

DOI: <https://doi.org/10.34069/AI/2023.65.05.21>

How to Cite:

Kovnyi, Y., Harasymiv, T., Chornopyska, V., Bek, U., & Fitsyk, S. (2023). Practical challenges and recommendations on the status of national minorities and indigenous peoples: a comparative analysis of the approaches of the European Union. *Amazonia Investiga*, 12(65), 219-229. <https://doi.org/10.34069/AI/2023.65.05.21>

Practical challenges and recommendations on the status of national minorities and indigenous peoples: a comparative analysis of the approaches of the European Union

Retos prácticos y recomendaciones sobre el estatuto de las minorías nacionales y los pueblos indígenas: análisis comparativo de los enfoques de la Unión Europea

Received: April 28, 2023

Accepted: June 3, 2023

Written by:

Yurii Kovnyi¹<https://orcid.org/0000-0002-1230-5050>**Taras Harasymiv²**<https://orcid.org/0000-0002-4627-4774>**Viktoriiia Chornopyska³**<https://orcid.org/0000-0002-3230-5971>**Uliana Bek⁴**<https://orcid.org/0000-0002-1770-4237>**Sofiia Fitsyk⁵**<https://orcid.org/0000-0002-1236-0359>

Abstract

Modern models of social development emphasize the prevalence of positive examples of solving complex national and political problems aimed at finding peaceful ways to conduct dialogue and resolve existing conflicts or misunderstandings. The purpose of the article is to analyze the practical challenges and develop recommendations in defining the statute of national minorities and indigenous peoples in the European Union. The article is based on theoretical methods of analysis and synthesis, comparison, structural-functional and dialectical methods. The article analyzes the current problems of the existence of indigenous peoples in the EU countries, the legal rules governing the mechanism for the realization of the rights of national minorities. The author identifies the main challenges that arise in the process of legal regulation of ethnonational policy in the EU. Among them, in particular, the author identifies the politicization of the issue of national

Resumen

Los modelos modernos de desarrollo social hacen hincapié en la prevalencia de ejemplos positivos de resolución de problemas nacionales y políticos complejos encaminados a encontrar formas pacíficas de llevar a cabo el diálogo y resolver los conflictos o malentendidos existentes. El propósito del artículo es analizar los retos prácticos y elaborar recomendaciones a la hora de definir el estatuto de las minorías nacionales y los pueblos indígenas en la Unión Europea. El artículo se basa en métodos teóricos de análisis y síntesis, comparación, estructural-funcional y dialéctico. El artículo analiza los problemas actuales de la existencia de pueblos indígenas en los países de la UE, las normas jurídicas que rigen el mecanismo para la realización de los derechos de las minorías nacionales. El autor identifica los principales retos que surgen en el proceso de regulación jurídica de la política etnonacional en la UE. Entre ellos, en particular, el autor identifica la politización de la cuestión de las minorías nacionales y la negación

¹ PhD in Economics, Associate Professor of the Department of Special Pedagogy, Ivan Franko National University of Lviv, Ukraine.

² Doctor of Juridical Science, Associate Professor of the Department of Theory of Law and Constitutionalism of the Educational and Scientific Institute of Law, Psychology and Innovative Education of the Lviv Polytechnic National University, Lviv, Ukraine.

³ Doctor of Juridical Science, Associate Professor of the Department of Civil Law and Process of the Educational and Scientific Institute of Law, Psychology and Innovative Education of the Lviv Polytechnic National University, Lviv, Ukraine.

⁴ PhD, Associate Professor of the Department of Civil Law and Process of the Educational and Scientific Institute of Law, Psychology and Innovative Education of the Lviv Polytechnic National University, Lviv, Ukraine.

⁵ PhD, Associate Professor of the Department of Civil and Business Law and Procedure in Lviv University of Trade and Economics, Lviv, Ukraine.

minorities and the denial of their existence. Similarly, the political factor is relevant for the legalization of indigenous peoples, which leads to the weak development of legal instruments. It is proposed to use international UN documents to formulate national legislation, to demand legal prosecution of any manifestations of discrimination at the public level, and to develop a legal framework for terminological aspects of definitions. The conclusions emphasize the importance for the EU candidate states (including Ukraine) to pay leading attention to the problem of indigenous peoples and national minorities.

Keywords: national minorities, indigenous peoples, EU, legal regulation, challenges.

Introduction

Modern models of social development point to the prevalence of positive examples of solving complex problems of national policy aimed at finding peaceful ways to conduct dialogue and resolve existing conflicts or certain misunderstandings. Despite some cases of open chauvinism as a political basis for explaining the basis of their own “superiority” (for example, the crimes of the Russian authoritarian regime in the occupied territories of Ukraine), the current attention of democratic governments is aimed at supporting the principles of ethnic diversity, protecting the rights and freedoms of national minorities and indigenous peoples from assimilation, and showing respect for smaller peoples and nations (Dudgeon, Bray & Walker, 2023). Current globalization trends have turned to the use of legal instruments of ethnic diversity (Kumar, 2021), which within the European Union, for example, has resulted in the use and popularization of the slogan “Unity in Diversity”.

