Russian Federation

Survey of the Modern Ecological Law

by Irina Krasnova*

Russia of today has the largest federal state territory. Its member-units comprise 21 republics, 49 oblasts, 6 krai, 11 autonomous units and 2 independent federal cities. Although formally, in conformity with the Constitution, all the member-units of the RF are equal, actual definite inequality between them is retained. If the republics are entitled to adopt constitutions, the other member-units can adopt charters. In their constitutions member-units proclaim themselves as independent states, while the charters lack such provisions. The autonomous districts, according to the Constitution of the RF, are named as independent member-units; however, their actual independence is limited as they form part of a respective krai that keeps them politically and financially dependent on the latter.

The legal system of Russia develops in conformity with its federal state structure. It comprises laws and regulations that are adopted on the federal, regional and municipal levels. The Russian legal system belongs to the continental system of law, and the case law is not included into the system of sources of law. At the same time, supreme judicial bodies are there to adopt decrees on selected issues of law, thereby interpreting the law on the basis of judicial practice, analysis, and their own understanding of a legal provision. On November 5, 1998 the Plenum of the Supreme Court of the Russian Federation adopted a decree "On Practice of Enforcing by Courts of the Legislation Establishing Liability for Environmental Wrongs." The Decree gave explanations to lower courts as to how to interpret and enforce selected provisions of laws that establish liability for environmental violations. The decrees issued by the supreme judicial bodies are addressed to courts and should be taken into consideration while hearing cases. Therefore, as to their significance, such decrees can be relegated to quasi-sources of law.

The problem of environmental protection and regulation of natural resources use, despite the economic and political crisis in Russia, does not avoid the attention of legislators. For a short historical period from the beginning of the economic and political reforms in the RF as an independent State (1991), the ecological legislation has been entirely replaced by new laws to adapt to the changed political and economic relations in the country. The former Russian Federation Law "On Protection and Use of Wildlife" (1982) was replaced by the Law on Wildlife, adopted in 1995. The Water Code passed in 1995, followed the Water Code of 1978. Land Use and Forestry Codes, and the Law on Subsoil followed the same route. Within this body of law only an old Law on Air Protection adopted in 1982 is still valid. Although the new laws contain necessary new mechanisms, to a large extent they retain links to their predecessors. Most of them have the same structure, and the scope of questions they cover is similar. It is still practice to pass comprehensive codifying regulatory acts, that encompass the whole set of relations connected with this or that natural object, from ownership issues, distribution of administrative powers to liability and international law provisions.

Environment protection and natural resources use issues have been also integrated into the new Constitution adopted in 1993. Article 9 of the Constitution establishes that land, and natural resources can be in state (public), municipal and private ownership. According to Article 36, individuals and organizations who are owners of land, are allowed to possess, use and dispose of their property freely unless it damages the environment or infringes the lawful rights and interests of other persons. The ecological rights of citizens, including the right to a favourable environment, information about its state and the right to be compensated for the damage caused by an environmental wrong, are proclaimed in Article 42. Article 58 obliges each person to protect the environment.

In addition, quite a large number of new laws appeared uncommon to the former system, with regard to questions they address. They are either aimed at settling selected ecological problems, or to regulate specific types of economic activities with due consideration of environmental protection interests. For instance, laws on wastes, on the safe use of pesticides and chemicals, on the use of nuclear energy and on protection of the population and areas from natural and manmade environmental emergencies, have recently emerged in the system of the Russian ecological law. It is worth pointing out that most of the problems which are addressed in these laws, are not new for Russia. They existed before and the State responded to them, also through legal regulation. What is significant, is that the legislative level of responding to these issues has been elevated. Certification procedures and state expertise for pesticides and agrochemicals existed before, but were established in governmental and ministerial regulations. Certainly, such laws contain new legal mechanisms, which take into account the contemporary economic and political realities. For instance, the nuclear energy industry was previously practically a closed field of activities. Nowadays, the Law on the Use of Nuclear Energy proclaims

* Professor of environmental law of the Russian Academy of State Administration under the President of the RF (Moscow), doctor of juridical science (Russia), LLM in environmental law (Pace University, USA).

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the right of citizens and organizations to have access to the information concerning safety of nuclear energy use, except for the data filed as a state secret. Individual business activities in the field of nuclear energy use are allowed, on condition that the persons intending to do that have obtained a state licence. The ecological expertise of projects connected with the use of nuclear energy is mandatory.

