

Chapter

Legal Statute and Perspectives for Indigenous Peoples in Ukraine

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Abstract

In this chapter the specific issues of legal statute and perspectives of the development of Indigenous Peoples in Ukraine are highlighted. The situation of occupation and attempt of annexation of the Crimean peninsula as the native land of three Indigenous Peoples (Crimean Karaites, Crimean Tatars, and Krymchaks) in conditions of the ongoing interstate conflict and internal displacement are determined. The aspects of recognition of the indigenous statute in Ukrainian, Russian, and international jurisdictions for those Indigenous People will be researched, as the reparations and reconciliations for such peoples as victims of international crimes of the Soviet times.

Keywords: annexation, Crimean Karaites, Crimean Tatars, deportation, indigenous peoples, internal displacement, Krymchaks, occupation, recognitions, reparations

1. Introduction

For the last decades, three ethnic groups residing in Ukraine struggled for the recognition as Indigenous Peoples and their coherent rights—Crimean Karaites, Crimean Tatars, and Krymchaks. Crimean Tatars (CTs) are the Indigenous People (IP) residing in Crimea, deported from the peninsula by illegal acts of the Soviet government in 1944 and particularly repatriated to Crimea in 1989–2010; they have approximately 200,000 representatives in Ukraine, first of all in Crimea. Crimean Karaites (CKs) and Krymchaks are the IPs which are non-numerous peoples, having now less than 500 representatives in Ukraine, most of all in Crimea [1].

Before World War II, all state authorities that controlled Crimea recognized those three ethnic groups as peoples (nations), traditional for Crimean peninsula. At the same time, Russian authorities during the nineteenth century held the policy of discrimination of the CTs and promoted their emigration from Crimea to the third countries. Krymchaks were discriminated by the Russian authorities' practices in the framework of the anti-Semitic law and till 1917 as People with Judaism as their traditional religion. In 1941 Krymchaks were the victims of genocide (Holocaust) in Crimea during the Nazi occupation. In 1944 CTs were the victims of genocide (forced deportation) under the control of the Soviet authorities. In Soviet period since 1967, the USSR state authorities rejected the statute of CTs as separate ethnic group, they were determined as "Tatars," as the part of undetermined Tatar population of the USSR [2].

Krymchaks and CKs were recognized in independent Ukraine on the regional level as non-numerous peoples in 1992; CTs were recognized by Ukrainian State

authorities as separate ethnic group. From the end of the twentieth century, those three ethnic groups demanded from Ukraine, international structures, and world community to recognize their rights as IPs.

Issues of defense and support for the rights of the IPs of Ukraine in modern conditions are tightly united with their recognition as Indigenous Peoples, with established and real possibilities for reparation of their violated collective and individual rights, and with issues for reconciliation in conditions of the interstate conflict, ongoing in Ukraine and related to Crimea as to the native land of the IPs. Occupation and attempt of annexation of Crimea by the Russian Federation (RF) in 2014, spreading the Russian national jurisdiction, economic, social, cultural, and ethnic policy over Crimea, totally changed the situation in the peninsula for IPs and their representatives, including issues of recognition, reparation, and reconciliation. Those issues since 2014 were lightened in a few scientific researches (N. Belitzer, E. Pleshko, A. Prykhodko, E. Topalova) with a very limited attention on the aspects of changes of the IPs' legal regime in Crimea and of those changes' reflection in the international normative acts.

So the target of this research is to establish the real situation with legal regime and statute, including recognitions, reparations, and reconciliation, for IPs of Ukraine.

2. Issues of recognition, reparations, and reconciliation of the Indigenous Peoples of Ukraine

2.1 Recognition

After the political decision of the problem of the Crimean autonomy in Ukraine during 1991–1996, as experts point, the modern Ukrainian Constitution of 1996 did not relate the legal grounds of the Autonomous Republic of Crimea (ARC) to the statute of the CTs and/or of other Ukrainian IPs. At the same time, the Constitution of the ARC, 1998, did not contain any reference to the IPs or their rights, neither for the legal ground of the autonomy not to defend them on the normative level. Establishment of the official statute for the Crimean Tatar language (both as for the Russian and Ukrainian languages) was the only formal relation with CTs in this Constitution [3].

But we should recognize that social and state Ukrainian institutions provided for that period the possibility to reflect on the Constitutional level the existence of the IPs of Ukraine as the constituent elements of the multinational Ukrainian People. It made essential legal grounds for development of their statute and recognition of their rights, for establishment of the national constitutional institute of IPs.

So Art. 11 of the Ukrainian Constitution, reflected in some researches, guaranteed that the state will promote the development of ethnic, cultural, linguistic, and religious identity of all IPs of Ukraine. More, as it was established in Art. 92 of this act, the rights of IPs must be defined by the special Ukrainian law. Regarding to the part 3 of Art. 119 of the Ukrainian Constitution, the local state administrations must realize on coherent territories, for areas of the IPs' settlement, and the execution of their cultural development programs. At the same time, Ukrainian Constitution fixed in those provisions the similar guarantees for all the national minorities [3].

