



ECOLOGY AND LAW

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PRIORITIES IN THE DEVELOPMENT OF ENVIRONMENTAL LEGISLATION AND THE IMPROVEMENT OF LAW-ENFORCEMENT EFFICIENCY

The initial condition for formulating opinions on the state of and prospects for the environmental legislation is a system of concepts and ideas concerning goals, priorities, principles, vectors, methods, and means of state environmental activity that is usually termed as state environmental policy. The thesis about the dependence of the legislation on national policy needs no proof. In its turn, national policy is environmentally oriented inasmuch as it is determined by public interests. However, at present, Russian society does not require the state to impose environmental legal limits, and, as a result, the environmental component of state policy does not belong to priorities. Nevertheless, there are attempts both within power bodies (see, for example, the Russian President's Address to the Federal Assembly of April 26, 2007, and the Program of Medium-Term Socioeconomic Development (2006-2008), approved by the Resolution of the Russian Government no. 38-r of January 19, 2006) and public structures (see, for example, Recommendations of the Public Chamber of the Russian Federation, approved by the plenary meeting devoted to environmentally sustainable development on February 9, 2007) to find key points that may help solve environmental problems effectively.

The conducted analysis of the state of the environmental legislation and its practical application allows us to make a number of proposals to competent state authorities, aimed at improving legal policy in the field of environmental protection, and formulate them as environmental legal priorities, i.e., critically important conditions and actions.

1. Taking into account environmental requirements in developing Russian law as a whole and considering public environmental interests in creating or improving the legal grounds of all types of economic activity.
2. Preventing a reduction of the existing legal guarantees of the right for a satisfactory environment.
3. Ensuring legal groundwork for the observance of environmental requirements in strategically important fields of the country's development, primarily in power engineering and the fuel and energy complex (oil and gas extraction; hydrocarbon transportation; the oil-refining industry; and units of heat, nuclear, and hydraulic power engineering).
4. Observing the established legal environmental requirements and banning their reduction during the realization of priority national projects on the affordable housing program, health care, education, and agribusiness.
5. Developing the regional environmental legislation as a field of joint competence and giving the Russian constituent members an opportunity to regulate environmental relations on the basis of

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- federalism in case the federal legislation lacks such norms.
6. Creating an effective mechanism of stimulating economic agents to reduce their negative environmental impacts and to ensure rational resource consumption and energy saving (the adoption of the Federal Law On Payments for Negative Environmental Impacts, the introduction of preferential taxation for environmental businesses, the introduction of the packing collateral value, legal support for nontraditional power engineering based on renewable sources, and other measures).
 7. Creating legal conditions for introducing the best (available) technologies in economic practice, which will form grounds for economic incentive.
 8. Ensuring rational nature management by regulating the maximum allowable extractions of natural components and imposing restrictions on the extraction of minerals.
 9. Liquidating the existing gaps in the environmental and sanitary procedures (to establish environmental quality norms outside settlement zones and to enforce the developed allowable limits of physical atmospheric impact).
 10. The target use of funds budgeted as payments for negative environmental impacts, fees for environmental violations, and compensations for environmental damage (Amendment to the Federal Law On Environmental Protection).
 11. Sticking to environmental requirements when decreasing the number of administrative barriers for business activities; conducting environmental review and control, sufficient for ensuring environmental security; and restoring the norms that establish obligatory state environmental review of town planning documentation, the documentation of the strategic planning of territories and industries, and some other documents that substantiate economic and other activities fraught with environmental impacts.
 12. Complex legal, organizational, economic, and ideological support for the inevitability of legal liability for environmental violations (to preserve the existing penalties for environmental crimes, to abolish the current practice of "economizing" legal measures of criminal repression and applying administrative measures selectively, to improve the work of state and prosecutor's bodies of environmental control and supervision with regard to claims, to better execution of judgment in environmental cases, and to improve the content of the Criminal Code of the Russian Federation concerning criminal responsibility for water and air pollution with regard to practices and proposals of prosecutor's supervision bodies).
 13. Creating legal conditions to compensate for environmental damage (to work out and approve methods of estimating the damage caused, in particular, to the atmospheric air; and to bring the current tariffs in line with the real cost of destructed and damaged objects) and working out legal basics to liquidate and compensate for accumulated (past) environmental damage.
 14. Regulating the legal status of environmentally unfriendly territories (to adopt the Federal Law On Zones of Environmental Disaster) and introducing preferential economic conditions on environmentally unfriendly territories and in sanitary protection zones of industrial enterprises and other facilities.
 15. Creating the necessary regulatory framework for environmental control (in the Code of Administrative Violations and the planned Federal Law On Environmental Control).
 16. Ensuring legal conditions for fulfilling Russia's obligations on the Kyoto Protocol to the UN Framework Convention on Climate Change (to regulate the accounting and circulation of rights to greenhouse gas emissions, transactions in the quota market, the distribution of obtained profits, greenhouse gas cadastre accounting, and a number of other issues).
 17. Ensuring Russia's efficient participation in international agreements aimed at preventing transboundary pollutions of water and other natural objects and ratifying the Convention on the Environmental Impact Assessment in a Transboundary Context (Espoo 1991).
 18. Working out universal technical regulations of environmental security, which would not contradict the currently effective environmental legislation.
 19. Ensuring the strategic planning of lawmaking processes (to work out and approve the Concept of Developing the Environmental Legislation) and the codification of environmental and natural resource legislations (to complete and approve the concept of the Russian Environmental Code, developed by the Ministry of Natural Resources).
 20. Implementing the norms on liabilities of officials involved in making environmentally important decisions, as well as of functionaries of state control bodies (for inaction), and introducing responsibilities of individuals and authorities

for delays in the adoption of necessary federal, regional, and municipal regulations.

21. Ensuring a stable work of the state environmental control system as the most important organizational condition of the efficiency of the environmental legislation (to coordinate the administrative reform with the state environmental control policy and to ensure the required material and labor support for federal, regional, and municipal control bodies).
22. Developing the legal basics for the environmental police activities to switch them from the experimental to stable mode over the whole Russian territory (to give the police forces the right not only to draw up protocols but also to investigate administrative environmental violations in a wider range than at present, as well as other necessary authorities for ensuring environmental order, by amending the Code of Administrative Violations and the Law On Police).
23. Issuing instructions by the highest judicial agencies on the application of the environmental and nature management legislations, including those on accounting environmental damage, to adapt general procedural norms to proving damage or a threat of damage to the environment.
24. Ensuring a better account for the public opinion when adopting federal laws regulating environmental and nature management relations and executing the law on the obligatory consideration of the Public Chamber's conclusions on the review of proposed federal laws at the Federal Assembly and the State Duma sessions.
25. Improving legal regulation to solve a number of urgent sectoral tasks: to ensure the required quality of drinking water, the environmental security of motor vehicles, and safe operation with and disposal of all kinds of waste.

In a sense, the legislation is auxiliary to environmental policy and, hence, must adequately reflect topical vectors in "ecologizing" the country's development. Law has its own specific means to ensure this reflection. In the majority of cases, this will require creating new norms and regulations or changing the current ones. Note that law is not almighty and often is unable to cancel environmental consequences of strategic decisions; in other words, law is effective to the limit permitted by environmental policy. In addition, overstated expectations owing to legal idealism are nothing but erroneous ideas in the public and even professional

perception of law. In reality, the result of legal norms (the real state of social relations) depends on a variety of factors that form a complex legal mechanism, in which legal texts are often of minor importance.

The proposed trends in the development of the environmental legislation are an ideal model that corresponds to equally ideal vectors of new environmental policy, which is being formed through interaction between the state and civil society.

The aforementioned priorities may form the basis for the Concept of Developing the Environmental Legislation. The question of adopting such a concept seems very topical, especially in the context of the current changes in environmental legal regulation and the organization of environmental protection control. Obviously, it is advisable to bring together all scientific ideas on the prospects for environmental law and official state environmental and nature management strategies. In any case, the strategic planning of lawmaking processes is an important condition of any successful way of improving the legislation.

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NOT ONLY DEVELOP BUT ALSO APPLY ENVIRONMENTAL LAWS

Every citizen who cares for the nature of his or her native land and the country as a whole must master environmental laws to participate in environmental activity.

Today, we must work to restore environmental law order in Russia. This implies solving the problem of recruiting personnel for control and supervision in the field of environmental protection.

The personnel should be not only highly professional but also honest and enthusiastic. Of course, such people are now very few in number, and the situation they work in is deplorable. However, if public opinion supports them, they will enjoy a second wind, which will probably favor genuine legal environmental protection.

We have to move forward in vindicating state environmental review and supporting public review. Today, this is still another defense line of ecology, which it dominates after having left the previous ones.

A discussion at the Public Chamber on the development and application of the environmental legislation may add a brick to the construction of civil society and contribute to overcoming skepticism with regard to both environmentalism and the Public Chamber itself.

The well-known and regularly stated main vectors of environmental policy should be undoubtedly supported. There are environmental legal defense lines that were lost over the past years, but there are others that can and should be professionally and competently defended. For example, the long-standing struggle concerning the target use of funds coming to the budget as a payment for environmental pollution has been lost. This payment was introduced 20 years ago during the perestroika and was meant only for restoring the disturbed environment. The Law of the Russian Federation On Environmental Protection of December 19, 1991, ran accordingly: "It is forbidden to use the payment received for environmental pollution for goals outside environmental protection." The law of 1991 sank into the oblivion, and the new Federal Law On Environmental Protection of January 10, 2002, does not contain such a provision. It has been gradually disappearing from the Forestry and Water Codes and other federal laws. Today, we are still fighting for preserving environmental review but we have lost the struggle for the target use of the above payment for environmental protection alone.

The current situation in the environment should be viewed and estimated objectively. Therefore, instead of general slogans and propagandistic wishes in our resolutions, we should envisage real and specific goals and plan methods of achieving them. Do the colleagues in our struggle for environmental prosperity not know how many strategies, concepts, guidelines, and resolutions have been adopted and how much paper has been spent at different power and control levels for different trends in our public, including environmental, life? Do we need the president's approval of the guidelines of our environmental policy? Is it not enough that he plans to busy himself with environmentalism in his leisure hours after retiring from office? This in itself was a message to society.

We have the Environmental Doctrine, approved by the Russian government on August 31, 2002, before the summit in Johannesburg. Is there anybody among functionaries or the public who has bothered to check how the government, federal ministries, services, agencies, and their territorial bodies have been executing the approved doctrine over these five years? Yet, it took a lot of time and effort of many specialists to develop this document. It is a good bunch of intentions, which, unfortunately, have not only been neglected but are also thrown back from time to time. Is there a state or public mechanism of checking the execution of these intentions and making officials and citizens answer for it?

On October 28, 2003, the Russian Ministry of Natural Resources approved the Plan on the Realization of the Environmental Doctrine, coordinated with 12 ministries and agencies, which is full of draft concepts, basic packages, proposals, complex measures, and so on, and so forth. However, in our opinion, the main point is not to write

new documents, new vectors, and new fine words about concepts, doctrines, strategies, etc., but to focus on their implementation, observance, use, and application.

As a rule, the public pays attention to the improvement and development of the legislation. It has become a fetish, and public consciousness idealizes its potentialities, although not everything written in laws turns into a reality in Russia. In the legal field, we should orient toward the practice of applying laws and methods of increasing their efficiency in environmental protection, as well as to balanced critical estimates of numerous proposed laws, which alone are supposed to improve the environmental situation. For example, we have been pressed for a long time to adopt the proposed law on environmental culture and environmental education. No doubt, we love the words environmental culture; I organized and have been heading for 15 years a respective department at an institution of higher education, and I participate in the annual Likhachev scientific readings in St. Petersburg, devoted to culture. The Russian legislation reflects our culture, including the culture of lawmaking and the culture of law enforcement and, in its turn, should influence them.

But can we improve this culture at once by a law? Fostering culture takes much time, and those who live now may be not patient enough to raise it to the desired level. As is customary to write in laws, we will work for the present and future generations. Although it is practically impossible to get culture and education moving forward by a law, we may do something in this respect. To be more precise, I would like to ask whether anybody among motivated environmentalists has ever seen what the proposed law on environmental culture contains. I am one of the conservatives who tried to say no to the proposed law on environmental culture on the following grounds. It is very nice to write in laws the words culture, all people should be cultured, all citizens must love their Mother Nature, and the like, implying that if all people are cultured, prosperity will come. However, this is not a law; this may be a professor's lecture or a paper by a RAS corresponding member, while laws should establish legal relations, grant rights, impose obligations, and envisage liabilities for their nonobservance. There are good words about environmental culture in the Law On Environmental Protection, and even better words were written in the aforementioned law of 1991. This does not mean that the past is always better than the present and future. However, according to the 1991 law, functionaries and leaders who made environmentally important decisions were not allowed to occupy their posts without having acquired at least minimal environmental knowledge. The 2002 law does not contain such a provision, and the proposed law on environmental culture does not differ from it in this

respect. One should understand that the growing number of laws does not add anything to the quality of their enforcement and does not ensure the desired legal environmental order. The main point today is mechanisms of applying laws and the ethical and cultural atmosphere around them in society. Apropos, it is a widespread opinion that it may be for the better that recently adopted laws on natural resources do not work, because some of their provisions weaken environmental requirements.

