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### Russian legislation in the area of minority rights

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**Managing Ethnic Diversity in Russia**  
**Edited by Oleh Protsyk and Benedikt Harzl**

***Russian legislation in the area of minority rights***

Bill Bowring, University of London

**Routledge 2012, Chapter 1, pp.15-36**

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**Introduction**

Russia is different. This is most of all the case with respect to minority rights and legislation for them. Even in its present form, with 83 subjects of the Federation, 21 of them ethnic republics, Russia is a very sizeable remnant, indeed perhaps the last, of the multi-ethnic empires. Of the vast Ottoman Empire, with its unique millet system accommodating Christian and Jewish autonomy, and many languages, only fiercely mono-ethnic Turkey remains. Of the Austro-Hungarian Empire, which included Hungarians, Czechs, Slovaks, Slovenians, Croatians, Bosnians and Montenegrins, and which in its last years gave birth to the theory of “national-cultural autonomy”, only Austria remains. But Russia, even after the collapse of the USSR, includes much of the territory and diversity of the Tsarist Empire.

The European instruments and systems for the protection of minority rights, developed in the final decade of the 20<sup>th</sup> Century, are primarily designed for the traditional, historical minorities of Western European states, and also for the many minorities with kin-states, finding themselves in the wrong place, as it were, in the aftermath of the two World Wars. Only the United Kingdom, which has no “national minorities”, but four historical Nations (England, Wales, Scotland, Ireland) can in any way be compared with Russia.

These instruments are to be found in the OSCE's Copenhagen Document (1990), the mandate of the OSCE's High Commissioner on National Minorities (HCNM, 1992), with his Hague, Oslo and Lund Recommendations, the Council of Europe's (CoE) European Charter for Regional or Minority Languages (Languages Charter, 1992), and the CoE's Framework Convention for the Protection of National Minorities (FCNM). Russia, a founder member of the CSCE/OSCE and a member of the CoE since 1996, struggles to comply with its obligations under the FCNM, and feels understandable apprehension at ratification of the Languages Charter.

This paper shows how Russia's post-Soviet legislation in the field of minority rights bears the indelible traces of her Imperial and Soviet history, and is also the product of intense ideological and theoretical debates since 1991.

I start with a brief account of the organizing principles of the Russian Empire, and how these survived the Soviet period in barely altered form. Next, I touch on the most significant theoretical debate, which has determined the main contours of minorities legislation in post-Communist Russia. Third, I set out the international legal instruments with which Russia must comply in its legislation. Fourth, in the context already explored, I give an overview of Russia legislation. My conclusion reflects my understanding of the lack of system and inconsistency in Russian legislation in the area of minority rights.

### **The Russian Empire**

In 1721 Peter the Great proclaimed the founding of the Russian Empire (using the Latinate word rather than the Russian, *imperiya* rather than *tsarstvo*), although this was the culmination of a process which started in 1480 when Ivan III conquered Novgorod and threw off the 'Tatar Yoke'; and continued in 1552 when Ivan IV

conquered the Khanate of Kazan.<sup>1</sup> It should be noted with interest that the term “the British Empire” was first used in about 1762<sup>2</sup>.

The Russian Empire was organized for the most part on administrative rather than “ethno-national” principles, although the late Oleg Kutafin showed, in a thorough study of Russian autonomy<sup>3</sup>, that there was a long history of varying degrees of autonomy within the Empire, continuing into Soviet Russia. It may be argued that with the Soviet Union the Russian Empire reached its greatest extent. Two examples of substantial autonomy were in territories which are now independent states and members of the European Union.

The Grand Duchy of Finland, which was a parliamentary, constitutional monarchy within the autocratic Russian Empire, was the extreme example. Finland was until the 19<sup>th</sup> Century an integral part of the Kingdom of Sweden, and still has a substantial and official recognized Swedish minority. During the Finnish War between Sweden and Russia, the four Estates of occupied Finland assembled at the Diet of Porvoo on March 29, 1809 to pledge allegiance to Alexander I of Russia. In return he guaranteed that the laws and liberties of the Finns as well as their Protestant religion would be left unchanged. Following Swedish defeat in the war and the signing of the Treaty of Fredrikshamn on September 17, 1809, Finland became a truly autonomous Grand Duchy.

Furthermore, the present day independent Latvia and Estonia were Swedish possessions until the Great Northern War. With the capitulation of Estonia and Livonia in 1710 these became part of the Russian Empire. The Livonian nobility and

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<sup>1</sup> See for an overview Hoskings, G (2002) *Russia and the Russians: From Earliest Times to 2001* (London: Penguin)

<sup>2</sup> See Truslow Adams, James (1922) “On the Term “British Empire”” v.27 n.3 *The American Historical Review* 485-489. In 1558 England defeated the Spanish Armada, and England and Russia simultaneously built great empires, the former maritime, the latter continental.

<sup>3</sup> Kutafin, O.E. (2006). *Rossiiskaya avtonomiya* (Russian autonomy) Moscow: Prospekt Publisher.

the city of Riga capitulated on 15 July 1710 and the Estonian nobility and the city of Reval (Tallinn) on 10 October 1710. Russia left the local institutions in place and confirmed the traditional privileges of the German nobles and burghers, especially with respect to the Protestant faith. This was the normal operational procedure of the multi-national Russian Empire. The condition was that the local nobility would serve the Tsar loyally, and Baltic Germans rose to the highest positions in the Empire.

Indeed, the Russian Empire grew from the 18<sup>th</sup> to the 20<sup>th</sup> centuries to have a remarkably complex structure. Peter the Great created eight *guberniyas* (provinces) in 1708, in the wake of his victories against Sweden in the Great Northern War, and Catherine I increased their number to 14. In 1775, Catherine the Great, with Prince Potemkin's immense conquests, established 44 provinces and two regions with provincial status. By 1914, the Empire consisted of no less than 81 provinces and 20 regions<sup>4</sup>.

Despite the fact that in reality the USSR functioned as a state with strongly centralized power, under the control of the Communist Party with its principle of 'democratic centralism', the formal, constitutional position was different – and contrasted sharply with the Tsarist Empire. The USSR presented itself as a confederation, a union of sovereign republics with the right of secession; and the Russian Socialist Federation of Soviet Republics (RSFSR) as a unitary state with strong elements of territorial autonomy<sup>5</sup>.

Of course, the ethnic populations which did not receive their 'own' territory, especially the indigenous peoples of the North, lost out in this competition. The goal of leaders of the 'titular' nationality in many of the particular territories was to

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<sup>4</sup> Teague, E. (2008). "Regional mergers in the Russian Federation". Unpublished paper presented to the Association for the Study of Nationalities. 2007 World Convention New York. Copy with the author.

<sup>5</sup> Khazanov, A. (1997). "Ethnic nationalism in the Russian Federation." 126 *Daedalus*: 121-142.

preserve as much as possible of its ethnic character and territorial integrity. Dowley observed as follows<sup>6</sup>:

“[e]lites in the ethnic autonomous republics and national level republics were appointed to represent the ethnic group interests in the larger state, and thus, their natural political base of support was supposed to be the ethnic group. Other political appointments in these regions were made on the basis of ethnicity, a Soviet form of affirmative action for the formally, institutionally, recognised ethnic groups referred to in the early years of the Soviet Union as *korenizatsiya* or nativisation.”