On the other hand, it is equally important to study the experience of democratic countries in the legal regulation of coexistence with national minorities and indigenous peoples, as this issue is extremely relevant for local multiethnic communities. Identifying the legal aspects of regulation on a local basis may be useful for other countries, especially developing countries. Accordingly, consideration of this issue is quite relevant for the formation of relevant research findings and recommendations for the protection of the rights of national minorities and indigenous peoples, and the formation of relevant areas of public policy, including in Ukraine.

de su existencia. Del mismo modo, el factor político es relevante para la legalización de los pueblos indígenas, lo que conduce a un débil desarrollo de los instrumentos jurídicos. Se propone utilizar los documentos internacionales de la ONU para formular la legislación nacional, exigir la persecución legal de cualquier manifestación de discriminación a nivel público y desarrollar un marco jurídico para los aspectos terminológicos de las definiciones. Las conclusiones subrayan la importancia de que los Estados candidatos a la UE (incluida Ucrania) presten una atención destacada al problema de los pueblos indígenas y las minorías nacionales.

Palabras clave: minorías nacionales, pueblos indígenas, UE, normativa jurídica, retos.

Research Problem

The development and subsequent improvement of the policy of protecting the rights of indigenous peoples and national minorities is important in the context of the current state of globalization, forming a kind of response to the challenges of unification of social and national structures. Established practices of coexistence in multinational societies in Europe demonstrate that national minorities generally constitute an active, important force for the establishment and development of the economy, law, and civil society in general. At the same time, open disregard for national minorities and neglect of their constitutional rights and interests is unacceptable in the practices of the twenty-first century (Kumar, 2021). As a result, such actions can lead to escalation or at least strong social tensions, the spread of public discontent, etc. Thus, the legal aspects of the policy on national minorities and indigenous peoples coexisting within the borders of one country are important aspects of modern research in the field of jurisprudence.

Research Focus

The main areas of research proposed in this article are to turn to the legal experience of democratic countries (primarily European countries). The main purpose of such an analysis is to formulate certain generalizations and develop recommendations that would be suitable for streamlining legal mechanisms for establishing coexistence with national minorities and indigenous peoples.

Research Aim and Research Questions

The purpose of the article is to analyze the practical challenges and formulate certain recommendations regarding the status of national minorities and indigenous peoples based on a comparison of the approaches of the European Union.

To achieve this goal, the following issues will need to be considered:

1. Analysis of the legal situation of indigenous peoples in the EU and challenges related to this issue.
2. Analysis of the legal status of national minorities in the EU and challenges related to this issue.

Theoretical Framework or Literature Review

Contemporary scholars have studied various aspects of the functioning of the policy on national minorities and indigenous peoples. Mostly, this problem is characterized within narrow territorial frameworks. Unfortunately, there are not many comprehensive studies on the evolution of the status of national minorities and indigenous peoples. Mór  (2016) described the key aspects of the status of national minorities in Hungary through the prism of legal discourse. The author also addressed the problem of parliamentary representation of national minorities in Hungary. Korhecz (2022) also studied similar issues. Thus, in multinational states with a large number of representatives of national, ethnic, and linguistic minorities with their own identity and culture, the principle of democracy requires that these groups have their representatives in the parliaments of the states. However, in many multiethnic states today, the national majority sometimes makes great efforts to minimize the representation of such ethnic groups in modern governing bodies. Accordingly, Korhecz (2022) compared the policies of Serbia and Hungary on the legislative regulation of the functioning of national ethnic groups in parliaments. Nipp (2015) characterized the main problems related to the legislative regulation of the rights and freedoms of national minorities. Marko (2009) provides a detailed overview of important legal mechanisms to ensure, support, or guarantee minority representation in elected bodies. According to Drzewicki (2010), the previous lack of important and extensive research on the main legal issues concerning the status of national minorities is the result of the normative deficit of certain minority rights norms in international law after the end of

World War II. At the same time, some documents influenced the formation of key standards on national minority rights. In particular, the following documents are important:

1. Copenhagen Document of the CSCE (1990)
2. UN General Assembly Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities (1992)
3. Council of Europe Framework Convention for the Protection of National Minorities - FCNM (1995)

Verstichel (2010) argues that after the war in Bosnia and Herzegovina, which ended with the signing of the General Framework Agreement (better known as the Dayton Agreement), a complex institution for regulating ethnonational principles in the post-war country was formed. In particular, the Upper House (otherwise known as the House of Peoples) is composed of the following delegates: five from each of the three ethnic groups: Serbs, Croats, and Bosnians. At the same time, the parliamentary assembly is declared to promote the "vital interests" of Bosnians, Croats, or Serbs. According to Verstichel (2010), "the presidency is composed of three members - one Bosnian, one Serb and one Croat - who rotate through the position of the "chairman". These are some of the important aspects of the consociational democracy shaped by the Dayton Agreement. However, it should be emphasized that contemporary scholars believe that some decisions related to ethnic or religious aspects are debatable. Paravina (2022) studied the peculiarities of observance of national minority rights for Serbs living in Croatia. The researcher focused on the analysis of language and education policies. Sanka (2020) also focuses on analyzing the dilemmas of language policy in relation to national minorities.

