

# Development of Russian legislation on Northern Indigenous Peoples

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**Abstract:** *This article analyzes the peculiarities of Russian legislation on Indigenous Peoples of the North and its application in practice over the past 20 years. The author identifies several phases of development of this legislation and its current status, and formulates proposals for improvement of the “indigenous” legislation and related enforcement practices.*

**Key words:** Russian law, indigenous peoples of the North, improving «indigenous» national legislation and law enforcement practices

## 1. Levels and functions of the law on northern peoples

Over the last 20 years legislation on indigenous peoples of the North has been formulated in the Russian Federation (hereafter RF) as a specific multisectoral

segment of Russian law.<sup>1</sup> In view of the federal system of government in Russia and related constitutional provisions (arts. 71, 72, 76), this legislation is a two-level one, i.e. consists of two blocks of laws and regulations – federal and regional. Federal legal regulation prevails in the sphere (human and civil rights and freedoms currently falls in the competence of the federal authorities), while the regional level is supplemental, more specific, and remedial. Its necessity and focus is determined by the fact that protection of human rights, indigenous minorities' rights, and protection of traditional livelihoods of small-numbered indigenous communities is in the joint competence of federal and regional authorities.

The existence of legislation on indigenous peoples of the North is an official acknowledgement of their specific legal status by the state. This ensures both the preservation of their culture, and promotes a better adaptation of those peoples to present social conditions.

## 2. Stages of formation of “indigenous” legislation

Three stages of different intensity and legal content are clearly distinguished in the course of development of “indigenous” legislation.<sup>2</sup>

1. There are 40 peoples in Russia classified as indigenous (Nenets, Khanty, Mansi, Chukchi, Evenki, Sami, etc.), 280 thousand people in total living in the Arctic on their indigenous lands in 28 constituent entities in Russia (ranging from the Kola peninsula in the west to Chukotka in the east). The list of the given peoples was approved by Decree of the Government of the RF dated April 17<sup>th</sup> 2006 No.536-p //Russian Federation Code (*Sobraniye zakonodatelstva Rossiiskoi Federatsii, hereafter – SZRF*). 2006. № 17. P.2. Cl. 1905. These peoples are referred to as ‘indigenous small-numbered peoples’ in Russia, however their main characteristics correspond to the definition of ‘indigenous peoples’ in art. 1 of the ILO Convention 169. So they present themselves and the same meaning is implied in the Constitution of the RF which identifies them as a special subject of the legal constitutional relations (Art. 69). This view is taken by the author in analysis of Russian legislation on indigenous peoples of the North.
2. For certain characteristics of this legislation see: Харючи С.Н. *Коренные малочисленные народы: проблемы законодательства*, Томск 2004 (Kharyuchi S.N., *Indigenous peoples: problems of legislation*, Tomsk, 2004); Андриченко Л.В. *Регулирование и защита прав национальных меньшинств и коренных малочисленных народов в Российской Федерации*, М., 2005. С.257–380 (Andrichenko L.V., *Regulation and protection of rights of ethnic minorities and indigenous peoples in Russian Federation*, Moscow 2005 pp. 257–380); Кряжков В.А. *Коренные малочисленные народы Севера в российском праве*. М., 2010. С.71–107 (Kryazhkov V.A., *Indigenous peoples of the North in the Russian law*, Moscow 2010 pp. 71–107); Под общей редакцией Штырова В.А., *Современное состояние и пути развития коренных малочисленных народов Севера, Сибири и Дальнего Востока Российской Федерации*. М., 2012 (Shtyrov V.A. (ed.) *Current status and the ways of development of the indigenous small-numbered peoples of the North; Siberia and Far-east of the Russian Federation*. Moscow 2012).

## 2.1 The First Phase: From the early 1990<sup>s</sup> to the adoption of the Constitution of the Russian Federation in 1993

This is a period when the RF became an independent state, and the issues of indigenous peoples of the North had achieved new legal solutions. They were guaranteed rights for the use of land and traditional economic activities (arts. 4, 14, 51, 89, 90, 94 of the Land Code of RSFSR dated 25 April 1991<sup>3</sup>), and of native languages (Law of the RF dated 25 October 1991 ‘On the languages of peoples of RSFSR’<sup>4</sup>). State protection was provided in relation to their culture (art. 22 of the Basics of the RF legislation on culture dated 9 October 1992<sup>5</sup>). Local self-government, taking into account the national and ethnic specifics of the population, including peoples of the North, was accepted (arts. 1, 3 of the Law of the RF dated 6 July 1991 ‘On local self-government in Russian Federation’<sup>6</sup>). It was provided that a portion of payments into the budgets of the constituent entities of the RF for the use of subsoil resources in the places of residence of indigenous peoples had to be used for social and economic development of the said peoples (art. 42 of the Law of the RF dated 21 February 1992 ‘On subsoil resources’<sup>7</sup>).

