

PROVISION AND PROTECTION OF THE RIGHTS OF INDIGENOUS PEOPLES OF THE NORTH AS A FUNCTION OF PUBLIC AUTHORITIES

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The subject. The article describes the main problems of protection of the rights and freedoms of indigenous peoples as one of the most vulnerable groups of residents in a modern state. The author emphasizes the relevance of the study, based on increased attention to the preservation of the peoples of the North, especially by the international community.

The purpose. The author dwells particularly on the legal protection of the rights of indigenous peoples of the North, both on the global and national levels. The main tasks and functions of state authorities on support and protection legal status of the indigenous Northern people are discussed.

The methodology. General scientific methods (systemic, structural, formal logical) and special (technical, legal, statistical) methods are used.

Results and scope of it's application. After the analysis the national legislation the author identifies the shortcomings that impede the efficient activities of state authorities in this direction and comes to the conclusion that the Russian normative legal base, regulating the activity of indigenous peoples of the North and protection of their rights, does not fully meet modern requirements and existing needs. Among the major remedy options the author cites a number of provisions which may be laid in the basis of the revised state policy.

Conclusion. The Russian Federation has not used the full potential of the tools to preserve the culture and identity of peoples of the North, which allows to simulate and to conduct further research to improve the quality of life of the peoples of the Russian North.

Key words: indigenous peoples of the North,; the legal status, the constitutional status, public authorities, provision, security, improvement of the legislation.

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1. Introduction to the subject of research.

Considering the problems of protection of the rights of indigenous peoples of the North, it is necessary to pay attention to the following aspects, to fully characterize the significance of the issue under study.

About 70% of indigenous peoples live in rural areas, and as a result, are directly dependent on the surrounding environment [1, p.10]. At the moment, there are a number of both universal and regional normative-legal acts of international law, which are aimed at protecting the rights and freedoms of indigenous peoples [2, p.206].

The beginning of a specialized protection of indigenous peoples, including the peoples of the North, was the adoption in 1957 of the ILO Convention № 107 "On the protection and integration of indigenous and other communities, Tribal and Semi-Tribal Peoples in Independent

Countries". With the adoption of the legal act the term "indigenous people" was adopted in the international rules [3, p.129].

The following ILO Convention No. 169 was adopted in June 1989. According to the Convention represented all the indigenous peoples should be considered only as a kind of semi-independent political entities that have the right to maintain and develop in accordance with their own aspirations and desires [4, p.43]. In 2006 the Council of the UN Human Rights was approved and adopted the Declaration on the Rights of Indigenous Peoples.

In addition to the above, we can also note the Declaration of Kari-Oca and the Charter of indigenous peoples of the world in 1992 [5, p.88].

Indigenous Peoples of the North, Siberia and Far East of the Russian Federation include 40 ethnic groups who inhabit a vast territory of northern and Asian parts of Russia. Indigenous peoples make up less than 0.5% of the total Russian population [5, p.86].

Their traditional ways of living are based on such economic activities as fishing, herding and hunting. Among the many ethnic groups of the Russian Federation's, northern peoples are among the most vulnerable to discrimination due to the low economic status, a considerable distance of their territories from the administrative center of the region and their limited political influence. This situation is historically conditioned.

2. Development of regulatory support for the rights of indigenous peoples of the North.

The multinational composition of the Russian state necessitated the Soviet government accent its activities in the position as the titular nations and indigenous minorities. On November 25, 1925 the Central Executive Committee adopted a decree defining the creation of so-called "indigenous management bodies", for inclusion of indigenous peoples into the economic activity and the rise of the social and economic spheres of life. But, nevertheless, no special status was granted to them [6, p.8].

Five years later an additional decree initiated by the creation of national associations in the areas of settlement of small nationalities of the North was adopted [7, p.8]. In the second half of the 1980s the legal terminology has been changed. The term "nationality" was dropped from official use, as the word "small". Later in 1989 it was recommended to implement the consolidation of the so-called traditional territories, which are not subject to alienation whether for industrial needs of small indigenous peoples of the North, Siberia and Far East. From 1990 to 1993 the phrase "indigenous peoples" was used twice in official documents, and only in the decrees of the head of state.

The above-mentioned regulations clearly demonstrate the fact that state authorities began to focus particular attention on the existence of a number of indigenous peoples issues.

