

## **Formation and peculiarities of definition of the concept of “national minority” in the Ukrainian discourse and the impact of western political, legislative and research results**

The history and features of the formation and development of the definition of the concept of “national minority” in the Ukrainian discourse and the influence of western political, legislative and research results have been analyzed in the article. The researcher has outlined the issues raised on the basis that Ukraine in 1991 ceased to be an integral part of the USSR and instead entered a new political, academic and legal reality. Accordingly, in this new state, the problem of determining the concept of “national minority” was actualized both as an actual situation and by attempts to change the design of the perception of ethno political reality, which was developed and implemented for decades within the framework of the Soviet Union. This was supplemented by the fact that in the Ukrainian scientific and political (and therefore legislative) environment – that at the time of the declaration of independence, and later – the issue of understanding and defining the category of “national minority” remained relevant, and it was significantly influenced primarily by Western or international legislation and research achievements. It has been stated that the definition of a “national minority” in the scientific environment is more developed in the Ukrainian case, which largely coincides with the international understanding of the studied category, although with the Ukrainian local specifics. Instead, the legislative regulation of the concept of “national minority” in Ukraine was and still is insufficient, even despite the implementation of international law in this country. Therefore, in the Ukrainian case in this direction there is still a fairly wide range of opportunities for development and improvement of the situation.

Artykuł analizuje historię i specyfikę powstawania oraz rozwoju definicji „mniejszości narodowej” w dyskursie ukraińskim oraz jaki mają na nią wpływ zachodnie wyniki polityczne, legislacyjne i badawcze. Wyodrębniono problematykę na podstawie tego, że w 1991 roku Ukraina przestała być częścią ZSRR, a zamiast tego weszła w nową rzeczywistość polityczną, akademicką i prawną. W związku z tym w nowym państwie problem zdefiniowania pojęcia „mniejszości narodowej” był aktualizowany zarówno przez stan faktyczny, jak i przez próby zmiany struktury postrzegania rzeczywistości etnopolitycznej, wypracowanej i realizowanej przez dziesięciolecia w Związku Radzieckim. Uzupełniał to fakt, że w ukraińskim środowisku naukowo-politycznym (a więc legislacyjnym) – w momencie ogłoszenia niepodległości, a później – kwestia rozumienia i definiowania kategorii „mniejszość narodowa” pozostawała aktualna, na co znaczący wpływ miały zachodnie ustawodawstwa. Stwierdzono, że definicja mniejszości narodowej w środowisku

naukowym jest bardziej rozbudowana w przypadku ukraińskim, co w dużej mierze pokrywa się z międzynarodowym rozumieniem badanej kategorii, aczkolwiek z ukraińską specyfiką lokalną. Ale regulacje legislacyjne pojęcia „mniejszości narodowej” na Ukrainie, jak było i nadal pozostają niewystarczające, nawet pomimo wdrożenia norm prawa międzynarodowego w tym państwie. A w przypadku Ukrainy w tym kierunku nadal istnieje dość szeroki wachlarz możliwości rozwoju i poprawy sytuacji.

*Słowa kluczowe: mniejszość, mniejszość narodowa, grupa etniczna/narodowa, Ukraina.*

After gaining its independence, Ukraine has faced a number of problems or simply issues that need to be addressed and controlled by the sovereign unit of the political map of the world. One of the areas of interest of the independent state was to become, of course, the issue of national character and interethnic relations, in particular the question of the features and essence of the definition of “national minority”. This issue was actualized both by the actual situation and by the efforts to change the structure of perception of ethno political reality, which had been developed and implemented within the Soviet Union for decades. The fact is, for example, that along with the titular Ukrainian nation – as the ethnic basis of an independent Ukrainian state – civil society and socio-political process in Ukraine, immediately after the proclamation of its independence, started to create and still create representatives of about 150 ethnic groups and nationalities<sup>1</sup>. On the other hand, these ethnic groups and nationalities were still and still are far from commensurate in number. After all, a prominent place among the peoples and cultures that have inhabited and continue to inhabit the Ukrainian State since 1991 was occupied by the Russian national minority, which has been and is the object not only of research but also of real political and even geopolitical process (Federation), which even affected the violation of the territorial integrity of Ukraine in 2014.

Accordingly, in the Ukrainian scientific and political (and consequently, legislative) environments – that at the time of the proclamation of independence, which later – has always been actualized issues of understanding and definition of the category “national minority”. This actually actualizes the presented scientific research, which is mainly aimed at elucidating the parameters of formation and peculiarities of defining the concept of “national minority” in the Ukrainian discourse and the influence on it primarily of Western or international legislative and research works.

