, individual legislative decisions of other international organizations and various national parliaments were studied. Also, using the example of the legislation of modern countries of the Balkan Peninsula, modern trends in the resolution of the rights of national minorities are indicated. The conclusions underline the prospect of using the model of autonomous communities for the legal regulation of the life of national minorities and indigenous peoples in a multicultural society.

Keywords: legal regulation; ethno-national relations; multiculturalism; national minorities; indigenous peoples.

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Regulación jurídica de las políticas etnonacionales (minorías nacionales, pueblos indígenas, multiculturalismo)

Resumen

La situación actual de las minorías nacionales, los pueblos indígenas y la política de multiculturalismo debe reconsiderarse desde un punto de vista jurídico. El propósito del artículo fue investigar la regulación jurídica de la política etnonacional, utilizando la experiencia de los principales Estados democráticos. El artículo utilizo varios métodos de conocimiento científico como el de cognición. Sobre la base del análisis, se examinan en detalle los mecanismos jurídicos de regulación de la política etnonacional a través del prisma de las principales tendencias de los derechos de los pueblos indígenas. En los resultados se prest**ó** especial atención a las prácticas del multiculturalismo y la observancia de los derechos de los pueblos indígenas. En particular, se estudiaron los documentos fundacionales de la ONU y del Consejo de Europa, las decisiones legislativas individuales de otras organizaciones internacionales y de diversos parlamentos nacionales. Asimismo, utilizando el ejemplo de la legislación de los países modernos de la Península Balcánica, se indican las tendencias modernas en la resolución de los derechos de las minorías nacionales. Las conclusiones subrayan la perspectiva de utilizar el modelo de comunidades autónomas para la regulación jurídica de la vida de las minorías nacionales y los pueblos indígenas en una sociedad multicultural.

Palabras clave: regulación jurídica; relaciones etno-nacionales; multiculturalismo; minorías nacionales; pueblos indígenas.

Introduction

Contemporary societal developments demonstrate examples of dealing with the complex problems of national life in individual countries and finding ways of peaceful understanding when conflicts or misunderstandings arise. Although individual cases (such as the Russian authoritarian regime and its crimes in Ukraine) point to the existence of open chauvinism as the basis of national policy, in general, democratic states and governments pay attention to respect for ethnic diversity, decision-making on the rights of national minorities, development of multiculturalism and other manifestations of respect for smaller peoples and nations.

The globalized world has turned to the practice of protecting ethnic diversity, the motto of the modern European policy “Unity in Diversity”

can be considered a kind of slogan of this process. At the same time, an analysis of the experience of democratic countries in Europe and America regarding the legal framework of multi-ethnic cohabitation can be useful for developing countries. From this point of view, the study of this issue will occupy an important place among research interests, since the rights of national minorities, the policy of respecting and promoting multiculturalism are evolving, and therefore require further consideration and research.

1. Research Problem

The development of multiculturalism and policies for the protection of indigenous peoples and national minorities is an urgent challenge to a globalized society. Modern world practices, and above all the practices of the multinational states of Europe, the EU, and North America, indicate that national minorities, indigenous nationalities constitute an important, and in some cases tangible and driving force in the transformation and development of civil society and a stable social situation.

On the other hand, an open disregard for the observance of constitutional rights and legitimate interests of national minorities has negative political and legal consequences, which can lead to an escalation of the separatist movement, the growth of discontent in society, etc. Thus, legal aspects of the regulation of the peaceful coexistence of several peoples within one state constitute an important aspect of legal research.

2. Research Focus

The article focuses on the analysis of legislative regulations and the philosophy of legal decision-making (primarily in the countries of Europe and the USA), which aim to develop certain recommendations on the general schemes of regulation of legal mechanisms of the ethno-national neighborhood. Thanks to this, it is possible to work out recommendations for finding legal solutions in this sensitive sphere.

3. Research Aim and Research Questions

The purpose of the article is to explore the legal regulation of ethno-national policies (refers to national minorities, indigenous peoples, and multiculturalism), using the experience of leading democracies of our time.

4. Research Methodology

The study was implemented in accordance with scientific principles and methods of cognition. Based on the analysis, the main subject of the study (legal mechanisms of regulation of ethno-national policy) is divided into several smaller parts, in particular, the coverage of the main trends of the rights of indigenous peoples, the study of models of implementation of national minorities issues by legislation. Using synthesis, these parts are combined and a comprehensive vision of the problem of regulation of ethno-national policy is formed.