To overcome the existing situation, we should pay more attention to the observance of civil environmental rights. Any violation of environmental rights should be publicly discussed, condemned, and punished. Apparently, our task is not to increase the number of words and papers lying on shelves but to raise hue and cry over any case, no matter flagrant or not, of violating laws, to press the public opinion through mass media, and to secure punishment for the guilty.

For example, the Volga Interregional Environmental Prosecutor's Office and the Solnechnogorsk Court of Moscow oblast initiated and examined about 25 cases of restoring disturbed water fenced-off areas along near-Moscow rivers. Did the public and mass media support these cases, which the prosecutor's office and the court have carried to execution? Note that they encountered difficulties and problems because of the public's indifference and silence, which sometimes even helped the popular actors involved to neglect environmental requirements.

We must decide whether we want to observe laws and live in a legal system and legal state, overcoming corruption, or we will observe laws only when it is profitable for us and neglect them otherwise. Therefore, it is purposeful to focus on the inevitability of punishment for every environmental violation and on the obligations of all people, including functionaries and businesspeople, to protect nature, envisaged by article 58 of the Russian Constitution. This is an important reserve of the public environmental climate, which we can use.

The human factor is also noteworthy, because an individual is capable of not only saying fine words about nature but also of participating actively in the struggle for the restoration of violated environmental rights and the compensation of the damage caused to the environment.

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ENVIRONMENTAL LEGISLATION: THE CURRENT STATE AND PROSPECTS FOR DEVELOPMENT

The State of the Environmental Legislation

Compared to the previous period of environmental lawmaking, the current one is characterized by a number of substantial advantages. The main ones are:

- The formation of a legislation system: on the environment, on natural complexes, and on natural sites. At present, integrated and differentiated approaches to the legal regulation of environmental relations are being harmoniously realized, which ensures the progressive and scientifically substantiated development of environmental law.
- A considerably increased share of laws in the legal corpus. The tendency toward the predominantly legislative regulation of relations in the interaction between society and nature ensures an effective realization of the constitutional principle of separating powers and building a legal state in Russia.
- The recognition of diverse forms of ownership of natural sites and resources and their sufficiently developed regulation in the legislation on natural resources.
- The recognition and wide legislative, including constitutional, establishment of environmental human rights. Mechanisms of realizing and defending these rights have been partially developed.
- An improved mechanism of regulating the use of natural resources and environmental protection. Legal measures have been developed to prevent environmental harm, including those in environmental regulation, environmental impact assessment, environmental review, licensing, the avowal of industrial facility safety, and control. In addition, the regulation of legal liability for environmental violations and crimes has been simultaneously improved.

It is characteristic of the modern state of the environmental legislation that it is complemented by the "ecologization" of other legislations. Environmental protection and the restoration of the friendly state of the environment are secured not only on the basis of the environmental legislation but also through an optimal regulation of environmental relations by economic (entrepreneurial), civil, administrative, and criminal legislations, as well as the industrial safety legislation and other branches of the Russian legislation.

Although we recognize some progress in the modern Russian environmental legislation compared to the previous period, it is widely known that this legislation still has many gaps. The legal environmental mechanism practically lacks such important tools as environmental certification, environmental audit, and environmental insurance. The legislation does not regulate procedural relations. In addition, the legislation contains serious drawbacks with regard to legal technicalities. Overall, the state of this legislative branch is far from scientific ideas of its content and, what is even more important, does not correspond to the Russian Constitution.

It is important to assess the environmental legislation from at least three points of view: the regulation of social relations attributed to environmental law, the realization of objective integrated and differentiated approaches to regulating environmental relations, and the development (presence) of an effective mechanism of regulating these relations or using norms envisaged by the legislation.

Since 1991, the Russian environmental legislation has been created practically anew.

Environmental laws are full of blanket rules. In practice, establishing such rules often dooms the law to inaction. For example, the Federal Law On Environmental Protection of January 10, 2002, establishes: forms of payment for negative environmental impact are determined by federal laws (article 16). Fees for environmental pollution are a potentially strong economic stimulus for entrepreneurs to initiate measures on environmental protection according to environmental regulations. However, no federal law on the forms of payment for negative environmental impact has been adopted. According to article 31 of the Federal Law On Environmental Protection, obligatory ecological certification should be in compliance with the procedure approved by the Russian government. Environmental certification is aimed at establishing the conformity of environmentally important products with the environmental requirements. However, the Russian government has not determined the procedure of obligatory environmental certification so far. Article 57 envisages: the procedure of announcing and establishing the regime of zones of environmental disaster is to be determined by the legislation on zones of environmental disaster. According to available estimates, up to 15% of Russian territory is environmentally critical areas. No federal law on zones of environmental disaster has been adopted. The procedure of environmental insurance has not been determined. The excessive enthusiasm of the legislator about establishing blanket rules contradicts article 10 of the Russian Constitution, envisaging the principle of separation of powers. For example, the Federal Law On the Protection of the Atmospheric Air consists of 34 articles that contain 17 instructions how to settle these or those relations in this sphere for the Russian government or specially authorized bodies in the field of air protection.

As a result: (a) the legislator does not create a legal mechanism of regulating environmental protection and using natural resources; (b) in practice, executive bodies are not too enthusiastic about executing the legislator's instructions; (c) the effectiveness of the legal regulation of environmental relations goes down; (d) the volume of corporate rule making increases; and (e) the civil state and law supremacy principles are undermined. Estimating the state of the environmental legislation as a whole, we feel it important to emphasize that it disagrees with the Russian Constitution. This is its general drawback.

Constitutional Basics of the Environmental Legislation

The Constitution of the Russian Federation is the main source of environmental law. It determines not only prospects for development in this field but also the scale of state activity in the interaction between society and nature. From the theoretical point of view, the currently effective Constitution stands out among

all the previous Russian constitutions not only because it has established the most important provisions that regulate environmental relations. In addition, it contains a number of general provisions that are fundamentally new for the Russian state. It is these provisions that determine qualitatively new approaches to the development of not only environmental law but also the legal system as a whole.

First, we mean the following interconnected provisions. Russia is a democratic legal state. Individual and human rights and freedoms are of the highest value. Russia is a social state. State power is realized through separating legislative, executive, and judicial powers. Human and civil rights and freedoms are of direct action. They determine the meaning, content, and application of laws, as well as activities of the legislative and executive powers and local governments; and they are ensured by justice. State and local authorities, functionaries, citizens, and associations are obliged to observe the Constitution of the Russian Federation and the laws. The Constitution is of supreme legal force and direct action. These provisions establish a standard for the functioning of all state power institutions and other legal environmental entities, determining, in particular, prospects for the development of environmental legislation. At the same time, they are a legal criterion for estimating the lawfulness and effectiveness of this activity, as well as its conformity with the Constitution. Each of the above provisions has its own content and considerable regulating potential.

In a legal state, power is restricted by law, which means that law is above power. Accordingly, the preparation and adoption of environmentally important resolutions in a legal state are based on legal norms and not on political, economic, and other motives. The building of a legal state will be a powerful factor of establishing a strict environmental order in Russia. In a social state, conditions are formed that ensure environmental comfort, decent life, and free development. Decent life, which is to be guaranteed in a social state, implies not only material welfare but also environmental components. Inasmuch as environmental problems affect human environmental interests, these problems are social. Consequently, their consistent solution in the interests of individuals and society by instruments of environmental law is key to creating a social state in Russia.

One of the main substantial innovations in the fundamentals of Russia's constitutional system, established by the currently effective Constitution, is associated with the principle of dividing state power into legislative, executive, and judicial. With respect to the field under consideration, this implies forming an up-to-date environmental legislation that would ensure its realization and resolving disagreements in this sphere justly and efficiently. The provisions of the Constitution concerning the legal state and power

separation principles predetermine the necessity to change radically the approach to legal technicalities of writing up-to-date laws. Laws should regulate environmental rules wider. The rule-making activity of executive bodies should be minimal.

The constitutional norm envisaging that the individual and human rights and freedoms are of the highest value is closely connected with article 18. Rights and freedoms determine the meaning and content of laws, activities of the legislative and executive powers and local governments and are ensured by justice. According to article 18, legislative bodies are obliged to (1) develop a legal mechanism that will make it possible to use natural resources rationally and protect nature effectively; the realization of this mechanism by executive and law-enforcement bodies will ensure the right of individuals for a satisfactory environment; and (2) create legal mechanisms ensuring the realization, observance, and protection of environmental rights. However, these most important fundamental theoretical assessments of the content aspects of the above constitutional provisions are far from the actual behavior of the state and other environmental legal entities. There is a colossal gap between them, which tends to grow. Practices of the state and other environmental legal entities seem to ignore these provisions altogether. The state's responsibility for the effective and consistent execution of these provisions by itself and other entities is especially high: the modern Russian state is to perform the main environmental function following from article 9 of the Russian Constitution. Proceeding from the Constitution, the state's most important task is to form an environmental legislation containing tools for the rational use of natural resources; environmental protection, and the realization, observance, and protection of environmental human rights. According to the Constitution, such tools should be sufficient to accomplish the main goal - the conservation (maintenance) and restoration of a satisfactory state of the environment. In practice, however, Russia is characterized by a huge-scale degradation of nature and is facing an environmental crisis. Against this background, the decision of the Russian parliament to practically abolish state environmental review looks a crying example of the "deecologization" of Russian state power. This review was the only relatively effective legal tool of environmental protection.

¹ Relations associated with sustainable development are regulated by a number of laws and the Russian president's decrees.

² Data have been published that Russia's explored reserves of oil are enough for 35 years; of gas, for 81 years; and iron ores, for 42 years. A. P. Parshev, *Why Russia Is Not America* (Forum, Moscow, 2001), pp. 58-62.

Practically the same was stated by the Russian Ministry of Natural Resources at the session of the Russian government on November 11, 2004: under the current exploration and production rates, profitable gold fields in Russia will be exhausted by 2011 and oil fields, by 2015. *Komsomol'skaya pravda*, Nov. 13 (2004).

Prospects for the Development of the Environmental Legislation

Prospects and tasks of development in this field, determined by the Russian Constitution, are associated with the need to create an effective legal mechanism of rational environmental management and protection. To accomplish this, it is necessary to improve some of the effective laws and adopt new ones: on payments for negative environmental impacts, on environmental audit, on environmental insurance, on zones of environmental disaster, and on environmental culture. The future laws should not only establish material norms but also regulate procedural relations.

The concept of sustainable development has been enacted in Russia¹. In the legal environmental context, it is based on two ideas: taking into account environmental requirements while preparing and making environmentally important decisions and taking into account environmental interests of future generations while preparing and making such decisions. Accordingly, working out the environmental legislation should be based on principles of sustainable development. The ownership of natural resources is the most topical question. With regard to the specificity of natural resources as ownership, it is important that they remain within public, predominantly state, ownership. Natural resources are the public domain.

When the Russian state as the owner of natural resources disposes of them and delivers them for use, it ignores the environmental interests of future generations. This mainly concerns exhaustible natural resources, such as oil, gas, and other subsurface resources. In the absence of balanced economic development, the state finds a solution to economic problems, including the annual formation of the revenue side of the budget, in the exploitation of the subsoil and ineffective sales of subsurface resources at the expense of the interests of the present and future generations. With respect to the subsurface, the problem of regulating maximum allowable extraction is the most topical. The urgency of this problem is due to the fact that, according to available data, we are approaching the point of exhaustion for some subsoil elements - oil and gas². General provisions of norms of the allowable extraction of environmental components are envisaged by the Federal Law On Environmental Protection (p. 26). This law rightly establishes that regulating fixed subsoil extraction should be covered by the subsurface legislation. According to articles 42 and 18 of the Russian Constitution, the legislator is obliged to establish such norms.

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WE NEED A STATE ENVIRONMENTAL STRATEGY!

There is no doubt that the future welfare of humankind is associated with the state of the environment and fully depends on our attitude to this problem.

Today, the human being has become the strongest planetary power. Suffice it to say that humankind annually extracts about 10 billion tons of minerals, consumes 3-4 billion tons of vegetation mass, and discharges into the atmosphere about 10 billion tons of industrial carbon dioxide. More than 5 million tons of oil and petroleum products are discharged into the World Ocean and rivers. The problem of drinking water is becoming increasingly sharp every day. The air of a modern industrial city is a mixture of smoke, mephitic, and dust. Many species of animals and plants are disappearing. The great balance of nature is so much violated that a bleak forecast predicting humankind's environmental suicide has appeared.

The lack of environmental knowledge is the main cause of environmental violations, the passive position of authorities, and the inadequate attitude of the population.

According to statistical data, 15% of the world management elite makes decisions that determine the fate of 85% of the planet's resources, two-thirds of which are in Russia. In its turn, Russia's sustainable development is impossible without solving environmental problems and ensuring environmental safety. Hence, it is vitally important for Russia to recognize environmental safety as a priority.

In the 21st century, our state has already made the first steps to this. For example, the State Duma has ratified the Kyoto Protocol to the UN Framework Convention on Climate Change, according to which Russia undertakes the commitment to maintain greenhouse gas emissions of 2008-2012 at the level of 1990.