The peculiarity of the solution of the research task is first of all that it concerns Ukraine – the state, as it was first a part of the Soviet Union, and then became independent as the main opponent of returning to the fold of the Soviet Union. This is important at least because during the socialist regime and the USSR in general, especially in the context of the policy of “merger

<sup>1</sup> Osaulenko O., Natsionalnyi sklad naselennia Ukrainy ta yoho movni oznaky za danymi Vseukrainskoho perepysu naselennia 2001 roku, Wyd. Derzhavnyi komitet statystyky Ukrainy 2003, s. 114.

of nations”, the studies of Soviet authors were very descriptive, factual and journalistic, because in the party monopoly on science, scientists offered only some material on cultural life of minorities. It was supplemented or even determined by political factors, in particular the awareness and planting of the Russian national element “title” in the construction of the so-called “Soviet people”. Thus, it was the “Russian ethnos” that was perceived as titular, even in those territories or in those former republics of the USSR in which Russians were a minority compared to other national groups, and this logic was perceived as unshakable, albeit internally false. However, the situation changed dramatically (apart from the perception of the Russians themselves – both in Russia and in the new states in the Soviet Union) just after the collapse of the USSR, in particular the proclamation of Ukraine’s independence, when due to the abolition of ideological and political dogma in academic environment has adequate opportunities to study the phenomenon of national minorities and their diversity (within the framework of interethnic relations), and in the field of legislation – the possibility of their political and regulatory regulation primarily as an integral part of civil society of any newly formed state.

Nevertheless, it was at this moment that Ukrainian science and practical politics (including the legislative process), as well as similar spheres in other post-Soviet states, felt (including within a certain vacuum and at the junction of ideological and political epochs) the main and a fundamental problem, which was reduced primarily to defining the essence and role of the concept of national minority, their understanding in the plural and the separation and gradation of their various options (primarily in the context of the Russian minority) in Ukraine. In the legislative sphere, this was complemented by the need to define the status of a national minority. The main difficulty in this process was the fact that at the turn of the late 80’s - early 90’s of the twentieth century there were huge and very perceptible differences in the interpretation and definition of “national minority”, on the one hand, between Soviet and post-Soviet legal systems, as well as, on the other hand, between the different national legal systems (post-Soviet and non-Soviet) countries, which were taken into account by Ukrainian lawmakers and scholars.

Accordingly, the best solution to the situation regarding the definition of a “national minority” in Ukraine (note that the law “On National Minorities in Ukraine”<sup>2</sup> was adopted not immediately after the declaration of independence of Ukraine, and later – on June 25, 1992), it turned out that Ukrainian scholars and politicians appealed to this issue through the prism of its formation in international / Western science and politics, starting from the beginning, but mainly in the second half of the twentieth century. Ukrainian scholars and politicians realized that the dynamic nation-building process of the early twentieth century, as well as the creation of the League of Nations (1919) led to an active study of the understanding, definition and international protection of national minorities. In addition, in this (interwar) period, the works of Ukrainian scholar O. Bochkovskiy, in particular the monograph “Introduction to

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<sup>2</sup> Pro natsionalni menshyny v Ukraini: Zakon Ukrainy № 2494-XII vid 25 chervnia 1992 roku, “Vidomosti Verkhovnoi Rady Ukrainy” 1992, nr. 36, s. 529.

Nationology"<sup>3</sup>, were notable contributions to the development of political ethnology, which studied the genesis of European ethnic processes, identified the role of national minorities in the formation and development of domestic and international relations, paid special attention to the analysis of Ukrainian nation-building processes, and put forward an ethnocentric concept of political system – the so-called "Natiocracy" (where national minorities virtually disappear, uniting into a single nation).

After that, especially after the creation of the USSR and its "occupation" of Ukraine, as well as after the Second World War, the work of Ukrainian researchers on this subject became extremely rare (except for some works by Ukrainians in exile), and it was clear political and ideological reasons. The scholars, therefore, (and less often the politicians) of the period after the restoration of Ukraine's independence have rarely appealed to them, and have turned to the works of Western scholars instead. Among them, for example, in the early 70's of the twentieth century, the study of the phenomenon of ethnic revival of national minorities took a central place among foreign researchers. E. Smith was one of the first to describe the essence and nature of this phenomenon in his work "National Identity", in which the causes and consequences of the formation of national identity as a collective phenomenon, the emergence of nations and nationalism are analyzed, as well as the signs of national identification and the attributes of the ethnic community are substantiated. Nevertheless, the most common and most successful in the 70's of the twentieth century and further was the definition of "national minority" by F. Capotorti.

