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Conventional mechanism for the protection of regional languages or languages of minorities

MECANISMO CONVENCIONAL PARA LA PROTECCIÓN DE IDIOMAS REGIONALES O IDIOMAS DE LAS MINORÍAS

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ABSTRACT

Today the problem of protecting regional or minority languages is an urgent one. Despite the existence of numerous international acts at the universal and regional levels aimed at protecting these languages, the language rights of national, linguistic, religious minorities and speakers of regional languages are violated. This scientific article is devoted to a comprehensive study of the conventional mechanism for the protection of regional or minority languages. The article examines the characteristic features of the conventional mechanism for the protection of regional or minority languages: law-making, interpretation, international control and law enforcement. The article begins with the disclosure of the content of the concepts of regional or minority languages. some approaches to this definition are considered. I proceed to the structure of the conventional mechanism for the protection of regional or minority languages and consider each component separately. The article provides a comparison of interpretation and specification. The article focuses on the views and works of Russian lawyers and researchers in the field of theory of state and law. The article is of an interdisciplinary nature, written at the intersection of law and sociolinguistics. This article will be of interest to specialists in the field of linguistics.

KEYWORDS

Regional languages
Languages of minorities
Conventional mechanism
Law-making
Interpretation
International control and law enforcement.

RESUMEN

Hoy en día, el problema de proteger las lenguas regionales o minoritarias es urgente. A pesar de la existencia de numerosos actos internacionales a nivel universal y regional destinados a proteger estos idiomas, se violan los derechos lingüísticos de las minorías nacionales, lingüísticas, religiosas y los hablantes de idiomas regionales. Este artículo científico está dedicado a un estudio exhaustivo del mecanismo convencional para la protección de las lenguas regionales o minoritarias. El artículo examina las características del mecanismo convencional para la protección de las lenguas regionales o minoritarias: legislación, interpretación, control internacional y aplicación de la ley. El artículo comienza con la divulgación del contenido de los conceptos

PALABRAS CLAVE

Las lenguas regionales
Las lenguas de las minorías
El mecanismo convencional
La elaboración de leyes
La interpretación
El control internacional y la aplicación de la ley

de idiomas regionales o minoritarios. se consideran algunos enfoques para esta definición. A continuación, procedo a la estructura del mecanismo convencional para la protección de las lenguas regionales o minoritarias y considero cada componente por separado. El artículo proporciona una comparación de interpretación y especificación. El artículo se centra en los puntos de vista y trabajos de abogados e investigadores rusos en el campo de la teoría del estado y el derecho. El artículo es de naturaleza interdisciplinaria, escrito en la intersección del derecho y la sociolingüística. Este artículo será de interés para los especialistas en el campo de la lingüística.

1. INTRODUCTION

In order to implement international legal provisions on regional or minority languages, the mechanism for their implementation should be studied. In the theory of international public law, the mechanism for implementing international law consists of two mechanisms, one of them is international conventional mechanism. This mechanism includes law-making, interpretation, international control and law enforcement.

2. DEFINITION OF REGIONAL LANGUAGES OR LANGUAGES OF MINORITIES

According to article 1 of the European Charter for regional or minority languages, regional or minority languages are those that:

1. traditionally used in the territory of the state by the inhabitants of this state, who are a group numerically smaller than the rest of the population of the state;
2. differ from the official language (s) of that state;
3. do not include any dialects of the official language (s) of this state, or the languages of migrants[1].

The compilers of European Charter for regional or minority languages, regional or minority languages the were offered several formulations of the concept of regional or minority languages, but they decided not to distinguish the two categories due to the fact that in practice, each regional or minority language is a special case and it is pointless to try to divide them into separate groups»[2].In fact, the combined concept of regional or minority languages proposed in the European Charter for regional or minority languages, regional or minority languages does not always correspond to the concepts and/or definitions contained in the constitutions or laws of European States.

1. EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES. Strasbourg, November 5, 1992 / / URL:http://conventions.coe.int/Treaty/rus/Treaties/Html/148.htm (Date accessed: 24.08.2018).
2. EXPLANATORY REPORT TO THE EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES. Strasbourg, 5.11.1992//URL: https://rm.coe.int/16800cb5e5 (Date accessed: 10.02.2020).

