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Rights of indigenous peoples of the Russian Arctic

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Abstract. The paper focuses on the relevant issue of legislative regulation of the rights of indigenous peoples of the Russian Arctic. The lands of the Arctic region have long been considered uninhabitable, and yet not for one century have they been explored and reclaimed by men. According to historical records, the Russian navigators sailed through the Arctic Ocean as early as the 11th century, and in the first half of the 16th century, a map of the Arctic Ocean seafloor was based on the drawings of Dmitry Gerasimov. By 16-17th centuries, the economic capacity of the Arctic territories was recognized both in Russia and in Western Europe. Some Arctic territories were featured in the treaties between the Muscovite state and the countries of Western Europe, which can be illustrated by the Treaty of Teusina signed with Sweden in 1595. However, the Government of the Russian Empire had long considered the development of the North as necessary, but not a top priority objective. In late 19th and early 20th century, the wealth of the Russian North was on the agenda again in the context of the economic boom and military growth of the leading European powers. In the USSR, the reclamation of the Arctic was limited to the development of natural resources, while the prospects of economic and industrial growth of the North as well as the associated legal regulations were also in prospect. Currently, the Arctic is a primary interest zone for Russia, the main acute issues remaining the reclamation and use of natural resources and legislative regulations of the indigenous peoples' rights.

1. Introduction

The Arctic zone of the Russian Federation is regarded as a subject of utmost strategic importance for ensuring the country's interests.

A special focus of the government should be on indigenous small-numbered peoples of the North, who not only require state protection, but also need to become fully incorporated in the Russian Arctic sustainable development.

Since the Russians were the first European settlers to come to the Arctic, about half of the Arctic population now live in the Russian territories. The indigenous population of the High North is formed by descendants of Russian immigrants — the Pomors (the White Sea coasts), Ust-Tsilemts (Ust-Tsilemsky District, the Komi Republic), Markovtsy (named after Markovo village, the Chukotka Autonomous Region), Kolymchans (the Kolyma river, the Republic of Sakha) and Gizhigans (the Gizhiga river, the Magadan Region).

The Pomors are considered to be an ethnic group of the Russian long-standing inhabitants. The most numerous indigenous people of the Russian Arctic is the Yakuts (the Republic of Sakha), who amount to about 500 thousand people. Other peoples living in the coastal areas of the Arctic are considered to be small-numbered peoples. Among them are: the Nenets (the Yamalo-Nenets Autonomous Region



and Nenets Autonomous Okrug) amounting to about 45 thousand people, Evens (the Magadan Oblast and Kamchatka Krai) amounting to more than 21 thousand people, Dolgans (the Krasnoyarsk Krai) numbering more than 7 thousand people, Evenks (the Eastern Syberia), Karelians (the Republic of Karelia), Chukchi (the Chukchi Peninsula, the shores of the Chukchi Sea and the Bering Sea), Koryaks (the Kamchatka Krai), Kola Sami (the Russian Kola Peninsula), Kets (the Krasnoyarsk Krai), Khanty (the Khanty–Mansi Autonomous Region), Nga-Nasans (the Taymyr Peninsula), Yukaghir (the Kolyma River), Selkup (the Tomsk Region, Krasnoyarsk Krai, Yamalo-Nenets Autonomous Region, Nenets Autonomous Region), Vepsians (the Republic of Karelia, Leningrad Region, Vologda Region) [6].



Figure 1. The Arctic ethnic groups settlement map
(Available at <https://ru.arctic.ru/population/>)

Each indigenous people has its own ancient culture, language, traditional handicrafts and epics. However, despite cultural differences, all indigenous people of the Arctic share a unique lifestyle and ways of exploiting natural resources inherited from their ancestors and adapted to the harsh survival conditions of the High North.

A part of indigenous peoples leads a nomadic or semi-nomadic way of living, which is defined by traditional ways of using natural resources, such as reindeer breeding, gathering, fishing, sea hunting and game hunting. The majority of the Russian Arctic's inhabitants are settled population living in villages, settlements, towns and cities. According to analysts, about 20 thousand people, who account for about a quarter of the aboriginal population, move throughout the Arctic all year round or for a part of the year. Most of the nomadic population of the country (60%) originates from the Yamalo-Nenets Autonomous Region [6].

About 1 million people currently live and work in the Arctic zone, more than 150 thousand of them originating from 17 indigenous small-numbered peoples.

Although throughout the past decade, the Arctic zone of the Russian Federation has been a focus of key strategies and big projects, the current legislation regarding the indigenous peoples of the North can be defined as undergoing legal stagnation and transformation.

