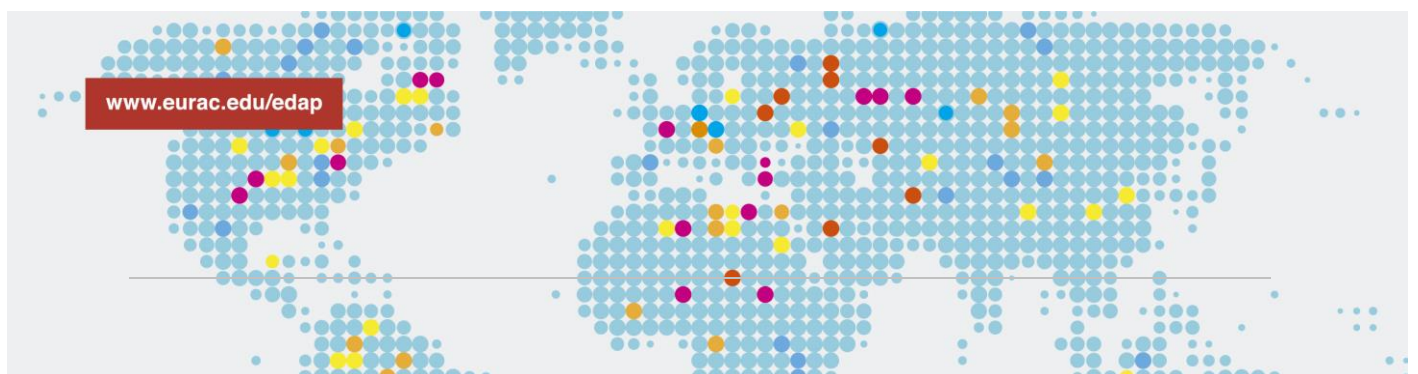


The Discipline of Minority Issues in the Russian Federation

Simone Stefan



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Drususallee / Viale Druso 1
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Abstract

The Russian Federation presents a rich pattern of different nationalities within its population and represents a unique, original model of governance of ethnic diversity. This model is based on both territorial and non-territorial instruments. The former are based on the 22 'ethnic' Republics (21 + Crimea), which have a titular nationality each; the latter on the Federal normative framework and on the system of the Non-Territorial Cultural Autonomies.

The article describes the Russian model, first considering its historical background (with particular reference to the Soviet legacy) and then analyzing the inherent legislation. In particular, the article takes into account the Constitution of the Russian Federation and the Constitutions of the 22 Republics. Then, it analyzes the Federal legislation, considering the laws dedicated to languages, culture, education and to the National Cultural Autonomy. A specific paragraph evaluates the legislation dedicated to the Indigenous Peoples, which aims to protect their traditional way of life and economic structure. Finally, some considerations are drafted on the effects and effectiveness of the analyzed juridical instruments, including concerns about the lack of actual political participation of minorities.

Author

Simone Stefan has a PhD in Comparative Constitutional Law (2016), received from the University of Udine. He has been a teaching assistant (*Cultore della materia*) of Comparative Constitutional Law and Law of Eastern European Countries at the same University. Formerly he received a BA in Juridical Sciences (2008) from the University of Verona and a MA in International Relations (2011) from the University "Ca' Foscari" of Venice. In 2010, he worked as an intern at the Black Sea State University "Petro Mohyla" of Mykolayiv. He can be contacted at simone.stefan@outlook.com

Key words

Russia, Russian Federation, minorities, nationalities, indigenous peoples, Subjects of the Federation, Ethnic Republics, National Cultural Autonomy, Soviet legacy.

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The Discipline of Minority Issues in the Russian Federation

Simone Stefan

1. Introduction

The Russian Federation nowadays represents a unique, original model of governance of ethnic diversity. In some aspects, Russia represents the last legacy of the pre-nation states age: it is the last multi-ethnic empire that survives until today.¹ While the Austro-Hungarian and Ottoman Empires ceased to exist after the First World War, when they were divided into several, essentially mono-ethnic countries, Russia still has almost the same great degree of multiethnicity and territorial diversity that belonged to the Russian Empire and the Soviet Union, even after the collapse of the USSR and the independence of all the former Socialist Soviet Republics. The adjective 'Russian' itself has two different translations in the Russian language, which distinguishes the concepts of 'cultural' Russian and 'political' Russian, respectively *russskiy* and *rossiskiy*. It is correct to say *russskiy yazik* (Russian language) and *russskaya kul'tura* (Russian culture) but *rossiskiy pasport* (Russian passport) and *Rossiskaya Federatsiya* (Russian Federation). The concept of 'nationality' as well as the legislative framework on minority issues and on the structure of the state, is still influenced by the Soviet legacy. The census of 2010 registered 145 different ethnic groups.² After the Russians, who represent 80.09 % of the population, the Tatars are the biggest nationality (more than five million people, 3.9 %). Only five groups exceed one million (Ukrainians, Bashkirs, Chuvashs, Chechens and Armenians), 11 exceed 500,000 (Avars, Mordvins, Kazakhs, Azerbaijanis, Dargins, Udmurts, Mari, Ossetians, Belarusians, Kabardins, Kumiks), 23 100,000 (Yakuts, Lezgians, Buryats, Ingush, Germans, Uzbeks, Tuvans, Komi, Karachays, Roma, Tajiks, Kalmyks, Laks, Georgians, Jews, Moldovans, Koreans, Tabasarans, Adyghe, Balkars, Turks, Nogais, Kyrgyz).

Throughout history, Russia and the Soviet Union have never actuated a complete and comprehensive policy of 'Russification' of non-Russian populations; nevertheless, the prevalence of Russian cultural, linguistic and social elements definitively merged. We can observe that the authorities' approach concerning issues of nationality has not been univocal, but has changed with respect to various historical and political phases. It is possible to observe a continuous tension between Russian nationalism and the deep-rooted concept of a united and indivisible Russia on one side, and the concrete reality of a multi-ethnic country on the other. Following the different historical periods and various political tendencies, Russia (and the Soviet Union) historically has been alternatively described as a virtuous example of friendship among peoples, or as a

¹ Bowring, Bill, "Russian Legislation in the Area of Minority Rights", in Protsyk, Oleh and Harzl, Benedikt (eds.), *Managing Ethnic Diversity in Russia* (Routledge Contemporary Russia and Eastern Europe Series, Abingdon, 2012), 15.

² Всероссийская перепись населения 2010 года
http://www.gks.ru/free_doc/new_site/perepis2010/croc/Documents/Vol4/pub-04-01.pdf (accessed 30 May 2017).

“prison of nations”.³

The analysis of the Russian model is of great interest for various reasons. First, for the complexity and historical uniqueness of the situation of the vastest country in the world, characterized by a rich pattern of nationalities, religions and cultures. The Russian model accommodates both systems of territorial and non-territorial protection of nationalities. The former is founded on the ethnic republics that constitute the Russian Federation alongside the other subjects of the Federation, the latter on the so-called Non-Territorial-Autonomies. There is also specific legislation dedicated to the indigenous peoples of the North, Far East and Siberia, who still maintain a traditional lifestyle and traditional economic activities.

This paper aims to describe the legislation of the Russian Federation on minority nationalities and indigenous people (considering the Federal Constitution, the Federal Laws and the Constitutions of the federative Republics), in the context of its historical and political-ideological framework.

2. Historical Background

2.1. The Russian Empire

To understand the concept of nationality in Russia, it is necessary to briefly outline the historical framework. We will see that in different phases of Russian (and Soviet) history, the authorities changed their approach to issues of nationality, alternating phases of larger awareness of the nationalities' exigencies and phases of exaltation of the ethnic-Russian element.

The Russian Empire was the last European autocracy. Power was conceived as being absolute and unlimited. This concept unified Oriental characteristics (absorbed through the two centuries long domination of the Golden Horde) and the Byzantine idea of the Empire as a “living body”. The autocracy was an absolute power, exercised by the Emperor without any limit, to ensure the supreme value of unity, connected to a sacral conception of the land, united and indivisible.⁴ The Fundamental Laws, issued in 1832, declare that “[t]he Imperial All Russian Monarch is autocratic and unlimited”. The integrity of the state is for the first time defined separately from the powers of the monarch by the opening articles of the new Fundamental Laws of the Empire of 23 April 1906 (article 1: “The Russian State is one and indivisible”).⁵

Considering the period, which started with the foundation of the Russian Empire as a modern state by Tsar Peter I (1721) and finished with the end of the monarchy, Aneta

³ The quote of “Prison of nations” is often mistakenly ascribed to the Marquis de Custine. In reality, the Marquise de Custine's words do not refer directly to the nations of Russia, but said about the Empire that “Cet Empire, tout immense qu'il est, n'est qu'une prison dont l'Empereur tient la clef” (This Empire, immense as it is, is only a prison to which the Emperor hold the keys). The first who define specifically the Empire ad a “prison of nations” was Lenin in his article On the Question of National Policy published on Пролетарская революция in 1924. De Custine, Astolphe, *La Russie en 1839, tome deuxième* (Librairie d'Amyot éditeur, Paris, 1843), 93; Ulyanov - Lenin, Vladimir I., “On the Question of National Policy”, in *Lenin Collected Works, volume 20*, (Progress Publishers, Moscow, 1972), 219, at <https://www.marxists.org/archive/lenin/works/1914/apr/06b.htm> (accessed 30 May 2017). On the theory of the nations “forcibly imprisoned” in the Soviet Union cf. Strayer, Robert, *Why Did the Soviet Union Collapse, Understanding Historical Change* (Routledge, New York, 2015), 71.

⁴ Ganino, Mario, *Russia* (il Mulino, Bologna, 2010), 27-29.

⁵ Wortman, Richard, *Russian Monarchy: Representation and Rule* (Academic Studies Press, Boston, 2013), 248, 249.

Pavlenko distinguishes four phases.⁶ The first is defined as “linguistic autonomy” (1721-1830): the Russian authorities adopted a different approach in the recently annexed territories. The *status quo* was preserved in the western territories (seen as a model of modernization), while a bigger russification of the administrative and educative systems was promoted in the eastern ones. Nevertheless, Tsar Peter I forbade the use of dialects in books and refused to recognize Ukrainian as a language. Similar policies were enforced by Catherine II.

The second period is defined as “selective russification” (1830-1863). After the Polish uprising (1830-1831), a more important process of russification started in Poland, where the Russian language replaced Polish in the administration, in the judiciary and as the language of instruction in state-supported schools. Similar policies of linguistic penetration were attempted in the Baltic provinces.

The third phase is defined as “expanding russification” (1863-1905). During the reign of Alexander II, the authorities systematically imposed the Russian language in the administration and education, starting from the Eastern provinces and Poland, and then in the Baltic area and in the East. There was also an increase of Russian in the rural schools, even if still not sufficient for a full russification of the peasants: the Russian language spread especially among ethnic elites.

The last phase was the “retrenchment of russification” (1905-1917). After the 1905 revolution (the uprisings also had a ‘national’ character alongside the western border, in Transcaucasia and in Siberia⁷), the Constitution of 1906 was granted. It did not provide any protection of linguistic diversity and imposed the use of Russian in the army, in the navy and in all the public and state institutions.⁸ The use of local languages and dialects in public institutions was to be determined by special laws. The Tsar Nicholas II was put under pressure by different requirements: the political right wing wanted a unitary state with only one education language, while the left pushed for federalization, full linguistic rights for minorities and a universal primary education in the native languages.⁹ A prudent liberalization of censorship followed the revolution, the restrictions of the use of languages and alphabets were abolished and the committee of Ministers allowed private schools to use Lithuanian, Latvian, Estonian, Polish and German as languages of education (but not Ukrainian and Belarusian, whose teaching was not considered necessary because of their affinity with Russian).¹⁰

⁶ Pavlenko, Aneta, “Linguistic Russification in the Russian Empire: Peasant into Russians?”, 35(3) *Russian Linguistic* (2011), 331-350.

⁷ Hirsch, Francine, *Empire of Nations, Ethnographic Knowledge and the Making of the Soviet Union*, (Cornell University Press, Ithaca, 2005), 24.

⁸ Ulasiuk, Iryna, “The Language Issue in the Evolution of Ukrainian Constitutionalism”, 54 *Revista de Llengua i Dret*, (2010), 135-165, at 137, 138.

⁹ Theodore R., Weeks, *Nation and State in Late Imperial Russia. Nationalism and Russification on the Western Frontier, 1863-1914* (Northern Illinois University Press, DeKalb 1996), 64.