In independent Ukraine in 1991–2014, those IPs had some problems with realization of their rights, but those violations were caused by common problems of the development of the new post-Soviet state. Norms of Ukrainian Constitution (art. 11, 92 and 119) introduced to its text with the “IPs” term became possible due to the peculiarities of the democratic process of adoption of this act in June 1996. Alas,

Ukraine has not passed later the legislation that would specify those provisions of the Constitution.

Experts point that according to the governmental draft of the concept of the state ethnic policy of Ukraine, elaborated in 2000–2001, IPs were defined as the autochthonous ethnic community, whose ethnic descent and germination were in the boards of modern Ukrainian state, who are in minority for all-Ukrainian ethnic quantities and have no ethnic-kin state forming out of the Ukrainian territory. A number of Ukrainian Laws adopted after the Constitution (“on the Supreme Council of ARC,” 1998, “on the Local State Administrations,” 1999, etc.) comprised the category “IPs” but did not established additional guarantees for such subjects [2].

Also some regional normative acts of the ARC since 1998 formed special legal regime for the Crimean Tatar language in peninsula, but de facto such documents were mush declarative than practical. Not complete recognition of CTs, CKs, and Krymchaks as IPs in this period was caused by escalation of pro-Soviet policy in Crimea in 1990–1998 by Russian immigrants, initiated and supported by the RF that were resettled in Crimea by the Soviet government after World War II [2].

In 1990–2014 Ukraine was trying to preserve the interethnic conflict in Crimea, and, as researchers established, such situation caused practical impossibility for the indigenous land claims, restitution claims, and defamation claims in conditions of their repatriation and reconciliation. The central and local state bodies and municipal entities, legal enforcement structures, courts, and Ukrainian Ombudsman had the common position that all the property taken from the Crimean Tatar owners from 1944 will not be returned to former owners or their successors and will not be compensated. De facto majority of coherent land partials and buildings were transited from state property to the private property of nonindigenous users that controlled it in the late Soviet time, during the common privatization proceeding in Ukraine before 2000 [4]. It caused refusal of official recognition of IPs’ rights, especially for former deported CTs.

Modern researches prove that in the independent Ukraine, representatives of the Karaites, CKs, and CTs claimed to be recognized as the IPs. The national movements of CKs and CTs have arranged their specific organizational forms. CTs created the system of Meilis as executive body elected by Qurultai as National Congress since 1991. CKs established the Ulu Beylik as the representative council that was formed by the National Congress of CKs in 2003. The claims of the CKs, CTs, and Krymchaks for their recognition as IPs grounded on such criteria, reflected in the international standards:

- Linguistic, cultural, ethnic, and religious identity of those ethnic groups
- Own traditional territory for settlement and residing in Ukraine, closely tied with those groups in economy, history, and culture
- Appearance and evolution of those groups in Ukraine as peculiar ethnoses, privation of other historic homeland, or ethnic-kin state formation abroad of Ukraine
- Indigenous self-consciousness of those ethnic groups’ members [3]

More, during the first years of the twenty-first century, some normative acts devoted to the aspects of CKs and Krymchaks statute or reflecting their issues were signed on all-Ukrainian or ARC levels. The law of Ukraine “On Grounds of the State Language Policy,” 2012, guaranteed, among some others, the special statute for Krymchak and Karaite languages [5]. The Cabinet of Ministers of

Ukraine (CMU) adopted Prescript No. 187-p on 2001 which was ordered to the Council of Ministers of ARC and to the Ukrainian Ministry of Justice to investigate the aspects of the realization of the rights of CKs and Krymchaks, preparing, if necessary, relevant proposals to the CMU [6]. More, in 2004 CMU assumed the state program for the Intangible Cultural Heritage Defense and Preservation, 2002–2008 (Resolution No. 1732). This program foreseen the duty of the Council of Ministers of ARC and the Ukrainian National Academy of Science for the organization of the scientific researches in the fields of the cultural heritage and history of Krymchaks and CKs [7]. Measures of preserving the Historic-Cultural Heritage of CKs and Krymchaks for 2012 were adopted by the Resolution of Verkhovna Rada of ARC No. 582-6/11 on 2011 [8].

Experts point that after the development of Russian aggression, in March 2014, the Ukrainian parliament (Verkhovna Rada of Ukraine, VRU) adopted the statement on the guarantees for the rights of the Crimean Tatar people (CTP) in Ukraine (Resolution No. 1140-VII). By this statement Ukraine declared and guaranteed the development and defense of the CTP cultural, ethnic, religious, and linguistic identity as an IP features [9]. This statement referenced in its preamble the principles and goals reflected in the first articles of the UN Charter and International Covenant on Economic, Social and Cultural Rights, in Articles 3, 11, and 15 of the Ukrainian Constitution. More, in part 4 of this statement (point 4), the support to the UN Declaration on the Rights of Indigenous Peoples (DRIP) was established [3].

By this statement Ukraine recognized “the inherent right of self-determination of the CTP in the sovereign and independent Ukrainian State” and confirmed the statue of the Mejlis and Kurultay of the CTP, as this people’s representative bodies. This Parliament Act prescribed to the CMU to prepare urgently the drafts of Ukrainian laws and other normative acts, regulating the status of the IPs. The statement was prescribed to elaborate those legal drafts consulting with the Mejlis, with cooperation of the UN, OSCE, and Council of Europe, implementing the international norms and standards of IPs, minorities and human rights (HRs) [9].