IUS ET SCIENTIA • 2020
Vol. 6 • N° 1 • pp. 89 - 98
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3. COMPONENTS OF THE CONVENTIONAL MECHANISM

The Conventional mechanism for the implementation of international legal norms is a «set of international legal means of implementing norms, their operation and application[3]» and contains the following components: law-making, interpretation, international control and law enforcement.

3.1. Law-making

The first component takes two forms, namely, the establishment of preliminary rules and the specification of international treaties and agreements. In the theory of state and law the institute preliminary rulemaking is not developed because there is no concept of preliminary norms, its symptoms, not a specific list of the subjects of the preliminary rulemaking. S. S. Alekseev rightly stressed the importance of these standards «to ensure a real, complete, accurate and timely implementation of subjective rights and duties»[4]. It can be assumed that preliminary rules are rules in which states record their wishes, plans, and intentions that do not impose legal obligations on them.

An example of the first form of law-making is the Declaration on language rights adopted at the 12th seminar of the International Association for the development of intercultural communication in 1987, held in Recife (Brazil). This Declaration is preliminary and contains some types of language rights. This example is not the only one, documents of UN forums, recommendations of the UN General conference on education, science and culture, and bilateral agreements of States have a large number of preliminary norms. For example, the report of the United Nations Permanent Forum on indigenous issues on the eighteenth session (22 April-3 May 2019)[5] contains the following wording: «the forum recommends that member States develop, promote», «the forum encourages». The Recommendation on the development of adult education of 26 November 1976, adopted by the UN General conference on education, science and culture, States that «member States should encourage agreements», «member States should strengthen their cooperation on a bilateral and multilateral basis». The San Stefano preliminary Treaty of 3 March 1878, concerning the protection of national minorities, stipulates that «States will determine special rules».

The second form of law-enforcement rulemaking is concretizing rulemaking. We should agree with the approach of E. S. Vaskovsky, who claims that «when specifying norms, specific rights and obligations of individual citizens are recognized by them through conclusions from legal norms and actual circumstances[6]». According to V. V. Lazarev «the results of concretizing rulemaking are legal provisions, as something approaching a legal norm and even

IUS ET SCIENTIA • 2020
Vol. 6 • Nº 1 • pp. 89 - 98
ISNN 2444-8478 • https://doi.org/10.12795/IESTSCIENTIA.2020.i01.08

3. SUVOROVA, V.Y. "Realizatsiya norm mezhdunarodnogo prava", Ekaterinburg. Izdatelstvo Sverdlovskogo yuridicheskogo instituta, nº 1, 1992, pp. 28

4. ALEKSEEV, S.S. Mehanizm pravovogo regulirovaniya v sotsialisticheskom gosudarstve, pp.96-97.

5. Report of the Permanent Forum on Indigenous Issues on the eighteenth session (22 April–3 May 2019), E/2019/43-E/C.19/2019/10//URL: https://undocs.org/en/E/2019/43(Date accessed: 04.03.2020).

6. VASKOVSKIY, E.V. Uchebnik grazhdanskogo protsessa. M.: Izd. Br.Bashmakovyih, 1917.

able to become it under certain formal procedures, if there is a need to cover these circumstances not only with a General, but also with a more specific rule[7]».

The abundance and generality of preliminary rules in international public law makes it difficult to implement international conventions and declarations in practice. There is a need to adopt additional international and regional legal acts that guarantee the protection of regional and minority languages.

The articles on the protection of minority languages in the UN Convention against discrimination in education of 14.12.1960, the UN Convention on the rights of the child of 14.12.1960, and the UN Declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities, adopted by General Assembly Resolution 47/135 of 18 December 1992, are specific provisions to article 27 of the International Covenant on civil and political rights of 16.12.1966.

