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Environmental legislation of the Russian Federation and the EU

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Abstract

Environmental problems are the global problems of mankind. The urgency of this issue is emphasized by all governments. Environmental standards are an important means of preserving the natural environment, well-being and security of a human being. The article examines the legislative recognition of environmental rules in Russia and abroad. The author studies the problems of the system and the structure of environmental legislation, the problem of codification of environmental law, gives suggestions on improving the legislation of the Russian Federation in the field of environmental protection, natural resource management and environmental safety, analyzes the feasibility of codification of environmental law in Russia. The questions of EU environmental legislation, main legislative acts in the field of environmental legislation of the Member States of the European Union and the Environmental Code of France shall be regarded as well.

Keywords

Environmental Code, environmental mechanisms, environmental legislation, environmental safety, mineral resources, soil, conservation areas.

Introduction

Human being is an inseparable part of nature. Human well-being is inseparable from the well-being of the environment. Whether we like it or not, but a man has been and still is a part of nature. Uncontrolled strengthening of

anthropogenic stress on the environment will cause significant economic and social losses. Quick pace of industrial development through the uncontrolled consumption of natural resources in the 20th century set humanity a limit in their demands for the environment. Due to various circumstances, environmental problems have attracted public attention in Europe earlier than in Russia. By the mid-twentieth century, it became clear that environmental crisis can only be avoided by centrally integrated changing not only the technological tools, but also public institutions, social values and laws. The main objective is to minimize the impact on the environment and its restoration may only be realized by setting strict standards for all types of emissions and the use of significant responsibility measures against violators, coupled with significant economic incentives for the use of resource-saving and environmentally friendly technologies.

Undoubtedly, environmental mechanisms and instruments for each country are chosen based on the features of the economy, industry, national mentality. Several states, in line with trends of the historical development of the legal system, have opted for the codification of environmental law, such as France, Sweden, Colombia, Kazakhstan, and in Russia – the Republic of Bashkortostan. On November 16, 2006 by the resolution of the Interparliamentary Assembly of the CIS Member Nations No. 27-8 was approved the model Environmental Code for CIS Member Nations[1]. A number of

1 "On the new version of the model law "On Environmental Safety": the Resolution of the Interparliamentary Assembly of the CIS Member States on November 15, 2003 No. 22-18" ["O novoi redaktsii model'nogo zakona "Ob ekologicheskoi bezopasnosti": Postanovlenie Mezhparlamentskoi Assamblei gosudarstv – uchastnikov Sodruzhestva Nezavisimykh Gosudarstv ot 15 noyabrya 2003 g. No. 22-18"], available at: www.busel.org/texts/cat9ad/id5fweenb.htm; "On the new version of the model law "On Environmental Insurance": the Resolution of the Interparliamentary Assembly of the CIS Member States on November 15, 2003 No. 22-19 ["O novoi redaktsii model'nogo zakona "Ob ekologicheskom strakhovanii": Postanovlenie Mezhparlamentskoi Assamblei gosudarstv – uchastnikov Sodruzhestva Nezavisimykh Gosudarstv ot 15 noyabrya 2003 g. No. 22-19"], available at: www.busel.org/texts/cat9ad/id5fweene.htm; "On the model law on "Access to environmental information": the Resolution of the Interparliamentary Assembly of the CIS Member States on December 6, 1997 No. 10-7" ["O model'nom zakone "O dostupe k ekologicheskoi informatsii": Postanovlenie Mezhparlamentskoi Assamblei gosudarstv uchastnikov Sodruzhestva Nezavisimykh Gosudarstv ot 6 dekabrya 1997 g. No. 10-7"], *Informatsionnyi byulleten' Mezhparlamentskoi Assamblei SNG*, 1998, No. 16, pp. 130-140; "On the model law in the Commonwealth of Independent States: the Resolution of the Interparliamentary

states followed the way of the adoption of special laws regulating fundamental areas of human impact on the environment (Germany, Norway, Spain).

EU environmental legislation

European countries are focused on the environmental legislation when it comes to environmental safety. The preamble to the EU's 6th Environmental Action Programme points out that the legislation is central core to the solution of environmental problems, and full and proper implementation of the existing legislation is a priority. It is important to note that the European environmental legislation is aimed primarily at the protection of the environment throughout its biodiversity, water and soil. (Article 2. Directive 2004/35/EG "On environmental responsibility for the prevention and remediation of environmental damage") (Richtlinie 2004/35/EG des Europäischen Parlaments und des Rates vom 21. April 2004 über Umwelt Haftung zur Vermeidung und Sanierung von Umweltschäden)[2]. Further, the environment is meant not only the land, climate, water, air, flora and fauna in their interaction, but also man-made environment, i.e. the quality of life and conditions that ensure a well-being and health.

