

# The new constitutional reality for indigenous peoples in Russia

By Dmitry Berezhkov (Arctic Consult, Norway) and Pavel Sulyandziga (Batani Foundation, US)

Beside the coronavirus, the Russian civil society continues to discuss new changes in the Russian Constitution that were suggested by Vladimir Putin this spring. This discussion is carried out in several parallel aspects. The “Lovers of the Motherland” competing in patriotic glorification of the state system are discussing the wisdom of Vladimir Putin, who is working day and night to strengthen Russian sovereignty.

Opposition journalists and political scientists are discussing the elimination of the principle of separation of powers and the amplification of the dictatorial power of the Russian president in the new Constitution.

Parallel to the national debate, the indigenous peoples of the Russian North have their own “lesser” process of discussing the new constitutional reality and, above all, they discuss the content of Article 69 of the Russian Constitution, which for almost three decades has been the foundation of the legal status of the small-numbered indigenous peoples of the Russian North, Siberia, and the Far East.

Before the March 2020 the Article 69 of the Russian Constitution included only one paragraph:

## **Article 69**

***The Constitution of the Russian Federation guarantees the rights of small-numbered indigenous peoples in accordance with generally recognized principles and norms of international law and international treaties of the Russian Federation.***

All these years, the most important, strategic legal function of this article for indigenous peoples has been the consistent development of several provisions of the Russian Constitution including:

- An individual, his rights and freedoms are the highest value; recognition, observance and protection of the rights and freedoms of man and citizen is the duty of the state (art. 2);
- land and other natural resources are used and protected in the Russian Federation as the basis of the vital activity of the peoples living in the respective territories (part 1 of article 9);
- in the Russian Federation, the rights and freedoms of man and citizen are recognized and guaranteed in accordance with generally recognized principles and norms of international law and in accordance with this Constitution (part 1 of article 17);
- the possession, use and disposal of land and other natural resources is carried out by their owners freely, if this does not harm the environment and does not violate the rights and legitimate interests of other persons (part 2 of article 36);

- everyone has the right to a favorable environment, reliable information about its condition and to compensation for damage caused to his health or property by an environmental violation (Article 42);
- everyone is obliged to preserve nature and the environment, take care of natural resources (Article 58);

If we talk about the rights of indigenous peoples of Russia on traditional nature use and access to natural resources which are necessary for its implementation, the above provisions, together with article 69, in their entirety, constituted “the core of the constitutional legal regime for the use and protection of natural resources by indigenous peoples” – **(2014 Kryazhkov)**.

In the Yeltsin constitution, article 69 in a soft and comfortable manner (for most stakeholders including the state, indigenous peoples, and business) connected these constitutional provisions with standards of international law, including the Convention of the International Labor Organization No. 169, the UN Convention on Biological Diversity, the UN Declaration on the Rights of Indigenous Peoples and other relevant documents.

“The Constitution of the Russian Federation guarantees the rights of small-numbered indigenous peoples in accordance with generally recognized principles and norms of international law and international treaties of the Russian Federation (Article 69). It should be kept in mind that generally recognized principles and norms of international law and international treaties of the Russian Federation are an integral part of its legal system (part 4 of article 15), as well as the fact that human rights and freedoms are recognized and guaranteed in the Russian Federation in accordance with generally recognized principles and norms of international law and in accordance with this Constitution (part 1 of article 17). Such provisions presuppose that the Russian state in its indigenous peoples’ policy takes into account international legal requirements, including the recognition of rights of indigenous peoples on traditional nature use.” **(2016 Kryazhkov)**.

The wording of Article 69 of the Russian constitution was a compromise. On the one hand, it allowed the state to say that Russia complies with international standards of the rights of indigenous peoples, which was fixed in the Constitution. On the other hand, the 69 article allowed indigenous peoples to demand that their rights to the traditional way of life, traditional culture, land, resources, and self-determination must be respected while giving them the legal opportunity to apply for the progressing international law.

The "own" separate article in the federal constitution was important for indigenous peoples from the psychological point of view, allocating by this way indigenous issues in a separate direction of the state's policy.