Let us consider the primary and concretizing norms on separate examples. For example, article 4(part 3) of the UN Declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities, adopted by General Assembly Resolution 47/135 of 18 December 1992, guarantees measures for teaching in their native language. The norm contained in this article is the primary one, since the specific rules in relation to it are listed in article 8 of the European Charter for Regional or Minority Languages, which is devoted to practical measures in the field of education. In addition, the Universal Declaration of language rights of 1996 includes measures such as the creation of international funds to promote the implementation of language rights in communities that are clearly under-resourced. An identical example is article 30 (part 1) of the Convention on indigenous and tribal peoples in independent countries, № 169 of 27 June 1989, which States that «governments shall take measures... in matters of... economic opportunities, education and health[8]», but there is no list of measures in the document. The specific rules in this case are articles 8, 13 and 14 of the UN Declaration on the rights of indigenous peoples of 13.09.2007. Consequently, the European Charter for Regional or Minority Languages can be considered as the main concretizing act, containing a more extensive list of measures that promote the use of regional or minority languages.

At the regional level, the Hague recommendations 1996 on the rights of national minorities to education and the Oslo recommendations 1998 on the language rights of national minorities attempted to flesh out various existing legal and other documents in order to provide countries with clear guidance on implementing OSCE commitments on minorities[9].

Before moving on to the next component of the conventional implementation mechanism for the protection of regional or minority languages, it is necessary to compare the

7. LAZAREV, V.V. "Effektivnost pravoprimenitelnyih aktov (Voprosyi teorii)". Kazan: Izd- vo Kazan.un- ta, 1975, pp. 15.

8. International Labour organization Convention № 169 of 27 June 1989 Concerning indigenous and tribal peoples in independent countries. Conventions and recommendations adopted by the International labour conference. 1957-1990. Vol. II. Geneva: International labour office. 1991, pp. 2193 - 2207.

9. Foundation for inter-ethnic relations, Hague recommendations on educational rights of national minorities and explanations (1996); Foundation for inter-ethnic relations, Oslo Recommendations on language rights of national minorities and explanations (1998). For a history of the Hague recommendations and further views on the relevant standards, see 4(2) international journal of group and minority rights (1996/97).

IUS ET SCIENTIA • 2020
Vol. 6 • N° 1 • pp. 89 - 98
ISNN 2444-8478 • https://doi.org/10.12795/IESTSCIENTIA.2020.i01.08

specification and interpretation. For example, V. Y. Suvorova wrote that« concretization and interpretation are closely related. Concretization is unthinkable without interpretation, and interpretation often turns into concretization[10]». On the one hand, M. V. Zaloilo And N. S. Malyutin agree with the position of V. Y. Suvorova and rightly note that «concretization and interpretation have one object and purpose-the approximation of the content of the concretized or interpreted norm to specific life circumstances, to the conditions of its application, on the other – they note that these two concepts are not identical for a number of reasons. First, interpretation must precede the concretization of the law and any rule is subject to it. Secondly, concretization is possible only if the norm-giver himself intentionally allows the development of the content of the normative prescription (for example, if there are evaluative concepts in the content of the norm, etc.)[11]».According to M. I. Braginskiy and V. V. Vitryanskiy, «the link between the norm and its application is the understanding of the norm, or, in other words, its interpretation[12]».

Investigating the reasons for the interpretation of an international treaty, the researcher I. S. Peretersky attributed to them:

- uncertainty of terms,
- insufficiently precise expression of the main idea of the agreement,
- inconsistency of the General provisions of the agreement with its specific subject matter,
- ambiguity or ambiguity of certain provisions of the contract, imperfection in the expression of thought, language problems[13]. In addition, E. S. Vaskovsky suggests that in the implementation of interpretation, it is necessary to detect not only the direct meaning of the norm, but also its «hidden content»[14].

3.2. Interpretation

The interpretation is broader in relation to concretization. This is due to the fact that in the process of interpretation, international legal norms are clarified and developed, while in the process of concretization, the existing interpretation of an international legal norm is corrected and new aspects are added. The subjects of interpretation of international legal norms are states, international bodies and organizations. An example of interpretation is the General comments, General recommendations of the UN Treaty bodies, which address a wide range of issues in several areas. As described above, General Comment № 23 of the UN Human Rights Committee interprets article 27 of the ICCPR.