The researcher noted that this is a population group that: differs from the main population group by its ethnic origin, nationality, language or religion; the number is inferior to the main group of the population; does not occupy a dominant (including quantitatively and politically) position in the country; demonstrates a desire to preserve identity, culture, traditions, religion and language; does not consist of recent emigrants or refugees; has deep roots in the country of residence (usually citizens of this country)<sup>4</sup>. The definition of national minorities, formulated by F. Capotorti, contains two important components and features. The essence of the first is that restricting the status of minorities by citizens of the state mostly excludes migrant workers, stateless persons and refugees from this concept. These groups are protected from discrimination by international law. In addition, they have additional rights, which are enshrined, for example, in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, in the Convention relating to the Status of Stateless Persons and in the Convention Relating to the Status of Refugees. There is also a Declaration of Human Rights for persons who are not citizens of the country in which they live. The second feature is the fact that the recognition of minority ethnic, religious or linguistic features distinguishes them from groups that can be identified by other common features. Thus,

<sup>3</sup> Bochkovskiy O., *Vstup do natsiolohii*, Wyd. Geneza 1998.

<sup>4</sup> Capotorti F., *Study on the rights of persons belonging to ethnic, religious and linguistic minorities*, New York 1979, s. 307

the characteristics of minorities, set out in the definition of F. Capotorti, make it possible to distinguish both objective (unique ethnic characteristics: numerical minority, non-dominant position) and subjective (the desire to preserve the existing characteristics) criteria. However, scholars note that in general this definition cannot be defined exhaustively, as it refers to “minorities at will” (groups that want to remain distinct), but does not cover “forced minorities” (groups that want to assimilate with the majority when the latter opposes them in achieving this goal). The position that a national minority should be inferior to the rest of the population in terms of its number is also ambiguous among researchers. Thus, according to A. Fene, the quantitative factor can be of great practical importance, but it does not characterize the deep reality of the situation of national minorities. An objective attitude to power also creates a minority. Accordingly, a minority is a group that is specifically subjugated, placed in a dependent or “humiliating” position by a factor of power.

Such comments were taken into account at the international legislative level. Thus, in 1985, the UN Subcommittee on Prevention of Discrimination and Protection of Minorities described a “national minority” as a group of citizens who constitute a quantitative minority, are in a non-dominant position, and have ethnic, religious or linguistic characteristics different from the majority population, and feelings of solidarity with each other, the purpose of which is to achieve de facto and legal equality with the majority<sup>5</sup>. Another attempt to define from the text of the Recommendations of the Parliamentary Assembly of the Council of Europe № 1201 (from 1993) on the Additional Protocol on the Rights of National Minorities to the European Convention on the Rights and Fundamental Freedoms of Minorities was made in 1993, when it comes to the definition from the text of the Recommendations of the Parliamentary Assembly of the Council of Europe № 1201 (since 1993) on the Additional Protocol on the Rights of National Minorities to the European Convention on the Rights and Fundamental Freedoms of Minorities.

The definition is worded as follows: “The term “national minority” refers to such groups of persons in a state who: reside in the territory of that state and are its citizens, maintain long-standing ties with that state, have ethnic, cultural, religious or linguistic characteristics, quite a number, though smaller in number than the rest of the population of a given country or region, are concerned about preserving what creates their common identity, culture, traditions, religion or language”<sup>6</sup>. However, the problem is that this Recommendation is not mandatory, so European countries are able to arbitrarily determine which groups of the population living in their territories fall into the category of national minorities. The recommendation also does not make a clear distinction between ethnic and national minorities. As for the term “the indigenous peoples”, the Recommendation refers to peoples whose social, cultural and economic living conditions distinguish them from other subjects of interethnic relations and whose

<sup>5</sup> Antoniuk O., Natsionalna menshyna yak etnopolitychnyi fenomen, “Nova polityka” 2000, vol. 2, s. 40.