Principles common to all EU Member States can be brought into the following basic provisions:

Given the global nature of environmental problems, their similarities to European countries, we need to harmonize measures for pollution control, consistent position on the international arena. In connection with the above, the Amsterdam Treaty (The Treaties establishing the European Communities and certain related acts 1997) contains next legal principles of environmental policy:

– Operation of countries should be aimed at preventing damage to the environment. Therefore, when evaluating the desirability of a decision the assessment of possible damage to the environment should be taken in the first place.

– In its actions the EU should follow a reasonable precaution. Even the existence of an abstract possibility of violation of ecological balance must

Assembly of the CIS Member States on April 14, 2005 No. 25-8" ["O model'nom zakonotvorchestve v Sodruzhestve Nezavisimykh Gosudarstv: Postanovlenie Mezhparlamentskoi Assamblei gosudarstv – uchastnikov Sodruzhestva Nezavisimykh Gosudarstv ot 14 aprelya 2005 g. No. 25-8"], available at: www.busel.org/texts/cat3ae/id5rwbend.htm

2 "European Parliament", available at: www.europarl.europa.eu

necessarily include the measures of prevention and elimination of pollution.

– Optimization of harm to the environment. In case of impossibility of economic and industrial development without prejudice to the nature, it is necessary to minimize the damage and to take all possible measures for its speedy removal.

– Tortfeasor is covering the costs in full, regardless of the degree of guilt.

The EU's 6th Environmental Action Programme was approved by the Decision of the European Parliament and the Council 1600/2002/ES number on July 22, 2002. Objects of the priority protection declared: climate change, nature and biodiversity, environment, health, quality of life, natural resources and waste management. (Official Journal of the European Union, 10.09.2002.). This program defines overall goals, objectives and principles of the environmental performance of the EU for the next 10 years[3].

To address issues affecting the environment the European Environment Agency (the European Environment Agency (EEA)) was created by the Regulation 1210/90 in 1993. According to this Regulation the Agency shall monitor the application of environmental legislation of the Union, develop environmental standards. Being aware that environmental problems are often transboundary, the Article 19 of the Regulation gives the right to participate in Agency operations to countries that are not EU members.

Environmental Code of France

Considering the environmental legislation of European countries, we must consider the environmental legislation of France. About 40 years of consistent system state approach to environmental issues led to the unconditional recognition of the authority of this country's environmental field.

The first environmental legal act is the law of 2 May 1930 on the protection of natural monuments (La loi sur la protection des monuments naturels). Given the consumer attitude to nature, in order to prevent uncontrolled waste of natural resources in the 80's and 90's of the 20th century adopted: the Law on 10 July 1976 on the Protection of Nature (La loi sur la protection de la nature), the Mountain Law (1985 la loi Montagne), the Law on the waterfront (1986) (La loi Littoral), the Law of the landscape (1993) (La loi Paysage) and the Law on

3 Bourg, D., Boy, D. (2005), *Conférence de citoyens, mode d'emploi*, Charles Léopold Mayer, Paris, 110 p.

Environmental Protection (1995) (La loi sur le renforcement de la protection de l'environnement). In addition, environmental regulations are introduced separately in the Forestry, Urban Development, Agricultural Codes (Le code de l'urbanisme, Le code forestier, Le code rural) etc. Also environmental regulations were met in numerous international treaties and agreements that have been signed by France. Thus, long-term environmental legislation in France consists of many different kinds of regulations in some way addressing to the protection of the environment.

However, contradictory and gaps demanded comprehensive solution to the problem of environmental legislation. Therefore on September, 18 2000 was issued the Ordinance 2000-914 on the adoption of the Environmental Code, Code de l'Environnement (Ordonnance № 2000-914 du 18 septembre 2000 a relative la partie Legislative du code de l'environnement, JO N 219 du 21 septembre 2000 page 14792). Adoption of the code allowed systematizing environmental standards and simplifying the application of the law. The Environmental Code consists of seven books. The first, General Provisions (Dispositions communes), establishes general provisions and principles of environmental law, basic economic principles of environmental management. The second book Physical environment (Milieux physiques) is dedicated to the regulation of air and water resources. The third – Natural territories (Espaces naturels). The fourth – Fauna and Flora (Faune et flore). Pollution prevention, assessment risk assessment, compensation of losses (Prévention des pollutions, des risques, et des nuisances) – the fifth book. Taking into account a special status of the overseas territories of France, the sixth book includes provisions involving environmental standards applicable in New Caledonia, French Polynesia, Wallis and Futuna, Southern and Antarctic French Lands and Mayotte. Protection of the Antarctic environment (Protection de l'environnement en Antarctique) is set in the final book of the Environmental Code[4].