The study by Dalimarta & Sara (2021) demonstrates that indigenous peoples are a part of society vulnerable to violations of fundamental human rights. Smith (2019) characterizes the main differences between the concepts of indigenous people and national minority. Stavenhagen (2015) describes the main problems faced by national minorities in the political and social dimensions. Vrdoljak (2018) examined the observance of key human rights among national minorities at the present stage. Bochsler (2010) analyzed the basic electoral rights and freedoms of national minorities in the current political environment. Hagen & Jensen (2018) emphasized the economic aspects of interaction with national minorities in the EU.

Methodology

The study is based on the use of theoretical methods of scientific cognition. In particular, the analysis method was used to organize the structure of the article and to identify the main problematic elements in the current interpretation of the rights of national minorities and indigenous peoples in the EU Member States. The use of the synthesis method made it possible to combine individual elements of interpretations of the problems of ethnonational policy regulation at the present stage. The application of the structural-functional method made it possible to study and compare society as an integral system of certain united parts that are aimed at sustainable development and require adherence to common democratic values and mutual respect. The use of this method also made it possible to identify certain points in the evolutionary development of ethnonational policy mechanisms on the examples of some countries. The dialectical method made it possible to interpret the ethnonational policy as a system that is constantly transforming in accordance with the understanding of the concepts of indigenous peoples and national minorities.

An important role in this legal research is played by the content analysis method used in the study of modern literature and the legal framework of EU countries.

Results

Current Trends in Legal Regulation and Implementation of Indigenous Peoples' Protection Policy in the EU

The general trends of democratic social development during the second half of the twentieth century did not do much to protect the rights of indigenous peoples (United Nations, 1990). The researchers determine that a

fundamental stage of legal support for the rights of indigenous peoples was the adoption of the International Labor Organization Convention No. 169. The Convention presented much clearer requirements for the use of indigenous labor and established norms of legal protection (Lautensach, 2016). In particular, the Convention legally enshrines the formation of collective legal norms for indigenous peoples, the possibility of providing certain territories for their use, and the establishment of certain rights for indigenous peoples, which in general had a positive impact on the protection of their interests and society. At the same time, the countries of the European Union, for example, did not adopt the provisions of this Convention because they believed that indigenous peoples in their territories were already well protected by national legislation. The Federal Republic of Germany was an exception in 2021. Although there are no indigenous peoples within its borders, this step was perceived as a democratic gesture of solidarity with Latin American countries. Other researchers believe that this renewed interest in Convention 169 from a legal point of view as a structural element of broader national policy in general (Kovalchuk et al., 2021; Kumar, 2021). In Europe, only the Netherlands and Luxembourg have supported this Convention.

Active legal regulation of the functioning of indigenous peoples in the international arena began in 2007 when the UN developed and adopted an important legal document - the Declaration on the Rights of Indigenous Peoples (United Nations. General Assembly, 2009). However, not all the leading countries of the world voted for the adoption of this somewhat fateful act (Lončar, 2016). This document, approved by the UN, in practice declared the possibility of taking into account trends in self-determination, opportunities for obtaining autonomous rights and self-government in those legal areas that would regulate the internal life of indigenous communities within nation-states and identifying ways to obtain funding for their own autonomous entities (See Table 1).

Table 1.

Key provisions of the Declaration on the Rights of Indigenous Peoples

The right to self-determination	Articles: 1, 2, 3, 4, 5, 6, 8, 33, 34
The right of indigenous peoples to protect their identity through education, language, religion, etc.	Articles: 9, 15, 23, 25, 31
The right of indigenous peoples to economic development, type of governance	Articles: 17, 18, 19, 20, 21, 35, 36, 37
The right to protect their own health, protection of the elderly, children, and women.	Articles: 22, 23, 24
The right to land ownership	Articles 10
Environmental Aspects of the Declaration	Articles: 26, 27, 28, 30, 32

Source: United Nations. General Assembly. (2009). Declaration on the Rights of indigenous Peoples. Allen & Unwin.

On the other hand, the Declaration, as a legal document, prohibited indigenous peoples from fighting for full independence, secession from the country, and the formation of their own state entities. This aspect was additionally emphasized in the Declaration, including its legal interpretation. All available clauses of this document were proposed to be considered in legal disputes as prohibiting and condemning any activity that could lead to the complete or partial disintegration, other manifestations of violation of the territorial integrity of borders and sovereignty of already established states (Manik, Sumertha & Widodo, 2023).