The presidential decree dated 22 April 1992 № 397 On urgent measures for protection of the places of residence and traditional economical activities of indigenous peoples of the North<sup>8</sup> aimed to define the territories of traditional resource management as an essential heritage of the indigenous peoples of the North - to provide for the lifetime ownership with hereditary succession or lease of pastures for hunting, fishing and other grounds by indigenous communes and families, without charge.

Based on federal regulations, regional legislation on the protection of rights of indigenous peoples of the North then started to form. The Khanty-Mansiysky Autonomous Okrug was the undisputed leader in this regard, where the unique *Regulation on the status of tribal lands* was passed on 5 February 1992<sup>9</sup>. These were special territories, allotted free of charge to representatives of indigenous peoples

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3. Gazette of the Congress of People’s Deputies of the RSFSR and the Supreme Soviet of the RSFSR (*Vedomosti S’ezda narodnykh deputatov i Verkhovnogo Sovyeta RSFSR, hereafter – Vedomosti*). 1991. №22. Cl.768.
  4. *Vedomosti*. 1991. №50. Cl. 1740.
  5. *Vedomosti*. 1992. № 46. Cl.2615.
  6. *Vedomosti*. 1991. №29. Cl.1010.
  7. *Vedomosti*. 1992. №16. Cl.834.
  8. *Vedomosti*. 1992. №7. Cl.356.
  9. Кряжков В.А., Составитель, *Статус малочисленных народов России (правовые акты и документы)*. (Kryazhkov V.A., compiler, *Status of minorities in Russia (legal acts and documents)*... Moscow 1994 pp. 310–321).

as their places of residence and economic activities, for lifetime ownership with hereditary succession to perform traditional resource management.

In general, when describing the first phase of law-making in the sphere under consideration, one may point out the following:

1. It followed the social and political activity of indigenous peoples, associations and deputies from amongst them, who were asserting their rights and interests in the federal and regional parliaments;

2. It had no proper basis under the Constitution in force (where special status of indigenous peoples was implied only indirectly, through the protection of their primordial living environment and traditional way of life as a subject under the joint competence of the federal and regional state bodies), but was oriented towards international legal standards for indigenous peoples rights, and interfaced with attempts to ratify the ILO Convention No. 169 (this question, initiated by the deputy, Krivoshapkin A.V., was included into the addendum of the fourth session of the Supreme Council of the RF on 13 February 1992<sup>10</sup>);

3. It was intense and covered quintessential relationships with the direct participation of indigenous peoples, but lacked deep insights and comprehensiveness. However, the legal regulations formed gave rise to optimism and outlined the broad legal perspectives.

## 2.2 The Second phase (1993–2001): The adoption of the new Constitution of the Russian Federation

In this phase the Russian state clearly assumed an obligation to guarantee the rights of indigenous peoples in compliance with generally accepted principles and standards of international law and treaties of the Russian Federation (art. 69). This led to the development of the national law. Relevant regulations, applicable to various aspects of indigenous peoples' life (land use, traditional resource management, public actions, language, culture, education, etc.), were legally recognized in a number of federal and regional sectoral laws<sup>11</sup>. During this period, specialized laws were passed, whereby indigenous peoples and persons became a central person in

10. Vedomosti. 1992. №11. С1.533.

11. Given acts are rather fully represented in the collected works prepared by the author of this article (see: Статус малочисленных народов России. Правовые акты. Книга вторая. М., 1999 (*Status of minorities in Russia. Legal acts. Book two. Moscow 1999*); Статус коренных малочисленных народов России. Правовые акты. Книга третья. М., 2005 (*Status of minorities in Russia. Legal acts. Book three. Moscow 2005*); Статус коренных малочисленных народов России. Международные правовые акты и российское законодательство. Книга четвертая. М., 2007 (*Status of minorities in Russia. International legal acts and Russian legislation. Book four. Moscow, 2007*)).

legal relations. Among such laws is, first of all, the Federal law dated 30 April 1999 *On the guarantees of rights of indigenous peoples of the Russian Federation*<sup>12</sup>. This act consolidated the legal basis of the status of indigenous peoples, promoted other specialized federal laws – on the territories of traditional resource management<sup>13</sup> and indigenous people's communes<sup>14</sup>.

