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## **Peculiarities of Legal Regulation of Socio-Cultural Development of Native Small-Numbered Peoples of the North, Siberia and the Far East under the Conditions of Global Transformations**

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*Under the conditions of growing global transformations, steady socio-cultural development of native small-numbered peoples of the North, Siberia and the Far East of the Russian Federation cannot be attained without strengthening of their social-economical potential, without preservation of their original life environment, traditional way of living and cultural values. Achievement of all these recollected factors is possible only if there is a focused support from the part of the state and if the nations themselves mobilize their inner resources. In connection with all these, consideration of peculiarities of legal regulation in the sphere of protection of rights and of traditional way of life of the native small-numbered peoples is especially topical.*

*In the given article we presume that the main stages of becoming of relations between the state and the native small-numbered nations of the Russian Federation correspond to international tendencies, though they differ significantly from them in timing. Besides, we are sure that as a state, the Russian Federation only starts forming its partnership relations with participants of the small-numbered nations.*

*The author of the article believes that we need a more precise definition and delineation of full powers of the federal, regional and local organs of power, which will help to avoid duplication of full powers, will set responsibilities of each level of power realization for provision of a legal status of the native small-numbered nations. Today, we observe that formal approach to full powers delineation takes place in the federal legislation, and it does not contribute to the formation of a necessary system of protection of the native small-numbered nations' rights. The mentioned approach is supposed to provide for avoiding of solution of vitally important problems of the given nations' originality preservation on the regional level, as far as federal subjects variously interpret the volume of their full powers in the given sphere, proceeding from that, what is allowed by the federal legislation.*

*Finally, we come to a conclusion that the legal base of the Russian Federation subjects, on which territories the native small-numbered nations live, differ significantly as in its number of normative legal acts, directed to organization and provision of protection of the native small-numbered nations' primordial living environment and of their traditional way of living, so in the content of those rights, which are given to the native small-numbered peoples. And all this leads to significant, and not always*

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*justified differences in establishment of the legal status of the native small-numbered peoples of the North, Siberia and the Far East on the territory of the Russian Federation.*

*Keywords: native peoples, socio-cultural development, legislation, primordial living environment, full powers.*

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Under the conditions of growing global transformations, steady socio-cultural development of the native small-numbered peoples of the North, Siberia and the Far East of the Russian Federation cannot be attained without strengthening of their social-economical potential, without preservation of their original life environment, traditional way of living and cultural values. It is possible to achieve all these mentioned factors only if there is a focused support from the part of the state and if the nations themselves mobilize their inner resources. In connection with all this, it is especially topical to consider peculiarities of the legal regulation in the sphere of protection of rights and of the traditional way of life of the native small-numbered peoples. Thereat, one should understand general world tendencies, occurring in the given sphere.

Analysis of the international legislation let us single out three main stages (Maximov, 2007) of interrelations between the state and the native peoples:

- 1) The stage of collaboration;
- 2) The stage of domineering and assimilation;
- 3) The stage of partnership relations formation.

On the first stage (in XVII-XVIII centuries), the government accepted the contribution of the aborigines' economy, their land and self-government titles. Aboriginal peoples usually prevail in their number on vast territories, while there are domineering branches in the economy of these territories, which are traditional for the native people. Aboriginal peoples enter the exchange of goods and commercial relations. Peaceful character of relations and cession of

lands were achieved by means of their purchase from the representatives of the native peoples.

On the second stage: XIX – up to the middle of XX centuries – foreign countries were typical to lead the policy of domineering and assimilation: development of new branches of economy (agriculture in the southern regions, forest and ore mining industries on the North), intensive growth of the nonresidential population. In the result we observe:

1. Aboriginal peoples are deprived of their lands and resources. Nonresidential population is engaged in the development of agriculture and industry. Migrants obtain monopolistic access to timber, mineral and power resources, gain rights of fishing and hunting areas, domineer in furs trading, in products of fishery and deer breeding.

2. Aboriginal peoples' self-government is interchanged by the policy of paternalism. Communities of the native peoples become objects of state regulation (on equal terms with the mineral resources and objects of infrastructure), and their interests are presented and defended by special state services. Full powers of the communities' authorities are limited by a narrow list of questions of traditional business and way of living.

3. They take measures, which are hazardous for the native cultures. Canada and the USA used to put various tribes to reservations – an efficient method of destruction of Indian communities and their assimilation. Fields striped-settling of Indians and colonists-farmers was also one of the means of assimilation. Christianization and the system of education (residential schools, foster families) we can also put on that list.