The Committee distinguishes the rights protected by article 27 of the ICCPR from the right of peoples to self-determination (article 1 of the ICCPR), as well as the guarantees provided

10. SUVOROVA, V. Y. "Realizatsiya norm mezhdunarodnogo prava", Ekaterinburg. Izdatelstvo Sverdlovskogo yuridicheskogo instituta,1992, pp.31.
11. ZALOILO, M.V., MALYUTIN N.S. "Tolkovanie i konkretizatsiya kak universalnyie formyi evolyutsii prava", Teoriya prava, 2015. –# 4(53). – S.88.
12. BRAGINSKIY, M.I., VITRYANSKIY V.V.Dogovornoe pravo, Kn. 1: Obschie polozheniya. 2011, pp.137.
13. Citation on: PERETERSKIY, I. S. Interpretation of international treaties, 1959, pp.18-19.
14. VASKOVSKY, E. V. Methodology of the Civil law, pp. 88-89.

IUS ET SCIENTIA • 2020
Vol. 6 • N° 1 • pp. 89 - 98
ISNN 2444-8478 • https://doi.org/10.12795/IESTSCIENTIA.2020.i01.08

for in articles 2.1 and 26 of the ICCPR. In addition, «the terms used in article 27 of the ICCPR indicate that persons subject to protection are: persons belonging to a particular group and having a common culture, religion and/or language, and not necessarily citizens of a state party (paragraph 5.1). General comment № 23 of the UN human rights Committee calls for a positive «legislative, judicial or administrative» obligation on the part of the state to protect the identity of a minority» and «the rights of its members to enjoy and develop their culture and language, as well as to practice their religion in community with other members of the group[15]» (para.6.2).

Speaking about the legal nature of acts of international legal interpretation, I. I. Lukashuk points out that «the interpretation carried out by the subjects of international law is official, and not by the subjects – unofficial[16]». V. S. Nersesyants believes that «the obligation of official interpretation causes, first, the duty of the law enforcement body to find and study the acts of explanation and, secondly, to follow them if their own ideas about the content of the applicable rules differ from the instructions contained in the acts of official interpretation[17]».

3.3. International control

It is considered in the scientific literature in both a narrow and broad sense. Proponents of the first approach are P. N. Biryukov[18], A. S. Gaverdovsky[19], I. I. Kotlyarov[20], and S. Y. Marochkin[21]. In a narrow sense, international control refers to a system of measures or activities to verify that participants in international relations have fulfilled their obligations. Supporters of the second approach are R. M. Valeev[22], Y. N. Ustinova, G. E. Lukyantsev. G. E. Lukyantsev defines international control as «the activity of subjects of international law... in which States' compliance with international legal obligations is monitored and verified, and in certain branches of international law...measures are taken to comply with them in order to properly develop

15. General comment № 23 of the United Nations human rights Committee. A/49/40, I (1994)107.
16. LUKASHUK, I. I. Sovremennoe pravo mezhdunarodnyih dogovorov, 2004, pp. 642.
17. NERSESYANTS, V. S. Problemyi obschey teorii prava i gosudarstva, 2006, pp. 451.
18. P. N. Biryukov understands under control "the activities of participants in international legal relations to verify compliance with the obligations of subjects of international law and promote their implementation". See more at: BIRYUKOV, P. N. International law: Study guide, 2006,pp. 84.
19. A. S. Gaverdovsky points out that "control activity consists in establishing the compliance of the activities of States with the accepted obligations in order to ensure their compliance".See more at: GAVERDOVSKIY, A.S. Implementatsiya norm mezhdunarodnogo prava. Kiev, 1980, pp. 169 -170.
20. I. I. Kotlyarov considers international control as "the action of subjects of international law or bodies created by them, which are carried out on the basis of international treaties and are concluded in checking the compliance of the state's activities with the obligations assumed in order to ensure their implementation". See more at: KOTLYAROV I.I. Mezhdunarodnoe sotrudnichestvo i mezhdunarodnoe pravo, Otv. red. M.M. Slavin, N.A. Ushakov, 1977, pp. 49.
21. S. Y. Marochkin notes that "the function of the control mechanism is to establish the compliance of the actual behavior of States with legal requirements through verification (monitoring, inspections, hearing reports, providing information)". See more at: MAROCHKIN, S.Y. Problema effektivnosti norm mezhdunarodnogo prava. Irkutsk, 1988, pp.111.
22. R. M. Valeev defines international control as "a system of legal norms established in international agreements, the subject of which is the relationship of States to verify compliance with international legal obligations and take measures to implement them". See more at: VALEEV, R.M. Kontrol v sovremennom mezhdunarodnom prave: Avtoref. dis d-ra yurid. nauk. Kazan, 1999,pp.16.