It should be noted a significant role of the public in the preservation of ecological balance, which is established by the Environmental Code of France. In accordance with the Articles L.121-L .121-1 to R.121-15 and R.121-1 – 16 of the Environmental Code, all projects of industrial or urban development, which have an impact on the environment and the land, must get through the public dis-

4 "Commission nationale du débat public", available at: www.debatpublic.fr

cussion. In addition, panel discussions can be held on general matters of the environmental conditions.

To ensure compliance with these rules created an independent administrative body – the National Commission for Public Debate, (La Commission nationale du débat public (CNDP)). The National Commission for Public Debate is an independent administrative body responsible for ensuring compliance with public participation in development or capital projects, interest on the national category of operations, which list is established by the decree in Conseil d'Etat, as it decides on important socio-economic issues or has significant effects on the environment or land. The procedure for the hearing is governed by the Decree of October 22, 2002 "On the order of public hearing" (Décret n° 2002-1275 du 22 octobre 2002 relatif à l'organisation du débat public). Public involvement is an important element of participation in environmental protection. According to the CNDP thousands of public hearings are held annually in various fields. Consensus conference is another form of participation of the public under the laws of France. It gives an opportunity for citizens to openly discuss with experts, politicians, business representatives and interested persons on scientific and technical issues on which pose a disagreement and uncertainty. On average, the conference lasts for 4-5 days, according to its results the report accounted for in the future is being made. For example, in 1998 was held the conference "GMOs in agriculture and food industry". The organizer was the Parliamentary Office for Scientific and Technological Assessment (OPECST) (l'office parlementaire des choix scientifiques et technologiques (OPECST); in 2002 has been held the Conference on Climate Change by the French Commission on Sustainable Development (Commission française du développement durable);in 2003 – the Conference on domestic sewage treatment, organized as part of national debate on water. (Débat national sur l'eau)[5]. According to the provisions of the Environment Charter (La Charte de l'environnement), everyone must do their utmost to preserve and improve the environment. Undoubtedly, consolidation of provisions of the Code providing guarantees for public participation in environmental protection can move from declarative statements to actions.

5 Débat national de l'eau (Bassin Hydraulique du Tensift), 2006. Available at: http://smap.ew.eea.europa.eu/fol112686/fol497757/fol657282/fol351524/debat_abht.pdf/

Thuswise, due to the codification of environmental regulations the shortcomings of the old legal structures were removed, canceled inactive or insufficiently effective standards, environmental standards have been brought in line with those of other areas of law. Reducing the number of blanket rules allowed simplifying the application of environmental law.

Russian law on environmental protection

The study of European environmental legislation raises a question: how feasible is the reform and codification of environmental law in Russia?

Sure, now the Russian legislation in the sphere of environmental protection has lacked a coherent and systematic approach to regulatory control of environmental relations. Adoption of the Environmental Code as a single legal act could provide consistence of environmental legal norms. Contradictions and dual interpretation, interbranch conflicts of law currently in legislation not only hinder the development of the economy, but also create the conditions for environmental degradation in the country. Lack of an integrated approach to the development of ecological relationships without regard to civil, administrative law creates confusion in the Russian legal system and creates legal nihilism within citizens.