4. There is a special ideology, which justifies political, economical and cultural domineering over native peoples. In the middle of XX century there was «The Doctrine of Assimilation» or «The Theory of Colonists». In correspondence with the doctrine of assimilation, all advantages and profits, being obtained by the nonresidential citizens from the usage of the new lands resources, were presented as a burden, which they bore for the sake of economical and social progress.

5. Racial prejudice is being spread. In reality, ideas of «self-value» of the native nations and cultures and necessity of their protection humiliate aborigines and bring up racial prejudices, as far as they present aboriginal communities as some special collectives, being only capable of traditional life provision and not able to self-organization and self-development.

Thus, we can conclude that the native peoples of the USA, Canada and the North of Scandinavia lost their control over their lands and resources on the second stage. Poverty, their dependence on the external political decisions, economic aid, and racism led to psychological and infectious diseases of the aboriginal population and also to their «social» illnesses. Processes of assimilation and dilution of the native peoples in the society of frontier men were estimated as logical and positive phenomena (Maximov, 2007).

The third stage (from the middle of XX century up to the present time) is the period of collaboration renewal. In response to the large-scaled resources and hydro-power projects, and also because of the attempt to repeal the American Indian law in the USA and Canada, the aboriginal peoples of Alaska, the Northern territories of Canada, Greenland, Switzerland, and Norway claimed for their rights of the lands, where they had been the first peoples to inhabit and considered to be their motherland. Native peoples' organizations came out for such economical development, which would not destroy their communities, but

would strengthen their self-governing and their abilities to economical and social progress. They applied to a court with their land claims, began to gather materials, substantiating the aboriginal peoples' right to live as collectives and nations – to live on their own lands and to have their own power structures. Thus, problems of the northern nations took a visible place in social and political discussions.

That is why, we need to single out that the attitude towards the aborigines of the foreign North has undergone radical reforming in the last three decades. Instead of searching for the ways of preservation of the paternalism policy and substantiation of necessity to subordinate the interests of small-numbered nations to «the national interests», they have chosen another way – the way of searching for justice in relations between the residential (primordial) and nonresidential citizens. Rights of lands and self-government do not give the native citizens advantages, but give chances and opportunities for achievement social and economical equality with the rest population of the country and the region, where they live. Arguments of those moral and material benefits, which the entire society will get, have been of big importance (Maximov, 2007). Thus, satisfaction of the land demands of the native peoples becomes a new form of protection of the natural eco-systems; besides, it allows keeping the influence and the control of the high-rental natural resources development in the hands of the federal center, solving «all the geopolitical nervousness» concerning «the waste lands».

Foreign experience proves that the most important thing for the small-numbered peoples is not the programs, not the invention of new structures for private problems solution (alcoholism, healthcare, education and so on.), and not simply possession of land rights and some power authorization, but first of all the state's

respect for their individual and collective rights, which allows possessing all the possibilities of the equal peoples' society.

We are to mark that the main stages of relations becoming between the state and the native small-numbered nations in the Russian Federation correspond to the international tendencies, but they much differ in their time periods. We may note that as a state the Russian Federation has just begun forming partnership relations with the representatives of the native small-numbered nations.

At present time, there are 40 small-numbered northern peoples densely living in 28 subjects of the Russian Federation. And in connection with this fact, we are to state that in general they have created the legal base in the sphere of protection of rights and traditional way of living of the small-numbered nations in Russia. The Russian Federation is a participant of international treaties in this sphere. In accordance with the Constitution, the questions of protection of the primordial living environment and traditional way of living of the small-numbered nations' ethnic communities are referred to the joint competence of the Russian Federation and the subjects of the Russian Federation (paragraph «m» part 1 p. 72) (Constitution., 2009). It appears from this that protection of the native small-numbered nations' rights in the mentioned sphere must be realized not only on the federal, but also on the regional level (Kryazhkov, 2005).

Federal Law №184-ФЗ dated 06.10.1999 «Concerning the general principals of organization of the legislative (representative) and executive organs of state power of the subjects of the Russian Federation» (Legal reference system...) settles the mechanisms of division of the federal and regional organs of power according to the subjects of joint competence, guarantees the list of full powers of the state authorities of the RF subjects, which are independently realized by the given

organs by means of the RF subjects' budgeting funds (regardless to subventions from the federal budget). To the number of the mentioned full powers we may also refer the powers in the sphere of «organization and provision of security of the primordial living environment and traditional way of living of the small-numbered nations of the Russian Federation» (subparagraph 54 paragraph 2 p. 26.3). It is significant that the mentioned questions can be solved by the state power organs of the RF subjects by means of accepting laws and other normative legal acts, including regional programs, independently from the presence of corresponding federal laws positions, which settle the given right.

