

TO THE QUESTION OF THE NEED TO IMPROVE LEGAL REGULATION EFFICIENCY OF ENVIRONMENTAL SAFETY IN THE RUSSIAN FEDERATION

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Abstract

Now the special urgency is got effective legal regulation of ecological safety in the Russian Federation, which is directly related to the formation of a consistent system of legal acts in this sphere. In this regard, the authors carried out a critical analysis of the current Russian legal framework of environmental security and developed scientific and practical recommendations for its possible improvement.

Key words: *ecology, environmental safety, right*

JEL Classification: [K32]

Ensuring environmental security is, without exaggeration, one of the most important tasks facing every country in the world. In this case, Russia is no exception. On the contrary, the problems of ecological safety in our country is extremely urgent, and state the task of providing environmental security for the population at present comes to the fore. In this regard, it is obvious that for the implementation of this task requires effective legal regulation, which will allow to set the necessary permission and prohibitions, to formulate rules of conduct in the environmental field. M. I. Rusakov true indicates that "environmental security is an important element of national security and takes in this system one of the key places"¹. However, as rightly pointed out by F. G. Myshko, "systemic concept of state management in the sphere of environmental security still does not exist"².

It should be noted that the legal provision of ecological safety in the Russian Federation is based on the requirements of the various international acts (A universal code of environmentally correct conduct, adopted at a public Symposium in Bangkok (Thailand) in 1960; The Stockholm Declaration on environment (1972); World Charter for nature (1982); World strategy of nature protection (1980); The business

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¹ M.I., Rusakov, Environmental safety of modern Russia: General Legal analysis. Abstract of thesis of candidate of legal Sciences. - Nizhny Novgorod, 2006, p. 4.

² F. G., Myshko, Environmental safety. – M., 2003, p. 23.

Charter on sustainable development (1990); The Declaration of the UN Conference on environment and development, adopted in Rio de Janeiro (1992), The UN Convention on climate change (on November 4, 1994); Basel Convention on the control of transboundary movements of hazardous wastes and their disposal (1994); The Convention on biological diversity (1995); The Convention for the suppression of unlawful acts against the safety of Maritime navigation (2001) etc.).

For orientation of the harmonized legislation in the field of ecological safety of the states-participants of CIS in 1992 the decree of the Interparliamentary Assembly adopted a recommendatory legislative act "On the principles of ecological security in the Commonwealth"³. K.K. Davaeva rightly observes that "to Russia, actively participating in international cooperation, there is a need of adoption at the state and regional levels of effective measures, primarily legal. First of all, aimed at providing elaborated by the international community of the principles and provisions of sustainable development, secondly, good environmental quality should be legislated as an essential element of social standards of living in the country in general and regions in particular"⁴. It should be noted that the specific aspects of ensuring ecological security is reflected in the Constitution of the Russian Federation (art. 9, 42, 58, 71, 72). In particular, article 72 of the Constitution includes the subject of joint jurisdiction of the Russian Federation and subjects of nature management; environmental protection and ensuring ecological safety; specially protected natural areas; land, water, forest legislation, legislation on subsoil, on protection of the environment. The key normative act in this sphere is the Federal law of 10.01.2002 No. 7-FZ "On environmental protection". In addition, you should allocate the Federal law of 14 March 1995 No. 33-FZ "On specially protected natural territories", Federal law of 23 November 1995 No. 174-FZ "On ecological examination", Federal law of 09.01.1996, No. 3-FZ "On radiation safety of population", Federal law of 19.07.1997 № 109-FZ "On safe handling with pesticides and agrochemicals", Federal law of 24 June 1998 No. 89-FZ "On wastes of production and consumption", Federal law of 30 March 1999 No. 52-FZ "On the sanitary-epidemiological welfare of population".

It should be noted in this context and Foundations of state policy in the field of environmental development of the Russian Federation for the period up to 2030 and the Environmental doctrine of the Russian Federation approved by the decree of the Government of 31 August 2002 No. 1225-R.

The subjects of the Russian Federation in the field of environmental protection are also actively use their powers in accordance with article 73 and article 76 of the

³ The recommendatory legislative act "On the principles of ecological safety in the Commonwealth", adopted by the Decree of the Interparliamentary Assembly of States-participants of CIS, St. Petersburg, On December 29, 1992. // <http://law.edu.ru/norm/norm.asp?normID=1372391> (date of access: 21.03.2016).