Also this Parliament Act banned (in Art. 8) any endeavor to limit any civil, social, or political rights of citizens of Ukraine related to various ethnic groups residing in Crimea, such as Armenians, Bulgarians, Crimean Tatars, Germans, Greeks, Karaites, Krymchaks, Russians, and Ukrainians, including aspects of the illegal “referendum” in the peninsula. This statement may be determined as historic act, and its realization of the international level was done in the framework of the annual session of the UN Permanent Forum on Indigenous Issues (PFII) in May 2014 [3].

As it is reflected in some essays, exactly on May 13, 2014, at the PFII session, the officer of the Ukrainian Mission before the UN made the formal declaration on behalf of the Ukrainian government on the support of the DRIP by Ukraine. Such act may be determined as being in compliance with other relevant unilateral acts of states for the recognition of the DRIP role, but issued, in common, by national supreme executive bodies (Australian, Canadian, Columbian, and New Zealand governments for DRIP in 2008–2013), not by the parliaments [3].

Alas, special Ukrainian law on statute of the IPs of Ukraine in conditions of permanent Ukrainian-Russian conflict is not still adopted. Anyway the project of such law (No. 4501) was registered in VRU in 1 day with the project of statement No. 1140-VII; the project was adopted in a first reading only.

A month later, attempting to make the annexation of the Crimea, the Russian President signed Decree No. 268, 2014, “On the Actions to Rehabilitate the Armenian, Bulgarian, Greek, Crimean Tatar and German Peoples and on the State Support of their Recovery and Development” [10]. The scientists insist that this act totally disregards the issues of CTs, as deported and as IP, and provides them the similar rights with the representatives of the European nations resettled to the

Crimea during the nineteenth century. Such equalization must be determined as the policy of assimilation of the CTP and refusal in recognition and support of their indigenous rights. More, the human rights purport of this Decree is too poor and not in compliance with the international standards of the IPs' rights [4].

This Decree reflected the attitude of the Russian government on such ethnic issues, with total confidence in own competence to "rehabilitate" all Bulgarian or Armenian people, neither taking to regard the real statute of such ethnic groups as minorities nor connecting those issues with the ethnic-kin states of those European nations. More, this act reflected the declarative provisions not the certain mechanisms; any of its norms cannot be executed for preserving and renovating the CTP rights brutally violated by the Soviet regime [10].

Other acts of Russian authorities in Crimea regarding to those issues was not even finalized. This draft of "law" of the "Republic of Crimea" (RC) No. 1520/30-10 "On Some Guarantees for the Rights of Peoples, Deported without Court Order on the Ethnic Ground during 1941–1944 from the Crimean Autonomous Soviet Socialist Republic" was primarily voted by the "State Council" of RC on June 4, 2014, but did not "enter into force." This draft did not mention the IPs' issues and did not establish the illegality of Soviet deportations; it did not provide any rights or compensation mechanisms for CTs, regarding only for some Soviet-style "actions for social defense" like compensation for ticket to Crimea. This draft did not foresee any special judicial procedure for CTs [11].

For the reason of increasing of the international attention to IPs in Crimea, the Russian occupation authorities decided to implement the indigenous legislation of the RF in relation to the CKs and Krymchaks. As we pointed before, those actions of Russian authorities used to make some propaganda and political influence, as the RF did not foresee the real problem from possible behavior of some hundreds of CKs and only hundreds of Krymchaks for Russian regime in Crimea. That is why the "State Council" of the RC voted in 2014 for the "Resolution" No. 2254-6/14 "On Introducing the Offers to the Government of the RF "On the Comprising the CKs and Krymchaks to the Unified List of Indigenous Non-Numerous Peoples of the RF." Such act confirmed the presence in a multiethnic Crimean community the non-numerous IPs, such as CKs and Krymchaks, with special statute [12].

This "resolution" grounded itself on the historic formation of those peoples in Crimea, with the "complex and multi-layered ethnic genesis," regarded the ethnic oneness, cultural specification, and religious identity of those IPs [12]. But, as experts proved, this "resolution" stipulated the elaboration of the draft of Russian government's resolution presented officially for the public consideration in late June 2014 on the state web source, but this normative act was not adopted. Later the issue of including the CKs and Krymchaks to the Unified List of Indigenous Non-Numerous Peoples of the RF discussed some times during 2015–2019 but was not realized [13].

Later, in 2015, project No. 2680 of the statement of VRU on preserving in Ukraine the originality and cultural heritage of CKs (Karays) and Krymchaks was registered by some deputies in the Ukrainian parliament. It was supported by the relevant parliamentary committees—on aspects of culture and morality and on HRs, national minorities and ethnic relations in May 2015 but did not supported by VRU. The identical project No. 4827 was registered in VRU in 2016, also with support of relevant committees [14], but it also was not voted by the parliament.