The key place in the system of the ecological legislation is reserved for the Law on Environmental Protection adopted back in 1991, that establishes principles and legal fundamentals for regulating the whole set of ecological relations. It includes chapters that declare the right of citizens to a favourable and healthful environment, a permit procedure for nature use, and the standard-setting and economic incentives rules. The Law also determines the legal regime for specially protected and ecologically unfavourable areas, and established requirements for ecological expertise. It needs to be pointed out that to a considerable extent this Law is not sufficient for practical actions; it lacks sufficient procedural provisions and some of the articles have a declaratory character. To fill in the gaps, additional laws are being adopted. For instance, a Law on Ecological Expertise was adopted in 1995. It prescribes in detail in which instances and how the state ecological expertise for the projects of economic activities is to be conducted. The lack of provisions necessary for the protection of valuable natural complexes is compensated by the Law on Specially Protected Areas passed in 1995.

However, such laws, which are considered as crucial, however, have created a complicated juridical situation. It occurs that the same scope of relations is regulated by more than one law of equal legal force. Some of the provisions of these laws are similar, duplicate each other, while others differ considerably. For instance, according to the Law on Specially Protected Areas, natural reserves are in federal ownership, and are established by decisions of the Government of the RF. However, the Law on Environmental Protection allows them to be established not only by decisions of the Government of the RF, but by decisions of the governments of member-units of the RF, and are not supposed to be solely in federal ownership. In this case, actions taken according to these laws shall be legal and illegal simultaneously. In fact, as in the case with the Constitutions of the member-units of the RF, the state treats these indiscrepancies indifferently, presuming, evidently, that they are not that dangerous, and that the practice picks up those provisions which are considered, for various reasons, as worth using. As regards the mentioned case, the provisions of the Law on Specially Protected Areas are actually complied with, while the Law on Environmental Protection in this part is ignored, with the mute consent of the state power.

It is worth mentioning that the number of provisions of the Law on Environmental Protection, which are not implemented, ignored or violated, is not small. It is widely accepted that the law is outdated, and needs to be replaced. In fact, in recent years, several versions, amendments, or drafts of new texts of the law have been prepared. However, not a single one was adopted. If in 1991, on the top of the wave of high priority for environmental interests and under conditions of just emerging models of economic activities, such a law did not arouse any serious fears, nowadays, businessmen, state entities and agencies, and public organizations, having frequently opposing interests, keep a seen eye on what kind of environmental provisions are expected to appear.

In addition to the emergence of new laws on environmental protection and natural resources use, and the widening of the scope of legal regulation of ecological law, ecological principles and provisions become integrated into other branches of law, such as civil, administrative, financial etc. The new Civil Code (in part adopted in 1994 and 1995) establishes legal fundamentals for compensation of environmental damage. The Tax Code of the RF provides for imposing an environmental tax. The Criminal Code has Chapter 26, that envisages a criminal liability for environmental crimes.

The legislator makes use of a quite well-known set of legal mechanisms able, as he believes, to ensure environmental protection and the sustainability of natural resources in economic and social development.

In view of maintaining a safe level for negative impacts on the environment and on public health, and ensuring sustainable use of natural resources, standard-setting mechanism are widely employed. Standards are established for regulating emissions of pollutants into air, discharges of effluents into water bodies, and storage of solid wastes. There are predominantly two types of standards – ambient ones established for air, water bodies and soil, and limitations for individual impacts. In addition, the Law on Radioactive Safety provides for establishing maximum allowable limitations for radiation to individuals as a result of the use of sources of ionizing radiation. A governmental decree of December 1998 establishes quota procedures for fishing, and quotas and other limitations are established for taking wild animals, cutting trees, and water withdrawal from water bodies.

