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## PRINCIPLES AND NORMS OF LAW IN THE CONSTITUTIONAL AND LEGAL MECHANISM OF ENSURING THE RIGHT TO EDUCATION OF CHILDREN – REPRESENTATIVES OF INDIGENOUS PEOPLES OF UKRAINE

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**Карпетян А., Принципи та норми права в конституційно-правовому механізмі забезпечення права на освіту дітей - представників корінних народів України.**

В статті встановлено роль принципів та норм права в нормативно-правовому механізмі забезпечення права на освіту дітей – представників корінних народів України, а також охарактеризовано принципи, закріплені в міжнародних актах та імплементовані в законодавство України.

Проаналізовано такі міжнародні акти з прав людини універсального характеру, які є джерелом права в Україні: Конвенція Міжнародної організації праці про корінні народи та народи, що ведуть племінний спосіб життя в незалежних країнах; Декларація ООН про права корінних народів. З принципів, закріплених в Декларації ООН про принципи міжнародного права від 24 жовтня 1970 р., щодо корінних народів України впливає таке: 1) корінні народи України – кримчаки, караїми, кримські татари – є народом України, його складовим; 2) корінні народи України мають право здійснювати свій культурний і соціальний розвиток; 3) право на освіту дітей – представників корінних народів України – є гарантією реалізації права на здійснення культурного і соціального розвитку корінних народів України і суб'єктивних прав кожної дитини – представника корінного народу України; 4) право на самовизначення має український народ, корінні народи України – його складова, не окрема і відособлена складова, а складова, яка є невід'ємною від народу України; 5) кожна держава світу має поважати право українського народу і його невід'ємної складової – корінних народів України – на здійснення свого економічного, соціального і культурного розвитку.

Виокремимо принципи внутрішньої політики держави в сфері освіти дітей – представників корінних народів України: 1) принцип державної турботи; 2) принцип відповідальності (патерналізму) держави; 3) принцип партнерства держави і корінних народів. При реалізації політики

держави в сфері освіти дітей – представників корінних народів України: має бути поєднано принцип державної турботи і принцип відповідальності (патерналізму) реалізації з принципом партнерства держави і корінних народів.

Також виокремлено і мету діяльності держави в сфері освіти дітей – представників корінних народів України – вона полягає в максимальному забезпеченні поваги, збереженні та розвитку самобутності корінних народів України. Інструментарій, який для цього застосовується, був виявлений на підставі аналізу Конвенції Міжнародної організації праці про корінні народи та народи, що ведуть племінний спосіб життя в незалежних країнах: 1) кореляція обов'язків держави та прав корінних народів України; 2) стимулювання такого суб'єкта як держава таким суб'єктом як міжнародна спільнота до встановлення партнерських форм взаємодії з корінними народами України; 3) використання міжнародною спільнотою для стимулювання встановлення партнерських форм взаємодії з корінними народами України договорів; 4) застосування міжнародною спільнотою примусу держави до встановлення партнерських форм взаємодії з корінними народами України вразі, якщо держава порушує права корінних народів України, або не встановлює партнерські форми взаємодії.

**Ключові слова:** право на освіту, права корінних народів України, корінний народ України, правові норми, принципи права, конституційно-правовий механізм забезпечення права дітей на освіту.

**Karapetian A. Principles and norms of law in the constitutional and legal mechanism of ensuring the right to education of children - representatives of indigenous peoples of Ukraine.**

The article focuses attention on the fact that the principles and norms of law are one of the effective components of the constitutional and legal mechanism of ensuring the right to education of

children - representatives of indigenous peoples of Ukraine. Attention is focused on the quality of legal norms as a necessary condition for the effectiveness of the constitutional and legal mechanism of ensuring the right to education of children – representatives of indigenous peoples of Ukraine. It has been established that due to the principle of equality and self-determination of peoples enshrined in the UN Charter, the indigenous peoples of Ukraine - Krymchaks, Karaites, Crimean Tatars – are the people of Ukraine, its component; indigenous peoples of Ukraine have the right to carry out their cultural and social development; the right to education of children – representatives of the indigenous peoples of Ukraine - is a guarantee of the realization of the right to cultural and social development of the indigenous peoples of Ukraine and the subjective rights of each child - a representative of the indigenous people of Ukraine; the right to self-determination belongs to the Ukrainian people, the indigenous peoples of Ukraine are its component, not a separate and isolated component, but a component that is inseparable from the people of Ukraine; every state of the world must respect the right of the Ukrainian people and its integral component - the indigenous peoples of Ukraine – to realize their economic, social and cultural development.