Today, concretization of full powers in the sphere of organization and provision of security of the primordial living environment and traditional way of living of the small-numbered nations is guaranteed by several Federal laws: Federal Law № 82-ФЗ dated 30 April 1999 «Concerning the guarantees of rights of the native small-numbered nations of the Russian Federation», Federal Law № 104-ФЗ dated 20 July 2000 «Concerning the general principals of organization of communities of the native small-numbered peoples of the North, Siberia and Far East of the Russian Federation», Federal Law № 49-ФЗ dated 7 May 2001 «Concerning the territories of traditional environmental management of the native small-numbered peoples of the North, Siberia and Far East of the Russian Federation» (Legal reference system...). Thereat, the most general list of full powers of the federal, regional and local organs of power in the considered sphere is guaranteed by the Federal Law «Concerning the guarantees of rights of the native small-numbered nations of the Russian Federation».

Besides the mentioned laws, there are also corresponding full powers of the federal, regional organs of state power, organs of local self-government in the Land Code of RF, in Federal

Law № 7-ФЗ dated 10 January 2002 «Concerning the Environment Protection», Federal Law № 174-ФЗ dated 23 November 1995 «Concerning Ecological Examinations», Law of the Russian Federation № 2395-1 dated 21 February 1992 «Concerning Subsurface Resources», Federal Law № 52-ФЗ dated 24 April 1995 «Concerning Fauna», Federal Law № 166-ФЗ dated 20 December 2004 «Concerning Fishing and the Conservation of Aquatic Biological Resources» and some other laws (Legal reference system...). In these laws, the full powers of the organs of state power in the sphere of protection of the primordial living environment of the small-numbered ethnic communities are defined proceeding from the object of regulation of the corresponding act.

Moreover, as for today, the Russian Federation legislation guarantees certain measures of state support (in the form of benefits, subsidiaries, quotas for the usage of biological resources). Benefits for the representatives of the native small-numbered nations of the North, living on their traditional areas and leading their traditional economical activity, being engaged in their traditional types of commercial activity, are guaranteed by the Tax Code of the Russian Federation, the Forest Code of the Russian Federation, the Water Code of the Russian Federation and the Land Code of the Russian Federation.

For the last 15 years, they have realized 3 Federal target-oriented programs on the territory of Russia, and also numerous regional target-oriented programs and sub-programs for the social-economical development of the small-numbered peoples of the North, which are appealed to form conditions for their steady development by means of the federal budget, budgets of the Russian Federation subjects and non-budgetary resources. Using the funds of the federal budget, they have provided subsidiaries for the budgets of the Russian Federation subjects

in order to support northern deer and livestock breeding.

In most organs of executive power of the Russian Federation subjects, they have created structural sub-departments for affairs of the small-numbered peoples of the North, Siberia and Far East, and which coordinate corresponding regional target-oriented programs and questions of social-economical development of these nations. In particular, in the Krasnoyarsk Region there is an agency for affairs and support of the North and the native small-numbered peoples, and its main tasks are the following (Regulation concerning..., 2008):

- State policy realization provision in the sphere of regional development of the Krasnoyarsk Region in the part of the northern regional territories;
- Provision of protection of the primordial living environment and traditional way of living of the native small-numbered peoples of the Russian Federation, who live on the territory of the Region;
- Provision of guarantees of original development of the native small-numbered peoples.

At the same time, there is a necessity to make serious amendments in the existing normative legal acts, for example, in the Land legislation in the part of the uncompensated fixed-term use of land plots by the small-numbered peoples of the North for traditional environmental management; in the Federal Law «Concerning the General Principles of the Local Government Organization in the Russian Federation» – in the part of settlement of full powers of the organs of local self-government for protection of the primordial living environment and traditional way of living of the small-numbered peoples of the North; in Fishing and Fauna Legislation – in the part of top-priority access of the small-numbered peoples of the North to fishing

grounds and hunting areas, to water biological resources and game animals.

Analysis of the regional legislation shows that the main legal acts, which regulate protection of rights and traditional way of living of the small-numbered peoples of the North, are regional laws, they are in particular:

- concerning the objects of cultural heritage (historical and cultural monuments) of the peoples of the Russian Federation;
- concerning culture;
- concerning the native small-numbered peoples.