¹⁰ *Ibid.*

It can be concluded that the Russian Empire never tried to fully ‘russify’ the population and to eradicate the other languages. The only phase of consistent russification was in the second half of the XIX century, but such reforms were implemented only for a short time and did not intend to transform non-Russians into Russians, but to subjugate the Polish and Baltic-German élites, to protect unity and to replace Polish, German and Tatar with Russian as the élite language. Indeed, the policies had only a low impact on peasants.¹¹

2.2. The Soviet Union

After the October Revolution, the management of the nationalities issue was one of the objects of the Bolshevik regime reforms. Lenin, whose thoughts were the basis of the Soviet state-building, pursued an important opening-up policy towards the nationalities of Russia. He refused the idea of a single compulsory national language and, above all, its imposition,¹² and supported the institution of schools teaching in all the local languages.¹³ The notion was that every privilege of a single nationality should be abolished and each nation should have the right to secede.¹⁴ On the basis of these principles, the revolutionary Government issued the *Declaration of the Rights of the Peoples of Russia*. The document proclaimed: the equality and sovereignty of the peoples of Russia; the right of peoples of Russia to free self-determination, including secession and formation of a separate state, the abolition of all national and religious privileges and restrictions; as well as the free development of national minorities and ethnic groups populating the territory of Russia.¹⁵ Post-revolutionary Russia has been considered the first country in the world, in which minority rights to language were guaranteed.¹⁶ Two federalisms developed after the Revolution: the first was the system of the Russian Socialist Federative Soviet Republic, based on the Constitution of 1918 (national law), the second was the system of the USSR, based on the international treaty of 1922 (international law). The treaty of 1922 became the basis for the Soviet Union Constitution of 1924.

In 1923 the Soviet authorities inaugurated the policy of *korenizatsiya* (“indigenization”), which aimed to develop a complete educational system in the languages of the various federative republics and to promote the creation of non-Russian cadres in the Party and in the local administrations. This policy effectively gave rise to a modern capillary

¹¹ Suny, Ronald G., “The Empire Strikes Out: Imperial Russia, “National” Identity and Theories of Empire”, in Suny, Ronald G. and Martin, Terry (eds.), *A State of Nations. Empire and Nation-making in the Age of Lenin and Stalin* (Oxford University Press, Oxford, 2001), 41.

¹² Ulianov - Lenin, Vladimir I., “Osservazioni critiche sulla questione nazionale”, in Vladimir I. Lenin, *Opere*, vol. 20 (Editori Riuniti, Roma, 1966), 12, 13.

¹³ Ulianov - Lenin, Vladimir I., “È necessaria una lingua di Stato obbligatoria?”, in Vladimir I. Lenin, *Opere*, vol. 20 (Editori Riuniti, Roma, 1966), 61-63.

¹⁴ “Risoluzione della Conferenza sulla Questione Nazionale”, 29 aprile (16 maggio) 1917, at <https://www.marxists.org/italiano/lenin/1917/4/confpan.htm#p2> (accessed 30 May 2017). → do not understand why there are two dates

¹⁵ Nahaylo, Bohdan and Swoboda, Victor, *Disunione Sovietica* (Rizzoli, Milano, 1991), 35.

¹⁶ Алпатов, Владимир М., “Языковая политика и языковые конфликты в современном мире”, in Биткеева, Айса Н., and Михальченко, Вида Ю. (eds.), *Языковая политика и языковые конфликты в современном мире. Доклады и сообщения Международной конференции (Москва, 16-19 сентября 2014)*, (Тезаурус, Москва, 2014), 80-89, cit. in Bowring, Bill and Borgoyakova, Tamara, “Language Policy and Language Education in Russia” (19 October 2016), in *Encyclopedia of Language and Education* (Forthcoming), at <https://ssrn.com/abstract=2854763> (accessed 30 May 2017).

education system and a sensible growth of the presence of non-Russian within the political and administrative structures. Moreover, it contributed to the creation of the category of ‘nationality’ in the (Asian) territories, where people still tend to define their identity in terms of religion, clan, tribe and place of origin.¹⁷

The Fundamental Law (Constitution) of the Soviet Union of 1924 adopted these principles, which have a clear multinational basis. The preamble underlined equality among all the people of the USSR and (in perspective) of the world as well as their peaceful relations. Moreover, it aimed to eliminate the oppression of nationalities. The ‘camp of socialism’ was characterized by “reciprocal confidence and peace, national liberty and equality”, and “the new federal state will be the worthy crowning of the principles laid down as early as October 1917 of the pacific co-existence and fraternal collaboration of peoples”.¹⁸

The practical application of these principles was not entirely achieved. Lenin himself rued the “Great-Russian chauvinism” that was still greatly present, declared that the freedom to leave the Union was not sufficient and *de facto* a “useless piece of paper”, and proposed a greater understanding and positive actions in favour of minorities.¹⁹

Stalin had an opposite view. In a first phase, he continued the policy of concessions towards the minorities. In this period, the definitive federal model of the Soviet Union was adopted: the institutional model was based on a hierarchy of territorial entities, founded on the different nationalities. At the top were the Soviet Socialist Republics (union republics): federate, nominally sovereign states with the (formal) right to secession. Then came the Autonomous Soviet Socialist Republics that did not have their own sovereignty. At the lowest level, there were other minor ethnic entities (Regions and Autonomous Districts).²⁰ Stalin defined three criteria for achieving the status of union republic: the territory needed an external border, the titular nation had to be a compact majority within its territory and have a population of at least one million.²¹

During the 1930s, Stalin changed his policy with great conviction. The Constitution of 1936 maintained the Federal structure of the USSR, but most attention was given to industrialization, collectivization and to the building of a new Soviet society, while limiting national particularities. The USSR became a “voluntary union of Republics”, instead of a “voluntary union of peoples”, as expressed in the 1924 Constitution (Article 13). The role of the Russian language increased, in comparison to the previous decade:²² to not speak Russian was considered politically reprehensible and learning the language was defined as necessary for personal social growth.²³ The Soviet authorities feared that cultural autonomy could become “cultural nationalism” and often discovered “bourgeois

¹⁷ Hirsch, *Empire of Nations* ... 145, at 146.

¹⁸ Основной закон (Конституция) Союза Советских Социалистических Республик, Принят второй сессией ЦИК СССР первого созыва 6 июля 1923 года и в окончательной редакции II съездом Советов СССР 31 января 1924 г., <http://www.hist.msu.ru/ER/Etext/cnst1924.htm>, English translation at [https://faculty.unlv.edu/pwerth/Const-USSR-1924\(abridge\).pdf](https://faculty.unlv.edu/pwerth/Const-USSR-1924(abridge).pdf) (links checked on 30 May 2017).

¹⁹ Ulianov - Lenin, Vladimir, I., “Sulla questione delle nazionalità o della “autonomizzazione”, in “Il diario dei segretari di Lenin”, in Lenin, *Opere Complete*, vol. 42, (Editori Riuniti, Roma, 1971), appendix.

²⁰ Baistrocchi, Massimo S., *Ex Urss, la questione delle nazionalità in Unione Sovietica da Lenin alla Csi*, (Mursia, Milano, 1992), 275.

²¹ Walker, Edward W., “The Long Road from Empire: Legacies of Nation Building in the Soviet Successor States”, in Esherick, Joseph W., Kayali, Hasan and van Young, Eric (eds.), *Empire to Nation: Historical Perspectives on the Making of the Modern World*, (Rowman & Littlefield Publishers, Lanham, 2006), 316.

²² Service, Robert, *Storia della Russia nel XX secolo*, (Editori Riuniti, Roma, 1999), 224.

²³ Ulasiuk, *The Language Issue in the Evolution of Ukrainian Constitutionalism*, ..., 138.

nationalists”, who were one of the objects of Stalin's purges.²⁴

Repression against several minority groups reached its apex during the Second World War, when the Nazi invasion made the risk of secession real. The Soviet authorities reacted by expelling the “extraneous elements” from the Soviet society.²⁵ During the Stalin era, there were 130 operations of deportation that can be grouped in 53 “global operations”, organized on social or ethnic grounds.²⁶ For example, at least 450,000 German, 200,000 Crimean Tatars, 38,000 Greeks, Bulgarians and Armenians were deported from Ukraine to Central Asia and Siberia.²⁷ In parallel, the Russian national element and Russian patriotism were greatly exalted.²⁸

After Stalin's death, Nikita Khrushchev sued for serious violations of the Leninist principles of the nationalities at the XX Congress of the CPSU in 1956.²⁹ In 1958, a new policy was launched, named *sliyanie* (fusion): a fusion among the different peoples of the Soviet Union to create a new political community. Such a process concerned in particular the non-Russian Slavs that would constitute the nucleus of a new *homo sovieticus*.³⁰

This policy continued during Leonid Brezhnev's rule. The Soviet Constitution of 1977 confirmed the multinational character of the state, but the “incoming approach among the nationalities and ethnicities of the USSR” needed “a reinforcement of the federal principles of the State”.³¹ For the first time, the Constitution defined the USSR as a unitary state, even if it maintained the federal structure and the voluntary character of the Union (Article 70).

Under Mikhail Gorbachev's leadership the policy on the nationalities did not change: the Program of the Communist Party of 1985 did not mention the *sliyanie*, but promoted the plurality of nations and ethnic groups, even mentioning the “new social and international community: the Soviet people”.³² The liberalizations of the Gorbachev period did not directly affect the policy on nationalities. However, thanks to the relaxation of censorship, individual national interests emerged with greater strength. Uprisings and crises developed in various territories of the Union. These processes and the general political crisis of the USSR (culminating in the attempted *coup d'état* on August 1991) resulted in the dissolution of the Soviet Union.

It is useful to summarize the characteristics of the policy on nationalities in the Soviet Union, as it still has an important legacy within today's Russia. Official ideology considered nationality a transitory element, to be overcome by the *sliyanie*. However, a

²⁴ Baistrocchi, *Ex Urss, la questione delle nazionalità in Unione Sovietica da Lenin alla Csi ...*, 276.

²⁵ Bettanin, Fabio, *Il lungo terrore, politica e repressioni in Urss 1917-1953* (Editori Riuniti, Roma, 1999), 191.

²⁶ Dundovich, Elena, Gori, Francesca and Guercetti Emanuela (eds.), *Gulag, storia e memoria* (Universale economica Feltrinelli, Milano, 2004), 115.

²⁷ Stepanenko, Viktor, “A State to Build, a Nation to Form: Ethno-Policy in Ukraine”, in Biro Anna M. and Kovacs, Petra (eds.), *Diversity in Action: Local Public Management of Multi-Ethnic Communities*, (LGI Books Open Society Institute, Budapest, 2001), 312, at 313.

²⁸ Riasanovsky, Nicholas V. and Romano, Sergio (eds.), *Storia della Russia, dalle origini ai giorni nostri*, (Bompiani, Milano, 1989), 579.

²⁹ Nahaylo, Swoboda, *Disunione Sovietica ...*, 149.

³⁰ Totskyj, Bronislav A., *Regional and Minority Languages in the Ukrainian Legislation*, Kyiv-Mohyla Academy. Abstract: *Minority politics within the Europe of regions* (2010), at http://www.academia.edu/1221616/Regional_and_minority_languages_in_Ukrainian_legislation (accessed 30 May 2017), 30, 31.

³¹ Правда, 5 июня 1977 г., cit. in Nahaylo, Swoboda, *Disunione Sovietica ...*, 251, at 252.

