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Alteration, (brief) version

"The United Nations Declaration on the Rights of Indigenous Peoples": theoretical-legal aspects of the realization (by the example of the Russian Federation).

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The long period of "The United Nations Declaration on the Rights of Indigenous Peoples" drafting was completed on 7 September 2007. The Declaration was adopted by the General Assembly.

The final document contains 46 articles. In fact, it affirms the basic rights and freedoms of indigenous peoples, relying on regulations which are contained in other international acts. In particular, the Declaration guarantees the freedoms of indigenous peoples (including the freedom of non-discrimination); the right to self-determination, self-government and autonomy while solving any internal matters; the right to be protected from forcibly removing from their lands; the right to restitution; the right to practise and revitalize their cultural traditions and customs; the right to use and transmit to future generations their histories, languages, philosophies, traditional medicines, etc.; the right to establish and control educational systems and institutions; the right to establish their own media; the right to the protection of the environment; the right to develop contacts with other peoples across borders; the right to own the land and natural resources within the territories where they live. The Declaration also forbids any wars on the territories

of minorities. At the same time, it ensures as the state obligation legal mechanisms for the implementation and protection of these rights.

However, the importance of the Declaration lies not only in adoption of the first international legal document that states the collective rights of ethnic groups systematically. It should be recognized that the Declaration has solved the difficult problem of the protection of indigenous peoples who can conflict with each other.

At the same time we should note that the Declaration couldn't decline in full measure the collision itself between collective and individual rights of ethnic minorities. It is the practice of realization of collective rights of indigenous peoples that gives suspicious attitude towards the ratification proclaimed by some states – members of the United Nations. Particular concern is given to regulations dealing with the right to self-determination and the right to own land and natural resources. Besides that we should give concern to legal terminology. The words "indigenous peoples", "self-government", "lands and territories", "ethnocide and genocide" have no clear definitions and development in the Declaration.

In other words, the process of the ratification makes the problem of two types of ethnic rights and freedoms actual. It is done not only for the politicians and law enforcement, but also for the scientists.

Theoretically, the main problem is tacit admission that there is no ethnic community without individuals who regard themselves as its members. *De facto,* the ethnic community is regarded as the totality of such individuals. The everyday understanding of the social world is rationalized on the theoretical level; hereunder it is approbated as an example of impartial objectiveness on behalf of science.

However, since the times of Galileo the work with ideal construction has been suggested and the connection with the routine world has been provided by the control over research procedures of "empirical facts". This state is completely applicable to the theory of law. In the sphere of law not only the theory, but the social reality of law and real law standard systems are ideal constructors of the

same class as constructors of the theory of science. Otherwise, as applied to them it is impossible to use the quantifier of universality; the requirements of logical completeness and consistency are interpreted as both the notion “legal truth” and the attempts of its “verification” in the process of using of special legal standards. In other words, the social relations between real participants of social interaction are not direct objects of regulation of imperative in form legal injunctions. The direct object of such influence is legal relations prescribed for legal subjects. The legal subjects as the elements of regulating relations are specially constructed by the same legal techniques. We can assert that the legal subject is the same ideal construct as the object of theoretical knowledge.

As appears from the above, firstly, the recognition of rational-discursive essence of law; secondly, the statement that it doesn’t belong to the sphere of real social relations and interests but is aimed at itself. In other words, the legal regulation doesn’t exceed all bounds of legal relations and interests and is aimed at itself. So we can conclude that any system of legal standards is autonomic, withdraws into itself, its functioning and development aren’t submitted to factors of external action.

Conformably to the handling problem, we can assert that the legal subject of collective ethnic rights and the legal subject of individual ethnic rights are not coincident and identical with each other. They are different legal subjects, constructed on the different basis.

The essence of social-legal mechanic of construction of such subjects can be expressed in the following states. First, the legal subjects are formed as the extrapolation on the unified logical basis to the legal field of miscellaneous social subject characteristics. Second, the legal standards arrogate the relation to logically constructed legal subjects. Third, the reconstruction of justice by legal means is the reconstruction of legal position of legal subjects who recognized to be equal because of removing from unified logical basis. Fourth, the reconstruction of social

justice is the verification of claims of a social actor on the position of a particular legal person.

Using such methods, especially in the case of international legal acts, includes the exarticulation of significant relations that can be regulated. In social actors those qualities and characteristics are sampled that are significant for regulation and are described in legal terminology – in the system of definitions that have particular content volume. At that it is required the execution of maximum unambiguity of interpretation of fixed requirements. From the gnoseological point of view, it is the operation of analysis that includes the using of methodology of social sciences and logical definition. What about legal practise, it is represented as metapragmatics, philosophy of law, metatheory and the using system of legislation is regarded as syntax. In other words, it is the problems of law gnoseology.

From this point of view individual ethnic rights are particular case of theoretical law concept of "rights and freedoms of individuals". Accordingly, law mechanisms of implementation of individual ethnic rights must be related to law mechanisms of implementation of individual rights and freedoms.