The principles of the state's internal policy in the sphere of education of children - representatives of indigenous peoples of Ukraine are singled out: 1) the principle of state care; 2) the principle of responsibility (paternalism) of the state; 3) the principle of partnership between the state and indigenous peoples. The analysis of the above-mentioned international act made it possible to establish the role of these principles in the formation (planning) and implementation of state policy in the sphere of education of children - representatives of indigenous peoples of Ukraine: the principle of state care and the principle of responsibility (paternalism) of implementation should be combined with the principle of partnership between the state and indigenous peoples .

The purpose of the state's activity – it consists in maximally ensuring respect, preservation and development of the identity of the indigenous peoples of Ukraine. The toolkit used for this can also be identified based on the analysis of the Convention of the International Labor Organization on indigenous peoples and peoples leading a tribal way of life in independent countries: 1) correlation of the duties of the state and the rights of the indigenous peoples of Ukraine; 2) stimulation of such an entity as the state by such an entity as the international community to establish partnership forms of interaction with the indigenous peoples of Ukraine; 3) the use of treaties by the international community to stimulate the establishment of partnership forms of interaction with the indigenous peoples of Ukraine;

4) application by the international community of forcing the state to establish partnership forms of interaction with the indigenous peoples of Ukraine in the event that the state violates the rights of the indigenous peoples of Ukraine, or does not establish partnership forms of interaction.

**Key words:** the right to education, the rights of the indigenous peoples of Ukraine, the indigenous people of Ukraine, legal norms, principles of law, the constitutional and legal mechanism of ensuring the right to education of children.

### 1. Introduction

According to the Constitution of Ukraine, everyone has the right to education. The provisions of the Constitution of Ukraine correspond to the norms of international acts on human rights, which were ratified by Ukraine (Ezer T., Deshko L., Gunn C., 2010). Social relations are changing (Deshko L., 2021; Deshko L.M., Bysaga Y.M., 2023; Polychko T., Bysaha Yu., Berch V., Deshko L., Nechyporuk H., Petretska N., 2021) and the regulatory regulation of the right to education needs improvement. In order to fulfill international obligations in good faith and in view of the development of Ukraine as a democratic state in which the principle of the rule of law operates (Deshko L., 2014), Ukraine is improving the regulatory and legal mechanism for ensuring the right to education of representatives of indigenous peoples of Ukraine.

Russia's occupation of the Autonomous Republic of Crimea, which is the territory of Ukraine and where the indigenous peoples of Ukraine live, has the consequence of violating the right to education of the indigenous peoples of Ukraine and, for example, in the Ukrainian language as the state language (Russia considers the study of the Ukrainian language in schools and education in the Ukrainian language as a crime) , and in the language of indigenous peoples. The Russian Federation in the occupied territory of Ukraine - in the Autonomous Republic of Crimea - applies a policy of assimilation on a full scale. The education of representatives of indigenous peoples is carried out in Russian.

Thus, representatives of the indigenous peoples of Ukraine are deprived of the opportunity to attend Ukrainian-language schools, schools where education would be carried out both in the language of the indigenous people and in Ukrainian as the state language.

This actualizes the issue of the post-war period - the restoration, as far as possible, of the right to education of children - representatives of the indigenous peoples of Ukraine - after the de-occupation of the Autonomous Republic of Crimea.

### 2. Theoretical framework or Literature Review

In the science of constitutional law, the study of the rights of the indigenous peoples of Ukraine

is devoted to the research of Professor Lyudmila Deshko, Oksana Vasylichenko and Olga Lotiuk (Deshko L., Vasylichenko O., Lotiuk O., 2022; Deshko L., Manzhylei M., 2013), and the issue of the rights of the indigenous peoples was raised in their studies by Professor Yuriy Bysaga and other scientists (Bysaha Yu., Deshko L., Nechyporuk H., 2020; Volkov V.D., Deshko L.N., Zablotskyi V.P., 2005; Deshko L.M., Hospodarets D.M., 2023; Volkov V., Deshko L., 2006). But a comprehensive study of the legal mechanism of ensuring the right to education of the representatives of the indigenous peoples of Ukraine - children - was not carried out.