The ratification of the Framework Convention for the Protection of National Minorities (FCNM) by the Russian Federation<sup>15</sup> shall be considered as an achievement of this period. The said Convention, being a part of the Russian legal system in accordance with the Constitution of the RF (par. 1 art. 15), undoubtedly strengthened the guarantees of the legal status of indigenous peoples of the North<sup>16</sup>.

One may state that during this stage the federal system of indigenous people's rights was progressively formed in accordance with the Constitution of the RF and international legal standards, supplemented with human rights protection guarantees at the regional level. In particular, the constituent entities of the Russian Federation have passed laws on the status (basic guarantees of rights) of indigenous peoples (Republic of Sakha (Yakutia), Krasnoyarsk Krai, Kemerovo and Amur Oblasts); on reindeer herding and other types of traditional economic activities (Republic of Sakha (Yakutia), Magadan and Murmansk Oblasts, Yamalo-Nenetsky Autonomous Okrug, Nenetsky AO, Khanty-Mansiysky AO and Chukotsky AO); on languages, folk arts and other elements of traditional culture (Republics of

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12. SZRF. 1999. №18. Cl.2208.

13. Federal Law dated 7 May 2001 *On the territories of traditional resource management of indigenous peoples of the North, Siberia and Far East of Russian Federation* // SZRF. 2001. №20. Cl.1972.

14. Federal Law dated 20 July 2000 *On general principles of organization of Communes of indigenous peoples of the North, Siberia and Far East of Russian Federation* // SZRF. 2000. Cl.3122.

15. SZRF. 1998. №25. Cl.2833.

16. Acknowledging this fact the author, of course, does not identify indigenous peoples with the national minorities (the differences between them are well known, and connected to the genesis and formation of these communities and the specific claims of indigenous peoples to land and other natural resources in the area of their traditional places of residence), but assumes that to the extent of common features they share, international standards on national minorities can be used by indigenous peoples to protect their rights, especially in the sphere of culture, language and education. This position is actually a view of the Human Rights Committee (see the General comment on Art. 27 of the ICCPR, CCPR/C/21/Rev.1/Add.5) as well as the Advisory Committee on the Framework Convention for the Protection of National Minorities, which drew attention to the situation of indigenous peoples when monitoring the implementation of the Convention by the Russian Federation (see, for example, the report for 2002).

Karelia and Sakha (Yakutia), Magadan Oblast, Khanty-Mansiysky and Yamalo-Nenetsky AO)<sup>17</sup>.

One of the regional human rights guarantees deserves special mention because it is unique – it is the establishment in the Khanty-Mansiysky AO of the Assembly of Indigenous Peoples of the North as part of the Duma of the Autonomous Okrug<sup>18</sup>. This Assembly not only represents the status of indigenous peoples, but also demonstrates a new understanding of minorities' rights in the parliament, an ability to find compromises and consideration of their opinion during relevant decision-making.

### 2.3 The third phase (early 2000 to the present): The current situation of Russian legislation on indigenous peoples

In general, the current situation can be characterized as 'legal stagnation' and a step back from former positions. The following examples illustrate the point:

- The lack of any new notable legal acts in this sphere. During the last decade the main positive achievements were the legal settling of the issue regarding registration of persons, pertaining to indigenous peoples, the maintaining of the nomadic or semi-nomadic way of life<sup>19</sup>, as well as the identification of: (a) the list of indigenous peoples of the North, Siberia and Far East of Russian Federation; (b) the listing and classification of traditional places of residence and traditional economic activities<sup>20</sup>; (c) estimating procedures for economic losses, inflicted upon communities of indigenous peoples of the North, Siberia and Far East as a result of economic and other activities of legal entities of all forms of ownership and private persons<sup>21</sup>; (d) rules for allocation and granting of subsidies from the federal budget to budgets of the constituent entities of the Russian Federation for

17. *Status of minorities in Russia. International legal acts and Russian legislation*. Book four, pp. 244–648.

