Problems of Legal Responsibility in Case of Radioactive Contamination in Russia

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Abstract

The development of technical progress unavoidably leads to a considerable increase of the number of cases with infliction of harm as a result of appearance and mass expansion of the new harmful factors: the use of new forms of energy, harmful complicated technologies and productions, deterioration of the quality of environment.

This thesis is dedicated to the problems of legal responsibility for the harm, inflicted by the radioactive contamination. In the process of using of law there was arisen a necessity for theoretical study and analysis of many questions, connected with the responsibility of the owners of the radioactive sources of the increased danger, the unifications of legislation in this sphere of civil law and introduction of changes in the active legislation.

The above circumstances, and also the need for further improvement of the current legislation determined the urgency of theme, its theoretical and practical significance.

In the recent decades in the world appeared the large number of new sources of increased danger, including those which connected with the radiation. In 1996 entered into force the second part of Russian Civil Code in which the big role is assigned to tort (delict) obligations, i.e., to obligations, according to which the civil liability arises without the fault. However, recently there were no active attempts to study responsibility for radioactive contamination in Russia.

Thus, this thesis is a comprehensive study, dedicated to the problem of legal responsibility for the harm, inflicted by the radioactive contamination and its consequences.

The present thesis consists of 4 Chapters and Conclusion.

In the 1-st Chapter is given an explanation of the concept of environmental law. This branch is new for the Russian legislation. The basic element of legal regulation of this branch is Law "On protection of the environment". This law is provided for the full compensation of the harm, inflicted to the health of citizens by unfavorable environmental effect.

Author attempts to present responsibility for radiation pollution and responsibility for infliction of harm in the system of environmental and civil legislation.

In the 2-d Chapter the author explains the problem of preservation of natural resources. It is one of the serious problems in the world today. The impact of human activities and technological advance will deteriorate the condition of environment.

The environmental pollution is the reason of damage to natural environment and human`s health. However, currently there is no effective method of prevention and compensation for environmental damage. On the other hand, to prove a direct causal relation between deterioration of human health and environmental damage is extremely difficult. Thus, in this chapter general problems of civil responsibility and compensation for harm are researched.

In the 3-d Chapter the author examined some nuclear accidents in the Soviet period. Plants producing nuclear fuel and atomic power stations are important part in Russia's nuclear projects. However, the operation of atomic power stations connected with a risk of radiation, which is harmful to human health.

Chernobyl atomic power station catastrophe and "Mayak" plant emergency were the biigest nuclear accidents in the Soviet period. Accordingly, this chapter is

dedicated to the problems of compensation of harm to the health and moral damage, inflicted to the victims of radiation.

In the 4-th Chapter, the problems of the enforcement of judgements for compensation of harm to the health in Russia because of budget deficit are researched. Due to such problems the radiation victims can not receive full compensation.

Russia ratified the European Convention of Human Rights in 1998. Russian nationals which rights have been violated by the illegal activities of government agencies (non enforcement of judgements) have the right to apply to the European Court of Human Rights. In this chapter the problem of relation of Russian and European judicial systems in the way of effective protection of the victims` rights is raised.

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Methodology

The methodological basis of this thesis composed the dialectical theory of knowledge, and also based on it general scientific and special methods of study, which made it possible to accomplish a comprehensive study of the theme of this thesis. In particular, in the thesis were used system-structural, historical-legal, comparative- legal and other special methods of study.

The empirical (practical) base of a study composed normative- legal acts (acting, and lost effect) and also legislation, which regulate the matters of legal responsibilities and circulation of radioactive materials in the territory of Russia. There were analysed judicial practice and statistical data, which related to the theme of a study.

In the thesis the Russian Constitution, civil legislation, and also legislation in the sphere of atomic safety and compensation of harm to the victims exposed to radiation are used. For better understanding of the problems of the present thesis and the sense of Russian legislation, the most important of them are enclosed in English translation.

Purpose of the Thesis

The problems of legal responsibility for infliction of harm by the radioactive contamination are extremely wide and multifarious. However, taking into account the limited volume of this thesis by the specific character of the theme, there is only one part of delict (tort) relationships is examined. This part is legal responsibility for the harm, inflicted by radioactive contamination directly to man. Thus the problems of responsibility for the harm, inflicted to natural environment, to property and other is not researched. The author considers, that many questions, which remained out of the framework of the present research are subject to separate and detailed study.

The system of legal relations, which are used in the sphere of the use of radioactive sources is an object of the study. The rules of Russian legislation, which regulate legal responsibility for the harm, inflicted by the radioactive sources (objects) are a subject of the study.

Taking into account the above-mentioned, the purposes of the present research are:

- to substantiate the solution of a number of debatable problems in the sphere of legal responsibility for the harm, inflicted by radioactive contamination,
- to give theoretical interpretation to concept of radioactive danger,
- to establish proposals for further improvement of the active legislation in the sphere of legal protection of those, who suffered from the radiation.

Being based on the above purposes, in this thesis was taken the attempt to solve the following objectives.

1. On the base of theoretical proposals in the sphere of radioactive

contamination to analyze different scientific points of view, which exist in this sphere of law, to give their estimation and, as a result, to formulate the concept of danger radioactive object.

2. To analyze the general theoretical aspects of civil-legal responsibility for the harm, inflicted by radioactive contamination, to designate boundaries of the responsibility. On this basis make an attempt to determine concept and examine the special features of responsibility for the harm, inflicted by radioactive sources.

3. On the basis of analysis of the active legislation and scientific researches to determine the subjects of responsibility (state, juridical person, individual) for the harm, inflicted by radioactive sources.

4. To develop proposals for the improvement of the active legislation on the application of rules in the sphere of operation and use of radioactive sources.

5. To give definition of the following concept: "the compensation for moral damage, inflicted by radioactive contamination";

6. Taking into consideration the complexity of theme of the research make an attempt to reveal the existing problems of legal protection of victims suffered from the action of radiation.

List of tables and maps

Chapter 1. Introduction

1.1 The general structure of environmental legislation

This thesis is dedicated to the problems of legal responsibility for the harm, inflicted by the radioactive contamination.

In the recent decades in the world appeared the large number of new sources of increased danger, including those which connected with the radiation. In 1996 entered into force the second part of Russian Civil Code in which the big role is assigned to tort (delict) obligations, i.e., to obligations, according to which the civil liability arises without the fault. However, recently there were no active attempts to study responsibility for radioactive contamination in Russia by researchers in Russia and Japan. The main reason is a deficiency of objective information on the consequences of atomic incidents. This information nowhere was published in the Soviet period.

In the Soviet period practically there was no comprehensive legislation on the protection of nature. There was only Law "On protection of the nature in the RSFSR"[1], adopted on October 29, 1960. This Law included the general principles of protection of the nature. All industrial enterprises, which contaminated environment, were in the state property. Therefore, Law was not provided for compensation of harm to the injured persons. Only personal responsibility of the directors of enterprises and individuals, who inflicted harm to the nature, was provided in this Law.

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[1] *Vedomosti VS RSFSR*, №40, Art. 586, 1960

Article 42 of The Constitution of the USSR[2], adopted on October 7, 1977 provided the right of citizens for protection of the health. This right was ensured also by measures for enhancement of environment. There was no right in the Constitution for favorable environment and compensation for the harm to health as a result of the pollution. This right appeared only the Russian Constitution on 1993.

In the Civil code of RSFSR on 1964 there was no concept of the complete compensation for the harm, inflicted to individual. Individuals could not demand in the court compensation of moral damage, as a result of negative action on the health. This possibility appeared only in the Russian Civil code on 1994.

For the first time the principle of full compensation for the harm to persons` health as a result of negative environmental effect was included into the Law of the RSFSR "On protection of the natural environment" on December 19, 1991, adopted at the end of the Soviet period. Subsequently this principle was fixed in Federal Law "On protection of the environment", which was adopted on January 10, 2002.

Protection of natural environment is one of the vital problems of the present. Scientific and technical progress and strengthening of anthropogenic pressure on the nature unavoidably lead to the aggravation of the ecological situation: the reserves of the natural resources are wasted, environment is contaminated, the natural relation between man and nature loses, deteriorates the physical and moral health of people, economic and political fight for the raw markets and the living space is intensified.

In ecological doctrine of the Russian Federation[3], approved by Decree of the

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[2] *Vedomosti VS USSR,* №41, art. 617, 1977

[3] Decree of the Russian Government №1255-P on 08.31.2002 «On ecological doctrine of Russia» (Распоряжение Правительства РФ № 1255-Р от 31.08.2002 "Об экологической доктрине Российской Федерации"), *Rossiyskaya gazeta (Российская газета)* № 176, 09.18.2002

Russian Government on August 31, 2002 is indicated, that retention and improvement of environment are priority directions of state and society activities. In this case, forming and realization of the strategy of social-economic development and state policy in sphere of ecology must be interrelated. Therefore, health, social and ecological prosperity of population are in indissoluble unity.[4]

Russian Federation relates to the countries of world with the worst ecological situation. The environmental pollution reached the unprecedented scales. The number one ecological problem in Russia is environmental pollution. The health of people sequentially deteriorates.

In Russia live 29 million children. The number of the most vulnerable categories of children includes child- orphan and the children, who remained themselves without the care of parents (731 thousand children), the children-invalids (587 thousand children) and children, who are located in the socially dangerous condition (676 thousand children). Worsening in the ecological situation, unfavorable working conditions of women, insufficient possibilities for a healthy way of life, high level of the morbidity of parents, especially mothers, lead to an increase in the children's morbidity and disablement. Only 30 percent of newborns can be acknowledged healthy. More than half of children have the functional deviations, which require therapeutic- correction and special rehabilitative measures.[5]

In the majority of the industrial regions of the country one third of inhabitants

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[4] A.M. Anokhin, "Problems of legal responsibility in the sphere of environment protection and use of natural resources", *Courier of ecological education,* №1, 2, 2004, p.17 (Анохин А.М. "Проблемы правовой ответственности в сфере охраны окружающей среды и природопользования", *Вестник экологического образования,* 2004, №1,2, с.17)

[5] Decree of the Russian Government №172 on 03.21.2007 "On federal special purpose program "Children of Russia" to 2007-2010 (Постановление Правительства РФ №172 от 21.03.2007 «О федеральной целевой программе «Дети России» на 2007-2010 г.г.»), *Digest of Russian legislation,* №14, art. 1688, 04.02.2007

have various forms of immunological insufficiency.

At the moment, the most general and effective method for resolution of Russia's ecological problems consists in the development and thorough application of legislation for protection the environment.

In the 1990s, Russia set about conducting a number of political and legal reforms. The legal and regulatory base for environmental protection was developed in a short period of time, but nonetheless it ensured the ecologically safe and rational use of the environment. Despite the continual improvement and up-dating of environmental conservation legislation, reforms conducted in the area of environmental protection have come up against serious obstacles. This is first and foremost due to the fact that particularly since 1996, at the federal level conservation of the environment, unfortunately, has not been a priority function of the state. In this situation, legislation to protect the environment is the main means of overcoming the ecological crisis. It is important to remember that, "economic success is of no value if the human race is perishing" and to employ a package of legal, economic and organizational measures in order to achieve the goal of saving the human race and its natural habitat.[6]

Economic and organizational methods for resolving ecological problems tend to lose their effectiveness with time if they are not underpinned by clearly formulated legislation. Therefore, it is important to monitor carefully and analyze adopted laws and regulations in order to ensure that they do not contradict previously adopted legislation.

The law "On protection of the natural environment", adopted on December 19,

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[6] State report *On condition of the environment in the Russian Federation in 1999, 1998, and 1997*, Moscow, 2000 (Отчёт о состоянии окружающей среды в Российской Федерации, М. 2000)

1991[7], has been the main law regulating the ecological sphere in Russia till 2002. It is important to note that the law contradicted much legislation adopted from 1993 onwards – most importantly, the Russian Constitution, and all subordinate legislation and instructions based thereon. Since 1994 more than 20 draft versions of this law have been introduced to the State Duma (Russian Parliament), including one by the Russian Government. Due to the very difficult economic and political situation in Russia, and as a result of the misguided view that economic problems had to be resolved and the ecological ones, this law still has not been passed. Only on October 13, 2000 was the draft federal law "On the introduction of amendments and additions to the Law on protection of the environment", which was prepared by members of the State Duma Committee for Ecology, approved by the Duma in its first reading. Finally it was adopted on January 10, 2002[8] (after 9 years, since The Russian Constitution was implemented).

