

УДК 342.7

THE RIGHTS OF THE INDIGENOUS NUMERICALLY-SMALL  
PEOPLES OF THE RUSSIAN FEDERATION IN PRACTICE  
OF HIGH AND REGIONAL COURTS

ПРАВА КОРЕННЫХ МАЛОЧИСЛЕННЫХ НАРОДОВ  
РОССИЙСКОЙ ФЕДЕРАЦИИ В ПРАКТИКЕ ВЫСШИХ СУДОВ  
И СУДОВ СУБЪЕКТОВ РОССИЙСКОЙ ФЕДЕРАЦИИ

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Поступила в редакцию 15 августа 2015 г.

**Abstract:** *the protection of indigenous numerically-small peoples' rights in the Russian Federation is inconceivable without scrutiny of the court practice and case law based on this issue. Particular attention should be paid to the practice of high courts which de facto is obligatory for all subordinate levels of Russian unitary court system. It seems important to describe the most significant court decisions which form the unified law-enforcement practice to be taken into account by indigenous communities and organizations of Russia.*

**Key words:** *indigenous numerically-small peoples, Russia, court practice, law-enforcement.*

**Аннотация:** *защита прав коренных малочисленных народов в Российской Федерации невозможна без изучения существующей судебной практики по данному вопросу. Особенно пристального внимания заслуживает практика высших судов, которая де-факто является обязательной для всех нижестоящих звеньев единой судебной системы России. Представляется важным рассказать о наиболее значимых решениях, которые формируют единую правоприменительную позицию, которую необходимо учитывать общинам и организациям коренных малочисленных народов России.*

**Ключевые слова:** *коренные малочисленные народы, Россия, судебная практика, правоприменение.*

### Introduction

The court practice traditionally is not considered as a legal source in the Russian Federation. Russian legal system is related to the Roman-Germanic legal family where a normative act is a basic source of law. However, pursuant to provisions of the Russian legislation it can be concluded that the high courts' decisions in Russia have a binding legal force. The article 6 of the Federal Constitutional Law of 21.07.1994 No. 1–FKZ «About Constitutional Court of the Russian Federation»<sup>1</sup> determines that «The decisions of the Constitutional Court of the Russian Federation are compulsory on

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<sup>1</sup> Federalnyi konstitucionnyi zakon ot 21.07.1994 No. 1–FKZ (redaktsia ot 12.03.2014 No. 5–FKZ) «O Konstitucionnom sude Rossiiskoi Federatsii» / The Federal Constitutional Law of 21.07.1994 No. 1–FKZ «About Constitutional Court of the Russian Federation» (in edition of 12.03.2014 No. 5–FKZ) / The document was originally published in «Rossiiskaya gazeta», 138–139, 23.07.1994.

all territory of the Russian Federation for all representatives, executive and court branches of authority, municipal bodies, enterprises, institutions, officials, citizens and their associations».

The articles 9 and 14 of the federal constitutional law of 07.02.2011 No. 1–FKZ «About courts of general jurisdiction in the Russian Federation»<sup>2</sup> specifies that the Supreme Court «inspects and summarizes the court practice and for the purpose of unification explains all positions to courts of general jurisdiction on matters of application of the Russian legislation».

But it doesn't mean that Russia has a case law system in the full sense. The right for summarizing of the court practice belongs only to the high courts on the federal level. Moreover the practice itself is not a legal norm and can be applicable only for a concrete case during a court procedure. The court practice can also be modified because of changes which happen in legislation. In that way «case law» in Russia de jure is absent, but de facto it exists in a latent form. Russian legal scholars argue in this way, some of them support the idea of «case law» in Russia (Khabrieva)<sup>3</sup>, but others against of it (Zakharov)<sup>4</sup>.

Notably the Chairman of the Constitutional Court of the Russian Federation Zorkin considers that the Constitutional Court decisions on cases of «constitutionality verification» of normative acts should be apprehended as «legal precedent» or «case law». It follows therefrom, by his notion, that, the Constitutional Court acts as «the subject of law-making»: «Its decisions, as a result of recognition normative acts as unconstitutional and losing legal power, have the same sphere of activity in time, the state territory and range of individuals and entities as a normative body has and therefore the same common value as normative acts have, which is not inherent by its nature to acts of regular and arbitral courts»<sup>5</sup>. However it's necessary to say that the Constitutional Court decisions concern only conformity of normative acts with the Constitution.

In conformity with the item 1 of the article 1 of the Federal Law of 30.04.1999 No. 82–FZ «On guarantees of the rights of indigenous numerically-small peoples of the Russian Federation» indigenous numerically-small peoples of the Russian Federation – are peoples, living on the territories of traditional habitat of their ancestors, keeping traditional way of life, activity and crafts, numbering in the Russian Federation not less than 50 thousand people and recognizing themselves as independent ethnic community.

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<sup>2</sup> Federalnyi konstitucionnyi zakon ot 07.02.2011 No. 1–FKZ «O sudakh obschei iurisdikcii v Rossiiskoi Federacii» (redakcia ot 01.12.2012) / The Federal constitutional law of 07.02.2011 No. 1–FKZ «About courts of general jurisdiction in the Russian Federation» (in edition of 01.12.2012) / The document was originally published in «Rossiiskaya gazeta», No 29, 11.02.2011.

<sup>3</sup> Khabrieva T. Y. «Tolkovanie Konstitucii Rossiiskoi Federacii: teoria i praktika» [The interpretation of the Russian Constitution: the theory and practice], Moscow, 1998, p. 53–54.