³² Nahaylo, Swoboda, *Disunione Sovietica ...*, 293, 294.

concrete policy of this kind was enforced only for short periods.³³ The Soviet authorities never operated on a principle of complete russification. Rogers Brubaker writes:

Soviet elites might have sought to organize the same territories and peoples as a Soviet nation state. But they did neither. On the one hand, Soviet rulers never elaborated the idea of a Soviet nation. ... They developed the doctrine of the 'Soviet People' (sovetskii narod) as a 'new historical community'. But this emergent entity was explicitly conceived as supra-national, not national. ... On the other hand, the Soviet Union was never organized, in theory or in practice, as a Russian nation-state. Russians were indeed the dominant nationality, effectively controlling key party and state institutions; and Russian was promoted by the state as its lingua franca. But this did not make the state a Russian nation state³⁴

The Soviet Union actuated dual-institutionalization, through the “dual scheme of ethnoterritorial federalism and personal nationality”, concepts that were not “spatially nor even conceptually congruent”. “The jurisdiction of the national republics was territorially, not personally circumscribed. On the other hand, the nationality of persons did not depend on their place of residence”, but on descent.³⁵

Considering the territorial aspect, the federal model in the USSR, as in other socialist countries, was implemented to respond to the demands of some dominant nationalities, but in an authoritarian framework. Through this framework, the Party was able to effectively control the whole central and local government apparatus,³⁶ in particular through the application of the principle of *democratic centralism* codified in the Soviet Constitution.³⁷

The dissolution of the Soviet Union caused the separation of the fifteen Union Republics. All the Republics constituted nominally national (mono-ethnic) States with a centralist administrative system, even if a huge number of minorities (in particular Russians) were left within the borders of the new countries. Bronislav Totskyj identifies three different approaches (radical, conservative, liberal) of the new states' authorities towards Russian presence, and in particular the Russian language.³⁸ The ‘radical’ approach tries to restrict the use and the diffusion of the Russian language (for example in Latvia, where the Official Language Law of 1999³⁹ defined all the languages spoken within the country, except Latvian and Liv, to be treated as ‘foreign’). The ‘conservative’ approach recognizes Russian as an official language alongside the national language (for instance, article 17 of the Constitution of Belarus was modified

³³ Zaslavsky, Viktor, *Storia del sistema sovietico, l'ascesa, la stabilità, il crollo* (La Nuova Italia Scientifica, Roma, 1995), 124, at 125.

³⁴ Brubaker, Rogers, *Nationalism Reframed, Nationhood and the national question in the New Europe* (Cambridge University Press, Cambridge, 1996), 28, at 29.

³⁵ *Ibid.*, 31-33.

³⁶ De Vergottini, Giuseppe, “Lo Stato federale: precedenti sviluppi e tendenze”, in *Enc. Dir.*, volume XLIII, (Giuffrè, Milano, 1990), 374.

³⁷ Конституция (Основной закон) Союза Советских Социалистических Республик, Принята на внеочередной седьмой сессии Верховного Совета СССР девятого созыва 7 октября 1977 г., article 3, <http://www.hist.msu.ru/ER/Etext/cnst1977.htm> (accessed 30 May 2017).

³⁸ Totskyj, *Regional and Minorities Languages in the Ukrainian Legislation ...*

³⁹ Republic of Latvia, Official Language Law, adopted by Saeima on 9 December 1999, at http://www.minelres.lv/NationalLegislation/Latvia/Latvia_Language_English.htm (accessed 30 May 2017).

by a referendum in 1995 to introduce Russian as a second official language alongside Belarusian). Finally, the ‘liberal’ approach: even if Russian is not an official language, its particular role is recognized to a certain extent (for example the Russian language is the only minority language explicitly cited in the Constitution of Ukraine, article 10).

3. Modern-day Russia

3.1. General aspects

Analysing issues of nationality, we have to consider different aspects. Firstly, the Russian territorial-administrative structure: the federal system based on the plurality of the “subjects of the Federation” that constitute Russia. Second, considering the different relations between national groups and territory, it is possible to identify different categories of nationalities.

In comparison with the other post-Soviet Countries, the Russian Federation is an exception. Because of the vastness of its territory, it maintains the multinational character of the State and the federal structure, still clearly based on the Soviet era system. As in the Soviet period, even modern Russia, with its younger history, alternated phases of decentralization and centralization, depending on political and historical circumstances. In the period between 1990 and 1992 there was the so called “parade of sovereignties⁴⁰”. The Republics asked for greater power and had enough strength to contract their competences with the Federation: 42 bilateral treaties between the subjects and the Federation were adopted in the period from 1994 to 1998, creating an asymmetric federal model.⁴¹

A process of centralization was reinstated after the election of President Vladimir Putin. Putin promoted several reforms, aimed at centralizing power: during his first presidency (2000-2004), he promoted the institution of the Federal Districts and the reform of the Council of the Federation (where the Subjects are represented). This policy continued during his second mandate (2004-2008), when he intervened on the attributions of the Subjects and on “federal interference”. Moreover, the heads of the Subjects are no longer directly elected, but are proposed by the President and elected by the councils of the Subjects. In 2000, the Constitutional Court, repealing some articles of the Constitution of the Republic of Altai, ruled that the Republics do not have their own sovereignty: the definition of the Republics as ‘states’ by the Constitution expresses only some particularities of their constitutional status, but does not confer proper sovereignty, distinguished by the sovereignty of the Federation.⁴² Moreover, ethnic and religious parties were forbidden.⁴³

Considering the federal structure of the State, the Russian model is still influenced by Soviet legacy. However, while there was a clear hierarchy among the different entities

⁴⁰ cf. Hale, Henry, “The Parade of Sovereignties: Testing Theories of Secession in the Soviet Setting”, 30 *The British Journal of Political Sciences* (2000), 31-56.

⁴¹ Ganino, *Russia ...*, 76.

⁴² *Ibid.*, 86.

⁴³ *Ibid.*, 64, at 67.

in the USSR (with the Union Republics at the top), the Russian Constitution of 1993⁴⁴ substantially equalized the status of the Subjects of the Federation, regardless of their different official denominations. The federalism of Russia is no longer only territorial-ethnic (as in the Soviet period), but comprises even ‘non-ethnic’ entities: the Regions (*oblasti*) are no longer simple local administrations as in Soviet times, but “Subjects of the Federation”. The federal system is not anymore considered merely a way of managing ethnic diversity, but also an answer to democratization requests,⁴⁵ even if the ethnic component remains. Russia is divided into 85 subjects (83 plus the Republic of Crimea and the Federal City of Sevastopol, annexed in 2014 and internationally still recognized as part of Ukraine, respectively as Autonomous Republic and City with special status): 46 Regions, 22 Republics (with Crimea),⁴⁶ 9 Territories, 4 Autonomous Districts, 3 Cities of Federal Importance (with Sevastopol), 1 Autonomous Region. The Autonomous Region, the Autonomous Districts and the Republics are still founded on an ethnic basis.

The Jews Autonomous Region was ‘artificially’ created according to Stalin's will in 1934, to give a homeland to Jewish people. In view of the Soviet ethnic-territorial federalism, namely that every nationality shall have its own territory, a land in the Far East, around the city of Birobidzhan, was chosen for this purpose and Jewish immigration was encouraged, beginning in 1928.

The Autonomous districts were instituted in the territories inhabited by the indigenous peoples of the North, Far East and Siberia in the 1920s, as ‘National Districts’. The Soviet Constitution of 1977 changed their name (National Districts became ‘Autonomous Districts’) and established that they were subordinated to Regions and Territories. A reform in 1990 stipulated that they were directly subordinated to the Russian Soviet Federative Socialist Republic, even if there was the possibility that they were still under the jurisdiction of a Region or a Territory. They have a sort of hybrid nature, because they are Subjects of the Federation, but they can also be subdued to a Region or a Territory. In that case “the relations between the Autonomous District within a Territory or Region may be regulated by the federal law or a treaty between the bodies of state authority of the Autonomous District and, accordingly, the bodies of state authority of the Territory or Region” (article 66 point 4 Constitution of the Russian Federation). Upon the collapse of the Soviet Union there were ten Autonomous Districts. Between 2005 and 2008 they have been reduced to four. Only one of them, Chukotka, is not part of another Region or Territory.

The Republics differ from the other Subjects, as they have a ‘titular nationality’. The titular nationality does not need to make up the majority of the population (for example, in Tatarstan 53.2% of the population is Tatar and 39.7% Russian; on the contrary in Karelia, the Karelians make up only 7.4% and the Russians 82.2%). The Republics adopt their own Constitutions, which define their status together with the Federal Constitution (article 66 point 1 Constitution of the Russian Federation), while

⁴⁴ Конституция Российской Федерации, Принята всенародным голосованием 12 декабря 1993 г. с поправками от 30 декабря 2008 г., 5 февраля, 21 июля 2014 г.

⁴⁵ Ganino, *Russia ...*, 75.

⁴⁶ Adygea (hereinafter AD), Altai (AL), Bashkortostan (BA), Buryatia (BU), Dagestan (DA), Ingushetia (IN), Kabardino-Balkaria (KB), Kalmykia (KA), Karachay-Cherkessia (KC), Karelia (KL), Komi (KO), Mari El (MA), Mordovia (MO), Sakha (Yakutia) (SA), North Ossetia-Alania (OA), Tatarstan (TA), Tuva (TU), Udmurtia (UD), Khakassia (KH), Chechnya (CE), Chuvashia (CU), Crimea (CR).

the other Subjects do not adopt a Constitution but a Statute (article 66 point 2). Moreover, the Republics have the right to establish their own state languages that shall be used together with Russian in the state and local institutions (article 68 point 1, 68 point 2).

Therefore, a different status of minorities arises from the territorial organization of the Federation. We can distinguish between ‘titular’ and ‘non-titular’ nationalities, the former enjoying particular rights. Moreover, we can differentiate the ‘small-numbered indigenous peoples’ that are the object of specific legislation.

Alongside the territorial organization of the nationalities, we have also a non-territorial system of protection, based on the so-called “National Cultural Autonomies” (hereinafter NCA), a term that indicate “a right, a political principle and a specific type of organization” (cf. *infra*).⁴⁷

3.2. The Nationalities in the Constitution of the Russian Federation and in the Constitutions of the Republics

In the preamble of the Constitution it is possible to underline the dichotomy between the unity of the State and the multinational composition of the people. In fact it recognizes the multi-ethnic character of the population of Russia (“We, the multinational people of the Russian Federation ...”) and then cites the people's will to preserve “the historically established state unity” and to proceed “from the universally recognized principles of equality and self-determination of peoples”. The principle of equality is guaranteed by Article 19, inserted in the Chapter 2 (Rights and Freedoms of Man and Citizen): equality of rights and freedoms are explicitly guaranteed by the state, regardless (among all) nationality, origin, language and religion. Furthermore, the article bans all forms of limitation of human rights on social, racial, national, linguistic or religious grounds.

Other articles of the second chapter of the Constitution are devoted to nationalities: Article 26 establishes the right of everyone to determine and indicate their nationality (26 point 1), to use their native language and to choose the language of communication, upbringing, education and creative work (26 point 2). Moreover “no one may be forced to determine and indicate his or her nationality”. Article 28 guarantees the freedom of conscience and the freedom of religion.

The linguistic issue is laid out in Article 68, inserted in Chapter 3 (on the federal structure). The Russian language is the state language “on the whole territory of the Russian Federation” (68 point 1). The Republics have the right to establish their own state languages, to be used together with the state language of the Russian Federation in the official bodies of the state and local power (68 point 2). Finally, the article establishes that the Russian Federation guarantees “to all of its peoples the right to preserve their native language and to create conditions for its study and development” (68 point 3).

In the same chapter, there is a reference to indigenous peoples: Article 69 guarantees

⁴⁷ Osipov, Alexander, “National Cultural Autonomy in Russia: A Case of Symbolic Law”, 35 *Review of Central and East European Law*, (2010), (Martinus Nijhoff Publishers, Leiden, 2010), 27-57, at 27.

“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”. However, it must be underlined that the Russian Federation has not ratified the ILO Indigenous and Tribal People Convention N. 169 of 1989.

Two more articles must be cited: Article 29 point 2 prohibits “the propaganda or agitation instigating social, racial, national or religious hatred and strife” and bans “the propaganda of social, racial, national, religious or linguistic supremacy”. Article 13 point 5 establishes that “The creation and activities of public associations whose aims and actions are aimed at a forced change of the fundamental principles of the constitutional system and at violating the integrity of the Russian Federation, at undermining its security, at setting up armed units, and at instigating social, racial, national and religious strife shall be prohibited”. Even if it is certainly positive to forbid hatred, it is necessary to underline that the accusation of inter-ethnic or religious animosity or of separatism has sometimes been used as an obstacle to the political activities of minority groups. The Advisory Committee of the Framework Convention for the Protection of National Minorities (hereinafter the Advisory Committee) underlines that non-governmental organizations reported that the legislation on countering and prosecuting extremism is sometimes used against human rights defenders, persons or organizations engaged in minority protection and non-traditional Muslim groups. Human and minority rights activists are accused of being ‘traitors’, ‘extremists’ or of ‘inciting social hatred’, then threatened with prosecution under the legislation against extremist activities.⁴⁸ Similar accusations are often levelled against ‘non-traditional’ religious groups such as Baptists and Pentecostals,⁴⁹ and recently these have caused the outlawing of the Administrative Center of Jehovah’s Witnesses by the Supreme Court.⁵⁰

Considering the distribution of competences between the Federation and the Federative Republics, it is not extremely clear: article 71 letter в puts “the regulation and the protection of the rights of national minorities” among the exclusive competences of the Federation. However, article 72 letter 6 puts the “protection of the rights of national minorities” (without ‘regulation’) among the joint competences of the Federation and the Republics.