The purpose of this article is to establish the role of the principles and norms of law in the normative-legal mechanism of ensuring the right to education of representatives of the indigenous peoples of Ukraine - children, and also characterize the principles enshrined in international acts.

### 3. Methodology

The methodological basis of this research is the general methods of scientific cognitivism as well as concerning those used in legal science: methods of analysis and synthesis, formal logic, etc. The empirical basis of the research is international documents, current legal acts of Ukraine, and assessment of Ukrainian and foreign experts.

### 4. Results and discussion

Miroshnichenko V., as a result of the analysis of the preamble and articles 1, 13 of the ILO Convention, singles out the following characteristics that unite indigenous peoples: these groups are the descendants of those people and peoples who inhabited any territory before the arrival of a population with a different culture, a different ethnic and racial background origin; at the national level, they occupy a non-dominant position; they have linguistic, traditional, and often racial characteristics different from the rest of the population of a certain country or region; they consciously consider themselves indigenous, and such self-awareness is part of their culture, religion, being, existence; they are tied to their native land, nature and environment.

The UN Declaration on the Principles of International Law dated October 24, 1970 contains a broad concept of the right to self-determination of peoples, revealing the content of which the developers of this international act indicated that due to the principle of equality and self-determination of peoples enshrined in the UN Charter, all peoples have the right to freely determine without outside interference its political status, as well as to carry out its economic, social and cultural development, and every state must respect this right in accordance with the UN Charter. The following follows from this regarding the indigenous peoples of Ukraine: 1) the indigenous peoples of Ukraine - Krymchaks, Karaites, Crimean

Tatars - are the people of Ukraine, its component; 2) indigenous peoples of Ukraine have the right to carry out their cultural and social development; 3) the right to education of children - representatives of the indigenous peoples of Ukraine - is a guarantee of the realization of the right to cultural and social development of the indigenous peoples of Ukraine and the subjective rights of each child - a representative of the indigenous peoples of Ukraine; 4) the right to self-determination belongs to the Ukrainian people, the indigenous peoples of Ukraine are its component, not a separate and isolated component, but a component that is inseparable from the people of Ukraine; 5) every state of the world must respect the right of the Ukrainian people and its integral component - the indigenous peoples of Ukraine - to realize their economic, social and cultural development.

At the same time, we emphasize that it follows from the UN Declaration on the Principles of International Law of October 24, 1970 that the territorial integrity and political independence of Ukraine are inviolable, and nothing in the Declaration can be interpreted as authorizing or encouraging any actions that would to the dismemberment, partial or complete violation of the territorial integrity of Ukraine or the political unity of Ukraine as a sovereign, independent state, which in its activities adheres to the principle of equality of the indigenous peoples of Ukraine. The indigenous peoples of Ukraine, unlike national minorities, do not have a homeland other than Ukraine.

The rights of indigenous peoples are enshrined in a number of international human rights acts. For example, the Convention of the International Labor Organization on Indigenous Peoples and Peoples Leading a Tribal Way of Life in Independent Countries dated June 27, 1989 No. 169, the UN Declaration on the Rights of Indigenous Peoples dated September 13, 2007 No. 61/295.

Based on the work of P.V. Gogolev, analyst, expert of the "Humanitarian Policy" group of the International Expert Network of the Crimean Platform, V. Myroshnychenko draws attention to the fact that "...the provisions of the ILO Convention are of great interest as the most important act, addressed to indigenous peoples, which enshrines at the ideological level, the combination of state care and responsibility (paternalism) with the principle of partnership between the state and indigenous peoples. ... one of the overarching ideas in the preamble of the Convention, which constructs its entire content, is the activity of the participating state to ensure maximum respect, preservation and development of the original ethnic community through the correlation of the duties of the state and the rights of this population group, on the one hand, and stimulation, and

sometimes the coercion of states with the help of pressure from the international community to establish partnership forms of interaction with indigenous peoples with the help of treaties, agreements, other constructive agreements..." (Miroshnichenko V., 2023).

So, let's distinguish the principles of the state's internal policy in the sphere of education of children - representatives of the indigenous peoples of Ukraine: 1) the principle of state care; 2) the principle of responsibility (paternalism) of the state; 3), the principle of partnership between the state and indigenous peoples. The analysis of the above-mentioned international act makes it possible to single out the peculiarity of the interaction of these principles in the formation (planning) and implementation of state policy in the sphere of education of children - representatives of the indigenous peoples of Ukraine: the principle of state care and the principle of responsibility (paternalism) of implementation should be combined with the principle of partnership between the state and indigenous peoples.

