



**KOVALOVA**  
**Alla Dmytrivna**  
Candidate of Sciences (History)  
Post-doctoral researcher,  
National Taras Shevchenko university  
of Kyiv  
(Kyiv)

## **EUROPEAN IDENTITY AND ETHNIC RIGHTS OF CITIZENS**

*У статті розглянуто співвідношення між європейською і етнічною ідентичністю в умовах інтеграції. На основі альтернативного досвіду України запропонована модель етнічних прав у межах наддержавних утворень.*

*В статье рассмотрено соотношение между европейской и этнической идентичностью в условиях интеграции. На основе альтернативного опыта Украины предложена модель этнических прав в пределах надгосударственных образований.*

*The article covers the correlation between European identity and ethnicity under integration. The model of ethnic rights in supranational structures is proposed on the base of alternative Ukrainian experience.*

Recently, there has been an increase of interest in the correlation between European identity and ethnicity. European identity under integration is considered in the frames of two main theories. The first one is «constitutional patriotism» based mostly on political and social unity. This concept proceeds from the priority of universal democratic values, rule of law and respect to differences. Geo-historical and cultural aspects are practically rejected that could prove the cosmopolitan character of the theory. It is the truth that in the past Europe represented Western civilization matrix which distinguished small European isle from the boundless ocean of “Orient-oriented” traditional societies. However, nowadays world-wide character of democratic values proved to be obvious. Europe has lost its monopoly position in spreading human rights and freedoms which became the part of people’s everyday life in across the board community.

The second concept usually called «union nationalism» concentrates on cultural and historical components. It stresses cultural homogeneity and similarities in historical origin of the Europeans. Common cultural and symbolic space together

with socio-political unity is the goal of the supporters of this idea. At the same time, although Euro-symbols like a single flag or hymn were officially introduced in common European space, one cannot mention a lot of other signs of communitarian historical-cultural entity. Educational unification of Europe in Bologna context focuses mostly on organizational standards and nothing is said about historical and cultural legacy as the condition in the EU membership [7]. Besides, controversial experience of the USSR in making famous socio-cultural phenomenon – «the Soviet people» – strengthens skepticism concerning common European identity of that kind.

In this situation the question about possibility of «the third way» (or some other ways) arises. Is it possible to produce the idea which could partly correct or combine above-mentioned concepts or present new vision of the problem? The author of this paper is not ready to suggest accurate and comprehensive answer the question. However, one can present some implications about certain principles, attitudes and technologies for the problem considering. It is also supposed that shaping of new European community as a principally new matter needs non traditional approaches and methods. Nevertheless, it does not mean radical unseen innovations. Historical experience of some multinational states gives fresh ideas and non-standard models for thinking about. One of these countries is Ukraine which contributed to ethnic theory and practice with its law initiatives and political practice in the XX–XXI centuries.

Proceeding from the above-mentioned, the main task of this paper is to outline some ideas about shaping new European entity in ethnic dimension using Ukrainian experience to initiate the discussion on the issue. In this case the method of historical retrospective could be more appropriate. It would help to restore historical models for their further adaptation and to understand better the logic of theoretical background of innovative experience.

While making independent Ukrainian state at the beginning of the 20th century, pioneer governance held a constructive position in resolving of ethnic question. In 1917–1918 years political thought of the country put forward some law initiatives, specifically, unique judicial act on ethnic rights based on European social-democratic

concepts. This law called «National-Personal Autonomy Act» (1918) [2], became the part of Ukrainian Constitution, adopted by the Central Rada (Council) in the same year [5]. Those documents proposed advanced idea of protection ethnic rights of non-Ukrainian citizens on a principally new base. First, National-Personal Autonomy Act recognized the special value of human ethnicity and put forward the idea of inalienable ethnic rights of the person which could not be taken out. Secondly, this legal document elaborated the procedure of free ethnic self-identification. Then, the act provided reliable system of exercising ethnic rights through appropriate structures – national unions. Besides, that law granted them status of state bodies with legislative functions and financial support. Finally, the act established the juridical mechanism of conflict resolution between ethnic and general state structures [2, p. 263–264].

Unfortunately, that innovative law was left just on paper because of loosing Ukrainian sovereignty. The next move in ethnic policy making was made in Perestroika period. The newly organized all-Ukrainian political association – People’s Movement of Ukraine («Rukh») – at its first Congress (1989) composed Council of Nationalities as one of its supreme body. Common efforts of some «Rukh» activists resulted in the bill on ethnic rights, composed on the base of Ukrainian historical law heritage. Unfortunately, that document called «National (Ethnic) Rights of Ukraine’s Citizens» was not proposed for public discussion because of unfavorable political situation. It was presented just at academic forums [4].