The Chairmen of the Supreme Soviets of Tatarstan and Bashkortostan, both of which aspired to the status of ‘union republics’, were always members of the Presidium of the Supreme Soviet of the USSR, along with those of the Union Republics - the only two “autonomous republics” so represented<sup>7</sup>. By the end of the 1970s, more than half of the professional cadre in half of the Union Republics and 11 of the 21 autonomous republics in the RSFSR was composed of the titular ethnic group. Social mobility of ethnic groups was higher than that of Russians<sup>8</sup>.

The first document of constitutional significance of the late Soviet period was the *Declaration on State Sovereignty of the RSFSR* of 12 June 1990, adopted by the Congress of People’s Deputies of the RSFSR<sup>9</sup>. The basic idea of the Declaration was the establishment of Russia as a sovereign democratic rule of law state on the basis of people’s power, separation of powers, and federalism. It also called for greater rights for the autonomous republics, autonomous *oblasts* and autonomous *okrugs*, as well as administrative *krais* and *oblasts*. But at this stage Russia was only formally speaking a federation. According to Umnova, there was the parallel development of two

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<sup>6</sup> Dowley, K. (1998). “Striking the federal balance in Russia: comparative regional government strategies” 31 *Communist and Post-Communist Studies*: 359-380, 363

<sup>7</sup> Shaimiev, M. (1996). Conflict prevention and management: the significance of Tatarstan’s experience. In *Preventing Deadly Conflict: Strategies and Institutions; Proceedings of a Conference in Moscow*, eds. Gail W. Lapidus with Svetlana Tsalik. New York: Carnegie Corporation p.1

<sup>8</sup> Drobizheva, L. (1996). Power sharing in the Russian Federation: the view from the center and from the republics. In *Preventing Deadly Conflict: Strategies and Institutions. Proceedings of a Conference in Moscow*, ed. Gail W. Lapidus, with Svetlana Tsalik. New York: Carnegie Corporation p.2

<sup>9</sup> Vedomosti of the Congress of Peoples Deputies RSFSR and Supreme Soviet RSFSR, 1990, No.2, Art 22

contradictory developments: ensuring the statehood of Russia on the one hand, and its disintegration on the other<sup>10</sup>.

The process of “sovereignisation” of the subjects of the RSFSR was also exemplified in laws which followed the declaration: the Laws of the USSR “On the foundations of economic relations of the USSR, and union and autonomous republics” of 10 April 1990, and “On delimitation of competences between the USSR and subjects of the federation” of 26 April 1990.<sup>11</sup> These laws raised the autonomous republics in the RSFSR to a significant extent to the level of subjects of the USSR, equal to the union republics in their interconnections with the USSR. The legacy of these laws is to be found in the continuing highly complex relations between the Federation and its diverse subjects.<sup>12</sup>

### **Theoretical disputes**

I wrote some years ago about the highly contested theoretical debates in Russia, which mirror Western disputes between “primordialists” and “social constructivists”<sup>13</sup>. These debates can help to throw light on the origins of the Russian territorial autonomies, and the more recent (non-territorial) National Cultural Autonomies, created by Federal law in 1996<sup>14</sup>.

Professor Valeriy Tishkov, who was Minister of Nationalities in the 1990s, and now heads the Institute of Ethnology and Anthropology of the Russian Academy of

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<sup>10</sup> Umnova, I. (1998). *Konstitutsionni osnovy sovremennogo Rossiiskogo federalizma* (The constitutional foundations of contemporary Russian federalism). Moscow: Dyelo, p.57

<sup>11</sup> Vedomosti of the Congress of People's Deputies of the USSR and the Supreme Soviet of the USSR, 1990, No 16, Art 270; and No.19, Art 329.

<sup>12</sup> Bowring, B (2010) “The Russian Constitutional System: Complexity and Asymmetry” in Marc Weller (ed) *Asymmetrical autonomy settlements: Asymmetrical constitutional designs as a means of accommodating ethnic diversity* (Philadelphia: University of Pennsylvania Press) pp. 48-74

<sup>13</sup> Bowring, B (2002) “Austro-Marxism's Last Laugh?: The Struggle for Recognition of National-Cultural Autonomy for Russians and Rossians” v.54, n.2 *Europe-Asia Studies* pp.229-250

<sup>14</sup> See also Bowring, B (2002) for details as to the Law and the controversy surrounding its enactment.



Science, argued in 1997 that the Soviet regime was involved in an extraordinary policy of nation-building. He wrote<sup>15</sup>:

“The nation-building process in Imperial Russia was abruptly halted by the Bolshevik regime, and the whole vocabulary was changed in favour of Austro-Marxist ethnonational categories. Now the ‘socialist nations’ were proclaimed and constructed in the Soviet Union on the basis of existing or invented cultural differences. Soviet ideology and political practice, while pursuing declaratory internationalism, also enforced mutually exclusive ethnic loyalties on the principle of blood, and through the territorialisation of ethnicity on the principle of ‘socialist’ (read; ethnic) federalism. The very process of civic nation-building lost its sense, replaced by the clumsy slogan of “making the Soviet people’ from many nations, instead of making one nation from many peoples.”

I cannot agree with Tishkov’s interpretation of Russian history. But, more interestingly, Tishkov’s views are very close to the analysis of the “social constructivist” Rogers Brubaker<sup>16</sup>. In his stimulating account Brubaker wrote<sup>17</sup>:

“... the Soviet Union was neither conceived in theory nor organised in practice as a nation-state. Yet while it did not define the state or citizenry as a whole in national terms, it did define component parts of the state and the citizenry in national terms. Herein lies the distinctiveness of the Soviet nationality regime - in its unprecedented displacement of nationhood and nationality, as organising principles of the social and political order, from the state-wide to the sub-state level. No other state has gone so far in sponsoring, codifying, institutionalising, even (in some cases) inventing nationhood and nationality on the sub-state level, while at the same time doing nothing to institutionalise them on the level of the state as a whole.”

This account in my view pays insufficient attention to Tsarist nationalities policy and practice, in particular the wide variety of forms of autonomy which laid the basis for Soviet policy. Nevertheless, Tishkov, writing in 1997, found particular support and significance in Brubaker’s theoretical position, especially his claim that the Soviet Union went so far as to “invent” nations.<sup>18</sup> Another view is that of Terry Martin, for whom “The Soviet Union was the world’s first Affirmative Action Empire”, a view

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<sup>15</sup> Tishkov, V. (1997). *Ethnicity, nationalism and conflict in and after the Soviet Union. The Mind Aflame*. (London: Sage) p. 250

<sup>16</sup> Brubaker, R(1996) *Nationalism Reframed. Nationhood and the national question in the New Europe*. (Cambridge: Cambridge University Press),

<sup>17</sup> Brubaker (1996) p.29

<sup>18</sup> Brubaker (1996) p.7

with which I agree, save for Martin's insufficient attention to the Tsarist precursors of Soviet national policy.<sup>19</sup>

Tishkov was delighted to find that this view exactly coincided with his own controversial conclusion, published in 1996, that "nation" does not constitute a scientific category, and ought to be expelled from the discourse of science and politics. His slogan was "Forget the nation!"<sup>20</sup>. Tishkov was a leading proponent of non-territorial autonomy, that is, National Cultural Autonomy as defined in the Law of 1996, as an alternative to the territorial autonomy characteristic of the Empire and of the Soviet Union..