Certain provisions of global decisions are also reflected in EU norms and national legislation of EU member states (Kugelmann, 2007). Although the mechanisms of the Council of Europe do not establish specific standards or other instruments to regulate the rights of indigenous peoples, the Declaration has a corresponding legally binding list of standards, including the prohibition of discriminatory actions and the right to respect in private and family life. The European Court of Human Rights has developed relevant case law covering the rights and freedoms of indigenous peoples. In addition, the observations of the monitoring bodies of the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages, which address certain issues of indigenous rights, are relevant (Sanka, 2020).

In fact, there are not many peoples in Europe that have a definition of indigenous. For example, in Finland, the Sami Parliament is the main representative body of the indigenous people of Finland. It was founded in 1973, but its status

was strengthened by the 1995 Act and the 1999 Constitution of Finland. According to these legal acts, the Sami, as an indigenous people, along with the Roma and other groups, have the right to preserve and develop their own language and culture guaranteed by the state, and the right to enjoy linguistic and cultural autonomy is exclusively for the Sami (Vančo & Efremov, 2020). Other “other groups” do not have such rights, according to Finnish law. The Sámi Parliament cannot take legislative initiatives, but it can initiate consideration of decisions on behalf of the whole people in relation to any legal, administrative, or other measures affecting the rights and interests of the Sámi. In Sweden, the Sami have the status of an indigenous people. At the same time, they are a national minority in this country. On par with other minorities, their language has official status in areas where the Sami minority lives compactly. At the same time, there is also a Sámi parliament in Sweden, which is more focused on cultural issues.

There are no other officially recognized indigenous peoples in the EU. For example, the Basques in Spain or the Lusatian Serbs in Germany have national minority status (Togebly, 2008). Obviously, the consequences of such decisions are political, since in the long run, granting autonomy could lead to separatism. For this reason, the Serbs of Lusatia within the federal state of Saxony have been granted important rights to protect their identity, while the Basques enjoy full autonomy and still seek independence from Spain.

Thus, the rights of indigenous peoples in the EU face challenges in several important ways (see Table 2).

Table 2.

Practical challenges and recommendations on the status of indigenous peoples in the EU

Challenge	Features	Recommendations
Political factor The solution of the problem of indigenous peoples is mainly entrusted to national parliaments, which may or may not recognize this status at their own discretion and in the interests of the titular nation. This creates significant legal difficulties for the protection of indigenous populations (e.g., Basques or Sardinians). On the other hand, tangible tendencies toward separatism only fuel the concerns of politicians, as the granting of a new status could lead to precedents of secession in the future.		Adherence to the UN Declaration, which allows for political consideration of the issue based on international documents. The affirmation of the principle that independence cannot be obtained based on the Declaration is an important clarification. On this basis, indigenous peoples will be able to decide for themselves whether to obtain this status or continue to pursue a policy of self-determination. It is important for EU countries to reduce the politicization of this issue.

Legal factor.

The problem with defining the rights of indigenous peoples is exacerbated by the fact that there is a certain substitution of concepts. The Lusatian Serbs could claim the status of indigenous peoples within Germany, but they do not have this status. Obviously, the issue of terminology and self-determination will become relevant in the future.

The development of an appropriate legal framework will make it possible to clarify definitions for legal instruments. Thus, it is possible to turn to a peaceful resolution of possible legal discussions or even social movements.

The revival of interest in the problem of indigenous peoples (as indicated by the example of Germany). There is likely to be a tendency to revisit the issue.

The adoption of the UN Declaration in 2007 provides an opportunity for further consideration of the issue of indigenous peoples in national parliaments with reference to existing legal documents. Perhaps the next actualization of the issue will bring productive solutions to avoid contradictions.

Source: authors' development

The relevance of the issue of indigenous peoples depends on the political will of national governments and relevant legal instruments. At the same time, the renewed interest in this issue among countries that do not have their own indigenous peoples indicates support for the general course of democratization of attitudes toward them around the world.

Problems of the policy on national minorities in the EU: the legal aspect

The EU member states have adopted separate conventions and other legal documents, including those approved by the Council of Europe (Virtanen, 2019). For example, the European Charter for Regional or Minority Languages became important in 1992, and the Framework Convention for the Protection of National Minorities was ratified in 1995, which also had separate provisions on indigenous peoples. To generalize legal legislation on minorities and ensure its universality and maximum adaptation to the process of European integration, Article 5 of the Convention reflects the current trend. In this context, it emphasizes the need to implement a legal policy that does not prejudice the measures taken in accordance with the general integration policy, while avoiding the practice of assimilation of persons belonging to national minorities. At the same time, the implementation of the fundamental principles of these documents depends on the norms and peculiarities of the national legislative framework of each participating country and therefore depends on the political will of national governments.