It is interesting to consider the Constitutions of the 22 ‘ethnic’ Republics. The definition of “multinational people”, as in the Preamble of the Constitution of the Federation, is used in 17 Constitutions,⁵¹ underlining the multi-ethnic character of their populations. The republics can choose a local language as its official one, alongside Russian. The vast majority of the republics have chosen this: 15 republics have one local

⁴⁸ Advisory Committee on the Framework Convention for the Protection of National Minorities, *Third Opinion on the Russian Federation, adopted 24 November 2011*, Strasbourg 25 July 2012, ACFC/OP/III(2011)010, paragraphs 92, 132.

⁴⁹ Advisory Committee on the Framework Convention for the Protection of National Minorities, *Third Opinion on the Russian Federation, ...*, paragraph 148.

⁵⁰ *Религиозная организация “Управленческий центр Свидетелей Иеговы в России” признана экстремистской*, note by the Ministry of Justice of the Russian Federation, 20 April 2017, at <http://minjust.ru/ru/novosti/religioznaya-organizaciya-upravlencheskiy-centr-svideteley-iegovy-v-rossii-priznana> (accessed 30 May 2017).

⁵¹ AD: articles 2, 51, 77; AL: preamble, 76, 144; BA: preamble, 1, 9, 10, 85; BU: preamble, 3, 60, 107; DA: preamble, 1, 4, 57, 77; KB: preamble; KA: preamble; KC: preamble, 59, 65, 69; MO: preamble, 2, 107; SA: preamble, 5, 44, 71; OA: preamble, 1; TA: preamble, 3; TU: preamble, 56, 110; UD: preamble, 1; KH: preamble, 3; CE: preamble 2, 66; CR: preamble, 2, 63.

language,⁵² four have two official local languages,⁵³ the Karachay-Cherkessia has four and Russian is defined as language of inter-ethnic communication.⁵⁴ The Constitution of Dagestan uses a different and more generic formulation, declaring official languages “Russian and the languages of the peoples of Dagestan” (article 11); 13 local languages have this status.⁵⁵ The Republic of Karelia is the only one that has not chosen any official language but Russian. However, it recognizes the possibility of adopting another language in conformity with the will of the population as expressed by a referendum (article 11). The same article establishes the right to preserve the mother tongues of the peoples of Karelia, creating the conditions for their study and development. Karelian, Finnish and Vespian are protected by an ordinary law.⁵⁶ The Advisory Committee underlines that the adoption of Karelian as an official language has been impeded by the desire to retain the Latin alphabet instead of the Cyrillic one, prohibited by the law on languages (cf. *infra*).⁵⁷ The constitution of Sakha (Yakutia), after defining Russian and Sakha (Yakut) as official languages, declares the languages of the small indigenous people of the north, in the areas of their compact settlement, as official (article 46).

The Constitutions are similar to each other, with regards to their systematics and contents. All the Republics explicitly express the principle of equality,⁵⁸ forbidding discrimination due to nationality, language, race, religion, with the exception of Kalmykia (that does not explicitly cite nationality) and Udmurtia.⁵⁹ Other aspects, widely diffused within the Constitutions, are the right of the free choice of the mother tongue and other dispositions concerning the use of languages.⁶⁰ Considering nationality, most of the Constitutions maintain that no one may be forced to determine and indicate his or her nationality.⁶¹ Even the freedom of religion is assured,⁶² often alongside the principle of secularism of the state (“no religion can be defined as official”).⁶³ Other widespread provisions concern the prohibition of racial, religious, national and ethnic propaganda or linguistic supremacy or hatred⁶⁴ and the ban of movements which promote such ideas or which attempt to upset the constitutional order or the integrity

⁵² AD: Adyghe (art. 5); AL: Altai (art. 13); BA: Bashkir (art. 1); BU: Buryat (art. 67); IN: Ingush (art. 14); CE: Chechen (art. 10); CU: Chuvash (art. 8, 10); KA: Kalmyk (art. 17); KO: Komi (art. 67); KH: Khakas (art. 69); SA: Yakut (art. 46); OA: Ossetic (art. 15); TA: Tatar (art. 8); TU: Tuvan (art. 5); UD: Udmurt (art. 8).

⁵³ KB: Kabardian, Karachay-Balkar (art. 76); MA: Hill Mari, Meadow Mari (art. 15); MO: Erzya, Moksha (art. 13); CR: Crimean Tatar, Ukrainian (art. 10).

⁵⁴ KC: Abaza, Cherkess, Karachay-Balkar, Nogai (art. 11).

⁵⁵ Bowring, Borgoyakova, *Language Policy and Language Education in Russia*, ... , 11.

⁵⁶ Закон Республики Карелия от 19 марта 2004 г. № 759 - ЗПК “О государственной поддержке карельского, вепсского и финского языков в Республике Карелия”.

⁵⁷ Advisory Committee on the Framework Convention for the Protection of National Minorities, *Third Opinion on the Russian Federation, adopted 24 November 2011*, Strasbourg 25 July 2012, ACFC/OP/III(2011)010, paragraph 168.

⁵⁸ AD: article 20; AL: 22; BA: 19; BU: 17; DA: 20; IN: 18; KB: 22; KC: 16; KL: 19; KO: 17; MA: 19; MO: 17; SA: 15; OA: 20; TA: 28; TU: 19; KH: 15; CE: 16; CU: 17; CR: 13.

⁵⁹ KA: article 22.

⁶⁰ AD: articles 24, 73; AL: 13, 36, 134; BA: 32, 54; BU: 24; DA: 6, 30; IN: 25; KB: 30, 76; KC: 23; KL: 11; KO: 27, 67; MA: 26; MO: 24; SA: 46; OA: 15, 26; TA: 34; TU: 5, 24; KH: 22, 69; CE: 23; CU: 23; CR: 19.

⁶¹ AD: article 24; AL: 35; BA: 31; BU: 24; DA: 30; IN: 25; KB: 30; KC: 23; KO: 27; MA: 26; MO: 24; OA: 26; TA: 34; TU: 24; KH: 22; CE: 23; CU: 23; CR: 19.

⁶² AD: article 27; AL: 34; BA: 30; BU: 26; DA: 29; IN: 27; KB: 32; KC: 25; KO: 29; MA: 28; MO: 26; OA: 28; TA: 37; TU: 25; KH: 24; CE: 25; CU: 25; CR: 21.

⁶³ AD: article 14; AL: 18; BA: 13; DA: 17; KB: 14; KC: 12; MA: 13; MO: 11; OA: 13; UD: 14; KH: 11; CE: 11; CR: 9.

⁶⁴ AL: 3; BA: 17; BU: 27; DA: 28; IN: 28; KB: 33; KC: 26; KO: 30; MA: 29; MO: 27; SA: 4; OA: 29; TA: 37, 42; TU: 26; KH: 25; CE: 26; CU: 26; CR: 22.

of the state.⁶⁵

Other provisions protecting minorities' rights are less consistent throughout the Constitutions. Only five Constitutions explicitly cite the right of education connected to nationalities. Article 44 of the Constitution of Altai ensures the development and implementation of regional programs for the development of education and takes even the national and regional 'ethnocultural' characteristics into account. A similar provision can be found in article 22 of the Constitution of Sakha (Yakutia) that guarantees state educational standards, considers "national, ethnocultural and other peculiarities of the Republic of Sakha (Yakutia)". The Constitution of Dagestan (article 42) reserves to the Republic the right to establish regional (national-regional) components of state educational standards. Considering the language issue, article 47 of the Constitution of Bashkortostan assures the teaching of the official languages of the Republic and the languages of the peoples of the Republic of Bashkortostan. Finally, article 56 of the Constitution of Tatarstan guarantees the education in the state languages of the Republic of Tatarstan. All these provisions seem almost generic.

Even the references to minorities in the articles referring to local self-government are few. The Republic of Altai (article 9) says that local self-government "is organized by considering historical, national, socio-economic and other local conditions". Moreover, article 69 puts forth that some administrative-territorial units may be granted the status of "national-territorial entities" by the law of the Republic, "depending on the characteristics of the national, ethnic composition of the population, its compact residence and other circumstances". Article 10 of the Constitution of Karelia permits the establishment of "national municipalities". The authorities of Bashkortostan contribute to "cultural and linguistic diversity" of the territories, in which local self-government is exercised (article 102 Constitution of Bashkortostan). In Sakha (Yakutia) the organization of the local self-government shall consider the "national-ethnic peculiarities" of the population (article 97 Constitution of Sakha) and one of the principles of the local self-government is the "observance of national-ethnic and historical traditions" (article 98 point 4). A final reference concerns the indigenous peoples: "In the localities of compact residence of indigenous small-numbered peoples of the North, local self-government takes into account national-ethnic peculiarities, in accordance with the procedure established by law" (article 99 point 2). This last provision can be linked to article 43: "On the territory of compact residence of indigenous small-numbered peoples of the North, by the will of the population, national administrative-territorial entities can be created, whose status is determined by the law of the Republic of Sakha (Yakutia)".

The Constitution of Kabardino-Balkaria provides the institution with a Committee of Inter-ethnic relations of the Parliament (article 99 point 3).⁶⁶ The Committee is composed of members of the Parliament. It should be attended by at least one-fourth of the elected members of the Parliament on inter-ethnic issues (article 103). Considering the decision-making process of the Committee, article 104 says that "the acceptance by the Committee on Inter-ethnic relations of the issue within the scope of its authority for

⁶⁵ AD: 9; AL: 17; BA: 12; BU: 7; DA: 16; IN: 12; KB: 15; KC: 8; MA: 12; MO: 11; OA: 12; TA: 12; TU: 15; KH: 11.

⁶⁶ cf. Law of the Republic of Kabardino-Balkaria "On the Parliament of the Republic of Kabardino-Balkaria", articles 23, 24 (Закон Кабардино-Балкарской Республики от 10 декабря 2003 г. № 110-РЗ "О Парламенте Кабардино-Балкарской Республики" - в ред. Закона КБР от 19 декабря 2011 г. № 120-РЗ).

consideration and subsequent recourse of the Committee to the Parliament, provides for grounds for mandatory suspension by the Parliament of further procedures of decision-making on that matter, until it is agreed upon in accordance with the established rules". The Constitution of Adygea explicitly recognizes the right of the ethnic communities to create their own national-cultural associations (*natsional'no-kul'turnye obedineniya*) (article 41 point 3).

Some Constitutions designate particular norms to indigenous people. Article 10 of the Constitution of Altai declares that the territory of the Republic "is the original land of the traditional settlement of its indigenous and other peoples" and "ensures the preservation of their identity". Moreover article 24 guarantees "the protection of the original habitat and the traditional original way of life and management of the indigenous people and small ethnic communities, in places of their compact residence, in accordance with federal and republican laws, principles and norms of international law". The Constitution of Sakha (Yakutia) is the charter that dedicates the biggest number of dispositions to indigenous peoples. The Republic of Sakha "guarantees the collective rights of the indigenous small-numbered peoples of the north on natural resources" (article 5 point 5). Indigenous people are also exempted from military service: "Representatives of indigenous minorities of the North have the right to replace military service with an alternative civil service in accordance with federal law" (article 27). More specific provisions are in the article 42-46. The Republic of Sakha "guarantees the preservation and revival of the indigenous peoples of the Republic of Sakha (Yakutia) ... respecting the traditions, culture, customs of the indigenous peoples of the Republic of Sakha (Yakutia) and indigenous small-numbered peoples of the North". In addition it protects their

[I]nalienable rights ... 1) to own and use in accordance with the law land and natural resources, including agricultural, hunting, fishing tribal areas; 2) to the organization of social and medical programs, taking into account the ecological peculiarities of the habitat, of the management and the ethnic specifics of the human body; 3) to protection against any form of forced assimilation and ethnocide, as well as from encroachment on ethnic identity, historical and sacred sites, monuments of spiritual and material culture.