<sup>4</sup> Zakharov V. V. «Reshenia Konstitucionnogo Suda RF v sisteme istochnikov rossiiskogo prava» [The Constitutional Court decisions in the system of Russian law sources] in Zhurnal rossiiskogo prava. 2006. № 11.

<sup>5</sup> Zorkin V. D. «Rossia i Konstitucia v XXI veke. Vzgljad s Ilinki» [Russia and the Constitution in the XXI century. The view from Ilinka], Moscow, 2007, p. 115–116.

Thus in the Russian public law the definition of «indigenous peoples» is different from international law definition, presenting, for example, in the ILO Convention No. 169.

Constraints which are entered in the Russian public law concerning the strength of indigenous numerically-small peoples are connected with the situation where much big in numbering peoples already have their own «judicial personality» in a level of the subject of the Russian Federation (for example, Komi or Yakut People) and often do not involve in «traditional natural exploitation».

The interest to the court practice concerning indigenous claims and suits is attributed first and foremost to the real life situations which are the subject for collision for indigenous communities which try to safe their motherland for next generations.

In this article it is offered to look at the most important issues from the court practice:

- 1) a social pension for indigenous numerically-small peoples;
- 2) modern technical equipment and «traditional activity»;
- 3) «Traditional tools and devices» and their seizure;
- 4) indigenous «primary choice and the priority» in using of flora and fauna on a land;
- 5) «Positive discrimination» and fishery rights;
- 6) licensing and contracting relations to secure preservation and reproduction of species;
- 7) «Representation quotas» for the indigenous numerically-small peoples;
- 8) «Tax policy» for indigenous numerically-small peoples.

### **A social pension for indigenous numerically-small peoples**

In accordance with the Supreme Court Ruling of 22.06.2012 No. 58–KG12–2<sup>6,7</sup>, during a civil trial about the obligation to award a social pension for a person belonging to indigenous numerically-small peoples, the court deemed proven the fact of his belonging to that social group as well as the fact of his living within a city district labeled as a place of traditional inhabitancy and traditional activity of the indigenous numerically-small peoples of Russia. The social pension is a kind of state pension which, along with handicapped citizens, should be given to citizens from indigenous numerically-small peoples of the North who have reached the age of 55 and 50 years (men and women respectively)<sup>8</sup>. The plaintiff was a 50-year-old Nanai woman

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<sup>6</sup> The Civil Procedural Code of the Russian Federation of 14.11.2002 No.138–FZ. URL: <http://www.wipo.int/edocs/lexdocs/laws/en/ru/ru081en.pdf> (accessed 25.04.2014).

<sup>7</sup> Opređenje Verkhovnogo Suda ot 22.06.2012 No. 58–KG 12–2 / The Supreme Court Ruling of 22.06.2012 No. 58–KG12-2 / The document was not published. See: Electronic version of documents in the «ConsultantPlus» system.

<sup>8</sup> Federalnyi zakon ot 15.12.2001 No. 166–FZ (redakcija ot 02.07.2013) «O gosudarstvennom pensionnom obespechenii v Rossiiskoi Federacii» / The Federal Law of 15.12.2001 No. 166–FZ (in edition of 02.07.2013) «About the State Pension Support

who belonged to the indigenous numerically-small peoples of the North, lived on the primordial territory of the Nanai People in the city of Khabarovsk and carried on traditional activity. Looking into the possibility to award a social pension by senility for citizens from the indigenous numerically-small peoples of the North by reaching a particular age, a legislator proceeded from their established negative socio-economic and demographic conditions, the need for preservation and development of the corresponding ethnic groups.

A similar case should also be mentioned here which has been considered later on the level of a regional court. The Ruling of Leningrad Regional Court of 28.08.2013 No. 33–3995/2013<sup>9</sup> determined and proved that to receive the status of person claiming pension benefits by reason of belonging to an indigenous numerically-small people one must prove both the fact of one's living on a territory of traditional inhabitancy and traditional activity of indigenous numerically-small peoples and one's ethnicity (nationality under the Russian public law)<sup>10</sup> which should be proven by a birth certificate and by data from a particular municipal authority clearly indicating that the person inhabits a rural place, observes indigenous traditions, engages in farming (horticulture), in collecting wild berries and mushrooms with their further processing, in fishery, hunting, etc.<sup>11</sup> This rule is confirmed by the Supreme Court Resolution of the Russian Federation of 23.11.2010 No. 27 (in edition of 18.10.2012)<sup>12</sup> which says that a simple reference to one's personal ethni-

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in the Russian Federation»/ The document was originally published in «Rossiiskaya gazeta», № 247, 20.12.2001. See: Electronic version of docs in the «ConsultantPlus» system.

<sup>9</sup> Opređenje Leningradskogo oblastnogo suda ot 28.08.2013 No. 33–3995/2013 / The Ruling of Leningrad Regional Court of 28.08.2013 No. 33–3995/2013 / The document was not published. See: Electronic version of documents in the «Consultant-Plus» system.

<sup>10</sup> Konstitucija Rossijskoi Federacii (prinyata vsenarodnym golosovaniem 12.12.1993) (s uchetom popravok, vnesennykh Zakonami RF o popravkah k Konstitucii RF ot 30.12.2008 No. 6–FKZ, ot 30.12.2008 No. 7–FKZ) / The Constitution of the Russian Federation (adopted by the national referendum of 12.12.1993) (with amendments added by the Russian Law on amendments to the Constitution of the RF of 30.12.2008 No. 6–FKZ, of 30.12.2008 No. 7–FKZ) / The document was originally published in «Rossiiskaya gazeta», No. 7, 21.01.2009. See: Electronic version of documents in the «ConsultantPlus» system.