2. Legal regulation

The first and crucial legal source of the Russian Arctic indigenous peoples' rights is the Constitution of the Russian Federation. It is worth mentioning Article 72, which establishes joint regulation of the national minorities' rights and freedoms by the regions and the Federation. Article 26 confirm the right to determine and indicate nationality. Many Federal Laws and other statutory acts establish the principle of equality between different ethnic groups [1].

The basic document regulating the social and economic activity in the Russian North is the Law of the Russian Federation of 19.02.1993 No. 4520-1 "On state guarantees and compensations for the persons working and living in the region of the High North and the districts equated to them". The concept based on the provisions of the Russian Constitution dedicated to the protection of the indigenous small-numbered peoples' rights, is reflected in several Federal Laws, such as: the Federal Law of April 30, 1999 No. 82-FZ "On guarantees of the rights of indigenous small-numbered peoples of the Russian Federation", the Federal Law of May 7, 2001 No. 49-FZ "On the territories of traditional nature management of indigenous small-numbered peoples of the North, Siberia and the Far East of the Russian Federation", the Federal Law of July 20, 2000 No. 104-FZ "On General principles for the organization of communities of indigenous small-numbered peoples of the North, Siberia and the Far East of the Russian Federation".

The rights of the indigenous peoples of the North are also guaranteed by a set of branch laws. For instance, Article 54 of the Water Code of the Russian Federation grants the indigenous small-numbered peoples the right to use water bodies for traditional uses of natural resources [2]. Article 48 of the Forest Code safeguards the protection of the original living environment and traditional lifestyles of the indigenous small-numbered peoples when using forests in the places of their traditional residence and economic activities [4]. Article 39.10 of the Land Code safeguards the provision to indigenous small-numbered peoples of the North and their communities of a state or municipally owned parcel of land for gratuitous use for a term not exceeding 10 years [3].

In order to develop the Arctic zone, in August 2017, the Government of the Russian Federation approved a state programme of social and economic improvement of the region until 2025. The programme stipulates a vast range of provisions beneficial for the rights of the indigenous peoples of the North.

Among them are: arranging special regimes of using natural resources and environmental protection, ensuring chemical safety in densely populated areas, preservation of cultural heritage, arts and crafts, improving the quality of life of the indigenous population and social conditions of the economic activity [5].

All the above-mentioned provisions comply with the Constitution of the Russian Federation, Federal Laws on rights of indigenous small-numbered peoples, as well as with the requirements of the fundamental international legal documents, such as: the 2007 United Nations Declaration on the Rights of Indigenous Peoples and the International Labour Organisation's Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries.

It should be pointed out, that the list of provisions of the state programme of the Russian Federation is also compliant with the international legislation directly related to the Arctic. For example, the provision for special regimes of using natural resources and environmental protection corresponds to the clause 25 of the Kirkenes Declaration, which recognizes the significance of the traditional knowledge of indigenous peoples in contribution to the sustainable development of resources.

All international statutory acts affecting indigenous small-numbered peoples all over the world fall into three basic groups. The first one includes documents of an advisory nature. Among them are:

the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 1992, the Vienna Declaration of 1989, the Charter of Paris of 1990 and other declarative documents encouraging a positive attitude towards ethnic minorities.

The second group covers documents aimed at making a cultural and ideological impact on the legal framework of each country. For instance, the International Labour Organisation's Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries, the CIS Convention of 1994 for the quality protection of national minorities.

The third group is formed by international documents intended for protection of national minorities from discrimination and humiliation. Here, it is worth highlighting the International Covenant on Civil and Political Rights (ICCPR) of 1965, the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and other legal documents binding on the Russian Federation.

Despite that, the legislation and human rights protection in Russia is actually affected by the lack of a stable framework of governmental management of the indigenous small-numbered peoples' affairs.

In terms of improving the Russian Arctic legislation, preference should be currently given to resolution of key issues related to the indigenous small-numbered peoples of the North.

These issues include prioritized use of natural resources, absence of legal means of obtaining compensations, ethnic self-identification. A particular emphasis is to be put on the right of indigenous peoples to participate in taking decisions affecting their freedoms and interests. Under the circumstances, cooperation with indigenous peoples should be ensured through their representatives at all levels of public authority in order to secure their wilful, provisional and deliberate consent. To address this problem, it could appear helpful to define the range of issues which necessarily require preliminary consulting with the representatives of indigenous peoples, to formalize the procedure and format of such consultations.

Thus, the Russian legislation on indigenous small-numbered peoples of the North is a developing legal reality comprised of a set of statutory acts at both federal and regional levels.

