

UDC 340.5

Modernization of Russian environmental legislation within the context of the experience of the People's Republic of China

Anisimov Aleksei Pavlovich

Full Doctor of Law,
professor of the department of civil law and procedure,
Volgograd Institute of Business,
P.O. Box 400010, Kachintsev str., No. 63, Volgograd, Russia;
e-mail: anisimovap@mail.ru

Ryzhenkov Anatolii Yakovlevich

Full Doctor of Law,
professor of the department of civil law and procedure,
Volgograd Institute of Business,
P.O. Box 400010, Kachintsev str., No. 63, Volgograd, Russia;
e-mail: kafedra.gpp.vib@mail.ru

Abstract

The subject of this paper is to conduct a comparative legal analysis of environmental legislation of the Russian Federation and the People's Republic of China. The research is focused on finding ways to upgrade the environmental legislation of both countries. As results of the study authors found that the experience of the People's Republic of China is of interest to Russian lawmakers in at least the following areas: in terms of increasing the powers of the local environmental authorities, wider use of mediation procedures in the consideration of environmental disputes, increasing the responsibility of public authorities at all levels and local authorities for the quality of the environment on their terri-

tory (Russian Federation in general, the subject of the Russian Federation, the municipality); to establish the rules that income derived from fines collected for excess discharge of contaminative waste should be used for the prevention and control of pollution and should not be used for other purposes. For the time being all received environmental payments in Russia do not accumulate for the solution of environmental problems, and "fuse" in income and expenditure of the budget.

The purpose of the article is to generalize the experience of the environmental protection of two countries with the development of recommendations for the improvement of Russian environmental legislation.

Authors in the study used a comparative legal research method. Field of application of the results – lawmaking, further research and educational process. As part of the study authors identified a number of areas of cooperation between two countries conditioned by the globalization, including the area of reducing the impact of genetically modified products on human body, nanotechnology and nanomaterials, damage from space programs and nuclear power plants, as well as sharp deterioration of the environmental situation in certain regions.

Keywords

Environment, natural resources, pollution, regulation, supervision, environmental disaster zone, reserve, quality of life, desertification, biological diversity.

Introduction

Russia and China have a long history of difficult relationships within unions and conflicts. Today the era of globalization dictate new challenges that our countries cannot solve alone. One such problem is the cooperation in the field of environmental protection, which is insensible to national boundaries.

In this direction, Russia and China have already made several steps towards each other. As such, for instance, it should be noted the Agreement between the Governments of Russia and China on the rational use and protection of trans-boundary waters (January, 29 2008). On November 12, 2008 was signed the Memorandum between the Ministry of Natural Resources and Environment of

the Russian Federation and the Ministry of Environmental Protection of China to establish a notification and exchange of information mechanism in cross-border situations of environmental character. It also stands to mention the creation of specially protected natural reservations. Thus, by the Agreement between the Government of the Russian Federation and the Government of the People's Republic of China on April 26, 1996 was created international reserve on the Khanka Lake. It consists of the Khankai-sky State Nature Reserve (Primorsky Krai) and the "Hanka Lake" reserve (Heilongjiang Province).

Continuation of such cooperation requires serious study of Russian and Chinese environmental legislation in order to use a positive law-making and law enforcement experience, and to develop joint environmental policy.

Comparative analysis

1) Environmental requirements are present both in the PRC Constitution and in the Constitution of the Russian Federation. The Constitution of the People's Republic of China of 1982 states (Article 9) that the State shall take measures to protect and improve the environment, working to combat pollution

and other social evils. The State guarantees the rational use of natural resources, takes under its guard valuable species of animals and plants. No organization or individual is permitted by any means to appropriate or destroy natural resources.

In turn, the 1993 Constitution of the Russian Federation contains a more detailed definition of environmental rights and responsibilities. According to Article 42 of the Constitution everyone has the right to a favorable environment, reliable information about its condition and compensation for damage caused to his health or property by ecological violations. The term "everyone" in the Russian science of constitutional law is defined as any person (Russian citizen, stateless person, foreign citizen) located in the territory of the Russian Federation. The Article 58 of the Russian Constitution states on the legal responsibilities as well: to preserve nature and the environment and care for natural resources.