IUS ET SCIENTIA • 2020
Vol. 6 • N° 1 • pp. 89 - 98
ISNN 2444-8478 • https://doi.org/10.12795/IESTSCIENTIA.2020.i01.08

international legal relations[23]». Moreover, L. A. Lazutin singles out surveillance as «a method of control activity that is widely used for verification by States of agreements related to various branches of international law[24]».

At the universal level, the Special Rapporteur is an example of an international monitoring body. For example, the UN Special Rapporteur on minority issues, approved by Commission on Human Rights Resolution № 2005/79 of 21 April 2005, submits an annual report on his activities to the human rights Council and the General Assembly, including recommendations on effective strategies for improving the implementation of the rights of persons belonging to national or ethnic, religious and linguistic minorities. In turn, the Special Rapporteur on the rights of indigenous peoples, approved by Resolution 42/20 of the UN Human Rights Council[25], examines specific cases of alleged violations of the rights of indigenous peoples by sending communications to governments and other actors, reports on the General human rights situation of indigenous peoples in individual countries, and contributes to case studies on topics of particular relevance to the promotion and protection of the rights of indigenous peoples.

At the European regional level, the European Charter for Regional or Minority Languages provides for a monitoring mechanism, the central element of which is the Committee of Experts (hereinafter referred to as the CE). The main function of the CE is to report to the Committee of Ministers on its assessment of a party's compliance with its obligations, to study the actual situation of regional or minority languages in the state and, where appropriate, to encourage that party to gradually achieve a higher level of commitment.

3.4. Law enforcement

S. S. Alekseev argued that it is a mechanism that makes it possible... to ensure the operation of legal norms in accordance with the requirements of developing public relations[26]. As D. Harasti noted, «the application involves establishing consequences for the parties and, in exceptional cases, also for third States in a specific situation[27]».

At the universal level, there is the UN Human Rights Committee (hereinafter referred to as the HR Committee), which is the United Nations human rights treaty body. This Committee is responsible for overseeing the implementation of the ICCPR by reviewing state reports, individual complaints and inter-state complaints, as well as preparing General comments, substantive statements and General discussions on topics addressed in the ICCPR.

In the case of Guesdon v. France, the applicant (the accused), who speaks Breton, was charged in French as part of the criminal proceedings. The accused and his witnesses claimed

23. LUKYANTSEV, G. E. Mezhdunarodnyiy kontrol v oblasti prav cheloveka: tendentsii i perspektivyi, Izd-vo RUDN, 2005, pp. 33.

24. LAZUTIN, L.A. "Sootnoshenie kontrolya i mer ukrepleniya doveriya v prave mezhdunarodnoy bezopasnosti", Ros. yurid. Zhurn, 1995, №1, pp. 83.

25. The Resolution of Human Rights Council «Human rights and indigenous peoples: mandate of the Special Rapporteur on the rights of indigenous peoples». A/HRC/RES/42/20// URL: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/42/20(Date accessed:12.03.2020).

26. ALEKSEEV, S.S. Teoriya prava, Harkov: BEK, 1994.

27. HARASZTI, G. "Some fundamental problems of the law of treaties", 1973, pp. 18, 29.

IUS ET SCIENTIA • 2020
Vol. 6 • N° 1 • pp. 89 - 98
ISNN 2444-8478 • https://doi.org/10.12795/IESTSCIENTIA.2020.i01.08

the right of the court to give evidence in Breton with the help of an interpreter, guaranteed by the state, since Breton was the «ancestral language» (paragraph 6.4) and

«the language in which...they speak normally» (p. 6. 2)[28]. However, the court rejected this request on the grounds that both the accused and his witnesses could speak French fluently. The applicant claimed that the French courts violated: the right to a fair trial, the right to hear witnesses on his behalf, the right to be assisted by an interpreter, the right to freedom of expression, the right to equal treatment and the enjoyment of minority rights, such as the use of a minority language (paragraph 2.3).In this case, the HR Committee declared that «article 14 of the ICCPR concerns procedural equality…The requirement of a fair trial [does not oblige] a state party to provide an interpreter to a national whose native language differs from the official language of the court, if he is able to adequately Express his thoughts in the official language»[29]. According to M. Paz, the right to a fair trial and the right to speak a minority language provide different types of protection for minorities. The first right protects minorities only to the extent necessary to ensure due process, which is satisfied only by an adequate understanding between the accused and the court[30].