<sup>6</sup> Belitsner N., Natsionalni, etnichni ta relihiini menshyny, “Krymski studii” 2002, vol. 3–4, s. 38.

position is governed by their customs, traditions or special legislation. All this is complemented by the fact that the term "national minorities" is also widely used in the documents of such an authoritative international organization as the Organization for Security and Cooperation in Europe. In the context of understanding this organization, this concept encompasses both ethnic and linguistic minorities. In general, the documents of the Organization for Security and Cooperation in Europe understand national minorities only as the citizens of a certain state (including migrant workers). In addition, they imply the existence of another state, the historical homeland of minorities living in the territory of the particular state in question<sup>7</sup>.

Such a Ukrainian researcher, mainly from the 1990s, as M. Shulha, draws attention to a completely different aspect of understanding the concept of "national minority", in particular in the context of legislation and practice of foreign countries. The scientist notes that in many countries after the Second World War there was an official reaction to the fact that the word "minority" has a moment of insult and humiliation<sup>8</sup>. For example, in Austria in 1976 a law was passed regulating the status of citizens of non-Austrian ethnic origin in the country. In this law, the word-combination "ethnic group" is used in principle instead of "ethnic minority". Germany also enshrined the legal status of certain groups of its citizens of non-German ethnic origin. These are, for example, Danes, Frisians, Lusatian Serbs, and so on. All other groups of German citizens of non-German ethnic origin – in particular Poles, Gypsies, Turks, Jews, etc. – on the contrary are not fixed in German law as special ethnic communities. The definition of a national group can also be found in the documents of the Federalist Union of European National Groups.

It is an alliance that is a non-governmental international organization that has existed since 1949 and includes non-governmental organizations of national minorities from 20 countries. The documents of this organization, although they do not have an official status, but arouse considerable scientific and practical interest. In the statute of the Federalist Union, a national group is defined as a national community, characterized primarily by the characteristics it wishes to preserve: its own language, culture and history. It does not form its own state in its own homeland or resides outside the state of its nationality. In general, scholars, following the political and legal status of ethnic communities in Western Europe, emphasize that there are different definitions of foreign citizens, including the most common, such as "national minority", "linguistic minority", "ethnic minority", and "nationality". However, the definition of groups of a foreign-speaking population that constitutes a single community, or any individual representative of this group, even if established, the criteria contained therein are rather vague in most legislative acts.

However, all the above theoretical developments were summarized in the document "Minority Rights: Declaration of the Rights of Ethno cultural and National Minorities and

<sup>7</sup> Abashidze A., Nacionalnye men'shinstva i pravo na opredelenie (mezhdunarodno-pravovyye problemy), "Etnograficheskoe obozrenie" 1995, vol. 2, s. 152.

<sup>8</sup> Shulha M., Mizhnarodnyi dosvid zakhystu prav natsionalnykh menshyn, "Prava liudyny v Ukraini" 1998, vol. 21, s. 43–49.

Indigenous Peoples”<sup>9</sup>. It examines the rights of three subjects of ethno politics, including such as: 1) ethno cultural minorities (consisting of immigrants, refugees and their descendants who do not live for a long time in the countries of origin; most features of race and / or religion; they are not universally recognized minorities in the classical sense, so they cannot claim broad rights); 2) national minorities, (which include historically established communities that have their own language and / or culture or religion, often become minorities as a result of changes in borders and the transfer of their territories from one country to another, or are ethnic groups without own statehood and are part of one or more major states; it is this category that focuses on international law, and therefore, respectively, Ukrainian law and the research pool); 3) indigenous peoples (have attributes that are characteristic of national minorities, but their additional characteristics and differences are that they inhabited the lands before the current majority, and therefore became a minority as a result of subjugation or colonization; indigenous peoples must also be endowed with specific rights).

In view of all this, Ukrainian researchers since the early 1990s have quite successfully stated that the definitions of a national minority are based on subjective and objective criteria. Objective criteria should include a numerical minority, length of residence in a particular country, citizenship, stable ethnic characteristics (ethnic, religious, linguistic, cultural features or minority consolidation), non-dominant position, lack of statehood in the territory of residence.