(Article 42 points 1, 2)

The territory of Sakha belongs to "its multinational people" and is "the age-old land of the traditional settlement of the indigenous peoples" (Article 44). The Constitution of Sakha provides the possibility to create national administrative-territorial entities in the areas where indigenous people compactly live (article 43), and that local self-government considers national-ethnic peculiarities (article 99 point 2). Moreover, even the electoral districts may consider the presence of the indigenous people: they can comprise a smaller number of voters to facilitate their adequate representation (article 93 point 2). Finally, article 46, after defining Sakha and Russian as official languages, defines the languages of the small-numbered indigenous peoples of the North as "official in places where these people compactly live". The last references to the indigenous people in the constitution of Sakha (Yakutia) refer to the use of natural

resources: “the procedure for the use and alienation of the objects of collective ownership of the indigenous small-numbered peoples of the Republic is established by the law of the Republic of Sakha (Yakutia), in accordance with federal legislation and international law” (article 103 point 2) and “the use of natural resources located in the territories of traditional nature management of the indigenous minorities of the North is effectuated on condition that the damage to the surrounding environment and to the traditional way of life of these peoples is compensated” (article 104 point 2).

3.3. The Federal Laws on Nationalities

Now, it is necessary to analyse the ordinary legislation dedicated to nationalities issues. I will consider the Law on Languages of the Peoples of the Russian Federation and the Law on National-Cultural Autonomy. Then, I will evaluate the references to the national issues in the Law on the Principles of the Russian Federation Legislation on Culture and in the Law on Education. Finally, I will consider the specific legislation pertaining to indigenous peoples.

The 1991 Law of the Russian Federation “On the Languages of the Peoples of the Russian Federation”⁶⁷ disciplines the use of languages. The languages are defined as “national patrimony of the Russian State” (Preamble) and the state contributes to the development of national languages, bilingualism and multilingualism. The text emphasizes the multinational and multilingual character of the people of Russia, stating the equality of languages and the freedom of choice and use of language, and prohibiting the restrictions or privileges on the use of a particular language (except in cases expressed in the legislation of the Federation) (Article 2).

Considering the legal status of the languages, the text distinguishes between the Russian language, which is the state language in the whole territory of the Federation; the official languages of the Republics, which are official in the territory of their own Republic; and finally the other languages, which are not official but are used in the areas of compact residence of people who do not have their national state or national-territorial entity or live outside their borders. These languages can also be used in communication, including official communication, with Russian and the state languages of the Republics (article 3). The Federation establishes the general principles, ensures the role of Russian as the state language, assists the Republics in the development of their state languages, creates the conditions for the preservation of the numerically small people and assists in the study of languages (article 6), creating specific federal programs and financing them (article 7). The guarantees for the protection of languages concern the social, economic and legal spheres (article 4).

Among the rights guaranteed to citizens are the right to choose the language of communication (article 8) and education (article 9); the latter even assured to people who have not their national-territorial entities or live outside them, through various forms of education, whose organization is assisted by the state.

With regards to the use of language in the official sphere, the state language of the republics can be used in the organs of state power, local self-government and state

⁶⁷ Закон РФ от 25 октября 1991 г. № 1807-1 “О языках народов Российской Федерации”, с изменениями и дополнениями от: 24 июля 1998 г., 11 декабря 2002 г., 2 июля 2013 г., 12 марта 2014 г.

institutions of the Republics, as well as in the publication of official acts. In the other Subjects of the Federation, which do not have the status of Republic, the legal normative act can be published in other languages of the Russian Federation “where necessary” (articles 11, 12, 13). Minority languages can be used in the preparation and conduct of elections, in areas of “compact residence of linguistic groups” (article 14). The law provides even the right for people to address state bodies, organizations, enterprises and institutions of the Russian Federation with proposals, petitions, complaints, and to speak in their meetings (with an appropriate translation, if necessary) in their own language (article 15). Legal proceedings are conducted in Russian or in the languages of the Republics. Everybody has the right to speak and receive information in their own language.

Considering the use of languages in general, the Advisory Committee welcomes the existence of substantial guarantees for equality among languages, but complains that the (Federal and Regional) laws are implemented to varying degrees and that the presence of minority languages in daily life is progressively disappearing.⁶⁸

Regarding mass media, media aired in the whole federation shall be in Russian, but newspapers and magazines can be published in other languages. Russian, the languages of the Republics and other languages are used in the constituent entities of the Federation (article 20). Despite the decreasing use of minority languages in urban centres, and although the Advisory Committee underlines that the number of TV and radio programs being broadcast is decreasing,⁶⁹ there is a large selection of print media organized by minority associations.

The Law also provides the right to have one’s name in documents written in conformity with the national tradition (article 16), as well as the toponymy and road signs in the place of compact residence of national groups (article 23). The Advisory Committee notes that the adoption of topographical signs in minority languages depends on the willingness of local authorities, which often opt for a restrictive interpretation of the term “where necessary”.⁷⁰

Other norms concern the discipline of language in the field of industry, communication, transport and energy (article 21), in the services and commercial sector (article 22), in foreign relations (article 26) and in the relations between the Federation and its subject (that is Russian - article 27).

A problematic norm is article 3 point 6 (introduced in 2002⁷¹) that imposes the use of the Cyrillic alphabet for all the languages of the Federation, with the possibility to derogate by a federal law only. The amendment follows the decision of Tatarstan, which in September 2001 enacted legislation to move to the Latin alphabet.⁷² The controversy was brought in front of the Constitutional Court, which recognized the federal competence on the matter and the conformity of the amended norm with the Constitution.⁷³ The non-possibility of adopting an alphabet other than Cyrillic is also

⁶⁸ Advisory Committee on the Framework Convention for the Protection of National Minorities, *Third Opinion on the Russian Federation*, ... , paragraph 162.

⁶⁹ *Ibid.*, paragraphs 22, 157, 158, 159.

⁷⁰ *Ibid.*, paragraph 172.

⁷¹ Федеральный закон от 11 декабря 2002 г. № 165-ФЗ “О внесении дополнения в статью 3 Закона Российской Федерации “О языках народов Российской Федерации”.

⁷² Bowring, *Russian Legislation in the Area of Minority Rights* ... , 20.

⁷³ Постановлением Конституционного Суда РФ от 16 ноября 2004 г. № 16-П пункт 6 статьи 3 настоящего Закона признан не противоречащим Конституции РФ.

contested by the Advisory Committee, because the choice of alphabet is intricately linked with the free choice of one's language.⁷⁴

Another problem is the vagueness of some criteria used to define the rights, like the expressions “where necessary” (article 13), “in case of necessity” (articles 14, 15), “in necessary cases” (article 16), “taking into account the local population” (article 21). Moreover, the Law, which was amended in 1998,⁷⁵ changed the formulations that define the use of the state language of the Republics from mandatory into mere possibilities (for example, article 13: “Laws and other normative documents of the republic ... are published in their state languages ...” became “*may be* officially published ...”).

Finally, the law prohibits restrictions and privileges in the use of languages (preamble, article 2). The use of the word *privileges* in the context of linguistic and minority rights can be problematic, because it could be interpreted as in opposition to the possibility of introducing positive actions in favour of disadvantaged groups.

The second relevant law that we must consider is the Federal Law “On National-Cultural Autonomy”.⁷⁶ Alexander Osipov points out that the term “National-Cultural Autonomy” in Russian legislation has two basic meanings: “the first refers to a general principle by which individuals use various institutional formats to collectively pursue their rights and interests related to their ethnic origin, language and culture. The second indicates a specific form of ethnicity-based organization”.⁷⁷

The Law “On National-Cultural Autonomy” refers to the second meaning. Citizens of the Russian Federation, who identify themselves as members of a minority ethnic community, can form a National-Cultural Autonomy as a public association (more precisely, a specific category of non-governmental organization⁷⁸) on the basis of their voluntary self-organization, in order to “preserve identity, develop the language, education, national culture, strengthen the unity of the Russian Nation, harmonize the inter-ethnic relations, promote the inter-religious dialogue, and also to implement activities aimed at the social and cultural adaptation and integration of migrants” (article 1). The role of the National-Cultural Autonomies is specifically cultural in a narrow sense, as the creation of political parties on an ethnic basis is prohibited.⁷⁹

The National-Cultural Autonomies can be local, regional or federal. The local association is formed by the general meeting of citizens who identify themselves with a certain ethnic community and reside in the territory of a municipal formation. The delegates of local National-Cultural Autonomies may establish a regional National-Cultural Autonomy (in the Subjects of the Federation), whose delegates may establish a federal organization. The federal association has to represent at least half of the registered regional National-Cultural Autonomies. Moreover the regional organizations of two or

⁷⁴ Advisory Committee on the Framework Convention for the Protection of National Minorities, *Third Opinion on the Russian Federation*, ... , paragraphs 168, 169.

⁷⁵ Федеральный закон от 24 июля 1998 г. №126-ФЗ “О внесении изменений и дополнений в Закон РСФСР “О языках народов РСФСР””

⁷⁶ Федеральный закон от 17 июня 1996 г. № 74-ФЗ “О национально-культурной автономии” С изменениями и дополнениями от: 21 марта 2002 г., 10 ноября 2003 г., 29 июня, 22 августа 2004 г., 30 ноября 2005 г., 1 декабря 2007 г., 9 февраля 2009 г., 2 июля 2013 г., 4 ноября 2014 г.

⁷⁷ Osipov, *National Cultural Autonomy in Russia: a Case of Symbolic Law*, ... , 35, 36.

⁷⁸ On the definition of NGO cf. Федеральный Закон от 11 Августа 1995 г. № 135-ФЗ “О благотворительной деятельности и благотворительных организациях”.

⁷⁹ Advisory Committee on the Framework Convention for the Protection of National Minorities, *Third Opinion on the Russian Federation*, ... , paragraphs 26, 74.

more Subjects of the Federation can create inter-regional coordination bodies, but that are not interregional National-Cultural Autonomies (articles 5, 6).

Even if the Law does not limit the number of National-Cultural Autonomies of a certain group within a certain territory, *de facto* the territorial departments of justice have denied the registration of parallel National-Cultural Autonomies. Moreover, the Constitutional Court of the Russian Federation established⁸⁰ in March 2004 that no more than one local or regional autonomy per ethnic community could be instituted in a municipality or a Region.⁸¹

The National-Cultural Autonomies are connected to government bodies through advisory councils. At federal level, the Government of the Russian Federation defines a federal executive body, under which an advisory council on affairs of National-Cultural Autonomies is established, composed of representatives of each federal National-Cultural Autonomy. Similar, councils may be established at regional and municipal level (article 7). The Advisory Committee denounces the limited impact of these councils: the extent to which consultations are carried out depends on the willingness of local authorities. Moreover, there is no systematic involvement of minority representatives in decision-making.⁸²

Chapters III and IV of the Law are dedicated to the main ambit of intervention for the associations: the right to preserve, use and develop the national language and the national culture. The bodies of state power at federal and regional level ensure the implementation of state policies aimed at preserving and developing national languages. In particular, the executive body can promote the creation of mass media, TV and radio programs, audio and video materials, printed materials, etc. (article 9). In addition, the Law establishes the right to receive basic education in the national language and to choose the language of education (article 10). National-Cultural Autonomies can create private preschool and general educational institutions, participate in the development of educational programs, publish textbooks, submit proposals to the executive bodies, and participate in the development of federal educational standards. They can also conclude agreements with foreign NGOs to guarantee the right to receive education in one's native language (article 11). The executive bodies of the Federation and of its subjects, *if necessary*, can create groups or classes in preschool or general educational institutions, take into account the proposals of the National-Cultural Autonomies, promote the development of programs, textbooks, teaching aids, provide material, legal and organizational assistance, finance activities, etc. (article 12).

In chapter IV, article 13 assures the right to create non-governmental institutions of national culture (e.g. theatres, cultural centres, and museums), unions, collectives, circles of studies, to promote festivals, exhibitions, and other events and publish works on national history, art, music, folklore, ethnography, etc. In this article, the law provides even the possibility of submitting proposals to state authorities and concluding agreements with foreign NGOs. Following the same systematic of chapter III, article 14 considers the specular government tasks. Article 15 concerns the subject of mass media, providing designated airtime in the state-owned audio-visual media, specifically

⁸⁰ Постановление Конституционного Суда РФ от 3 марта 2004 г. № 5.

⁸¹ Osipov, *National Cultural Autonomy in Russia: a Case of Symbolic Law ...*, 40.