It is noteworthy that, by 2001, Tishkov, who remains the leading Russian government expert on minorities issues, appeared to be much more sympathetic to the Soviet nationalities policy. He wrote:

"Here [in the Soviet world] there took place the institutionalisation of ethnic groups ,and the codification of state building was based on it, and here the situation is completely different [from the West] and was already reflected in the institutions of federalism in the Soviet time. And this attitude is actually an inheritance which we received and the ethno-territorial form of Soviet federalism has played a great positive role. Ethnic federalism or ethno-territorial autonomy – this is recognized on the world level as the most suitable form of self-determination. Therefore, the republics, I consider – this is the form of ethno-territorial self-determination, ethno-territorial autonomy within Russia."<sup>21</sup>

Perhaps this reflected the growing disillusionment with the National Cultural Autonomy experiment in Russia, explored in detail by Aleksandr Osipov.

Osipov, who to a certain extent shares Brubaker's theoretical outlook, is much more skeptical about group or collective rights, especially the right to self-determination,

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<sup>19</sup> Martin, T (2001) *The Affirmative Action Empire: Nations and Nationalism in the Soviet Union, 1923 – 1939* (Ithaca: Cornell University Press), p.1

<sup>20</sup> Tishkov, V. (1996). "O natsii i natsionalisme (On the nation and nationalism)", *Svobodnaya Mysl (Free Thought)* 3

<sup>21</sup> Tishkov, V (2001) "Etnicheskii federalizm: rossiiskii i mezhdunarodniy opyt (Ethnic federalism: Russian and international experience) Paper delivered at the conference "Federalism na poroge XXI veka: Rossiiskoye i mezhdunarodnoye izmereniya" (Federalism at the threshold of the XXI century: Russian and international dimensions) 9-10 February 2001, at <http://federalmcart.ksu.ru/conference/konfer2/tishkov.htm>

which was the corner-stone of Bolshevik nationalities policy.<sup>22</sup> He notes that “practically all Russian laws relating to ethnic questions, beginning with the Law “On rehabilitation of repressed peoples” of 1991, are based on the concept of group rights.” This is also true of the Russian Constitution of 1993. However, he considers that it is Russia’s great misfortune that the discourse of group rights is to a significant extent based on disagreement or misunderstanding<sup>23</sup>.

But I am inclined to place more emphasis than him first, on the historical irony of the adoption by post-Soviet Russia of a policy which was anathema to the Bolsheviks, especially Lenin, who vigorously promoted and put into practice after 1917 a policy of “self-determination of nations”, which is at the root of the existence in contemporary Russia of 21 ethnic republics; and second, on the fact that the Law of 1996 was the result of stormy debate as to Russia’s future, and was perceived as a genuine “third way” between the extremes of national territorial autonomy, and purely administrative territorial organization.<sup>24</sup>

Most recently, Tishkov, in tune with the Kremlin’s outlook, has published, on the right-wing *Russkiy Zhurnal* site, an article entitled “The 21<sup>st</sup> century recognizes the right of the majority: the complications of multiculturalism”.<sup>25</sup> Paul Goble comments that this is a “view likely to please Russian nationalists even as it frightens national

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<sup>22</sup> For Lenin’s contribution, through his policy of the “Right of Nations to Self-Determination”, see Bowring (2002)

<sup>23</sup> Osipov, A (2004) *Natsionalno-kulturnaya avtonomiya. Idei, resheniya, instituty*. (National-cultural autonomy. Ideas, decisions, institutions.) (St Petersburg: Centre for Independent Sociological Research), p.442

<sup>24</sup> For a thorough examination of these issues see Bowring, B (2008) “The Tatars of the Russian Federation and National-Cultural Autonomy: A Contradiction in Terms?” in Karl Cordell and David Smith (eds) *Cultural Autonomy in Contemporary Europe* (Abingdon: Routledge), pp.81-100; Bowring, B (2005) “Burial and Resurrection: Karl Renner’s controversial influence on the ‘National Question’ in Russia” in Ephraim Nimni (ed) *National-Cultural Autonomy and its Contemporary Critics* (Abingdon: Routledge) pp.191-206; and Bowring, B (2002)

<sup>25</sup> Tishkov, V (2011) 31 May 2011 “XXI vek priznaet prava bolshinstva: slozhnosti multikulturalizma” at <http://www.russ.ru/Mirovaya-povestka/XXI-vek-priznaet-prava-bol-shinstva>

minorities” in Russia.<sup>26</sup> This is also in line with the fact that recent policies of the government of the Russian Federation have promoted greater centralization – see on this Hans Oversloot’s chapter in this collection.<sup>27</sup>

### **Russia’s international law commitments**

In this section I first discuss Russia’s approach to international law, and then turn to the various binding commitments Russia has undertaken to international standard-setting instruments.

Russia has a “monist” approach to international law, meaning that treaties ratified by it become part of its domestic law without the need (as in Britain) for further legislation. Article 15(4) of the 1993 Constitution of the Russian Federation provides:

Universally recognized principles and norms of international law as well as international agreements of the Russian Federation shall be an integral part of its legal system. If an international agreement of the Russian Federation establishes rules, which differ from those stipulated by law, then the rules of the international agreement shall be applied.<sup>28</sup>

On 10 October 2003 the Plenum of the Supreme Court of the Russian Federation following consultation with the Constitutional Court and with Russia’s Judge at the European Court of Human Rights, Anatoliy Kovler, adopted a detailed Resolution “On the application by judges of general jurisdiction of universally recognized principles and norms of international law and of international treaties of the Russian Federation.”<sup>29</sup>

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<sup>26</sup> Goble, P (2011) “21st Century to be ‘Century of the Majority,’ Tishkov Says” 1 June 2011 at <http://windowoneurasia.blogspot.com/2011/06/window-on-eurasia-21st-century-to-be.html>

<sup>27</sup> See also Bowring, B (2010)

<sup>28</sup> See Danilenko, G (1994) “The New Russian Constitution and International Law” v.88 n.3 pp.451-470; and Marochkin, S (2007) “International Law in the Courts of the Russian Federation: Practice of Application” v.6 n.2 *Chinese Journal of International Law* 329-344

<sup>29</sup> See for the impact of the ECHR in Russia, Burkov, A (2010) *The Convention for the Protection of Human Rights in Russian Courts* (in Russian), Moscow: Wolters Kluwer, 2010, <http://sutyajnik.ru/bal/wolters..> See also Burkov, A *The Impact of the European Convention on Human Rights on Russian Law* (Stuttgart: ibidem-Verlag, 2007) <http://www.sutyajnik.ru/bal/ibidem>

In the case where Russian has signed but not ratified an international treaty, the UN's 1969 Vienna Convention on the Law of Treaties<sup>30</sup> provides in article 18:

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

(a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty;

The Russian Federation has signed and ratified a number of international conventions, and participates in organisations and mechanisms which relate wholly or in part to the protection of minorities.