Instead, among the subjective criteria, the pragmatic desire to preserve the status quo (available characteristics) should be singled out. Therefore, it is wrong to think that a national minority is a separate group of the population in the state, linguistically and culturally different from the dominant nation, which has its own past and seeks to exist as a national community. Given this, the well-known Ukrainian researcher of ethno-national issues<sup>10</sup> V. Yevtukh in the 90s of the twentieth century began to characterize the concept of “national minority” on several criteria, according to which: 1) the condition for the implementation of the ethnic minority as a whole structure is its interaction with other ethnic groups of the population of the country of residence, in the process of which the formula “us – them” is filled with meaning; 2) ethnic minority is a clearly defined status in the relations that are formed in a polyethnic society, where the basic formula is “majority – minority”; 3) ethnic minority is a kind of community of people, which is based on their social origin, has common linguistic and cultural properties, psychological orientations and awareness of belonging to this community; 4) the boundaries of the term “ethnic minority are determined by its relationship with the terms “ethnic group” or “national group”<sup>11</sup>. In this regard, it is obvious that this is the view held by most Ukrainian researchers in the early 1990s that the national minority is a kind of ethnic minority, with a described status

<sup>9</sup> Prava menshyn: Deklaratsiia prav etnokulturnykh ta natsionalnykh menshyn ta korinnykh narodiv, “Krymski studii” 2001, vol. 1–7, s. 42.

<sup>10</sup> Kubliiovych V., Entsyklopediia ukrainoznavstva: u 5 t., Wyd. Naukove tovarystvo im. T. Shevchenka 1993, vol. 3, s. 1738.

<sup>11</sup> Yevtukh V., Etnopolityka v Ukraini: pravnychi ta kulturolohichni aspekty, Wyd. Feniks 1997, s. 27.

in a polyethnic country, special administrative relations with it, and therefore with clear political goals and claims to a special status in the system of administrative and state relations. It is on this basis that the question of the political and legal status of national minorities arises, including through the prism of reflections on it within the framework of Ukrainian legislation. Accordingly, among the basic characteristics that reflect the essence of the phenomenon of ethnic or national minority in the Ukrainian scientific discourse such as common stable ethnic characteristics, stay in a particular sovereign state under the preconditions of their own historical homeland, interaction with other ethnic groups on the principle "us – them", a clear status for the majority of the population, as well as the presence of its function in the structure of a multiethnic society are identified and used.

At the same time, Ukrainian researchers were pushed to a position that corresponds to the opinion of Western scholar F. Heckmann<sup>12</sup>. This scholar believes that an ethnic minority is an ethnic group that is discriminated against, oppressed and deprived in a system of ethnic stratification. The researcher divides all ethnic minorities by status, different socio-structural positions in society and political orientation into the following types: 1) national (as a consequence of the emergence of nation-states (national states), for which an important condition was the coincidence of state self-organization and ethnicity of their population); 2) regional or population groups (formed for various reasons, despite unification and assimilation, have preserved their ethnic identity); 3) immigrant minorities (created as a result of large-scale industrialization), including settlers and workers; 4) colonial minorities (as descendants of the ancient population of the territories conquered and inhabited by colonists, who in the course of looting, extermination and displacement were deprived of their inherited economic basis of life, due to which their social structure and culture were destroyed); 5) minority peoples and new national minorities (arose as a result of the formation of new national countries after the collapse of the colonial system). At the same time, according to this scientist, the attributes of an ethnic group are: common origin and awareness of community, which are characterized by collective history and culture; collective perception of oneself as an ethnic group, which is based on the self-consciousness of the group and the perception of its separation from other groups. Therefore, ethnic groups are socio-cultural communities that have statehood, constitute ethnic groups and consist of representatives of one people or parts of peoples.

In contrast, one of the well-known Ukrainian representatives of ethnic political science of the period after Ukraine's independence, I. Varzar, means by "ethnic minority" a concept that defines exclusively quantitative outlines of a population in comparison with the titular people-ethnic group of a particular multinational society. The scientist believes that such groups can and should participate in political life and state-building policy, both directly

<sup>12</sup> Gekmann F., *Narod, nacija, etniceskaja grupa i etniceskoe men'shinstvo: k nekotorym osnovnym kategorijam etnichnosti*, "Zarubezhnyj mir: social'no-politicheskie i ekonomicheskie problemy" 1990, vol. 19, s. 34–36.