2) The scientific and legal comparison of core environmental laws of Russia and China is of the greatest interest. But before we comment a number of considerations on them, we draw attention to an important doctrinal point. In environmental law of the Russian science for several decades there has been a dispute between supporters of

the "broad" and "narrow" understanding of the subject of environmental law. Proponents of the "broad" approach believe that an environmental law as a branch of law includes a nature resources law (land, water, mining, forestry, faunal and air) and environmental law (includes rules on the management of the environment, responsibility for environmental offences, features of environmental protection in certain spheres of human activity or specially protected areas, etc.).

At that supporters of the "broad" approach offer the Environmental Code, which includes standards both natural resources and environmental law. Finally, they believe that environmental law regulates the ownership of natural resources¹.

Replying to them, supporters of a "narrow" approach to the understanding of environmental law say that the land, water, mining and other industries of natural resources law are of individual character, in spite of the close relationship with the issues of the environmental protection. Just as they have a close connection with civil, administrative, criminal, and other branches of the law,

which does not, however, permit to mix them and declare a sole branch of the law.

Consequently, according to this school of thought, a project of the Environmental Code should not include thousands of articles governing the ownership of natural resources (as well as licensing, assignment for use, etc.), but only a few dozen of articles regulating directly the environmental issues. A land, water, forestry and other relationships for the use and protection of natural resources shall be governed by the laws of the natural resources legislation.

That is the position now occupied by Russian lawmaker, who built the Federal Law on 10 January 2002 "On Environmental Protection"² by a "narrow" model. The study of the PRC Law "On Environmental Protection" on 26 December 1989³ shows that the Chinese legislator also adheres to the concept of

1 Brinchuk, M.M., "Environmental law: textbook" ["*Ekologicheskoe pravo: uchebnik*"], available at: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=CMB;n=16371>

2 "Federal Law "On Environmental Protection" on January 10, 2002" ["*Federal'nyi zakon "Ob okhrane okruzhayushchei sredy" ot 10 yanvarya 2002 g.*"], *Sobranie zakonodatel'stva RF*, 2002, No. 2, Art. 133.

3 "The Law of the People's Republic of China "On Environmental Protection" on December 26, 1989" ["*Zakon KNR "Ob okhrane okruzhayushchei sredy" ot 26 dekabrya 1989 g.*"], available at: www.asia-business.ru/law/law2/resources/environment/

a "narrow" understanding of the scope of the environmental law. As in Russia, where act the Forestry Code, the Water Code, the RF Law "On Subsoil" and other natural resources laws, PRC adopted the Forestry Code of the PRC⁴, the PRC Law on mineral resources⁵, etc.

3) While comparing standards of environmental laws in Russia and China you can find a number of common and distinct concepts, rules and procedures.

a) When comparing the terminological variety of two major environmental laws of Russia and China, one can conclude that in the PRC (Article 2 of the Law of the People's Republic of China "On Environmental Protection") the term "environment" refers to all natural elements and artificially modified natural elements that influence on human life, including atmosphere, water, sea, land, minerals, forests, grasslands, wildlife, traces of man and nature, nature re-

serves, historical and natural attractions, urban and rural areas.

In Russia, we see the same essential terminological approach. In the Article 1 of the Federal Law on 10 January 2002 "On Environmental Protection" under the term "environment" "stands a set of components of the environment, natural and natural-anthropogenic objects, as well as man-made objects", and, for instance, the term "natural-anthropogenic object" is defined as a natural object that changed as a result of economic and other activities, and (or) object created by man, with the properties of natural objects and having recreational and protective value.