<sup>11</sup> Rasporyazhenie Pravitelstva RF ot 08.05.2009 No. 631–p «Ob utverzhdenii perechnya mest tradicionnogo prozhivaniya i tradicionnoi hozyaistvennoi deyatel'nosti korennykh malochislennykh narodov Rossijskoi Federacii i perechnya vidov tradicionnoi hozyaistvennoi deyatel'nosti korennykh malochislennykh narodov Rossijskoi Federacii» / The Governmental Order of the Russian Federation of 08.05.2009 No. 631–r «On approval of the list of places of traditional inhabitancy and traditional activity of indigenous numerically-small peoples of the Russian Federation and the list of forms of traditional activity of indigenous numerically-small peoples of the Russian Federation» / «Sobranie zakonodatelstva RF», 18.05.2009, No. 20, art. 2493.

<sup>12</sup> Postanovlenie Plenuma Verkhovnogo Suda RF ot 23.11.2010 No. 27 (red. ot 18.10.2012) «O praktike rassmotreniya del ob administrativnykh pravonarusheniyakh, svyazannykh s narusheniem pravil dobychi (vylova) vodnykh biologiche-

city («nationality» in Russian Law) under Article 26 (1) of the Constitution does not automatically lead to granting the person a right to the traditional activity and its benefits.

The main conclusion is the «ethnicity» and «traditional activity» separately from each other, in accordance with the Russian legislation, cannot serve as the guarantee of rights for individuals. Just only together these factors could assure «indigenous rights» from the Russian Federation. This is the rule of law.

### **Modern technical equipment and «traditional activity»**

The Supreme Court of the Russian Federation in its Ruling of 01.07.2009 No. 56–G09–19<sup>13</sup> confirmed the validity of the ban on using modern technical equipment by representatives of indigenous numerically-small peoples. The Ruling has mentioned that the federal legislation does not provide for using mechanical transport equipment by numerically-small peoples as a way of preserving the traditional lifestyle and managing the environment. The case was heard by the Court Board on Civil Cases of the Supreme Court touched the issue of leaving unchanged the decision of the Primorskiy regional court of 27.03.2009<sup>14</sup>. The Supreme Court sustained the decision of the Primorskiy regional court proceeding from the definition of traditional activity, established by Article 1 of the Federal Law «On general guarantees of rights of the

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skikh resursov i inyh pravil, reglamentiruyuschikh osuschestvlenie promyshlennogo, pribrezhnogo i drugih vidov rybolovstva» / The Supreme Court Resolution of the Russian Federation of 23.11.2010 No. 27 (in edition of 18.10.2012) «On the practice of considering cases on administrative offences connected with breaking of fishery rules and other rules concerning commercial, coastal and other types of fishery» / The document was originally published in «Bulletin Verkhovnogogo Suda RF», No. 1, January, 2011. See: Electronic version of documents in the «ConsultantPlus» system.

<sup>13</sup> Opreделение Verhovnogogo Suda RF ot 01.07.2009 No. 56-G09-10 «Ob ostavlennii bez izmeneniya resheniya Primorskogo kraevogo suda ot 27.03.2009, kotorym chasticjno udovletvoreno zayavlenie o priznanii nedeistvuyuschim postanovleniya administratsii Primorskogo kraia ot 28.07.2008 No. 169-pa «Ob utverzhdenii polozheniy o gosudarstvennykh prirodnykh zakaznikakh kraevogo znacheniya» / The Supreme Court Ruling of 01.07.2009 No. 56–G09-10 «On leaving unchanged the resolution of the Primorsky regional court of 27.03.2009 which partially satisfied the application on recognition inoperative the order of the Primorskiy region administration of 28.07.2008 No. 169–pa «On establishing regulations concerning the state nature reserves of the regional level» / The document has not been published. See: Electronic version of documents in the «ConsultantPlus» system.

<sup>14</sup> Reshenie Primorskogo kraevogo suda ot 27.03.2009 No. 3–24/09 «O priznanii nedeistvuuschim abzatca 4 punkta 4.1 «Polozhenia o gosudarstvennom prirodnom landshaftnom zakaznike kraevogo znacheniya «Verhnebikinskii», utverzhdennoe postanovleniem Administratsii Primorskogo Kraia ot 28.07.2008 No. 169–pa» / The Decision of Primorskii regional court of 27.03.2009 No. 3–24/09 «On recognition inoperative sub-paragraph 4 of paragraph 4.1 «Regulations concerning the state nature reserve of regional level named «Verhnebikinskii», approved by the resolution of the Primorskiy Krai administration of 28.07.2008 No. 169–pa» / The document was not published. See: Electronic version of documents in the «ConsultantPlus» system.



indigenous numerically-small peoples of the Russian Federation». The article connects tradition to the «historically well-established method of survival» based on «historical experience of the ancestors», a «distinctive culture»<sup>15</sup>, hence the use of modern technical equipment (motor boats, snowmobiles) for purposes of the traditional use of natural resources is not provided by the Russian legislation. The UN Human Rights Committee (HRC) concludes opposite based on an evaluation of the article 27 of the ICCPR.<sup>16</sup> Russia is party of that treaty from 1968 (ratification – 1973)<sup>17</sup>.