The structural-functional method is based on the study of society as an integral system of integrated parts striving for a stable existence by choosing a certain system of values. As a result of using the historical method of cognition, the evolutionary development of the formation of the mechanisms of ethno-national policy is traced on specific examples. Based on the dialectical method, the phenomenon of ethno-national policy is defined as constantly transforming, changing, and requiring study at many stages of development.

A weighty role in this legal research is played by the method of content analysis, which was used in the study of modern literature, invariant in the structure or content of the object under study.

5. Literature Review

Móré (2016) described the peculiarities of the functioning of national minorities in Hungary. The author focused especially on the problem of parliamentary representation of national minorities in Hungary. At the same time, Nipp (2015) identified key problems of legislative regulation of national minority rights in America. Ntalakosta (2021) identified the problem of regulation of indigenous rights in Canada through the prism of historiosophic analysis.

The researcher notes that although Canada has established mechanisms to regulate the legal activities of Indigenous peoples, they continue to face discrimination and violations of their freedoms. Ntalakosta's study (2021) analyzes a number of legal violations committed against indigenous lands, in particular, the author notes large-scale energy projects, coastal pipelines, trans-Mountain pipelines built without taking into account the interests of minorities living in Northern and Western Canada.

At the same time, Rights (2013) described the specifics of the legal regulation of indigenous peoples in the Philippines. Key aspects of national minority rights regulation are analyzed in Stavenhagen (2015). Vrdoljak

(2018) in a study entitled Indigenous peoples, world heritage, and human rights. Paravina (2022) analyzed the long debate over national minority rights for Croatian Serbs through the lens of minority language and educational policies. The researcher notes that such controversy results from the introduction of legislation and integration policies in the European Union that focus on citizenship and the integration of immigrant workers but pay less attention to the constitutional recognition of minority language rights formed after the breakup of Yugoslavia. Paryzkyi (2022) outlined the key features of the transformations of certain vectors of modern legal development.

Johansson (2022) studied the theoretical aspects of the concept of multiculturalism. His study analyzes the literature of the late 1990s and early 21st century: it was during this time that many works on the problem of multiculturalism were compiled. Johansson's (2022) article identifies several important issues that require theoretical explanation. The first relates to the theoretical conceptualization of collective or group identities. The second problem contains a discussion of "race" and ethnicity, and the third is directly related to identity politics.

The fourth concerns the boundaries of national space and transnationalism. The theoretical foundations of the phenomenon of multiculturalism are also explained by Patel *et al* (2017). Krieger (2020) identified the key limits of racism, sexism, and characterized their key manifestations through transnationalism. Morska and Davydova (2021) analyzed key aspects of human rights philosophy through the lens of contemporary globalization trends.

Nevertheless, some problems require more careful analysis, in particular, the search for the best models of cohabitation of national minorities and indigenous peoples through the prism of multiculturalism.

6. Research Results

6.1. Indigenous Rights and Multiculturalism: Trends in Development

The democratization processes that swept the world in the second half of the twentieth century did not initially address the rights of indigenous peoples (Morska and Davydovna, 2021). The constitutional legal instrument, the "Declaration on the Rights of Indigenous Peoples," was not developed and adopted at the UN until 2007 (Stephens *et al.*, 2007). At the same time, only 143 states voted for its legitimization, while countries with sizeable indigenous populations (such as the United States, Canada, New Zealand, and Australia) opposed such a ruling.

The "Declaration" referred to the rights of indigenous peoples, in particular the possibility of self-determination, the possibility of autonomy and self-government in matters relating to the internal life of their communities, the ability to find their own ways to finance autonomous entities (Stephens *et al*., 2007). Legally, indigenous peoples did not have the right to seek independence. The Declaration stipulated that no fact could be construed as authorizing or encouraging any action that would lead to disunity or to the partial or total disruption of the territorial integrity and political unity of sovereign and independent states.

An important international milestone in legal support for indigenous peoples was the adoption of the Indigenous and Tribal Peoples Convention in modern countries (Yupsanis, 2010). This "Convention" was adopted in 1989 and was the basis for another international legal instrument, the Convention concerning Indigenous and Tribal Peoples in the Independent States. According to Article 3 of this document, "Indigenous and tribal peoples shall enjoy full human rights and fundamental freedoms without hindrance or discrimination" (United Nations, 1989).