⁴ K. K., Davaeva, The problems of ecological safety in the context of sustainable development of Russian regions in "Science and education: agriculture and economics; entrepreneurship; law and management", 2011, October, http://www.journal-nio.com/index.php?option=com_content&vie=706&Itemid=91 (date of access: 25.03.2016).

Constitution of the Russian Federation. Thus, A.S. Bogolyubov rightly notes that "the adoption by subjects of the Russian Federation normative legal acts in environmental matters must be justified not so much by the desire to signify their sovereignty, as the need to resolve outstanding environmental non-personal problems that are general, not exhaustive execution"⁵.

Try to look at the existing legal framework of environmental security in the Russian Federation, critically, to identify problems, understand the opportunities to improve the efficiency of legal regulation.

As we see in the modern Russian legal field quite a lot of acts regulating questions of ecological safety. In addition, it should be noted that the above list is not exhaustive. This is just a basic platform. Given the existing palette of legal acts in the environmental field, a fair question would be: have we achieved sustainability in our lives? Whether you feel protected from environmental threats by using the available legal means? The existing ambivalent attitude of the state and society to nature, with practical impunity for acts that harm the environment, low ecological culture of the population, the problems in the legal regulation of environmental safety allow us to conclude that no, we are not protected from any environmental hazard. Partly this is facilitated by the existing "fragmentation" of the Russian legislation regulating the issues of environmental safety, the lack of a certain unified normative act, which collects all the key aspects of this sphere.

A.S. Rogov and Yu. G. Fedotova define the purpose of environmental security as "the sustainable use of natural resources, reducing the risk of human-induced factors, elimination of negative consequences for nature and people, prevention and liquidation of environmental disaster and the preservation of the existing level of environmental component"⁶. Should agree with the opinion of the authors. However, it is fair to indicate that this goal is now almost impossible. Unfortunately, environmental issues are everywhere. For example, E.A. Belokrylova raises an important problem of environmental safety of nanotechnology⁷. As another example, almost catastrophic ecological situation in the fisheries sector. Prevailing in recent years the system of bodies that monitor the industry are diverse, complex and uncoordinated, so low efficiency of its functioning. M.V. Koroleva rightly notes that "the loss of the state monopoly in this area in recent decades has led to the difficulty of state control of this activity and contributed to the development of large-scale illegal fishing of marine biological resources. Currently a criminal activity in the fishing industry have reached an unprecedented scale. The industry is almost completely criminalized. Inspections showed that about 80% caught by Russian fishmongers production in the northern seas and the seas of the Far East is sold

⁵ S. A., Bogolyubov, Development of legislation on ecological safety, in "Problems of environmental security. Digest of research papers", V.N. Lopatin ed., 2003, p. 41.

⁶ A. S., Rogov, Yu. G., Fedotova, The concept of ecological security of the Russian Federation, in "Environmental law" 2014, No. 3, p. 11.

⁷ E. A., Belokrylova, Problems of legal support of environmental safety of nanotechnology: the experience of Russia and European Union in "Environmental law", 2013, No. 2, pp. 13-19.

directly in the fishing areas of foreign economic entity to bypass customs duties and taxes"⁸.

One cannot but agree with O.P. Bednuy, who writes that "today, the most acute question about the necessity of legal regulation of environmental safety in the areas of environmental disaster. In this area there is a core provision requiring thorough legal analysis. To them in the first place, are the criteria that allow to put the question on granting the territory of the zone of ecological disaster, and economic tools that provide opportunities for funding to improve the quality of the natural environment in this territory up to the required level"⁹.

The situation in the Russian environment, from our point of view, very sad. Society lacks knowledge in the environmental field, not by years of culture, draw attention to gaps in the legal regulation of environmental safety.