In the item 9.4 of the Communication No. 547/1993 (case *Apirana Mahuika et al v. New Zealand*) HRC indicated that «the right to enjoy one's culture cannot be determined in abstracto but has to be placed in context. In particular, article 27 does not only protect traditional means of livelihood of minorities, but allows also for adaptation of those means to the modern way of life and ensuing technology».

As a result the Russian Supreme Court's attitude contradicts to the international law standards and could be the subject of ECHR appeal procedure on a background of the article 14 (discrimination) (Russia is also a member-state of the European Convention from 1996, ratification – 1998<sup>18</sup>), or the complaint to the HRC.

#### **«Traditional tools and devices» and their seizure**

Notwithstanding the existing prohibition of use of modern technical devices for traditional activity, there is also a norm which guarantees the rights for the indigenous numerically-small peoples of any tools and devices used by them for securing their existence.

Paragraph 29, sub-paragraph 3 of the Resolution of the Supreme Court Plenum of 18.10.2012 No. 21<sup>19</sup> points out that that «delinquency tools or equipment are not subject to seizure if they provide the only source of liveli-

<sup>15</sup> Federalnyi zakon ot 30.04.1999 No. 82-FZ (redaktsia ot 05.04.2009) «O garantiakh prav korennykh malochislennykh narodov Rossiiskoi Federatsii» / The Federal Law of 30.04.1999 No. 82-FZ (in edition of 05.04.2009) «On general guarantees of rights of the indigenous numerically-small peoples of the Russian Federation» / The document was originally published in the «Rossiiskaya gazeta» newspaper, No. 90, 12.05.1999. See: Electronic version of documents in the «ConsultantPlus» system.

<sup>16</sup> *Apirana Mahuika et al. v. New Zealand*, Comm. 547/1993, U.N. Doc. CCPR/C/55/D/547/1993 (HRC 1995).

<sup>17</sup> URL: [https://treaties.un.org/pages/viewdetails.aspx?chapter=4&src=treaty&mtdsg\\_no=iv-4&lang=en](https://treaties.un.org/pages/viewdetails.aspx?chapter=4&src=treaty&mtdsg_no=iv-4&lang=en) (accessed 21.04.2014).

<sup>18</sup> URL: <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=005&CM=&DF=&CL=ENG> (accessed 21.04.2014).

<sup>19</sup> Postanovlenie Plenuma Verkhovnogo Suda RF ot 18.10.2012 No. 21 «O primeneni sudamu zakonodatelstva ob otvetstvennosti za narushenie v oblasti ohrany okruzhayuschei sredy i prirodopolzovaniya» / The Supreme Court Plenum Resolution of the Russian Federation of 18.10.2012 No. 21 «On application by courts of the legislation on liability for law-breaking concerning the environment and environmental management» / «Bulletin Verkhovnogo Suda RF», No. 12, December, 2012.

hood (as are, for example, hunting tools that provide the means of livelihood to the indigenous numerically-small peoples of the Russian Federation)).

The rule of law forbids a seizure of such tools because it bans forage of indigenous peoples. Also it's evidently that a «tool» itself is a part of cultural identity of indigenous peoples, connecting with way of living, potentially with a religion and etc. So a seizure is an act of discrimination.

### **Indigenous «primary choice and the priority» in using of flora and fauna on a land**

It was confirmed by the Supreme Court Ruling of 20.06.2012 on the case No. 69–APG12–2<sup>20</sup> that during the distribution of lands, the regional authorities shall first and foremost address the needs of the indigenous numerically-small population living in a particular area. Representatives of the Khanti and Mansi peoples applied to the court to recognize the resolution of Khanti-Mansi autonomous okrug – Yugra administration concerning the List of fishing areas in Kondinskii area inoperative from the date of entry into force, and also to recognize inoperative paragraph 4 of the said resolution.

In the view of the applicants, the autonomous okrug authorities illegally obliged them to participate in a contest of commercial fishery, to assign the fishing areas according to its results, in spite of the fact that according to Article 49 of the Federal Law of 24.04.1995 No. 52–FZ «On flora and fauna»<sup>21</sup>, they have the right to primary choice of fishing areas for catching aquatic bio-resources which they trade as the main source of income for provision of their families' livelihood. Nevertheless almost all fishing areas in Kondinskii area they inhabit, have been allotted for commercial fishery by the disputed resolution.

During the court procedure, it was found out that 42 fishing areas for indigenous fishery were allocated in general at a large distance (15 – 20 kms and 30 – 40 kms) from the traditional indigenous inhabitancy, whereas there was no evidence that the fishing area distribution and insertion into the cor-

<sup>20</sup> Opređenje Verkhovnogo Suda RF ot 20.06.2012 po delu No. 69–APG12–2 «Ob ostavlennii bez izmeneniya reshenia suda Khanti-Mansiiskogo avtonomnogo okruga – Yugri ot 02.03.2012, kotorym chastichno udovletvoreno zayavlenie o priznanii ne-deistvuushim v chasti postanovleniya pravitelstva Hanti-Mansiiskogo avtonomnogo okruga – Yugri ot 12.08.2011 No. 291–p «Ob utverzhdenii Perechniya rybopromyslovykh uchastkov na territorii Khanti-Mansiiskogo avtonomnogo okruga – Yugri» / The Supreme Court Ruling of 20.06.2012 on the case No. 69–APG12–2 «On leaving unchanged the resolution of Khanti-Mansi autonomous okrug – Yugra court of 02.03.2012 which partially satisfied the application on the recognition of the Khanti-Mansi autonomous okrug – Yugra government resolution of 12.08.2011 No. 291–p «On adoption of the List of fishing areas on the territory of Khanti-Mansi autonomous okrug – Yugra» inoperative» / The document was not published. See: Electronic version of documents in the «ConsultantPlus» system.