As we all know, in practice, the realization of these rights, unfortunately, turned into a “push and pull”. No strict legal standards in this area existed either at the federal or regional level. In some regions where there was money from the extraction of natural resources and where the number of indigenous peoples of the North allowed them to represent a significant component in regional politics - for example, in Yamal, in the Khanty-Mansiysk region, in Yakutia, international law (and the article 69 as its "relay station") has been successfully used until

recently by indigenous politicians in their work to promote the interests of indigenous peoples and to improve regional legislation.

In regions where the number of indigenous peoples was small, international law was most often ignored by the local authorities and business, with the exception of certain investment projects of large international companies, such as, for example, Sakhalin-2 (Royal Dutch Shell). Much depended on the personality of the local governor — if the “good” governor arrived in the region — the indigenous peoples moved their agenda successfully. If the governor did not take the indigenous issues seriously - their affairs fell into decay.

However, all these years, Article 69 of the Constitution was a kind of a legal bar that indigenous peoples tried to use for protection of their rights and on which, in turn, representatives of the state and business were forced to look around. By the amendments to the Constitution, Vladimir Putin substantially changed this status quo.

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In our short January article, “How Putin's proposals threaten the indigenous peoples of Russia,” when the Russian president only introduced the first package of his amendments, including the idea of the supremacy of the national law over the international one, we suggested that without worsening the situation of indigenous peoples formally, the proposals of Vladimir Putin, however, will negatively affect their legal status in future. First of all, because of the increased possibilities for manipulating the decisions of international bodies, as well as due to the fact that the president gives an unlawful subtextual signal to the bureaucracy that there is no need further to look with caution at international law, in their work with indigenous issues.

However, reality as often happens in Russia, turned out to be worse than expected. On March 2, Vladimir Putin suddenly proposed amending this article, adding two additional points to it and now it looks in a different way:

#### **Article 69**

- 1. The Constitution of the Russian Federation guarantees the rights of small-numbered indigenous peoples in accordance with generally recognized principles and norms of international law and international treaties of the Russian Federation.***
- 2. The state protects the cultural identity of all peoples and ethnic communities of the Russian Federation and guarantees the preservation of ethnocultural and linguistic diversity.***
- 3. The Russian Federation provides support to compatriots living abroad in the exercise of their rights, ensuring the protection of their interests and preserving the all-Russian cultural identity.***

Unfortunately, we were unable to find any intelligible explanations from the official and/or officially registered documents for why it was necessary to make these amendments to Article 69 of the Constitution, despite the fact that we carefully followed the entire path of the bill in the State Duma (the Lower Chamber of the Russian Parliament) and in the Council of Federation (the Upper Chamber of Russian Parliament).

We published the chronology of the constitutional amendments in a separate list and included there only those documents and publications that, in our opinion, have at least some kind of relation to the subject of our short study - that is, to the problem of changing Article 69 of the Constitution of the Russian Federation.

We did not find almost any references and, especially, explanations about the need to amend Article 69 of the Constitution in these documents. The only references, more than brief, under this article, were contained in the resolution of the Public Chamber of the Russian Federation - "based on the agenda of the extraordinary plenary meeting of the Public Chamber of the Russian Federation with the participation of members of the Working Group on the preparation of proposals for amendments to the Constitution of the Russian Federation, representatives of regional public chambers of the Russian Federation, public councils under federal executive bodies," dated March 10, 2020, and in the conclusion of the Committee of the Council of Federation for International Affairs "on the draft law of the Russian Federation on amendments to the Constitution of the Russian Federation "On improving the regulation of certain issues of the organization and functioning of public authority" dated March 11, 2020:

- "The Public Chamber of the Russian Federation, noting the historic significance of the bill draft, considers that its provisions will make a significant contribution to the improvement of constitutional mechanisms aimed at ensuring guarantees of the rights of indigenous peoples, protecting the cultural uniqueness of all peoples and ethnic communities of the Russian Federation while maintaining ethnocultural and linguistic diversity; supporting compatriots living abroad in the exercise of their rights, protecting their interests and ensuring the preservation of the all-Russian cultural identity. " (Resolution of the Public Chamber of the Russian Federation of March 10, 2020)
- "The new version of Article 69 establishes that the Russian Federation provides support to compatriots living abroad in the exercise of their rights, ensuring the protection of their interests and the preservation of all-Russian cultural identity." (Conclusion of the Federation Council Committee on Foreign Affairs of March 11)

We could not find any other explanations, conclusions, or explanatory notes explaining the need to change the so important for indigenous peoples constitutional article on the official state web resources. In the initial "package of amendments" received from the President of Russia on January 20, there was no talk of changing the 69th article of the Constitution, and accordingly, this problem was not reflected in the initial explanatory note to the new Constitution.