⁸² Advisory Committee on the Framework Convention for the Protection of National Minorities, *Third Opinion on the Russian Federation, ...*, paragraph 25.

dedicated to National-Cultural Autonomies and encouraging and supporting the private mass media that cover National-Cultural Autonomies activities.

Finally, part V of the Law considers the financial aspects. The federal executive bodies *can support*, the Subjects of the Federation's ones *support* and local executives *have the right to support* the expenses of the National-Cultural Autonomies (article 16). It is notable that the article uses different expressions to indicate the mandatory or not mandatory character of this financial support: only the financing by the Subject of the Federation's Executives is more than just a possibility.

The actual efficacy of the Law and of the National-Cultural Autonomies is discussed. The Advisory Committee notes that the law does not create any clear obligations on the part of the State, with regard to the preservation of the cultural identity of persons belonging to national minorities, nor does it clearly mark the competencies that the creation of a National-Cultural Autonomy entails. In practice, the situation appears to differ from region to region. In some regions the establishment of a National-Cultural Autonomy does not bring any evident advantage for minorities' associations, e. g. in the case of the Perm Territory the establishment of a National-Cultural Autonomy does not imply any advantages for minority associations in terms of obtaining funds for cultural activities, as all organizations are treated on an equal footing. In other cases it appears to be the contrary, like in the Moscow Region, where the access to premises in the "House of Friendship" depends on the registration as a National-Cultural Autonomy.⁸³

National-Cultural Autonomies enjoy fewer rights than ordinary public associations, as they can not choose their form of organization, face procedural restriction, and their activities must be restricted only to the spheres of language, culture and education. This means that a National-Cultural Autonomy could be closed (or its registration could be denied), if its activity encompasses other spheres, such as human rights advocacy or promotion of tolerance. Even the relations between National-Cultural Autonomies and the Government are not clearly described: for example, the Law does not identify specific government bodies, empowered to make funding decisions. The only two advantages connected to the status of National-Cultural Autonomy are the free space that can be ceded to them by the state-owned mass-media and the possibility for the executive authorities to set up advisory councils, but such provisions are not considered to be binding.⁸⁴ Alexander Osipov considers the National-Cultural Autonomy as "a matter of symbolic, but not instrumental, law and policy. National-Cultural Autonomies are ... ultimately useless, as ordinary NGOs can achieve all the goals and objectives that were intended for NCAs".⁸⁵ The "low-cost symbolic recognition can serve as a political instrument allowing for the neutralization and pacification of ethnicity - or culture - based group claims".⁸⁶

Criticism of the National-Cultural Autonomies system has emerged especially in the recently annexed Crimea. Crimea, an Autonomous Republic within Ukraine, was annexed by the Russian Federation in 2014, after a military intervention and a contested referendum. These events followed the political crisis in Ukraine, opened by the so-called "Evro-Maydan" demonstrations and the overthrow of the President Viktor

⁸³ *Id.* paragraph 72.

⁸⁴ Osipov, *National Cultural Autonomy in Russia: a Case of Symbolic Law ...* , 40, 41.

⁸⁵ *Ibid.* 53.

⁸⁶ *Ibid.* 57.

Yanukovich.⁸⁷ A political clash was registered between the new Russian authorities and the Mejlis of Crimean Tatar people, the self-proclaimed representative organ of the Crimean Tatar community.⁸⁸ As they mostly express a pro-Ukrainian view, the Crimean Tatars have faced several attacks on their rights since the annexation.⁸⁹ Due to this political contrast, the Supreme Court of the Republic of Crimea classified the Mejlis as an “extremist organization” and forbade its activities within the territory of the Russian Federation.⁹⁰ The elimination of the self-proclaimed representative organs of the minority proceeded simultaneously with the creation of new representative structures, in conformity with Russian law. The Deputy Mayor of Simferopol Teyfuk Gafarov⁹¹ (Crimean Tatar, member of Mejlis as Head of the Legal Department, but collaborative with Russian authorities⁹²) said that Tatars need to create Territorial Self-Government Bodies instead of the local Mejlises.⁹³ The new authorities favoured the substitution of the Mejlis with a National-Cultural Autonomy, following the Russian model and legislation. On 12 June 2016 Zaur Smirnov, the head of the Crimean state committee for inter-ethnic relations and deported citizens, announced that “Crimean Tatars who live in various regions of Russia intend to establish a federal national-cultural autonomy ... a form of national-cultural self-determination, which allows representatives of this or that ethnic community to independently decide issues of the preservation of their uniqueness, the development of their language, national culture and education”. Smirnov added that the Crimean Tatars already have a National-Cultural Autonomy on the peninsula, but in order to form a federation represented in the presidential council of national cultural autonomies, there must be support from “no less than half of the registered regional national-cultural autonomies of Russian citizens”.⁹⁴ The appointed Head of the “Regional National-Cultural Autonomy of Crimean Tatars in the Republic of Crimea”, Eyvaz Umerov, said that there were plans to create a “Federal National-

⁸⁷ cf. Filippini, Caterina, “La Crimea: da Repubblica Autonoma dell’Ucraina a Repubblica della Federazione Russa?”, 6/2014, *Federalismi.it* (2014), 5, 6, at <http://www.federalismi.it/nv14/articolo-documento.cfm?Artid=24588> (accessed 30 May 2017).

⁸⁸ The organ is composed by 33 members, elected by the Kurultay, the general assembly of the Crimean Tatars.

⁸⁹ On violations of Crimean Tatar rights, cf.: *The Situation of National Minorities in Crimea Following Its Annexation by Russia*, Directorate-General for External Policy, European Parliament, Bruxelles, 13 April 2016.

⁹⁰ Press Communication by the Mejlis of the Crimean Tatar People <http://qtm.org/ru/%D0%BD%D0%BE%D0%B2%D0%BE%D1%81%D1%82%D0%B8/5211-%D0%B2-%D0%BA%D1%80%D1%8B%D0%BC%D1%83-%D0%B7%D0%B0%D0%BF%D1%80%D0%B5%D1%82%D0%B8%D0%BB%D0%B8-%D0%BC%D0%B5%D0%B4%D0%B6%D0%BB%D0%B8%D1%81> (accessed 30 May 2017).

⁹¹ On the appointment of Teyfuk Gafarov as deputy Mayor of Simferopol cf.: “Mejlis member Teyfuk Gafarov appointed vice-mayor of Simferopol”, *QHA - Crimean News Agency* (19 August 2014), <http://qha.com.ua/en/politics/mejlis-member-teyfuk-gafarov-appointed-vicemayor-of-simferopol/132110/> (accessed 30 May 2017).

⁹² In March 2016, Out of 33 members of the Mejlis 22 are still in Crimea, eight are on mainland Ukraine, and three have been suspended from participating in the body because of their acquiescence to Russian authorities. (Luke Coffey, Luke, “Russia Continues to Oppress Crimean Tatar”, *Al Jazeera*, (19 March 2016), at <http://www.aljazeera.com/indepth/opinion/2016/03/russia-continues-oppress-crimea-tatars-160308054208716.html> (accessed 30 May 2017).

⁹³ “Occupants in Crimea Replace Mejlises with ‘TOS’”, *QHA - Crimean News Agency* (5 March 2016), at <http://qha.com.ua/en/politics/occupants-in-crimea-replace-mejlises-with-tos/136312/> (accessed 30 May 2017).

⁹⁴ Goble, Paul, “Moscow Offering Crimean Tatars Ersatz Autonomy”, 13 (106) *Eurasia Daily Monitor* (14 June 2016), at <https://jamestown.org/program/moscow-offering-crimean-tatars-ersatz-autonomy/> (accessed 30 May 2017).

Cultural Autonomy of the Crimean Tatars” in Russia by the end of 2016,⁹⁵ but it seems that there have not yet been concrete steps in this direction.⁹⁶

We find other relevant norms on nationalities in the laws on culture and education.

One of the goals of the Federal Law “On the Fundamentals of the Legislation of the Russian Federation on Culture”,⁹⁷ is the creation of legal guarantees for the free cultural activity of association of citizens, peoples and other ethnic communities (article 1). Article 6 recognizes equal dignity of the culture of all the peoples and ethnic communities of Russia.

Section III is dedicated to the rights and freedoms of peoples and other ethnic communities in the field of culture. Article 20 establishes the right “to preserve and develop their cultural and national identity” and “to protect, restore and preserve the original cultural and historical environment”. The rights of the titular nationalities of the subjects of the Federation should not damage the rights of the other communities living in these territories. Article 21 is devoted to National-Cultural Autonomy and states that it is not defined as a form of organization, but as the right of ethnic communities, that live outside their titular entity or do not have their own region, to freely realize their cultural identity. This is possible through the creation of cultural centres, associations, events like festivals and exhibitions. National-Cultural Autonomies should be supported by the public authorities of the Subjects of the Federation (article 39). The law recognizes even the protection of the culture of the small-numbered ethnic communities by the State (article 22).

The last law to take into consideration is the Federal Law “On Education in the Russian Federation”.⁹⁸ Some 89 minority languages are taught in various degrees in Russian schools, which provide various models of education. These include, among others, ‘ethnic schools’ with teaching in minority languages, schools ‘with an ethno-cultural component’, consisting of two to three hours of teaching of minority languages and cultures, teaching of the language as a compulsory or optional subject, and kindergarten with an ‘ethno-cultural component’.⁹⁹ The law “On Education” repealed a 1992 Law, aiming to reduce the ethnic component in education, promoting the uniformity and centralization of education, in conformity with a trend started with amendments introduced in 2007.¹⁰⁰ The Law underlines the multinational character of the state, indicates the principles of unity of the educational space and of the protection and

⁹⁵ “The Crimean Tatars collaborating with the illegitimate authorities do not act on behalf of all indigenous people. The pro-Kremlin “national-cultural autonomy” will be a loyal, state financed organization”, *QHA - Crimean News Agency* (15 June 2016), at <http://qha.com.ua/en/politics/cultural-autonomy-imitates-care-of-crimean-tatars/137530/> (accessed 30 May 2017).

⁹⁶ Стельмах, Сергей, “‘Федеральная резервация’ для крымских татар”, *Крым реалии* (23 December 2016), at <https://ru.krymr.com/a/28193637.html> (accessed 30 May 2017).

⁹⁷ Закон РФ от 9 октября 1992 г. N 3612-1 “Основы законодательства Российской Федерации о культуре”, С изменениями и дополнениями от: 23 июня 1999 г., 27 декабря 2000 г., 30 декабря 2001 г., 24 декабря 2002 г., 23 декабря 2003 г., 22 августа 2004 г., 31 декабря 2005 г., 3 ноября, 29 декабря 2006 г., 23 июля 2008 г., 21 декабря 2009 г., 8 мая 2010 г., 22 апреля, 2 июля, 30 сентября 2013 г., 5 мая, 21 июля, 1 декабря 2014 г., 28 ноября 2015 г.

⁹⁸ Федеральный закон от 29 декабря 2012 г. N 273-ФЗ “Об образовании в Российской Федерации”, С изменениями и дополнениями от: 7 мая, 7 июня, 2, 23 июля, 25 ноября 2013 г., 3 февраля, 5, 27 мая, 4, 28 июня, 21 июля, 31 декабря 2014 г., 6 апреля, 2 мая, 29 июня, 13 июля, 14, 29, 30 декабря 2015 г., 2 марта, 2 июня, 3 июля, 19 декабря 2016 г.

⁹⁹ Advisory Committee on the Framework Convention for the Protection of National Minorities, *Third Opinion on the Russian Federation*, ... , paragraph 190.

¹⁰⁰ Prina, Federica, “Localism or Centralism? Education Reform in Russia and its Impact on the Rights of National Minorities”, *42 Cambrian Law Review* (2011), 113-130, at 124.

development of the ethno-cultural characteristics and traditions of the peoples of the Federation (article 3), and promotes the mutual understanding and cooperation among peoples in the educational contents, without discrimination based on race, nationality, ethnicity, religion and social affiliation. The bodies of the federal Subjects are involved in the determination of the programs, by accounting for their regional, national and ethno-cultural characteristics (article 12, points 1 and 12).

Considering the language of education, the choice of language is guaranteed “within the limits of the opportunities provided by the education system”. In the territories of the Republics, the official languages of the Republics *may* be introduced. Parents have the right to choose the language for their under-age children (Article 44). The citizens have the right to learn and to receive basic education in their native language, but “within the opportunities offered by the education system” (article 14). The regional and ethno-cultural peculiarities are taken into account in the production of textbooks or other educational resources (article 18).