First of all, a little about the key law in this field – the Federal law "On environmental protection". This law, according to many experts, suffers significant shortcomings. So, to shortcomings of the theoretical nature concerns the definition of environment. In article 1 of this law stipulates that the environment is "the totality of the natural environment components, natural and natural-anthropogenic objects, and also anthropogenic objects"¹⁰. For just the opinion of M. M. Brinchuk, "the inclusion by the legislator in the content of the notion "environment", along with natural complexes and objects of natural-anthropogenic objects, anthropogenic objects only confuses the understanding of environment, one of the main categories of environmental law and integrated object of environmental law"¹¹. There are valid claims and to the definition of "environmental security". This concept is defined as "the state of protection of natural environment and vital human interests from possible negative impact of economic and other activity, emergency situations of natural and technogenic nature and their consequences". In the present case we believe that it is necessary to replace the phrase "natural environment" for "environment", which is much broader in scope.

It should be noted that the studied law there are drawbacks, mainly of a technical nature. For example, article 30 of the "Licensing certain types of activities in the field of environmental protection" and article 31 "Ecological certification of economic and other activities" are placed before the provisions on the assessment of the impact of the proposed activity on the environment and the environmental assessment, which seems illogical. In addition, these articles are placed in the chapter

⁸ M. V., Koroleva, The state of law and the problems of ecological safety in "Problems of environmental security", Digest of research papers, V.N. Lopatin ed., 2003, p. 148.

⁹ O. P., Bednuy, Legal aspects of environmental security, in "Problems of environmental security", Digest of research papers, V.N. Lopatin ed., 2003, p. 47.

¹⁰ Federal law of 10.01.2002 No. 7-FZ "On environmental protection", Collected legislation of the Russian Federation of 14 January 2002. No. 2. Art. 133.

¹¹ M. M., Brinchuk, Federal law "On environmental protection" and ecological safety in the Russian Federation, in "Problems of environmental security" Digest of research papers, V.N. Lopatin ed., 2003, p. 44.

on standardization in the field of environmental protection, although by regulation they have a very indirect relation.

In the text of this law, there are linguistic and logical defects of legal techniques. For example, in accordance with article 23 of the Federal law "About environmental protection", "standards of permissible emissions and discharges of substances and microorganisms shall be established for stationary, mobile and other sources of environmental impacts by the subjects of economic and other activities based on the norms of permissible anthropogenous load on the environment, standards of environmental quality and technological standards". This provision is worded somewhat ambiguously, it can be seen that the standards are established to economic entities, and it is fundamentally wrong.

M.M. Brinchuk accurately observed that "it was important to adopt this Law as the parent act environmental legislation governing not only relations on the environment. Want the Federal law "About the environment", reflecting common patterns of interaction between society and nature, defining principles of legal regulation of nature use and nature protection. The implementation of such an approach would enhance the systemic nature of environmental laws"¹². In General, agreeing with that concern in mind, we note that at the present time, maybe you should think about and codification of environmental legislation. We believe that without the Environmental code of the Russian Federation, about which necessity so long arguing in legal science, the systematization of environmental laws will be defective.

Pay attention to some provisions of the Federal law of 23.11.1995 № 174-FZ "On ecological examination". Thus, article 3 of this law sets forth the following principles of environmental assessment: "Environmental examination is based on the following principles:

- the presumption of potential environmental danger of any planned economic and other activity;
- the obligation of the state ecological expertise before decisions on the implementation object of ecological examination;
- integrity assessment of the environmental impact of economic and other activity and its consequences;
- the binding nature of requirements of ecological safety at carrying out of ecological examination;
- accuracy and completeness of the environmental assessment;
- independence of experts of the environmental expertise in the exercise of their powers in the field of ecological examination;
- the scientific validity, objectivity and legality of the conclusions of ecological examination;
- publicity, participation of public organizations (associations), taking account of public opinion;

¹² M. M., Brinchuk, *op.cit.*, p. 45.

- responsibility of participants of ecological expertise and stakeholders for the organization, conduct, quality of environmental expertise".

The list of fundamental principles enshrined in this article is quite broad. However, you should pay attention to the fact that some of them are declarative. For example, the law establishes the principle of mandatory requirements of environmental safety during environmental review. Moreover, these requirements are never fixed. In this regard, no understanding what to do in this case. Or, for example, the principle of scientific validity, objectivity and legality of the conclusions of ecological examination. It seems that to achieve the scientific validity of the conclusion of ecological examination is very difficult. To do this, it must be brought scholars involved in related problems, but this happens rarely. Also raises questions the logic of this principle. Why on the legality of the examination results stated in the last turn? We believe that the legality of ecological examination report must be provided as a separate principle, and this principle should be put at the beginning of the list.