The most important environmental legislation is regulated with following laws (Acts of Parliament):

- The Constitution of the Russian Federation (December 12, 1993)[9];
- The Russian Civil Code (first and second parts) (November 30, 1994, January 26, 1996)[10];
- Federal Law "On Protection of the Environment" (January 10, 2002);
- Federal Law "On the use of atomic energy" (November 21, 1995)[11];

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[7] RSFSR Law №2060-1 on December 19, 1991 "On protection of the environment", *Vedomosti SND and VS*, № 10, art. 457, 03.05.1992

[8] Federal Law №7 on January 10, 2002 "On protection of the environment", *Digest of Russian legislation*, №2, art.133, 01.14.2002

[9] The Constitution of the Russian Federation (December 12, 1993), *Rossiyskaya gazeta (Российская газета)* № 237, 12.25.1993

[10] The Russian Civil Code (first part) on November 30, 1994, *Didgest of Russian legislation*, №32, art.3301, 12.05.94, The Russian Civil Code (second part) on January 26, 1996, *Didgest of Russian legislation*, №5, art.410, 01.29.96

- Water Code (June 3, 2006)[12];

- Federal Law "On subsurface Resources" (February 21, 1992)[13];

- Federal Law "On Sanitary and Epidemiological Welfare of Population" (March 30, 1999)[14];

- Law "On Industrial and Domestic Wastes" (June 24, 1998)[15];

- Land Code (October 25, 2001)[16];

- Law "On Protection of Atmospheric Air" (May 4, 1999)[17];

- Forest Code (December 4, 2006)[18];

- Federal Law "On Protection of Wildlife" (April 24, 1995)[19]

- The Tax Code (Chapter 25.2 "Water tax")[20] + corresponding laws on payment for using land and forest.

There are also special legislation, concerning radioactive accidents in the Soviet period:

- Law on May 15, 1991 "On social protection of citizens, who were exposed to radiation as a result of the catastrophe in the Chernobyl atomic power station"[21];

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[11] Federal Law on November 21, 1995, №170-FZ "On the use of atomic energy", *Rossiyskaya gazeta (Российская газета)* № 230, 11.28.1995

[12] Water Code on June 3, 2006, *Digest of Russian legislation,* №23, art. 2381, 06.05.2006

[13] Federal Law on February 21, 1992 "On Subsurface Resources", *Digest of Russian legislation,* №10, art. 823, 03.06.1995

[14] Federal Law on March 30, 1999 "On Sanitary and Epidemiological Welfare of Population", *Rossiyskaya gazeta (Российская газета)* №64-65, 04.06.1999

[15] Federal Law on June 24, 1998 "On Industrial and Domestic Wastes", *Digest of Russian legislation,* №26, art. 3009, 06.29.1998

[16] Land Code on October 25, 2001, *Digest of Russian legislation,* №44, art. 4147, 10.29.2001

[17] Federal Law on May 4, 1999 "On Protection of Atmospheric Air", *Digest of Russian legislation,* №18, art. 2222, 05.03.1999

[18] Forest Code on December 4, 2006, *Digest of Russian legislation,* №50, art. 5278, 12.11.2006

[19] Federal Law on April 24, 1995 "On Protection of Wildlife", *Digest of Russian legislation,* №17, art. 1462, 04.24.1995

[20] The Tax Code (Chapter 25.2 "Water tax"), *Parliament newspaper (Парламентская газета)* №140-141,07.31.2004

[21] *Vedomosti SND and VS,* №21, art. 699, 1991

- Federal Law on November 26, 1998 "On social protection of the Russian citizens, who were exposed to radiation as a result of emergency in 1957 on the industrial association "Mayak" and disposal of radioactive wastes into Techa river"[22].

Since Russia is a federation, all these laws are federal. The subjects of the federation as the different regions of the federation have their own constitutions and legislation. From the birth of the new Russian Federation (1992) there has been a battle going on between decentralization and centralization tendencies. According to the Constitution, natural resources belong to the joint jurisdiction of the federation and the subject (Art. 72). The Constitution, however, does not specify what joint jurisdiction means. When there were no laws on the federal level, the subjects passed their own laws. After new federal laws have been passed, contradiction with the earlier legislation of the subjects appeared.

Thus, the subjects of the federation have to change their regional laws to correspond to the principles given in federal legislation. Environmental law is now being reformed. One reason for the reforms is that the federation is now strengthening its positions. This means that the structure of environmental legislation is still taking its form. The principle that natural resources are state property, however, generally been cemented in the current legislation.

The Russian Constitution declares that natural resources are protected and used as the basis for living of the peoples of the region (Art. 9, Item 1). It requires that the owner who can freely possess his land or other natural resources has to ensure that it does not damage the environment or rights of other people or benefits guaranteed by law (Art. 36, Item 1). The Constitution also guarantees the right for

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[22] *Didgest of Russian legislation,* №48, art. 5850, 11.30.1998

every citizen for favourable environment, the right to obtain information on the environmental situation as well as the right to get compensation for damage caused by an environmental crime for his health or property (Art. 42).

In accordance with the Constitution of the Russian Federation, everyone has the right to a favourable environment, everyone is obliged to preserve nature and environment, carefully deal with natural resources that are the basis of steady development, life and activity of people living in the territory of the Russian Federation.

Federal Law "On protection of the environment":

- defines legal bases for the state policy in the field of preservation of the environment, activity of people living in the territory of the Russian Federation, providing the balanced solutions for social and economic problems, preservation of a favourable environment, biological variety and natural resources in order to comply with the needs of present and future generations, strengthening of the law in the field of environmental preservation and maintenance of ecological safety;
- regulates relations in the field of interaction of society and nature, arising from economic activities and other activities connected with impact on nature as the major component of an environment, being a basis of life on the Earth, within the territory of the Russian Federation as well as on continental shelf and in exclusive economic zone of the Russian Federation.

Also, the Law "On protection of the environment" is a typical framework law and regulates on the powers on the sphere of the protection of the environment. It regulates the division of power between the federation, its subjects and municipal authorities. It also gives citizens rights to receive information and demand for protection of the environment within the legal framework, without specifying how

these rights can be used. It lists the methods for protection of the environment, regulates on what level limits and quality standards are set (usually governmental level) and lists the forms of penalties for negative influence on the environment. It also sets highly general rules for giving licences for building. The law also gives the framework rules for monitoring as well as state and municipal inspection. More detailed rules are given either by other laws or mostly by decrees.

There are also certain principles set for the protection of the environment. The polluter pays principle is mentioned in the law. Liability for charges is set by payments which the one driving polluting activity should pay. The payment principle was introduced already by the previous law on environmental protection from the soviet period (1991), which was mentioned above.

The Water Code as well as the Forest Code and the corresponding general laws are also framework laws regulating on quite a general level. A lot of attention is paid to defining and classifying the objects of regulation into different groups. In the Water Code, different water objects (e.g. rivers and lakes), as they are called, are divided between the federation, the subjects of the federation and a lesser degree municipalities in quite a complicated way. Water objects which extend to areas of two or more subjects, are under federal jurisdiction. The Forest Code, as mentioned above, regulates that the whole forest fund is the property of the federation. All economically significant forests belong to the fund. Also natural conservation areas are federal. Some woods or parks for recreation purposes around and inside towns or villages belong to municipalities and are not included in the forest fund. Both codes have, however, adopted the same principle that 60 % of the payments for the use of water or forest go to the budget of the subject of the federation and 40 % to the federal budget. Taxes are also paid for the use of state

property. Also the below ground resources (groundwater resources, oil, gas, minerals,) are divided between the federation, the subject and the local municipal level.

Very important means for developing environmental law and regulations as well as implementing them are the federal environmental programs which are coordinated between the federal, subject level and local level. Environmental programs can be used to co-ordinate all the levels and interest groups of society and activate citizens to influence on their environment.

The discovery of nuclear energy and tremendous up growth of the forms of its application has arisen the problem of responsibility for harm, which may be inflicted to environment and to human as a result legitimate activity. Civil-legal responsibility for the harm, caused by radioactive source of increased danger, is always responsibility for the unlawful infliction of harm. Thus, infliction of any harm is always unlawful, even if the activity of the owner of radioactive source of increased danger was legitimate.

Accordingly, infliction of harm as a result nuclear incident should be considered as unlawful action, which generating an obligation to compensate pecuniary losses.[23]

In this thesis the author touch the problems of the compensation for harm to citizens, who was exposed to radiation as a result of Chernobyl catastrophe and emergency on "Mayak" plant. These incidents occurred in the Soviet period, when much objective information was not published. In the Soviet Union there were other atomic incidents on military and civil facilities. Incidents occurred on the

[23] S. A. Malinin, Peaceful use of atomic energy: International-legal questions, Moscow, 1971, p. 135 (Малинин С. А. Мирное использование атомной энергии: Международно-правовые вопросы, М.,Международные отношения, 1971, с. 135)

nuclear-powered submarines, plants for production of nuclear fuel, atomic power stations and so forth. However, in the majority cases the information about incidents was confidential.

Therefore, even now, it is not possible to represent a complete picture about number of emergencies with radioactive contamination. After the collapse of the USSR in 1991 the incidents on Chernobyl and "Mayak" plant acquired the great social and political importance. The special laws were adopted and many documents and information, concerning the incidents were published. Taking into consideration, that these incidents were the largest in a number of victims, the author uses them as the basic examples of harm from radiation at present thesis.

2. Development of the Russian legislation on radioactive contamination

In the Soviet legislation the responsibility for nuclear damage was not provided. There was no concrete indication in the legislation to the use of atomic objects as an activity of the increased danger.

In Russia an exploration of atomic technologies began in the middle forties of past century. It is natural that all these technologies were directed to the military aims. There was no special legislation about the regulation of the activity of atomic objects (majority of which were secret).

The Soviet legislation contained some rules dedicated to the sources of increased danger. But there was no a concrete rule, which would refer to these sources the atomic objects and activity connected with them.

Only in the eighties of the past century, in connection with the catastrophe on Chernobyl atomic power station and the processes of democratization of the Soviet

society the questions of compensation for harm to the health in connection with the radioactive contamination were arisen. Under the public pressure almost at the end of the Soviet period (1991) was adopted the Law "On social protection of citizens, who were exposed to radiation as a result of the catastrophe in the Chernobyl atomic power station". In this Law the victims of radiation were provided for monthly compensation, depending on the degree of harm to health from the radiation effect. Later, in 1998 was adopted Federal Law "On social protection of the Russian citizens, who were exposed to radiation as a result of emergency in 1957 on the industrial association "Mayak" and disposal of radioactive wastes into Techa river". Accordingly, the state assumed responsibility for the consequences of the catastrophe. This responsibility means the obligation of the state to pay out social benefits and disability pensions to radiation victims from the federal treasury.

According to Article 5 of the Law "On social protection of citizens, who were exposed to radiation as a result of the catastrophe in the Chernobyl atomic power station", the compensation of harm, provided by present law and measures of the social support of citizens, who were exposed to radiation as a result of the catastrophe on Chernobyl atomic power station are obligations on expenses of the Russian Federation. Thus, financial support for realization of the measures of social support of citizens, who were exposed to radiation, is made exclusively due to funding of the federal budget of Russia.

But these Laws did not solve the questions about complete compensation for harm, including the moral harm, inflicted to citizens. For the first time the principle of complete compensation for the harm to persons` health as a result of negative environmental effect was included into the Law of the RSFSR "On protection of the natural environment" on December 19, 1991. At the moment of adopting these

laws in Russia were no standards of the civil legislation, according to which it would be possible to demand compensation of harm in the court. Of course, it concerned a moral damage. More lately the rule on compensation for moral harm appeared on the "Basis of civil legislation of the Union of Soviet Socialist Republics (USSR)". But the Basis did not have retroactive force. There was no also practice of its application by Soviet courts. In 1993 the Russian Parliament (The Supreme Soviet) asserted that this rule could be put into effect in the territory of Russia since August 1992.

The first part of the Russian Civil Code was adopted in 1994. It was put into operation since January 1, 1995. The rules about the harm and the order of its compensation and the concept of moral damage were finally appeared in this Code. Only in 1996 with the adoption of the second part of the Russian Civil Code appeared rules about responsibility for the damage, inflicted by the sources of increased danger. Atomic objects were related to the number of such sources. In 1995 was also adopted Federal Law "On the use of atomic energy". Subsequently this principle of complete compensation for the harm was fixed in Federal Law "On protection of the environment", which was adopted on January 10, 2002.

Chapter 2. Civil responsibility for environmental torts

2.1 Introduction

Environmental law is a relatively young branch of the Russian legislation. It comprises the following groups of relationships:

- exploitation of natural resources;
- environmental protection;
- ownership of natural facilities;
- protection of ecological rights of individuals and legal entities.

The main objective of establishment for such a branch of law was obviously to ensure healthy environment for society in general as well as for each individual in particular.

Being occupied in ecologically harmful industries, one often happens to forget about prior importance of life and health protection, safe environment, development of non-polluting industries, rational use of natural resources and potential opportunities of natural environment.

Taking into consideration the abovementioned, collaboration of public authorities and social institutions entitled to control and monitor environmental conditions can make more effective legislation to protecting a right for clean and safe environment and a right of access to environmental information.