More recently the mechanism of ecological expertise (environmental impact assessment) has received wide use. In accordance with this procedure, a project may be carried out only on condition that it has received approval by the state ecological expertise commission. The wide scope of these provisions, based on the principle of potential environmental impact of any project, makes it possible for the State Committee on Environmental Protection responsible for conducting the ecological expertise, to control any planned economic and non-economic activities from an environmental point of view. The ecological expertise mechanism is based upon the principle of openness, public participation and due consideration of public opinion. Representatives of civil society and public organizations can be included in expertise commissions, and public organizations or groups of citizens are allowed to conduct their own public expertise of the planned projects. ➠

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Widely used is the mechanism of licencing natural resources use. According to contemporary law, all types of predominantly commercial use of nature, are obliged to obtain a state permit. Competence for granting permits are distributed among various agencies on the federal and member-units levels, which together form a state institutional system of environmental protection and natural resources use. For instance, the Federal Forestry Service that administers the federal forests, leases forested areas for use, issues permits for timber cutting and plant and berry gathering in forests. The Ministry of Natural Resources is empowered to issue licences for exploration and exploitation of mineral deposits, construction of underground objects, use of water bodies for irrigation, water supply and navigation etc.

Within the system of measures regulating environmental protection and use of natural resources much attention is attached to ownership issues. In this regard, one can talk about the specifics of Russian ecological law, which includes within its system provisions which determines the forms of ownership rights of natural objects, privatization procedures of state property, and procedures for making deals. A noticeable feature of ecological law development on this issue is the trend to provide for predominantly state ownership of natural objects and for prohibition to privatize them. Such a regime is established in relation to water objects, subsoil, wildlife and forests. The right of state ownership is extended to whole natural complexes (ecosystems) that have an outstanding ecological, aesthetic, scientific, educational and recreational value and that are included into the system of specially protected areas. Such natural complexes include national and natural parks, reserves and natural monuments on an area of 32,5 million hectares that makes up approximately 2 per cent of the whole territory of the country.

The Constitution of the RF and the ecological legislation provide for the separation of state property into federal property and property of member-units of the RF. Actually this work is done slowly, coming as it does across complicated political and economic barriers. As a result, many natural objects remain undivided between the Russian Federation and its member-units and are administered jointly.

This does not affect the forests (forest fund), which under the Forest Code of the RF are declared federal property. This provision of the Forest Code was challenged by two member-units of the Federation – the Republic of Karelia and Khabarovsky krai. The Constitutional Court of the RF which heard this case, in its decision of 9 January 1997, confirmed the constitutionality of the Forest Code provision concerning federal ownership rights for the forests. It emphasized, in particular, that the forests of Russia play an important ecological role in global natural processes. In addition, Russia has definite international obligations with regard to ensuring the protection and sustainable use of forests. To accomplish this, forests should be managed as an integrity with national interests at the top. The federal ownership regime best suits these goals.

The federal legislation is supplemented with laws and regulations of the member-units of the RF and legislative acts adopted by local authorities. According to the Constitution, environmental protection and natural resources use falls within the concurrent competence of the RF and the member-units. In pursuance, member-units have their own comprehensive laws on environmental protection, land use and water use laws and laws on specially protected areas.

The issue of co-relation of the federal legislation and regulatory acts adopted by the member-units of the RF is not yet settled. For instance, the Criminal Code that establishes liability for ecological crimes is one for the whole of Russia; however, the Land Code of the RF is supplemented with 15 land codes of the member-units, which exist independently. The same happens with the Forest Code, Laws on Subsoil and on Wildlife.

Juridical science attaches much attention to the assessment of the state and perspectives of development of the Russian ecological law. The system, structure and contents of ecological law are being discussed. Some lawyers maintain that parallel to ecological law land, water, mining, forestry and wildlife branches of law exist. Others assume that the ecological law is an integrated body of law encompassing the whole set of social relations connected with the use and protection of nature as a whole, its parts and elements. This seemingly theoretical discussion has, in fact, practical implications. Depending upon what the scope of ecological law is, the scope of the ecological rights of citizens can be determined. Now it is disputable whether the right to information on the state of the environment covers only pollution aspects, or also the right to know how the natural resources arebeing managed and used.

Therefore, the ecological law of Russia is a wide branch of law that is presently going through a critical period in its development, when new laws are aimed at creating a firm legal basis for ensuring environmental protection and rational use of natural resources under conditions of transition to a market economy and for a longer perspective. ❐

Notes

M.M. Brinchuk. Ecological (environmental) law. Moscow, 1998.
B.V. Erofeiev. Ecological law of Russia. Moscow, 1997.
Ecological law. Collection of legislative acts, 1998.
Ecological law (Ed. by S.A. Bogoliubov), 1999.

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