18. On regulatory and legal basics and practice of operation of the given organ see: *Kryazhkov V.A.* Given thesis pp. 343–347; Ассамблея представителей коренных малочисленных народов Севера Думы Ханты-Мансийского автономного округа. 15 лет. Ханты-Мансийск, 2011 (Assembly of representatives of indigenous peoples of the North in the Duma of the Khanty-Mansiysk Autonomous Okrug. 15 anniversary. Khanty-Mansiysk 2011).

19. SZRF. 2011. №50. Cl.7341.

20. SZRF. 2009. №20. Cl. 2493.

21. This document was approved by the Order of the Ministry of Regional Development of the RF of December the 9<sup>th</sup> 2009 №565, but was not published. So according to the Constitution of the RF (par.3 art. 15), this document shall not be applied.

support of economic and social development of indigenous peoples of the North, Siberia and Far East<sup>22</sup>;

- The repeal in 2004 of the Federal Law *On the basics of the state regulation of social and economical development of the North of Russian Federation*, that may be qualified as a denial by the state of the special policy considering the specifics of Northern regions and indigenous peoples living there;

- The withdrawal from the federal legislation of several provisions related to indigenous peoples. In particular, at present, it is no longer possible for:

Indigenous peoples to obtain plots of land for lifetime ownership with hereditary succession and be able to use them free of charge;

The allotment of grounds for traditional fishing and hunting on the sole source basis;

The obligatory assessment of the possible negative impacts of a development project upon the traditional way of life and resource management of indigenous peoples;

The use of a portion of extraction payments made by constituent entities of the Russian Federation for the social and economic development of indigenous peoples;

The organization of local self-government provided for compact settlement of indigenous peoples at the territory of a certain municipality;

The authority of the constituent entities of the Russian Federation to set representative quotas in their legislative bodies and representative bodies of local self-government.

The diminishing of rights of certain groups of indigenous peoples of the North resulted from the uniting of the Autonomous Okrug (Dolgan-Nenets, Evenky and Koryak) with the constituent entities of the Russian Federation. Instead of the former national-territorial units, administrative-territorial units with special status within the constituent entity of the RF were formed. At the same time, the respective peoples lost their own legislative and other government authorities, their own budget, their direct agency in the parliament of the Russian Federation, and their direct financial and other relationships with the federal governmental authorities. As a result, a marked weakening of guarantees of the social and other rights of indigenous peoples can be observed.

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22. SZRF. 2009. №12. Cl. 1428. Introduction of these rules actually means the establishment of the new state-legal form of support for social and economical development of Northern peoples, instead of respective federal target programs earlier used for this purpose. The efficiency of this new approach is not yet evident.

Key relationships lack proper regulation, particularly those regarding rights of indigenous peoples and persons pertaining to the use of land (rights are acknowledged but have no legal “substance”; moreover, the scope of authority is reduced, no longer including the right to own land free of charge, obtain plots of land for lifetime ownership with hereditary succession, and for reindeer herding – temporary use for a period of up to 25 years<sup>23</sup>); for priority natural use (a tendency toward reduction is observed<sup>24</sup>); for special compensation (the possibility for relief is not supported by respective legal mechanisms and is considerably at the discretion of those who should pay it), for cultural heritage, and so on.

Certain standards are decorative legislation only (in the sense that they do not work, no actual legal relationships arise from their basis). This relates, for example, to provisions on authorized representatives of indigenous peoples, ethnological expertise, participation of representatives of said peoples in environmental and ethnological expertise, and an obligatory consideration of customs and traditions when making judicial or other decisions. The implementation of the Federal Law dated 7 May 2001 *On the territories of traditional resource management of indigenous peoples of the North, Siberia and Far East of Russian Federation* is blocked. During the ten years of its existence, all requests on the establishment of the territories of traditional resource management of federal significance were rejected, and the court judgments approved the refusals of their establishment, which federal executive agencies substantiated with various reasons, including a lack of necessary executive acts to be issued by the said agencies.

### 3. Factors impeding the development of law

Law-making processes and enforcement practices are burdened by certain co-factors, such as:

- A crisis of ideas in the legal regulation related to indigenous peoples of the North. From my point of view, this is reflected by the Conception of the sustainable development of indigenous peoples of the North, Siberia and Far

23. Dynamics of the said changes are traced when comparing provisions of the Land Code of RSFSR 1991 with the changing provisions of land law currently in force, Federal Law on ensuring of indigenous peoples’ rights (pp. 1 s. 1 and 2 Cl. 8) and Federal Law of the territories of traditional resource management (second section, Cl.11).

