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INDIGENOUS PEOPLES OF RUSSIA: COLLISION BETWEEN DOMESTIC AND INTERNATIONAL LAW

The article suggests the brief scientific and legal analysis of Russian constitutional law on the rights of indigenous peoples. The main aim is to show the problematic issues and legal gaps inside the system of federal normative acts in comparison with international legal standards, customs and recommendations from the authoritative bodies as the UN, ILO, CERD and etc. The final provisions contain the concrete measures for the legal reform in Russia, protecting indigenous communities.

Indigenous peoples, indigenous numerically small peoples, Russia.

With the collapse of the Soviet Union, the policy of assimilation, conducting at the state level, had stopped. The Russian Federation Constitution adopted by national referendum on 12. 12. 1993 establishes in Article 69 the principle of “guarantee the rights of the indigenous numerically small peoples” according to international law [1]. Unfortunately, this rule is rather declarative because Russia is still not a party to ILO Convention 169 – one of the strongest instruments in international law. Russia has not ratified ILO Convention № 169, primarily due to the presence of a certain kind of legal conflicts with Russian law. It requires the clause concerning the concept of “indigenous people” as enshrined in the Article 1 of the Convention. Reservations must also apply to the Article 14 of the Convention. It establishes that for the numerically small peoples recognized the rights of ownership of the lands they traditionally

occupied. However, the acting of Russian legislation does not fix for numerically small peoples the land ownership rights to the territories of traditional nature [2]. Still, given the interest of the Russian Federation in the convention and the convention's position as the sole current instrument on indigenous rights, it is interesting to apply its standards to the situation of the numerically small peoples. Even if the convention does not become binding for the Federation, it still constitutes a solid political tool to provide pressure for the development of indigenous rights [3]. Unfortunately, Russia for this moment had not yet signed the United Nations Declaration on the Rights of Indigenous Peoples [4].

There are several key provisions in the relevant articles of the Constitution, establishing rights and freedoms of the peoples residing in Russia: 1. equality of rights and freedoms of man and citizen, regardless of their nationality, language and culture (Article 19); 2. prohibiting any form of restrictions on the rights of citizens on ethnic grounds, as well as actions aimed at inciting ethnic hatred (Article 26); guarantee the rights of "indigenous numerically small peoples" and "numerically small ethnic societies" (Article 69, Article 72 (m)).

Article 69 leads the idea, that: "guarantee the rights ... according to the universally recognized principles..." If we look at the UN Declaration on Indigenous Peoples Rights we can find those principles and basic rights: 1. Right for self-determination (3, 4 Article); 2. Right for land resources (25-29 Article); 3. Principle of free and prejudicial agreement (10, 11, 19, 28, 30, 32 Article); 4. Principle of consultations (19, 32, 38 Article); 5. Right for restitution (11, 28 Article); 6. Unity of the state (46 Article).

The last 6th principle is very important, because it means that no separatism could exist in modern society [5], only, if the state government could give full sovereignty for indigenous peoples [6]. Secession can be realized only in case in "genocide" or systematic cruel human rights violations against indigenous people. This is the doctrinal opinion which could be real international custom in