According to a number of estimates, by 2010, greenhouse gas emissions in the fuel and energy complex will be 80% of the 1990 level and will not reach this level even in 2020, which will allow Russia to fulfill this obligation. However, Russia will have to observe strictly the established institutional and legal norms of organizing projects within the framework of this protocol, which ensure efficiency and transparency.

Implementing new environmental technologies should be not a temporary incidental measure but a part of an integral environmental strategy of each enterprise that pollutes the environment. At present, metallurgical enterprises pollute soils with heavy metals and discharge water containing salts of these metals and other dangerous substances into water bodies. Such enterprises must construct a multilevel system of environmental protection, envisaging a constant monitoring of atmospheric emissions, water discharges, and other harmful impacts. To accomplish this, it is necessary to organize departments or laboratories of environmental monitoring, as is the case, for example, at the Chelyabinsk Zinc Plant.

The pulp and paper industry faces not only those environmental problems that are characteristic of the production process itself (atmospheric emissions, water discharges, etc.) but also a global one. This problem is associated with deforestation, whose rates are becoming critical all over the world.

A while ago, many specialists saw the mechanism of overcoming the environmental crisis and ensuring conditions for the development of environmental programs during the nature management process in economic and political stabilization. In my opinion, it has already come. Therefore, we now have every possibility to make a breakthrough in the "environmentalization" of nature management.

As is known, the United States has lost more than one-third of its forests by now, while in Europe there are no virgin forests at all. In my opinion, it is time to develop fundamentally new pulp and paper technologies.

Developing environmentally friendly technologies is especially topical for the country's fuel and energy complex (FEC), because this industry is one of the main sources of pollution.

One of the main FEC problems, especially acute in traditional oil-extracting regions, is polluting the environment with oil and petroleum products.

Waste utilization rates remain low, and plans of large-scale waste use remain plans. Note also the low level of the environmental safety of technological processes, the high wear and tear of main equipment, and the insufficiently developed environmental protection structure (systems of preventing and reducing negative environmental impacts).

To solve the above problems, we need a harmonized legislative and regulative base that would stimulate investments, regulate environmental safety and protection, and meet modern environmental requirements and scientific and technological achievements; we must also form a single information system of environmental monitoring.

At the same time, it is necessary to speed up the development of the draft Environmental Code, as well as draft Federal Laws On Obligatory Environmental Insurance, On Payments for Negative Environmental Impacts, etc.

Note that I have mentioned issues of the legislative support of processes that take place in many industries and influence environmental safety of Russia's vast territory. However, state measures on stimulating the implementation of environmentally friendly technologies will bring success and become a real part of integral state policy only when (and if) they are added and developed by own environmental programs of all economic agents and of those who form environmental culture. A while ago, many specialists saw the mechanism of overcoming the environmental crisis and ensuring conditions for the development of environmental programs during the nature management process in economic and political stabilization. In my opinion, it has already come. Therefore, we now have every possibility to make a breakthrough in the "environmentalization" of nature management. As an example, we may remember the Federal Law On Lake Baikal Protection, which determines the characteristic features of managing land resources in the central and protective environmental zones, as well as those of woodland management in organizing tourism and recreation in the central environmental zone.

The boundaries of the Baikal natural area and its environmental zones were approved by the Resolution of the Russian Government of November 27, 2006. However, the boundaries of the Baikal water

conservation zone remain unapproved. As a result, we have been facing the threat of a negative economic or other impact on the state of the Baikal natural area for six years.

State control and supervision of the observance of international norms and environmental protection rules on this territory are difficult. The boundaries of the Baikal territory are established according to specific ground points with account for geographical coordinates. It seems reasonable to establish in the same way the boundaries of the Baikal water conservation zone. In this connection, the Committee for Natural Resources and Nature Management has developed the draft Law On Amending Article 2 of the Federal Law On Lake Baikal Protection (to the extent of determining the Baikal water conservation zone).

According to these amendments, the Baikal natural area, which includes Lake Baikal, its water conservation zone, and its basin within the Russian territory, the range of the Baikal water conservation zone is established at 2500 m (water conservation zones are established with the only intention to prevent as much as possible negative economic impacts on water bodies).

According to articles 15 and 65 of the Water Code of the Russian Federation, "within the boundaries of water conservation zones, it is forbidden to use sewage for fertilizing soil; it is forbidden to deploy cemeteries; animal burial sites; and production and consumption waste burial sites, as well as burial sites for radioactive, chemical, explosive, toxic, and poisonous substances that can negatively affect the state of water bodies." Thus, the draft Law On Amending Article 2 of the Federal Law On Lake Baikal Protection, prepared by the Committee for Ecology and the Committee for Natural Resources and Nature Management, is aimed at preventing anthropogenic pollution of the lake and will make it possible to preserve the unique environmental system of Lake Baikal for the present and future generations.

Only then we will preserve our country not only as a state but also, which is equally important, as a territory fit for our descendents to live on.

V.M. Tarasyuk

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CHANGES IN THE TOWN PLANNING CODE THREATEN NATIONAL SECURITY

On the 11th anniversary of the law, the Russian State Duma made a large-scale antienvironmental "gift" to the Russian environmentalists and population: it introduced the draft Federal Law On Amending the Russian Town Planning Code and Some Other Legislative Acts of the Russian Federation (hereinafter, the draft law).

The draft law's covering letter states that the draft law is to remove administrative barriers for the purposes of increasing housing construction, as well as improving the mechanisms of acquiring land for housing development. The proposed mechanism of removing bureaucratic barriers withdraws from environmental review and related public control the most environmentally crucial projects: all types of town-planning documentation and documentation on changing the status of federal territories, including materials that substantiate the transfer of forestland to nonforestland; land use documentation, etc.

Almost 40 laws are to lose norms that necessitate state environmental review.

Obviously, the adoption of the draft law would, in fact, liquidate the institution of state environmental review during the design and construction of any projects that can negatively affect the environment and human health.

Amending the above legislative acts would lead to the illegitimacy of many dozens of legal acts and technical and methodological documents based on the current law. This concept of the draft law is dangerous a priori and cannot be adopted for the very reason of the proposed all-round and single-step changes in many areas of law and activity. As for the current system of environmental protection, we may confidently predict its disorganization for an indefinite period of implementation of the discussed amendments.

In order to conduct an objective assessment and to prevent the adoption of the said draft law, the environmental community organized its public environmental review. The author of these lines had not only to take an active part in it but also to head the expert commission as its chairperson.

On the whole, the adoption of the draft law is unacceptable due to the absence of constitutional, international, and environmental legal and related socioeconomic evaluations of the consequences of changing the current environmental law and the consequences of ensuring the efficient organization of state environmental control, as well as ensuring the sanitary and epidemiological well-being of the population.

Proposing the replacement of state environmental review and a number of other state reviews with the state review of design documentation, the authors of the draft law pass over in silence the fact that it altogether excludes from its objects the draft documents of the territorial planning of the Russian Federation in the field of:

- the development of federal transportation, railroads, information and communications;
- the country's defense and security; energy; the use and protection of forest resources;
- the development and deployment of especially protected natural federal territories;
- the protection of the territories located in two and more constituents of the Russian Federation that are exposed to natural and anthropogenic

The Federal Law On Environmental Review (hereinafter, the law), adopted in 1995, no doubt, contributed greatly to ensuring the Russian citizens' constitutional rights for health and a favorable environment. Because environmental review is of preventive nature and is aimed to stop making defective environmental and socioeconomic decisions.

emergency risks and their consequences, the territorial planning of municipal districts;

- the general layouts of settlements;
- the general layouts of city districts, etc.

Consequently, such projects are not to be reviewed at all.

The proposed concept of subordinating simultaneously the principles and mechanisms of several areas of law to a law that regulates the relations in town planning, precisely, the current need of an industry, contradicts the constitutionally fixed priority of human rights and freedoms.

The draft law has been developed in violation of legal techniques and contradicts many norms of the Russian Constitution (articles 2, 9, 15, 17, 18, 20, 41, 42, 55, 58, 114), international conventions, and a large number of federal laws. Its adoption would limit a number of constitutional and legislatively fixed rights of citizens and legal entities.

In pursuance of the above articles of the Russian Constitution, a complex of laws has been adopted to set the legal framework for state environmental policy in order to observe the constitutional right of the citizens for a favorable environment. The preambles of the Federal Laws On Environmental Protection, On Environmental Review, On the Sanitary and Epidemiological Well-being of the Population, etc., point to the fact that the above laws are legal acts that provide state guarantees for implementing the constitutional right of the citizens for a favorable environment.

The legislation becomes void of the necessity to evaluate the environmental impacts of all possible options of the planned activities, as well as norms that set environmental and sanitary-epidemiological supervision.

The draft law limits the rights of citizens to discuss in public the objects of environmental review, to conduct public environmental reviews, and to make economic and other decisions according to the duly authorized procedure; so the implementation of the draft law may adversely affect the environment and human life, health, and property (articles 14, 19 of the Federal Law On Environmental Review, and article 12 of the Federal Law On Environmental Protection). In addition, the draft law proposes to exclude environmental and sanitary-epidemiological control at all stages of construction and replace them with construction control. Thus, all new construction and reconstruction projects will not go through environmental and sanitary-epidemiological reviews, which also contradicts the Russian Constitution.

The draft-law concept contradicts the federal Law On Security, and its adoption would create threats to the vital interests of the individual, society, and the state, which also contradicts the Russian Constitution. The liquidation of the institution of environmental review and environmental control, proposed by the draft law, directly contradicts the provisions of the

Russian Environmental Doctrine, as well as the State Strategy of the Russian Federation for Environmental Protection and Sustainable Development.

The adoption of the draft law would also entail the violation of Russia's obligations that follow from several international conventions, including that on the protection of the Baltic and Black seas from pollution (the Helsinki and Bucharest Conventions), On the Destruction of Chemical Weapons, and the Basel Convention On Control over Transboundary Transportation of Hazardous Wastes and Their Disposal, as well as numerous bilateral international agreements.

The format of this article does not allow us a deeper probe into all amendments introduced into more than 30 laws, which have already been in effect since January 1, 2007.

Obviously, their adoption would lead to the following:

- constitutional postulates about a law-governed state, about the highest legal power and direct action of the Constitution, and about the priority of human rights and the state's obligation to observe and protect them (art. 1, 2, 15, 17, 18, and other of the Constitution) would just be good declarations of the Main Law;
- the constitutional rights of the citizens for a favorable environment and health would not be fully guaranteed;
- the priority guidelines of state environmental policy (under art. 114 of the Russian Constitution and the Environmental Doctrine of the Russian Federation) would not be implemented;
- the national demographic project would not be able to achieve the set goal even if its financing increased many times; and
- obligations to a number of international conventions would not be met.

Unfortunately, the motivated objections of the environmental community, Russian federal constituents (Moscow, Moscow oblast, and others), the State Duma's Committee for the Environment (which supported the opinion of the public environmental review of the draft law and sent it to the Russian president), and the Russian Public Chamber were unable to stop the adoption of dangerous amendments.

Now we have only one way of restoring the legal status of the institution of state environmental review and other standards: a petition of citizens (the author of these lines among them) will soon be sent to the Russian Constitutional Court asking it to probe into the constitutionality of the majority of the amendments introduced into the Russian Town Planning Code and some other legislative acts of the Russian Federation.

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PROBLEMS OF SCIENCE SERVICE FOR THE CONCEPT OF THE RUSSIAN ENVIRONMENTAL CODE

The creation of a special codified act, like any other legislative act, must comply with the current requirements that regulate the development of draft laws and meet certain scientific concepts. However, some fundamentally important aspects were allotted unjustifiably little time in the draft Concept of the draft Federal Law On the Environmental Code of the Russian Federation (hereinafter, the draft concept), developed by the Russian Ministry of Natural Resources in 2006 and presented in the ministry's official web site (<http://www.mnr.gov.ru/>). In relation to this, it is necessary to consider in detail the provisions of the draft concept: (a) which may positively affect the development of environmental legislation and (b) which are hard to accept due to their theoretical and practical vulnerability.

What novel and progressive ideas is the new act to introduce? Among legal instruments that may actually modernize environmental legislation, the draft concept plans:

- to expand the arsenal of environmental methods of economic regulation;
- to widen the provisions of standardization legislation;
- to complement the legal regulation of environmental review;
- to create (for the first time) some basic provisions of the currently nonexistent flora legislation (specifically, its protection);
- to specify the notions of environmental information;
- to improve the status of legal norms that regulate environmental impact assessment;
- to develop the legal institutions of environmental audit, environmental insurance, and environmental certification;
- to eliminate the contradiction in the damage indemnification procedure, which is present in the current Federal Law On Environmental Protection
- to define the notion of soil as a separate natural object and formulate special requirements for soil protection. In fact, these are the main novations proposed by the designers of the draft concept of the future Environmental Code.

Do we really need, first, the Environmental Code itself and, second, a new legislative act for these changes? We think that the answer to this question is negative for the following reasons:

(1) The draft Environmental Code in the proposed version of its concept will not either materially reflect new ideas, or set a new goal, which must be compulsorily observed under the Main Requirements for the Concept and Development of Draft Federal Laws, adopted by the Russian government's resolution no. 576 of August 2, 2001.