Pay attention to the text of the Federal law of 9 January 1996 No. 3-FZ "On radiation safety of population"¹³. Again, we will focus on the principles. In article 3 of this law stipulates that "the basic principles of radiation safety are:

- the principle of normalization – not exceeding the permissible limits of individual exposure doses of citizens from all sources of ionizing radiation;

- the principle of justification - the prohibition of all activities using sources of ionizing radiation, in which obtained for the individual and the society benefit does not exceed risk of possible harm caused by additional to natural background radiation exposure;

- the optimization principle is the maintenance on possible low and attainable level with taking into account economic and social factors of individual doses and number of exposed individuals using any source of ionizing radiation".

From our point of view, the first principle must be the principle of protection of public health and environmental safety.

You should pay attention to the provisions of the Environmental doctrine of the Russian Federation approved by the decree of the Government of 31 August 2002 No. 1225-R¹⁴, which, in particular, identifies priorities for ensuring environmental security of the Russian Federation. In its preamble rightly States that "the current environmental crisis threatens the possibility of sustainable development of human civilization. Further degradation of natural systems leads to destabilization of the biosphere, the loss of its integrity and ability to maintain environmental quality, essential for life. Overcoming the crisis is possible only on the basis of the formation of a new type of relationship between man and nature, precluding the possibility of destruction and degradation of the natural environment". Section 4 of the

¹³ Federal law of 09.01.1996, No. 3-FZ "On radiation safety of population", Digest of laws of the RF, 15.01.1996, No. 3. Art. 141.

¹⁴ Ecological doctrine of the Russian Federation approved by the decree of the Government of 31 August 2002 No. 1225-R, Digest of laws of the RF, 09.09.2002, No. 36. Art. 3510.

Environmental doctrine of the Russian Federation called "Priorities for ensuring environmental security of the Russian Federation". In it, in particular, reflected the priorities of security in the implementation of potentially hazardous activities and in emergencies: "the main task in this area is to ensure environmental safety of potentially hazardous activities, rehabilitation of territories and water areas affected by anthropogenic impact on the environment," environmental priorities in health care: "the main tasks in these areas are improving the quality of life, health and increase life expectancy of the population by reducing adverse environmental factors and improving environmental performance environment". The main features of the prevention and reduction of environmental consequences of emergency situations: "the main task in this area is the identification and minimization of environmental risks for the natural environment and human health associated with the occurrence of emergency situations of natural and technogenic character", as well as the prevention of terrorism, endangering of the environment: "the main task in this area is the prevention of terrorist acts, causing environmental degradation and degradation of the natural environment" and control over the use and spread of alien species and genetically modified organisms: "the main task in this area is the organization of control over the import, use and distribution in the country of alien species and genetically modified organisms".

It should be noted that due to the continuing degradation of the natural environment, as well as the growing influence of these processes on the lives and health of people in this section of the Environmental doctrine of the Russian Federation is of key importance. We believe that a key in this case is the creation of an environment of various kinds of activities that would best provide the environmental security of the country. In addition, from our point of view, it is important to establish tight deadlines for the implementation of rehabilitation of territories and water areas that have experienced anthropogenic or otherwise environmentally hazardous impacts.

We should not forget that one of the levers of effective economic mechanism for ensuring environmental security is environmental insurance, which, performing preventive and investment functions, can create real protection of territories and population from threats to its vital interests. We believe that the provisions of the environmental insurance could also be included in the text of the Environmental doctrine of the Russian Federation. The same applies to provisions on development and strengthening environmental culture. Education, education and education is the basis of formation of ecological world Outlook, active life position and responsibility on individuals to solve environmental problems, sustainable development of the biosphere and society.

Ecological doctrine of the Russian Federation must be aimed at promoting the rights of citizens to a healthy and favourable natural environment. Unfortunately, the people of Russia, in the majority, don't know if they have such a right. Meanwhile, in the world this right is protected, primarily through preventive measures, as well as by

applying administrative law, criminal and civil penalties. And this is the key to environmental safety.