24. See, for example, amendments to Cl. 48 of the Federal Law of 24 April 1995, introduced by the Federal law of 28 December 2010 (SZRF. 2011. №1. Cl.32), as well as Federal law of 20 December 2004 *On fisheries and conservation of aquatic bioresources* (SZRF. 2004. №52. Cl. 5270) and Federal Law dated 24 July 2009 *On hunting and conservation of game resources and amendments to certain legal acts of the RF* (SZRF. 2009. №30. Cl.3735).

East<sup>25</sup> and the Decree of the Government of the RF dated December 28, 2010 No. 2455-p which approved measures for the Second International Decade of world indigenous peoples, for the years 2011–2014<sup>26</sup>. Both acts lack new approaches and directions for the development of legislation on the said peoples;

- Ignorance in state legal relations of the UN Declaration of 2007 on the rights of indigenous peoples – a document which reflects the expectations of these peoples and references the legal basis of their status;
- Unclear perspectives for the ratification of the European Charter for Regional or Minority Languages (A decree of the President of the RF on the signing of it was issued on the 22<sup>nd</sup> of February 2001) and the ILO Indigenous and Tribal Peoples Convention 169 (ratification has not been discussed at the official level);
- A simulation of legal intent with regard to the regulation of ‘aboriginal’ relations. The fact, that unfortunately becomes the rule, is demonstrated by a failure to fulfill a number of requirements of the Plan of measures for social and economic development of Northern regions by certain federal ministries<sup>27</sup> regarding a number of issues including the development of a procedure for decision-making on issues of relationships between indigenous peoples of the North and economic entities (November 2005), the development of a pilot project for the territories of traditional resource management of indigenous peoples (2006–2008), on proposals for the introduction of a position for authorized representatives of indigenous peoples of the North (December 2005) and the Action Plan for implementation in 2009–2011 of the Conception for the sustainable development of indigenous peoples of the North, Siberia and Far East.<sup>28</sup> This final element included the preparation of legal acts, the ensuring of priority access for indigenous peoples of the North to hunting grounds, game animals and, in general, renewable natural resources, regulating land management in the places of settlement and economic activities of these peoples, and the creation of model territories of traditional resource management of federal significance;
- All this was coupled with the elimination of federal state bodies directly responsible for solutions regarding northern peoples’ issues. *Goscomsever/State Committee for the North* of Russia ceased to exist in 2000. The last en-

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25. SZRF. 2009. №7. Cl. 876.

26. ConsultantPlus service network.

27. SZRF. 2005. №9. Cl. 736.

28. SZRF. 2009. №36. Cl.4364.

tity was the North and Indigenous Peoples Issues Committee of the Council of the Russian Federation, which was repealed on 9 November 2011 by the Order No.439-SF. Indigenous peoples issues are currently one of the subjects under the competence of the Department for inter-ethnic relations under the Ministry for Regional Development of Russia. In the State Duma it is within the remit of the Nationality Issues Committee, and in the Council of Federation, the Committee for Federal Structure, Regional Policy, Local Self-Government and Issues of the North;

- There is an ignorance on the part of judges and other lawyers (partially due to a lack of specialized courses in the colleges of law and in the system of occupational training) of the basics of ‘indigenous’ legislation, causing its interpretation and enforcement without correction or consideration for the peculiarities of the status of indigenous peoples of the North, their culture, customs and traditions.

The difficulty in cooperation between the federal authorities and the Association of Indigenous Peoples of the North, Siberia and the Far East (RAIPON) which is in fact the authorized representative of these peoples, is worth mentioning. The relationships between them are sporadic and not friendly, as recent events show. In some instances there seems to be a desire to diminish the significance of this organization, as manifested in governmental initiatives on creation and support of alternative organizations of indigenous peoples, in discussions of relevant issues without the participation of the Association, and by ignoring their proposals for adopting legal acts and documents.