<sup>21</sup> Federalnyi zakon ot 24.04.1995 No. 52–FZ «O zhivotnom mire» (v redaktsii ot 11.11.2003) / The Federal Law of 24.04.1995 No. 52–FZ «On flora and fauna» / The document was originally published in «Sobranie zakonodatelstva Rossiiskoi Federatsii» of 24.04.1995, No. 17, art. 1462.

responding List<sup>22</sup> was performed taking into account the rights of indigenous numerically-small peoples to primary choice of lands and priority in using flora and fauna. Moreover, it was apparent from the case files that in the rural area Polovinka 5 fishing areas were assigned (on a distance of 12 – 15 kms) for 329 persons belonging to the indigenous numerically-small peoples whereas all the nearest fishing zones were assigned to commercial fishery. Therefore the court satisfied claims of the representatives of the indigenous numerically-small peoples Khanti and Mansi.

Currently such precedent could be used as «an evidence of summarizing of a court practice» and could be used by other indigenous groups for the protection of their rights in other cases.

### «Positive discrimination» and fishery rights

The issue of equality of citizens before the Constitution frequently provokes disputes questioning acceptability of assignment of special rights to indigenous numerically-small peoples which are granted preferential treatment regarding the objects of environmental management.

In a case a citizen who did not belong to the indigenous numerically-small peoples claimed to the Constitutional Court of the Russian Federation that the provisions of the Federal Law «On fishery and preservation of aquatic biological resources» (Article 25 (1))<sup>23</sup> ruled out any opportunity to practice traditional fishery by all non-indigenous citizens and limited his right to access the aquatic biological resources contrary to Articles 2, 7, 15, 17, 18, 19, 21, 24, 29, 35, 37, 45, 46, 52 and 55 of the Constitution of the Russian Federation.

In accordance with the Resolution of the Constitutional Court of the Russian Federation of 29.05.2012 No. 846–O<sup>24</sup>, the disputed norm defines one of

<sup>22</sup> Rasporyazhenie Pravitelstva RF ot 08.05.2009 No. 631–p «Ob utverzhdenii perechnya mest traditsionnogo prozhivaniya i traditsionnoi hozyaistvennoi deyatel'nosti korennykh malochislennykh narodov Rossiiskoi Federatsii i perechnya vidov traditsionnoi hozyaistvennoi deyatel'nosti korennykh malochislennykh narodov Rossiiskoi Federatsii» / The Governmental Order of the Russian Federation of 08.05.2009 No. 631–r «On approval of the list of places of traditional inhabitancy and traditional activity of indigenous numerically-small peoples of the Russian Federation and the list of forms of traditional activity of indigenous numerically-small peoples of the Russian Federation» / «Sobranie zakonodatelstva RF», 18.05.2009, No. 20, art. 2493.

<sup>23</sup> Federalnyi zakon ot 20.12.2004 No. 166–FZ (redaktsiya ot 02.07.2013) «O rybolovstve i sokhranении vodnykh biologicheskikh resursov» / The Federal Law of 20.12.2004 No. 166–FZ (in edition of 02.07.2013) «On fishery and preservation of aquatic biological resources» / The document was originally published in «Rossiiskaya gazeta», No. 284, 23.12.2004. See: Electronic version of documents in the «Consultant-Plus» system.

<sup>24</sup> Opredelenie Konstitutsionnogo Suda RF ot 29.05.2012 No. 846–O «Ob otkaze v prinyatii k rassmotreniu zhaloby grazhdanina Nagibina Stepana Aleksandrovicha na narushenie ego konstitutsionnykh prav chastiu 1 stati 25 Federal'nogo zakona «O rybolovstve i sokhranении vodnykh biologicheskikh resursov» / The Constitutional Court Ruling of the Russian Federation of 29.05.2012 No. 846–O «On refusal to con-



the types of legal fishery – fishery as a traditional activity of the indigenous numerically-small peoples of the North, Siberia and Far East of the Russian Federation and establishes the subjects (actors) having such right. At the same time part 1 of the article 25 of the disputed Federal law does not regulate rights of any citizens, but only the indigenous numerically-small peoples of the North, Siberia and Far East, and does not place restrictions on access to aquatic biological resources for other categories of citizens.

The court found that the disputed statement cannot be regarded as a violation of the claimant's constitutional rights. The court also stated that the essence of the complaint, specifically the nature of the asserted claims, the arguments given by claimant in support of his position suggest that he connected the violation of his rights not with the disputed legal norm but with denial of his fishing right by provisions of Article 25 of the above mentioned Federal law and by orders issued by courts of general jurisdiction. At the same time the verification of legacy and validity of court resolutions is not a matter for the Constitutional Court of the Russian Federation, as stated in Article 125 of the Russian Constitution and Article 3 of the Federal Constitutional Law «On the Constitutional Court of the Russian Federation»<sup>25</sup>.

### **Licensing and contracting relations to secure preservation and reproduction of species**

The Supreme Court pointed out in its Ruling of 31.05.2006 No. 74–G06–9<sup>26</sup> that the obligation to secure preservation and reproduction of domestic reindeer, wild ungulates, fur-bearing animals and game-fish infringed upon the rights to independence provided to communities by Article 7 of the Federal Law No. 104–FZ of 20.07.2000 «On general principles of organization of indigenous numerically-small peoples of the North, Siberia and Far East of the Russian Federation»<sup>27</sup>.