After gaining state independence the ethnic question became the matter of practical character. That was why a special document – «Declaration on Ukrainian Nationalities’ Rights» was issued by Ukrainian parliament in 1991 [1]. Appropriate law must follow it to provide its statements with concrete mechanisms and procedures. Nevertheless, instead of the aforesaid bill, Ukrainian parliament adopted National Minority Act (1992). That legal document proceeded from traditional foundation. Its appearance was step back in comparison even with National-Personal Autonomy Act of 1918. According to the law of 1992, minorities in Ukraine had no

their special structures for protecting their rights. That legislative act implied only special commissions to deal with minorities. Besides, just one of them – on Ukrainian parliament level – was obligatory, the others could be created by recommendation of authorities. Minority peoples could do nothing but consult administration through their representatives in appropriate councils. Thus, ethnic minorities in Ukraine practically had no possibility to act as an active force in Ukrainian society; they were the passive objects of state concern [3, p. 2].

Instead of that law, the alternative draft on ethnic rights, mentioned above, was rather of innovative character. That is why it is reasonable to pay special attention to its theoretical prerequisites. In fact, after long period of national-liberation movement or government reformers' activities, disintegration of great powers has completed in Europe and outside it in the XX-th century. Nevertheless, dismantling of old empires resulted in appearance of their diminishing copies. New state units despite of their more ethnic homogeneity reproduced all imperial attributes of their predecessors. Thus, instead of resolving ethnic problems there was their particularization. Above-mentioned principle of minorities' protection was proposed by world political thought to hold out against that tendency. In our days observing minority rights is regarded as one of the democracy indicators and put forward as an entry condition when joining the European Union (Copenhagen criteria) [8, p. 13]. Other European structures also adhere to the traditional minority concept [6].

At the same time, practical experience shows that exercising minority rights in the EU and outside this association is not very effective because of several reasons. First, only several countries of the European Union presented the list of the peoples which they regarded as minorities. Secondly, it is rather difficult to give accurate definition of the notion «minorities» as, on the one hand, some of them constitute majority of the population in certain regions of their country and on the other hand, some minorities are indigenes peoples which claim their own statehood to become title nation there.

That is why the idea of universal equal ethnic rights instead of traditional rights of minorities was presented in Ukrainian political and academic circles. According to

it all peoples have equal ethnic rights but different mechanisms of their protecting in conformity with their status and historical peculiarities. For example, in Ukraine the title nation (Ukrainians) constitutes the majority of the population and, therefore, its rights are automatically defended by the parliament according to the principle «one person – one voice». Other peoples due to their small size have no possibility to influence ethnic policy of the Ukrainian state using other methods and technologies. As a matter of fact, the draft on ethnic rights of Ukraine's citizens considered the problems of non-Ukrainian population in detail according to that concept.

Even in the days of elaborating of that draft the authors recognized that the bill was not of final character and needed to be supplemented and polished. However, at that period new important tasks and insufficient experience favored seeking innovative ways and employing native legacy. Having been apart from traditional points of views, Ukrainian political and academic communities, inspired by independence, were free of standard thinking and professional blinkers and turned their eyes upon Ukrainian historical achievements. Thus, above-mentioned National-Personal Autonomy Act issued in 1918 looked (and really was) innovative and was used as the foundation of new ethnic strategy. So, the next step – the bill on ethnic rights of Ukraine' citizens – was composed to put this strategy into law frames.

Let us examine the content of this document. In initial part it determined the notion «People of Ukraine» in integral ethnic dimension. In accordance with that draft, People of Ukraine were represented by various nationalities. They acted altogether as the joint subject of Ukrainian state [4, p. 100]. Proceeding from fundamental importance of ethnic values, Ukrainian state guaranteed to its citizens the exercising not only political and economic rights but also ethnic ones. The document contained detailed elaboration of those rights.

The bill started with renowned right on self-determination. In Ukraine that right was considered because of problem of indigenes people that lived on Ukrainian territory but had no their statehood outside Ukraine. That point became a matter of heated debates because of its controversial nature because of separation tendencies in Ukraine. Those circumstances have been taking into consideration when speaking of

the case of Crimean Tatars. After repatriation, Crimean Tatars experienced difficulties in ethnic revival and in resolving the settlement problems on their native lands. Granting them rights on self-determination (up to creating their separate state) could produce ethnic tension and even conflicts in Crimean region. Besides, unpredictable behavior of Crimean Tatars themselves and possible influence of their potential supporter (Turkish state) gave more reasons for doubt. Nevertheless, it was decided to insist on inserting that point into the bill. Moreover, the right of peoples on self-determination was not only declared, but also provided with general mechanism of putting it into practice. The draft stated that practical realization of the right on self-determination for the stateless people that lived in Ukraine must be determined jointly by Ukrainian parliament and the representative body of the nation concerned. In the case of compact settlement stateless indigenes peoples not only in Ukraine but also in neighboring countries, the question must be resolved by all the parties concerned through interstate agreements. The question about the self-determination of disperse nations living elsewhere in the world must be the concern of both Ukrainian and all other countries. It is necessary to admit, that while discussing the draft, there was a cautious proposition to keep the question of self-determination idle (to postpone it officially for 10–20 years) but this suggestion was not included into the text. In general, such attitude to self-determination problem turned to be advantageous. In addition to strict observing the appropriate international legislation, this concept provided trust credit among not only Crimean Tatars but also among other nationalities in Ukraine.