It follows that the understanding of the environment as a combination of natural and man-modified ecosystems are generally the same. However, there are some differences in the understanding of subject matter. In China, they are understood including grasslands or traces of human activity. In Russia such terms are not used, but soils along with the land allocated as the object of protection. In addition, in Russia the objects of environmental protection more widely represented in relation to the present day, due to different dates of adoption of the analyzed laws. Then it should be considered a successful reference in the Russian law

4 "Forestry Code of the People's Republic of China. Chapter VII. Additional provisions" ["Lesnoi kodeks KNR. Glava VII. Dopolnitel'nye polozheniya"], available at: www.chinalawinfo.ru/economic_law/law_forestry/law_forestry_ch7

5 "The Law of the People's Republic of China on mineral resources" ["Zakon Kitaiskoi Narodnoi Respubliki o mineral'nykh resursakh"], available at: www.rs-tran.ru/index.php?id=135

of the ozone layer and near-Earth space as objects of protection.

Selection of the best environmental technologies

In the terminological unit we should also highlight the question of the best available environmental technologies. In Russia the best available technology – a technology based on the latest achievements of science and technology aimed at reducing the negative impact on the environment and a time-bound practical application with regard to economic and social factors. In China, there is no similar term, but the Article 25 of the PRC Law contains a rule that for the technological transformation of new and existing industry should be used facilities and processes, which could provide the high level of resource utilization and poor waste disposal. At the same time, shall be used efficient and rational technology of comprehensive waste management and recycling of pollutants. Here we can see a certain similarity.

b) The Russian and Chinese laws use different methods to formulate the legal technique of environmental rights. The Article 6 of the PRC Law states that all organizations and individuals are to protect the environment and have the

right to report or file charges against organizations or individuals that pollute the environment or cause harm. Despite the capacity and credibility of this formulation, we note that the Federal Act contains a more complete list of environmental rights, including the right to environmental information, to organize, to appeal to environmental rallies, pickets and marches, etc. Equally are well represented environmental responsibilities. In this case, the Russian legislator detailed lists not only the rights and duties of citizens, but also the created associations.

c) During the analysis of general provisions of environmental laws of the Russian Federation and the PRC it should be noted that many of the regulatory approaches to environmental protection are much the same. For instance, one of such common approaches should include mandatory presence in Russia and China the plans and programs for the protection of the environment, measures to promote environmental education, science, development of environmental monitoring system, public awareness about the environment, etc. A similar approach is to government regulation of environmental quality standards.

According to the Article 9 of the PRC Law on Environmental Protection the authorized board of management of

environmental protection under the PRC State Council sets national standards of environmental quality. The administration of the provinces, autonomous regions and municipalities directly under the jurisdiction of the Central Government establish local environmental quality standards in cases where the national environmental quality standards are not defined, and submit them for registration for the authorized board of management of environmental protection under the PRC State Council.

In the Russian Federation the environmental quality standards shall be established at the federal level (Article 5 of the Federal Law on the Environmental Protection), but the subjects of the Federation may establish environmental quality standards containing the relevant requirements and standards not below the requirements and standards established at the federal level (Article 6). At the same time, we note that the local authorities in Russia have no right to establish local environmental quality standards.

Thus, as part of the comparison, local (municipal) level of government in China is endowed with much larger environmental authority than the local level of government in Russia.

Many similarities in the environmental laws of the PRC and the Russian

Federation may be observed in the part of liabilities. Both countries provide such sanctions as suspension (or even termination) of activity, fine, damage compensation. In the PRC, as well as in the Russian law, in the case of environmental pollution due to insurmountable natural disasters that cannot be prevented even with timely reasonable measures, the party concerned shall be exempt from liability. If a violation of the law caused serious environmental pollution, leading to serious damage to public or private property or to the detriment of health and human deaths, according to the law, directly responsible for the accident, the PRC conducts criminal investigation.

– In Russia the whole system of environmental management can be divided into general measures (environmental supervision, liability, etc.), and special measures (requirements for individual activities, creation of areas with special environmental and legal status, special measures for the protection of certain types of natural resources).