In accordance with Article 7 of the above-mentioned Federal law, federal

sider the complaint made by citizen Nagibin Stepan Aleksandrovich on violation of his constitutional rights by part 1 of Article 25 of the Federal Law «On fishery and preservation of aquatic biological resources» / The document was not published. See: Electronic version of documents in the «ConsultantPlus» system.

<sup>25</sup> Federalnyi konstitucionnyi zakon ot 21.07.1994 No. 1–FKZ (redaktsia ot 12.03.2014 No. 5–FKZ) «O Konstitucionnom sude Rossiiskoi Federatsii» / The Federal Constitutional Law of 21.07.1994 No. 1–FKZ «About Constitutional Court of the Russian Federation» (in edition of 12.03.2014 No. 5–FKZ) / The document was originally published in «Rossiiskaya gazeta», No. 138–139, 23.07.1994.

<sup>26</sup> Opreделение Verkhovnogo suda ot 31.05.2006 No. 74–G06–0 / The Supreme Court Ruling of 31.05.2006 No. 74–G06–9 / The document was not published. See: Electronic version of documents in the «ConsultantPlus» system.

<sup>27</sup> Federalnyi zakon ot 20.07.2000 No. 104–FZ (redaktsia ot 02.02.2006) «Ob obshikh principakh organizatsii obschin korennykh malochislennykh narodov Severa, Sibiri i Dalnego Vostoka Rossiiskoi Federatsii» / The Federal Law of 20.07.2000 No. 104–FZ (in edition of 02.02.2006) «On general principles of organization of indigenous numerically-small peoples of the North, Siberia and Far East of the Russian Federation» / The document was originally published in «Rossiiskaya gazeta», No. 142, 25.07.2000. See: Electronic version of documents in the «ConsultantPlus» system.

and regional authorities, municipality and officials are not entitled to intervene in the activity of indigenous numerically-small peoples' communities, violate self-dependence of indigenous community unions. The right to self-dependence of people participating in civil relations is provided under Article 2 of the Civil Code of the Russian Federation<sup>28</sup>. In conformity with Article 17 of the Federal law «On general principles of organization of indigenous numerically-small peoples of the North, Siberia and Far East of the Russian Federation» communities have the right to own, use and dispose property, including domestic animals. The legal relationships in the sphere of protection and reproduction of the species of flora and fauna living in freedom in natural conditions are regulated by the Federal law «On flora and fauna».

In accordance with Article 4 of the aforesaid Federal law, flora and fauna within the territory of the Russian Federation are objects of state property. Hence the obligation and task to secure the preservation and reproduction of flora and fauna is carried out by the state. Imposition of duties to ensure preservation and reproduction of the species of flora and fauna (wild ungulates, fur-bearing animals and game-fishes) on indigenous numerically-small peoples' communities is illegal because these duties are set on individual users of flora and fauna as a condition prescribed by a corresponding license and a contract. Therefore the court decided to satisfy demands of the prosecutor of the Republic Sakha (Yakutia) to the extent of recognition of part 1 of Article 22 of the Law of the Republic Sakha (Yakutia) «About ancestral, tribal nomadic community of indigenous numerically-small peoples of the North» of 17.10.2003 82–Z No. 175–111 inoperative.

### **«Representation quotas» for the indigenous numerically-small peoples**

Over a long time the regional legislation contained a quota norm for representatives of the indigenous numerically-small peoples in local legislative bodies, dumas and parliaments. However, the Supreme Court Ruling of 10.08.2005 on case No. 63–G05–8<sup>29</sup> confirmed that the previously existent

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<sup>28</sup> «Grazhdanskii kodeks Rossiiskoi Federatsii (chast pervaya)» ot 30.11.1994 No. 51–FZ (redaktsia ot 02.11.2013) / The Civil Code of the Russian Federation (part one) of 30.11.1994 No. 51–FZ (edition of 02.11.2013) / The document was originally published in «Rossiiskaya gazeta», No. 238-239, 08.12.1994. See: Electronic version of documents in the «ConsultantPlus» system.

<sup>29</sup> Opređenje Verkhovnogo Suda RF ot 10.08.2005 po delu No. 63–G05–8 «Ob ostavlenii bez izmeneniya resheniya suda Nenetskogo avtonomnogo okruga ot 07.12.2004, kotorym bylo udovletvoreno zayavlenie o priznanii otdelnykh položenii Zakona Nenetskogo avtonomnogo okruga ot 09.10.2011 No. 314–oz «O dopolnitelnykh garantiakh izbiratelnykh prav korennykh malochislennykh narodov Rossiiskoi Federatsii, prozhivaushikh na terrotorii Nenetskogo avtonomnogo okruga» (v redakcii ot 27.10.2004 No. 516–oz), protivorechashimi federalnomu zakonodatelstvu / The Supreme Court Ruling of 10.08.2005 on case No. 63-G05-8 «On leaving unchanged the decision of the Nenets autonomous okrug Court of 07.12.2004 which satisfied the claim on recognition of some statements of the Law of Nenets autonomous okrug of 09.10.2001 No. 314–oz «On additional guarantees of electoral rights of indigenous

norm of Article 13 of the Federal Law «On general guarantees of the rights of indigenous numerically-small peoples of the Russian Federation» violated the basic principles of the Constitution of the Russian Federation, for which reason it lost its force since 1<sup>st</sup> January 2005. According to the Supreme Court, the given norm of the Federal law contradicts the later statements of the Federal Law No. 67–FZ of 12.06. 2002 «On general guarantees of electoral and referendum rights for the citizens of the Russian Federation»<sup>30</sup>, which is why the court deemed the norm inapplicable in the given argument.