Other ethnic rights considered in the bill were as follows: right on territorial and national-cultural autonomy; right on political and culture-educational associations for representing ethnic interests; right on material and other support of state to develop native languages, culture and education; right on free employing of native language in all spheres of life; right on free development of national culture, traditional religion, education in the spirit of national traditions, on preserving environment and traditional way of life; right on free comprehensive contacts with their compatriots abroad; right on full and complete rehabilitation of the peoples damaged by

repressions, liquidation of artificial disproportions in economic and socio-cultural areas [4, p.100–107]. Some of those rights have been already provided more or less successfully by other Ukrainian laws (for example, Languages Act, 1989) or was under discussion (Repressed Peoples' Act). Though, the draft law on ethnic rights covered overwhelming majority of them.

The bill dwelled also upon the question of the nature of ethnic rights. Being individual, as political and citizen ones, they could be best ensured against violations through appropriate ethnic associations, which would represent and protect their rights and legitimate interests. Thus, individual ethnic rights must have collective forms of their realization. In the case of traditional minority system it was the state that had to provide those rights. At the same time, the state has always been the one which violated the ethnic rights of its citizens in one or another way. No one individual had power to damage any ethnic person or ethnos as a whole like the state could. Genocide, ethnic discrimination and restrictions were carried out by state in the name of state interests. At the same time, it was no doubt that state power could and must be turned into defense of ethnic rights. Actually, it must be done by ethnic entities themselves.

In order to guarantee radically inviolability of national rights and interests, the bill ordered to create special representative bodies of various nationalities which were to be formed by, from, and for those peoples. So, those bodies were to be of state status to exercise government power. Precisely, the structures called national unions (this name was borrowed from National-Personal Autonomy Act) under various denominations (seim, medjlis or any other one) were empowered to perform certain important functions. Exactly, each national union represented its ethnos and acted on behalf of it as juridical person. That union also must submit into Ukrainian parliament bills and resolutions concerning its ethnic interests. That body had to participate in elaboration of national development programs of its language and culture. At last, a national union jointly with local authorities was to organize training and managing in ethnic educational establishments and culture institutions.

The next substantial point of the draft dealt with the joined representative supreme body of national unions. In spite of decentralized system of national unions available in National-Personal Autonomy Act, the present bill provided in Ukraine common authorities of ethnic representative agencies. The draft act implied all-Ukrainian representative ethnic structure (National Congress) formed for five years to harmonize ethnic relations in the country. Each nation notwithstanding of its number, must delegate three persons for participation in its work.

To conclude, one can admit that draft law «National Rights of Ukraine's Citizens» continued the line of its predecessor – National-Personal Autonomy Act. Nevertheless, the bill put essential items of the Act into modern context, corrected and specified some points and added several issues, which were generated by new social realities. At last, the draft gave impulse to further investigation.

Nowadays Ukraine is inclined to European vector of development. This fact stimulated the search of optimal ways and methods of integration strategy and, thus, engaged Ukrainian political and academic circles more into European issues. Under these circumstances, the problems and challenges of the European Union has become a matter of common concern both politicians and researchers of Ukraine. They were involved into wide discussions about European identity, preserving ethnicity, new models of citizenships etc. Ukrainian researchers and politicians now try not only to study new phenomenon of European community but also to make use of native science legacy concerning ethnic issues.

In this respect, proceeding from the above-mentioned considerations, one can suggest several general principles to use in resolving of these controversial issues. The first one is recognizing of fundamental value of ethnicity and, therefore, ethnic rights for its preservation. Ethnic rights must be regarded as inalienable human rights of all living beings, like right on life and other natural rights. The second principle implies universal character and complete unconditional equality of ethnic rights of all nationalities, notwithstanding of their size, state status and peculiarities. No division into majorities and minorities must be employed when dealing with peoples. At last, reliable system of ethnic rights' protection and free exercising is to be elaborated and



introduced in European space. This system must have strong law bases both on national and communitarian levels. In this connection, it is supposed, that under integration the international legislative act must be composed and put into life – «European Charter on Ethnic Human Rights». One can mention the existing models of that kind – Charter on Social Rights and other documents of that kind. They altogether shaped the form which is rightly called the European social model. One can add that the EU social project is considered to be very successful. Likewise, European ethnic model could also be elaborated and suggested for consideration. This model, like other ones, is to have its theoretical foundation. The pivot component of this theory could be the European identity concept. In this connection, European identity is proposed to determine as the integral entity of various peoples living in European space united by universal values of ethnic rights on the base of common democratic values. Thus, legal foundation of ethnic rights could be considered as a part of European *acquis communautaire*.

Practical advantages of such approach could be as follows. It helps to avoid reproduction of imperial ethnic situation in newly-organized countries and, therefore, it could stop disintegration processes in European region. Then, this concept would really exclude open and hidden discrimination of minorities. Finally, realization of ethnic rights' model could liquidate the contradiction between two opposite tendencies: communitarian course of the European community structures on the one hand, and division of the only ethnos into majority and minority in different European states (for example, the Germans in Germany and France).

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