and indirectly, and indirectly and representatively<sup>13</sup>. Therefore, he substantiated two lines of correlation of the peoples of compatriots of the same multiethnic society – horizontal and vertical<sup>14</sup>. The horizontal vector contains: 1) the titular people-ethnic group (gives its name to all social attributes of authentic society – country, state, nature, minerals, landscape, shelf, economy, currency, diplomacy, airspace, etc.); 2) one, two or more subtitled ethnic peoples (who in a certain geopolitical field had all the appropriate attributes of ethno-social title, but currently found themselves in the status of minorities with their adequate “historical weight”). In the vertical vector there is a three-level hierarchy of minorities, ethnic groups, including: 1) the dominant people-ethnos is a minority people who (relative to the titular and sub-title peoples-compatriots) in the context of a multiethnic society has leading socio-economic, political-cultural and other constructive roles (in the socio-political sense it objectively dominates, but subjectively should not seek to become the dominant force in society or regional society); 2) recessive people-ethnos – such a minority people that in the context of a multiethnic society objectively occupies non-leading positions, but consciously plays centripetal-constructive state-building roles in relation to the titular, sub-titular and dominant peoples-compatriots; 3) marginal people-ethnos, which to all peoples-compatriots of a multiethnic society plays quite peripheral and constructive roles and lives, as a rule, in marginal (or border) areas of the geopolitical space of the state, bordering on ethno historical homeland.

In a similar vein, Ukrainian scholar of the 1990s M. Shulha notes that the main difference between the concepts of ethnic / national minority and ethnic group is the presence or absence of their own state or homeland outside their current permanent residence<sup>15</sup>. At the same time, the researcher identifies aspects of the concept of “national minority”, including descriptive, political, linguistic, cultural and religious, as well as two contexts of application of this concept, including international law and local specifics, which was important in explaining Ukrainian legislation on that score. In contrast, Ukrainian scholar V. Nikityuk believes that since the issue of belonging to a national minority is a matter of purely individual choice, the rights of ethno-national minorities, which are part of their legal status, are individual, but not collective. After all, these are the rights of individuals who belong to ethno-national minorities, not the rights of groups created by individuals<sup>16</sup>. Therefore, according to the scientist, national minorities are also ethnic minorities. A similar opinion has already been suggested by I. Varzar, who emphasizes that the “ethnic minority” is a physical array of people of “non-local” ethnic status, who live (or are temporarily) in the modern ethnic environment. In the process of determining the ethnic group, the volume of the ethnic mass

<sup>13</sup> Varzar I., *Iz konspektiv mynulykh lit. Vybrane v kontseptualnykh i memuarnykh vymirakh*. Knyha 1: Derzhava i narod-  
etnos u politolohichnomu dyskursi. Wyd. Fada LTD 2003, s. 289

<sup>14</sup> arzar I., *Deiaki etnosotsialni ta etnorehionalni aspekty formuvannia yedynoderzhavnoi politychnoi elity v bahatonarodnomu suspilstvi*, [w:] *Rehionalni ta natsionalni elity: khto formuie polityku?*, Chernivtsi 2002, s. 130–144.

<sup>15</sup> Shulha M., *Mizhnarodnyi dosvid zakhystu prav natsionalnykh menshyn*, “Prava liudyny v Ukraini” 1998, vol. 21, s. 43.

<sup>16</sup> Nikityuk V., *Status natsionalnykh menshyn (porivnialno-pravovyi aspekt)*, Kyiv 1996, s. 184.

of people does not play a big role, and the main thing here is the historical place of a certain ethno-phenomenon in the context of a certain ethno-political plane<sup>17</sup>.

All these opinions of Ukrainian researchers correspond to the remarks of Western scholars, who were actually appealed to by the former, in particular with the position that the ethnic or national group is based on its ethnicity. Thus, while researching this issue, Western researcher E. Smith (whose works were translated into Ukrainian in the 90s of the twentieth century<sup>18</sup>) emphasizes the ethnic group as a type of cultural community that attaches great importance to the myth of origin and historical memory and differs in one or more cultural features – religion, customs, language, institutions, and so on. Therefore, national communities are “historical” in two senses, because: first, historical memory is crucial for their continued existence; second, each of the ethnic / national groups is a product of historical forces and may therefore undergo historical changes and disintegration.

Accordingly, the basic attributes of an ethnic community should be the group's own name, the myth of common ancestors, a common historical memory, one or more differential elements of a common culture, as well as a connection with “native land” and a sense of solidarity in a large part of the population. This, as we can see, means that ethnic or national attributes are characterized not only by cultural and historical content, but also by their strong subjective components. Fictional origins and fictional ancestors are important in ethnic identification, and the connection between family and nation is present in nationalist mythology and testifies to the crucial importance of this attribute for ethnic / national affiliation<sup>19</sup>. The ethnic group lives compactly, creates linguistic, cultural, religious and territorial integrity. In a multiethnic society, an ethnic group is part of a nation and has no statehood. However, it can form cultural-national and territorial-national autonomy, striving more intensively and qualitatively to satisfy its cultural and political needs, interests, as well as to realize its “energy potential”<sup>20</sup>. Therefore, an ethnic / national group comprises both a minority and a dominant / titular ethnic group, which is numerically and culturally predominant in a given country, even if it has attained the status of a nation. Therefore, the terms “ethnic group” and “ethnic community” are often identified<sup>21</sup> in the scientific vocabulary.