At the same time, Article 5 of the Convention notes that: "the social, cultural, religious and spiritual values and customs must be recognized and protected, the values and traditions of these peoples must be respected, the policies of governments must be aimed at alleviating the difficulties experienced by these peoples..." (United Nations, 1989: 14).

The provisions of the Convention apply without discrimination to male and female members of these peoples. At the same time, these legal instruments are advisory in nature and not binding (Patel *et al*., 2017). On the other hand, the legally binding instrument is the International Labor Organization Convention 169, which contains clear requirements for the legal protection of indigenous peoples.

In particular, this Convention legally establishes the existence of the collective rights of indigenous peoples, the possibility of their possession of certain territories, and the existence of legal obligations to indigenous peoples, which has generally strengthened the scope of protection of their rights (Sapinski, 2022).

As researchers have noted, it has only become a reality to implement this convention in Latin American countries (Rights, 2013). Many European countries have not ratified it, although Germany's accession in 2021 (although Germany has no indigenous peoples) indicates interest in the document in the legal realm. In general, European lawmakers also consider the rights of indigenous peoples through the prism of multiculturalism, which is characterized by the coexistence of representatives of different cultures, peoples, and religions within the same legal community and the creation of such legal acts, which would avoid overt assessments of the

social structure. To regulate multicultural policies, even at the level of local communities has been decided (Zumeta, 2021).

For example, individual Swiss cantons and Italian regions have charters defining the rights of newcomers and regulating multicultural policies (Johansson, 2022). However, multiculturalism and its legal foundations are represented more by norms of national legislation, which characterize democratic processes in Europe.

In the countries of the European Union, the conventions adopted by the Council of Europe should be pointed out. First of all, in 1992 the European Charter for Regional Languages of National Minorities was supported, and in 1995 the Framework Convention for the Protection of National Minorities was approved, which also referred to the relevant rights of indigenous peoples (Tembo, 2016). The implementation of the main provisions of these documents indeed depends on the provisions of national legislation in these spheres, so they are subject to political will in particular countries.

In North America, there are other methods of protecting the rights of indigenous peoples. In the United States and Canada, legislative and judicial precedent-setting mechanisms are used for this task. The transfer of separate legal rights, the creation of judicial autonomies for indigenous peoples in North America throughout the twentieth century has not demonstrated effective results (Ntalakosta, 2021).

Legislators in legal practice rely on separate agreements between the government and indigenous peoples to regulate their legal status. Judicial decisions also have weighty legal effect (Smith, 2019), that result from lawsuits brought by Indigenous peoples' representatives against governmental organizations or local executive bodies.

6.2. Models for resolving national minority issues through legislation (the case of the republics of the former Yugoslavia)

The ethnic mosaic of peoples in the modern countries that formerly comprised the single republic of Yugoslavia led to fundamental transformations in all ethnic communities after the dissolution of that federation and the formation of new independent states, including those integrated into the modern EU (Zubielevitch *et al.*, 2021). The legal treatment of ethno-national problems in the region became particularly important given the Serbian government's aggressive attempts to preserve the unity of the former country and force other nationalities to comply with political unity (Krieger, 2020). The wars that erupted in the Balkan Peninsula throughout the 1990s had devastating consequences primarily for Serbia itself.

At the same time, attempts to further defuse the political situation under the patronage of other European countries and the U.S. led to the gradual development of legal mechanisms for national cohabitation. The experience of using such regulation can be useful for other countries, as it takes into account the latest trends in defining the legal status of national minorities and their rights.

In fact, every independent participating State of the former Yugoslavia as a whole has a legal framework for the legislative regulation of ethno-national life, in which, above all, the legal position of national minorities is clearly defined (Paryzkyi, 2022). In general, an analysis of the legal framework of these countries shows that the models of such regulation contain many common features and are extremely similar to each other. In particular, the constitutions of the Balkan countries contain separate sections on the fundamental rights of national minorities, which are the basis for the formation of relevant provisions and legislation, detailing these rights and specifying the mechanisms and means of their implementation.