As pointed out by explanations of the Supreme Court Plenum of the Russian Federation contained in paragraph 5 of the Resolution No. 5 of 10.10.2003 «On application of generally recognized principles and norms of international law and international treaties of the Russian Federation by courts of general jurisdiction»<sup>31</sup>, international treaties which apply directly to the Russian legal system are applicable by courts during civil procedure if an international treaty of the Russian Federation prescribes other rules than the federal law that regulates relationships being the subject of the court procedure.

In appliance with Articles 2 and 3 of the Convention «On standards of democratic elections, electoral rights and freedoms in member states of the Commonwealth of Independent States»<sup>32</sup> (ratified by Russia, Federal Law of 02.07.2003 No. 89–FZ)<sup>33</sup>, the right of citizen to elect and being elected into

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numerically-small peoples of the Russian Federation living on the territory of the Nenets autonomous okrug» (in edition of 27.10.2004 No. 516–oz) as contradictory with the federal legislation» / The document was not published. See: Electronic version of documents in the «ConsultantPlus» system.

<sup>30</sup> Federalnyi zakon ot 12.06.2002 No. 67–FZ (redaktsia ot 02.11.2013) «Ob osnovnykh garantiakh izbiratelnykh prav i prava na uchastie v referendumе grazhdan Rossiiskoi Federatsii» / The Federal Law of 12.06.2002 No. 67–FZ (edition of 02.11.2013) «On general guarantees of electoral and referendum rights for citizens of the Russian Federation» / The document was originally published in «Rossiiskaya gazeta», No. 106, 15.06.2002. See: Electronic version of documents in the «ConsultantPlus» system.

<sup>31</sup> Postanovlenie Plenuma Verkhovnogo Suda RF ot 10.10.2003 No. 5 (redaktsia ot 05.03.2013) «O primeneniі sudami obschei urisdiktsii obshepriznannykh principov i norm mezhdunarodnogo prava i mezhdunarodnykh dogovorov Rossiiskoi Federatsii» / The Supreme Court Plenum Resolution of 10.10.2003 No. 5 (edition of 05.03.2013) «On application of generally recognized principles and norms of international law and international treaties of the Russian Federation by courts of general jurisdiction» / The document was originally published in «Bulletin Verkhovnogo Suda RF», No. 12, 2003. See: Electronic version of docs in the «ConsultantPlus» system.

<sup>32</sup> «Konventsiya o standartakh demokraticheskikh vyborov, izbiratelnykh prav i svobod v gosudarstvakh-uchastnikakh Sodruzhestva Nezavisimykh Gosudarstv» (Zakluchena v Kishineve 07.10.2002) / The Convention «On standards of democratic elections, electoral rights and freedoms in member states of the Commonwealth of Independent States» (Signed in Kishinev 07.10.2002) / «Bulletin mezhdunarodnykh dogovorov», No. 2, 2006, p. 18–34.

<sup>33</sup> Federalnyi zakon ot 02.07.2003 No. 89–FZ «O ratifikatsii Konventsii o standartakh demokraticheskikh vyborov, izbiratelnykh prav i svobod v gosudarst-

the public authorities, municipalities and other bodies of national representation, to elective positions, is implemented regardless of any discrimination based on sex, religion, faith, political or any other views, national (ethnic) or social origin, membership in a national minority or an ethnic group, property status or other circumstances. Every citizen should have equal legal opportunities to stand for election. Thus the Supreme Court indirectly pointed out that «affirmative action» violates the principle of the equality of citizens.

### **«Tax policy» for indigenous numerically-small peoples**

The indigenous community «Tiger» (village Krasnyi Yar in the Pozharskiy area of the Primorskiy krai) contested its right to recognition of the provisions of the Governmental Resolution of the Russian Federation of 30.06.2010 No. 490 «On tax rates per unit of hunting area in hunting-economic agreements without auction»<sup>34</sup> contradicting a whole range of federal legislative norms.

In the opinion of the community, according to the Federal law of 12.01.1996 No. 7–FZ «On non-commercial organizations»<sup>35</sup> [33] the community has the right to entrepreneur activity relevant to the aims of the community. Hunting and hunting management has been based upon a license and an agreement. After the Law on hunt had entered into force, the community had to refuse to conclude a hunting-economic agreement because under the disputed Governmental Resolution a fixed tax rate was established for all users of hunting activity in Primorskiy krai in the amount of 10 rubles per 1 acre of hunting area.

Taking into account that the hunting area for such community has a territory of 1 352 100 acres, a single payment figures up to 13 521 000 rubles (~388 836 USD) which is scarcely affordable for an indigenous community. However, the court stated that under Article 333.2 of the Tax Code of the Russian Federation<sup>36</sup> the right to uncompensated use of flora and fauna has

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vakh-uchastnikakh Sodruzhestva Nezavisimykh Gosudarstv» / The Federal Law of 02.07.2003 No. 89–FZ «On ratification of the Convention «On standards of democratic elections, electoral rights and freedoms in member states of the Commonwealth of Independent States» / «Rossiiskaya Gazeta», No. 130, 05.07.2003–12.07.2003.