Article 87 is dedicated to the teaching of the spiritual and moral culture of the peoples of the Russian Federation, with specific reference to religious education. The conformity of the teachings with the dogma is controlled by centralized religious organizations. Even the teachers are chosen from among those recommended by the religious organizations.

The Advisory Committee underlines that opportunities to study in, and the study of, many of the minority languages exist. However, such opportunities diminish at secondary education level. The right to take the state examination in a minority language was removed in 2009. Moreover, the Federal legislative provisions, concerning minority language education, are too broad and are often not effectively implemented at local level and many schools in minority languages have been closed, because of a process of ‘optimization’, initiated in 2008. Moreover, the interest of parents to send their children to schools in their minority language seems to be progressively diminishing.¹⁰¹

3.4. The Legislation on Indigenous Peoples

The final part of legislation that must be considered concerns the laws dedicated to Indigenous Peoples. In Russia, there are 46 different groups of indigenous peoples; the biggest one are the Nenets (44,640).¹⁰² The Russian Federation has not ratified the ILO Convention 169 on the Tribal and Indigenous Peoples,¹⁰³ however it has produced several laws on this issue: the “Law on the Guarantees of the Rights of the Indigenous Small-numbered Peoples of the Russian Federation”, the “Law on the Common Principles of the Organization of the Communities of the Indigenous Small-numbered People of the North, Siberia and Far East of the Russian Federation”, and the “Law on Territories of Traditional Settlement of the Small-numbered Indigenous People of the North, Siberia

¹⁰¹ Advisory Committee on the Framework Convention for the Protection of National Minorities, *Third Opinion on the Russian Federation*, ... , paragraphs 24, 192, 196.

¹⁰² “Единый перечень коренных малочисленных народов Российской Федерации” утверждён постановлением Правительства Российской Федерации от 24 марта 2000 года № 255, а также изменён согласно постановлениям от 13 октября 2008 г. № 760, от 18 мая 2010 г. № 352, 17 июня 2010 г. № 453, 2 сентября 2010 г. № 669, 26 декабря 2011 г. № 1145, 25 августа 2015 г. № 880.

¹⁰³ International Labour Organization, Convention Concerning Indigenous and Tribal Peoples in Independent Countries - C 169, Adopted in Geneva on 27 June 1989, Entry into force on 5 September 1991.

and Far East of the Russian Federation”.

The Law “On the Guarantees of the Rights of the Indigenous small-numbered Peoples of the Russian Federation”¹⁰⁴ establishes the “juridical framework of the guarantees for the social, economic and cultural development” of such peoples (preamble). The Indigenous small-numbered Peoples are “the peoples that live in their ancestors' traditional settlement territories, that preserve traditional economic models and job activities, that are formed by less than 50,000 persons and that have awareness of themselves as independent ethnic communities” (article 1). The list of the Indigenous small-numbered Peoples is approved by the Government of the Russian Federation, based on a proposal of the Subjects of the Federation.¹⁰⁵ An exception exists for Dagestan: because of the uniqueness of the ethnic composition of the Republic, the State Council of Dagestan autonomously defines the characteristics of its indigenous people and redacts its own list, consecutively included in the Federal list (article 1). The norms are also applied to persons, who are not a member of the Indigenous small-numbered Peoples but who reside in places where Indigenous small-numbered Peoples live and who perform their traditional economic activities (article 3).

Articles 5, 6 and 7 respectively list the competences of the Federal, Regional (of the Subjects of the Federation), and Local Authorities. Federal organs have the right to adopt laws and federal programs of socio-economic and cultural development (positive actions). Representatives of Indigenous small-numbered Peoples *can* be involved in the decision-making process and in the technical evaluation of the norms and other juridical acts. Specific legislation prevents the forced assimilation, the ethnocide and the ecocide of their autochthonous life environment. Considering the economic aspects, Federal authorities can restrict the activities of federal-owned enterprises, solve the dispute on the eventual environmental damages caused by them and elaborate federal and regional programs for the exploitation and the protection of land and the development of natural resources.

Finally, the Government approves the list of the places of traditional settlement and the list of the typologies of traditional economic activities. The Subjects of the Federation take part in the implementation of Federal development programs, can restrict the economic activities of public and private enterprises in the places of traditional settlement, take part in the regulation of the budget relationship between the Federation and the local authorities, and devolve specific competences to local self-government authorities. They can also create, on a voluntary basis, councils of the representatives of the Indigenous small-numbered People, within the executive organs of the Subjects. Similar councils can be created at local level. Moreover, local self-government authorities take part in the implementation of the Federal and Regional programs, monitor the use of the land and establish the general principles of the organization and functioning of the territorial and communitarian self-government of the small-numbered peoples in their traditional settlement places and regarding their

¹⁰⁴ Федеральный закон от 30 апреля 1999 г. № 82-ФЗ “О гарантиях прав коренных малочисленных народов Российской Федерации”, с изменениями и дополнениями от: 22 августа 2004 г., 26 июня 2007 г., 13 мая, 30 декабря 2008 г., 5 апреля 2009 г., 13 июля 2015 г.

¹⁰⁵ The list has been approved by the Decree of the Government of the Russian Federation N. 536-R of 17 April 2006 (Распоряжением Правительства Российской Федерации от 17 апреля 2006 г. № 536-р “Об утверждении перечня коренных малочисленных народов Севера, Сибири и Дальнего Востока Российской Федерации”, в ред. Постановлений Правительства РФ от 18.05.2010 № 352, от 26.12.2011 № 1145).

traditional economic activities.

The indigenous peoples have specific rights connected to the protection of their traditional settlement environment and to the performance of their traditional economic activities, including the free use of land and natural resources and the priority in employment in the traditional sectors. Other rights concern the participation in the decisional proceeding regarding the subjects of their interest, such as receiving state assistance in the reform of all the forms of education and formation of the youth by taking in consideration the traditional way of life of the indigenous peoples (article 8). A specific article (9) is dedicated to the right to substitute military service with an alternative civil service. The cultural rights are listed in article 10: in particular the rights to protect and develop indigenous languages, to create so-called study groups and mass-media, and to observe traditional religions and attend their rites. The following two articles are dedicated to the indigenous peoples' self-government. Article 11 reads that the members of the small-numbered Peoples have the right to exercise "public territorial self-government" in the places of their compact settlement, in conformity with the federal law, but without specifying the forms of such self-government. Article 12 establishes the right to form "communities of small-numbered peoples and other associations", referring to a federal law (which I will analyse below). Finally, article 14 establishes that peoples' customs and traditions can be considered in juridical proceedings, if not in conflict with federal laws.

Indigenous communities are disciplined by the Law "On the General Principles of Organization of the small-numbered Indigenous Communities of the North, Siberia and the Far East of the Russian Federation".¹⁰⁶ Article 1 defines the small-numbered Indigenous Peoples as "peoples living in the areas of the North, Siberia, and far East of the Russian Federation, in the territories of the traditional settlement of their ancestors preserving the traditional way of life, management and crafts, counting less than 50,000 people and aware of themselves as independent ethnic communities". The communities are made on a voluntary basis (articles 5, 8), by the initiative of persons belonging to small-numbered peoples. The initiative must start from people, as the bodies of the state power and their officials can not be founders. Through decision of the general assembly, even persons that do not belong to small-numbered peoples, but who are involved in the traditional management and activities, can be admitted to the Community (articles 8, 9, 10). The membership of the Community can be both, individual or collective (families, clans) (article 11).

The determination of the internal structure is free (article 5) and can be made based on the traditions and customs that do not contradict the law (article 4). It is also possible to create Unions of communities based on constituent treaties, but the communities retain their autonomy (article 20). The constituent assembly of a Community, composed of all the citizens residing in a territory, approves the Charter (article 8). The general assembly (*skhod*) is the "supreme governing body" and has exclusive competences on the election on the Council of the Community and its Chairman (whose duties are listed in articles 15 and 16), the acceptance of new members and their exclusion, the definition of the main activities, the election of the board of auditors, reorganization,

¹⁰⁶ Федеральный закон от 20 июля 2000 г. № 104-ФЗ "Об общих принципах организации общин коренных малочисленных народов Севера, Сибири и Дальнего Востока Российской Федерации" С изменениями и дополнениями от: 21 марта 2002 г., 22 августа 2004 г., 2 февраля 2006 г., 28 декабря 2013 г.

liquidation and self-dissolution of the community (disciplined by articles 21 and 22) and approval of the decision of the Chairman of the council. It can have also other competences indicated by the Charter (article 14).

Regarding the relationships among the Communities and the organs of the State and regional power, the latter can help Communities by the stipulation of contracts for the execution of job and concession of services, by training of personnel in the professions needed by the Communities, advisory assistance, development and implementation of regional and local programs for socio-economic assistance. The authorities shall not interfere with the autonomy of the Communities (article 6). Moreover, the Communities have some competences in the field of culture and education of children, in conformity with their traditions (article 19).

The last law concerning the indigenous peoples is the Law “On the Territories of Traditional use of the Natural Resources of the small-numbered Indigenous Peoples of the North, Siberia and the Far East of the Russian Federation”.¹⁰⁷ The law aims to protect the original habitat and way of life of small-numbered peoples, to preserve and develop their original culture and to protect the biological diversity (article 4). It protects settlements (even temporary ones, such as camps), land and water areas, objects of historical and cultural heritage and other parts of the territory, as provided by Federal and Subjects' Law (articles 10, 15, 16). The Law institutes special territories of traditional use of natural resources, which are of federal, regional and local significance. This is done through the decision of the respective organs of public power (the Government of the Federation, the executives of the Subjects of the Federation, the local self-government bodies), on the basis of the appeals from the small-numbered peoples, their communities or representatives (articles 5, 6, 7, 8). The legal regime of these territories is established by the respective executive (Federal, regional or local), with the participation of people belonging to small-numbered people (article 11). Natural resources are used in conformity with the legislation of the Russian Federation and of its Subjects as well as with the traditional customs of small-numbered peoples, who have the right to obtain land plots and to use the common mineral resources (articles 12, 13, 14). Entrepreneurial activities are allowed, if they do not violate the legal regime of the territories (article 13).

The protection of the traditional way of life of the indigenous peoples is also based on norms of non-specific laws.¹⁰⁸ Article 7 of the Land Code of the Russian Federation¹⁰⁹ “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, defence, security and other specially designated 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”. The “Forestry Code”¹¹⁰ allows the Subjects of the

¹⁰⁷ Федеральный закон от 7 мая 2001 г. № 49-ФЗ “О территориях традиционного природопользования коренных малочисленных народов Севера, Сибири и Дальнего Востока Российской Федерации”, с изменениями и дополнениями от: 26 июня 2007 г., 23 июля, 3 декабря 2008 г., 28 декабря 2013 г., 23 июня, 31 декабря 2014 г.

¹⁰⁸ Bowring, *Russian Legislation in the Area of Minority Rights ...* , 31, 32.

¹⁰⁹ Земельный кодекс Российской Федерации от 25 октября 2001 г. № 136-ФЗ.

¹¹⁰ Лесной кодекс Российской Федерации от 29 января 1997 г. № 22-ФЗ.

Federation to “delimitate the borders of the forest reserves areas subject to the special regime of forestry management and forest use in the territories traditionally inhabited by indigenous small-numbered peoples’ ethnic communities” (article 47). The legislation of the Russian Federation also establishes the discipline for the use of the forest lots, in compliance with the traditional way of life of these peoples and communities (article 124). The protection of the traditional habitat and way of life is provided also by the Water Code¹¹¹ (articles 65, 66) and by the Federal Law “On the Animal World”¹¹², which provides the right of priority usage of animals in the territory of traditional settlement and economic activities for the small-numbered indigenous peoples that have “traditional methods of preservation and usage of objects of animal world” (articles 5, 6).