### **United Nations**

The USSR had already signed and ratified all the United Nations human rights treaties relevant to a greater or lesser extent to minorities, and Russia is bound by them as successor to the USSR:

- Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948; signed by the USSR on 16 December 1949, ratified by the USSR on 3 May 1954<sup>31</sup>
- International Convention on the Elimination of All Forms of Racial Discrimination of December 21, 1965; signed by the USSR on 7 March 1966, ratified by the USSR on 4 February 1969.<sup>32</sup>
- International Covenant on Economic, Social and Cultural Rights (ICESCR) of December 16, 1966; signed by the USSR on 18 March 1968, ratified by the USSR on 16 October 1973.<sup>33</sup>
- International Covenant on Civil and Political Rights (ICCPR) of December 16, 1966; signed by the USSR on 18 March 1968, ratified by the USSR on 16 October 1973.<sup>34</sup>
- Optional Protocol to the International Covenant on Civil and Political Rights of December 16, 1966; the USSR acceded on 1 October 1991.<sup>35</sup>
- Convention on the Suppression and Punishment of the Crime on Apartheid of November 30, 1973; signed by the USSR on 12 February 1974, ratified by the USSR on 26 November 1975.<sup>36</sup>

<sup>30</sup> [http://untreaty.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf)

<sup>31</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg\\_no=IV-1&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg_no=IV-1&chapter=4&lang=en)

<sup>32</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg\\_no=IV-2&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg_no=IV-2&chapter=4&lang=en)

<sup>33</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg\\_no=IV-3&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg_no=IV-3&chapter=4&lang=en)

<sup>34</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg_no=IV-4&chapter=4&lang=en)

<sup>35</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg\\_no=IV-5&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg_no=IV-5&chapter=4&lang=en)

<sup>36</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg\\_no=IV-7&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg_no=IV-7&chapter=4&lang=en)

- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of December 18, 1979; signed by the USSR on 17 July 1980, ratified by the USSR on 23 January 1981.<sup>37</sup>
- Convention on the Rights of the Child of November 20, 1989; signed by the USSR on 26 January 1990, ratified by the USSR on 16 August 1990.<sup>38</sup>

Although it may appear that the USSR had no intention of even partial implementation of the obligations it had accepted, it punctiliously submitted the periodical reports required of it<sup>39</sup>, and distinguished Soviet international lawyers served on the Treaty bodies..<sup>40</sup>

And there were surprising developments only months before the collapse of the USSR in December 1991. In the Ratification of the Optional Protocol Case, (4 April 1991), in a move which put the USSR ahead of the UK and the US, the Committee for Constitutional Supervision, part of Gorbachev's *perestroika*, requested the Supreme Soviet to secure ratification by the USSR of the First Optional Protocol to the UN International Covenant on Civil and Political Rights (ICCPR).<sup>41</sup> The USSR had ratified the ICCPR – in 1973 – but not the Protocol, which enables individual complaint to the UN's Human Rights Committee by a person complaining of a violation. There was a commendably prompt and positive response. On 5 July 1991

<sup>37</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en)

<sup>38</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en)

<sup>39</sup> For the initial report submitted by the USSR, see CCPR/C/1/Add.22; for its consideration by the Committee, see CCPR/C/SR.108, SR.109 and SR.112 and Official Records of the General Assembly, Thirty-third Session, Supplement No. 40 (A/33/40), paragraphs 409-450. For the second periodic report of the USSR, see CCPR/C/28/Add.3; for its consideration by the Committee, see CCPR/C/SR.564-567, SR.570 and Official Records of the General Assembly, Fortieth Session, Supplement No. 40 (A/40/40), paragraphs 251-319. For the third periodic report of the USSR, see CCPR/C/52/Add.2; for its consideration by the Committee, see CCPR/C/SR.928-931 and Officials Records of the General Assembly, Forty-fifth Session, Supplement No. 40 (A/45/40), paragraphs 72-119.

<sup>40</sup> The best know of these was Professor Rein Müllerson, recently retired from Kings College London, and from 1988 to 1992 a member of the UN Human Rights Committee. Between 1987 and 1991 he was the Head of the International Law Department of the Institute of State and Law of the Academy of Sciences in Moscow, and was adviser to the Chairman of the Supreme Soviet of the USSR (M. Gorbachev), [http://untreaty.un.org/cod/avl/pdf/ls/Mullerson\\_bio.pdf](http://untreaty.un.org/cod/avl/pdf/ls/Mullerson_bio.pdf)

<sup>41</sup> VSND SSSR *ibid*, 1991 No.17, 502; see also *Sovyetskaya Iustitsiya* I 23 December 1991, 17.

the Supreme Soviet adopted two Resolutions acceding to the Optional Protocol and recognising the jurisdiction of the HRC.<sup>42</sup>

In any event, it is clear that Russian legislation is heavily influenced by, and is measured against, the international obligations to which it has subjected itself.

Russia has continued the Soviet tradition of regular reporting to the UN treaty bodies. It submitted its Fourth Periodical Report to the UN Human Rights Committee, the Treaty Body for the ICCPR, on 22 February 1995; its Fifth Report on 9 December 2002; and its most recent, Sixth, Report on 5 February 2008. In each Report it gave details of its compliance with Article 27 of the ICCPR, which provides:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

The Russian reports and the Concluding Observations of the Human Rights Committee provide a very important counterpoint to the process of reporting under the FCNM.

## **OSCE**

The OSCE is of course a purely political organization, but its Copenhagen Document of 1990, although a “soft law” instrument without binding effect, contains the most comprehensive list of principles of minority protection, and provides an important foundation for all subsequent European treaty-making and practice. But Professor Tishkov and others concede:

Virtually no attention is given in the Russian Federation, however, to the recommendations made by the OSCE experts in connection with the work of the minority rights commissioner, in particular the Hague recommendations regarding the education rights of national minorities (1996), the Oslo recommendations regarding the linguistic rights of national minorities (1998)

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<sup>42</sup> *Vedomosti SSSR*, 1991 No.29, 842, 843.

and the Lund recommendations on the effective participation of national minorities in public life (1999).<sup>43</sup>

These recommendations provide an invaluable analysis and presentation of the “state of the art”, drawing from hard law and soft law. It may be that the reticence of Russian experts is connected with the well-known positivism of Russian scholarship.

### **Council of Europe**

Russia joined the Council of Europe in 1996. This was highly controversial at the time, since Russia was engaged in bloody internal armed conflict in the First Chechen War (1994-1997). Germany played a key role in persuading the other CoE member states that it would be better to have Russia inside the Council. Even more surprisingly, Russian nationalists and communists in the State Duma voted overwhelmingly for accession and then ratification in 1998 of the European Convention on Human Rights, despite the many binding commitments entered into by Russia, allowing for an unprecedented degree of interference in its internal affairs, something which would have been inadmissible for the USSR.<sup>44</sup> There have now been many judgments against Russia at the Strasbourg Court, but Russia has always paid the compensation (“just satisfaction”) ordered by the Court, even if its cooperation has often been problematic.<sup>45</sup>

It is no surprise then that Russia has an impressive engagement with the CoE’s relevant treaties.