In 2015, CMU voted for the Action Plan for the National HRs Strategy Implementation. Regarding to its art. 112, point 10, the Ukrainian Ministry of Culture, engaging NGO and foreign experts, was able to elaborate, before 2017, the draft of the Law on IPs of Ukraine. This provision of the action plan was not executed, but the alternative draft was prepared and presented by some NGO like Crimean Tatar Resource Center and Foundation on Research and Support of

the IPs of Crimea. This nongovernmental draft was investigated in 2016 by the experts via the UN EMRIP also as ODIHR OSCE annual sessions, and it got the positive summery by the Legislation Institute of VRU but was not registered in the Ukrainian parliament [15].

Steps of the RF for legitimating the attempt of annexation of Crimea were not recognized by the world community; more, those steps were recognized as dangerous for HRs and for the rights of IPs. So, the UN General Assembly (UN GA) Resolution 68/262 “Territorial integrity of Ukraine” called the subjects of international law do not recognize the changes of the status of the ARC and the city of Sevastopol falling from the so-called “referendum” in 2014, but did not mention the IP issues regarding to Crimea [16]. But in some later acts of the international organizations and bodies, CTs also were recognized as IP. Two 2014 UN OHCHR reports (April and June) on the HR situation in Ukraine pointed the information about the boycott by the “CTs as IP” of the so-called “referendum” in Crimea; also those reports reflected the cases of violence and discrimination against CTs as the IP. By such official statements, the UN OHCHR called the Russian powers in Crimean to preserve the minorities’ and the IPs’ rights in the peninsula, including the CTs’ rights, such as the freedom not to be the victim of deportation from a native land [17].

Researches pointed on the strong statement of the Caucus of IPs on the UN PFII 13th Session against the normative manipulations of Russian authorities with ethnic relations in Crimea. Caucus pointed on the intention to avoid the confession of the statute and rights of CTs, CKs, and Krymchaks as the IPs in Crimea that made those IPs are extremely vulnerable from any discrimination or repressions from the Russian occupying powers. By this statement the Caucus of the IPs declared on the risks floating from the Russian ethnic policy in peninsula that is strongly not in compliance with the IPs well-recognized international standards such as DRIP [18].

Above mentioned explains why in May, 2014, the Caucus of IPs pointed on duty for visit of the Special Rapporteur on the Rights of IPs to Crimea for gathering the relevant data regarding the situation and problems of the IPs. More, experts pointed on Caucus’ proposals to include the Crimean IPs’ representatives to the deputies of the world conference of IPs that was expected in the autumn of 2014. Additionally Caucus of IPs offered to the RF to confirm the rights of the Indigenous Peoples in Crimea to save their own citizenship, to change or to get dual citizenship freely by own choice, and to travel to and from Crimea without any punishment or distinction for their individual rights [4].

Also on May 12, 2016, the European Parliament (EP) adopted special Resolution 2016/2692 (RSP) on the CTs [19] and were reminded that the entire population of CTs, an IP, was forcibly deported to other parts of the then USSR in 1944, with no right to return until 1989, whereas on November 12, 2015, the VRU adopted a resolution in which it recognized the deportation of the CTs in 1944 as genocide and established May 18 as a Day of Remembrance.

In Art. 2 of Resolution 2016/2692 (RSP), it is pointed out that the ban on the Mejlis of the CTP, which is the legitimate and recognized representative body of the IP of Crimea, will provide fertile ground for stigmatizing the CTs, further discriminating against them and violating their HRs and basic civil liberties, and is an attempt to expel them from Crimea, which is their historical motherland; it is concerned that the branding of the Mejlis as an extremist organization may lead to additional charges in accordance with provisions of the Criminal Code of the RF.

2.2 Reparations and reconciliation

We mentioned in some essays that from 1991, the Ukrainian state confirmed *de facto* the specific features of the CTs’ politic statute and granted to this ethnos

some guarantees. The relevant Agreement on Issues Related to Restoration of the Deported Persons', National Minorities', and Peoples' Rights, must be highlighted; it was signed in Bishkek by group of the post-Soviet states in October 1992 and established common mechanisms of reparations and compensations for individuals, without relevance to their indigenous origin; this treaty was ratified by Ukraine not by the RF and lost its power before 2104 [20].

Measures taken by Ukraine were connected officially not with indigenous statute or origin of the CTP, but they grounded on a duty to aid the victims of Soviet deportation, which give them the relevant reparations. Those benefits had individual forms; they had ground on programmatic normative acts voted by CMU and ARC bodies without possibility for the CPs' representatives of structures to initiate any judicial proceeding for the recognition of their collective or individual indigenous rights. For example, such Ukrainian normative acts, devoted to CTs, as CMU Decree No. 1952, 2003, or No. 626, 2004, did not establish the transparent administrative or civil proceeding for former deported persons. Special Ukrainian law "On the Restoration of Individuals' Rights, Deported on Ethnic Ground" No 1872IV, was voted by VRU in June 2004. This act foresaw the judicial procedure of confirmation the fact of deportation for the representatives of CTP with special appellation mechanisms for refusals' cases; anyway it was banned by Ukrainian President's veto, and those proceeding did not enter to force [21].