In addition, let's highlight the purpose of the state's activity - it consists in maximally ensuring respect, preservation and development of the identity of the indigenous peoples of Ukraine. The toolkit used for this can also be identified based on the analysis of the Convention of the International Labor Organization on indigenous peoples and peoples leading a tribal way of life in independent countries: 1) correlation of the duties of the state and the rights of the indigenous peoples of Ukraine; 2) stimulation of such an entity as the state by such an entity as the international community to establish partnership forms of interaction with the indigenous peoples of Ukraine; 3) the use of treaties by the international community to stimulate the establishment of partnership forms of interaction with the indigenous peoples of Ukraine; 4) application by the international community of forcing the state to establish partnership forms of interaction with the indigenous peoples of Ukraine in the event that the state violates the rights of the indigenous peoples of Ukraine, or does not establish partnership forms of interaction.

The General Policy section of the Convention on Indigenous Peoples and Tribal Peoples in Independent Countries of the International Labor Organization states that national governments shall consult with the indigenous peoples concerned through their representative bodies when considering legislative or administrative measures which they directly concern, create procedures thanks to which the specified peoples can participate freely or to no less extent than other sections of the population in decision-making at all levels in elected institutions, in administrative and other bodies that carry out

policies and implement programs related to these peoples, create prefaces for the full development of their own institutions and initiatives of these peoples, and if necessary provide the resources necessary for these purposes. Therefore, one of the principles of cooperation between indigenous peoples and state governments is the principle of conducting consultations through representative bodies of indigenous peoples regarding education policy.

At the same time, the principles of the policy in the field of education for indigenous peoples, in view of the preamble of the Convention, are: the need to eliminate orientation towards assimilation; preserving the language of the indigenous peoples of Ukraine within the borders of Ukraine; ensuring the possibility of indigenous peoples of Ukraine to realize the right to education.

According to Part 2 of Art. 8 of the Law of Ukraine "On Indigenous Peoples of Ukraine" acts and decisions of executive authorities on the development of languages, culture, ensuring the rights of indigenous peoples of Ukraine to education in the language of the indigenous people, media activities in the languages of the indigenous peoples of Ukraine, integration of the indigenous peoples of Ukraine are adopted after the consultations with representative bodies. The procedure for holding consultations between executive authorities and representative bodies is determined by the Cabinet of Ministers of Ukraine. This procedure is currently defined by the Resolution of the Cabinet of Ministers of Ukraine "On approval of the Procedure for conducting consultations of executive authorities with representative bodies of indigenous peoples of Ukraine" dated August 19, 2022 No. 1018. Ukraine developed the provisions of this Declaration and developed additional mechanisms for the protection of the rights of indigenous peoples of Ukraine in the field of education, and defined them at the national level.

## 5. Conclusions

The quality of legal norms is a necessary condition for the effectiveness of the mechanism of constitutional and legal provision of the right to education.

Due to the principle of equality and self-determination of peoples enshrined in the UN Charter, the indigenous peoples of Ukraine - Krymchaks, Karaites, Crimean Tatars - are the people of Ukraine, its component; indigenous peoples of Ukraine have the right to carry out their cultural and social development; the right to education of children - representatives of the indigenous peoples of Ukraine - is a guarantee of the realization of the right to cultural and social development of the indigenous peoples of Ukraine and the subjective rights of each child - a representative of the indigenous people of

Ukraine; the right to self-determination belongs to the Ukrainian people, the indigenous peoples of Ukraine are its component, not a separate and isolated component, but a component that is inseparable from the people of Ukraine; every state of the world must respect the right of the Ukrainian people and its integral component - the indigenous peoples of Ukraine - to realize their economic, social and cultural development.

The principles of the state's internal policy in the sphere of education of children - representatives of indigenous peoples of Ukraine are singled out: 1) the principle of state care; 2) the principle of responsibility (paternalism) of the state; 3) the principle of partnership between the state and indigenous peoples.

The analysis of the above-mentioned international act made it possible to establish the role of these principles in the formation (planning) and implementation of state policy in the sphere of education of children - representatives of indigenous peoples of Ukraine: the principle of state care and the principle of responsibility (paternalism) of implementation should be combined with the principle of partnership between the state and indigenous peoples.

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