The various ideas outlined above, discussed at a number of scientific conferences and published in sufficient numbers, became the basis of Ukrainian legislation on national minorities, as well as clarified it after its regulation and implementation in the early 90s of the twentieth century. At the same time, it should be noted that despite the fact that Ukrainian legislation began to focus mainly on the achievements of domestic researchers who followed Western ideas, many of its provisions were nationally or locally dependent and oriented. Even

<sup>17</sup> Rymarenko Y., *Mala entsyklopediia etnoderzhavoznavstva*, Wyd. Geneza 1996, s. 33

<sup>18</sup> Smit E., *Natsionalna identychnist*, Wyd. Osnovy 1994

<sup>19</sup> Smit E., *Natsionalna identychnist*, Wyd. Osnovy 1994, s. 21

<sup>20</sup> Zhuk P., Mazur N., Solomoniuk R., Turchak R., *Etnopolitychna karta svitu XXI stolittia*, Wyd. Mandrivets 2000, s. 33

<sup>21</sup> Rymarenko Y., *Mala entsyklopediia etnoderzhavoznavstva*, Wyd. Geneza 1996, s. 43

though Ukraine, – as a component of the international community, has certainly committed itself to implementing many provisions of international law. In general, it should be understood that in the practice of Ukrainian legislation the concept of “national minority” was first introduced and used, as noted above, not immediately after independence, but somewhat later, in particular in the law “On National Minorities in Ukraine” of 25 June 1992<sup>22</sup>. Prior to that, i.e. before the adoption of this legal act, it occurred only at the level of scientific or political terminology, which was not standardized. It is interesting, that, in Art. 3 of the Law “On National Minorities in Ukraine” the latter were defined as “groups of citizens who are not Ukrainians by nationality show a sense of national self-awareness and community among themselves”<sup>23</sup>.

This remark became important because the presented definition did not cover the real ethnic / national situation in Ukraine and the prevailing tendency after the Second World War, especially in the Western political process, to ethnic heterogeneity, which provides for the possibility of self-determination of ethnic groups. In addition, the national legislation of Ukraine does not contain a list or contains a limited list of groups of citizens belonging to national minorities. Therefore, theorists and practitioners immediately began to express some concerns and warnings about it, in particular about the fact that such a definition makes it possible to classify as “national minorities” virtually any ethnic / national group of citizens, regardless of its historical connection with Ukraine. The whole reason is that the definition proposed in the legislation, and first of all in the mentioned law, did not contain and does not contain clear criteria according to which the representatives of one or another ethnic group of Ukraine could be considered as national minorities. In addition, the legislation does not specify the time criteria for staying in the territory and a certain quantitative characteristics and position of national groups in socio-political life, as well as the presence of a historical homeland. Accordingly, despite the good developments in this context in academic discourse, the Ukrainian legislation has developed the idea of “national minority” as too vague for its legal application, which at the dawn of Ukraine’s independence laid the possibility of granting such status to any person or group of the persons who have the citizenship of Ukraine.

In contrast, the situation turned out to be much better in some other normative legal acts that were adopted under the sovereignty of Ukraine, in particular in international legal acts and international treaties with the participation of Ukraine. For example, the definition of “national minority” is found in interstate legal documents, in particular in the Treaty on Good Neighborliness and Cooperation between Ukraine and Romania. It defines the Romanian minority in Ukraine as citizens of Ukraine, regardless of the regions in which they live and which, according to their free choice, belong to this minority, taking into account their ethnic origin, language,

<sup>22</sup> Pro natsionalni menshyny v Ukraini: Zakon Ukrainy № 2494-XII vid 25 chervnia 1992 roku, “Vidomosti Verkhovnoi Rady Ukrainy” 1992, nr. 36, s. 529

<sup>23</sup> Pro natsionalni menshyny v Ukraini: Zakon Ukrainy № 2494-XII vid 25 chervnia 1992 roku, “Vidomosti Verkhovnoi Rady Ukrainy” 1992, nr. 36, s. 529.

culture and also religion<sup>24</sup>. In addition, Ukraine's agreement with Romania outlines the legal framework that the Ukrainian state should be guided by in its relations with the Romanian national minority. These include, in particular, the 1994 Council of Europe Framework Convention for the Protection of National Minorities, the OSCE Copenhagen Conference on the Human Dimension of 29 June 1990, the UN General Assembly Declaration on the Rights of Persons Belonging to National and Ethnic Religious and linguistic minorities (Resolution 47/135) of 18 December 1992, Recommendation № 1201 of the Parliamentary Assembly of the Council of Europe on an Additional Protocol to the European Convention on Human Rights concerning the Rights of National Minorities.