In the same context, in my opinion, was the conflict between the Ministry of Justice and the Association: Ministry, based on the Federal Law of 19 May 1995 “On Public Associations” (Art. 42), with the decision of November 1, 2012 suspended activities of the organization for a period of six months, which led to the suspension of some rights and the possible liquidation of the Association if during this period it did not comply with the claims of the Ministry. The reasons for the decision were identified by the Ministry of Justice in 2010 as breaches of the law related to, in particular, the fact that the Association did not register its symbol, failed to provide correct information on the location of its permanent managing body and on all its offices and subsidiaries. Subsequently, the Association sought to correct the breaches of law by making the necessary amendments to the Charter of the Association, but it was refused state registration of the amendments due to the failure to submit the complete list of documents and to comply with the formal requirements to the documents. The appeal of the Association against the refusal was not successful (see, the judgment of the Zamoskvorechye district court in Moscow dated June 29, 2012, and the decision of the judicial panel of the Moscow City Court, October 18, 2012).

In late January 2013 the Association held an extraordinary congress and again sent the documents approved by the congress to the state registry. This time there were no particular claims from the Ministry. The constituent documents of the Association were registered (the order of 11 March, 2013, No. 486-p), and the decision on suspension of activities was repealed (the order of 13, March, 2013, No. 518-p), and so the status of the all-Russian non-governmental organization of indigenous peoples was restored in full. Common sense prevailed and eventually the opinion of the Constitutional Court was taken into account, which in its Resolution of 18 July 2003 № 14-П identified: the decision of liquidation of an organization (as well as prior to liquidation, suspension of activities) cannot be justified with the formal grounds of repeated violations of legislation only, but should be applied in accordance with the acknowledged principles of legal liability and be proportionate to the violations and the resulting consequences.

#### **4. Ways of improving laws on Northern peoples**

What are the prospects for the development of legislation on indigenous peoples of the North and their enforcement? I believe there are a number of points that give rise to some hope that the RF will become more consistent in the effective solving of the challenges facing these peoples. This is due to the existence of original Northern peoples on Russian territory over several centuries; the Constitution of the RF which acknowledges this fact and addresses the protection of their rights, and an understanding of the importance of this issue by the broader world community (of which Russia considers itself a part) which demands special state policy for the protection of human rights for indigenous peoples, as is clearly expressed in the elaborated international legal standards. The industrial development of the Arctic declared by Russia on the native territory of Northern peoples, shall increasingly become a factor, which will stimulate substantial activity in the field of the legal regulation of 'aboriginal' relations<sup>29</sup>.

Now, during the improvement of the said legislation and enforcement practices, priority should be given to the solution of key issues related to indigenous peoples of the North regarding the use of land and other natural resources. Ensuring the said rights is the basis for the preservation and development of the traditional culture of these peoples.

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29. In any case, Basics of the state policy of the Russian Federation in the Arctic until 2020 and further perspective (approved by the President of the RF on September 18, 2008 №PR-1969) link the solution of Arctic issues, including indigenous ones, to the improvement of Russian law currently in force.

In order to specify the right of indigenous peoples to the use of land envisaged by the law, it would be advisable to use as a starting point the following:

- Land use rights should not be interpreted exclusively from a position of ordinary property relations, but through public law linked to the residence of indigenous peoples on their respective lands from times immemorial;
- To be acknowledged as a perpetual right in all cases where these peoples have been permanently present on their ancestral lands, and have used these lands for hunting, fishing and other traditional economic activities over the centuries;
- The right is inalienable and as such not subject to transfer, not for sale, abandonment in favor of anyone except for the state, exercised collectively;
- It allows representatives of indigenous peoples priority over all other persons to apply for allocation of land plots (territories) for the maintaining of their traditional way of life and traditional economic activities, and moreover, free use of ancestral lands for said purposes and in the case whereby rights for these lands (territories) were not properly registered;
- A restriction of the said right is not excluded, but can be done in accordance with the law and for the public benefit only, under indispensable participation of indigenous peoples in elaboration of respective solutions and compensation for all losses inflicted by use of primordial lands/territories for non-traditional commercial activities;
- It assumes the reservation of territories (in the form of the territories of traditional resource management as types of specially protected natural territories, ethnic-ecological refuges, territories of traditional settlement and traditional economic activities, etc.) with a special legal regime (ensuring targeted use of the territory, protection of indigenous rights, including those within the relationships with entities of non-traditional economic activities) for reindeer herding and other types of traditional livelihood activities of indigenous peoples of the North.
- The second block of issues includes the improvement of “indigenous” legislation in the sphere of self-government (co-management) of indigenous peoples of the North, ensuring involvement of these peoples and their representatives in the decision-making process affecting their rights and interests. With this view there is a need for:
  - during the modernization of electoral legislation – to restore the right of the constituent entities of the Russian Federation to set representative quotas for indigenous peoples in the regional legislative authorities and representative bodies of local self-government and to restore the right of public associations of the given peoples to nominate candidates;