In Ballantyne, Davidson and McIntyre v. Canada, English-speaking business owners in the province of Quebec challenged local laws prohibiting them from using English in advertising. The HR Committee stressed that English-speaking Canadians cannot be considered a linguistic minority and have claims under article 27 of the ICCPR, since the minorities referred to in article 27 of the ICCPR are minorities within a single state, and not minorities within a province(para.11.2). The Committee concluded that there had been a violation of article 19, paragraph 2, of the ICCPR and considered that it was not necessary to prohibit commercial advertising in English in order to protect the vulnerable position of the French-speaking group in Canada. This protection can be provided in other ways that do not interfere with the freedom of expression in the language of their choice of those involved in areas such as trade. The state may choose one or more official languages, but it cannot exclude freedom of expression in the language of its choice outside the spheres of public life (para.11.4)[31].

In Deerhardt and others v. Namibia, the state instructed civil servants not to respond to the authors ' written or oral communications with the authorities in Afrikaans, even if they were fluent in the language. These instructions, prohibiting the use of Afrikaans, concerned not only the issuance of government documents, but even telephone conversations. Moreover, the applicants were denied the use of their native language (Afrikaans) not only in government, education and public life, but also in justice. For example, they were forced to use English, which they do not normally use or speak fluently, throughout the trial and to ensure that all documents were translated under oath into English[32]. The HR Committee, finding a vi-

28. Human Rights Comm., Communication № 219/1986, Guesdon v. France// CCPR/C/39/D/219/1986 (1990).

29. Human Rights Comm., Communication № 219/1986, Guesdon v. France// CCPR/C/39/D/219/1986 (1990).

30. PAZ M. "The Tower of Babel: Human Rights and the Paradox of Language", *European Journal of International Law*, Volume 25, Issue 2, May, 2014, pp.473 – 496.

31. Ballantyne, Davidson, and McIntyre v. Canada, Communications № 359/1989 and 385/1989//UN Doc CCPR/C/47/D/359/1989 and 385/1989 Rev. 1 (1993).

32. J. G. A. Diergaardt (late Captain of the Rehoboth Baster Community) et al. v. Namibia. Communication № 760/1997.CCPR/C/69/d/760/1997//URL: http://hrlibrary.umn.edu/undocs/session69/view760.htm(Дата обращения: 12.03.2020).

IUS ET SCIENTIA • 2020
Vol. 6 • N° 1 • pp. 89 - 98
ISNN 2444-8478 • https://doi.org/10.12795/IESTSCIENTIA.2020.i01.08

olation of article 26 of the ICCPR, noted that the circular in question was deliberately directed against the possibility of using Afrikaans when working with public authorities. By the look of A. Soboleva, the importance of the decision in this case is that «it has become possible to challenge as discriminatory on the basis of language the provisions of legislation that establish preferences for a single language, if their reasonableness is questioned and it is possible to prove their biased, arbitrary nature[33]».

4. CONCLUSION

Conventional mechanism for the protection of regional or minority languages consists of several elements. The interpretation included in the structure of the convention mechanism is broader in relation to concretization. This is due to the fact that in the process of interpretation, international legal norms on the protection of regional or minority languages are clarified, clarified and developed, while in the process of specification, the existing interpretation of international legal norms is adjusted and new aspects are added. The international monitoring bodies whose functions are directly related to the protection of regional or minority languages are the Committee of Experts under the European Charter for Regional languages or languages of minorities, the Advisory Committee under the FCNM, and the group of rapporteurs on legal regulation.

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IUS ET SCIENTIA • 2020
Vol. 6 • N° 1 • pp. 89 - 98
ISNN 2444-8478 • https://doi.org/10.12795/IESTSCIENTIA.2020.i01.08

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