<sup>34</sup> Postanovlenie Pravitelstva RF ot 30.06.2010 No. 490 (redaktcia ot 30.08.2013) «O stavkakh platy za edynitcu ploshadi okhotnichego ugodiya pri zakluchenii okhothozaistvennykh soglashenii bez provedeniya auktciona na pravo zaklucheniya okhothozyastvennykh soglashenii» / The Governmental Resolution of 30.06.2010 No. 490 (in edition of 30.08.2013) «On tax rates per unit of hunting area in hunting-economic agreements without auction» / The document was originally published in «Rossiiskaya Gazeta», No. 147, 07.07.2010. See: Electronic version of documents in the «ConsultantPlus» system.

<sup>35</sup> Federalnyi zakon ot 12.01.1996 No. 7–FZ (redaktcia ot 02.07.2013, s izmeneniyami ot 02.11.2013) «O nekommercheskikh organizatsiyakh» / The Federal Law of 12.01.1996 No. 7–FZ (edition of 02.07.2013, with changes of 02.11.2013) «On non-commercial organizations» / The document was originally published in «Rossiiskaya Gazeta», No. 14, 24.01.1996. See: Electronic version of documents in the «ConsultantPlus» system.

<sup>36</sup> «Nalogovyi kodeks Rossiiskoi Federacii (chast vtoraya)» ot 05.08.2000 No. 117–FZ (redaktcia ot 23.07.2013) / The Tax Code of the Russian Federation (part two) of 05.08.2000 No. 117–FZ (edition of 23.07.2013) / The document was originally pub-

only been established for species hunted only for private purposes within limits determined by regional authorities of the Russian Federation, but uncompensated use of lands of different types prescribed by the paragraph 1 of part 1 of Article 8 of the Law on guarantees of indigenous numerically-small peoples shall be carried out in order based on federal and regional legislation. The payment for concluding hunting-economic agreements, the order of defining such payment, the subjects of payment and the persons exempt from the payment are established under Article 71 of the Law on hunt, the Government only has the right to establish the tax rate. In connection with the said facts the Government did not possess the power to grant by the disputed act any preferences not determined in federal legislation.

The claimant's reference to the Governmental Order of the Russian Federation of 08.05.2009 No. 631-r cannot be taken into account because under Article 23 of the Federal Constitutional Law of 17.12.1997 No. 2-FKZ «On the Government of the Russian Federation»<sup>37</sup> [35] the Order entered into force on 08.05.2009, i.e. before the Law on hunt, which regarded hunting for the purposes of indigenous activity as a separate type of hunt. In this way hunting after expiration of the license can be exercised only on a basis of hunting-economic agreements with regular payments because the Law on hunt does not provide exemption for commercial hunting of indigenous communities.

Therefore the court practice on indigenous issues is mostly fragmented and situational and depends on regular changes in the Russian legislation.

For the current moment the Supreme Court of the Russian Federation still not make any official court «review» on court cases from the subjects of the Russian Federation though strict outspoken position of the high court instance on general jurisdiction could facilitate the status of the indigenous numerically-small peoples.

The court practice is being the reflection of the «vital», but not the written law, helps to understand to which direction the Russian legal system goes.

At the same time by means of participation of human rights defenders, communities of indigenous numerically-small peoples, municipal bodies, bodies of state authorities in the subjects of the Russian Federation and bodies of state authorities of the Russian Federation in resolving of issues touching «sustainable development» and «traditional natural use of resources», the question of isolation of simple people from indigenous communities from their vital interest is being decided.

This way the idea of open civil society is being implemented.

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lished in the «Parlamentskaya gazeta» newspaper, No. 151–152, 10.08.2000. See: Electronic version of documents in the «ConsultantPlus» system.

<sup>37</sup> Federalnyi konstitucionnii zakon ot 17.12.1997 No. 2-FKZ (redaktsia ot 07.05.2013) «O Pravitelstve Rossiiskoi Federatsii» / The Federal Law of 17.12.1997 No. 2-FKZ (edition of 07.05.2013) «On the Government of the Russian Federation» / The document was originally published in «Rossiiskaya gazeta», No. 245, 23.12.1997. See: Electronic version of documents in the «ConsultantPlus» system.



### Conclusion

To complete the analysis of the current judicial and legal enforcement on the rights of indigenous numerically-small peoples of the Russian Federation the following recommendations for improving of the Russian national legal framework should be given:

1) to review the principle of appointment of the social pension for individuals belonging to the indigenous numerically-small peoples of the Russian Federation only on a basis of current traditional activities of such individuals, because many old people actually can no longer carry out traditional activities and left their native lands by force of circumstances and for the present moment live in cities; they need to have an opportunity to receive such pension regardless of their residence and activity;

2) to provide an opportunity for the indigenous numerically-small peoples of the Russian Federation to use modern technical devices, equipment, radio and mobile phones in order to support the implementation of traditional activities in mind partial loss of survival skills in the natural environment due to the historical policy of «collectivization», «industrialization» and forced migration;

3) to ban any commercial exploitation of fishing resources in the native indigenous water areas;

4) to clarify the federal law provisions concerning the responsibility for reproduction and preservation of biological resources, because the indigenous communities are not required to ensure the federal procedure of preservation and reproduction of flora and fauna;

5) to return quotas for representatives of indigenous numerically-small peoples of the representative (lawmaking) bodies of Subjects of the Federation;

6) to incorporate the legal norm providing that indigenous communities will be exempt from state fee for hunting-economic agreement which is concluded not for personal but commercial aims since it is necessary for survival of the community, and a profit goes exclusively to needs of communities in order to preserve the traditional way of life.