These are fundamental rights (the right to exist as a self-determined community, relating to a particular ethnicity) (Matvienkiv and Shmalenko, 2022), "compensatory" rights (the right to use their native language in administrative activities, the right to receive education, receive information in their native languages, appropriate cultural development, legally regulated ability to freely interact, develop economically, and use national symbols to define themselves) (Stavenhagen, 2015), "political" rights (the rights of minorities to participate in national and local decision-making processes, especially with regard to determining their own political and social position) (Paravina, 2022).

The enshrining of fundamental and "compensatory" rights in the legislation of the member states of the former Yugoslavia has been an important tool for pacifying the region after the bloody wars. In the Republic of Northern Macedonia, for example, members of national minorities may hold free demonstrations, maintain and develop their own national identity and its attributes, and found cultural, artistic, educational institutions and other organizations that should support and develop the national identity. The right to study ethnic languages in primary and secondary schools (with the compulsory detailed study of the state language) is also approved by law. The state undertakes to guarantee the protection of the ethnic, socio-cultural, linguistic, and religious identity of national minorities.

The gradual resolution of national minority problems has also been facilitated by the movement of Northern Macedonia toward membership in the European Union. In particular, in 2017 a long dispute with Greece, whose territory was home to a large Macedonian diaspora, was resolved. Because of hate speech and informal claims by the Macedonian diaspora, official Athens blocked the integration process, and only when the Skopje

government changed the country's name to North Macedonia was the conflict resolved (Patel *et al*., 2017).

With its decision, the Macedonian government put the country's European integration aspirations ahead of the ethno-national confrontation with the neighboring state. Also in 2022, an interstate agreement between Bulgaria and Northern Macedonia was brokered by France - this international document stopped the Macedonian hostility in Bulgaria (Vrdoljak, 2018). Skopje was able to continue its course of European integration, an integral part of which was the solution of problems with national minorities outside the country.

Considering the political rights of national minorities can be seen in Slovenia, where Italians and Hungarians live in compact groups. The fact that Slovenia has been a full member of the EU since 2004 makes it easier to adopt and comply with legislative norms, so the country is also subject to the general legal norms produced in this union (Johansson, 2022). Representatives of national minorities take part in national and local elections on the same level as all citizens of the state. At the same time, they have the right to participate in the election of governors from their own national communes (societies).

In legal practice, such practices are called the double concept of guaranteeing the rights of national minorities (Nipp, 2015). On the one hand, they get the right to vote on general grounds, and on the other hand, they get the opportunity to represent their own interests by electing representatives from their own environment to the legislative and executive authorities at regional and local levels.

The use of the dual concept is justified in a number of legal documents. The Slovene Constitution ensures the right to represent minorities in parliament and local executive structures and details the mechanism of parliamentary elections. In particular, the basic law of the country states that members of national minorities, regardless of their place of residence (ethnically compact or mixed), can participate in the election of their representatives to the general parliament of the country (Patel *et al*., 2017). All communities living separately (dispersed) from the main place of residence have the right to vote remotely to express their own position.

Local elections in Slovenia are organized based on the Local Self-Government Act. In areas where members of national Hungarian or Italian minorities live next to Slovenians, they are guaranteed at least one representative each in local government. A major concession for national minorities is that it is virtually impossible to amend legislative acts governing ethno-ethnic life without the participation of representatives of national minorities and their respective consent.

The formation of self-governing national minorities has become an important and effective instrument for protecting the rights of national minorities. Using the example of Slovenia, we can see that since 1994 the Law on Self-Governing National Minorities was adopted. It defines in detail the issues under the responsibility of minorities, outlines the means of its operation as an autonomous element, the basic functions and structure, the possible sources of financing, and the procedures for contacts with state authorities at the general and local levels.

A typical example is the work of the ethno-national entity of Italians in Slovenia. The Italian self-governing national minority has the power to cooperate on behalf of the Italian minority with the public administration, to be sure to monitor and approve all measures related to the status of the community before putting them into practice. The functions of the self-governing minority also include international cooperation with Italy and other Italian national minorities residing in other countries.

A similar legal basis also exists in other European countries. For example, in Hungary, according to the Law on the Rights of National Ethnic Minorities, national communities have the status of self-governing elements of society (Móré, 2016).