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<sup>43</sup> Tishkov V.A., V.V. Stepanov, D.A. Funk, O.I. Artemenko “Status of and support for linguistic diversity in the Russian Federation” Expert Report, Moscow 2009, copy in the possession of the author

<sup>44</sup> See for detail of the debates concerning accession and ratification Bowring, B (1997) “Russia’s Accession to the Council of Europe and Human Rights: Compliance or Cross-Purposes?” *6 European Human Rights Law Review* pp.628-643; and Bowring, B (2000) “Russia’s accession to the Council of Europe and human rights: four years on” *European Human Rights Law Review* Issue 4, p.362

<sup>45</sup> See Bowring, B (2010) “The Russian Federation, Protocol No. 14 (and 14bis), and the Battle for the Soul of the ECHR” v.2, n.2 *Goettingen Journal of International Law*, 589-617



- European Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950 and Protocols thereto; signed by Russia on 28 February 1996, ratified by Russia on 5 May 1998<sup>46</sup>. This has an increasing minority rights case law.<sup>47</sup>
- European Charter of Local Self-Government of 15 October 1985<sup>48</sup>, signed by Russia on 28 February 1996, ratified by Russia on 5 May 1998; Russia has now made several serious attempts to implement the Charter<sup>49</sup>
- Framework Convention for the Protection of National Minorities (FCNM) of February 1, 1995, signed by Russia on 28 February 1996 on joining the Council of Europe, ratified by Russia on 18 June 1998
- Revised Social Charter of 3 May 1996, signed by Russia on 14 September 2000, ratified by Russia on 16 October 2009
- European Charter for Regional Languages or Minority Languages of 5 November 1992, signed by Russia on 10 May 2001.<sup>50</sup>

Russia has now provided three periodical reports for the FCNM, on 8 March 2000, 26 April 2005, and 9 April 2010. The first two cycles have been completed with Resolutions of the Committee of Ministers on 10 July 2003 and 2 May 2007 respectively. The Advisory Committee is now working on its Opinion on the third cycle report. These reports provide a rich analysis and commentary on Russia's increasingly sophisticated, but also at times argumentative, engagement with this international mechanism. Russia's experience also contributes to the growing wealth of analysis of the Advisory Committee.<sup>51</sup>

As in other Reports since 1996, considerable emphasis is placed in Russia's 2010 Report to the FCNM<sup>52</sup> on the Federal Law "**On National-Cultural Autonomy**" (No. 74-Φ3 of June 17, 1996, as amended on June 29, 2004), which defines the latter as "a

<sup>46</sup> See Bowring, B (1997), and Bowring, B (2000) note 39 above.

<sup>47</sup> See Gilbert, G (2002) "The Burgeoning Minority Rights Jurisprudence of the European Court of Human Rights" v.24, n.3 *Human Rights Quarterly* pp. 736-780

<sup>48</sup> Strasbourg, 15.X.1985, CETS No.: 122, at <http://conventions.coe.int/Treaty/EN/Treaties/Html/122.htm>

<sup>49</sup> See Bowring, B "Enhanced Local Self-government as a Means of Enhancing Minority Governance" in Mark Weller (ed) *Political Participation of Minorities: A Commentary on International Standards and Practice* (Oxford: Oxford University Press, 2010), pp.661-681

<sup>50</sup> <http://www.jp.coe.int/CEAD/JP/Default.asp?ProjectObjectiveID=2266>; the author is an expert of the European Union – Council of Europe Joint Programme "Minorities in Russia: Developing Languages, Culture, Media and Civil Society." The programme is for three years, with a budget of €2,750,000

<sup>51</sup> See Phillips, A *The Framework Convention for the Protection of National Minorities: A Policy Analysis* (2002) Minority Rights Group International, at

[http://www.greekhelsinki.gr/bhr/english/organizations/fcnm\\_pol\\_paper\\_aug.doc](http://www.greekhelsinki.gr/bhr/english/organizations/fcnm_pol_paper_aug.doc)

<sup>52</sup> [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_3rd\\_SR\\_RussianFed\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_SR_RussianFed_en.pdf)

form of national and cultural self determination constituting a public association of citizens of the Russian Federation, identifying themselves with certain ethnic communities, based on their voluntarily chosen identity for the purpose of independently solving the issues of their identity preservation and their linguistic, educational and national cultural development".

According to the Report, "It is based on the following principles: freedom of expression, self-organization and self-government, diversity of forms of internal organization, combination of public initiative and state support, respect for the principles of cultural pluralism."

### **Russian legislation**

Article 15(10 of the 1993 Constitution of the Russian Federation<sup>53</sup> states:

The Constitution of the Russian Federation shall have the supreme juridical force, direct action and shall be used on the whole territory of the Russian Federation. Laws and other legal acts adopted in the Russian Federation shall not contradict the Constitution of the Russian Federation.

It is therefore essential to start with the relevant provisions of the Constitution, which must in all cases prevail as against all the Constitutions and Charters of the 83 subjects of the Federation; and as against all the legislative and normative documents falling within the competence of those subjects. It should be noted not only that Russia is divided into eight federal "Okrugs" each with an apparatus devoted to bringing about consistency, but that in each subject there is a special department of the Office of the General Prosecutor constantly monitoring compliance of regional law with federal norms. There is not space for me in this paper to explore the law of the subjects of the Federation.

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<sup>53</sup> <http://www.constitution.ru/en/10003000-01.htm>

This constitutional provision was concretised in the “Blueprint for State National Policy” (1996) which remains, despite the passage of fifteen years, the official policy of the Russian Federation. But this document has no statutory status and, in the view of Professor Tishkov and others, can in many respects be regarded as outmoded, so there is a need to come up with new guidelines and legislative standards for preserving and developing the ethnic and linguistic diversity of the RF population.<sup>54</sup>

The Constitutional corner-stone is Article 19(2), which provides:

The State shall guarantee the equality of rights and freedoms of man and citizen, regardless of sex, race, nationality, language, origin, property and official status, place of residence, religion, convictions, membership of public associations, and also of other circumstances. All forms of limitations of human rights on social, racial, national, linguistic or religious grounds shall be banned.

Article 9 provides:

1. Land and other natural resources shall be utilized and protected in the Russian Federation as the basis of life and activity of the people living in corresponding territories.
2. Land and other natural resources may be in private, state, municipal and other forms of ownership.

This can – just about – be interpreted as having regard to the position of indigenous peoples in Russia.

Article 26 provides:

1. Everyone shall have the right to determine and indicate his nationality. No one may be forced to determine and indicate his or her nationality.
2. Everyone shall have the right to use his or her native language, to a free choice of the language of communication, upbringing, education and creative work.

The second part of this article is plainly of vital importance to minorities and their members, but is expressed with excessive vagueness.