After the Russian attempt to annex the Crimea in 2014, Ukraine voted the Law No. 1207-VII "On the Preserving the Rights and Freedoms of Citizens and on Legal Regime for the Ukrainian Temporarily Occupied Territory." This legal act in its preamble included the duty for protection and total realization of the civil, politic, cultural, and other rights of the Ukrainian citizens in Crimea, "including IPs," into the grounds of the national politics regarding the Ukrainian temporarily occupied territory [22].

So the scientists point that such legal framework of Law No. 1207-VII covers the IPs' issues for Crimea, and the coherent obligation for Ukrainian authorities to set all the possible steps for securing the constitutional and international standards of rights and freedoms in Crimea is relevant to the public duty to secure the IPs' rights. At the same time, this law points that the responsibility for HRs' violations in Crimea is relied on the RF as on occupier state and as for the relevant "norms and principles of international law." The modern doctrine allows to include the DRIP provisions to those "norms and principles" that Ukraine must execute and demand to execute regarding the situation in Crimea. So Ukraine must demand to realize in Crimea the DRIP provisions, including ban assimilation of the IPs and depriving their integrity, cultural or ethnic features, their traditional lands, territories, and resources. Also Ukraine must counteract to any attempts of the forced displacement and deportations of the IPs representatives from Crimea [23].

Experts also stress the importance of the new Law No. 1223-VII "On the Restoration of the Rights of Individuals Deported on Ethnic Grounds" that was voted in 2014. Such law also does not include the "IPs" category; but its norms contain the term "deported peoples" and regard CTs directly. This law may be determined at the common act that covered all the illegal deportations made by the Soviet state on ethnic grounds on the modern Ukrainian territory. Articles 7–9 of Law No. 1223-VII established the procedures of recognition of the statute of the deported person for the CTP representatives.

Law No. 1223-VII contains the provisions for the real estate and other relevant properties confiscated from deportees by the Soviet state; such possessions must be returned to the deportees or to their successors in nature but only if the preserved buildings are not in private property now. In other circumstances, the deported person's his or her successors must get the financial compensation; both restitution

and compensation may be suited by such person only via 3 years after his or her recognition as deported one [24].

We discussed the practical possibility of implementation in Ukraine criminal proceedings concerning deportations of CTs on ethnic grounds, committed by the Soviet authorities in 1939–1991 [25]. This possibility has become almost confirmed, when on December 2015, the Investigation Department of the Prosecutor's Office of the ARC (which is based in Kiev now) initiated criminal proceedings under Art. 442 "Genocide" of the Criminal Code of Ukraine on the fact of deportation of the CTs.

Before the occupation of Crimea, the Security Service of Ukraine (SSU) together with the Prosecutor General's Office in 2009 started the preliminary investigation for the illegal resettlement of ethnic groups from Crimea that started in 1944. For such investigation the separate group was created in the structure of the SSU Headquarters in the ARC. Until 2010 the SSU investigators researched evidences of this Soviet deportation of the CTP from Crimean peninsula; later their activities were stopped, this SSU special group was disbanded, and all the gathered evidences in 2014 were captured by Russian invaders in Simferopol. After 2014 Russian powers in Crimea did not start any proceeding or investigation regarding to the crime of the CTs' deportation; more they declared officially that all the relevant SSU materials "are lost" [25].

Hence, this proceeding of the Prosecutor's Office of the ARC regarding the events of 1944–1989 with CTP was actually started from scratch and needs the strong support of international structures. These criminal proceedings have some judicial perspectives—as some victims of the deportation are alive and reside in Ukraine, as the huge historic data is still available. More, some witnesses and co-participants, as of the beginning of the deportation, so of the events of the Soviet counteraction to the initiative resettlement of the CTs to peninsula in 1954–1989, party—some former members of the State Security Committee (KGB) bodies live in Ukraine till now [25].

The historic investigation of those issued is the task of the Ukrainian Institute of National Remembrance regarding to the CMU Resolution No. 684, 2014. Exactly this institute is the central executive body, governing the duties under aegis of the Minister of Culture, in area of assessment "of forced deportations, of such crimes' organizers and executors and of their actions' effects for Ukraine and the World." The duty and possibility of legal enforcement investigation of the Soviet deportations were confirmed by this institute in its letter No. 01/301, 2015 [25].

We must consider the role of military personnel and commanders of the Soviet force structures, the Ministry of International Affairs, the Ministry of State Security, and the KGB of the USSR for organizing the deportation of CTP, for the detention of the deported people in non-freedom regime till 1956, and for permanent counteraction against CTs resettlement to Crimea even since 1967 when such activities of CTs became formally allowed by the Soviet legislation [26].

So there is no doctrinal doubt that the Soviet deportation of CTP from the Crimean peninsula was the international crime without temporal limits for its investigation. Now, even when Crimea is occupied, Ukrainian legal bodies have the necessary jurisdiction for such investigation and judicial proceeding. But the final legal determination of such deportation as a genocide or as other international crimes against humanity must be established in the final act of the competent court. The aid of international bodies for such investigation will be important in conditions of ongoing occupation of Crimea by the RF [26].