With regards to the concrete actuation of these laws, the Government of the Russian Federation adopted a Concept Paper about the sustainable development of indigenous people for the years 2009-2015. However, the Advisory Committee in 2011 underlined that its implementation was progressing slowly, especially because of the lack of funding. Moreover, changes in legislation have weakened the right of indigenous people to freely access natural resources. The penetration of the territories inhabited by the indigenous people by private companies also often happens without the consultation with the indigenous communities, as the legislation is implemented to varying degrees in different regions. Finally, in 2011 the Advisory Committee underlined that the 2001 “Law on the Territories of Traditional Use of small-numbered Indigenous Peoples of North, Siberia and Far East” had still not been actuated, as no protected territories have been set up.¹¹³ Indigenous peoples face several problems, and have a level of literacy and education lower than the rest of the Russian population.¹¹⁴ Participation in the socio-political life of the Federation is impeded by the fact that the people live in remote areas with a lack of means of transportation and communication, and because their effective consultation is often left to the discretionary power of the authorities.¹¹⁵

4. Conclusions

The normative framework underlines a full recognition of the multi-ethnic feature of the Russian Federation people, on the heels of its historical tradition. The Russian law provides instruments for both territorial and non-territorial autonomy of minority nationalities, through a dual scheme of ethnoterritorial federalism and personal nationality, whose origins date back to the Soviet period. However, we can notice some ambiguities. With regard to nationality policies, Russian (and Soviet) history has alternated phases of greater or lesser centralization. In particular when state power appears to be stronger, the concessions in favour of nationalities become less generous. President Vladimir Putin's presidencies have been characterized by a clear

¹¹¹ Водный кодекс Российской Федерации от 16 ноября 1995 г. № 167-ФЗ.

¹¹² Федеральный закон от 24 апреля 1995 г. № 52-ФЗ “О животном мире”.

¹¹³ Advisory Committee on the Framework Convention for the Protection of National Minorities, *Third Opinion on the Russian Federation*, ... , paragraphs 78, 80, 81, 82.

¹¹⁴ Anaya, James, “Situation of Indigenous Peoples in the Russian Federation”, addendum of *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People* (United Nations Human Rights Council 23 June 2010), paragraphs 66, 67.

¹¹⁵ *Id.* paragraphs 53, 54.

determination to recentralize power, after Boris Yeltsin's era. This process also affects the policy on nationalities. This is evident in the fact that the formulations of some norms are expressed in hypothetical or vague terms.¹¹⁶ For this reason, the effective application of the norms often depends on the willingness of the authorities.

The other aspect that characterizes the Russian model is the separation between the cultural and political sphere. While there is a full recognition of the different nationalities, this is performed especially through ethnic festivals, folk performances, houses of nationalities. The Parliamentary Assembly of the Council of Europe has spoken about the "folklorization" of minorities, which seems to replace linguistic and cultural rights.¹¹⁷ There are few spaces for the effective participation of minorities in the political process. First of all, the prohibition of parties and political organizations, based on a national or regional basis, affected the possibilities of effective political representation: regional leaders are usually members of United Russia (Putin's ruling party), which contributes to the exclusion of minority issues from the political debate.¹¹⁸ Furthermore, the role of the National-Cultural Autonomies is ambiguous. They mostly have a cultural and not political role (as political ethnic parties are indeed prohibited) and they do not seem to have specific attributions or advantages in comparison with ordinary NGOs. The councils on affairs of National-Cultural Autonomies (at federal, regional and local level) have a limited impact as the extent to which consultations are carried out depends on the willingness of authorities.

All this must be considered when exploring the concept of Russian nationality in the Russian Federation and of the consequent Russian nationalism. Speaking about the role of Russian nationality in the Soviet Union, Rogers Brubaker wrote: "Russianness, like 'whiteness' in the US, was in a sense invisible; it was experienced not as a particular nationality but as the general norm, the zero-value, the universal condition against which other nationalities existed as particular"¹¹⁹. This is still (and more) true in today's Russia, a country where ethnic-Russians make up more than 80% of the population. This is connected to the cultural and political promotion of 'Russian values': the patriotism, the defence of the motherland, the unity of Russia, the traditional social values, especially expressed by the Orthodox Church (or, to a lesser extent, by the other 'traditional' religions, like Islam, Judaism and Buddhism). Even 'anti-fascism' in Russia is strictly connected to the victory in the II World War (the "Great Patriotic War"), rather than to an adhesion to democratic values. It is not unusual in political demonstrations to see the communist red flags together with the ultra-nationalist and monarchist black-yellow-white flag (something that would be practically impossible in the Western European political tradition). In this framework, the number of racially-motivated crimes, targeting in particular persons originating from the Caucasus and Central Asia, as well as the Roma, remains alarming.¹²⁰ Moreover, these minorities face problems in

¹¹⁶ e.g. the amendments of 1998 to the Law of the Russian Federation "On the Languages of the Peoples of the Russian Federation", or the new Law On education in comparison with the Law of 1992 and its amendments of 2007. cf. *supra*.

¹¹⁷ Parliamentary Assembly of the Council of Europe, *Situation of Finno-Ugric and Samoyed Peoples*, Doc. 11087, 26 October 2006, paragraphs 10, 28, 31.

¹¹⁸ Prina, Federica, "The Position of National Minorities in Putin's Russia: Uniformity or Diversity?", 15(08) *Cicero Foundation Great Debate Paper* (2015), 8, at 9.

¹¹⁹ Brubaker, *Nationalism Reframed, Nationhood and the national question in the New Europe*, cit., 49.

¹²⁰ Advisory Committee on the Framework Convention for the Protection of National Minorities, *Third Opinion on the Russian Federation*, ... , paragraphs 15, 16, 89, 90, 250, 251.

various fields, like access to housing, education and the labour market¹²¹. Federica Prina notes that the Russian state promotes uniformity, which means

[D]eviations from state-endorsed socio-political narratives are strongly circumscribed. Attacks on non-uniformity are activated not only in case of expression of political dissent (treated as deviant political behaviour), but also in other instances, such as: socially 'unaccepted' types of diversity (for example, homosexuality as 'non-traditional sexual relationships') and certain forms of 'accepted' diversity (such as ethno-linguistic and religious diversity).¹²²

The 'unaccepted' diversity is often persecuted: the legislation on countering and persecuting extremism or social hatred is sometimes used against human rights defenders, persons or organizations engaged in minority protection groups. Human and minority rights activists are sometimes accused of being 'traitors', 'extremists' or of 'inciting social hatred' and are subsequently threatened with prosecution under the legislation against extremist activities.¹²³ This accusation, for example, has been used against the attempt of Tatars to reintroduce Latin instead of Cyrillic alphabet, and more recently against the Mejlis of Crimean Tatars and the Jehovah's Witnesses.

Using the categories identified by Rogers Brubaker in his "triadic nexus"¹²⁴ (linking national minorities, nationalizing states and external national 'homelands'), we can observe that Russia promotes both a *nationalizing nationalism*, towards its internal minorities, and a *homeland nationalism* towards Russian minorities abroad. On one side, Russia operates to 'nationalize' its minorities ("nationalizing nationalism"), avoiding all separatist instances and promoting political and social uniformity. On the other side, the Federation has systematically intervened abroad, in the protection of its political interests, namely to defend a Russian population (for example in Transnistria, in Crimea, in Eastern Ukraine) or 'pro-Russian' national groups (as in Abkhazia and South-Ossetia).

To conclude, the Russian Federation fully recognizes the multi-ethnic character of its people and there are a range of possibilities for self-organization for minority ethnic, linguistic and religious groups. The legislative framework covers several aspects of the rights of minorities, even if it often presents various degrees of ambiguity and a lack of effective implementation mechanisms. This sort of incompleteness of the Russian model is especially due to the general lack of political pluralism in the country, in parallel to the exaltation of 'traditional Russian values' within the population.

¹²¹ *Ibid.* paragraphs 17, 23, 51, 54, 58, 59, 60, 61, 63, 64, 85, 90, 96, 100, 102, 109, 111, 174, 176, 177, 178, 181, 182, 200, 224, 226, 256, 258, 259, 262, 266.

¹²² Prina, *The Position of National Minorities in Putin's Russia: Uniformity or Diversity?* ... , 8.

¹²³ Advisory Committee on the Framework Convention for the Protection of National Minorities, *Third Opinion on the Russian Federation*, ... , paragraphs 92, 132.

¹²⁴ Brubaker, *Nationalism Reframed, Nationhood and the national question in the New Europe* ... , 4-; cf. Smith, David J., "Framing the National Question in Central and Eastern Europe: a Quadratic Nexus?" (2002), 2(1) *The Global Review of Ethnopolitics*, 3-16.

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- Конституция Республики Татарстан от 6 ноября 1992 г.
- Конституция Республики Тыва, принята Референдумом Республики Тыва 6 мая 2001 г.
- Конституция Республики Хакасия, принята на XVII сессии Верховного Совета Республики Хакасия (первого созыва) 25 мая 1995 г.
- Конституция Российской Федерации, Принята всенародным голосованием 12 декабря 1993 г. с поправками от 30 декабря 2008 г., 5 февраля, 21 июля 2014 г.
- Конституция Удмуртской Республики от 7 декабря 1994 г.
- Конституция Чеченской Республики, принята 23 марта 2003 г.
- Конституция Чувашской Республики, принята Государственным Советом Чувашской Республики 30 ноября 2000 г.

Лесной кодекс Российской Федерации от 29 января 1997 г. № 22-ФЗ

Основной закон (Конституция) Союза Советских Социалистических Республик, Принят второй сессией ЦИК СССР первого созыва 6 июля 1923 года и в окончательной редакции II съездом Советов СССР 31 января 1924 г., <http://www.hist.msu.ru/ER/Etext/cnst1924.htm>, English translation at [https://faculty.unlv.edu/pwerth/Const-USSR-1924\(abridge\).pdf](https://faculty.unlv.edu/pwerth/Const-USSR-1924(abridge).pdf) (links checked on 30 May 2017).

Распоряжением Правительства Российской Федерации от 17 апреля 2006 г. № 536-р "Об утверждении перечня коренных малочисленных народов Севера, Сибири и Дальнего Востока Российской Федерации", в ред. Постановлений Правительства РФ от 18.05.2010 № 352, от 26.12.2011 № 1145.

Степное Уложение (Конституция) Республики Калмыкия от 5 апреля 1994 г.

Федеральный закон от 24 апреля 1995 г. № 52-ФЗ "О животном мире"

Федеральный Закон от 11 Августа 1995 г. № 135-ФЗ "О благотворительной деятельности и благотворительных организациях"

Федеральный закон от 17 июня 1996 г. № 74-ФЗ "О национально-культурной автономии" С изменениями и дополнениями от: 21 марта 2002 г., 10 ноября 2003 г., 29 июня, 22 августа 2004 г., 30 ноября 2005 г., 1 декабря 2007 г., 9 февраля 2009 г., 2 июля 2013 г., 4 ноября 2014 г.

Федеральный закон от 24 июля 1998 г. №126-ФЗ "О внесении изменений и дополнений в Закон РСФСР "О языках народов РСФСР"

Федеральный закон от 30 апреля 1999 г. № 82-ФЗ "О гарантиях прав коренных малочисленных народов Российской Федерации", с изменениями и дополнениями от: 22 августа 2004 г., 26 июня 2007 г., 13 мая, 30 декабря 2008 г., 5 апреля 2009 г., 13 июля 2015 г.

Федеральный закон от 20 июля 2000 г. № 104-ФЗ "Об общих принципах организации общин коренных малочисленных народов Севера, Сибири и Дальнего Востока Российской Федерации" С изменениями и дополнениями от: 21 марта 2002 г., 22 августа 2004 г., 2 февраля 2006 г., 28 декабря 2013 г.

Федеральный закон от 7 мая 2001 г. № 49-ФЗ "О территориях традиционного природопользования коренных малочисленных народов Севера, Сибири и Дальнего Востока Российской Федерации", с изменениями и дополнениями от: 26 июня 2007 г., 23 июля, 3 декабря 2008 г., 28 декабря 2013 г., 23 июня, 31 декабря 2014 г.

Федеральный закон от 11 декабря 2002 г. № 165-ФЗ "О внесении дополнения в статью 3 Закона Российской Федерации "О языках народов Российской Федерации"

Федеральный закон от 29 декабря 2012 г. N 273-ФЗ "Об образовании в Российской Федерации", С изменениями и дополнениями от: 7 мая, 7 июня, 2, 23 июля, 25 ноября 2013 г., 3 февраля, 5, 27 мая, 4, 28 июня, 21 июля, 31 декабря 2014 г., 6 апреля, 2 мая, 29 июня, 13 июля, 14, 29, 30 декабря 2015 г., 2 марта, 2 июня, 3 июля, 19 декабря 2016 г.

Constitutional Court Jurisprudence

Постановление Конституционного Суда РФ от 3 марта 2004 г. № 5.

Постановлением Конституционного Суда РФ от 16 ноября 2004 г. № 16-П