Legislations of some subjects are of special interest, first of all it is the Republic of Sakha-Yakutia, where beside all the mentioned laws there are several additional ones, which specify the full powers of the subject: Law of the Republic of Sakha (Yakutia) 667-3 № 219-IV dated 19.02.2009 «Concerning protection and conservation of the epical heritage of the native peoples of the Republic of Sakha (Yakutia)»; Law of the Republic of Sakha (Yakutia) 82-3 № 75-III dated 17.10.2003 «Concerning the tribal, clannish wandering community of the native small-numbered peoples of the North»; Law of the Republic of Sakha (Yakutia) 227-3 № 461-III dated 31.03.2005 «Concerning the legal status of the native small-numbered peoples of the North»; Law of the Republic of Sakha (Yakutia) 147-3 № 301-III dated 16.06.2004 «Concerning the objects of the national cultural property of the peoples of the Republic of Sakha (Yakutia)» (Legal reference system...).

Legislation of the Khanty-Mansiisk Autonomous District – Yugra, is also rather various; it also has additional normative legal acts: Law of KMAD – Yugra № 64-03 dated 29.06.2006 «Concerning conservation, usage, popularization and state protection of the cultural heritage objects in the Khanty-Mansiisk Autonomous District – Yugra»; Law of KMAD –

Yugra № 92-03 dated 08.11.2005 «Concerning the sanctuaries of the native small-numbered peoples of the Khanty-Mansiisk Autonomous District – Yugra»; Law of KMAD – Yugra № 37-03 dated 18.06.2003 «Concerning the folklore of the native small-numbered peoples of the North, living on the territory of the Khanty-Mansiisk Autonomous District – Yugra» (Legal reference system...).

We are to underline the fact that today one of the fundamental documents as for the Federation, so for the regions is the Conception of steady development of the native small-numbered peoples of the North, Siberia and Far East of the Russian Federation (Conception of steady development..., 2009).

The target of the Conception is to create special conditions in the Russian Federation for formation of steady development of the native small-numbered peoples of the North on the basis of their social-economical potential strengthening under the conservation of their primordial living environment, traditional way of living and cultural values of these nations. The conception is supposed to be realized in 2009-2025 years in 3 stages:

At the first stage (2009-2011 years) they will realize a complex of high priority measures, which foresees improvement of the normative legal base in the sphere of rights protection of the small-numbered peoples of the North, also including the part of ranging of the terminology, being used in the normative legal acts, which regulate the questions of rights guarantees and traditional environmental management; improvement of division of competences and of full powers of the organs of state power and of local self-government; provision of the top-priority access to the small-numbered peoples to fishing grounds and hunting lands, water biological resources and game animals; uncompensated fixed-term use of land plots for traditional environmental management

by the small-numbered peoples of the North; approval of the list of locations for traditional living and for traditional commercial activity, and also for traditional types of economical activity of the small-numbered peoples of the North; development and acceptance of the method of calculation of damage, having been caused to the primordial living environment of the small-numbered peoples of the North by the economic agents.

At the second stage (2012-2015 years) it is foreseen to continue realization of measures for creation of conditions for steady development of the small-numbered peoples of the North.

It is supposed to create necessary conditions for employment of the representatives of the small-numbered peoples of the North in traditional spheres of commercial activity, and also in ethno-tourism, ecological tourism, organization of forest recovery works, land use planning, environmental works, monitoring of the natural environment conditions in the places of traditional living and traditional economical activity.

At the third stage (2016-2025 years) they will form the conditions for steady development of the small-numbered peoples of the North, including efficient mechanisms of conservation of the primordial living environment and traditional way of living, finishing of modernization of traditional economical activity and all the social sphere (including the system of education, healthcare, and culture) in the places of traditional living and traditional economical activity.

In 2025, in the result of realization of the measures of the third stage, they suppose to achieve the average indicator of the Russian life quality for the small-numbered peoples of the North, and also to decrease the rate of infant mortality not less than twice in comparison with 2007 year.

In the last years, especially because of the process of Russian federation subjects' consolidation, more and more attention is paid to the question of status of the existing administrative-territorial units, on which territories the representatives of the native small-numbered peoples of the North, Siberia and Far East live. And it is quite logical, as far as any integral ethno-cultural group, which is socially healthy, strives for its national-territorial attribution, to its own precise borders. Moreover, at present time, active processes of national elites becoming take place – these processes are typical to the native small-numbered peoples of the North, Siberia and Far East, and as a rule they are accompanied by the demand of territorial separation.