Article 29(2) provides:

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<sup>54</sup> Tishkov V.A., V.V. Stepanov, D.A. Funk, O.I. Artemenko “Status of and support for linguistic diversity in the Russian Federation” Expert Report, Moscow 2009, copy in the possession of the author

The propaganda or agitation instigating social, racial, national or religious hatred and strife shall not be allowed. The propaganda of social, racial, national, religious or linguistic supremacy shall be banned.

This is beyond the scope of the present article, but Russia suffers greatly from xenophobia and racist violence, although there are signs of a tougher response from the law enforcement bodies.

Article 43 on the right to education contains no reference to minorities of any description.

It has to be read with Article 68 on language, which provides:

1. The Russian language shall be a state language on the whole territory of the Russian Federation.
2. The Republics shall have the right to establish their own state languages. In the bodies of state authority and local self-government, state institutions of the Republics they shall be used together with the state language of the Russian Federation.
3. The Russian Federation shall guarantee to all of its peoples the right to preserve their native language and to create conditions for its study and development.

However, it will be noted that only the 21 ethnic Republics, out of 83 subjects of the Federation, have a right to a state language or languages. I return below to the particular problems of Tatarstan.

Article 69 provides

The Russian Federation shall guarantee the rights of the indigenous small peoples according to the universally recognized principles and norms of international law and international treaties and agreements of the Russian Federation.

By Article 71, the exclusive jurisdiction of the Federation includes

- c. regulation and protection of the rights and freedoms of man and citizen; citizenship in the Russian Federation, regulation and protection of the rights of national minorities;

By Article 72, the joint jurisdiction of the Federation and its subjects includes:

1. protection of traditional living habitat and of traditional way of life of small ethnic communities;

In the latest Russian Report to the FCNM, Articles 69, 71 and 72 are summarized as follows:

The Constitution of the Russian Federation guarantees the protection of rights of national minorities, including “indigenous minorities” and “ethnic minorities” (Art. 69, 71, 72). The Constitution of the Russian Federation considers the regulation and protection of rights of national minorities in the whole framework of the regulation and protection of rights of humans and citizens, ensuring law and order on the state territory and the civil issues, while the rights of “indigenous minorities” and “ethnic minorities” are additionally supplemented by the right to the land and other natural resources viewed as “the basis of the life and activity of the peoples inhabiting the corresponding territory” (Art. 9), as well as the right for the protection of their traditional living environment and lifestyle.

Which may be thought somewhat to overstate the case. It is in fact readily apparent that the drafters of the 1993 Constitution had no consistent or systematic approach to the protection of minority and indigenous rights in the Constitution.

Russia’s Second Report to the FCNM indicated the most relevant legislation in the view of the government authors of the Report.

First is the Soviet era **Federal Law “On the Languages of the Peoples of the Russian Federation” (No. 1807-1 of October 25, 1991**, as amended on July 24, 1998, and December 11, 2002), which regulates the system of normative acts which govern the use of the languages of the peoples of the Russian Federation in its territory. This was a law of the RSFSR (Russian Socialist Federation of Soviet Republics), enacted shortly before the demise of the USSR.

The 2002 amendment stipulates that “in order to unify the graphical base of the alphabets of state languages of the Russian Federation and the republics, the said law (Article 3,6) was amended to the effect that in the Russian Federation "alphabets of the state language of the Russian Federation and state languages of the republics should have a Cyrillic graphical base".

This has already caused considerable controversy in Tatarstan<sup>55</sup>, which in September 2001 enacted legislation for a move to Latin rather than Cyrillic orthography, which in turn led to the 2002 amendment, and to a November 2004 ruling by the Constitutional Court of the Russian Federation. The Court held that use of one alphabet or another was a federal issue, and that the republic of Tatarstan had no right to decide to use a different alphabet for its language. For a region or locality within Russia officially to use an alphabet other than Cyrillic would require an amendment to federal legislation.<sup>56</sup> The Chairman of the Court, Valery Zorkin, was reported by RIA Novosti news agency as having said: "The establishment of a single written alphabetic basis for all languages of the Russian Federation is ... in the interest of safeguarding the unity of the state." Mintimer Shaimiev, then President of Tatarstan was quoted as responding : "I would say that yesterday's decision by the Constitutional Court does not deprive Russian Federation subjects of the right to consider this issue -- it can be resolved through the adoption of a federal law."<sup>57</sup>

Article 9(2) of this Law assures the possibility to receive *basic general education* in the native language, as well as the choice of the language of instruction, within the limits offered by the education system.

Article 5(1) of the **Federal Law “On Education”** of 10 June 1992<sup>58</sup> (as amended up to 17 December 2009)<sup>59</sup> guarantees equal rights to education for all citizens, without discrimination, for example as to nationality (which in Russian has the meaning “ethnicity”). Article 6(1) provides that general questions of language policy are

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<sup>55</sup> See Sebba, M “Ideology and Alphabets in the former USSR” v.30 n.2 (2006) *Planning*, pp. 99-125(27), at [http://eprints.lancs.ac.uk/1262/1/Ideology\\_and\\_Alphabets\\_eprint.pdf](http://eprints.lancs.ac.uk/1262/1/Ideology_and_Alphabets_eprint.pdf)

<sup>56</sup> RFE/RL Newline, 18 November 2004

<sup>57</sup> RIA-Novosti 17 November 2004

<sup>58</sup> <http://mon.gov.ru/dok/fz/obr/3986/>

<sup>59</sup> <http://www.consultant.ru/files/popular/000043.zip>

governed by the RSFSR Law on Languages of 1991, mentioned above. Article 6(2) provides specifically for the right to receive basic general education in the mother tongue, as well as the choice of the language of instruction within the limits of the possibilities of the education system. The right of citizens of the Russian Federation to receive education in their mother tongue is guaranteed by the establishment of the necessary number of corresponding educational establishments, classes, groups, and the conditions for their functioning.

By virtue of Article 9(3), “basic (fundamental - основным общеобразовательным)” general education includes secondary education. There are however no detailed norms that provide a numerical threshold for the introduction of instruction in or of minority languages. In all state accredited educational establishments, except for pre-school establishments, learning the Russian language as the state language of the Russian Federation is regulated by state educational standards. Learning the official languages in the ethnic republics is regulated by the laws of the respective republics (Articles 5 and 6). Developments to 2008 have been outlined by the present author in the *European Yearbook of Minority Issues*.<sup>60</sup>

The Advisory Committee for the FCNM, in its Opinion of 2 May 2007<sup>61</sup> stated as follows:

247. The Advisory Committee regrets that detailed norms for implementing the right to receive instruction in or of minority languages, provided for in Article 9 of the Law on the Languages of the Peoples of the Russian Federation and Article 6 of the Federal Law on Education, have still not been developed. For instance, there are no rules establishing numerical thresholds for the introduction of this kind of instruction and existing schools “with an ethnocultural component” do not have a legal basis in federal law.