As is known, the regulation of environmental relations and environmental security is not being created anew; it already exists. There are many ways of improving this legislation, and the creation of a new act is not always desirable. Bringing legislation to conformity with modern conditions is a constant job of developing legislation. Under such conditions, the main basis for the development of a new act to replace the existing act(s) is a cardinal change in the content and form of legal regulation, so that it reflects new significant scientific worldviews and

The codification of environmental law as a whole is a process expressed and finalized in the adoption of a special codified act.

doctrines, whose implementation through lawmaking may improve the level and quality of the legal corpus. Obviously, the adoption of the Environmental Code version described in its draft concept will not meet these requirements.

(2) The adoption of a code must be accompanied by taking into account those features that were not reflected in the draft concept. The act that is proposed for development will not be explicitly characterized by the completeness of regulation, even if we understood environmental relations only as environmental protection and environmental security and their derivatives, listed in the analyzed conception (here, there are no reasons whatsoever to disregard nature management as environmental relations). The lack of completeness of legal regulation in the planned Environmental Code is proved at least by the fact that its draft concept links its adoption to the annulment of only three legislative acts in the system of environmental legislation: On Environmental Protection, On Atmospheric Air Protection, and On Production and Consumption Wastes. The lack of any uniform criteria of act selection for codification is obvious. The lists of acts that are to be fully absorbed by the Environmental Code and laws that are to be amended with the adoption of the Environmental Code are characterized by subjectivism.

(3) The draft concept does not reflect major juridical theories and concepts. Proposals to create an environmental code are not brand new. As is known, S.A. Bogolyubov, M.M. Brinchuk, A.K. Golichenkov, S.A. Shesteryuk, and others have developed various aspects of the idea of an environmental code in the science of environmental law. However, scientific developments are, strangely enough, ignored during the resolution of such a global problem as the creation of the Environmental Code.

(4) A weakness of the draft concept is also in planning to unite only a few legal norms of the legislation on natural resources. A gap between environmental and nature-utilization standards may lead to serious violations in the balance of the legal regulation of relations in nature management and destroy the proven mechanisms of law implementation. We may avoid this only if the intended Environmental Code legally regulates the relations in environmental protection and environmental security together with relations in the use and protection of natural resources.

(5) The draft concept does not take into account the existing correlation of legal acts between legislative areas and the traditional nature of legal regulation of individual social relations within different legislative areas. The development of provisions concerning environmental security, as it follows from the draft concept, «will be based on legislation in the field of technical regulation, and those concerning the industrial security of hazardous industrial facilities and radiation security, in the field of general national security.» This statement reflects again the pendency

of the problem of selecting acts for the coming codification.

(6) Information, so accented in mass media, about the developers' intention to improve the economic regulation of environmental protection in the Environmental Code rouses doubts about its efficacy. In fact, the provision, still unimplemented, of attaching higher taxes to environment polluters and tax benefits and loans to environmentally friendly businesses was already realized in the RSFSR Law On the Protection of the Natural Environment. Without the development of mechanisms for such legal provisions in special legislations – tax, budgetary, and banking – the new economic mechanism is doomed to the same fate. In fact, the draft concept takes this circumstance into account, stating that the respective provisions «must be supported by the necessary amendments to the tax, customs, and other legislations.» But the issue is whether such support will be envisaged in the development of certain legislative areas. No doubt, economic regulatory measures must be thoroughly developed not only in the Environmental Code itself. Consequently, for the future act's provisions not to remain on paper, it is necessary, right at the stage of its concept development, to lift all the problems of its efficient implementation. Moreover, the size of the economic mechanism to be added to the Environmental Code remains unclear, taking into account the fact that the Russian Ministry of Natural Resources is planning to implement the Law On Payments for Negative Environmental Impacts simultaneously with the development of the Environmental Code (with all the said changes in economic regulation).

On the whole, the quality of the draft concept speaks volumes about the quality of the proposed new act. The draft concept so far leads only to the following unambiguous conclusions: first, hasty actions are inadmissible in the development of new legislative acts in the system of environmental legislation, and, second, serious, special, and scientific research is necessary when planning such significant interventions into the already formed and effective legal corpus. Convincing and serious reasons must be produced for the proposed changes. However, they are not reflected in the draft concept under analysis. Its text indicates that the scientific community has very few opportunities, if any at all, to influence the current events. And this situation, if we are speaking about the creation of qualitative and efficient environmental legislation, must change most cardinaly. Otherwise, this system will receive another new legislative act that by the quality and justification of its existence matches very well the quality of its draft concept.

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ENVIRONMENTAL CONTROL: TO BE OR NOT TO BE?¹

Let us consider the existing system of federal environmental control. The main state bodies of federal environmental control are the Ministry of Natural Resources and Rostekhnadzor². Hereinafter, by the Ministry of Natural Resources (MNR), we mean also its subordinate bodies and organizations, i.e., the whole system of this ministry.

MNR is charged with developing state policy and legal regulations in the field of studying, using, reproducing, and protecting natural resources, including: control over the state subsoil reserves and forestry; the use and protection of waters; the use and protection of forestry and forest reproduction; the exploitation and safety of water reservoirs and complex water systems, as well as protective and other (except for navigable) waterworks; the use of wildlife objects and habitats (except for hunting areas) and natural areas of preferential protection; and environmental protection (except for the field covered by environmental supervision).

Rostekhnadzor is charged with adopting regulations and ensuring environmental control and supervision with regard to the limitation of negative anthropogenic impacts.

The common point is that the above bodies are authorized to adopt regulations (and/or submit them to the Russian government) in the field of federal environmental control. The difference is that MNR (and its bodies) is not responsible for supervision, while Rostekhnadzor is not responsible for nature management.

However, according to the status, it is MNR that is charged with forming state policy, including that in the field of federal environmental control, and ensuring uniformity in measures taken. In the field under consideration, "forming state environmental policy" means coordinating joint efforts to create a system of federal environmental control and ensuring the coordinated operation of its elements.

The lack of plans and programs on the development of practically all administrative instruments of state environmental policy adversely affects the whole system³. To organize and realize executive powers means to forecast, plan, set strategic goals, control, etc.

¹ On urgent measures in state environmental control. State environmental control (environmental protection control, environmental control) is a system of measures for preventing, detecting, and suppressing violations of the environmental legislation and ensuring the observance of environmental requirements, including norms and regulations, by economic and other agents.

² Note. Rostekhnadzor is the Russian Federal Service for Ecological, Technical, and Atomic Supervision, subordinate directly to the Russian government. The competence of the Ministry of Natural Resources (MNR) covers the Federal Service for Supervision of Natural Resource Usage (Rosprirodnadzor), the Federal Agency on Subsoil Usage (Rosnedra), the Federal Agency for Forestry (Rosleskhoz), and the Federal Agency for Water Resources (Rosvodresursy). The Ministry of Environmental Protection and Natural Resources of the Russian Federation (Minprirody) existed before 1996, and the State Committee for Environmental Protection of the Russian Federation (Goskomekologii), before 2000. During the four years before establishing Rostekhnadzor, MNR was the only federal environmental monitoring body.

³ For tools (instruments, mechanisms, means, methods, levers, stimuli) of environmental policy, see: E. A. Vystorobets and V. Ya. Dupak, State and Regional Environmental Policy (MOUITS Nakhabino, Moscow, 2005) [in Russian]; full text version on: <http://www.silverday.ru/ecolog/>.

Public anxiety about the absence of a state environmental control procedure is reasonable. It is reasonable de-facto. The law enforcer cannot keep pace with legislators, and the explanatory work is insufficient.

In our opinion, it is necessary to adopt the following documents and take the following measures as the first step to mitigate the problem:

- (1) to revive the system of state environmental control (federal environmental control, state environmental control in the Russian constituent members, environmental control at local governmental bodies, and environmental control by individuals and legal entities): MNR jointly with Rostekhnadzor should first of all incorporate norms of environmental control and define the notion of environmental supervision;
- (2) to issue a joint instruction (order) of MNR and Rostekhnadzor on temporary application of the Rules approved by the former Ministry of Environmental Protection and Natural Resources on April 17, 1996, to the extent not contradicting the currently effective legislation and with a comment excluding arbitrary application, or to substitute the above Rules by new ones;
- (3) to draw up a list of objects subject to federal environmental control on the basis of the medium (for example, the air medium) and industrial principles (On Approving the List of Objects Subject to Federal Environmental Control of Atmospheric Air, On Approving the List of Objects Subject to an Annual Disposal of More than 10 000 t of Waste of the First and Second Classes of Hazard, and On Approving the List of Hazardous Production Facilities) in addition to the List of Objects Subject to Federal Environmental Control, adopted by the Russian government, and the territorial and departmental lists of such objects (for example, the lists of MNR and Rostekhnadzor objects by constituent member, which are absent today);
- (4) to issue a Rostekhnadzor instruction on approving the standard statute on the federal environmental control administrative commission of Rostekhnadzor's interregional territorial department (or the department on technological and environmental supervision), which establishes procedures, document forms, and the reporting procedure (at least) on the pattern of model acts approved by the Russian government and in compliance with the currently absent similar MNR documents;
- (5) to issue an instruction similar to Rostekhnadzor's Order On Approving the List of Regulations and Methodological Recommendations <...> on State Supervision and Control in Construction, in compliance with the currently absent similar MNR document;
- (6) to issue MNR's and Rostekhnadzor's methodological recommendations, which should be universal by system and special by industry, type, and level of environmental control;
- (7) to issue a MNR order and Rostekhnadzor instruction On Functionaries... (article 23.29 of the Code of Administrative Violations) on the basis of a Russian government's resolution (§ 4 article 65 of FZ-7);
- (8) to establish the official rights and duties of inspectors and to provide means, uniforms, attributes, conditions, etc., approved in compliance with and in execution of (on the basis and in elaboration of) federal laws;
- (9) to establish special divisions (or to separate a part of existing ones);
- (10) to adopt individual acts on appointments and amend official regulations (employment instructions);
- (11) to establish an industrial [departmental] system of bodies or uniform industrial [departmental] systems of environmental state control bodies (of nature and environmental protection), which may be accomplished in five years;
- (12) to adopt regulations on federal environmental control over special objects on territories with a special legal regime;
- (13) to ensure the normalization (including, at least, the execution of items 5.2.9–5.2.14 of the Provision On Rostekhnadzor, the creation of databases for inspectors on this and on the execution of items 5.3.3.5–5.3.3.8 and 5.3.4.–5.3.8, briefs, the adoption of comparable reporting parameters in cooperation with MNR, and the retrospective analysis of annual official reports);
- (14) to adopt a MNR order/Rostekhnadzor instruction on measures for developing the system of federal environmental control to the extent that concerns the realization of powers;
- (15) to approve qualifications for organizations and heads and members of creative (development) teams, standard instructions, and particular terms of reference: the Rostekhnadzor Order On Organizing Work On Developing Lists of Objects Subject to Federal Environmental Control by the Constituent Member no. 306 of May 20, 2005; and
- (16) to improve the efficiency of other state functions.

As long as these measures are neglected, the development of other types of environmental control and the realization of other state functions, including the execution of Russia's international obligations, will be hindered.

International cooperation in the field of environmental supervision helps study foreign experience. It is purposeful to discuss the mechanisms of environmental control during international actions.

Federal laws and other higher legislative acts are documents of direct action. Applying them does not require adopting any additional acts. Issuing normative law-enforcement acts of the Russian government in the execution of federal laws is associated with reference and blanket norms of these federal laws, which directly establish that the Russian government

approves, adopts, etc., documents regulating a concrete sphere of social relations. For this and for commenting, for example, in the form of methodological instructions, no additional instructions to the Russian government or federal executive bodies are needed: their duty to regulate this or that sphere is formulated in federal laws and provisions. The direct action of federal laws with regard to reference and blanket norms becomes apparent.

A federal law may contain up to several tens of such norms. Obviously, it takes more than one day to develop twenty resolutions. Consequently, to avoid adoption of unworkable laws, it is necessary to specify in the explanatory note to a proposed law that all required governmental resolutions have been supported and may be submitted to the prime minister. This approach corresponds better to the spirit and letter of law than anticipatory law-making.

Previously, the stability of the system was largely based on introducing only well-balanced and adjusted transformations. It is right first to develop and approve an innovation and only then propose a resolution on its development. Its substantiation should be with regard to a long-term effect. At present, this approach is ignored. Hence, it is advisable to attach to the package of documents to a proposed normative act a note on the balance of convenience as an obligatory element.

Note that it is a duty of interested bodies to stimulate, initiate, and promote prescribed actions. General instructions are in abundance. However, there are no specific instructions on preparing these or those documents. In particular cases, we face inaction. Independent collegial advisory bodies are required (scientific and technical councils, public councils, and working groups). We should listen to them and hear them. We should support every initiative contributing to the country's welfare. This will bring success.

We can stop the system's malfunction only on legal grounds. Official incorporations of normative provisions are necessary for each and every tool of environmental policy. In this case, "black holes" in legal regulation — the causes of voluntarism in law enforcement — will show up.

The law enforcer (including federal executive bodies) is objectively unable to keep pace with legislators. As a result, state environmental control is paralyzed. The state is weakened.