But not only investigating the Soviet deportation is important for reparation and reconciliation of the IPs' rights in Ukraine especially for those who become internally displaced persons from Crimea since 2014. For a long period, the Ukrainian government provided minimal assistance to internally displaced persons, many

of whom found themselves in an administrative limbo due to their uncertain legal status. Recognizing the long-term reality of internal displacement for these groups, the legislation was intended to provide better access to legal documentation and essential services to those who had fled the fighting [27].

More, the ban of Mejlis of the CTP as an “extremist organization” by the Russian authorities in Crimea and Moscow in 2016 caused the additional violations of the rights of this IP. Threats to ban the Mejlis began in October 2015, and on February 15, 2016, the de facto prosecutor of Russian-controlled “RC” Natalya Poklonskaya announced that an application had been made for the ban, with the claim being that the Mejlis was “extremist.” Modern authors point of the “clear Soviet echoes” for this suit of occupier illegal prosecutor that grounded formally on “applications” from CTs structures and local institutions, including their “heads,” asking to recognize the Mejlis actions as “illegal and provocation.”

The act of banning the Mejlis was given by the so-called “Supreme Court” of RC on April 2016, and it was supported by the Supreme Court of the RF (SCRF) on September 2016 regarding to the appellation of the Mejlis’ defenders. This totally illegal and politicized proceeding, the RF tried to determine the Mejlis as a “civic organization” that may be banned for “extremist” activities. More some “evidences” used in this proceeding were totally absurd, such as the document, presented by CTP leader Mustafa Dzhemiev in 1988, or as some Mejlis’ documents issued 20 years before the occupation of Crimea by RF. The determination of the “extremism” for the Mejlis de facto was connected in this proceeding with the CTP’s struggle for their indigenous rights in Ukraine [28].

During this proceeding the defense of Mejlis pointed to the SCRF duty to execute the DRIP provisions relating to the Mejlis. Even supporting the position of the “Supreme Court of the RC” to ban the Mejlis, in this case, analyzing the DRIP provisions, SCRF confirmed that DRIP is actually for Russian jurisdiction, including the Mejlis case. By this SCRF de facto recognized the IPs’ rights for CTs in the DRIP framework.

Issues of violation of CTs’ rights were reflected in Resolution 71/205 adopted by the UNGA on December 19, 2016 [29]. In this act the UNGA welcomed the reports of the Office of the UN High Commissioner for HRs on the human rights situation in Ukraine, of the Commissioner for HRs of the Council of Europe, of the HRs assessment mission of the Office for Democratic Institutions, and HRs (ODIHR) and the High Commissioner on National Minorities (HCNM) of the OSCE, in which they stated that violations and abuses of HRs continued to take place in Crimea and pointed to the sharp deterioration of the overall HRs’ situation.

In Resolution 71/205 the UNGA pointed on the reported serious violations of rights of the Crimean residents, including CTs, such as abductions, arbitrary detentions, discrimination, enforced disappearances, extrajudicial killings, harassment, intimidation, politically motivated prosecutions, torture and ill-treatment, transfer of detainees from Crimea to the RF, violence, etc. Also the abuses of the right to peaceful assembly and of the freedoms of association, of expression, and religion or belief were lighted in this UNGA act. In Resolution 71/205 the UNGA demanded the RF to execute a set of occupying power international obligations: to stop immediately all normative and de facto abuses against Crimean residents, including arbitrary detentions, discriminatory practices and measures, torture, and inhuman or degrading treatment [29].

Issues of internal displacement from Crimea were also reflected in Resolution 72/190 adopted by the UNGA on December 19, 2017 [30]. In this act the UNGA condemned again the reported serious violations and abuses committed against the residents of Crimea, in particular extrajudicial killings, abductions, enforced disappearances, politically motivated prosecutions, discrimination, harassment,

intimidation, violence, including sexual violence, arbitrary detentions, torture and ill-treatment, in particular to extract confessions, and psychiatric internment and their transfer or deportation from Crimea to the RF, as well as reported abuses of other fundamental freedoms, including the freedoms of expression, religion, or belief and association and the right to peaceful assembly.

In this act the UNGA demanded the RF to reduce all the decisions that banned the Mejlis of the CTP and its activities as the “extremist organization,” to cancel the acts banning the Mejlis’ leaders to enter Crimea and to stop any other steps for limitations on the rights and possibilities of the CTP to establish and preserve own representative structures. Also in Resolution 72/190, the UNGA supported the efforts of Ukraine to maintain economic, financial, political, social, informational, cultural, and other ties with its citizens in the occupied Crimea in order to facilitate their access to democratic processes, economic opportunities, and objective information.

Some acts of the EP as of the European Union politic representative body also reflect the situation with internal displacement of the indigenous CTs and violation of their individual and collective rights in Crimea that caused such displacement. In Art. 9 of the EP resolution of February 4, 2016, on the HRs’ situation in Crimea, in particular of the CTs (2016/2556 (RSP)), the impediments to CTP leaders returning to Crimea and their prosecution were deplored [31].