At present time, there are no effective methods of prevention and compensation of environmental damage. It` s very hard to proof casual relation between ecological harm and human health. That is why the problems of liability for environmental damage become actual.

2.2 The concept of civil responsibility for environmental delicts (torts)

Civil legal responsibility for environmental offenses - this is the property responsibility of citizens and legal persons for the caused damage to natural environment, to health and to the property of citizens and other subjects by environmental pollution, by spoiling, by destruction, by damage, by the irrational use of the natural resources, by the destruction of natural ecological systems and by other ecological offenses. Such responsibility is established in accordance with the rules, which are contained in the civil and ecological legislation.

For the terminological difference: the losses, as a result of undue satisfaction of obligation are conventionally designated as damage (Chapter 25 of the Russian Civil Code). Losses, as a result in the absence of the obligations, provided by agreement or special legal act, designated as harm (Chapter 59 of the Russian Civil Code).[24]

By damage should be understood the total or partial loss of the value of property as a result of destruction, spoiling, lack, loss or stealage, and also money (material) expenses. Harm - as the condition of civil legal responsibility - is expressed in the negative consequences in the property like damage or losses. Thus, according to the civil law, harm has wide generic notion. There is no general concept of harm in the civil legislation. However, it had been formed long ago in the science of civil law and during the time practically did not change.

Russian scholar Polyakov correlates the concepts of "harm" and "losses" as general and particular, but "harm" consists of two forms: property harm and moral

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[24] S.A. Bogolubov, *Russian ecological law*, Moscow, 2007, p.300-306 (Боголюбов С. А. *Экологическое право*, М., Высшее образование, 2007, с. 300-306)

harm. This point of view is substantiated, since the term "losses" characterized only property component of harm.[25]

In scholar researches it is possible to find the examination of the harm, caused by ecological delict, in two aspects - economic (material) and ecological (nonmaterial). It is explained by the fact, that a similar division arises from the system of interaction of society and nature, where two systems are functioning: economic and ecological.[26]

After determining the civil-legal essence of the institute of compensation of ecological harm, it is possible to suggest another classification. Presence of the material, actually countable harm is compulsory in each case of suing the subject (person) for the civil (material) responsibility. Furthermore, it is inexpedient to use a term "ecological harm" for the designation of nonmaterial harm. In rational aspect, the concept of ecological harm can be used for the designation of the harm, which has the ecological origin and the compensation capability.

Thus, ecological harm is expressed in the derogation of the property interests of the owner of the natural resources or nature user as a result of destruction, damage, pollution and exhaustion of natural objects as usable resources (illegal cutting of forest, the spoiling of the soil). Also, in connection with this, there is impossible to use natural objects according to their functions, to obtain incomes (costs), needs for additional expenses for their restoration. Ecological harm bears not only material nature, but also actually calculated in terms of money like the harm, caused by other delicts.

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[25] I. N. Polyakov, *Responsibility for the obligations due to harm*, Moscow, 1998, p. 19-23 (Поляков И.Н. *Ответственность по обязательствам вследствие причинения вреда,* М., Городец, 1998, с. 19-23)

[26] V.V. Petrov, *The Russian ecological law*, Moscow, 1995, p. 334 (Петров В.В. *Экологическое право России*, М., БЕК, 1995, с. 334)

The legal basis for legal responsibility is Law "On protection of the environment" and the Civil Code.

First of all, for the more complete disclosure of the theme of work it is necessary to open the meaning of the used terminology. *Juridical responsibility* - this is the possibility of invoke to guilty person, who commit an offense, the legal coercive measures, provided by the violated juridical norm, according to strictly defined procedural order.

Concept of juridical responsibility in the positive sense is perception by the person of the necessity for performance of duty and the appropriate behavior.

Further, *ecological delict* - this is guilty, illegal act, which disrupts ecological legal order and *inflicts harm* to natural environment and human health, or to ecological rights and interests of citizens and legal persons.

When it says about the ecological harm, there are different terms uses in the legislation: harm, damage, lost profit, losses. For example, in Federal Law "On protection of the environment" says about compensation of the harm, caused by ecological delict (Section XIV). The Russian Constitution establishes the right of each on the compensation of the damage, caused to its health or to property by ecological delict (Art. 42). Law "On protection of the environment" is provided for the compensation of the harm, caused to the health of citizens by unfavorable environmental effect (Art. 79).

In the Civil Code is determined the concept of "losses" (Art. 15)[27] - these are the expenditures, which person, whose right was disrupted, produced or will have to produce for restoring the disrupted right, loss or damage of its property (real

[27] The Russian Civil Code on 30 November, 1994, *Didgest of Russian legislation*, №32. art.3301, 12.05.94

damage), and also *unreceived profits,* which this person would be obtained with the normal conditions of civil circulation, if the right was not disrupted (lost profit).

As *ecological harm* is understood any aggravation of environmental condition, which occurred as a result of the violation of legal ecological requirements, and any related with its derogation, which is guarded by the law of material and nonmaterial benefit, including life and human health, the property of persons and legal persons. Thus, the elements of ecological harm are damage, lost profit and moral damage. *Ecological damage*, first of all, is manifested in the form of the environmental pollution, spoiling, destruction, damage, exhaustion of natural resources, destruction of ecological systems. Because of this damage can be caused to health and to the property of citizens and legal persons.

Ecological harm is frequently related with the lost of profit, i.e., with non receipt by nature user of the incomes, which he could obtain with the normal conditions. For example, farmer could obtain the higher harvest of agricultural crops, if the environment was not polluted.

At present time, jurists make an attempt to create an independent form for the environmental protection responsibility, which understood as "provided by law unfavorable consequences, which arise at the violation of the requirements of rules of law on the protection of nature objects". The object of protection is assumed as the basis of this responsibility.

Arising of environmental protection responsibility is a convention (formality). This responsibility can not pretend to the role of independent form. Environmental protection responsibility is the complex, which is the most widely used in the sphere of the environmental protection forms of the juridical responsibility, such as: administrative, civil (substantive), disciplinary and criminal.

However, setting a question about the acknowledgement of other forms of responsibility unavoidably must entail creation of the special fundamental mechanism of their implementation. This is the hard and expensive measure. In this connection, more real for purposes of the protection of environment is improvement of rules of law and practice of their application within the framework of administrative, criminal, civil and disciplinary, methods of legal regulation, taking into account the special features, caused by the particular object of protection.[28] In this case the special features, caused by the definite object of the protection of nature, must be considered.

Civil responsibility is characterized by only coercion to the bearing of the negative property consequences, which appear in connection with the non-execution, the improper execution of contract obligation or with the reason for extra-contractual (delict, tort) harm. The purpose of civil responsibility consists of the restoration of the disrupted property state of person due to the property of the wrong-doer or person, responsible for the delict (tort) of other.

Delict responsibility does not precede any responsibility of particular person. It is based on the fact of the accomplishment of the prohibited action, which encroaches on the absolute rights: property rights, to life and health of citizens.[29] This is why the delict liability can arise before any person, whereas contractual liability is established only at the part in the agreement. The delict (tort) is the foundation of responsibility.[30]

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[28] Y.S. Shemshuchenko, V. L. Muntyan, B.G. Rozovsky, *Juridical liability in environmental protection*, Kiev, 1978, p. 16-30 (Ю.С. Шемшученко, В. Л. Мунтян, Б. Г. Розовский, *Юридическая ответственность в области охраны окружающей среды*. Киев, 1978, с. 16-30)

[29] V. T. Smirnov, *Obligations due to the harm*, Leningrad, 1973, p. 14 (Смирнов В.Т. *Обязательства, возникающие из причинения вреда*. Ленинград, 1973, с. 14)

[30] B. T. Bazilev, *Bases of juridical responsibility. Materials of scientific conference*, Krasnoyarsk, 1972, p.9 (Базылев Б. Т. *Основания юридической ответственности. Материалы научной*

Thus, a consequence of delict is a damage, which related to the responsibility. Responsibility is an important condition of restoring the balance of the disrupted rights in the environmental juridical relationships.

2.3 Content of environmental delict

In civil-legal literature, rules about compensation of harm are usually divided into two groups: general and special. The first group includes rules, which have the general value. These rules are used in all cases, when in the law there are no indications relative to the application of special rules, which establish responsibility on separate kinds of obligations. General nature has the rules of articles 1064, 1065 of the Russian Civil Code[31]. These rules are:

- establish the general conditions of civil- legal responsibility and indicate circumstances, which free from responsibility on compensation of harm;

- determine the bases of compensation for moral damage and so forth.

Subordinate legislation composes the second group. This group includes governmental decrees and also charters, rules and instructions, in which are given an answers to the most varied questions, concerning the compensation of harm.

There are specific principles, inherent only in institute of the compensation of harm: the principle of the fault of a harm-doer, total compensation of harm, interrelation of obligations as a result of infliction of harm with other juridical institutes. The delict (tort), which causes the harm to person or to the property of a person is the base of responsibility as a result of harm infliction.

конференции. Красноярск, 1972, с. 9)

[31] The Russian Civil Code on 30 November, 1994, *Didgest of Russian legislation,* №32. art.3301, 12.05.94

There are several conditions, which establish the obligations on compensation of harm.

- *Delict (tort)* is action or inaction, which disrupts stipulated rules and personal rights of suffered person. Action is considered as delict, if it violates order or prohibition, established by the rules of objective (substantive) law. Inaction becomes delict, if provided by the rule of law duty is not fulfilled by the person voluntary. Accordingly, the harm inflicts to another person.

- *Infliction of harm* is necessary condition of responsibility on obligations as a result of harm. If there is no harm - there is no responsibility.

Harm to property consists of following: arising the real damage to sufferer; deprivation of the possibility to obtain planned incomes; necessity to carry any material expenditures. The main characteristic of property harm is the fact, that it always can be expressed by definite sum of money. As the property harm civil legislation includes the losses, which bear the persons in the case of infliction of damage to their life and to health (Chapter 59 "Liabilities for damage" of The Russian Civil Code). This is so-called physical harm. Physical harm can be the result of injury or another damage of health. The sufferer also has right to compensation for moral damage (physical and moral sufferings) in accordance with Art.151, 1099-1100 of the Russian Civil Code.

- *Fault of harm-doer (tortfeasor)*. The obligation of compensation is laid on harm-doer only in the case of his fault behavior. For example, if we examine accident on enterprise as the source of the damage inflicted to citizens, the enterprise as owner of the source of increased danger is obligated to compensate harm in accordance with Item 1 Article 1079 of the Russian Civil Code (if only

enterprise will not prove that the harm arose as a result of irresistible force or intention of the sufferer).

The fact of operation of the source of increased danger, which inflicted harm, despite the fault of possessor or operator of the source of increased danger, is the base to raise claims for compensation of harm. Thus, Article 54 of Federal Law "On the use of atomic energy" says, that responsibility of operating organization for losses and harm, inflicted by radiation exposure, arises regardless of the fault of operating organization.[32]

- *Causal relation* between harm and delict. All actions, facts, events, processes in the life are connected with each other. Thus, if enterprise inflicted harm to natural environment and in connection with this began aggravation of the health of person, it is possible to suppose the causal relation. This causal relation includes the actions of enterprise, as a result of which the natural environment was polluted. The harm inflicted to person is aggravation of his health.

Enterprises, which exert unfavorable influence on natural environment are responsible to citizens for the harm, inflicted to their health. If direct or indirect causal relation with unfavorable influence of natural environment (radiation) to the health is established, it gives the right to clime the compensation of harm in the judicial order.

Actually, the Constitution guaranteed to population the right for compensation of only a part of real ecological harm. Such harm is inflicted by ecological offenses. The same approach is in Federal law "On protection of the environment". Special rule in this law says about compensation of the harm, inflicted to health of citizens

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[32] I.O. Krasnova, "The legal regulation of compensation of ecological harm", *The ecological law*, №4, 2005 (Краснова И.О., "Правовое регулирование возмещения экологического вреда", *Экологическое право*, 2005, №4)

"as a result of violation of legislation in sphere of environment protection" (Article 79). Legislation makes possible for citizens - to recover, and state bodies - to compensate the harm. Such harm causes by the activity, which does not possess all elements of delict.

Thus, regardless of the numerous forms of ecological harm, its elimination consists of three basic methods: 1) preventive maintenance; 2) suppression; 3) elimination of the consequences of ecological offense.[33]

On the special features of origin and compensation, it is possible to recognize three forms of this harm:

- caused as a result of extraordinary situations of natural and industrial nature;

- connected with residence on the territories with an increased risk of radiation, chemical or other environmental pollution;

- connected with residence on the ecologically unfavorable territories.[34]

Claims on compensation of harm to health are possible to file simultaneously with claims on compensation of moral damage. The compensation for moral damage in accordance with Item 3 Article 1099 of the Russian Civil Code is accomplished regardless of the property harm.