3. Actual problems

One of the key issues related to the rights of indigenous peoples of the North today is the absence of procedures for determining nationality. According to the federal legislation, the majority of rights and exemptions guaranteed for indigenous small-numbered peoples are accessible to those citizens, who have confirmed their national affiliation to ethnic minorities. It incurs certain difficulties related to finding relevant criteria and procedure. For example, there is no regulatory procedure to recognize national affiliation. This legal lacuna prevents indigenous peoples of the North from fully exercising their specific governmentally guaranteed rights applicable to the traditional use of natural resources and lifestyle [7].

The problems related to traditional hunting and fishing should not be ignored either, since the use of natural resources is an indispensable part of life, culture and customs of indigenous peoples of the North. The survival and preservation of entire ethnic groups depend on these activities. It seems feasible to facilitate access to traditional resources, differentiate types of quotas in order to preserve the established lifestyle and to expand the list of traditional economic activities.

This category also includes interrelation between the residents of the North and industrial enterprises. The traditional territories of inhabitation and economic activity of the indigenous small-numbered peoples are being actively industrialized, which gradually leads to driving them out of their ancestral lands and destroying their traditional lifestyle.

Under the circumstances, the federal and regional authorities as well as public organizations should regularly monitor status quo of indigenous peoples of the North in the industrialization areas on the basis of certain indicators and immediately take necessary measures to improve the situation.

In the view of this challenge, the matter of legal support of natural resources use has become relevant in certain regions of the Russian Federation in early 21st century. The government is currently placing an increased focus on the priority development of the Arctic zone concurrently with maintenance of the ecological balance within the vast territories of Northern Russia [8].

A keystone condition of state regulation of the natural resource use in the Arctic is the possibility to conduct a proper ecological impact assessment. In their research, E.V.Voskresenskaya and A.A. Tebryaev point out that the ecological impact assessment as well as "forensic studies are crucial legal instruments for enabling the sustainable use of natural resources and environmental protection from negative impact in urban areas". Furthermore, the authors consider it feasible to adopt the "National Standard for Environmental Forensic Assessment" and "Unified Standard of the Russian Federation for Legal Expertise" [9]. While adopting the "National Standard for Environmental Forensic Assessment", it should be taken into account that the Russian Federation sovereignty extends to a vast sector of the Arctic, which imposes on the state an additional responsibility for ensuring the environmental safety of the region in the context of its development and industrialization.

Therefore, a necessity arises to devise an entire set of legal regulatory acts for controlling safe development of particular gas and oil fields as well as environmentally friendly transport of large hydrocarbon reserves via the Arctic Ocean and Arctic seas [10].

As it has already been mentioned, a particular emphasis is to be put on the right of indigenous peoples to participate in taking decisions affecting their freedoms and interests. According to experts, in the modern context, indigenous small-numbered peoples are not as much interested in governmentally guaranteed specific rights, as in taking management-related decisions with regard to use and preservation of traditional territories of inhabitation and economic activities together with the public authorities. Thus, autonomy as a way of communication with the government seems an applicable model, which is capable of maintaining fragile environmental balance of the Arctic and keeping the traditional lifestyle and economic activity of the indigenous peoples of the North ongoing.

During the past decade, there can be noted a trend of legislation amendment by Arctic countries. The "protectionism" model is shifting to the model of joint administration of the government and indigenous peoples. In Norway, the USA and Canada, new legal instruments are emerging for exercising the right of indigenous peoples to participate in administration of northern territories. Major improvements can be observed in Canada, where the sphere of autonomous administration implemented through exercising the indigenous peoples' rights covers the provision and use of lands, exploitation of fauna, management of specially protected natural areas, environmental control and assessment, as well as use of water resources [7].

In terms of the Russian legislation, a tendency to restrict autonomy of indigenous peoples can be observed. It results from a lack of guaranteed representation of indigenous peoples in legislation bodies and representative bodies of local self-government, as well as by absence of the legislative power to grant certain self-government authority to communities of indigenous peoples of the North. Within the studied aspect, it is worth mentioning public organizations of national minorities, to which it could be possible to delegate a considerable part of rights related to elections, protection of interests and control over authorities.

It should be noted that there has been established a legal basis for joint administration of Arctic territories by the public authorities and representatives of indigenous peoples in Russia. The key role here is played by Article 69 of the Russian Constitution, which guarantees the rights of indigenous small-numbered peoples in accordance with generally accepted principles and norms of international law, as well as international agreements of the Russian Federation [1].