This model we generally see in the environmental legislation of the PRC. Along with the above general measures, the PRC provides the measures of a special character. According to the Article 13 of the PRC Law the organizations, involved in project construction

that pollutes the environment, must comply with relevant state provisions concerning environmental protection. In the same group we should note the measures for environmental protection in agriculture (Article 20 of the PRC Law), protection of marine waters from pollution (Article 21), integration of environmental requirements in the planning of residential areas (Article 22), introduction of specific requirements for production, storage, transportation, sale and use of toxic chemicals and materials containing radioactive substances, etc.

Similar to the above mentioned requirements may be observed in the Law of the Russian Federation. The only difference is that the Russian law set out these rules in more detail, and there are much more rules than in the PRC Law.

The second variety of special measures, which is present in both Russian and Chinese environmental laws, is confined in creation of areas with special environmental and legal status. These areas can be of two types: specially protected natural areas and areas of ecological disaster. Their special status is determined as it is not an ordinary territory, on which the state of natural systems is much better than either traditional (reserve) or much worse (area of ecological disaster). The last type of area is missing

(though mentioned) in Russia, and is not mentioned in the PRC Law on Environmental Protection.

In both countries much better is the case with the regulation of the legal status of protected areas. In Russia these territories are called reserves, national parks, wildlife sanctuaries, natural monuments, etc. In China, there are also nature reserves and other protected areas, and, in addition, the administration of different levels is responsible to take measures to protect regions representing different types of natural ecological systems, regions inhabited with rare and endangered species of wild animals and plants, regions, where the main sources of drinking water are conserved, geological structures that possess a great scientific and cultural value, famous regions with coves and ancient deposits, traces of the ice age, volcanoes and hot springs, traces of human history, ancient and valuable tree species.

Not surprisingly that measures for the protection of these valuable areas are the same, for instance, with regard to a ban of industrial construction or mandatory reduction in the number of placed waste.

The third block of the Russian environmental legislation includes provisions on the protection of specific natu-

ral resources. Such rules may be either in the basic Law of the Russian Federation on Environmental Protection and in natural resources laws (Forestry Code, Water Code, etc.). Chinese legislator is in similar positions. For instance, the Article 21 of the Forestry Code of the PRC provides series of measures for the protection of forests from fires, and the Article 22 regulates the organization of preventive measures to prevent forest diseases. Similar provisions exist in the Forestry Code of the Russian Federation.

Thus, the environmental laws of the PRC and Russia are built on a similar model, according to which the environmental law governs the protection of the environment, and nature resources governs the use of natural resources (including property issues). The point of intersection of the scope of environmental and natural resources legislation constitutes the ensuring of rational use of natural resources. Many methods of environmental protection in Russia and China strongly coincide. The environmental and legal regulation in Russia is more capacitive for a scope of issues, but there is a number of environmental measures used in Chinese laws **that require further study in order to improve the ecological legislation of Russia**, including:

a) The experience of China is of interest for the Russian legislator with regard to increasing environmental powers of local authorities;

b) Not less noteworthy are the provisions of the PRC Law dedicated to mediation procedures in the consideration of environmental disputes. In this sense the Article 15 of the PRC Law is very remarkable, according to which the activity on prevention and control of environmental pollution and damage to the various administrative areas should be carried out by local administrations by negotiation or by the decision of the administration of the highest level through mediation. In Russia, the mediation process is just beginning its first application, and this experience for us could be much useful.

c) in the Russian Federation the authority of any level is not responsible for the quality of the environment on their territory (Russian Federation in general, the subject of the Russian Federation, municipality). Environmental legislation only obliges them to take certain measures to ensure the quality of the environment. No responsibilities for the effectiveness of these measures (either legal or political) are carried by the corresponding officials. In this sense, it is noteworthy that the Article 16 of the

PRC Law provides that "local governments at various levels are responsible for the environmental quality of areas under their jurisdiction and take measures to improve the environment". This experience is also of interest for Russia.

d) According to the Article 28 of the PRC Law the income derived from fines collected for excess discharge of polluting waste is to be used for the prevention and control of pollution and should not be used for other purposes. This is just the norm, which introduction to the Russian environmental legislation has been debated for a long time. Today in Russia all received budget environmental payments do not accumulate for the solution of environmental problems, and "fuse" in the income and expenditure of the budget.