When considering the existing legal framework of environmental security in the Russian Federation it is impossible not to pay attention to the complex regional regulations.

So, in the Republic of Bashkortostan has its own Ecological code of the Republic of Bashkortostan of 28 October 1992 No. BC-13/28, the preamble of which States that "protection of natural environment, rational use of natural resources, ensuring ecological safety of human life – an essential condition for sustainable economic and social development of the Republic of Bashkortostan"¹⁵. Environmental safety this law is interpreted as "a state of protection of natural environment and vital human interests from possible negative impact of economic and other activity, emergency situations of natural and technogenic nature and their consequences" (article 1). The same definition of this concept is presented in article 1 of the Law of Kursk region of 5 July, 1997 No. 16-ZKO "On environmental safety", "environmental safety – state of protection of natural environment and vital human interests from possible negative impact of economic and other activity, emergency situations of natural and technogenic nature and their consequences"¹⁶. The interpretation coincides with the definition of "environmental safety", which is enshrined in article 1 of Federal law of 10.01.2002 No. 7-FZ "On environmental protection". However, for example, in the Law of the Nizhniy Novgorod region of 10.09.1996 No. 45-Z "On environmental safety"¹⁷, of the studied concept is defined as "a condition characterized by the presence or likelihood of anthropogenic or natural phenomena and processes, which can cause environmental changes that threaten the vital interests of the individual and society" (article 1). As we can see, it is a completely different interpretation of this concept.

In this regard, analyzing regional legislation in the field of environmental safety, it can be concluded that the definition of "environmental security" in the laws of subjects of the Russian Federation are different. And are different ways of ensuring ecological safety, as well as, for example, the interpretation of its objects and subjects. M. A. Lapina rightly notes that "this discrepancy can be explained, firstly, by the lack of legislation on issues of environmental security at the Federal level; second, the prevailing environmental conditions in each specific region (constituent entity of the Russian Federation); thirdly, various approaches to management in this area"¹⁸. An interesting point of view S. A. Bogolyubov, namely that further

¹⁵ Environmental code of the Republic of Bashkortostan of 28 October 1992 No. BC-13/28, Gazette of the State Assembly - Kurultai, President and government of the Republic of Bashkortostan, 2004, No. 1 (175). Art. 12.

¹⁶ The law of Kursk region of 5 July 1997. No. 16-ZKO "On environmental safety", Digest of laws of Kursk region, No. 10, 1997.

¹⁷ The law of the Nizhniy Novgorod region from 10.09.1996 No. 45-Z "On environmental safety", Legal environment, No. 36(136), 18.09.1996.

¹⁸ M. A., Lapina, Legal regulation of environmental safety in the Russian Federation and its subjects, in "Problems of environmental security", Digest of research papers, V.N. Lopatin, ed., 2003, p. 63.

dissemination at the regional level deserves "the practice of adopting by-laws, local acts, aimed at ensuring strict and mandatory implementation of legislative requirements. However we must understand that not all emerging environmental conflicts can be resolved through legal prescriptions; many excesses should attempt to impose limits on the level of application of moral norms, customs, taking into account the requirements of good faith, reasonableness, fairness, historic, local tradition. Otherwise in the current environment or can promote corruption, or to lapse into a police state"¹⁹.

Examining Federal and regional laws, regulating the issues of environmental security, it can be concluded that to improve the effectiveness of regulation needs to be streamlined "scattered" in different legal acts, the norms governing relations in this sphere. From our point of view, it is necessary to adopt separate Federal law "On ecological safety in the Russian Federation", the text of which, in particular, should:

- to secure a uniform definition of "environmental safety";
- to define the principles of environmental safety in the Russian Federation;
- to differentiate the powers of all organs of state and municipal authorities and public associations in the sphere of ensuring ecological safety;
- to determine the objectives, tasks, rights and obligations and responsibilities of actors involved in ensuring environmental security of the population and the territory of Russia;
- to establish means and ways of environmental safety;
- to determine the requirements of environmental safety, ensuring the protection of atmospheric air, water bodies and other areas that are associated with human activity;
- to establish liability for violation of requirements of ecological safety;
- to consolidate the features of state control and supervision in sphere of maintenance of ecological safety.

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