In particular, the governments of the Federal Republic of Germany (Germany) and the states

of Saxony and Brandenburg recognize the Serbs of Lusatia as a national minority who have no other homeland outside of German territory. There are significant historical traditions in the German judicial system that guarantee the right of Lusatians to use their mother tongue in courts (Samorai, 2020). These traditions were established in the late nineteenth century and later restored in the former German Democratic Republic, as well as adapted at the federal level through the Constitutional Judicial Act. Especially the two-state constitutions of Saxony and Brandenburg reveal the legal status of Serbo-Lusatians as citizens of the Federal Republic of Germany and a national minority in Germany. The constitutional organization of these federal states guarantees compliance with the principles of a republican, democratic, and socio-legal system (Hudson et al., 2023). In particular, the Constitution of Saxony guarantees the right of an ethnic minority to use its national symbols and flag on an equal footing with the coat of arms and flag of the federal state. The following articles of the Constitution are intended to enshrine the legal equality of the Lusatians as an autochthonous minority with the titular German ethnic group, to regulate the mechanisms of proper protection, and to determine the public authorities that will exercise the rights and freedoms of the Lusatian minority.

In the current circumstances, the experience of the states of the former Yugoslavia, which after the war of the 1990s went through a long stage of restoration and normalization of ethnonational life, including with an emphasis on the status and rights of national minorities, is also important. Based on a study of the legal practices of Croatia and Slovenia (both members of the European Union), it is clear that the proposed models of

normalization are similar in many respects. Their constitutions contain provisions on the fundamental rights of national minorities, which form the legal basis for the relevant legislative framework that details these rights and defines the instruments for their realization. This includes the consolidation of fundamental rights (the right to exist as a self-determined community that identifies itself with a particular ethnic group) and the provision of “compensatory” rights (protected opportunities to use their native language in administrative and educational institutions, receive information, the necessary level of cultural development, free opportunities for interaction, economic development, and the use of their own symbols for self-identification) (Gevorgyan & Baghdasaryan, 2021). “Political” rights are also granted: access to decision-making at the national and local levels, especially in matters that affect one's own political and social status. For example, in Slovenia, where Italians and Hungarians live together, there is a concept of a double guarantee of national minority rights. These representatives of national minorities have the right, along with all other citizens, to vote in national and local elections (Kovalchuk et al., 2021). At the same time, they also vote in the election of managers from national communes (communities) and receive the right to elect representatives from their own environment to legislative or executive bodies.

Austria has a strong democratic tradition of protecting minority rights. In Burgenland, Croats, Slovenes, Hungarians, Czechs, and Slovaks have national minority status. In the future, it is planned to grant this status to the Roma ethnic group. The Austrian Federal Law of July 7, 1976, on the Legal Status of National Minorities defines them as Austrian citizens who do not speak German as their mother tongue, have a separate cultural identity, and have lived in Austria with domicile (80-100 years). An important innovation is the functioning of the Council of Ethno-National Minorities, which has advisory powers to the federal government (Nettheim, 2009). Hungary also sets a minimum period of residence on its territory for obtaining national minority status. Hungary considers

“national or ethnic minority” all ethnic groups that have been living in the territory of the Republic of Hungary for at least one century, constitute a minority among the population of the state, hold Hungarian citizenship, differ from the rest of the population in their language, culture, and traditions, and show an awareness of their unity aimed at preserving this and protecting the interests of their historically formed communities.

The experience of France, which has not ratified the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities, is original. According to researchers, constitutional considerations allow the French not to accede to international treaties and not to recognize the existence of minorities (Chikuvadze, 2023).

The politicization of ethnicity poses a serious challenge and destabilizing factor in the realization of the rights of national minorities, especially when it comes to decision-making. The process of politicization of ethnicity emerges when discussing the issues of compact settlement of representatives of a particular national minority outside their homeland. There are several examples of such policies in Europe. First of all, we should mention the Russian minority in the Baltic States and the Serbian minority in the neighboring countries of the Balkan Peninsula. The Kremlin has repeatedly used the consequences of Soviet policy, in particular the large number of Russians who were resettled in other republics during the Soviet Union. Similarly, Serbs use the settlement of their ethnic group in the countries of the former Yugoslavia. Abuse of tolerant attitudes toward national minorities has become an urgent problem for legal response in Latvia, Lithuania, and Estonia. The legally enshrined institution of non-citizens provides an opportunity to overcome the political ambitions of politicians who use their fellow citizens to achieve their personal goals.

Therefore, there are certain challenges to the rights of national minorities in the EU countries related to several important aspects (See Table 3).