The system organization of state environmental control implies its continual improvement through adopting methodological documents, establishing:

- programs and plans of urgent measures;
- qualifications for organizations and the heads and members of creative teams (development groups);
- mechanisms of control and execution;
- methodological recommendations and instructions; and

- results in comparable parameters with state environmental control in other spheres (in the competence of different state bodies) and over the whole period of its existence.

In addition to the List of Objects Subject to Federal Environmental Control, adopted by the Russian government (the Resolution of the Russian Government no. 777 of October 29, 2002), and territorial and departmental lists of objects (for example, MNR objects by constituent member), we need environment-related and industrial lists, for example:

- Rostekhnadzor's Instruction On Approving the List of Objects Subject to Federal Environmental Control of Atmospheric Air Protection;
- Rostekhnadzor's Instruction On Approving the List of Objects Subject to Federal Environmental Control of Transboundary Environmental Pollution and Negative Environmental Impacts within Two or More Russian Constituent Members with an Annual Deployment of Waste of the First and Second Classes of Hazard of More than 10 000 t [the alternative name is On Approving the List of Objects Subject to Federal Environmental Control with an Annual Deployment of More than 10 000 t of Waste of the First and Second Classes of Hazard];
- Rostekhnadzor's Instruction On Approving the List of Objects Subject to Federal Environmental Control of Transboundary Environmental Pollution and Negative Environmental Impact within Two or More Russian Constituent Members, Classified by the Russian Legislation as Hazardous Production Facilities, Which Produce, Use, Process, Form, Store, Transport, and Liquidate Substances Dangerous for the Environment [the alternative name is On Approving the List of Hazardous Production Facilities Subject to Federal Environmental Control].

The same objects may be included in different lists. The comparison of these lists makes it possible to draw up a universal geographical list.

What should we do to make state environmental control effective? Work. Specific functionaries should be charged with responsibility for realizing and developing this or that legal branch, law, legal institution, and norm, which should be written in special instructions or established in official regulations. However, responsibility is impossible without financial support. If state officials fail to allocate funds for preserving the state, we will lose it. We need real openness and public control.

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URGENT PROBLEMS OF ENSURING RUSSIA'S SUSTAINABLE DEVELOPMENT AND ENVIRONMENTAL SECURITY*

With regard to Russia and its regions' transition to the sustainable development model, the most important task of state policy should be the rational use of natural resources and reliable environmental protection and safety.

At present, due to the adoption of the Federal Law On Amending the Town Planning Code and Individual Legislative Acts of the Russian Federation, no. 232-FZ of December 18, 2006, legal support for environmental aspects of sustainable development is crucial.

The practical abolition of the most important procedure - state and public environmental review and the assessment of environmental impacts of planned activities (both as a procedure and result of assessing the environmental impact of such activities) - will make the public opinion about environmental consequences of planned activities insignificant, which may be regarded as a violation of the constitutional rights for a satisfactory environment and for trustworthy information about its state.

The abolition of article 35 of the Federal Law On Environmental Protection, which envisaged that, if the deployment of buildings, structures, constructions, and other facilities adversely affected the legal interests of citizens, then the decision on them was to be made with regard to the results of referenda held on relevant territories, also prevents the public from making environmentally substantiated decisions.

Hence, it is crucial that the government adopts regulations and other legal and methodological documents on the procedure of accounting for the public opinion about planned economic and other activities in order to discover public preferences in this respect. The development of mechanisms that involve the public in making environmental decisions is based both on international documents (the Aarhus Convention) and the Environmental Doctrine of the Russian Federation. The above mechanisms should be regarded as an improvement to the requirements of the Town Planning Code, which envisages public hearings, although the procedure of holding them is determined by the land-use and development rules of each municipal unit and there are sometimes certain additional conditions for holding them (for example, an application signed by 200 to 500 citizens).

The absence of environmental review as a mechanism that ensures the allowable environmental impacts of planned activities and the orientation of state policy toward the use of market tools for stimulating rational nature management and environmental protection require the development of environmental management, insurance, and audit systems, the latter being regarded by many specialists as the environmental review of operating facilities or independent environmental control.

At present, the government must develop and implement measures to support enterprises and organizations that implement environmental management or control environmental quality. Environmental management is an effective mechanism of not only competition between enterprises oriented toward external markets, which is very topical in the context of

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The absence of environmental review as a mechanism that ensures the allowable environmental impacts of planned activities and the orientation of state policy toward the use of market tools for stimulating rational nature management and environmental protection require the development of environmental management, insurance, and audit systems, the latter being regarded by many specialists as the environmental review of operating facilities or independent environmental control.

Russia's joining the WTO, and creating their favorable image but also ensuring the rational use of natural resources and decreasing negative environmental impacts. For example, in some cases, the Environmental Code of Kazakhstan envisages benefits or the abolition of payment for environmental pollution for enterprises that have implemented the system of environmental management.

The development of an environmental audit procedure will help decrease possible environmental risks, through working out substantiated proposals and recommendations on urgent measures and enterprises' long-term policy, and stimulate the adoption of respective decisions on rational nature management and environmental security.

With regard to decreasing environmental risks and compensating for damage, it is important to insure civil environmental responsibility of individuals and legal entities involved in environmentally hazardous activities for causing environmental damage.

All this proves the necessity to adopt federal legislative acts regulating environmental insurance and audit. This will also prevent the construction and operation of facilities that do not meet environmental norms, because amendments to articles 35 and 38 of the Federal Law On Environmental Protection exclude the participation of environmental bodies in choosing land for construction and in state commissioning committees.

The above amendments, associated with the adoption of the Town Planning Code, have completely changed the concept of the environmental monitoring of investment activities in our country. Within the framework of the previous environmental legislation, investment activities implied accounting for environmental restrictions beginning with the earliest stages of the planned activity, and investing (financing) took place only with a positive state environmental feasibility study or design documentation. The basic criteria of assessing investment projects - their environmental admissibility and substantiation - have also been excluded. All this may lead to unpredictable environmental consequences caused by the construction and operation of enterprises and other facilities.

Taking into account environmental restrictions is unavoidable at all stages of investment activity, from idea to realization. Accounting for environmental factors and restrictions in the investment process should not be discrete, i.e., oriented to individual stages of making environmentally important decisions, but continual and within a single approach that is called the environmental monitoring of investment projects.

For Kaluga oblast, which is one of the Russian regions attractive for investments, an environmental monitoring model has been developed for investment activity with regard to modern environmental requirements and restrictions. This model, which

has been worked out by the Kaluga Ministry of Economic Development and Trade, makes it possible to assess whether proposed projects meet environmental requirements and, consequently, to make environmentally substantiated decisions, as well as to invest in modern innovation projects and deploy high-tech and competitive enterprises, which fulfill all environmental measures and, ultimately, promote the region's sustainable development.

The state environmental review of projects is also complicated, because the Town Planning Code of the Russian Federation establishes that such a review should determine whether the respective design solutions satisfy technical regulations (similar changes have been introduced in the notion of environmental review according to article 1 of the Federal Law On Environmental Review). The absence of technical regulations, primarily, environmental safety regulations, increases the probability of making insufficiently substantiated decisions; hence, the State Duma should prepare and adopt federal laws on environmentally important regulations as soon as possible.

It is also necessary to take governmental measures on increasing the efficiency of the state environmental control system, which is practically ineffective in our country because there are separate departmental subsystems that solve narrow tasks. Consequently, it is impossible to estimate reliably the state of the environment and potential negative impacts that will emerge during the realization of the planned activity.

ON SUPERVISION PRACTICES OF THE VOLGA INTERREGIONAL ENVIRONMENTAL PROSECUTOR'S OFFICE

The Volga Interregional Environmental Prosecutor's Office supervises the observance of laws that protect the environment and environmental civil rights in the Volga River basin. It includes 15 interdistrict environmental prosecutor's offices, located in the Volga federal constituents, starting from Ostashkovo, Tver oblast, where the great Russian river begins, and down to Astrakhan. Prosecutor's supervision is based on a basin principle. This is not by chance, since the Volga basin is a single and undividable ecosystem. The basin principle ensures an ecosystemic approach to the issues of improving the environmental situation in the Volga basin, an integral picture of environmental and legal conditions in this region, simultaneous checks in the whole basin, the identification of problems that are the most typical for the whole basin, and making complex decisions on eliminating identified violations. The means of prosecutor's supervision make local governments, monitoring bodies, and economic agents solve environmental problems, which remained unsolved for decades.

The Volga prosecutor's office raised the problems of bodies of water polluted by raw waste waters; illegal water extraction from underground sources; low-quality potable water supply; the contamination and littering of the Volga with drowned watercraft; illegal occupation of land and illegal construction in water protection zones; burials of biological wastes (including anthrax-containing spores), medical waste utilization, and many others.

In order to eliminate breaches of law, the prosecutor's office used the whole arsenal of prosecutor's response measures; created investigative practices in many types of environmental and related crimes, as well as actionable practices; and developed methodological recommendations, which other prosecutor's offices use in their work.

Unfortunately, we have to state that the current legal framework for environmental protection is not perfect, contradictory, and does not fully correspond to realities. Investigating criminal cases of environmental pollution, damage of natural objects, and other environmental crimes, we clearly see a conflict between the interests of economic agents and the provision of the environmental security and sanitary-epidemiological well-being of the population during the operation of industrial facilities.

Many economic agents do not invest into the introduction of new, more environmentally friendly and safe technologies; into the repairs and construction of treatment facilities, because it is more profitable for them to pay for excess waste discharges. They are also encouraged by the years of an unjustifiable approach to calculating the amount of damage incurred on the environment as a payment for negative environmental impacts. It is high time to abandon this principle.

The prosecutor's examination of the observance of the atmospheric air protection legislation identified the improper operation of obsolete equipment at asphalt and concrete factories and an expanded-clay production facility, which led to the pollution of the atmospheric air in residential areas with dust concentrations exceeding many times the maximum permissible values. On the basis of these facts, we instituted and took to court 15 criminal cases, and another 5 cases are pending. Only criminal action was able to induce the heads of these enterprises to purchase and install or repair the relevant treatment facilities. More efficient control over atmospheric air pollutions is hindered by imperfect legislation: environmental standards are not set; hygienic standards are set only for residential areas, which makes it impossible to institute criminal proceedings even for air pollutions outside residential areas that negatively affect the environment; the permissible standards of physical impacts on the atmospheric air are set by sanitary norms, which are not registered in the Russian Ministry of Justice; the operational rules for gas-and-dust filtering equipment, which are referred to in the disposition of blanket art. 251 of the Russian Criminal Code, were adopted back in 1983 and do not regulate many current issues.

One of the main reasons for the pollution of bodies of water is the discharge of insufficiently treated or totally untreated waste water. In 2005, on the territory of only 15 constituents of the Volga basin, 2.6 billion cubic meters of insufficiently treated and 354 million cubic meters of totally

untreated waste water were discharged into bodies of water. The tear and wear of water treatment facilities and sometimes their total absence contribute to the above situation. Therefore, it is necessary to promote their repairs and the construction of new facilities. For these purposes, we use one of the most effective means of prosecutor's response: we bring suits requiring reconstructing or building treatment facilities and bringing discharges down to standards. We have already sued almost 400 such suits, the majority of which were sustained. In pursuance of the suits, many treatment facilities have already been built or repaired, and funds have been allocated for these purposes.

If there are enough grounds, the prosecutor's office applies criminal actions in the struggle against water pollution. However, this struggle is also hindered by imperfect legislation. The norm set by article 250 of the Russian Criminal Code does not forbid direct water pollution in a body of water but envisages a liability only in case it entails negative impacts on flora and fauna, fish resources, forestry, and farming. The absence of penal prohibition of direct water pollution leads to the impossibility of making liable the heads of enterprises that have long or in large amounts been illegally discharging hazardous substances into bodies of water, creating a real threat to human health and life.

The broader use of penal actions is hindered by the unhappy construction of the majority of the components of environmental crimes, which require the immediate onset of material damage, while such crimes are characterized by both the lengthy period of negative impacts and the remoteness of irreversible negative consequences; as well as different interpretations of criminal offenses. The evaluative nature of consequences does not allow determining unambiguously the presence of the components of crime and leads to a large number of expensive and often lengthy examinations. There are no necessary laboratories and specialized accredited expert institutions. The very category of consequence evaluation excludes objectivity in determining the size of damage, since it initially implies that the law enforcer subjectively determines the gravity of consequences due. The lack of specific criteria in the applicable legislation of material environmental damage hinders cooperation with specialists and, in the majority of cases, leads to the impossibility of obtaining definite conclusions. Thus, the current environmental articles of the Russian Criminal Code do not perform their necessary regulatory function and unjustifiably narrow the sphere of their application.

The above reasons presuppose necessary changes in criminal law in order to make environmental norms more specific to cover all socially dangerous infringements in the sphere of environmental protection.

Sanctions for environmental crimes are inadequate by the extent of their social threats and, in fact,

do not play any preventive role. For example, the sanctions of the first parts of articles 256 and 260 of the Russian Criminal Code do not envisage deprivation of liberty at all. Criminal cases investigated by the Volga Environmental Prosecutor's Office indicate that some defendants, who had previous criminal charges, commit similar crimes again.