7. Discussion

It is worth agreeing with researchers who believe that contemporary measures to legislate the rights of national minorities, indigenous peoples, and multiculturalism are related to attempts to consolidate society around universal values (Paravina, 2022; Johansson, 2022; Patel *et al*., 2017). A reference to the writings of historians Parshyn and Mereniuk (2022) shows vivid examples of the tolerant coexistence of different peoples and different confessions based on the concepts of humanism and practicality. According to Paravina (2022) appeals to ideas of humanism, respect for human rights, and tolerance are enshrined in law and form an indispensable part of legislative regulation.

Similarly, attempts to suspend or abolish the rights of national minorities are rightly considered to be detrimental to national unity and to disrupt the functioning of the social machinery (Sapinski, 2022). The current level of social development demonstrates that governments of developed countries strive to create conditions that facilitate the integration of ethno-national communities into common national organisms.

Among European democracies, a separate example is Belgium, where the conflict between the Flemish and the Walloons continues. The legal regulation of this case demonstrates the desire of two different peoples to get

along in one state, to arrange the autonomous status of both communities and their territorial arrangement. However, it does not speak of national minorities, but of a confrontation between two peoples with their own interests and traditions. The case of Switzerland is also somewhat similar, although it has a confederal political system with extensive autonomous rights for individual cantons.

The challenge and factor of destabilization in the dimension of the borders of the realization of the rights of national minorities (it is said about the possibility of making a decision) is the issue of the politicization of ethnicity. The process of "politicization" of ethnicity arises when considering the compact settlement of members of a certain national minority outside the home state. European examples of such a policy have several images. First of all, it refers to the Russian minority in the Baltic countries, the Serbian minority in the neighboring countries of the Balkan Peninsula.

The official Kremlin has repeatedly used the consequences of Soviet policy - the considerable number of Russians resettled in other republics during the Soviet era. Similarly, the Serbs have exploited the resettlement of their ethnos in the countries of the former Yugoslavia. The abuse of tolerant attitudes toward national minorities has become a relevant subject for legal response in Latvia, Lithuania, or Estonia, where the legally enshrined institution of non-citizens allows politicians to overcome their political ambitions to use their fellow citizens to achieve their own ends.

The search for coexistence in the legal plane can combine methods of maintaining a tolerant attitude with legal instruments of punishment for those who, under the slogan of tolerance, seek to sow political discord or civil conflict. The legislative model of self-governing national minorities, aimed at maximizing the involvement of national communities in administrative governance, looks effective; combined with the preservation of the integrity and inviolability of national codons, this model is able to satisfy the basic principles of respect for their rights.

On the other hand, current trends of giving indigenous peoples a new legal status, different from that of national minorities, can be considered relevant, which in a peculiar way can be considered as compensation for their lack of statehood. The process of legal renewal of the status of indigenous peoples can become an important tool to reduce tensions in society and prevent possible separatism.

Perhaps the model of self-governing national minorities could also be applied to indigenous peoples, who would be given the right to participate in public and political life, governance, and cultural life. Combined with the proposed UN instruments on the rights of indigenous peoples, this would regulate certain aspects of their legal life. It is also important to emphasize the multiculturalism of modern societies, which would finally change the

public outlook toward tolerance of the rights of national minorities and indigenous peoples and the consolidation of their status in the legislative foundations of society.

Conclusions and Implications

Therefore, public attention to the problems of national minorities, indigenous peoples, and multiculturalism was reflected in the adoption of relevant legal decisions and legislative acts. In particular, the rights of indigenous peoples are regulated by international legislative acts and national legislation. At the interstate level, the UN and Council of Europe conventions, world organizations (such as the International Labor Organization), also point to the inviolability of national borders and do not support indigenous peoples' rights to self-determination.

At the same time, not all of them have been ratified by national governments and put into use in other countries. However, the prospect of their use in Europe exists, as the most influential countries (Germany in particular) are beginning to turn to these norms. The EU and European countries are characterized by an appeal to multiculturalism, which also includes the rights of indigenous peoples and the policy of "unity in diversity". A separate instrument for regulating cohabitation with natives is judicial decisions, which have demonstrated their effectiveness in North American countries - binding arbitral awards serve as mechanisms for indigenous people to influence their status.

The experience of regulating the rights of national minorities is important. In particular, the resolution of this issue in the Balkan Peninsula has demonstrated the effectiveness of the method of granting rights to self-governing communities, thereby giving them a legal presence in state decision-making. The use of this principle is possible while taking into account the rights of indigenous peoples and confronting the aggressive politicization of the national question, such as that actively used by the authoritarian Kremlin regime.

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