It is noted that the Law on Languages and the Law on Education use the term “in the

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<sup>60</sup> Bowring, B (2008) “Legal and Policy Developments in the Russian Federation in 2007 with regard to the Protection of Minorities” in Volume 6, 2006/7 *European Yearbook of Minority Issues* (Leiden: Martinus Nijhoff) pp.529-543

<sup>61</sup> ACFC/OP/II(2006)004

mother tongue” (на родном языке), which is often translated as “in their native language”. The Language Charter refers to languages “used” or “spoken”. The FCNM refers to “minority languages” and states are obliged “to recognise that every person belonging to a national minority has the right to learn his or her minority language” (Article 14). I believe that it would be very difficult to give any meaning to the phrase “minority language”, other than “language actually spoken or used”: where that language is not the state language, and is in fact spoken or used by less than 50% of the population.

More recent legislation, notably an amending law, No.309, of 1 December 2007<sup>62</sup>, is intended, when in force, to remove the system of the three components (the federal level, the regional level and the individual school) of the state educational standard, and will give the federal centre greater control over curriculum and educational standards. The regions will participate in the process of establishing the educational standard, but decisions over the content of the curriculum will remain with the Federal Ministry of Education, including approval of the textbooks and teaching materials. However, there appears to be no system or a process established for participation of the regions in curriculum development. These provisions came into effect on 1 September 2009, with introduction of a new curriculum. It is yet unclear how the new system will work.<sup>63</sup>

The dismantling of the system of the specific national-regional component was strongly opposed by the leaders of the ethnic republics, who were said to have submitted a bill to the State Duma to bring back the regional component. According to

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<sup>62</sup> N 309-ФЗ; at <http://www.consultant.ru/online/base/?req=doc;base=law;n=72965>, or [http://ntc.duma.gov.ru/duma\\_na/asozd/asozd\\_text.php?code=138302](http://ntc.duma.gov.ru/duma_na/asozd/asozd_text.php?code=138302)

<sup>63</sup> For a thorough investigation, see Prina, F “Homogenisation and the ‘New Russian Citizen’: A Road to Stability or Ethnic Tensions?”, forthcoming in *JEMIE: Journal on Ethnopolitics and Minority Issues in Europe*, draft with the author



information received when I visited Bashkortostan in 2009 with the HCNM, the presidents of Tatarstan and Bashkortostan were ready to submit a complaint to the Russian Constitutional Court in case the State Duma would not take an action. Furthermore, the Minister of Education of Bashkortostan has said<sup>64</sup> that his colleagues are working on their own concept of the ethno-national education which they will implement notwithstanding or ‘in spite of’ policies of Russification and federal efforts to control and centralize the education system and dismantle national and ethno-cultural aspects of education.

In June 2009 President Rakhimov of Bashkortostan spoke out “categorically” against those actions of the center that he believed were not in the interests of his republic, including in the first instance the elimination of the national and regional component of educational programs.<sup>65</sup> On 5 June 2009 it was reported that the Russian Minister of Education Andrei Fursenko had, in a reply to an appeal by the Speaker of the Tatarstan Parliament, Farid Mukhametshin, May 2009, noted that teaching of languages of nations of the RF or foreign languages can take place if there is an appropriate decision of the council of the institution. Earlier, the Ministry had issued an instruction to higher education institutions to adopt new charters so that that education of mother tongues should be optional only. Following representations by Tatarstan parliamentarians, and the Council of Rectors of Tatarstan HE institutions, this part of the instruction letter was cancelled.

However, Tishkov and others take the view<sup>66</sup> that

With the entry into force of Federal Law No. 309, regional authorities and public figures in some republics of the Russian Federation feared that the teaching of non-Russian languages

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<sup>64</sup> Personal communication

<sup>65</sup> See [www.mk.ru/politics/293874.html](http://www.mk.ru/politics/293874.html) and [www.sobkorr.ru/news/4A28D3C6715D8.html](http://www.sobkorr.ru/news/4A28D3C6715D8.html)

<sup>66</sup> Tishkov V.A., V.V. Stepanov, D.A. Funk, O.I. Artemenko “Status of and support for linguistic diversity in the Russian Federation” Expert Report, Moscow 2009, copy in the possession of the author

would be discontinued. Now, however, there is a gradual realisation that under the new legislation, the teaching of native languages is not about to be abolished and can in fact be accomplished within the framework of the core educational programme. The republican official languages can be studied under a mandatory (basic) curriculum implemented in the RF Republics. The mandatory part of the basic educational curriculum envisages the learning of the official language of the Russian Federation – the Russian. It is further provided that the transition to the new federal state educational standards is to apply from 2010 and then only from the 1st year of primary school. Older pupils, therefore, will complete their schooling under the old system.<sup>67</sup>

The Federal Law **“On the Fundamentals of the Legislation of the Russian Federation on Culture”** (No. 3612-I of October 9, 1992, as amended on June 23, 1999, December 27, 2000, December 30, 2001, December 24, 2002, December 23, 2003, August 22, 2004) stipulates the right of peoples and other ethnic communities "to preservation and development of their cultural and ethnic identity, protection, reconstruction and maintenance of native cultural and historical environment" (Article 20).

### **Indigenous peoples**

Tishkov and others state:

Russian legislation protects, first and foremost, those ethnic groups which lead a traditional lifestyle based on traditional subsistence economy (reindeer herding, hunting, marine mammal hunting and fishing) way of life and have been officially recognised as “indigenous small peoples”.<sup>68</sup>

The 2008 Russian Report to the FCNM also made the following assertion:

Russian State policy attaches particular importance to introducing and developing ethnically targeted legislation providing legal protection in accordance with the principles of international and Russian law, for the most vulnerable ethnic cultural communities. Since the adoption of the Constitution of the Russian Federation, Russian legislation has officially termed such ethnically vulnerable groups “ethnic minorities” (article 71 (c) and article 72, paragraph 1 (b), of the Constitution), “small indigenous peoples” (article 69 of the Constitution or, as in the federal Small Indigenous Peoples of the Russian Federation (Guarantees of Rights) Act No. 82 of 30 April 1999, “small peoples”) and “small ethnic communities” (article 72, paragraph 1 (l), of the Constitution). The Communities of Small Indigenous Peoples of the North, Siberia and the Russian Far East (General Principles of Organization) Act No. 104 of 20 July 2000 specifically introduces the new term “small indigenous peoples of the North, Siberia and the Russian Far East”. The term was also given significantly greater weight by the special legal status of such peoples.

<sup>67</sup> Federal Law No. 184-FZ of 18 July 2009 established a transitional period. No new pupils will be admitted for study under the old standard after 30 December 2009

<sup>68</sup> Tishkov V.A., V.V. Stepanov, D.A. Funk, O.I. Artemenko “Status of and support for linguistic diversity in the Russian Federation” Expert Report, Moscow 2009, copy in the possession of the author

The Constitution of the Russian Federation draws a clear distinction between these sets of peoples: whereas it links the regulation and protection of the rights of “ethnic minorities” with the regulation and protection of human and civil rights and freedoms, the rule of law, law and order and the question of nationality as a whole, it links the rights of “small indigenous peoples” and “small ethnic communities” with rights to land and other natural resources, which are seen as the bedrock of the life and activities of peoples living in a given territory, and with the protection of their traditional habitat and way of life. Russian legislation guarantees small indigenous peoples a wide range of rights over the use of their lands, control of their productive use in their traditional habitat and maintenance of their traditional activities and way of life.