Such a list of international legal acts is very important, as Ukraine, as a party to the international political process, is obliged to implement it and has done so at different times, which is why it largely complies with international legal norms.

Among all the various international legal acts, the basic pan-European documents in the field of protection of minority rights include, in particular, the Framework Convention for the Protection of National Minorities, which Ukraine ratified after joining the Council of Europe in December 1997. It is interesting, that, there is no definition of a "national minority" in this convention. In addition, the principles set out in the Convention do not provide for the recognition of collective rights, but instead for the protection of persons belonging to national minorities who are able to exercise their rights alone or in combination with others. In this regard, the Framework Convention clearly identifies three basic aspects: respect for the territorial integrity and national sovereignty of the states parties to the convention; the right of every person belonging to a minority to decide freely whether or not to be considered as such (provided that the decision or exercise of rights thereon shall not be prejudicial to such person); understanding that States parties to the Convention will seek to achieve full and genuine equality in all spheres of economic, social, political and cultural life between persons belonging to national minorities and persons belonging to the majority of the population. Thus, in general, the Convention and its explanatory report, which are implemented in Ukrainian law, state that "a pluralistic and truly democratic society must not only respect the ethnic, linguistic and religious identity of every person belonging to a national minority, but also create appropriate conditions for detection, preservation and development of identity"<sup>25</sup>.

Another important international document and part of Ukrainian legislation was the European Charter for Regional or Minority Languages, which Ukraine signed in Strasbourg in May 1996, but ratified on May 15, 2003. Given the impossibility of enforcing the obligations under the Charter for all ethnic groups living in Ukraine who may be considered national minorities by law, and given the right (under the Charter) of each country to determine its own languages for which it undertakes to apply the provisions of the Charter, it has been decided

<sup>24</sup> Dohovir pro vidnosyny dobrosusidstva i spivrobotnytstva mizh Ukrainoiu ta Rumuniieiu, "Holos Ukrainy", 24 veresnia 1992, s. 4.

<sup>25</sup> Ramochnaja konvencija o zashhite nacional'nyh men'shinstv, "Panorama-Forum" 1996, nr. 4, s. 103.

to determine temporarily a certain number of such languages. The European Charter itself sets out the principles that define the concept of “regional or minority languages”. These are the languages that: are traditionally used within a certain territory of the state by the citizens of that state, who make up a group that is smaller in number than the rest of the population of that state; differ from the official language of the state. These languages are a means of communication for a number of persons, which justifies the implementation of the various safeguards and incentives provided for in the Charter<sup>26</sup>.

Interestingly, the Verkhovna Rada of Ukraine (Parliament of Ukraine), adapting this document to Ukrainian legislation, decided that the provisions of the Charter apply exclusively to the languages of 10 minorities: Belarusian, Bulgarian, Gagauz, Greek, Jewish, Moldavian, Crimean Tatar, German, Polish, Russian, Romanian, Slovak and Hungarian. Thus, Ukraine has demonstrated the influence of the local component and found that any member state of the Council of Europe can in fact choose its own, acceptable definition of a national minority. Given that in the political and legal space of multiethnic European countries there is a constant controversy over the activities of national minorities and the realization of their rights, the problem of terminological definitions immediately became and remains relevant, and Ukraine is a vivid reflection of this. The situation in Ukraine has not changed the attempt to amend the statutory definition of the national minority, because despite the proposed changes, as of 2021 the situation is the same as it was in the early 90s of the twentieth century.

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<sup>26</sup> Chilachava R., Pylypenko T., Yevropeiska khartiia rehionalnykh mov i mov menshyn, [w:] Mizhnatsionalni vidnosyny i natsionalni menshyny Ukrainy: stan, perspektyvy, Wyd. Hol. red. lit-ry movamy nats. menshyn Ukrainy 2004, s. 318

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