The year 1995 was marked by the development of the draft document "Fundamentals of the legal status of Indigenous Peoples of Russia". It contained two significant aspects: the parameters (qualitative and quantitative), which defined the essence of the phenomenon of indigenous people as a control object and the support of certain rights and freedoms have been entered:

- qualitative criteria: the indigenous peoples living in the territory, which can be described as the traditional territory of their ancestors, it retains the features of a traditional way of life for him, sees itself as a special self-sustaining ethnic community,

- The quantitative criterion: the indigenous peoples in their numbers may not total more than 50 thousand people [8, p.17].

These criteria are reflected in current legislation, particularly in the Federal Law of 30.04.1999 number 82-FZ. The law establishes the basis for the implementation of safeguards to protect the rights of indigenous peoples, in particular:

1. guarantee of the so-called "original economic-economic development",
2. guarantee to ensure a certain level of social life,

3. guarantee of preservation of cultural identity,
4. guarantee of preservation of original habitat, etc. .

Thus, it is confirmed that the significant function of the state and state structures is to protect and preserve the specific features of the life and cultural foundations of indigenous peoples. At the end of the twentieth century, activities aimed at improving the situation and preserving the cultural structure of indigenous small peoples began to be seen as an important element of state national policy [9, p.25]. However, the problems associated with the life of the peoples in question, the exercise of their legal status demonstrate lack of attention of public authorities to the field.

3. Traditional way of life as an object of provision.

The collapse of the Soviet Union led to a general collapse of the public infrastructure in the territories of indigenous peoples. Consequently, many indigenous communities have been left to fend for themselves in economic activities, compiling it, and sometimes, the only source of food and cash income products [10].

As noted earlier, at the end of XX - beginning of XXI century, the indigenous peoples of the Russian North were in a very precarious position. Their difficulties are directly related to the fact that the very foundations of their existence and functioning are risky. The complex problems are related to the fact that the struggle of indigenous peoples for a special legal status and implementation of certain legislative guarantees are focused around the struggle for resources [11 p.73].

Denial of the right to the realization of the traditional way of life deprives indigenous peoples of life in dignity and leaves them in a kind of vacuum. A significant problem of protecting the rights of indigenous peoples of the North is also the preservation of cultural heritage, in particular, of languages, culture, traditions etc. [12]. This aspect is significant in the list of rights and freedoms of small indigenous peoples, to which representatives of federal and regional authorities do not pay sufficient attention.

The advent of industry in the territory of the indigenous peoples of the North is also a problem. It is necessary to actively implement the state policy of protectionism of the indigenous population of the North. The predominance of extractive industries has had a serious impact on their ability to continue such a life and, consequently, to guarantee their long-term food security [13]. Since the 1960s, more and more dynamically developing mining turned territory of living of indigenous people into areas of environmental disasters. In recent years, a sharp rise and fall of oil prices and increased environmental pressure in the territories of indigenous peoples. Records show that the power structures, as well as private corporations are not yet able to get informed consent of indigenous peoples for implementation of the mining activity. The construction of large hydroelectric dams is another major threat to the collective survival of indigenous peoples [10]. Since the beginning of the new millennium, the creation of certain legal prerequisites for the privatization of land, forests and water bodies has caused serious threats to the indigenous population.

Thus, there are a significant number of problems and difficulties related to the implementation of the rights of indigenous peoples to a decent livelihood, taking into account their traditions and cultural identity.

4. Defects of legal support of vital activity of the indigenous peoples of the North.

The Russian legal framework that regulates the livelihoods of the indigenous peoples of the North and the protection of their rights does not fully meet modern requirements and existing needs. In particular, it is possible to single out such shortcomings in the current legislation, which hinder the effective activity of public authorities in the direction in question, such as:

1. The multiplicity of different legal acts.

2. The existence of legal rules of a general nature governing the protection of the rights of indigenous peoples.

3. The absence of federal legislation that would adjust herding and other traditional economic activities of the peoples of the North.

4. The virtual absence of modern legislation the official interpretation of the concept of the peoples who are on the verge of extinction.

5. The presence of considerable uncertainty in the direction of said previously ratification ILO Convention № 169.

Thus, there is no established and effective system to support the fundamental interests peoples of the North in the modern Russian legislation [8].

In addition, the legal definition of indigenous people does not allow to single out a group of small peoples entitled to special protection by the public authorities [14, p.59].

According to A.V. Filipenko, protection of rights of indigenous peoples of the North needs adoption of the measures:

- Firstly, the codification of the target of legislation in the field of protection of rights.
- Second, a single specialized body of state power not only in the autonomous region, but also at the federal level.

- Third, the increasing activity of public organizations.