In accordance with the positions of Federal Constitutional Law № 6-ФКЗ dated 17.12.2001 «Concerning the order of acceptance into the Russian Federation and formation of a new subject of the Russian Federation, being a part of it» (Legal reference system...) they have formed five new subjects of the Russian Federation, and it has resulted in the fact, that six autonomic regions have vanished from the map of Russia, they have been turned into the territories with a special status.

In connection with all these, we are to notice that reducing the number of subjects, having been created in accordance with their national belonging, we decrease the political status of the peoples living there and default admit their state inability, and it as well concerns the title nation, which has given the name to the subject. Beside the national administrative-territorial units and in accordance with the Federal legislation of the community of the native small-numbered peoples of the North, Siberia and Far East, institutional methods of peoples' originality conservation and development on the territory of newly formed subjects are the following:

public associations in various organizational-legal forms, national-cultural autonomy as a kind of public association in an organizational-legal form of the social organization. The right of territorial social self-governing is also a form of political self-organization of the small-numbered peoples.

This way, today's situation needs a more precise definition and delineation of full powers of the federal, regional, and local organs of power, which will allow escaping of unjustified doubling of their full powers and will fix the full powers of each level of realization of power for provision of the legal status of the native small-numbered peoples. Today, in the given sphere of the federal legislation, we observe a formal attitude to full powers delineation and it does not contribute to becoming of the necessary system of rights of the native small-numbered peoples. The mentioned approach is noticed to allow avoiding of solution

of vitally important problems of the given nations' originality preservation on the regional level, as far as federal subjects variously interpret the volume of their full powers in the given sphere, proceeding from that, what is allowed by the federal legislation.

Today, the legal base of the Russian Federation subjects, on which territories the native small-numbered nations live, differ significantly as in its number of normative legal acts, directed to organization and provision of protection of the native small-numbered nations' primordial living environment and of their traditional way of living, so in the content of those rights, which are given to the native small-numbered peoples. And all this leads to significant, and not always justified differences in establishment of the legal status of the native small-numbered peoples of the North, Siberia and the Far East on the territory of the Russian Federation.

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## **Особенности правового регулирования социокультурного развития коренных малочисленных народов Севера, Сибири и Дальнего Востока в условиях глобальных трансформаций**

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*Устойчивое социокультурное развитие коренных малочисленных народов Севера, Сибири и Дальнего Востока Российской Федерации в условиях усиливающихся глобальных трансформаций невозможно осуществить без укрепления их социально-экономического потенциала, сохранения исконной среды обитания, традиционного образа жизни и культурных ценностей. Достижение всех перечисленных факторов возможно только при наличии целевой поддержки государства и мобилизации внутренних ресурсов самих народов. В связи с этим особенно актуальным является рассмотрение особенностей правового регулирования в сфере защиты прав и традиционного образа жизни коренных малочисленных народов.*

*В статье отмечается, что основные этапы становления взаимоотношений государства с коренными малочисленными народами в Российской Федерации соответствуют международным тенденциям, однако они существенно отличаются по временным промежуткам. Кроме того констатируется, что Российская Федерация как государство только сейчас начинает формировать партнерские отношения с представителями коренных малочисленных народов.*

*По мнению автора статьи, требуется более четкое определение и разграничение полномочий федеральных, региональных и местных органов власти, которое позволит избежать дублирования полномочий, установит ответственность каждого уровня осуществления власти за обеспечение правового статуса коренных малочисленных народов. Формальный подход к разграничению полномочий, который имеет место сегодня в федеральном законодательстве в указанной сфере, не способствует становлению необходимой системы защиты прав коренных малочисленных народов. Отмечается, что этот подход позволяет уходить от решения жизненно важных проблем сохранения самобытности данных народов на региональном уровне, поскольку субъекты Федерации по-разному трактуют объем своих полномочий в указанной сфере исходя из того, что это позволяет им федеральное законодательство.*

*В заключение делается вывод о том, что правовая база субъектов Российской Федерации, на территориях которых проживают коренные малочисленные народы, существенно различается как по количеству нормативных правовых актов, направленных на организацию и обеспечение защиты исконной среды обитания и традиционного образа жизни коренных малочисленных народов, так и по содержанию тех прав, которые предоставляются коренным малочисленным народам. Это приводит к существенным, не всегда оправданным, различиям в установлении правового статуса коренных малочисленных народов Севера, Сибири и Дальнего Востока на территории Российской Федерации.*

*Ключевые слова: коренные народы, социокультурное развитие, законодательство, исконная среда обитания, полномочия.*

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