In the case of collective ethnic rights it is a question of supplement to ethnic social problems of theoretical law concepts dealing with social communities. As for Russia it is necessary to emphasize two such concepts: "people as the source of sovereignty" and "the right of citizens to voluntary union for the protection and realization of joint interests". The legal expression of these conceptions is the allocation of particular group of subjects among subjects of federation – national-territorial administrative units in the first case and national-cultural units in the second case.

According to the logical approach using in this article, the realization of the ethnic rights within sovereign political units of international relations is the legal regulation of the relations between legal subjects recognized as the participants of

legal relations in the sphere of implementation of collective ethnic rights, the correction of these relations and elimination of legislative gaps.

In technical respect the solving of this task supposes the classification of ethnic rights into groups provided in the form of diverse legal subjects. For example, the right to the sovereignty should be related to the group of rights that realized through the affirmed in the Constitution status of national-territory administrative units with peculiarities of implementation of all their obligations to secure collective indigenous peoples ethnic rights.

As a result, we can pick out the participants of these legal relations – the Russian Federation, legitimateness of which is originated from the will of multinational Russian peoples and national territory autonomy, legitimateness of which is to be originated from the same grounds, i.e. from the will of multinational community with citizens living on this territory. Accordingly, the legal mechanism for realization of the right to sovereignty is the treaty of authority distribution between federal center and the subject of federation. So the object of the treaty can be particular features inherent to the group of subjects which form the subclass of the logical one. It can be only collective ethnic rights in the case to distinguish such subgroup on the basis to provide the group of collective rights with the treaty content (e.g. neither citizenship right nor international matters). In other words the Russian Federation as the subject of international relations assumes obligations of all collective ethnic rights implementation. Some of them which related by the Russian Federation to the rights to provide particular social ethnic community with ethnic sovereignty are passed to administrative territorial subject as additional obligations. And so far as the subject of federation assumes an obligation of such type, the federation can delegate him additional rights which are necessary and sufficient to fulfill these obligations. According to the logic of treaty relations, non-observance of these obligations is the basis to eliminate additional rights and to restrict the subject of federation with its particular status and use other legal

mechanisms to provide collective right of the ethnic community by the federation itself.

Naturally, that such variant of the decision expects clear, fixed in legislation determination contents of the right of the ethical group on sovereignty. Identical clear fixation of contents will be required for other collective rights. But when taking the positions that exactly Russian Federation as subject of the international right provides these rights, given problem turns into t the category of legally technical problems. The point is, becoming the question of political discourse; the problem of the collective rights of indigenous peoples can be solved through constitutional determined and constitutional permitted procedures. Other way can be blocked on the grounds of attempts on sovereignty of multinational Russian community.

The other example of the possibility of the decision appearing collision can be the right to natural resources. By force of that, within the framework of Russia political sovereignty the natural resources are in its jurisdiction, in its jurisdiction there are legal forms of the property securing and its usage, federal political authorities can install the legal mode of the provision this collective right of indigenous peoples, coming from position that subjects of these rights can not be этнофоры. The variant of the decision can be the establishment of the fund, which could be filled up with determined fixed percent from taxes, gathering from usage of entrails, water and timber resource, agricultural areas on territory of the ethnic community settlement. The difficultness with determination of such territory is solvable at presence of the political will. These problems, naturally, must be taken into account at enforcing the laws, regulating relations in specified sphere.

Considering variants of the solution of the complex of the named problems it is impossible pay no regard the fact, under their solution in Russian practice practically they do not consider such legal subject as local self-government. For instance when it does not manage to base on history documents, confirming the right to natural resources, it can be brought the position that ethnic territories,

which have some collective ethnic rights, are local communities within the municipal units, where the part of given ethnos exceeds the certain number. In this sense it is impossible not to recall the practice of the first soviet years, exactly - a separation of national regions. It is possible to expect that imposition of legal status of municipal formation and legal mechanism of the collective right implementation will also allow solving variety of problems in practice.

In some cases, for instance, when ensuring the collective rights: self-government and autonomy in the solving of the internal questions, observance and revival their own traditions and customs, use and transmission to future generations their histories, language of philosophy, traditional medicine, etc., creation of their own educational systems and educational institutions and control them, creation of media - can be used such form of the legal subject, as voluntary public association with particular features. In Russia national cultural autonomy can be referred to such forms. But in purpose of the legal provision of the rights reserved by the Declaration using of this form requires the adjustments corresponding to laws and statutes. According to methodological standpoint of using given form must be accompanied with the instruction of the rights provided in its frame, the instruction of that circumstance that it is one of the mechanisms, practiced in Russia for ensuring exactly collective rights, frame conditions of the treaty obligations and rights of the relations between federation and national-cultural autonomy and, finally, not to link using of this form with practice to handle other forms of the provision of its collective rights by particular ethnic community. By force of that form itself - a voluntary association of the people - allows simultaneous existence of several resemble associations in the frame of one ethnic community, that it must be provided the principle of equal approach of federal authorities to each of these independently from their strategy of the realization of collective ethnic rights (these strategies are considered to be realized without violation of the Constitution of the Russian Federation). The dimension, scale of the obligations performing, appearing beside federal authorities within the

framework of relations with NKA, can be dealt with the number of the particular association or with the part of the number of ethnic community.