- to ensure that the organization of local self-government is acceptable for the peculiarities of the livelihoods of indigenous peoples and involves communes of these people into the system;
- to adjust relations with regard to the institution of authorized representatives of indigenous peoples, i.e. the definition of organizations and persons competent to act on behalf of respective ethnic communities in cooperation with public authorities and industrial developers;
- vest rights in public associations of indigenous peoples for legislative initiatives, and develop the form and procedures for their permanent participation in legal and other forms of decision-making, affecting the rights and interests of the given peoples;
- to define legal effects and procedures for the conclusion of contracts/agreements between indigenous peoples and industrial developers, as well as with public authorities.

Issues related to the ethnic identification of indigenous peoples of the North are awaiting legal solution as well as multiple ethnic groups, who claim inclusion into this community. Such legal solutions should define (a) the terms for the acquiring of special rights by indigenous peoples and the terms of the exercise of these rights by those not acknowledged as indigenous but having affinity with indigenous peoples and preserving traditional livelihoods, (b) protection of indigenous peoples rights for diverse cultural heritage, and (c) application of customs and traditions in legal practice.

The legal regulation under consideration should not be sporadic (as it is now), but systematic, based on an integrated plan of legislative work oriented to enactment in the near, medium, and long-term covering the political, socio-economic and spiritual bases of the status of indigenous peoples. Key points in this respect shall be provisions of the Constitution of the RF (par.4 art.15, par.1 art. 17, par.1 art. 55, art. 69, p. “m” par.1 art. 72), the Federal Law *On ensuring of rights of indigenous peoples in the Russian Federation*, as well as international documents such as the International Covenant on Civil and Political Rights (art. 27), the Framework Convention on the Protection of National Minorities, the UN Declaration on the Rights of Indigenous Peoples, and others. There is a need through regional regulation to ensure the links of federal standards of law with certain legal relationships, considering the specifics of the status of respective ethnic communities.

The legal regulation of “aboriginal” relationships may be executed through amendments to the laws currently in force, and by development of special legal acts, in particular devoted to land use, reindeer herding, cultural heritage, etc.

As legal material accumulates, possibilities for its systematization shall be understood. This condition ensures the comprehension, accessibility and accuracy of legislative execution, allowing the identification and elimination of existing gaps, discrepancies and antinomies. From the said position, for example, in Khanty-Mansiysky AO it would be advisable to unify the acts on language, folklore and holy places of indigenous peoples, then enact a consolidated Okrug law on the preservation and development of indigenous people's culture on the basis of these said laws. Similar actions are acceptable for regulation in the sphere of traditional economic activities of the peoples of North, both in the above-mentioned Autonomous Okrug, and in other constituent entities of the Russian Federation, and at the federal level in areas such as traditional hunting, fishing and other activities which are based on common principles and should have a single legal basis.

Is it possible to codify "indigenous" legislation, i.e. systematize it in a way that results in a new legal act, for instance, the Code on indigenous peoples of the North of Russian Federation? There are certain prerequisites that need to be discussed (specific to relationships under regulation, multiple acts, incompleteness, duplicated and conflicted rules, the existence of similar codification acts in Russia in the past such as the Charter on administration of non-Russians of 1822 and Regulations on non-Russians of 1892). At the same time the Russian Federation, from my point of view, is not yet ready to carry out legal reform, since state-legal views are neither clear nor stable, and the legal regulation of single relationships is just outlined and some are not covered at all.