The compensation of the harm, inflicted to health, is expressed in losses, which bears the person in relation with aggravation of his health. The additionally expenditures for treatment, restoration of health in sanatoriums, dispensaries,

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[33] B.V. Erofeev, *The ecological law*, Moscow, 2009, p.187 (Ерофеев Б.В., *Экологическое право России*, М., ИД «Форум», 2009, с. 187)

[34] M. I. Vasilyeva, "Legal problems of the compensation of harm, inflicted to health of citizens by unfavorable environment", *State and Law*, №10, 2008, p.28 (Васильева М. И., "Правовые проблемы возмещения вреда, причиняемого здоровью граждан неблагоприятным воздействием окружающей среды", *Государство и право,* 2008, №10, с. 28)

expenditures for treatment, prosthetics, nursing and so forth are regulated in accordance with Item 1 Article 1085 of the Russian Civil Code.

Defendant in lawsuit about the compensation of harm can be legal person or state. Defendant in trial always must be independent legal person. Court trials showed that the simultaneous recovery of compensation of the harm and moral damage in connection with unfavorable influence of radiation to the health is possible. The current Russian legislation and the rules of international law make it possible in the judicial order to recover (exact) the damage fully from the person, legal person who inflicted the harm.

2.4 The structure of environmental damages

Art.15 of the Russian Civil Code describes and fixes as the legal standard the basic economic formula, which in the present time widely used with the calculation of losses and damage for natural resources, large part of which according to Article 130 of the Civil Code relates to the objects of immovable property.

Thus, according to civil law principles, losses include some components. The restoration of the disrupted right=real damage+ lost profit. *Real damage* is loss or damage of property. *Lost profit* is uncollected incomes.

Compensation for environmental damage is limited to costs incurred for reasonable measures to reinstate the contaminated environment. Compensation is also available for lost profits- i.e. fishing, tourism etc,- that are a direct result of damage to natural resources.

In additional to removal clean-up costs, there are other categories of recoverable damages:

- damage to natural resources;
- damage to real or personal property;
- loss of subsistence use of natural resources;
- loss of revenues;
- loss of profits and earning capacity due to injury of natural resources.

Legal literature and law enforcement practice widely operate with the concept "owner" of the source of increased danger. Owner - the person who at the moment of the reason for harm in his own name achieved the activity, in which a source of the increased danger was used, therefore, he was obligated to provide control above this source.[35] The owners of the sources of the increased danger are legal persons and persons, who accomplish operation of the sources of the increased danger both by the force of property rights or right of operational control, and on other bases (for example, by lease agreement, rental or by proxy).

Juridical owner of the source of increased danger changes only when transfer of the source is legally confirmed. One of the juridical consequences of transferring the source of increased danger, arise as assignment to the new owner a harm, inflicted by this source in the operation period.

Liability is not only placed on the owner of source of increased danger, but also on the operator or charterer of the source.

Moral damage is new for the Russian environmental law. In accordance with the decree of the Plenary of Russian Supreme Court on December 20, 1994 "Some questions of the application of legislation about the compensation for moral

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[35] V. A. Fleyshits, *Basic problems of civil liability for the damage of health*, The scientific notes, Moscow, 1955, p. 51, (В.Т.Флейшиц В.А. *Основные вопросы гражданской ответственности за повреждение здоровья*, Учёные записки ВИЮН, вып.1. М., 1955, с. 51)

damages"[36] moral damage can consist of the moral tensions in connection with the impossibility to continue active public life, with the job loss, and also with the physical pain, connected with the damage of health or in connection with the disease, as a result of moral sufferings. The corresponding lawsuit can be filed in the context of the violation of right to the favorable environment.

In accordance with Article 77 Item 3 of the Federal law "On protection of the environment" damage to the environment caused by a subject of economic and other activity handling with wastes, must be compensated according to the approved rates and techniques of calculation of the size of environmental damage.

According to Article 78 Item 1 of the Federal law "On protection of the environment" definition of size of damage to the environment caused by infringement of the legislation in field of environmental protection, is carried out on the base of actual expenses for recovery of the disturbed environmental conditions, or in case of their absence - according to rates and techniques of environmental damage size calculation, approved by the executive managing authorities in sphere of environmental protection on federal level . Claims for indemnifications of harm to the environment caused by infringement of the legislation of the Russian Federation in the field of environmental protection can be advanced during 20 years.

Development of adequate economic mechanisms of the estimation and indemnification of the environmental damage becomes of a great importance in conditions of separation of supervising functions in sphere of the environmental

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[36] The decree of the Plenum of Russian Supreme Court on December 20, 1994 "Some questions of the application of legislation about the compensation for moral damage", *Rossiyskaya gazeta (Российская газета)* № 29, 02.08.1995

preservation from use of natural resources. It is necessary to arm the wildlife management inspectors with detailed instructive-methodological documents on definition of sizes of indemnification of damage to separate components of the environment, as well as to natural ecosystems on the whole.

The analysis of normative-legal documents on damage estimation and indemnification and of some complex instructive-methodological documents has shown that the operating system of the environmental damage assessment leads to unsuitable results because of:

- neglecting of market factors,
- subjectivity of the approved cost indexes and their practically total inadequacy to the real sizes of the environmental damage.

The environmental damage assessment is regulated by special federal laws and, in particular, the Federal law "On protection of the environment". According to it the indemnification of damage that was a result of ecological infringement, must be made voluntary or under the court or arbitration decision according to the approved rates and techniques of calculation of the damage size, and in case of their absence - on actual expenses for restoration of the violated environmental conditions in view of the losses, including the loss of profit.

The main disadvantage of the approaches used in currently in force normative-methodical documents is a methodical disunity of the damage assessment, related precisely with causing damage to the environment and natural resources, and their narrow departmental orientation. In this case, it is very hard for administrative bodies to recognize the kind of damage assessment for which they are responsible.

The choice of methodical approaches of economic evaluation of the harm (damage) to the environment is closely related with solving of the following problems:

- legal and economic definition of concept "harm",

- definition of kinds of natural resources damage and harmful influences on the environment, and possible solutions,

- definition of tortfeasors (harm-doers) and subjects of the right who bear losses because of the inflicted damage.

It is obvious, that at assessment and compensation of the environmental damage, a complex methodology, including all possible kinds of negative environmental impact is necessary. Such methodology has not existed till now.

Evaluation of the economic consequences of damage to human health from the effects of the polluted environment solves the following problems:

- identifying indicators that characterize such damage (for example, additional mortality, morbidity, invalidity, and other changes in human health);

- comparative evaluation of the influence of unfavorable risk factors of environmental pollution on different human health indicators;

- cash appraisal of human health indicators.

Additional mortality, morbidity, or invalidity caused by the environmental pollution are usually used as the main indicators that characterize damage to human health from environmental pollution. Thus, damage from morbidity, mortality, or invalidity includes the following components:

-medical care costs, including outpatient and inpatient treatment, rehabilitation measures, and sanatorium-resort treatment;

- temporary or permanent disability compensation costs of people who lost their

health (life);

- additional compensation to the sufferer (or his/her family) if this disease or death are proved to be related to the impacts of the polluted environment, for example, lawsuits of those who suffered from the impact of fluorides, mercury, etc.;

- benefits foregone for society due to disability as a result of disease (death).

When determining the sizes of damage, both immediate direct costs and remote losses are taken into account: immediate direct costs include medical-care, rehabilitation measures; remote losses are additional losses due to decreased labor ability in a remote period and other late effects after treatment, i.e., degradation of human life quality, as well as the number of years (days) of lost healthy life.

There are several examples of economic valuation of health loss from the effect of polluted environments. The total loss of human health from water and atmospheric air pollution in certain years was estimated at 2.3–3.4% of Gross Domestic Product (GDP). This valuation agrees with valuations of the World Bank experts.[37]

In Russia, about 7 million people are ill with bronchial asthma that is a «manifest» disease reflecting the effect of the atmospheric air. According to the most conservative estimates, the annual damage from this factor may be US $400–600 million. However, these estimates do not reflect further health and relevant economic losses. Another type of health damage is the effect of such widespread substance as lead. An increase in its content in the blood of preschool-age children leads to the retarded intellectual development of a child. In

[37] S.N. Bobylev, V.N. Sidorenko, Y.V. Safronov, *Macroeconomic valuation of human health loss from Environmental Pollution for Russia*, Moscow.: World Bank Institute, Nature Protection Fund.– 2002, p.32

addition, negative consequences may show even 10 years after lead impact in early childhood. In Russia, 2 million children may show excessive lead concentrations.[38]

Here is an example of judicial practice, which makes possible to establish the causal relation between pollution of environment and harm for the human health.

This example is a lawsuit of compensation for moral damage because of the adverse effects of the environment.[39] On the November 8, 2003 Segezhsky City Court of the Republic of Karelia considered the civil case of suit by the Fund of youth and childhood «Ariston» in the interest of Kuzin D.A. (plaintiff) to the Joint Stock Company «Siberian-Urals Aluminum Company» (defendant) about moral damage, recovery of property damage.

Plaintiff was born in 1984, from birth, lives in Nadvoitsy settlement of Segezhskiy district of the Republic of Karelia. There is a «Nadvoitsky aluminum plant of Siberian-Urals Aluminum Company» branch in Nadvoitsy, whose activities have harmful effects to the environment and public health of the settlement. As a result of emissions connected with the activities of the defendant, the plaintiff suffered from the disease of teeth, the destructive form of fluorosis. For the first time disease was found in 1989 and confirmed during the subsequent years. Plaintiff claims defendant to recover compensation for moral damages in the amount of 30000000 rubles and compensate material expenditures for treatment and prosthetics of teeth of 50000 rubles.

The court found that the production of aluminum and related emissions flouring-bearing substances into the atmosphere, soil and water are the main cause of dental fluorosis among people living in the zone of activity of the aluminum

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[38] B.A. Revich, V.N. Sidorenko, "Human health damage from environmental pollution", *Center for Russian environmental policy, Bulletin "Towards a Sustainable Russia"* № 35, 2006, p.3-5)

[39] Regional public organization The legal center "Rodnik", Materials of judicial practice, 2005

industry. The plant is an intensive source of the environmental pollution by the fluorine-bearing industrial emissions into air and water. The major manifestation of toxic effects of emissions is a dental fluorosis.

Physical and moral sufferings, inflicted to Plaintiff since 1989, have been continuing until the present time, because of adverse impacts on the environment as a result of continued activities of plant, including the period after enactment of laws about the compensation of moral damage, which follows from the expert reports, available in the materials of the lawsuit.

Plaintiff assembled the official data about the fact that the fluorine-bearing emissions into the atmosphere, produced by plant due to luck of the proper cleaning structures, caused severe illnesses in humans, such as fluorosis, disease of the cardiovascular activity, digestive tract, and oncological diseases.

In the court is proven that the harmful effect of the industrial wastes of plant is result of pollution of the objects of environment by fluoric compounds. The reason for negative influence on human health is not the single emission of some specified substance, but the complex of the harmful substances as a result of their prolonged presence and accumulation in the objects of the environment. This is a consequence of imperfect design decisions for almost half a century ago and also inability to organize and lack of initiative of the previous administration of plant.

In accordance with the conclusion of the complex medico-ecological examination, carried out by the Research Institute of Human Ecology and Environmental Hygiene, the situation in location of Nadvoitsy settlement caused by the significant environmental pollution by the wastes of the plant. The casual relation between the sources of the pollution of plant and pollution levels by the fluorine-bearing compounds of the environment of Nadvoitsy settlement and

morbidity of the children's population of settlement because of fluorosis is indisputable.

The only source of environmental pollution by fluorine-bearing compounds is plant, because there are no other analogous sources of pollution by the specific compounds of fluorine near the settlement. Specifically, the activity of plant caused real harm to health of plaintiff.

The legal-medical examination of № 142 on 02.12.2003 found that Plaintiff suffers the disease of teeth "destructive form of fluorosis". According to the information in the medical documents, diagnosis "fluorosis of the teeth" is for the first time established in June 1989. It was subsequent confirmation of the diagnosis in 1994, 1996, 1998 and 2001. The presence of the disease of teeth "fluorosis" is caused by the extremely high environmental pollution (water, air, soil) by fluorine and by the fluorine-bearing compounds (4-7 times higher than maximum permissible concentration) in the period of his embryonic and pre-school time (beginning of the 80th, the middle of the 90's).

The fault of plant management in the reason for harm to Plaintiff's health is established by expert conclusions. For the first time law provided the compensation of moral damage relative to the case by the law "On protection of the environment", adopted on December 19, 1991, put into operation on 03.03.1992.

According to Art.151 of the Civil Code, the court may impose upon the harm doer the duty to pay out the monetary compensation for the moral damage, if the citizen has been inflicted a moral damage (the physical or moral sufferings) by the actions, violating his personal non-property rights or infringing upon the other non-material values in his possession.