At the same time, the current law does not promote the effective struggle against recurrent crimes. In our opinion, such a form of multiple crime as repeatability was unjustifiably excluded from the Criminal Code; the earlier existent provision of the suspension of the limitation period of relief from criminal responsibility if a person commits a new crime was liquidated; the calculation of independent limitation periods for each crime was introduced without a possibility of full revival of the limitation period if a new criminal crime was committed.

Thus, for adequate responses to infringements in the sphere of nature protection and compensation for damage incurred to the state, methodologies should be developed and adopted to provide us with criteria of assessing the qualitative condition of an affected object (the atmospheric air, soil, water), as well as flora and fauna and other disturbed natural components. Alongside the above, cost equivalents must be provided. Parameters set in the methodologies must ensure the objective and justified determination of the volume, area, and scale of negative impacts and negative consequences and take into account the coefficients of the environmental situation and environmental importance of territories.

Branch environmental law, for example, fauna legislation, needs further development. A federal law that regulates social relations in hunting has not been adopted so far. The normative acts of the former Soviet Union, which were adopted back in the 1960s-1980s, are still in effect, for example, the RSFSR Standard Hunting Rules and others. These acts are, naturally, obsolete. In the absence of a federal law, the federal constituents attempt their own legal regulation by adopting regional hunting rules. However, the rules adoption procedure is very complex and lengthy. Therefore, we think it necessary to adopt the Federal Law On Hunting and Game Husbandry as soon as possible.

For the rational use and protection of water bioresources, the adoption of federal regulatory acts envisaged by the Federal Law On Fishery and Preservation of Water Biological Resources must be accelerated.

A serious problem is the absence of basin fishing rules. The fishing rules effective in the Volga region, adopted back in the 1970s-1990s, should be abolished, because they contradict federal legislation. However, their abolition without adopting new rules would lead to the impunity of infringers, which would have a negative impact primarily on the condition of water biological resources.

No less serious problem is the absence of the procedure for the issuance of permits for the extraction (catch) of water bioresources. In addition, especially during the fish spawning period, the introduction of fishing limitations becomes an acute problem. Until now, the Russian Ministry of Agriculture has not established the procedure of introducing such limitations. There is no regulatory legal act, envisaged by clause 3 of art. 50 of the Federal Law On Fishery and Preservation of Water Biological Resources, which determines the procedure of coordinating the location of economic and other facilities, as well as the introduction of new technological processes that influence the condition of water bioresources, and other acts. In our opinion, it is necessary to adopt the Federal Law On the Preservation of the Sturgeon Fishes and the Rational Use of the Sturgeon Resources, because the sturgeon situation is catastrophic and their population is decreasing.

According to health care data, up to 30% of human diseases are related to potable water. In relation to this, the Volga Environmental Prosecutor's Office took steps to improve supervision over the execution of environmental legislation. We have created the practices of instituting and investigating criminal cases for the very fact of supplying low-quality potable water. Twenty-three such cases were taken to court. We also widely used bans on illegal fresh water extraction from underground sources, 360 such claims were taken to court.

The adoption of a federal law on potable water and potable water supply, the draft of which has long been considered by the State Duma, would improve the situation with qualitative potable water supply.

Legislative regulation in a number of issues is also needed for resolving the problem of the safe operation of waterworks. Waterworks security legislation does not envisage different criteria and requirements depending on the functions of waterworks. The Federal Law On Waterworks Security is of a generalized nature and does not take into account the specifics of energy, transportation, and industrial waterworks, as well as dams.

In this connection, it is necessary to adopt a regulation on the procedure of withdrawing, conserving, and liquidating abandoned and emergency waterworks and to amend the Federal Law On Waterworks Security by making the government authorities of the federal constituents responsible for the security of abandoned waterworks. The Russian Water Code must be added by a provision that "the title of the Russian Federation, federal constituent, municipal formation, legal or physical entity to a pond or watered pit should obligatorily include the title to waterworks within their composition." The adoption of the above provisions would do away with abandoned waterworks, because pond and watered pit owners would simultaneously own waterworks.

For several years, the Volga Environmental Prosecutor's Office has been creating the practices of suing local governments for nonaccepting cattle burial grounds into municipal ownership and nonharmonizing them with nature-protective, sanitary-epidemiological, and town-planning specifications. Formulation no. KAS06-193, issued by the Board of Appeal of the Russian Supreme Court on June 13, 2006, seriously undermined the mechanism of legal defense of the interests of the state and society. It ruled null and void the provision in the "Veterinary and Sanitary Rules of the Collection, Utilization, and Destruction of Biological Wastes," according to which cattle burial grounds and biothermal pits not owned by organizations are considered municipal property. This means that accepting abandoned facilities into municipal property is the right of municipal formations and not their obligation and may not occur in spite of their will. If local administrations do accept voluntarily abandoned cattle burial grounds into their property, the burials grounds will stay abandoned, creating a potential threat of environmental damage.

We see a similar situation with retired and abandoned watercraft. Out of 2044 cases identified in the Volga basin, there are 1372, or 67%, of such watercraft. Their long stay in the drowned condition pollutes bodies of water, reduces spawning sites, and creates an unfavorable sanitary-epidemiological situation, but legal norms that would obligate authorities and local governments to salvage and utilize abandoned and drowned watercraft are absent.

The current Arbitration and Civil Procedure Codes also need revision. It is necessary to return procedural authorities to prosecutors, of which they were deprived, and amend art. 52 of the Arbitration Procedure Code by adding a provision on the prosecutor's right to apply to the court of arbitration to protect state and public interests, and other public interests, including those of an indefinite circle of persons.

Culture and morals are hard to overestimate in resolving environmental problems. As Academician D.S. Likhachev said, "Reasons for the death of biological and ecological systems and human cultural values are same: they are in the main point – in the cultural level of society, in particular, in its moral culture. If the state of culture in our country is not going to improve, the environmental situation will not improve either." In a society of high culture, many environmental problems would never have arisen.

V.A. Soldatova

The Volga Interregional Environmental prosecutor.

PROBLEMS OF LAW ENFORCEMENT IN THE METROPOLITAN REGION

The Moscow Prosecutor's Office has informed the Prosecutor-General's Office of the Russian Federation that the Ministry of Natural Resources is passive with regard to developing and approving methods that would make it possible to assess damage caused by cutting down the green belt on urban lands.

Meanwhile, as opposed to article 260 of the Russian Criminal Code, the disposition of article 262 does not forbid using methods developed by Russian constituent members for calculating the costs of soil restoration in assessing damage from the violation of the NAPP regime. This seems right, if we take into account a higher value (both environmental and material) of environmental sites, particularly in Moscow. However, this work is clearly insufficient at present.

With regard to the annually growing illegal environmental impact in Moscow, administrative measures within the Moscow legislation are clearly insufficient. A passive position in this respect may lead to the destruction of environmental sites, including the natural areas of preferential protection. This may result in further worsening of the environmental situation and the violation of civil rights for a satisfactory environment.

Thus, it is urgent to develop as soon as possible legal documents on determining the environmental damage in Moscow NAPPs. This problem may be solved only through coordinated actions of the Moscow power, control, and law-enforcement bodies.

The problem of attributing the Moscow River to fisheries or recreational reservoirs is equally topical. Control bodies have not come to a unanimous opinion concerning this seemingly insignificant and far-fetched question.

According to long-standing studies and estimates, the quality of water in the Moscow River does not meet the requirements established for fisheries, including owing to the worsened quality of water as a result of overestimated the limits of pollutant discharges, envisaged by recreational and economic norms.

There is no currently effective legal act defining a fishery and no document regulating water quality (critical concentrations of pollutants and estimated safe environmental impacts) in fisheries. The lack of such documents results in violating the procedure of classifying the Moscow River or attributing it to this or that category.

Changes in the currently effective environmental legislation, associated with the abolishment of state environmental review for construction projects at the beginning of this year, also give rise to concern. Despite all the drawbacks in the organization and operation of such examinations, state environmental review helped detect and prevent economic activities that did not meet the requirements of environmental security.

To improve the environmental situation in Moscow and respond quicker to violations of the environmental legislations, it is necessary to ensure a closer interaction with the Public Chamber and public environmental organizations as soon as possible. A properly organized work in this respect directly conditions the safety of environmental sites and environmental welfare.

T.A. Brudastov

Moscow interdistrict environmental prosecutor

State policy in the field of national security protection includes the environmental component as a priority, which has increased public concern for the state of the environment, as well as for its conservation, restoration, and rational use.

The law-enforcement practice faces many problems owing to the fact that **functionaries and the heads of economic agents do not know the environmental legislation and law-enforcement bodies** **relegate environmental crime detection to the background.**

Moscow is in a deadlock with regard to assessing the damage caused by illegal actions of individuals and organizations that cut down the green belt and destruct the fertile soil layer in the natural areas of preferential protection (articles 260 and 262 of the Russian Criminal Code).

Owing to the absence of approved federal methods of calculating environmental damage caused by the illegal cutting of the green belt and fertile soil destruction during excavation on urban lands and in the Moscow natural areas of preferential protection (NAPP), the norms of criminal responsibility have not been applied for a long time.

ON THE ACTIVITIES OF THE ENVIRONMENTAL PROSECUTOR'S OFFICE OF MOSCOW OBLAST AND PROBLEMS OF ENVIRONMENTAL LEGISLATION

The Interdistrict Environmental Procurator's Office of Moscow oblast works in a number of fields related to the state supervision of the oblast's use of forest, water, and land resources (including subsoil management).

A most topical problem to date is the regulation of relations related to the use and protection of forests near Moscow after the adoption of the new version of the Russian Forestry Code. Today we have a really grave situation in this sphere. If some one decides to fell all trees in a city, for instance, in Mytishchi or Khimki, it will be impossible to hold this person liable either criminally, or civilly, or even administratively.

The new Forestry Code rules that there are forests within the forestry fund and forests located on lands of other categories. Unfortunately, it does not define in detail the notion of "forests on lands of other categories." So, what do we have? This is either a forest tract or just two-three trees. Conventionally speaking, here, for example, we have two-three trees growing; what is it? Is it a forest or not?

Moreover, the old rates for calculating damages incurred on the forestry fund and forests outside the forestry fund, adopted on May 21, 2001, by the Russian government's Resolution no. 388 On Approving the Rates for Calculating Damages Incurred on the Forestry Fund and Forests Excluded from the Forestry Fund by Violations of the Russian Forestry Legislation, are inapplicable to the new Forestry Code.

The new Forestry Code and the law on the effectiveness of the Forestry Code do not state whether these rates are abolished or not. Moreover, it is unclear when the new rates will be adopted. Representatives of the Federal Service for Nature Management Supervision and the Federal Forestry Agency produce no intelligible answer. In other words, in 2007, we have a serious gap in exercising the new Forestry Code, including article 260 of the Russian Criminal Code. Another problem has been created. What are law enforcement bodies to do if citizens start felling trees that grow on residential lands and on farmlands? There is nothing to do but to shrug one's shoulders and keep silence.

Another important problem is related to subsoil management. At present, we increasingly often come across illegal subsoil use. What do we see? Excavators and trucks are pulled onto a land plot, are operated for a day or two or at night, and then are pulled away again. In other words, land is materially disturbed by such operations.

These actions cannot be qualified in any way, because this «business» is carried out by individuals, who are nonexistent as legal entities in both the law on business activities and art. 255 of the Russian Criminal Code. Therefore, it is important and timely to introduce an article on illegal subsoil development (extraction) into

A most topical problem to date is the regulation of relations related to the use and protection of forests near Moscow after the adoption of the new version of the Russian Forestry Code. Today we have a really grave situation in this sphere. If some one decides to fell all trees in a city, for instance, in Mytishchi or Khimki, it will be impossible to hold this person liable either criminally, or civilly, or even administratively.

the Criminal Code, because such cases are plenty now. Every one knows how valuable sand is, as it is used in the production of concrete, and concrete, in its turn, in construction. This is a very profitable business.

Another very profitable business is dumps. Now there are very many abandoned pits turned into dumps in Moscow oblast. We see that trucks stream garbage there every day. Unfortunately, again it is impossible to qualify this in any way. Every one refers to the fact that, in the past, wastes were also deposited in those places. Therefore, it is necessary to introduce an additional formula on illegal waste disposal into art. 247 of the Russian Criminal Code.

The old Criminal Code had article 199 about unauthorized occupation of land. Unfortunately, this article was abolished in the new Criminal Code, although it is very topical today. The same is true of any land, including the lands of the forestry fund. We think it necessary to introduce a formula on unauthorized occupation of land into the new Criminal Code. Environmental prosecutor's bodies find it very hard to investigate situations where individuals illegally occupy several hectares of forestry land, fence it, and even build something on it. At present, such cases go very hard through courts.

Moreover, we need a law on payments for negative environmental impacts. Now, in the absence of such a law, we have a paradoxical situation with payments (more precisely, nonpayments) for negative environmental impacts, as if the state does not need money. Assume that Moscow oblast has 25 000 registered users of natural resources out of about 200 000 potential users. Only 20 000 of them actually pay. This is 10% of the total number of users of natural resources who must pay for the use of nature.