The resolution of EP 2016/2692 (RSP) on the CTs [19] reflected the concern of the European Union and the international community regarding the current problems for HRs in the occupied peninsula. This act pointed on the pressure over those who did not confirm the “legacy” of the Russian authorities in Crimea; it specially stressed that such so-called powers “targeted the indigenous community” of the CTs, as the majority of the CTP opposed the RF to take control over the peninsula and boycotted the so-called “referendum” in March 2014.

This EP act strongly condemned the RF, whereas CTs’ institutions and organizations are increasingly branded as “extremists” and prominent members of the CT community which are, or risk, being arrested as “terrorists,” whereas the abuses against CTs include abduction, forced disappearance, violence, torture, and extrajudicial killings that the de facto authorities have failed to investigate and prosecute, as well as systemic legal problems over property rights and registration.

Resolution 2016/2692 (RSP) also reflected that CTs’ leaders, including Mustafa Dzhemilev and Rafat Chubarov, have previously been banned from entering Crimea and are now allowed to do so but under threat of arrest—thus sharing the same fate as numerous other members of the Mejlis and CTs’ activists and displaced people, whereas more than 20,000 CTs’ have had to leave occupied Crimea and move to mainland Ukraine.

By Arts. 6 and 9 of Resolution 2016/2692 (RSP), EP condemned the severe restrictions on the freedoms of expression, association, and peaceful assembly, including at traditional commemorative events such as the anniversary of the deportation of the CTs by Stalin’s totalitarian Soviet regime and at cultural gatherings of the CTs; it recalled that Indigenous CTP have suffered historic injustices which led to their massive deportation by the Soviet authorities and to the dispossession of their lands and resources; regrets are the fact that discriminatory policies applied by the so-called authorities are preventing the return of these properties and resources or are being used as an instrument to buy support.

Also the Resolution of EP 2017/2596 (RSP) of March 16, 2017, on the Ukrainian prisoners in the RF and the Crimean situation should be mentioned. In its Art. 8, there underlines that the CTs, as an IP of the peninsula, and their cultural heritage seem to be prime targets for repressions: calls for unrestricted access to Crimea by international institutions and independent experts from the OSCE, the UN and the Council of Europe. In its Art. 9, the resolution reminds the Russian authorities that

despite the illegality of the annexation of Crimea, the RF is, in a de facto capacity, fully responsible for upholding the legal order in Crimea and protecting Crimean citizens from arbitrary judicial or administrative measures.

This document pointed that restrictive Russian legislation regulating political and civil rights has been extended to Crimea, which has resulted in the freedoms of assembly, expression, association, access to information, and religion being drastically curtailed, as well as credible reports of intimidation, enforced disappearances, and torture, whereas there are approximately 20,000 internally displaced persons from Crimea in other Ukrainian regions, the Mejlis of the CTP has been banned and proclaimed an extremist organization.

By Art. 10 the resolution of EP expresses strong concern over the many credible reports of cases of disappearances, torture, and systematic intimidation of local citizens opposed to the annexation of Crimea and calls on Russia to immediately cease the practices of persecution, to effectively investigate all cases of HRs' violations, including enforced disappearances, arbitrary detentions, torture and ill-treatment of detainees, and to respect the fundamental freedoms of all residents, including the freedoms of expression, religion or belief, and association and the right to peaceful assembly; calls for all disappearances and kidnappings during the period of occupation of Crimea are to be investigated immediately, including the case of Ervin Ibragimov. In its Art. 18 EP calls for the EU support for Ukrainian and CTs' media projects for Crimea as well as those initiated by the European Endowment for Democracy and Radio-Free Europe/Radio Liberty and in defense of CTs' schools and other initiatives to protect their cultural heritage [32].

EP also voted the resolution of October 5, 2017, on the cases of CTs' leaders Akhtem Chiygoz and Ilmi Umerov and the journalist Mykola Semena (2017/2869 (RSP)) [33]. In Arts. 3 and 4 of this act, the EP condemned the Russian authorities' actions in Crimea that discriminate "the Indigenous CTs," as such actions cause the infringement of CTs' property rights, also as they increase pressure over CTP in their economic, social, and political life opposing the Russian attempt of annexation of the Crimea. By this resolution EP confirmed once again that CTs' rights were gravely and brutally limited and violated after the ban of the Mejlis activities and determining this body as "extremist" "civil organization," also as after the ban for the CTs' leaders to return to Crimea.

Also the issues of violation of CTs' rights were reflected in the OSCE documents. Report of the HRs' assessment mission on Crimea, prepared by OSCE ODIHR and the OSCE HCNM in 2015 in point 178 confirmed that Russian powers in occupied Crimea limited the movement of CTs' leaders, established for them the entry bans and other nonproportional measures to prevent their travels to Ukrainian mainland and abroad. Such limitations were clearly politicized as the persons banned to enter Crimea were originating from Crimea and regarding to the RF laws adopted after 2014 theoretically were the "Russian citizens" [34].