From the Prescript of the Plenum of Russian Supreme Court on December 20,

1994 follows, that if the tort action (inaction) of defendant, that inflicted to plaintiff moral or physical sufferings began before coming into force of the law, which establishes responsibility for infliction of moral harm, and such tort (action, inaction) continue after the coming into force of the law, then moral harm is subject to compensation.

In accordance with Articles 151, 1099, 1101 of the Civil Code the court recovered from the defender in favor of plaintiff the compensation for moral harm in the amount of 50000 rubles. With determining of the amount of compensation for moral harm the court considered the nature of physical and moral sufferings, caused to the plaintiff, the degree of the fault of the plant (defendant), requirements of rationality and validity.

In accordance with Art.1064 of the Civil Code, compensation of material expenditures for treatment and prosthetics of teeth recovered from the defendant in favor of Kuzin (plaintiff) was 18000 rubles, according to expert conclusion on 10.20.2003.

The base for the lawsuit are Article 42 of The Russian Constitution, Article 79 of Federal Law "On protection of the environment" about the right of citizens to compensation of harm, caused to health by ecological offense. Furthermore, claims of the present lawsuit are based on Article 151 of the Civil Code "On compensation of moral harm" and Article 1064 of the Civil Code "On the fact that the harm to person is subject to full compensation by harm-doer".

2.5 Conditions of application of civil responsibility

The fundamental principles of Russian environmental law are set out in the

Federal Law "On protection of the environment" and public administrative bodies are expected to apply these when enforcing environmental law. These principles include such as the polluter pays principle, the principle of potential environmental danger, full compensation for damage caused to environment, principle of environmental impact assessment, etc.

Violation of environmental law or permits can give rise to civil, administrative and criminal liability. Civil responsibility might result either in full compensation for damage caused to the environment or performance of remediation. Remediation should replace monetary compensation if the responsible party is willing and capable to undertake such remediation (or to finance it), or if remediation is more effective than financial compensation. The amount of financial compensation is estimated using applicable calculation methodologies and, in their absence, on the basis of the actual expenses necessary for remediation of the damaged environment, including lost profits.

Title holders are generally responsible for compliance with the environmental requirements during operation of a facility. Such situation is rather uncommon in Russia. This question may generally arise in circumstances when property owned by one entity is, for example, leased to another. Under Russian law, two title holders (owner and lessee) appear in this situation. Russian law does not clearly allocate environmental responsibility under these circumstances. Thus, it is possible to assume that various types of liability (including civil liability) may be applied to either title holder: the owner or the lessee.

If the owner was found liable for environmental breaches committed by the occupier (lessee) of the property, under certain circumstances, the owner will have grounds for claiming compensation for its expenses (incurred, for example, in

performing remediation) from the lessee on the grounds of redress suing. In practice, in order to avoid the risk of being found liable for environmental breaches committed by the occupants of the property, appropriate contractual mechanisms are used to determine the party (the lessee) responsible for maintaining the facility in compliance with the environmental requirements. It should be mentioned, though, that no clear case law is available today on the effectiveness of these measures.[40]

In the period of socialism in Russia, when the state took care of all economic activity, there was no need to pay for using natural resources. Now, it has been introduced the principle that the one driving economic activity is liable for paying a charge for using natural resources as well as polluting the environment. In Russia the principle for paying for polluting (waste water, air pollution) was introduced with the earlier law on the protection of the environment stemming from the last months of the Soviet Union in 1991. The state has introduced also payments for using various natural resources (land, forest, water, below ground resources) with special laws on the issues.

When polluting does not stay within the regulated limits, there is a special payment which can be ordered administratively. In Russia the payment is determined calculating the excess pollution. The Ministry of Natural Resources and Environmental Protection of Russia and its territorial organs have a right to calculate the damage to the environment and require damages from the polluter. The polluter can dispute the damages and submit the decision to the court. Payments do not free the enterprises for their responsibilities to take care of the

[40] E. Goudina, T. Khovanskaya, A practical insight to environment law in Russia, Moscow, 2007

environment. Enterprises are required to submit a plan for protecting the environment when they apply for a licence.

Damage for the health of citizens or to their property has to be taken before the court of arbitration or the ordinary court. Starting a court procedure is everywhere a right in principle, but difficult to manage and time consuming in practice. Often people do not believe in their chances against the state or an influential enterprise. The plaintiff who has to prove that there has been a damage and that it has been inflicted by the fault (delict) of the polluter. Proving both damage and fault in practice needs to be done in cooperation with state environmental authorities. Delict based liability can be divided among several polluters according to their share of the pollution. Probably partly, because of traditions arising from socialism when huge damages where not needed since the state took the responsibility, the courts are reluctant to order damages. They require quite certain proof both for the fault and the damage as well as for the causal connection between them. It is also clear, that the judges may feel responsibility for not causing closing down of an enterprise offering jobs for surrounding people.

Article 86 of Federal Law "On protection of the environment" says that the harm, caused to environment, to health, to property of citizens, to national economy, is subject to complete compensation in accordance with the legislation. The principle of the complete compensation of harm is established also in Article 1064 of the Civil Code. The content of this principle is disclosed in Article 1082 of the Civil Code. To allow a claim about the compensation of harm, court in accordance with the circumstances of the case, forces the person, who is responsible for the harm, to recover it in kind (to grant the thing of the same kind and quality, to revise the damaged thing) or to compensate the losses.

The subjects of the ecological harm can be citizens, public organizations, entrepreneurs, enterprises, governmental institutions. Harm to person or enterprise as a result of illegal actions or omission of state government, municipal government or the officials of these organs is subject to compensation for account of the federal treasury, the regional treasury or municipal treasury.

According to Article 15 of the Civil Code, compensation of losses has following definitions:

1. The person, whose right was violated, can require the total compensation of losses, if by law or agreement is not provided the compensation of losses in the smaller amount.

2. As losses are understood the expenses, which person, whose right was violated, has born or will have to bear for restoring the violated right, loss or damage of its property (real damage), and also unreceived incomes, which this person would be obtained with the normal conditions of civil circulation, if his right was not violated (lost profit).

If the person, who violated the right (harm-doer), obtained profit, the sufferer, whose right was disrupted, are able to require compensation on parity with other losses. The compensation of the lost profit has to be in the amount not less than such incomes.

However, the general bases of responsibility for harm are determined in Article 1064 of Russian Civil Code: illegality of action (inaction), the causal relationship between the action (inaction) and the result (damnification) and the fault of harm-doer. The person, who caused harm (harm-doer, tortfeasor), is free from the compensation of harm, if he proves that the harm does not relate to his fault. However, due to the law the compensation of harm by the absence of the

harm-doer`s fault can be provided in particular, if harm is caused by *the source of increased danger.*

Legislation provides for the *judicial and extrajudicial order* of the compensation of ecological harm. The extrajudicial order of compensation is realized by different methods, including *voluntary compensation*, by means of the insurance of the risk of ecological harm and *administrative order*. The voluntary method of the compensation of harm, which is rarely encountered in practice, has for harm-doer some advantages. Judicial order can create powerful anti-advertisement to enterprise and to another harm-doer, in which they are not concerned.

The administrative order of the compensation of ecological harm applies, as a rule, to the emergencies and the natural disasters, which have ecological consequences, by adopting the measures of the social and economic protection of the victims.

According to Article 77 of Federal Law "On protection of the environment" harm to natural environment causes by its pollution, by spoiling, by destruction, by damage, by the irrational use of the natural resources, by the destruction of natural ecological systems and by other environmental delicts. As the injured party comes out the natural environment, which is not subject, but is the object of right. Accordingly, harm to natural environment compensates, depending on real situation, for the possessor of property rights of the natural resources or user of nature.

The lawsuits about the compensation of the harm, caused to environment, are examined on the actions of attorney, public bodies of control of use and protection of the natural resources, citizens and legal persons, who possess and use natural resources, the administration bodies of state conservation areas and national parks.

The Russian Civil Code provides for two methods of the compensation of harm - in the kind (real) and in the money.

2.6 Concluding remarks

There are some important measures to make more effective responsibility for environmental damage.

1) Only some theoretical questions concerning the civil- legal liability in ecological right are researched. However, there is no clear concept of environmental harm as the part of the ecological fault (delict).

2) The Law "On protection of the environment" is a typical framework law and regulates on the powers on the sphere of the protection of the environment. It regulates the division of power between the federation, its subjects and municipal authorities. It also gives citizens rights to receive information and demand for protection of the environment within the legal framework, without specifying how these rights can be used.

3) Liability in environmental accidents is evaluated according to the general rules of civil liability. In practice it means that for personal injury and damage to health it is difficult to prove the polluter who is in fault and the causal relation between the fault and the damage. The number of such lawsuits is little. Because earlier the state has taken the responsibility and has paid for victims of accidents, this problem has probably not yet been realized. Courts have not dealt with cases of environmental accidents. There is neither special regulation for environmental liability nor special legislation for certain types of environmental accidents such as paying and limiting damages for nuclear accidents.

4) The study of legal regulation and practice of the use of means, obtained on the lawsuits about the compensation of the harm, inflicted by the disturbance of legislation about protection of the environment, showed that the current legislation in this sphere does not make it possible to trace the use of a particular sum, recovered for the particular delict, for the restoration of disrupted favorable conditions of the environment. This indicates, that the property liability practically loses its compensating function. Thus, to estimate the effectiveness of the complex of relations on the compensation of harm, caused to the natural resources, and to the restoration of disrupted favorable conditions of natural environment is impossible, since the current legislation did not provide the mechanism of control of the means to restoration of the harm, recovered from inflictor of damage (harm-doer).

5) Accordingly, it is necessary on the legislative level to establish another order of entering and use of means, obtained on the lawsuits of compensation of the harm, inflicted by ecological delicts. Entire amount of recovery must accumulate in the non-budgetary ecological fund for the corresponding level (depending on whether the natural object appears as the property of the Russian Federation, subject of the Russian Federation or by municipal property).

Furthermore, clear regulation of the cooperation of administrative bodies must be provided into function, which includes the realization of restoration measures, and the non-budgetary ecological funds, where accumulates means, obtained as a compensation of the inflicted harm to the environment.

6) The trends of development and adaptation of the institute of the compensation of harm, caused by the violation of legislation about protection of the environment are possible to trace on the example of legislation on the use of atomic

energy. Analysis of the current legislation in the above mentioned sphere, makes it possible to assert, that in the regulation of compensation of the large harm, inflicted to environment, the public-legal originations prevail, in spite of the fact, that initially institute of civil liability considered within the framework of private law.

This transformation of juridical nature of legal regulation is predetermined by the special significance of the object of inflicted harm. The originations of the public- legal regulation of the relations are following: first of all, including of state to the participants in the juridical relationship on the compensation of harm. State bears subsidiary liability in the case of insufficiency of harm-doer`s means, and also in cases when inflicted losses exceed the limit of the responsibility of inflictor (harm-doer), if such limit is established by the current legislation of the Russian Federation or by international-legal documents.

7) Russian government adopted a comprehensive environmental law in 2002. This law details the responsibilities of the government in overseeing environmental quality. It defines the rights of citizens to protest and even to seek compensatory damage, including pain and suffering, for pollution-related injuries. The Law also outlines the right of the authorities to collect emission fees. However, the Law is a set of general goals (framework law), without enforcement procedures. It does not provide specific rules and penalties for existing and potential polluters.

Chapter 3. Responsibility for radioactive contamination

3.1 Introduction

In the Soviet period, state, possessing larger political power and immunity, for a long time assumed such rules of law, which made impossible to fix in it responsibility for ecological offenses. In the period from 1991 till present time, many laws include the standards, which regulate the order of the compensation of harm in connection with its infliction to citizens, were accepted by the Russian Parliament.

The building of atomic power stations and plants for production and processing of nuclear fuel was the important component of the Soviet atomic program. However, the operation of nuclear plants is connected with radioactivity, which is capable to lead to severe consequences for human health.

Irrespective of the future of nuclear power engineering, at present, its existence is accomplished fact. Problems of the protection of environment, connected with atomic energy are still topical.

At present time, state recognizes responsibility for pollution of natural environment, enacting special laws about social protection of citizens. However, the social privileges guaranteed by state and compensation in relation with the pollution of natural environment do not fully compensate the harm. There is a problem to prove causal relation between influence of radiation and harm to health. Thus, in practice the harm, inflicted to health as a result, for example, of radiation exposure, and moral damage are significant.

3.2 Legislation and policies concerning radiation safety

In the Soviet Union atomic power plants capacity from year to year was increased, the country was stuffed by nuclear weapon, nuclear reactors, and nuclear weapon tests were carried out. Despite these facts, long time, the Soviet Union did not enact its own laws in the sphere of use of atomic energy and nuclear safety.[41] Only in the nineties legislation about nuclear safety was started.