Table 3.*Practical challenges and recommendations on the status of national minorities in the EU*

Challenge	Features	Recommendations
<p>Politicization. Politicization of the issue of national minorities (typical for the territory of states that collapsed in the recent past and belonged to the socialist camp).</p> <p>Bureaucratic obstacles and constitutional interests of titular peoples. Formation of deliberately unworkable rules for the legalization of a national minority. It occurs when governments pursue assimilation (legal and ethnic), thus destroying the basis for the functioning of a national minority.</p>	<p>Modern European policy "Unity in Diversity"</p>	<p>1. The Baltic way of solving the problem is to introduce the institution of non-citizens, which allows to isolate of the aggressive minority from participation in legal decision-making</p> <p>2. Balkan way - integration of minorities based on the concept of a double guarantee of national minority rights.</p> <p>Refusals to seek dialogue (overt and covert) are destructive and lead to social tensions. The response to this legal challenge can probably be primarily a public one - under pressure from society, governments are able to review cases of discrimination against national minorities. It is also relevant to refer to international decisions, conventions, etc. that set certain guidelines in legal decisions regarding national minorities. Although the proposed slogan is demonstrative, it still allows for raising the issue of oppression of national minorities at the international level. Thanks to this, this problem does not remain on the margins of political and legal life and requires constant updating. This includes the search for new legal instruments.</p>

Source: author's development.

Accordingly, much of the solution to the rights of national minorities depends on political will, which generally fits into the modern credo of "Unity in Diversity".

Discussion

As demonstrated, the protection of the rights of national minorities and indigenous peoples has become an extremely important part of acquiring the necessary political criteria to qualify for membership and become EU member states. One can agree with the view that the importance of this element as the foundation of the European integration process is simultaneously and equally important with democratic transformation, the rule of law, and human rights protection (Togeb, 2008; Vrdoljak, 2018; Kumar, 2021). European and international standards for ensuring the rights of indigenous peoples and national minorities are also relevant for Ukraine. In particular, the current Association Agreement between Ukraine and the European Union also

includes these factors. The parties that approved it showed their commitment to close and valuable relations based on democratic values, respect for democratic principles, the rule of law, human rights, and fundamental freedoms (Kovalchuk et al., 2021). In particular, it was also about the rights of persons belonging to national minorities, non-discrimination, respect for national feelings and traditions, etc.

A problem that leads to destabilization in the realization of the rights of national minorities is the politicization of ethnicity (Paravina, 2022). This means that the issue of compact settlement of representatives of a particular national minority outside their homeland becomes a subject of political disagreement (Korhecz, 2022; Sarkki et al., 2023). European examples of such politicization have several manifestations. In particular, it concerns the Russian minority in the Baltic States and the Serbian minority in the neighboring countries of the Balkan Peninsula. The Kremlin has repeatedly used the

consequences of Soviet policy, in particular, the large number of Russians who were resettled in other republics during the Soviet era, for political purposes.

In Ukraine, the problem of national minorities and indigenous peoples was addressed at the legislative level quite late. Although the definition of “indigenous people” appeared in the Constitution of Ukraine in 1996, there was no clear definition of who fell under this concept. The reason for this situation can be identified in the political sphere: for a long time, certain political forces in Ukraine have been speculating on the national question. Their focus was not so much on the Russian part of the population as on the pro-Russian part of the Ukrainian population, whose sentiments were not in line with European integration. Delays and artificial inflating of the “national question”, the status of the Russian language, etc. led to the deployment of full-scale Russian aggression - the Russian authoritarian regime used this situation to launch a full-scale aggression against Ukraine. Only on March 20, 2014, after an illegitimate “referendum” in Crimea, the Crimean Tatars were recognized as an indigenous people - the Verkhovna Rada of Ukraine adopted a resolution and officially supported the UN “Declaration” on the Rights of Indigenous Peoples.

However, it was only in July 2021 that the Law of Ukraine “On Indigenous Peoples of Ukraine” was adopted. For the first time in Ukrainian realities, the concept of an indigenous people of Ukraine was defined as an autochthonous ethnic community that originated on the territory of Ukraine, has an original language and culture, has traditional, social, cultural, or representative bodies, self-identifies as the indigenous population of Ukraine, constitutes an ethnic minority within it and does not have its own state formations outside Ukraine (which separates them from national minorities). According to this act, the Crimean Tatars, Karaites, and Krymchaks are recognized as indigenous peoples of Ukraine (the latter ethnic groups, according to the 2001 census, amounted to only 1,196 and 406 people, respectively). Thanks to the adopted law, these indigenous peoples were able to self-determine, as no other country protects them. The law also recognizes the representative bodies of indigenous peoples, which require the appropriate permission of the Cabinet of Ministers of Ukraine to perform their functions. Against the background of European and international practice, this decision is quite reasonable and relevant. However, there are several problems in its implementation.

First of all, the decisions were made too late, when the Crimean peninsula was occupied by Russians under the guise of the results of a “referendum.” It is unrealistic to implement the resolutions of the Ukrainian government in such circumstances, at least as of today.

The possible formation of national autonomy of the Crimean Tatars is also a cause for concern among researchers, as it could become a precedent for other, primarily national minorities. Although the analyzed law clearly refers to indigenous peoples, other interpretations may appear in practice. This indicates the continuing politicization of the national issue in Ukraine and weak definitions in legislative acts that allow for two interpretations even in cases where terms seem to be clearly defined. European experience allows us to reconsider and normalize the issue (Lautensach, 2016). It is about gradually abandoning the politicization of the issue and using the legislative experience of other countries in dealing with indigenous peoples and national minorities. Therefore, the solution to the national issue in European countries is entirely applied in nature.