The improvement of legislation on indigenous peoples shall be accompanied by an improvement of enforcement practice and human rights. The following is important:

- Supervision over compliance with legislation on the given peoples shall become one of the special activities of the public prosecution service;
- Courts considering the cases with the participation of persons, pertaining to indigenous peoples, shall take into account their status, customs and traditions, and be guided by experts and authorized representatives as appropriate, ensuring the correct interpretation of proceedings, facts, relations and events having cultural and anthropological significance;
- Persons pertaining to indigenous peoples and their associations should have an opportunity to protect their special rights as derivative from the basic rights and freedoms of citizens in the Constitutional Court of the RF, and in the constitutional courts of the constituent entities of the Russian Federation

(in Yakutia, for instance, where such a court has operated for about 20 years, its role in the protection of Northern peoples' rights is rather important)<sup>30</sup>;

- The Commissioner for human rights in the Russian Federation should track the performance in the sphere of human rights as regards indigenous peoples of the North via annual reporting (this has happened only twice – in 2001 and 2002); and there is probably a need to return to the question of whether to establish the position 'commissioner for human rights of indigenous peoples in Russia'<sup>31</sup>;

The constituent entities of the Russian Federation, where indigenous peoples of the North reside, should establish positions of commissioner for human rights of these peoples, considering this position as a standard for the constituent entities of the Russian Federation<sup>32</sup> and rather much in demand, if to judge by the experience of the commissioner for human rights of indigenous peoples in the Krasnoyarsk Region<sup>33</sup>.

Representatives of indigenous peoples and officers should have the opportunity for the better understanding and use of "aboriginal" legislation. This could be promoted by the issuing of respective collected legal acts, judgments, comments to laws, special training courses on "aboriginal rights" in the judicial institutions, and in the qualification system for judicial officers, state and municipal officers (at least in the indigenous regions), and legal education for indigenous leaders. Internet resources should be fully exploited for legal information.

The stability and development of Russian "aboriginal" law and its proper application should correlate with international legal regulations of the relationships under review and the perception of respective international standards by Russia. With such a view it is necessary to promote and incorporate provisions of the UN

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30. For human rights possibilities of constitutional justice in this respect see: Кряжков В.А. Защита прав коренных малочисленных народов Севера в конституционных судах Российской Федерации: практика и перспективы // Журнал конституционного правосудия. 2009. №3 (9). С.3–8 (Kryazhkov V.A. "Protection of rights of indigenous peoples of the North in the Constitutional Court of the RF: practice and perspectives" in *Constitutional Justice Journal* №3 (9) 2009 pp. 3–8).

31. Such a proposal was defined by Decree of the State Duma of the Federal Assembly of the Russian Federation dated 26 May 1995 №816–1 GD *On the crisis in economics and culture of indigenous (aboriginal) peoples of the North, Siberia and Far East of the Russian Federation* // SZRF. 1995. №24. Cl. 2260.

32. Decree of the President of the RF of 4 December 2009 №1381 *On the standard public positions in the constituent entities of the RF* // SZRF. 2009. №49. Cl. 5921.

33. See the Report of this Commissioner on the observance of constitutional rights and freedoms of indigenous peoples over the Krasnoyarsk Region in 2010, Krasnoyarsk 2010.

Declaration on the Rights of Indigenous Peoples and other international documents, confirming the rights of these peoples into the current legislation; to support the idea of the ratification of the European Charter for regional or minority languages and the ILO Convention 169, as well as the development of international legal documents on the rights of indigenous peoples in the Arctic region; and the promotion of issues related to the protection of indigenous rights in European bodies.

Thus Russian legislation on indigenous peoples of the North and its 20-year period of development is a legal reality. It may be characterized as unstable, contradictory, often simulative, by many parameters in the initial phase and not in full accordance with international legal requirements. This reflects the general context of the development of the RF, and from my point of view is also caused by the fact that axiological notions/value conceptions of the status of given peoples in the Russian Federation are not yet formed. At the same time there is a need for more diligence on the rights of indigenous peoples so that they are actually dictated by their status and, as a duty of the state, by respective provisions of the Constitution of the RF and international law. The above-mentioned circumstances give reason to believe that Russian state-legal policy in this sphere will be and should be modified.

### **Развитие российского законодательства в отношении коренных народов Севера**

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**Аннотация:** В статье анализируются особенности российского законодательства в отношении коренных народов Севера и его применение на практике в течение последних 20 лет. Автор в нормативно-правовом плане выделяет несколько этапов развития данного законодательства, включая его современное состояние, а также формулирует ряд предложений по совершенствованию «аборигенного» законодательства и правоприменительной практики.

**Ключевые слова:** российское законодательство, права коренных народов Севера, совершенствование «аборигенного» законодательства и правоприменительной практики.