The Federal Law on 10 January 2002 "On Environmental Protection" has been a significant step in the legal regulation of environmental relations for that period. However, the solving of systemic approach problem of environmental legislation still failed. In addition, the presence of a large number of rules entitles the authorities to regulate one or another legal relationship itself, providing ample opportunities for abuse. Fragmentation of legal norms leads to the fact that the same legal relationship is governed by several legislative instruments. For instance, the conservation areas. Legal regulation is contained in the Federal Law "On Environmental Protection", the Federal Law on March 14, 1995 No. 33-FZ "On specially protected natural areas", the Land Code of the Russian Federation, the Forestry Code of the Russian Federation, the Water Code of the Russian Federation, the Federal Law "On the animal world". In addition, these areas may be of federal, regional or local significance. The federal are being federal property and come under the jurisdiction of the federal au-

thorities, with the exception of lands, which are located within the resorts of federal importance and transferred to the ownership of the Russian Federation subjects or municipal ownership. To regional significance belong owned entities of the Russian Federation that come under the jurisdiction of the state authorities of the Russian Federation. To local significance belong municipal property that come under the jurisdiction of local authorities. All this increases the number of acts regulating the legal status and the use of protected areas and thus adds misunderstanding. At the same time, a number of concepts that require regulatory consolidation has not been set yet. For instance, the concept of "soil". This natural object is an important part of the environment, the basis of human existence. There are many scientific definitions of the soil. For example, the soil is a surface layer of the Earth's crust, formed under the combined influence of natural factors and has a special feature – fertility, i.e. the ability to secure plants with necessary amount of nutrients, which determines its value for agriculture and forestry[6]. V.I. Vernadsky believed poetically that the soil is a noble rust of the earth...[7]

Russian legislation repeatedly uses the term "soil", although there is no legal definition of the concept of "soil". The concept of subsoil is tied to the concept of soil layer. "Subsoil is a part of the Earth's crust below the soil, and in its absence – below the earth's surface and the bottom of ponds and streams, extending to depths accessible for exploration and development" (the Law of the Russian Federation on February 21, 1992 N 2395 – I). The Article 8.7 of the Administrative Offences Code of the Russian Federation establishes an administrative liability for breach of duty on land reclamation, mandatory measures for land improvement and soil protection. The Article 62 of the Federal Law "On Environmental Protection" declares the protection of rare and endangered soils. Moscow Code of Administrative Violations within its Article 4.48 provides an administrative liability for violations of the protection and management of urban soils. The lack of legislative consolidation of the definition "soil" leads to conceptual confusion, uncertainty of legal norms,

6 Degtyarev, I.V. Osipov, L.I. (1986), *Land law and land cadastre* [*Zemel'noe pravo i zemel'nyi kadastr*], Yurid . lit., Moscow, 240 p.

7 Vernadskii, V.I. (2012), *Biosphere and noosphere* [*Biosfera i noosfera*], Airis-press, Moscow, 576 p.

which constructions contain this term, making it difficult to use legal acts in practice.

However, in author's opinion, the main drawback of the Russian legislation is the lack of legal consolidation of systemic economic approach to environmental management. It must be noted that there is currently no effective economic incentives for the use of environmental business practices and environmentally responsible behavior of citizens. Existing legal mechanisms are fiscally punitive and do not provide the balance of public and private interests. Meanwhile, as has been noted, the only balanced ecological-economic mechanism of nature management, combining economic interest, administrative promotion of positive environmental behavior and comprehensive responsibility for the permitted violations could create an effective system of interaction with the environment.

Conslusion

It must be recognized at this stage that a current Russian legislation cannot provide the full rights of Russian citizens to a healthy environment, does not solve the already existing environmental problems and prevent new ones. Reform of the law on protection of the environment is a must. Systematic, integrated approach to the legislative strengthening of environmental standards should facilitate the development of new environmentally friendly modes of production, promote the growth of legal consciousness of citizens, ensure the improvement of civil control methods of environmental relations, encourage the reduction of a negative impacts on the environment and help to overcome the existing problems.

The large number of common declarative rules does not provide adequate protection of public and state environmental interests. The absence of an effective mechanism for the implementation of these standards is to protect the environment only on paper.

In order to avoid legal uncertainty and dual interpretation of the law it is required to consolidate at legislative level the conceptual framework in the field of environmental law.

The legal consolidation of system economic approach to environmental issues is a significant operation. This approach must combine not only severe and enforceable penalties for habitual negligence to the environment but also encourage prudent environmental behavior.

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Экологическое законодательство Российской Федерации и ЕС

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Аннотация

В статье рассматриваются вопросы законодательного закрепления экологических норм в России и зарубежных странах. Автором исследуются проблемы системы и структуры экологического законодательства, проблемы кодификации природоохранного законодательства, формулируются предложения по совершенствованию законодательства Российской Федерации в области охраны окружающей среды, рационального использования природных ресурсов и обеспечения экологической безопасности.

Ключевые слова

Экологический кодекс, природоохранные механизмы, экологическое законодательство, экологическая безопасность, недра, почва, природоохранные территории.

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