Along with the regulatory activities of environmental protection the Chinese law enforcement practice for the protection of the environment is very valuable for Russia. Here one of the positive examples may be steps to transition to a "green economy". The indication of these measures began in 2007, and for the time being has given the first results. A manifestation of this strategy is to increase the production of electricity by the use of wind, solar, thermal springs, growth of environmentally friendly ve-

hicles (electric cars), creation of eco-cities. Condition for the realization of the last project is the rapid development of technology, "green" construction of residential houses. While Russia has only a few conversations on these directions, the People's Republic of China is taking decisive action, backed up by significant funding.

On an international scale the concept of "green economy" in a complete form appeared only at the UN Conference on Sustainable Development Rio+20, held on June, 20-22 2012 in Rio de Janeiro (Brazil). In the decisions of the conference it was noted that "green economy" must be viewed in the context of sustainable development and poverty reduction as an important tool for sustainable development. Only the "green economy" can provide various options of policy formation. It should contribute to the eradication of poverty and sustainable economic growth, promoting social integration, improving human well-being and creating opportunities for employment and decent work for all, while ensuring the normal functioning of the planet's ecosystems. In China the concept is already being implemented.

Great success achieved the "environmental diplomacy" of China, which, as mentioned in the scientific literature,

"is presented as an activity of subjects of international relations for the control of inter-state relations in the field of environmental protection through negotiation and other peaceful means. The specifics of the Chinese "environmental diplomacy" ("huantszin vaytshyao") is characterized, on the one hand, as a way to protect the Chinese state interests and opposition against pressure of more developed countries in the protection of the environment, who impedes the environmental and economic development of China"⁶.

Conclusion

The era of globalization and rapid development of science and technology gives rise to a number of new threats to the environment and human life and health. Overcoming these threats cannot be realized only by one country, which requires both enhancing international cooperation and harmonization of national legal systems. Among these global threats we should emphasize an impact on the human body of genetically modi-

fied products, nanotechnology and nanomaterials⁷, damage from space programs and nuclear power plants, a sharp deterioration of ecological conditions in some areas. Taking into account a complex ecological situation in the immediate vicinity with the state border, in future Russian Federation and China could create a zone of ecological disaster on the principles used in the reserve at Hanka Lake, when the two halves of the territory are under the jurisdiction of different countries, but the plan of environmental activities they have is common and consistent. Such contaminated area can be created on the banks of the Amur River.

It must be noted a whole range of promising areas of cooperation between the two countries relating to the development of eco-tourism, environmental business (production of ecologically clean agricultural products, environmental services, including environmental insurance), cooperation in the field of climate and ozone layer protection, conservation, desertification, ecological culture, upbringing and education, fight against ecological diseases and environmental migration, etc.

6 Kolpakova, T.V. (2009), *Political and legal management of social and ecological processes of the PRC in modern conditions: Author's thesis* [Politiko-pravovoe upravlenie sotsial'no-ekologicheskimi protsessami KNR v sovremennykh usloviyakh: avtoref. dis. ... kand. filosof. nauk], Chita, 25 p.

7 Anisimov, A.P. (2012), "Protection of the environment from the adverse effects of nanotechnology" ["Okhrana okruzhayushchei sredy ot negativnogo vozdeistviya nanotekhnologii"], *Agrarnoe i zemel'noe pravo*, No. 5, pp. 93-95.

Such a list of measures will alleviate environmental problems in Russia and China, protect from the deterioration of quality of life, reduce the level of international tension of transboundary water and air pollution in both countries.

These and many other problems will require understanding and cooperation on the part of government agencies in both countries, as well as representatives of business organizations and ordinary Russian and Chinese citizens.