Conclusions

Therefore, the issue of practical challenges and recommendations regarding the status of national minorities and indigenous peoples (based on a comparative analysis of the approaches of the EU states) is relevant for modern legal science. In particular, the author identifies the following challenges to the functioning of legal definitions of indigenous peoples: political and legal. To overcome them, it is recommended to:

1. Strict adherence to the UN “Declaration”, which can become a legal basis for defining the legal rights of indigenous peoples. Currently, only the rights of the Sami people (in Finland) are defined in the EU. At the same time, the assertion of the principle of the impossibility of gaining independence based on the Declaration may become the basis for further development of legal regulation of indigenous peoples (one example is Ukraine, which is oriented towards EU accession and has granted indigenous status to Crimean ethnic groups).
2. A political and legal solution to this issue will allow for the development of an appropriate legal framework to overcome conflict or controversial cases. The interest of the leading European countries (Germany, the Netherlands, Luxembourg) in

this issue indicates their interest in this legal process and the existence of political solidarity with unrecognized indigenous peoples.

Among the current legal challenges to the existence of national minorities, national minorities are the following: the use of national minorities in political interests, ignoring the existence of national minorities on their territory. To overcome them, it is proposed to:

1. Use of the Baltic approach (introduction of the institute of non-citizens) or appeal to the Balkan experience (double guarantee of national minority rights).
2. Intensification of public reaction to discrimination and development of appropriate legal mechanisms based on international law, national legislation, and general trends towards democratization of public life in the EU.

At the same time, the experience of countries in implementing specific measures and regulating the rights of national minorities and indigenous peoples will require additional research in terms of developing the necessary terminology. In particular, this is relevant for countries seeking to join the EU and harmonize their legislation (including Ukraine).

Bibliographic references

- Bochsler, D. (2010). Electoral Rules and the Representation of Ethnic Minorities in Post-Communist Democracies. *European Yearbook of Minority Issues Online*, 7(1), 153–180. doi: 10.1163/22116117-90001632
- Chikuvadze, P. (2023). Gender-related policy guidelines' impact on rural female students' participation in sciences at an advanced level. *Futurity Education*, 3(1), 135–151. <https://doi.org/10.57125/FED/2022.10.11.11>
- Dalimartha, F., & Sara, R. (2021). Human Rights for Indigenous Peoples. In *Proceedings of the 1st International Conference on Law, Social Science, Economics, and Education, ICLSSEE 2021, March 6th, 2021, Jakarta, Indonesia*. EAI. <https://doi.org/10.4108/eai.6-3-2021.2306859>
- Drzewicki, K. (2010). Participation, representation, and identity. the right of persons belonging to minorities to effective participation in public affairs: Content, justification, and limits. *Security and Human Rights*, 21(4), 311–316. <https://doi.org/10.1163/187502310794895443>
- Dudgeon, P., Bray, A., & Walker, R. (2023). Mitigating the impacts of racism on Indigenous well-being through human rights, legislative, and health policy reform. *Medical Journal of Australia*, 218(5), 203–205. <https://doi.org/10.5694/mja2.51862>
- Gevorgyan, S., & Baghdasaryan, K. (2021). Toward a Transhumanist Transformation of Human Labor Potential in the Context of Global Challenges. *Futurity Economics&Law*, 1(4), 36–45. <https://doi.org/10.57125/FEL.2021.12.25.05>
- Hagen, I. M., & Jensen, R. S. (2018). Trade union representatives from ethnic minorities. Representation revisited. *Transfer: European Review of Labour and Research*, 25(4), 437–450. <https://doi.org/10.1177/1024258918800214>
- Hudson, M., Carroll, S. R., Anderson, J., Blackwater, D., Cordova-Marks, F. M., Cummins, J., David-Chavez, D., Fernandez, A., Garba, I., Hiraldo, D., Jäger, M. B., Jennings, L. L., Martinez, A., Sterling, R., Walker, J. D., & Rowe, R. K. (2023). Indigenous Peoples' Rights in Data: a contribution toward Indigenous Research Sovereignty. *Frontiers in Research Metrics and Analytics*, 8. <https://doi.org/10.3389/frma.2023.1173805>
- Korhecz, T. (2022). Parliamentary representation of national minorities in Serbia and Hungary: Mechanism for effective participation of minorities, or tool for political manipulation? *Legal records*, 13(2), 536–559. <https://doi.org/10.5937/pravzap0-40672>
- Kovalchuk, V.B., Zharovska, I.M., Gutiv, B.I., Melnychenko, B.B., & Panchuk, I.O. (2021). Human rights and positive obligations of the state. *Journal of the National Academy of Legal Sciences of Ukraine*, 28(3), 27–35. [https://doi.org/10.37635/jnalsu.28\(3\).2021.27-35](https://doi.org/10.37635/jnalsu.28(3).2021.27-35)
- Kugelmann, D. (2007). The Protection of Minorities and Indigenous Peoples Respecting Cultural Diversity. *Max Planck Yearbook of United Nations Law Online*, 11(1), 233–263. <https://doi.org/10.1163/18757413-900000007>
- Kumar, A. (2021). Analysis of the Principle of Subsidiarity as a Principle of EU Law: Future Perspectives. *Futurity Economics&Law*, 1(4), 18–27. <https://doi.org/10.57125/FEL.2021.12.25.03>
- Lautensach, S. (2016). Indigenous Peoples. In A. J. Wiesand, K. Chainoglou & A. Sledzinska-Simon (Ред.), *Culture and Human Rights: The Wroclaw Commentaries*.