Radiation safety is the component of ecological safety. In its turn, ecological safety is an element of general safety. In Federal Law on March 5, 1992 "On the safety"[42] - this general concept is defined as condition of protection of the vitally important interests of person, society and state from internal and external threats.

Using concept "safety", it is necessary to clearly understand what is threat, from what it occurs, to whom it is directed, how the safety is ensured (guaranteed), how it is measured. All questions of environmental protection, which compose joint scientific, organizational and technical complex, are included in ecological safety. It says about protection of ecosystems and man as the parts of ecosphere from external industrial dangers.

Federal Law on January 10, 2002 "On protection of the environment"[43] defines ecological safety as "condition of the protection of natural environment and vitally important interests of human from possible negative influence of economic

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[41] A. A. Yaroshinskaya, *Chernobyl: Twenty years later. The crime without punishment*, Moscow, 2006, p. 493 (Ярошинская А.А. *Чернобыль: Двадцать лет спустя. Преступление без наказания*, М., Время, 2006, с. 493)

[42] Law on March 5, 1992, № 2446-1 "On the safety", *Vedomosti SND and VS*, №15, art. 769, 04.09.1992

[43] Federal Law №7 on January 10, 2002 "On protection of the environment", *Digest of Russian legislation*, №2, art.133, 01.14.2002

and other activity, emergency situations of natural and industrial character, their consequences".

The concept of radiation safety is fixed in Federal Law on January 9, 1996 "On radiation safety of population".[44] It is defined as "condition of protection of present and future generation of people from the influence of ionizing emission (radiation) harmful for their health". "Threat" is clearly defined as ionizing emission, directed toward the man.

Threat proceeds from sources of ionizing emission, and one of the basic principles of providing radiation safety is "not exceeding of permissible limits of individual radiation doses for citizens from all sources of ionizing emission".

In the basis of legislation on radiation safety is idea about the human as the weakest component of biosphere, which must be protected by all possible methods. It is considered, that if person will be properly protected from the harmful effects of the ionizing emission, then environment will be also protected, since resistance to radiation of the elements of environment (ecosystems), as a rule, is substantially higher than of a person. Radiation safety is provided by the complex of measures of radiation protection.

Here is an explanation of terminology, contained in legislation, which regulates relations of providing safety in using of atomic energy. In the Federal Law on November 21, 1995 "On the use of atomic energy"[45] safety is one of the key terms. It is important to note, that general definition is absent, but the content is defined particularly.

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[44] Federal Law on January 9, 1996, №3-FZ "On radiation safety of population", *Didgest of Russian legislation,* №3, art. 141, 01.15.1996

[45] Federal Law on November 21, 1995, №170-FZ "On the use of atomic energy", *Rossiyskaya gazeta (Российская газета)* № 230, 11.28.1995

Law distinguishes four kinds of danger - radiation, nuclear, fire and technical. The determination of each form is revealed in other normative acts.

Concept of "government control of safety in use of atomic energy", which is contained in the Law "On using of atomic energy", consists of three basic elements:

- development and use of standards and rules;

- licensing;

- supervision on compliance of standards and rules and on conditions of using licenses.

Concerning the concept "nuclear safety", its legislative definition is absent. Legislator, apparently, assumed the fact, that terminology of this new technology has not been hardened yet and changes frequently. Contemporary definitions of terms are transferred into the normative documents, subordinate legislation, such as, for example, "The general provisions of providing safety on atomic power station"[46]. In the provisions is said about safety of nuclear plant as an object, but not mentioned about "personnel, population and environment", which Law "On using of atomic energy" includes.

According to the provisions, nuclear and radiation safety of nuclear plant is defined as "the characteristic of nuclear power station, which makes it possible during the normal operation and disturbances of normal operation to decrease radiation exposure on the personnel, population and environment by the established limits".

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[46] Decision of Federal Agency for Nuclear Energy of Russia (Rosatomnadzor) on 11.14.97 №9 "On enacting and implementation of normative document PNAE G-01-011-97 "General rules of providing safety in nuclear power stations. OPB-88/97" (Постановление Госатомнадзора РФ от 14.11.97 №9 «Об утверждении и введении в действие нормативного документа ПНАЭ Г-01-011-97 «Общие положения обеспечения безопасности атомных станций. ОПБ-88/97»)

Thus, term "nuclear safety" is not determined, but the term "nuclear emergency" is clear established: emergency, connected with the damage of fuel elements, which exceeds specified limits of safety operation, and (or) with atomic irradiation of personnel, which exceeds permitted limits.

This emergency can be arisen by the following reasons:

- by disturbance of monitoring and control of nuclear fission chain in the reactor core;

- by appearance of criticality during reload, transportation and storage of fuel elements;

- by disturbance of abstraction of heat on fuel elements;

- by other reasons, which lead to damages of fuel elements.

Identification of the concepts of nuclear and radiation safety in connection with nuclear power stations as to separate atomic object, reflects insufficient juridical methodology during creation of "The general provisions of providing safety on atomic power station" or absence of sufficient criteria of differentiation of concepts "nuclear safety" and "radiation safety".

For purposes of the protection of the interests of citizens, which exposed to nuclear damage, Federal law "On the use of atomic energy" provides fundamentally new system, unknown to domestic civil legislation. Compensation for nuclear damage in accordance with civil law, which does not reflect new requirements of society, is obstructed or impossible. The situation, which was established in connection with the compensation for damage after Chernobyl emergency, confirms these difficulties.[47]

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[47] A.I. Yorysh, "Law on the use of atomic energy", *State and Law,* №8, 1996, p. 38 (Йорыш А.И., "Закон об использовании атомной энергии", *Государство и право*, 1996, №8, с. 38)

Term "fire safety" is fixed in Federal Law on December 21, 1994 "On fire safety"[48] and is defined as "condition of the protection of person, property, society and state from fires". The base of this term is safety of people, and the threat is fire - "uncontrollable combustion, which inflicts material damage, harm to life and to health of citizens and also to interests of the society and the state."

In comparison with radiation, nuclear and fire safety, another position was formed with definition of concept "technical safety". From the point of view of contemporary legislation, it is legal phantom: there is no law on the technical safety, also there is no its definition within the legislation.

In contemporary Russian legislation is used another concept - "industrial safety", fixed in Federal Law on July 21, 1997 "On industrial safety of dangerous industrial units"[49]. This concept is "condition of protection of the vitally important interests of person and society against emergencies on dangerous industrial units and consequences of emergencies". By emergency is understood "destruction of constructions and (or) technical devices, used on dangerous industrial units, not controlled explosion and (or) emission of dangerous substances". This law contains particular definitions of dangerous industrial units, dangerous substances (inflammable, explosive, toxic and so forth), dangerous types of equipment and kinds of activities.

It is important to note that in the list of dangerous substances, nuclear materials and radioactive materials are absent. Nevertheless, equipment, which works at high pressure and temperatures, and also load-lifting mechanisms are

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[48] Federal Law on December 21, 1994, №69-FZ "On fire safety", *Rossiyskaya gazeta (Российская газета)* № 3, 01.05.1995

[49] Federal Law on July 21, 1997, №116-FZ "On industrial safety of dangerous industrial units", *Didgest of Russian Legislation,* № 30, art. 3588, 07.28.1997

included in operation of Federal Law "On industrial safety of dangerous industrial units". Thus, the law creates conditions for different interpretation of its operation sphere.

Accordingly, concepts "nuclear" and "radiation safety" do not have clear legislative distinction. There is no general criterion of separation of these concepts. On the one side, the object of safety is interests and health of the present and future generations. On the other side, the object of safety is atomic power station, i.e., nuclear device. Thus, the object of safety is not clearly explained in legislation.

There is no legislative definition of concept "technical safety". This obstructs clear determination of the sphere of regulation, fixed in Federal Law "On industrial safety of dangerous industrial units".

In environmental law question about ecological and nuclear safety is still topical. Providing of ecological safety is understood as evaluation criterion of legal effectiveness of rules for environment protection. Observance of these rules is indicator of providing of ecological safety. On the contrary, their disturbance is indicator of susceptibility to ecological danger.[50]

3.3 Radioactive sources of increased danger

Radiation exposure is the source and the nature of inflicted harm, which is the base for the special regulation of the obligations in legislation. To prove the presence of causal relation between radiation exposure and inflicted harm is especially complicated in case of individual life and health. The estimation of the

[50] M.M. Brinchuk, "Providing of ecological safety as legal category", *State and Law*, №9, 2008, p. 42 (Бринчук М.М., "Обеспечение экологической безопасности как правовая категория", *Государство и право*, 2008, №9, с. 42)

distant consequences of such illnesses as cancer, genetic effects and the congenital defects in case of radiation injury, is complicated because of the fact, that spontaneous level of these illnesses is sufficiently high and depends on many factors.

The responsibility of operating organization has a special nature, which is defined in the Russian Civil Code as responsibility of the owner of the source of increased danger. It is so-called "without guilty" responsibility, which arises independently of the fault of the owner of the source of the increased danger. This position concretized in Article 54 of Federal Law "On the use of atomic energy", according to which the responsibility of operating organization for losses and harm, inflicted by radiation exposure, arises independently of the fault of operating organization.

The responsibility of the operating organization is the special case of the specific responsibility of the owner of the source of increased danger. To its responsibility is not extended the rule, established in Item 2 Article 1079 of Russian Civil Code, according to which the owner of the source of increased danger does not responsible for the harm, inflicted by this source, if he proves that the source came out from its possession as a result of the unlawful actions of others.

The operating organization is also responsible for the harm in case of coming out of the object of use of atomic energy from its possession as a result of unlawful actions. Accordingly, do not act some other rules of the Russian Civil Code, for example Item 2 Article 1083, which contains the possibility of discharging the owner of the source of increased danger of responsibility in case of rough carelessness of the sufferer, when harm-doer's fault is absent. It is the action of the principle of no-fault liability of the operating organization.

The term "the source of increased danger" appeared only in the Soviet legislation. Subsequently this legal institute was also introduced into the legislation of a number of other former socialist countries of East Europe.

According to Article 404 of the Civil Code of RSFSR, adopted on 1922[51], individuals and enterprises, whose activity is connected with an increased danger for surrounding: railroads, streetcars, factory and plant enterprises, the merchants of combustible materials, the holders of wild animals, the persons, who raise the constructions etc. are responsible for the harm, caused by the source of increased danger, if they do not prove that the harm has arisen as a result of irresistible force or intention or gross negligence of the sufferer.

This definition of increased danger is almost verbatim reproduced other subsequent codes of the civil legislation.

Article 90 "Responsibility for the harm, caused by the source of increased danger" of The basis of civil legislation of the Union of Soviet Socialist Republics (USSR), adopted on 1961[52] says the following: "Organizations and citizens, whose activity is connected with increased danger for surrounding (transport organizations, industrial enterprises, construction industry, the owners of cars and the like), are obligated to compensate the harm, caused by the source of increased danger, unless they prove, that the harm has arisen as a result of the irresistible force or intention of the sufferer.

Article 454 "Responsibility for the harm, caused by the source of increased danger" of the Civil Code of Russian Soviet Federative Socialist Republic (RSFSR), adopted on 1964[53] says that: " Organizations and citizens, whose activity is

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[51] *Izvestiya VTSIK*, №256, 11.12.1922
[52] *Vedomosti VS USSR (Ведомости Верховного Совета СССР)*, №50, art. 525, 1961
[53] *Vedomosti VS RSFSR (Ведомости Верховного Совета РСФСР)*, №24, art. 407, 1964

connected with the increased danger for surrounding (transport organizations, industrial enterprises, construction companies, the owners of cars, etc), are obligated to compensate the harm, caused by the source of increased danger, unless they prove, that the harm has arisen as a result of irresistible force or intention of the sufferer.

Item 1 Article 128 "Responsibility for the harm, inflicted by the source of increased danger" of the Basis of civil legislation of the Union of Soviet Socialist Republics (USSR), adopted on 1991[54] consists of the following:" Legal persons and citizens, whose activity is connected with increased danger for surrounding (transport organizations, industrial enterprises, construction companies, the owners of mechanical transport, etc) are obligated to compensate the harm, caused by the source of increased danger, unless they prove, that the harm has arisen as a result of irresistible force or intention of the sufferer.

Item 1 Article 1079 "Liability for the Injury Inflicted by the Activity with Increased Hazard for People Around", of the Russian Civil Code, adopted on 1994 says that: Legal entities and individuals whose activity is associated with increased hazard for people around (the use of transport vehicles, mechanisms, high voltage electric power, atomic power, explosives, potent poisons, etc.; building and other related activity, etc.) shall be obliged to redress the injury inflicted by a source of increased danger, unless they prove that injury has been inflicted in consequence of force majeure or the intent of the sufferer. The obligation of redressing injury shall be imposed on the legal entity or the individual who possess the source of increased danger by right of ownership, the right of economic or operative management or on any other lawful ground (by right of lease, by procuration for the right to drive a

[54] *Vedomosti SND and VS of the USSR*, №26, art.733, 06.26.91

transport vehicle, by decision of the corresponding body on the transfer of the source of special danger, etc.).