References

1. Anisimov, A.P. (2012), "Protection of the environment from the adverse effects of nanotechnology" ["Okhrana okruzhayushchei sredy ot negativnogo vozdeistviya nanotekhnologii"], *Agrarnoe i zemel'noe pravo*, No. 5, pp. 93-95.
2. Brinchuk, M.M., "Environmental law: textbook" ["Ekologicheskoe pravo: ucheb-nik"], available at: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=CMB;n=16371>
3. "Federal Law "On Environmental Protection" on January 10, 2002" ["Federal'nyi zakon "Ob okhrane okruzhayushchei sredy" ot 10 yanvarya 2002 g."], *Sobranie zakonodatel'stva RF*, 2002, No. 2, Art. 133.
4. "Forestry Code of the People's Republic of China. Chapter VII. Additional provisions" ["Lesnoi kodeks KNR. Glava VII. Dopolnitel'nye polozheniya"], available at: www.chinalawinfo.ru/economic_law/law_forestry/law_forestry_ch7
5. Kolpakova, T.V. (2009), *Political and legal management of social and ecological processes of the PRC in modern conditions: Author's thesis [Politiko-pravovoe upravlenie sotsial'no-ekologicheskimi protsessami KNR v sovremennykh usloviyakh: avtoref. dis. ... kand. filosof. nauk]*, Chita, 25 p.
6. "The Law of the People's Republic of China "On Environmental Protection" on December 26, 1989" ["Zakon KNR "Ob okhrane okruzhayushchei sredy" ot 26 dekabrya 1989 g."], available at: www.asia-business.ru/law/law2/resources/environment/
7. "The Law of the People's Republic of China on mineral resources" ["Zakon Kitaiskoi Narodnoi Respubliki o mineral'nykh resursakh"], available at: www.rs-tran.ru/index.php?id=135

Модернизация российского экологического законодательства в контексте опыта Китайской Народной Республики

Анисимов Алексей Павлович

Доктор юридических наук,
профессор кафедры гражданского права и процесса
Волгоградский институт бизнеса,
400010, Россия, Волгоград, ул. Качинцев, 63;
e-mail: anisimovap@mail.ru

Рыженков Анатолий Яковлевич

Доктор юридических наук,
профессор кафедры гражданского права и процесса
Волгоградский институт бизнеса,
400010, Россия, Волгоград, ул. Качинцев, 63;
e-mail: kafedra.gpp.vib@mail.ru

Аннотация

В статье проводится сравнительно-правовой анализ экологического законодательства России и Китая, в том числе по линии терминологии, процедур охраны окружающей среды, наличия требований в отдельных сферах деятельности, норм об охране отдельных природных ресурсов. В результате авторы обращают внимание на ряд положений экологического законодательства КНР, которые представляют интерес для России.

Ключевые слова

Окружающая среда; природные ресурсы; загрязнение; нормирование; надзор; зона экологического бедствия; заповедник; качество жизни; опустынивание; биологическое разнообразие

Библиография

1. Анисимов А.П. Охрана окружающей среды от негативного воздействия нанотехнологий // Аграрное и земельное право. – 2012. – № 5. – С. 93-95.
2. Бринчук М.М. Экологическое право: учебник. [Электронный ресурс]. – Режим доступа: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=СМВ;n=16371>
3. Закон Китайской Народной Республики о минеральных ресурсах. [Электронный ресурс]. – Режим доступа: www.rs-tran.ru/index.php?id=135
4. Закон КНР «Об охране окружающей среды» от 26 декабря 1989 г. [Электронный ресурс]. – Режим доступа: www.asia-business.ru/law/law2/resources/environment/
5. Колпакова Т.В. Политико-правовое управление социально-экологическим процессом КНР в современных условиях: автореф. дис. ... канд. философ. наук. – Чита, 2009. – 25 с.
6. Лесной кодекс КНР. Глава VII. Дополнительные положения. [Электронный ресурс]. – Режим доступа: www.chinalawinfo.ru/economic_law/law_forestry/law_forestry_ch7
7. Федеральный закон «Об охране окружающей среды» от 10.01.2002 // Собрание законодательства РФ. – 2002. – № 2. – Ст. 133.