The current HRs' situation in Crimea and the challenges faced by HRs' defenders working on and in Crimea were discussed at an expert meeting on June 14, 2018, in Kherson, Ukraine. The meeting was organized by the OSCE ODIHR in cooperation with the Mission of the President of Ukraine in the ARC. This meeting was held with 28 representatives of various civil structures, such as leading HRs' defense Crimean structures, the Mission of the President, and intergovernmental organizations. Those representatives discussed and researched the situation with HRs in peninsula, regarding to the proposals of the abovementioned report of the HRs' assessment mission, done in 2015. This will further the efforts of this mission to promote and monitor the observance of the HRs of Ukrainian citizens living in Crimea and of internally displaced persons from the peninsula, including indigenous representatives [35].

The ban of Mejlis of the CTP was watched by the International Court of Justice (ICJ) in Ukrainian claim against the RF for the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD). In this case ICJ established the special measures and demanded by its Order the RF “to refrain from maintaining or imposing limitations on the ability of the CTs community to conserve its representative institutions, including the Mejlis of the CTP.” This Order was added to the preliminary decision of the ICJ handed down on April 19, 2017, acknowledging its own jurisdiction over the Ukraine vs. Russia case.

As judge of the ICJ James Crawford pointed related to this case, nothing in CERD prevents any state from national regulating the issues of establishment or development of the organizations representing any ethnic group. The states also have competence even to ban such organization in the most serious situations, but of course such measures or bans must be clearly and transparently justified. In the case Ukraine vs. Russia, those justifications are absolutely necessary regarding the historical destiny of the CTP and the essential role of the Mejlis in preserving, advancing, and protecting the CTs’ rights, especially during the period of changes and disruption. So the ICJ will be able to assess the evidences from the parties of this case in that regard, pointed by this judge.

More, judge J. Crawford added in his declaration for this case that the provisional measures established by the ICJ regarding to the Mejlis issue require that Russia must refrain from maintaining that ban. At the same time, this ICJ Order did not point the aspects the volume and framework of the decisions of the Crimean bodies and SCRF regarding the provisions of the Russian law executed for. So the Order of ICJ confirmed that this ban may plausibly implicate rights under international law and of course it may not be in compliance with the domestic courts’ acts [36].

More, in September 2017, some Mejlis members’ representatives lodged the application to the “Supreme Court of the RC” demanding to execute the ICJ Order by making the review of Russia’s ban. Some coherent individual suits were lodged soon after the Crimean “prosecutor” informed the Mejlis first deputy head, Nariman Dzhelyal, that the “prosecutors’ office” seeks the “clarification” for this ban regarding the ICJ’s Order. There had also been a separate application lodged by Russian lawyer Nikolai Polozov on July 18, 2017, to this issue [29]. The “Supreme Court of the RC” rejected all those application by the formal grounds. During the 2017 Mejlis of the CTP, local Mejlises of CTs and some members of Mejlis and Qurultay bodies lodged their individual application to the European Court on HRs against Russia for their rights, guaranteed by the European Convention on HRs and brutally violated by the illegal ban of Mejlis.

3. Conclusions

So we may point that since 2014, Crimean Tatars were recognized by Ukraine as Indigenous People de jure, and Crimean Karaites and Krymchaks were recognized by this state de facto. The Russian Federation, contrary to some declarations made during 2014–2015 after occupation of the Crimean peninsula, did not recognized any ethnic group of Crimea, as the Indigenous People de jure. Proceeding in the International Court of Justice in CERD case of the Ukraine vs. Russia, including demand to cancel the ban of Mejlis of Crimean Tatar People and position of the Supreme Court of Russia in Mejlis case, shows the absence of legal strategy in Russia related to Crimean Tatar issue. The Russian doctrine for traditional non-numerous Indigenous Peoples is not in compliance with Karaites and Krymchaks situation.

The key issues for reparations and reconciliation for Indigenous Peoples of Ukraine are connected with consequences of:

- The genocide started against them during World War II, including the deportation of the Crimean Tatar people (1944–1989), duty of coherent investigations, court decisions, and compensations.
- The internal displacement of representatives of Indigenous Peoples from occupied Crimea to other regions of Ukraine since 2014 that cause the duty to provide the wide set of displaced Indigenous persons' rights.
- The ban by the Russian authorities of the Mejlis of the Crimean Tatar People since 2016, coherent proceedings started in Russian jurisdiction, in the European Court on Human Rights, and in the International Court of Justice.
- The discrimination of the Indigenous Peoples in the occupied Crimea since 2014 by Russian de facto authorities is often not in compliance with the Geneva Law and international standards of human rights.

Those aspects were reflected not in Ukrainian and Russian normative acts but in some resolutions of the UN General Assembly and European Parliament devoted to situation in Crimea. The paradox of reflecting the UN Indigenous standards for Crimea more in acts of European Union than of the UN structures is an interesting phenomena for future scientific researches.

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Conflict of interest

I, Borys Babin, confirm, declare, and certify that I have no any real possible affiliations relevant to any structure, entity, or organization with any financial or other material interest, including the consultancies, educational grants, employment, honoraria, membership, participation in speakers' bureaus, stock ownership, other equity interest, and/or the expert testimony or patent-licensing arrangements; also I have no any relevant, real or potential, nonfinancial interest, such as affiliations, beliefs, knowledge, personal, or professional relationships in the subject matter or materials reflected, discussed, and concluded in this work.

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