- Fourth, most importantly, the right to the territory of traditional nature. [15]

Despite the existence of various laws defending the rights of indigenous peoples of the Russian Federation of the North, these categories of the population are in fact deprived of the guaranteed right to land as a necessary aspect of their survival existence. Without adequate protection of indigenous communities, northern people cannot resist the aspirations of private entities to gain access to land, water and natural resources on the territory of the traditional habitat of these peoples.

5. The main directions of ensuring and protecting the rights of indigenous peoples of the North.

Modern scholars point out that with regard to the indigenous peoples need to adhere to the so-called "positive discrimination":

1. Any additional benefits can be established only in the case of real need.

2. Special rights of the indigenous peoples of the North can be regulated and fixed only by the federal legislation.

3. Use and the introduction of incentives of an economic nature is advantageously carried out by creating a hierarchy corresponding to resource users.

4. It is necessary to carry out denial of dependency policies in connection with the danger of reducing the so-called "potential competitiveness" of the people.

Among the main options to correct the situation contains the following provisions which may be laid in the foundation of the revised state policy:

1. It is necessary to improve the legal framework designed to protect traditional ways of land use not only within the existing legal acts, but also in the creation of an integrated system that includes both federal and regional level of regulation.

2. It is advisable to analyze the legislation in the field of management of natural resources on the subject of discrimination against indigenous peoples, with the revision of any situation which is not compatible with the realization of the rights of indigenous peoples of the North.

3. Efforts should be made to develop legislative acts aimed at carrying out a systematic and comprehensive socio-anthropological impact assessment of industrial projects in the territory and the habitats of indigenous peoples.

4. As a specific example of implementation of the rights of indigenous peoples of the North is a necessary abandonment of the Evenk hydroelectric dam that threatens to displace and destroy

the livelihoods of many indigenous Evenks living in the former Evenk Autonomous District, in accordance with the recommendations of the World Commission of dams about fate and indigenous peoples in decision-making on dams project ah.

5. It is necessary to establish a system of control over the actions of public authorities to implement and protect the rights of indigenous peoples.

6. It is necessary to consolidate the federal requirement for so-called "principle of preferential access" indigenous peoples of the North to the biological resources.

7. It is necessary to carry out the preparation of information on the measures before taken to assess and mitigate the impact of global warming on indigenous peoples of the North, including the provision of legal guarantees (such as the land rights), allowing indigenous peoples to adequately respond to the ongoing changes in their natural environment.

In modern conditions it is possible to improve the protection of the rights of indigenous peoples as a specific system functions of public authorities through an authorized institute. At present the Russian Federation the list of typical public office entities present position of "Commissioner for the rights of indigenous peoples." A person who is engaged in such a position carries out activities of protection is, the rights and interests of indigenous peoples in a particular subject of the federation . According to the basics of the existing constitutional system, the Russian state is fully guaranteed protection of the rights and freedoms of indigenous peoples in full compliance with existing international law [16, p.758] .

Some subjects of the Russian Federation introduce these positions. In accordance with the Regional law of Kamchatka Territory on December 19, 2013 № 367 the post of Commissioner was established to carry out the following activities:

1. protection of rights of indigenous peoples who live in the territory of the RF subject,
2. enforcement of the respect and recognition of the special status of the indigenous peoples on the part of public authorities of subjects of the Russian Federation,
3. enforcement of the respect and recognition of the special status of the indigenous peoples on the part of municipal authorities located on the territory of the subject of the Russian Federation [17 , p. 24] .

Improvement of the efficiency of the activities must be accompanied by the following innovations: the development and implementation of the federal law regulating the activities of the Ombudsman for the Rights of Indigenous Peoples of the North, the transfer of the Commissioner for the Rights of Indigenous Peoples from the regional to the federal level.

6. Conclusions.

There are a significant number of problems and difficulties which are linked to the implementation of indigenous peoples' rights to a decent life in accordance with their traditions and cultural preservation. Important function of the state and government is the protection and conservation of the features of life and cultural backgrounds of indigenous peoples. The protection of rights must be carried out at both the federal and regional level, but one should pay attention to the fact that the dominance of the regional legislation reduces the efficiency of public institutions in the absence of complete and effective legal system.

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<p>Информация об авторе Силантьева Надежда Андреевна – аспирант, кафедра государственного и муниципального права, Сургутский государственный университет 628400, Тюменская область, г. Сургут, пр. Ленина, д. 1. SPIN-код: 4916-9911, AuthorID: 832328</p>	<p>Information about the author Nadezhda A. Silantieva – PhD student, Department of State and Municipal Law Surgut State University 1, Lenina, Surgut, Tyumen region, 628400, Russia SPIN-code: 4916-9911, AuthorID: 832328</p>
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