There are some conclusions on the above legislation on the sources of increased danger.

1. Legislator operates with two close concepts: the activity, connected with the increased danger and the source of increased danger.

2. An essential characteristic of the object of protection are interests of surrounding persons.

There are some definitions of the sources of increased danger, which were proposed by the Soviet scholars.

According to the theory of the scholar Fleyshits E. A.: "By the source of increased danger are understood the properties of things either forces of nature, which with the level of development of technology do not allow control them completely by the man. Thus without being subordinated completely to control of the man, these danger objects create the high probability of infliction of harm to life or to human health or to material comforts."[55]

Another scholar Sobchak A. A. has the following definition: "The source of increased danger is the complex material object, which increased harmfulness is shown in the independence of it properties from the man. These properties do not allow the man to provide full control over the object. So, this situation rises the danger of accidental injury, and influences to volume and nature of prospective infliction of harm."[56]

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[55] E. A. Fleyshits, *Obligations from the infliction of harm and obligations from the unjust enrichment*, M., 1951. p. 132 (Флейшиц Е.А., *Обязательства из причинения вреда и обязательства из неосновательного обогащения*, М., 1951, с. 132)

[56] A. A. Sobchak, Civil- legal responsibility for infliction of harm by the effect of the source of increased danger: An abstract of the thesis of the candidate of jurisprudence, Leningrad, 1964. p. 8

Federal Law "On the use of atomic energy" provides that depending on the type of the object of use of atomic energy the legislation are established the forms and the limits of responsibility of the operating organization for losses and harm, inflicted by radiation exposure. In this case the maximum limits of responsibility pertaining to one incident cannot be more than the size, established by the international treaties of the Russian Federation. Since the size of the inflicted harm can exceed the established limits of responsibility, the responsibility to ensure the payment of the sums, which are missing to the total compensation of harm, is entrusted to the Russian government. Thus, the state assumes an additional responsibility for the harm, inflicted by the use of atomic energy.

Giving the definition of the objects of increased danger it should be considered both the objects of material nature and the activity. For example: the objects of the material peace: 1) the objects of nature, which are found in the possession, use or disposal of legal person or individual person, 2) the products of labor.

There is a difficult task to proof of the presence of causal relation with solving of matter on the compensation of radiation harm. The procedure of proving of causal relation between nuclear incident and nuclear damage consists of two stages. The first stage is proving of the fact that this damage is nuclear by its nature. The second stage is proving that the nuclear damage is inflicted as a result of the nuclear incident, which occurred on the concrete nuclear plant.[57]

The activity, connected with the radioactive sources of increased danger can be divided into two groups.

(Собчак А.А., Гражданско-правовая ответственность за причинение вреда действием источника повышенной опасности: Автореф. дис. канд. юрид. наук. Л., 1964. с. 8)

[57] A. I. Yorysh, A. M. Petrosyants, V. F. Petrovskiy, *International atomic law*, Moscow, 1987, p.232 (Йорыш А.И., Петросьянц А. М., Петровский В. Ф., *Международное атомное право*, М., Наука, 1987, с.232)

The legitimate activity: a) on use of the sources of increased danger; b) created an increased danger for surrounding people; c) connected with the increased danger for surrounding people.

The unlawful activity on use of the sources of increased danger.

But, it is still necessary to develop clear definition and the content of the radioactive source of increased danger in Russian legislation.

3.4. The limits of responsibility for radioactive harm

The Vienna Convention on Civil Liability for Nuclear Damage[58] (hereinafter as "the Vienna Convention") was developed and accepted in 1963. The establishment of the international-legal system of responsibility for nuclear damage was the purpose of the Vienna Convention. Each state itself determines the limit of responsibility of the operator (operating organization) of nuclear plant on the condition that the limit shall not be lower than established minimal size (at present time about 55 million US dollars).

The no-fault liability of operator for nuclear incident is one of the basic principles of the concept of responsibility for the nuclear damage, which has been set both in the national legal systems, and in international law. The no-fault liability makes it possible to simplify and to accelerate the process of obtaining the compensation by victims for nuclear incident. The process of ratification of the Vienna Convention was strongly extended in time, and it was entered into the force only in 1977 (i.e. 14 years after its adoption).

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[58] The Vienna Convention on Civil Liability for Nuclear Damage, www.iaea.org

For Russia at that time a question about accession to the Vienna Convention was not arisen. The Russian approach was based on the principle of the state responsibility, whereas the Vienna Convention provided responsibility within the framework of civil law, which included the damage, inflicted to individual persons and to organizations.

Furthermore, there was no domestic legislation in Russia, which regulates questions of responsibility for nuclear damage taking into consideration both internal, and international aspects of this problem (Law on the use of atomic energy was adopted by the State Duma only in 1995). Without this legislation the guarantee of fulfillment of commitments regarding participation in the Vienna Convention was impossible.

Chernobyl emergency and connected with it interest in the world to the problems of responsibility for nuclear damage contributed to increase of the number of participants in the Vienna Convention (in essence due to the Eastern European countries).

The Vienna Convention was signed by Russia in Vienna on May 8, 1996.[59] The Vienna Convention took into force on the territory of Russia on April 4, 2005. The basic purpose of this convention is the creation of the international-legal system of responsibility for the nuclear damage as a result of incidents on the objects of the peaceful use of atomic energy. The Vienna Convention regulates order, periods and principles of the compensation of damage in case of incident on nuclear object, giving to each state-participant to determine the upper limit of responsibility, which, according to the Vienna Convention can not be below 55

[59] Federal Law on 03.21.2005 "On ratification of The Vienna Convention on Civil Liability for Nuclear Damage", Rossiyskaya gazeta (Российская газета), №58, 03.24.05

million US dollars at the present moment. Convention assigns on the operator of nuclear plant the obligation to support insurance or another financial guarantee, which covers its responsibility.

However, in the case of the insufficiency of these means the state, which is responsible for the nuclear object provides the payment of compensations.

Federal Law on November 21, 1995 "On the use of atomic energy" depending on the type of atomic energy object, provides some forms and limits of the responsibility of operating organization, established by legislation for losses and harm, caused by radiation exposure. In this case the maximum limits of responsibility with regard to one incident cannot be more than the size, established by international treaties of the Russian Federation. Since the size of inflicted harm can exceed established limits of responsibility, the Russian Government provides the payment of the sums, which are missing to the full compensation of harm. Thus, the state bears an additional responsibility for the harm, caused by using of atomic energy.

The Vienna Convention provides for the compensation of the nuclear harm, caused by nuclear incident, i.e., by any incident or by a series of the incidents of one and the same origin. At the same time Federal law "On the use of atomic energy" provides legal responsibility for radiation harm, which was inflicted as a result not only for any incidents, but also with normal use of atomic energy. Thus, the content of concept of "harm", inflicted by radiation, used in Federal Law "On the use of atomic energy" is wider in comparison with concept of "nuclear damage" , established by the Vienna Convention.

The Vienna Convention has a larger juridical force in comparison with Federal Law "On the use of atomic energy". At present in accordance with the special

legislation, which regulates the responsibility in sphere of compensation of radiation harm, only harm, inflicted by nuclear incident, must be compensated. The harm, caused by the normal use of atomic energy is subject to compensation in accordance with the usual rules of civil law.

There are no limits of responsibility on the sums of compensation for radiation harm in Federal Law "On the use of atomic energy". Item 2 Article 55 of this Law indicates that the maximum limits of responsibility for the harm, inflicted by radiation exposure, with respect to one incident cannot be more than the size, established by international treaties of the Russian Federation. The Vienna Convention does not establish the maximum limit of responsibility of nuclear plant`s operator, providing the possibility of its unlimited responsibility. However, the Vienna Convention leaves to states–participants the possibility to limit this form of responsibility, but in this case the limitation of responsibility of the operator of nuclear plant cannot be less than 55 million US dollars for each nuclear incident.

Thus, in the Russian legislation responsibility of operating organization can be established in any amount, but not less than 55 million US dollars. However, at present, the Russian legislation does not contain the standards, which limit responsibility of operating organization for a volume of compensation; therefore, in the case of nuclear harm responsibility of operating organization, which has limited financial resources, will be unlimited on the sums of compensation.

This problem today has a special significance, since in the case of the nuclear incident operating organization, possibly, will not has the cash resources, sufficient for satisfaction of claims of full compensation of nuclear harm. State also can refuse participation for compensation of radiation harm, since in accordance with

Article57 of Federal Law "On the use of atomic energy" the Russian government provides payment of sums on the compensation of harm, inflicted by radiation exposure, only in part, in which this harm exceeds the limit of responsibility established for operating organization.

Since the limit of responsibility of operating organization is not established, the latter must bear the unlimited responsibility, which does not contradict the Vienna Convention. Therefore, the state can refuse the compensation of harm, inflicted by radiation exposure to the third persons. Thus there is a large gap in the Russian legislation, which must be completed by establishment for operating organization of the limits of a volume of the compensation for nuclear harm.

3.5 Compensation of harm as a result of Chernobyl catastrophe

Atomic energy is one of the most important achievements of man. However, now, especially after Chernobyl catastrophe, there are hesitations, that nuclear energy is benefit and completely safe. It is necessary to understand the nature of radiation. Radioactivity is property of material. Emission (eradiation, appearance) of the ionizing particles is the feature of radioactivity. This process is called the ionizing emission. The ionizing emission is dangerous for human health and any organism, only with the high levels of exposure[60].

For understanding of the influence of radiation refer to Table 1[61].

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[60] A. Dolgih, P. Izhevskiy, "Radiation and the health of man", *The basis of vital activity safety*, №2, 2000, p. 44 (Долгих А., Ижевский П., "Облучение и здоровье человека", *Основы безопасности жизнедеятельности,* 2000, №2, с. 44)

[61] I. L. Abalkina, S. V. Panchenko, *Chernobyl radiation in questions and answers*, Moscow, 2005, p.4 (Абалкина И. Л., Панченко С. В., *Чернобыльская радиация в вопросах и ответах*, М., Комтехпринт, 2005, с.4)

Table 1 Terms and abbreviations are used in measurement of radiation

Term	Measures		Relation of measures	Description
	SI	Previous system		
Activity	Becquerel, Bq	Curie, Ci	1 Ci = 37x 10^9Bq	the number of radioactive decay per time unit
Dose rate	Sievert per hour, Sv/h	Roentgen per hour, R/h	1 microR/h= 0,01 microSv/h	radiation level per time unit
Absorbed radiation dose	Grey, Gy	Rad	1 Rad=0,01 Gy	the quantity of energy of the ionizing radiation, transmitted to the specific object
Effective dose	Sievert, Sv	Rem	1 Rem=0,01 Sv	the radiation dose, which considers different sensitivity of organs to radiation

"Sievert" is sufficiently high value. The more applicable for measuring radiation dose and radiation background is milliSievert or one thousandth of 1 Sievert. "Curie" in physics, unit of activity of a quantity of a radioactive substance, named in honour of the French physicist Marie Curie. 1 curie (Ci) is equal to 3.7×10^{10} becquerel (Bq). In 1975 the becquerel replaced the curie as the official radiation unit in the International System of Units (SI).

Becquerel is very small value in comparison with the Curie (1 Ci = 37 X 10^9 Bq). Becquerel is usually used for measuring the content of radionuclides in water, air, foods and materials. Curie is used for measuring of pollution density of the soils.[62]

It is necessary to show the general picture of emergency consequences, which took place on Chernobyl atomic power station on April 26, 1986.

Immediately after emergency the radioactive isotopes of iodine were the greatest danger for population. The maximum content of radioactive iodine in the

[62] Encyclopedia Britannica online, www.britannika.com (Curie, Becquerel)

milk and the vegetation was observed from April 28 to May 9, 1986. However, during the period "iodine danger", safeguard measures had not been provided. For Russia on the end of April and May, were the greatest influence of radioactive isotope Iodine -131, which could penetrate to human`s organism with milk, eggs and vegetables. Since June 1986, the radiation exposure was formed due to the radioactive isotopes of Caesium-137.

Radioactive discharges from the very beginning were spread to different directions along the air flows, passed at the different altitude. The major transfer of radioactive discharges occurred in the west and the northwest to the territory of Belarus and further, to the Western Europe. Next day discharges reached Poland and Sweden. Because wind direction changed, in the separate areas fell rains of different intensity. As a result, there was elution of radionuclides from the clouds. An extremely uneven picture of pollution occurred.