In accordance with the Federal Law **“On Guarantees of the Rights of Indigenous Small Peoples of the Russian Federation”** (No. 82-ΦЗ of April 30, 1999, as amended on August 22, 2004) peoples living in the territories of their ancestors’ original settlement and preserving their traditional way of life, economy and trades, numbering less than 50,000 people in the Russian Federation and identifying themselves as autonomous ethnic communities belong to indigenous small peoples. Under the Federal Law indigenous small peoples are guaranteed a wide range of rights in the sphere of land use and control over the use of land for industrial purposes within traditionally inhabited areas as well as in the maintenance of traditional activities and way of life, etc.

The Federal Law **“On Basic Principles of Community Organization of Indigenous Small Peoples of the North, Siberia and the Far East of the Russian Federation”** (No. 104-ΦЗ of July 20, 2000, as amended on March 21, 2002 and August 22, 2004) was the first to establish on the federal level the legal status of indigenous small peoples’ communities as a form of self-organization of individuals belonging to small peoples and united on the basis of blood/kin relations (family, ancestry) and (or) neighboring territories, created for the purpose of protecting their traditional living habitat, preserve and develop traditional way of life, economy, trades and culture.

The Law regulates legal relations concerning the organization, activities, re-organization and elimination of all communities and their associations (unions) of

indigenous small peoples of the North, Siberia and the Far East of the Russian Federation.

The Federal Law “**On the Territories of Traditional Environmental Management of Indigenous Small Peoples of the North, Siberia and the Far East of the Russian Federation**” (No. 49-Φ3 of May 7, 2001) is designed to protect the traditional living habitat and traditional way of life of indigenous small peoples, to preserve and promote their cultural identity and to ensure biological diversity in the territories of traditional environmental management.

The Law states that "in addition to the federal legislation, the legal regulation of relations in the field of education, preservation and use of territories of traditional environmental management can be based on the customs of the indigenous small peoples provided these customs do not contradict the legislation of the Russian Federation".

Of special interest to Russia's indigenous peoples is the **Land Code of the Russian Federation** (No.136-Φ3 of October 25, 2001, as amended on June 30, 2003, June 29 and October 3, 2004) which “provides for the possibility to establish a special legal regime regulating the use of agricultural, human settlements and industrial lands as well as lands allocated for the purposes of power industry, transportation, communications, radio broadcasting, television, information technologies, space-related activities, defense, security and other specially designated lands, lands of specially protected territories and sites, lands of forest and water resources and land reserves” located "in areas of traditional residence and economic activities of indigenous small peoples of the Russian Federation and ethnic communities provided for in federal laws, laws and other normative legal acts of the constituent entities of

the Russian Federation and normative legal acts of local self-government bodies" (Article 7,3).

The **Forestry Code of the Russian Federation** (No. 22-Φ3 of January 29, 1997, as amended on December 30, 2001, July 25, December 24, 2002, December 10, 23, 2003 and August 22, 2004) empowers Federation's subjects with regard to the forest reserves use, preservation, protection and forest reproduction "to delimitate the borders of forest reserves areas subject to the special regime of forestry management and forest use in the territories traditionally inhabited by indigenous small peoples and ethnic communities" (Article 47) and (in compliance with the legislation of the Russian Federation) to establish the regime of forest reserves plots use in the territories traditionally inhabited by indigenous small peoples and ethnic communities to ensure traditional way of life of these peoples and ethnic communities (Article 124).

The **Water Code of the Russian Federation** (No. 167-Φ3 of November 16, 1995, as amended on December 30, 2001, December 24, 2002, June 30, December 23, 2003 and August 22, 2004) provides that the protection of "traditional living habitat and way of life of small ethnic communities while using water bodies" is the joint responsibility of the Federation and its subjects in the field of water bodies use and protection (Articles 65, 66).

The Federal Law **"On the Animal World"** (No. 52-Φ3 of April 24, 1995 amended on November 11, 2003) provides indigenous small peoples and ethnic communities "whose cultural identity and lifestyle imply the traditional methods of preservation and usage of objects of animal world" with the right to priority usage of the animal

world in the territories of their traditional settlement and economic activities" without its transfer.

There are many other legislative provisions with seek to enhance the position of indigenous peoples in Russia.

What might appear to be a flawless scheme of protection must be treated with scepticism. In their Concluding Observations of 24 November 2009<sup>69</sup>, the Human Rights Committee made the following comment:

28. While welcoming decree No. 132 of 4 February 2009 on the sustainable development of indigenous peoples in the North, Siberia and the Far East, and the corresponding action plan for 2009-2011, the Committee expresses concern about the alleged adverse impact upon indigenous peoples of: (a) the 2004 amendment to article 4 of the Federal Law on Guarantees of the Rights of Numerically Small Indigenous Peoples; (b) the process of consolidation of the constituent territories of the Russian Federation through absorption of national autonomous areas; and (c) the exploitation of lands, fishing grounds and natural resources traditionally belonging to indigenous peoples through granting of licenses to private companies for development projects such as the construction of pipelines and hydroelectric dams. (art.27)

It is likely that the Human Rights Committee will pay increasing attention to these problems.

In their 2007 Opinion, the FCNM Advisory Committee also expressed deep concern as to the considerable variation across Russia's regions as to existing support for numerically small indigenous peoples, and emphasised the need for consolidation of federal norms, by establishing the necessary mechanisms for implementing the rights contained in the existing laws. Moreover, some new laws rather than consolidating guarantees appeared to be having the opposite effect.

## **Conclusion**

Russia takes minority rights seriously, and has a record of intense engagement with international instruments, mechanisms and treaty bodies. First-rate scholars analyse

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<sup>69</sup> <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/465/50/PDF/G0946550.pdf?OpenElement>

and explore the many issues concerned. There is an impressive degree of self-organisation by ethnic, linguistic and religious minorities and their members, reflected by the paradoxical growth in the numbers of National-Cultural Autonomies, noted by Osipov.

Yet Russia has no legislation dealing systematically with the problems of minorities other than indigenous peoples. It is only with some considerable difficulty that order may be read into the jumble of the constitutional provisions, as I have shown above. There is a shocking absence of mechanisms for implementation and enforcement of government standards. The law on language is a Soviet remnant, while that on education is full of ambiguity. This lack of precision is only to a limited extent mitigated by the fact that Russian administrators, for example those in Moscow, can show themselves capable of considerable flexibility and responsiveness, especially on issues of education in and of the mother tongue.

This chapter has argued that such constitutional and legislative complexity are directly related to the history of the Russian – Tsarist and Soviet - response to the “national question”, especially through territorial autonomy even where the “titular” people, after which the territory is named, do not even have a relative majority of the population. This is also the reason why the apparent alternative, that is non-territorial “autonomy” through the NCAs, is presented by the authorities in their reports to international treaty bodies as their major and original contribution to resolving issues of minority rights in Russia.

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