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Hierarchy of legal sources regulating minorities' rights in Russia

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Characteristics of the Russian legal system

- Continental (Civil) legal system: based on statutes and codes, division into Public and Private Law
- Russian Law has evolved under the strong influence of German Law: this signifies that laws are enacted in the form of written statutes, and the codes constitute one of the bases of the legal system
- Legal positivism: the law is solely the product of the state (normative law)

Monist approach to International Law (Art.15 of the Constitution)

International Treaties

an integral part of the Russian legal system

- ratified by the Federal Assembly of the Russian Federation (Parliament)
- no need for further legislation
- laws should not contradict international treaties
- in case of conflict, the rules of an international treaty shall be applied
- BUT! Constitution will prevail in a conflict between the Constitution and an International Treaty

The Council of Europe's Framework Convention for the Protection of National Minorities

- is a treaty designed to protect the rights of persons belonging to national minorities
- adopted by the Committee of Ministers of the Council of Europe on 10 November 1994 and entered into force on 1 February 1998
- the Advisory Committee (ACFC) monitors the implementation of the Convention by states. It is composed of 18 independent experts appointed by the Committee of Ministers.
- Russia signed the FCNM 28 February 1996 and ratified it 21 August 1998, entered into force 1 December 1998

<https://www.coe.int/en/web/minorities>

- The (FCNM) does not contain a definition of "national minority" as there is no general definition agreed upon by all Council of Europe member states.
- *Each Member State has a margin of appreciation to assess which groups are to be covered by the Convention within their territory.*

Article 3 of FCNM

1. Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.
2. Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.

Article 4 of FCNM

1. The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.
2. The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.
3. The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination

Fourth Opinion of the Advisory Committee on
the Russian Federation - adopted on 20
February 2018

Scope of application of the Convention in RF

The (Russian) authorities usually refer to the 193 ethnic affiliations identified in the 2010 census as the groups covered by the Framework Convention. This includes the category of “indigenous small-numbered peoples” who enjoy a particular status under federal legislation. The Advisory Committee *welcomes this flexible approach* towards the scope of application of the Framework Convention (§21)

Russian federal legislation establishes an upper limit of 50 000 persons for a group to be recognised as an indigenous small-numbered people, together with the criteria of

- living on ancestral lands,
- maintaining a traditional way of life, economic activities and crafts and
- identifying as a separate ethnic group.
- In addition, inclusion in the list of small-indigenous peoples of the Russian Federation occurs on the basis of *a request made to the federal authorities by the regional authorities* in the areas where the indigenous peoples live.

*The Advisory Committee underlines that criteria, in particular thresholds, should be interpreted in a flexible manner and be subject to periodic review, so as not to lead to unjustified or discriminatory exclusion from access to minority rights (§23).

*The existing criteria to this effect should be applied flexibly and they should not create unnecessary obstacles in practice (§27).

“Full and effective equality of indigenous small-numbered peoples”

- “a strong legislative emphasis on the preservation of the traditional way of life and traditional economic activities of indigenous peoples”
- Traditional economic activities are defined in a federal list, together with the territories of traditional residence of the indigenous peoples
- Indigenous peoples may set up community-based enterprises (*obshchina*), which can receive subsidies from the authorities, but are non-profit in purpose and may engage only in the *traditional economic activities*

“Full and effective equality of indigenous small-numbered peoples”

- The quality of life of indigenous peoples remains below the average
- Tourism is not listed as a “traditional economic activity”
- activities such as fishing or hunting are subject to quotas and in practice indigenous peoples have to compete for plots with private businesses, which puts them at a disadvantage
- Industrial activities have an additional negative impact on the traditional activities of the indigenous peoples, for example by decreasing fish stock in rivers and lakes or interfering with reindeer migration routes

In such circumstances it seems that the possibilities for sustainable socio-economic development of indigenous peoples and their full and effective equality are limited. Traditional economic activities are vital for indigenous peoples and need full support, including by ensuring preferential, free and non-competitive access to land, wildlife, and other natural resources.

Recommendation

The Advisory Committee urges the authorities to take both legal and practical measures to ensure full and effective equality of indigenous peoples, in close consultation with their representatives. Sufficient funding should be provided for the sustainable development of indigenous peoples. Various models of economic activities should be supported, both traditional and not traditional, in accordance with the needs and interests of the indigenous peoples (§48)

Land rights

Marks of Socialist past in Land Law

- private ownership to land introduced by the Constitution 1993
- resistance to private ownership to land: State is the main owner of land resources (90%, Sukhanov 2017)
- that leads to the prevailing administrative regulations in the field of land use (acquisition of land rights from the State)
- political and historical context of the country's development has brought specific features to the national Property Law, in particular, the recognition of buildings as separate objects of property rights contrary to the classic Civil Law approach *superficies solo cedit*

Land rights

Because of the state monopoly on land resources along with classical property rights like ownership right, servitude and mortgage other forms of property rights to land were created

- the inheritable right of the possession – for private individuals
- permanent possession for indefinite use – for legal entities

Land rights

- Lack of systemic/common approaches on land regulation
- Civil Code, Land Code, Housing Code, City-Planning Code
- Land Code was adopted later than Civil Code and almost completely isolated from it
- contradictions between the Codes (the Land Code in direct contradiction with chapter 17 of the Civil Code does not mention the category of limited property rights to land)

- Proposed reform of Russian Property Law to unify approaches on property issues in different legal acts has been “frozen” in the Russian Parliament since 2012.



Thank you!

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