Perhaps there was some discussion in the presidential working group on the preparation of amendments to the Constitution of the Russian Federation, where the small-numbered indigenous peoples of Russia were represented by Grigory Ledkov - who is the president of the

Russian Association of the Indigenous peoples of the North (RAIPON) and who represent the presidential "United Russia" political party in the State Duma. At the same time, as we were able to understand from publications in media, the authorities of some regions where live indigenous peoples, sent their proposals to this working group. As far as we know, such proposals were sent by the Nenets Autonomous Okrug and the Republic of Sakha (Yakutia).

However, as we said above, we could not find any public documents on this subject and, with a high degree of probability, we can assume that there are no any public documents explaining the meaning of the amendments to Article 69, at least such explanations are not reflected in the official "bill's passport" in the web-system of the State Duma.

Most likely, there were some internal discussions on Article 69 in the depths of the Presidential Administration, but no one person in the country did not know officially/publicly about the intention to change Article 69 until the last hours before the deadline to change the bill draft before the second reading in the State Duma (which is the key and final reading for federal bills in the Russian Parliament) on March 2, 2020. President Putin introduced his "second package of amendments" in the last possible day, without any time to discuss or make any changes.

Moreover, it should be noted that we could not find the president's "second package" of amendments to the constitution anywhere. The content of the "second package" of Vladimir Putin became known from numerous publications in media. It was reported on March 2 by the Chairman of the State Duma Vyacheslav Volodin, but the document itself and the explanatory note explaining the essence of the changes introduced by the presidential "second package" we didn't find in the web as well as in the web-system of the State Duma.

The text of the presidential amendments, including those introduced in Article 69, can be found in the table of amendments to the draft law prepared by the State Duma Committee on State Building and Legislation (which is available in the web-system of the State Duma). However, this document does not contain any explanations why the president of the Russian Federation decided to develop the "second package" of amendments to the draft bill of the Constitution including amendments to Article 69.

Unable to find an official explanation of the meaning of the amendments introduced in Article 69, we tried to collect the statements of some politicians, experts, and public figures on this issue in order to try to understand how the new proposals of the president Putin will affect the future of indigenous peoples in Russia.

Such opinions can generally be divided into three groups.

The first group is the standard propaganda:

- "it is very important that we retained the status of the small-numbered indigenous peoples of the North in the new edition (of the Consitution)" - Deputy of the Khanty-Mansiisk Autonomous Okrug, vice-president of RAIPON Alexander Novyukhov;
- "I consider the amendments aimed at strengthening the conditions of statehood in the Russian Federation, taking into account the current situation at the international level in relation to Russia" - Chairman of the Assembly of Indigenous Peoples' Representatives in the Duma of the Khanty-Mansiisk Autonomous Okrug Yeremey Aipin.

- “after making these amendments, Russian citizens, through their representatives, will have the opportunity to form a government of the Russian Federation.” - deputy of the State Duma and the president of RAIPON, Grigory Ledkov.

The second group of comments, which can conditionally be attributed to the problems of Article 69 (already in the new edition, which refers not only to indigenous peoples) are the statements of representatives of ethnic minorities organizations:

- “This is the continuation of that purposeful policy. They are depriving us of the right to self-determination ” - the head of the Kabardino-Balkarian human rights center Valery Khatazhukov;
- “It is necessary to honestly and without deception recognize that Russia is de facto no longer a federation, and the privileged position of the Russian nation is secured by the existing relations between the center and the regions” - Elder (Inyazor) of the Erzya people Syres Bolyan;
- “Internal inconsistency (of the amendments to the Constitution) is reflected in the labeling of Russians as a “state-forming people”, while the same sentence (of the new version of the Constitution) speaks of the Russian Federation as an association of peoples with equal rights” - a former member of the UN Permanent Forum on Indigenous Issues (PFRC) Oliver Loode.