- Berlin, Boston: De Gruyter. doi: <https://doi.org/10.1515/9783110432251-080>
- Lončar, J. (2016). Electoral Accountability and Substantive Representation of National Minorities. *East European Politics and Societies: and Cultures*, 30(4), 703–724. doi: <https://doi.org/10.1177/0888325416650252>
- Manik, K. U., Sumertha, I. G., & Widodo, P. (2023). Implementing elements of national security by fulfilling the rights of indigenous people of Laman Kinipan in Central Kalimantan (Indonesia). *Defense and Security Studies*, 4, 29–35. <https://doi.org/10.37868/dss.v4.id231>
- Marko, J. (2009). Effective participation of national minorities in public affairs in light of national case law. *International Journal on Minority and Group Rights*, 16(4), 621–642. doi: https://doi.org/10.1163/15718115_016_04-10
- Móré, S. (2016). Issues of the parliamentary representation of national minorities in Hungary. *International Journal of Public Law and Policy*, 5(4), 317. doi: <https://doi.org/10.1504/ijplap.2016.082253>
- Nettheim, G. (2009). Human Rights and Indigenous Peoples. *Cosmopolitan Civil Societies: An Interdisciplinary Journal*, 1(2), 129–141. doi: <https://doi.org/10.5130/ccs.v1i2.1045>
- Nipp, T. L. (2015). National Legislative Issues. In *Intellectual Property Rights: Protection of Plant Materials* (p. 101–102). Madison, WI, USA: Crop Science Society of America, Inc. American Society of Agronomy, Inc. Soil Science Society of America, Inc. <https://doi.org/10.2135/cssaspecpub21.c10>
- Paravina, A. (2022). Croatian Serb Culture, Language, and Minority Education Rights. *Social Sciences*, 11(7), 275. <https://doi.org/10.3390/socsci11070275>
- Samorai, J. L. (2020). Rethinking Indigenous Languages: Das Questões, 10(1), 57–63. <https://doi.org/10.26512/dasquestoes.v10i1.32344>
- Sarkki, S., Pihlajamäki, M., Rasmus, S., & Eronen, J. T. (2023). “Rights for Life” scenario to reach biodiversity targets and social equity for indigenous peoples and local communities. *Biological Conservation*, 280, 109958. <https://doi.org/10.1016/j.biocon.2023.109958>
- Sanka, M. (2020). Linguistic Rights of Indigenous Peoples. *De Jure*, 11(2), 225–229. <https://doi.org/10.54664/NRIB2337>
- Smith, R. K. M. (2019). Indigenous peoples. In *Texts and Materials on International Human Rights* (p. 347–394). Routledge. <https://doi.org/10.4324/9780429273476-11>
- Stavenhagen, R. (2015). Indigenous Peoples' Rights to Education. *European Journal of Education*, 50(3), 254–257. <https://doi.org/10.1111/ejed.12136>
- Togeb, L. (2008). The Political Representation of Ethnic Minorities. *Party Politics*, 14(3), 325–343. <https://doi.org/10.1177/1354068807088125>
- United Nations. (1990). The rights of indigenous peoples. Centre for Human Rights.
- United Nations. General Assembly. (2009). Declaration on the Rights of indigenous Peoples. Allen & Unwin.
- Vančo, I., & Efremov, D. A. (2020). Revitalizing saami through education in Finland. *Yearbook of Finno-Ugric Studies*, 14(4), 617–627. <https://doi.org/10.35634/2224-9443-2020-14-4-617-627>
- Verstichel, A. (2010). Representation and Identity: The Right of Persons Belonging to Minorities to Effective Participation in Public Affairs. *European Yearbook of Minority Issues Online*, 7(1), 449–466. <https://doi.org/10.1163/22116117-90001643>
- Virtanen, P. K. (2019). Indigenous peoples' cultural heritage: Rights, debates, challenges. *The International Journal of Human Rights*, 23(1-2), 313–315. <https://doi.org/10.1080/13642987.2019.1572915>
- Vrdoljak, A. F. (2018). Indigenous Peoples, World Heritage, and Human Rights. *International Journal of Cultural Property*, 25(3), 245–281. <https://doi.org/10.1017/s0940739118000218>