In addition, opportunities are being created for indigenous peoples to participate in the administration of their territories at the regional level. For example, in the Sakhalin Region, there has been established the Institute of representatives of the peoples of the North at the regional Duma, while in the Duma of the Khanty-Mansi Autonomous district – Yugra, the Assembly of the peoples of the North has been operating with a special status for more than 15 years. In a number of regions, special committees and commissions responsible for the affairs of the Northern peoples are being established as part of legislative bodies. Among these regions are the Republic of Sakha (Yakutia), Krasnoyarsk and Kamchatka Regions, Chukotka and Yamalo-Nenets Autonomous Regions [7].

Despite the occurrence of the legal basis for joint administration of the Arctic territories in the federal subjects of the Russian Federation, the possibilities are used selectively and unsystematically. As a consequence, autonomy is exercised only on a partial and occasional basis.

4. Russian Association of Indigenous Peoples of the North

The Russian Association of Indigenous Peoples of the North (RAIPON), which was founded in 1990 at the first Congress of the peoples of the North, is currently a rather influential organization in this sphere. RAIPON is a Russian national umbrella organisation representing 41 peoples (numbering about 250 thousand), which are split into 34 regional and ethnic unions. The Association is authorised to represent these peoples on the federal and international levels.

The objective of the Association is to protect the rights of indigenous peoples and their legal interests in terms of environmental preservation, social, economic and cultural development, to provide educational support and assistance in exercising the right for autonomy.

The supreme body of RAIPON is the Congress of indigenous small-numbered peoples of the North, Siberia and the Far East of the Russian Federation, which takes place every 4 years. The Association cooperates with the State Duma of the Russian Federation and the Government of the Russian Federation on the federal legislation regulating the rights of the indigenous peoples, inter alia, by means of reaching agreements with the public authorities and arranging events on federal and regional levels.

RAIPON holds a special consultative status at the Economic and Social Council of the United Nations (ECOSOC), is an active member of the UN Human Rights Council, the UN Permanent Forum on Indigenous Issues and a Permanent Participant of the Arctic Council.

The members of the Association Presidium are members of the UN Permanent Forum on Indigenous Issues, the UN Expert Mechanism on the Rights of Indigenous Peoples, the Public Chamber of the Russian Federation as well as the UN Working Group on the issue of human rights and transnational corporations and other business enterprises.

One of the major focus areas of the Association is international activity. Owing to the representatives of the Association, the issues of the Russian indigenous small-numbered peoples are not only known abroad, but also actively addressed. The Association operates within the Arctic Council through 6 working groups, each of them being responsible for a certain sector. Some groups monitor the elimination of pollution in the Arctic, other ones supervise the Arctic Monitoring and Assessment Programme, some of them focus on preservation of flora and fauna of the Arctic. Separate groups are in charge of prevention, preparedness and liquidation of emergency situations as well as protection of the Arctic marine environment and sustainable development in the Arctic.

One of the challenges faced by RAIPON is communicating to the society the awareness of the Arctic zone as not merely a natural resource, but, first of all, as a territory where indigenous peoples live, their traditions and customs preserving the environment and fragile ecosystems.

At the UN, the interests of indigenous peoples are represented by the Permanent Forum on Indigenous Issues, which is a subsidiary body of Economic and Social Council of the United Nations (ECOSOC). Its mandate stipulates addressing the issues of indigenous peoples related to economic and social development, environmental protection, culture, healthcare and human rights. The Permanent Forum on Indigenous Issues is annually held in New York for 10 working days.

5. Conclusions

It is crucial to emphasise the fact, that the Russian legislation distinguishes the concepts "indigenous peoples" and "indigenous small-numbered peoples". Indigenous peoples of the Arctic fall into three categories: a) small-numbered peoples; b) some numerous peoples of the North (the Yakuty or Yakut, the Komi); c) sub-ethnic groups of Russian long-standing inhabitants. However, specific state protection and care extend only to indigenous small-numbered peoples: the Nenets, Selkup, Nga-Nasans, Chukchi, Eveny, Evenks, Dolgans, Itelmens, Chuvans and others. This contradiction incurs a number of legal collisions, which have a direct impact on the development and interaction of these groups of Arctic peoples [7].

Therefore, the legal regulation in the Arctic zone should cease being occasional and should become systematic instead, with a tendency to pass statutory acts in a short-term, mid-term and long-term perspective with a due regard for political, social, economic, cultural and ethical bases of the indigenous peoples' status. Moreover, it is necessary to enforce the federal standard of rights to certain legal relations through the regional regulation with an account for the associated ethnic communities' status quo.

To sum up, in order to meet modern demands, an inevitable condition of securing rights of indigenous peoples of the North is codification of the relevant law, which would result in a new statutory act, such as, for instance, the Code on Indigenous Small-numbered Peoples of the North of the Russian Federation.

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