The most useful for the topic of this article and the smallest group of comments were the statements of individual experts predicting the further development of events and changes in the national policy of the Russian Federation, with regards to the rights of indigenous peoples:

- “The phased enlargement of the constituent entities (Russian regions) of the Russian Federation continues to be discussed by the federal government. The wording of the text of the amendment law is such that federal law can create federal territories on absolutely any areas, regardless of the borders of constituent entities of the Russian Federation ”- Petr Gogolev, Chairman of Il Tumen (the Parliament of the Republic Sakha (Yakutia)).
- “For the practical implementation of part 1 of Article 69 at all levels of legislation, it is necessary to continue the legal consolidation of the provisions of the UN Declaration on the Rights of Indigenous Peoples ”- Mikhail Todyshev, Chair of the Council of Elders of Shor people, ex-head of the RAIPON's legal office.
- “The meaning of Article 69 of the Constitution of the Russian Federation is blurred. The new amendments to Article 69 narrowing the indigenous peoples' rights to the preservation of ethnocultural and linguistic diversity. That means that IPs rights on land and resources declared by international law will be ignored by default in the new Constitution,”- Olga Murashko.

Without significant judicial knowledge to discuss with respected experts the legal consequences of new amendments to Article 69 of the Constitution, we, nevertheless, as practitioners who worked for many years in the public movement of indigenous peoples in Russia want to note the following:

- Certainly, the fact of making additional points in Article 69 of the Constitution blurs the legal status of the small-numbered indigenous peoples of the North, Siberia and the Far East. Even more accurately, one could say the status of indigenous peoples is “spreading on a big plate”, as the protection of the rights of indigenous peoples in Russia fixed now in the same article as the protection of the rights of the Russian-speaking population (compatriots) living abroad. And we need remember that among such "compatriots" there are not only lovers of great Russian writers like Lev Tolstoy and Fyodor Dostoyevsky, but also such controversial characters as, for example, warlords Girkin (I. Strelkov - a person who played a key role in the Annexation of Crimea by the Russian Federation in 2014) or Motorola (A. Pavlov - field commander of the terrorist group during the War in Donbass in 2014-2016), and who are internationally known for being engaged in the massacres in Eastern Ukraine.
- The new paragraph 2 in the updated Article 69: “The state protects the cultural identity of all peoples and ethnic communities of the Russian Federation and guarantees the preservation of ethnocultural and linguistic diversity” automatically limits the application of international law concerning indigenous peoples by issues of “cultural identity” and “linguistic diversity.” That means that the state will actually remove the topic of the indigenous peoples' rights on land, resources, self-determination, and their economic development from the state agenda.
- But the most negative consequence of the adoption of amendments to Article 69 of the Constitution (including the form of adoption of this law) is the destruction of the very principle of international law in relation to indigenous peoples in the Russian Federation. How are the state and indigenous peoples going to apply the norms of international law in Russia from now and, first of all, to the key principle of “free, prior and informed consent” if during making the most important decision - changing the state Constitution, this principle was not observed in such a demonstrative and dismissive manner as the decision was organized as a "black operation" without informing any country citizen affected by this decision?

Considering the written above we conclude that the consequences of changing the Constitution for the indigenous peoples of Russia will be negative in the nearest future. Vladimir Putin made a constitutional coup and usurped the state power. But destroying a general "Russian nation" as a political unite (with a delayed effect in the future), he along the way is destroying a rather fragile balancing of interethnic relations in the country, which has been building by the Russian state for centuries, including destroying the very foundation of the legal status of indigenous peoples in Russia.

On a positive note, we consider the expectancy that as soon as Vladimir Putin will live his position as the president, any subsequent Russian leader, even Putin's appointee, will need to restore the violated political balances and this constitutional "black operation", which is illegal (from the constitutional and international point of view) and shameful (from the human justice point of view) will be canceled. And the indigenous peoples need to be prepared for this procedure.

**Dmitry Berezkhov, Pavel Sulyandziga March 23, 2020**

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