Let me say a few words about the new Water Code, which has turned out extremely insipid. Before, the prosecutor's office fought against law infringers; legislation was more or less observed; and there were material limitations concerning the riverbank protective belt. Now there are no such provisions. According to the new Water Code, anyone can build anything on it. Unfortunately, the new Water Code is unjustifiably superliberal.

An important component of the prosecutor's work used to be the supervision of state environmental review. After analyzing the work of our interdistrict environmental prosecutor's office, we see that 60-70% of legal violations are breaches of the state environmental review legislation.

It is important that, over the years of our work, we noticeably improved the observance

of this legislation by local governments. In practice, it means that there should be an expert opinion before allocating land, as well as before construction. It seemed that we had taught many people this civilized procedure that precedes construction. Now it seems as if a reverse process has started. Obviously, environmental review should not be excluded from legislation.

The year 2007 is going to be hard especially for environmental law enforcement bodies. Frankly, our environmental prosecutor's office will face very hard conditions if timely and necessary measures are not taken to correct the situation described in this article.

E.G. Olovov

Acting Prosecutor of the Interdistrict Environmental Prosecutor's Office of Moscow oblast

PUBLIC ENVIRONMENTAL CONTROL WITHIN THE EXISTING LEGAL FRAMEWORK

Numerous changes in environmental regulations, including those related to the current administrative reform, have considerably weakened state environmental control at all levels.

Therefore, under the current legal conditions, we think it timely to speak about strengthening the participation of public (and, on the whole, noncommercial) associations in controlling and supervising environmental protection. In particular, it is necessary to restore the active role of the public in judicial proceedings on administrative violations through vesting representatives of public associations with special powers for inspecting economic agents during public environmental control, such as drawing up protocols, acts, etc.

As is known, the RSFSR Code of Administrative Violations envisaged the right of public association representatives to draw up protocols while performing their controlling functions (inspections). The currently effective Code of Administrative Violations of the Russian Federation includes only one provision that envisages the initiation of proceedings on administrative violations upon receiving materials, reports, and petitions from individuals and legal entities representing public associations (article 28.1). Such rights to apply have nothing to do with inspections, and the lack of specific norms does not allow the public to realize its right to conduct public control.

Environmental review, which determines whether documents and/or documentation substantiating planned economic and other activities conform to environmental requirements of technical regulations and the environmental protection legislation to prevent negative environmental impact (article 1 of the Federal Law On Environmental Review), has always been considered an effective mechanism of public environmental control and environmentally important decisions.

Considerable changes in legal acts regulating respective legal relations make the public more cautious concerning law enforcement in this sphere.

For example, one of the main problems is determining the list of locations subject to environmental review.

Articles 11 and 12 of the Federal Law On Environmental Review determine the list of locations subject to state environmental review at the federal and regional levels. In addition to a list of individual review locations, these articles contain references to three federal laws (On the Continental Shelf of the Russian Federation, On the Exclusive Economic Zone of the Russian Federation, and On Inland Sea Waters and the Territorial Sea and Contiguous Zone of the Russian Federation), which also specify locations for environmental review.

However, a number of legal acts that establish special norms of environmental protection and regulate relations in the field of wildlife conservation and use, as well as those connected with the use and protection of natural medicinal resources; with the organization, conservation, and use of specially protected natural areas; and with the protection of atmospheric air, etc., also contain requirements for obligatory environmental reviews of locations not specified in articles 11 and 12 of the Federal Law On Environmental Review.

Under the current legal conditions, we think it timely to speak about strengthening the participation of public (and, on the whole, noncommercial) associations in controlling and supervising environmental protection. In particular, it is necessary to restore the active role of the public in judicial proceedings on administrative violations through vesting representatives of public associations with special powers for inspecting economic agents during public environmental control, such as drawing up protocols, acts, etc.

In particular, the following legal acts of the Russian Federation contain such norms:

- Federal Law On Environmental Protection (part 5 article 40, parts 3 and 4 article 46, part 4 article 48, and part 1 article 50);
- Federal Law On Especially Protected Natural Territories (p. 1 article 7);
- Federal Law On Wildlife (articles 13 and 20);
- Federal Law On Lake Baikal Conservation (article 5; p. 2 article 6);
- Federal Law On Natural Medicinal Resources, Medicinal and Health-Improving Territories , and Resorts (p. 2 article 10);
- Federal Law On Land Rezoning (§ 4 p. 4 article 2; § 2 p. 1 article 4; article 10; § 4 p. 1 article 12); etc.

The above legal acts and the Federal Law On Environmental Review have equal force, and practically all of them (including the Federal Law On Environmental Review) were last amended in December 2006. In addition, the above laws contain special norms and regulate certain types of specific public relations with due account for their characteristic features.

Thus, decisions on whether environmental review is obligatory for this or that object should be based not only on the Federal Law On Environmental Review but also on other applicable special laws that regulate respective legal relations.

It is noteworthy that despite the changes in the environmental review legislation, the most widespread violations are still nonobservance of the requirement to conduct obligatory state environmental review; the financing or implementation of projects, programs, or other documentation that are subject to state environmental review but have not received the environmental seal of approval; and conducting activities that are not in conformity with the documentation that has received the environmental seal of approval (which is an administrative violation, covered by article 8.4 of the Code of Administrative Violations of the Russian Federation).

The Federal Law On Amending the Code of Administrative Violations of the Russian Federation and Other Legislative Acts of the Russian Federation and On Declaring Null and Void Certain Provisions of Legislative Acts of the Russian Federation No. 45-FZ of May 9, 2005, introduced a new type of administrative penalty – administrative suspension of operation, including because of certain environmental violations. At the same time, norms envisaging suspension of operation for violating legislation requirements were excluded from the Federal Law On Environmental Protection, the former Forestry Code of the Russian Federation, etc. Thus, there are certain environmental

violations (covered by articles 8.4, 8.25, 8.32, 8.39, and others) that cannot lead to suspension of operation, imposed by either state control authorities or courts.

The situation may be substantially improved by amending the Code of Administrative Violations of the Russian Federation through the introduction of administrative suspension of operation as the main administrative penalty for the above administrative violations.

As stated above, environmental review is aimed at preventing potential unfavorable impacts on the environment (the law defines the environment as a totality of natural environmental components and natural, natural--anthropogenic, and anthropogenic objects). While organizing public environmental review prior to or simultaneously with state environmental review, the public may use norms of both national and international law, and sometimes this results in a wider and deeper study into many questions, compared to state review. For example, public examiners should take into account that, according to article 2.9 of the Provision On Assessing the Impact of Planned Economic and Other Activities on the Environment of the Russian Federation, if planned economic and other activities may result in a transboundary impact, the study and preparation of materials on environmental impact assessment are to be with regard to provisions of the UN EEC Convention on the Environmental Impact Assessment in a Transboundary Context (Espoo 1991). This is especially topical in examining engineering deliverables of oil pipelines, terminals, and similar constructions.

For an effective use of the above possibilities by the public, it is necessary to ensure Russia's participation in international agreements on preventing transboundary pollutions of water and other objects, which implies ratifying the Convention on the Environmental Impact Assessment in a Transboundary Context (Espoo 1991) and joining the Protocol on Strategic Environmental Assessment to the Convention on the Environmental Impact Assessment in a Transboundary Context.

I.B. Bogdan

Chair of the Council of the Ekodal' Far Eastern Interregional Ecological Public Organization

ENVIRONMENTAL LAW: A RIGHT OF CITIZENS OR BUREAUCRACY?

The inability of Russia's environmental legislation to fulfill its incumbent duties of preventing environmental degradation is related not to the insufficient number of laws and lack of any specific regulations but to the conceptual inefficiency of these regulatory acts and the inefficiency of ideology on which they are created.

Detailed analysis of the key standards in the field of environmental protection reveals a paradoxical picture: except for the Law On Environmental Protection, a citizen, for whose benefit and health the whole system of environmental protection is created, is absent in them. Those laws that somehow mention the rights of citizens do not reveal their content, and the Russian citizens, in fact, have no opportunity to defend their rights directly (legal self-defense).

Any actions that a citizen may undertake in the legal field are, one way or another, related to applying to government bodies and persuading them to take action. Even reference to court is becoming increasingly difficult, since applicants have to prove their legal capacity in the issues of environmental protection. Unfortunately, on the one hand, this puts the realization of civil rights under dependence on the efficiency of administrative practices at governmental institutions, and on the other, reduces interest in the use of environmental law and trust in it.

What is happening to the environmental civil rights now? On the one hand, the current reform of federal legislation is washing constitutive dispositions out of articles. For instance, the old version of the Town Planning Code mentioned the environmental rights of citizens, while the current one does not. The new version of the Forestry Code does not specify the environmental civil rights in forestry relations either.

On the other hand, legal relations related to environmental protection are actively being «pushed» into the economic sphere. Courts now often pass judgments where the right for a favorable environment is, in fact, treated as a property right. The new Forestry Code attaches an economic value to forests, but this is a private property value, which may be put into circulation, and not a value of ecosystemic services, which every citizen has a right to have (public property).

The consequences of such a degeneration and transformation of environmental legislation into a peculiar «thing within,» unfortunately, goes far beyond common legal neglect.

A most vivid example here is the Law On Especially Protected Natural Territories (EPNT), which does not even mention civil rights. Under the current law, especially protected natural territories exist «for the purposes of preserving unique and typical natural complexes..., remarkable natural formations, objects..., studying natural processes in the biosphere, and monitoring changes in their conditions.» We may agree to the fact that all the above may be financed from the budget and may justify the existence of research institutes and administrative

Over the past years, Russia's environmental legislation has formed as law that serves mainly bureaucratic interests. A citizen as an entity of legal environmental relations is either absent whatsoever or is gradually disappearing from Russian law, as the basic laws are being revised. Government bodies and nature managers are turning into the main legal entities. Although environmental crimes violate the rights of citizens, the latter are, in fact, deprived of the opportunity to defend their interests independently, without the participation of either the procurator's office or a controlling body of the executive power.

structures. But no item on the list is related to the interests of the citizens. It turns out that the existence of EPNT is not linked with the observance of our basic right for a favorable environment, interrelations between an individual and a reserve are not regulated by environmental legislation. According to the law on EPNT, the population is only an object of «environmental upbringing.» However, real life makes its own allowances, and, finally, people adjust any bureaucratic institutions to their needs. Other ways of «appropriating» such a «thing within» as EPNT occupy a vacancy in legal environmental relations. All conflicts related to the «offense» of tourism on reserves and the «commercialization» of EPNT activities are based on a vacuum in relations between EPNT and citizens, which the relevant law has created.

Due to the above trend of bureaucratizing environmental legislation, review, certification, and standardization – all those instruments on the improvement of which specialists are pinning so great expectations, – are turning into the rules of state struggle against economic agents. Owing to administrative-technical logic, inherent in them, they are gradually but inevitably degenerating into bureaucratic «games,» in which the interests of administrative structures are dominating over the interests of society. Unfortunately, owing to their destructive nature, they still have a good potential for bribery.

For example, the actual liquidation of environmental review has aroused panic in the environmental community. However, these attitudes have not gone beyond the narrow circle of professionals and have not generated a wave of public indignation, as was the case with the Forestry Code. Informal conversations reveal that the majority of functionaries, business representatives, and citizens see the situation completely differently than the environmentalists. High-ranking government functionaries announce the «uselessness» of environmental review, since «there was not a single negative review among 1500 a year»; amounts are voiced privately that are to be paid for the positive review of an issue (usually through an «own» firm that assesses environmental impacts).

Alas, there is no way to check these statements. The Law On Environmental Review does not oblige government bodies to publish necessary statistical indices. The findings of environmental reviews are usually «confidential» for both citizens and local governments, and even for deputies and regional executive powers.

This opportunity not to make public necessary documents is due to negligence in the formulation of the Law On Environmental Review. The law says that citizens and municipal formations may request

not the opinion of environmental review itself but certain «information about its results,» which takes the work of government bodies outside the sphere of civil control. This error might be avoided if the law were consistently developed not as a description of the environmental review procedure but as a mechanism of disclosing art. 42 of the Russian Constitution about the civil right for authentic information about environmental conditions.

Thus, we may state that a basis for corruption in the sphere of environmental review is the neglect of environmental civil rights, namely, the right for environmental information.

Reluctance to see citizens as entities of environmental law is deeply rooted in the professional environmental community. For example, the overwhelming majority of experts in environmental education speak and think in terms of «imposing» environmental ideas on the «population.» The subject of environmental enlightenment and upbringing may change depending on the position of the speaker, but rhetoric remains unchanged: «the population must or ought to know...; the leaders must know...» and so on. Even the Center for Russian Environmental Policy's bulletin especially dedicated to issues of environmental education does not mention even once that citizens may have certain rights with regard to the processes of environmental education and upbringing.

Meanwhile, if we look at law in this respect, we will see intriguing opportunities. Article 58 of the Russian Constitution fixes the obligation of each one of us to preserve the environment and care for natural resources. Obviously, humans are unable to carry out this obligation if they totally lack environmental education. The latter, consequently, must be provided by the state, and the obligation will go to the citizen.

Constantly stressing the importance of moral concepts in environmental protection, specialists in this field, as a rule, ignore the necessity to acknowledge legislatively the human right to act on moral grounds. Practical experience shows that humans who try to protect the environment on moral grounds (the protection of trees grown by people in cities, zooprotection, protests against landscape destruction, etc.) are very many (and this may be viewed as a proof of the efficiency of the system of environmental education and upbringing). But they have no legal instruments for such activities.

A vivid criterion is inability to receive moral damage for damaging the environment if you rely on Russian law and act within the framework of the currently applicable legal practices. Even to

prove the fact that individuals may suffer from the destruction of the natural environment outside their property (an apartment, dacha, house) would require, at present, expert and administrative support so strong that it becomes an unattainable task for individuals.

Therefore, it turns out that society does not need environmental legislation (except for a narrow circle of specialists); it is not in demand, in fact. Although law itself is becoming increasingly in demand by society in different spheres. If, at this sharp turn, we are unable to propose anything except environmental propaganda and 20-year old appeals, environmental law itself may disappear altogether, being absorbed, for instance, by natural-resources law and civil law.

In my opinion, the main trend in the development of environmental law must be the return of the human being and citizen as a legal entity. Not as a helpless child, who is the object of parental care but as an independent legal entity. Here, serious efforts are needed from the expert community, because at present this concept has not been worked out so well as to be proposed for practical implementation.

For example, lawyers can say almost nothing about what the «right for a favorable environment» is and what obligatory consequences it entails. What does it mean, for example, in relations between a citizen and especially protected natural territories, city forests, or any other natural objects, their managers, and regulators? What is «a favorable environment»? How far does it stretch? Does this notion include only the conditions of my existence, or also ecosystemic services consumed by me, or anything else?

We cannot say that there are no answers to these questions at all, but the condition of public discussion is far from suggesting them as the basis for normative regulation.

However, since the goal of public hearings on issues of environmental legislation, organized by the Public Chamber's Commission for Environmental Security and Protection, is in formulating a set of recommendations, then, perhaps, the most important one is the necessity to organize a legal review of draft normative acts in terms of how they realize article 42 of the Russian Constitution and reveal environmental civil rights.

We must draw the Federal Assembly's attention to the necessity of the earliest development of the law on state review, since now all the functions of environmental review are being transferred to single state review. Unfortunately, while we have a law on environmental review, which regulates many important legal issues that guarantee citizens their rights, in particular, the status of an opinion, the

ability to appeal it, etc., there is no such law on state review. Consequently, civil rights for information access and participation in decision making cannot be practically implemented due to the lack of procedures and finances for government bodies.

Unfortunately, we must admit that changes in environmental legislation, which we witness, reflect the public opinion.

Therefore, we must pay attention to the necessity of restoring the status of a citizen as an entity of environmental law who enjoys full rights. It is necessary to stress constantly and in all documents that citizens have environmental rights and not just use them as extras who say what was imposed on them.

We should request the Public Chamber to develop a procedure for draft normative acts, review draft laws under development, and monitor the current laws and applicable legal practices in terms of the above concept: making a citizen an agent of environmental policy.

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ACCESS TO VITAL NATURAL RESOURCES IS A CONSTITUTIONAL RIGHT OF EVERY PERSON

Forests are a crucial natural resource for human life, comparable only with water. Forests all over the world are viewed as the basis for the well-being of people and a guarantee of state prosperity and sovereignty.

Foreign experience shows that the priority of social and public interests and the protection of state interests are the basis for the regulation of forestry relations. In the United States and Canada, the concept of forestry relations is based on the preservation of the forestry fund in federal public ownership and the use of forests in the interests of society and the citizens of the country. In Canada, 96% of forestland is publicly owned. The United States has been buying out private forests into federal ownership for many years. Both countries have officially restricted forestland lease to and privatization by foreign citizens and legal entities.

The resolution of the Russian Constitutional Court of January 9, 1998, defines the legal status of the forestry fund as a public domain of the multinational people of Russia. The forestry fund is public property.

In recent years, a silent legal reform, aimed at the requisition of natural resources from the state and society and their privatization by Russian, foreign, and transnational corporations, has been conducted consistently and systemically in Russia.

The new Forestry Code, which has been effective since January 1, 2007, in a sophisticated and covert form creates legal mechanisms of forestland privatization, even by foreign citizens, stateless persons, and foreign companies, and this has established a real threat to Russia's sovereignty. The Forestry Code contains a secret and well-designed system of legal norms that make it possible to privatize forests in a short period and quite legally.

Article 71 of the Forestry Code rules that a forestland lease contract should have the same terms and conditions as a regular property lease contract, envisaged by the Russian Civil Code.

Article 624 of the Russian Civil Code allows the lessee to privatize leased property, when the lease period expires or before its expiration provided the lessee pays the buyout price, stipulated in the contract. If the lease contract does not envisage the buyout of leased property, it may be established by an additional agreement between the parties, which have a right to agree on charging the previously paid lease payments off the buyout price.

Article 607 of the Russian Civil Code envisages special conditions for leasing land and natural objects, which allow introducing a ban on forestland buyout. Article 624 of the Russian Civil Code contains a direct norm that makes it possible to ban the buyout of leased property. The Russian Constitution, which gives the same rights to foreigners and stateless persons as to the Russian citizens, allows establishing limitations to their rights by federal laws. However, these provisions of Russian legislation were not employed to protect

The adopted Forestry Code creates a scheme for the secret privatization and sale of forests through buying out leased forestlands. Simultaneously with the Forestry Code, the Water Code was adopted, which turned bodies of water into property and included them into civil circulation. Leased bodies of water may be bought out and privatized. Changes in the Civil and Land codes turned all bodies of water into integral parts of land estate. The owner's title to land covers all bodies of water within its limits. The size of land estates leased or privatized is not limited by the Forestry or Land codes. The Water Code does not contain limitations for the size of bodies of water leased or privatized either.

the rights of citizens and the state for forests as a national treasure.

The demands of thousands of appeals from the Civil Movement Russia's Land Is People's Treasure, the appeals of 104 deputies and scientists to ban forestland buyouts and to assign the forestry fund the status of a public domain of the Russian people, to ban the private ownership of forests and to ban the title to forestland for foreign citizens and stateless persons were not heard. The adopted Forestry Code creates a scheme for secret privatizations and sales of forests through leased forestland buyouts. Simultaneously with the Forest Code, the Water Code was adopted, which turned bodies of water into property and included them in civil circulation. Leased bodies of water may be bought out and privatized. Changes in the Civil and Land codes have turned all water objects into integral parts of land estate. The landowner's title to land covers all bodies of water within its limits. The size of land estates that can be leased or privatized is not limited by the Forestry and Land codes. The Water Code does not contain limitations for the sizes of water objects to be leased or privatized either.

The introduction of the private ownership of forestland has also determined the condition of the Russian citizens. The principle of paid forest use was fixed for all without exception. Banning and limiting mechanisms were created for citizens with regard to their staying in woods and gathering and procuring food and other nonwood forest products.

Article 11 formally declares the right of citizens for the free and gratis staying in woods and gathering of wild fruit, berries, nuts, mushrooms, and other food and nonwood forest resources. However, this provision is, in fact, made null and void by a number of limitations and bans. The grounds for limitations are so indefinite and broad that can be introduced arbitrarily by owners, lessees, and authorities.

The staying of citizens in woods can be banned or limited «on defense and security lands, on especially protected natural territories, and on other lands to which the access of citizens is banned or limited by federal laws.» What do such indefinite formulations mean for the citizens? What for are they?

According to the Land and Civil codes, «other lands» include leased and private lands that are used by their owners at their discretion and by lessees according to the terms of lease contracts.

The Land Code and the Civil Code are those «federal laws» that give grounds for banning citizens from accessing woods. The legal regime of private and leased lands does not envisage free and gratis access of citizens to forestland. The Civil, Land, and Forestry codes safely protect the rights of land owners and lessees and do not oblige them to

let citizens to their lands for free staying and gratis gathering of forest products.

Authorities are not obliged to ensure the citizens' right for free and gratis access to private and leased forests, to say nothing of gathering and procuring forest products.

The complex execution of the provisions of the Forestry, Land, and Civil codes in certain cases and in cases of any «other legislation» make it impossible for the citizens to realize the right, formally declared in p. 1 of article 11, to stay gratis in woods and gather mushrooms, berries, nuts, and other forest products.

The paid use of forests is introduced for farming, which is an unprecedented violation of the constitutional rights of citizens. The Forestry Code does not guarantee the rights of citizens for gratis haying, cattle pasturing, and other agricultural activities. Article 38 introduces payments in a veiled form for all types of farming through obscure formulations, references to the Civil and Land codes, and concealments. The provision on the ability to farm only on allocated lands is aimed to liquidate individual farms and destroy the backyard farms of the inhabitants of small towns, settlements, and villages.

Even in scarcely populated regions, it seems difficult to allocate forestland for each family. Moreover, the Russian tradition is based on the collective and communal use of forests and lands. Therefore, the buyout of the right for forest use and the fencing off of separate plots within forest tracts and bans on access to forest cropping places for the rural and urban population will be a basis for conflicts and social tensions. The material conditions of the overwhelming majority of rural inhabitants are so miserable that they will not be able to buyout the right for forest use. The absurdity and lack of vitality of this system of forest use is obvious.

Native minorities are put on the verge of physical destruction. The Forestry Code grossly violates the constitutional rights of this least protected category of the Russian population. This law:

- lacks the constitutional obligations of the state to ensure and protect the native habitat and rights of native minorities for traditional lifestyles;
- lacks the provisions on attaching to native minorities their territories and traditional nature management;
- lacks guarantees for native minorities to participate in making decisions that affect their right for forest use and their native territories;
- creates opportunities to privatize and lease the territories of native minorities; and
- lacks guarantees for native minorities to use for free and gratis the forests of their habitats.

In violation of commonly adopted international norms, the Forestry Code does not provide native minorities with an opportunity to attach forestland to them. Instead, a legal framework is created to privatize or lease the territories of native minorities by and to practically any individual or legal entity, including foreigners, stateless persons, and foreign companies. Native minorities are viewed as a «gratis addition» to the lands where they live. A situation is created deliberately where native minorities may, in fact, be «handed over» by the owner or lessee together with the land. Neither the Forestry Code nor other legislations oblige forestland owners and lessees to ensure the rights of native minorities for the free and gratis use of forests. Articles 81, 82, and 83, which define the authorities of the federal and regional powers and local governments, do not include the constitutional obligations to protect the habitation territories and rights of native minorities for their traditional lifestyles.

The Forestry and Water codes affect the rights and interests of all Russian citizens. The adoption of these socially crucial laws is inadmissible without nation-wide discussions. The Russian Constitution considers human rights and freedoms the highest value of the state. Under article 3, the people are the only source of power, and they execute their power directly. Article 32 guarantees the citizens the rights to participate in the management of state affairs both directly and through their representatives. The nation-wide discussion of laws is the implementation of the constitutional right of the citizens to take part in managing state affairs. The Civil Movement Russia's Land Is People's Treasure sent more than 20 000 appeals on the nation-wide discussion of the Forestry Code and on the preservation of the state ownership of forestland to the Russian government, Russian president, and State Duma. However, the powers that be ignored the opinion of the people, and the anticonstitutional laws were passed.

Attempting to defend their right to participate in adopting socially crucial laws, the citizens applied to the court, appealing the decline of the Russian government to publish the Forestry Code and organize the nation-wide discussion of the draft Forestry Code. The appeal is based on constitutional norms that guarantee the rights of citizens to take part in managing state affairs (arts. 2, 3, 32). The court in its judgment not only declared null and void the basic provisions of the Russian Constitution but also distorted the very spirit, meaning, and content of the main state law.

Extracts from the judgment by the Presnya District Court of April 4, 2006:

«The right for a legislative initiative, granted to the Russian government, is not conditioned by a preliminary nation-wide discussion of the introduced

draft law, as well as not to be based on a concept approved by the majority of the Russian citizens.»

«The interpretation of arts. 3 and 32 of the Russian Constitution and the above norms in their systemic interrelation indicate for certain that the citizens and public organizations do not have a right to determine the content of a draft law introduced by the Russian government to the State Duma, as well as a right to influence in any way the discussion and adoption of this law.»

Only positive legal actions of the public can stop the implementation of the anticonstitutional laws - the Water and Forestry codes - which make it possible to sell forests and bodies of water as regular property. Both laws need conceptual changes. It is necessary to introduce provisions that fix the legal status of the forestry fund and bodies of water as public treasures of the Russian people. It is necessary to fix the civil right for free and gratis access to water and forest resources as an inseparable human right, which belongs to every one by birth. The rights of native minorities for the free and gratis use of forests and water in their habitats must be fixed. To protect the rights of this category of the population, the Forestry Code must include provisions on the creation of territories of traditional nature management.

The Public Chamber is obliged to promote dialogue between society and the power and ensure the implementation of the constitutional right of the Russian citizens to participate in managing state affairs by the publication and nation-wide discussion of socially crucial draft laws. These rights are guaranteed by articles 2, 3, 7, 9, 15, 18, 24, and 32 of the Russian Constitution, by the Federal Constitutional Law On the Government of the Russian Federation, and by the Regulations of the State Duma of the Russian federation.

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