Explosive force on the fourth power unit of Chernobyl atomic power station was more than 100 times exceeded nuclear weapon power, used in Hiroshima and Nagasaki. Immediately after catastrophe perished 31 people, and 600 000 liquidators (about 200 000 liquidators from Russia)[63], which participated in extinguishing of fires and clearing, were exposed to high radiation doses.[64]

The almost 8 400 000 inhabitants of Russia, Belarus and Ukraine were exposed to radiation. It is more than the population of Austria. Contaminated proved to be About 155 000 square kilometers of territory were contaminated. In comparison with the territory of Italy, it is almost half. Almost 52 000 square kilometers of agricultural area suffered from Cesium -137 and Strontium-90 with

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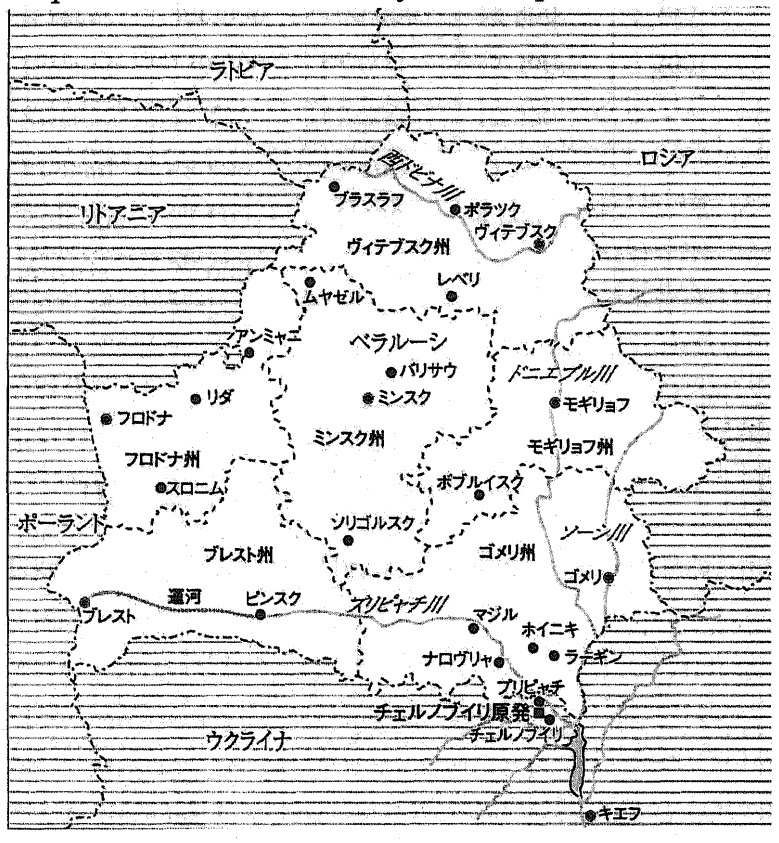
[63] Public association "Union Chernobyl of Russia", http://www.souzchernobyl.ru

[64] Onishenko G., "Under the cover of half-life", *Rossiyskaya gazeta, federal issue (Российская газета)*, №4044, 04.14. 2006

the half-life period of 30 and 28 years respectively. Almost 404 000 people were moved to other territories. However, millions of people are still live in conditions, when residual action of radiation has mass of dangerous consequences.

In Russia the Bryansk region more then others suffered on the radioactive contamination. Tula, Kaluga and Orel regions were also contaminated. After twenty years, radioactive contamination includes 4343 populated areas in 14 regions of Russia, where live one and a half million people. Indeed, 180 thousand participants emergency liquidation were exposed to increased level of radiation. They are included in Russian medico- radiation-monitoring register and been under medical observation.

Map 1 Location of Chernobyl atomic power station[65]



[65] Hideyuki Kawana, *The Global Environmental Problems (Russia and former USSR republics)*, Volume 4, Ryokufu, Tokyo, 2009, p. 411 (川名　英之、『世界の環境問題(第 4 巻　ロシアと旧ソ連邦諸国)』、緑風出版、2009、411 頁)

For population the most serious medical consequence of emergency became thyroid gland cancer. The thyroid gland - is organ, sensitive to exposure by radioactive iodine. Those who were children and adolescents at the moment of emergency are the most vulnerable to this decease. In the period 1992-2000 in Belarus, Russia and Ukraine were revealed about 4000 cases of thyroid gland cancer in people, who at the moment of emergency were 0 -18 years old.[66]

Table 2 Levels of pollution in European countries by Cesium-137 (unit of measure is Km^2)[67]

Country	**Rate of Caesium-137, kiloBq/m^2**					
	10-20	**20-37**	**37-185**	**185-555**	**555-1480**	**1480-**
Belarus	60 000	30 000	29 900	10 200	4 200	2 200
Russia	300 000	100 000	48 800	5 700	2 100	300
Ukraine	150 000	65 000	37 200	3 200	900	600
Sweden	37 400	42 600	12 000			
Finland	48 800	37 400	11 500			
Bulgaria	27 500	40 400	4 800			
Austria	27 600	24 700	8 600			
Norway	51 800	13 000	5 200			
Germany	28 200	12 000				

The table shows, that the greatest part of pollution was fallen in Russia, Ukraine and Belarus. Thus, the majority of suffered people lives in these countries.

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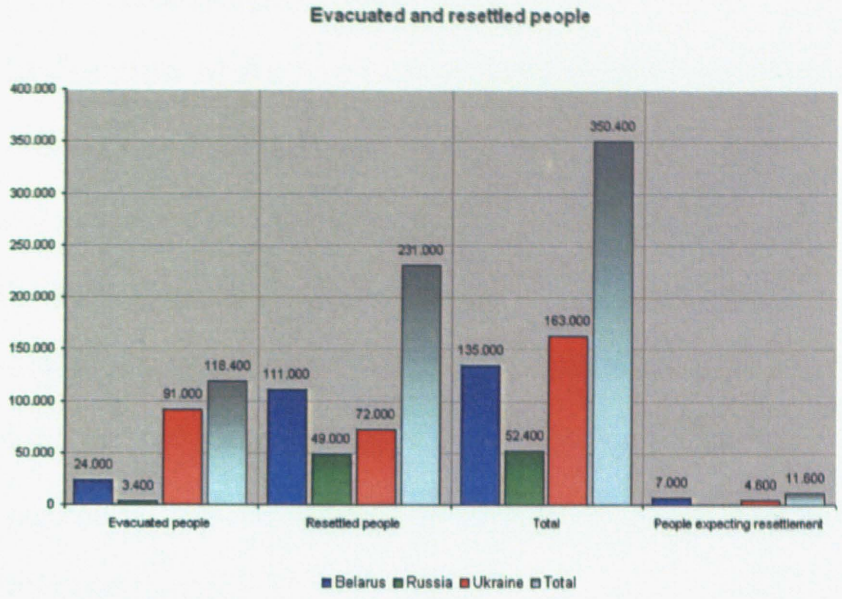
[66] I. L. Abalkina, S. V. Panchenko, *Chernobyl radiation in questions and answers*, Moscow, 2005, p.10 (Абалкина И. Л., Панченко С. В., *Чернобыльская радиация в вопросах и ответах*, М., Комтехпринт, 2005, с.10)

[67] Hideyuki Kawana, *The Global Environmental Problems (Russia and former USSR republics)*, Volume 4, Ryokufu, Tokyo, 2009, p. 327 (川名 英之、『世界の環境問題(第 4 巻 ロシアと旧ソ連邦諸国)』、緑風出版、2009、327 頁)

Table 3 The Chernobyl nuclear disaster forced large-scale migration[68]



The accident at Chernobyl and its consequences, the evacuation and resettlement of 350 400 people, also had a profound social impact on the three countries concerned - Belarus, Russia and Ukraine.

If the soil in their village was contaminated with more than 5 Ci/km2 caesium-137, the people in all the main regions affected by the Chernobyl accident had the right to resettle. If the soil contamination level was above 15 Ci/km2, people in Ukraine were evacuated. In Belarus and Russia, people had to leave their villages if soil contamination levels exceeded 40 Ci/km2.

After the emergency the Soviet Government adopted some legislation acts.

Decree of the Council of Ministers of the USSR on June 5, 1986, № 665-195 "On the conditions of payment for work and for material support of workers of enterprises, organizations and establishments, which occupied on the works, connected with the liquidation of the consequences of the emergency on Chernobyl

[68] Materials of United Nations Development Programme (UNDP), 2002, www.undp.org

atomic power station and preventing of environmental pollution"[69].

This Decree established that:

a) The time of the work of workers, directly involved in the liquidation of consequences of the emergency and preventing of environmental pollution in the 30 kilometer zone of Chernobyl atomic power station, is counted in the triple size into the period, which gives the right to the preferential pension;

b) Workers and officers, who had occupational disease as a result of work on liquidation of the consequences of emergency on Chernobyl atomic power station, are assigned by preferential old age pensions regardless of the working time in the harmful conditions;

c) The working time in the 30 kilometer zone of Chernobyl atomic power station for soldiers and military builders of military construction forces and also for reservists, is counted in the triple size into the working period and into the period, which gives right to the preferential pension;

d) To pensioners, occupied on the works, old age pensions are paid out in full size regardless of received wages.

Other regulations were included into Decree of the Central Committee of the Communist Party of the Soviet Union and Council of the Ministers of the USSR on May 7, 1986, № 524-156 "On the conditions of payment for work and material supply of workers of enterprises and organizations, located in the zone of Chernobyl atomic power station"[70].

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[69] Russian State Archive of the contemporary history, National Archive of the Republic of Belarus, *Chernobyl. April 26, 1986 - December 1991. Documents and materials*, Minsk, 2006 (Чернобыль. 26 апреля 1986 – декабрь 1991.- Документы и материалы, Минск, 2006)

[70] Russian State Archive of the contemporary history, National Archive of the Republic of Belarus, *Chernobyl. April 26, 1986 - December 1991. Documents and materials*, Minsk, 2006 (Чернобыль. 26 апреля 1986 – декабрь 1991.- Документы и материалы, Минск, 2006)

According to the above Decree the Government assumed following obligations.

- To pay out to citizens, including soldiers, evacuated from the zone of Chernobyl atomic power station, lump-sum allowance in the size of 200 roubles per man.

- To assign families, that lost the earner as a result of emergency on Chernobyl atomic power station, lump-sum allowance in the size of 500 roubles per each family member due to the means of enterprises, organizations and establishments.

- To establish that all workers, who became temporarily disabled as a result of the emergency on Chernobyl atomic power station are received allowance as the social insurance in the size of 100 percent of the earnings, regardless of the duration of working period and place of work.

- In 1986 assign free passes for sanatorium resort treatment of workers, which were located in the zone of Chernobyl atomic power station. Provide with free passes into the pioneer resort camps of the children of workers, which were located in Chernobyl zone. Provide with yearly free passes for sanatorium resort treatment of the victims of emergency on Chernobyl atomic power station.

- To establish that the disability pensions, as a result of injury or disease, inflicted by emergency on Chernobyl atomic power station and survivor's pensions as result of these circumstances are assigned in the order, provided by the current legislation in case of the work injury or occupational disease. In this case the pensions are established in the sizes, which are not lower than the sizes, provided by legislation on the state pensions.

These decrees were concerned only people, who participated in liquidation of the consequences of emergency. There were no matters on compensation for harm

to the people, exposed to radiation, who did not participate in the liquidation. Actually, concept "nuclear damage" is substituted with concept "occupational disease". Accordingly, it does not reflect the scale and consequences of emergency in the Chernobyl atomic power station.

Law "On social protection of citizens, who were exposed to radiation as a result of the catastrophe in the Chernobyl atomic power station" divides citizens, who suffered from the emergency to two basic categories: the inhabitants of the regions, which suffered from the irradiation and participants in liquidation of consequences of the catastrophe. Concept of "moral damage" and order of its compensation in the Law are absent.

Some kinds of compensation of harm and measures of social support of citizens, who had radiation sickness, other illnesses, and invalids as a result of the Chernobyl' catastrophe, provided in Article 14 of the Law.

1) Payment of allowance on temporary disablement to four months straight in the size of 100 percent of average wage;

2) Providing of citizens, being needed in improvement of housing conditions, by dwelling space;

3) Payment for 50 percent rent of the occupied total living space in the houses of state and municipal dwelling funds and in the privatized living quarters;

4) Additional payment to the level of previous wage in case of transferring (according to medical indications) into the lower-paying work.

5) Use of the yearly regular paid leave (vacation) into the convenient time, and also obtain an additional paid vacation on 14 calendar days;

6) Payment of allowances on temporary disablement in the size of 100 percent of average wage;

7) Priority to remain at the work with shortening of personnel retrenchment, regardless of working period at the enterprise;

8) Priority to entrance into the house-building cooperatives and propriety in providing with lands for building of private houses;

9) Unscheduled service in therapeutic and prophylactic hospitals and drugstores;

10) Service in the health centers, in which the victims were serviced before the pension;

11) Noncompetitive entering into the state educational institutions of initial, average and highest education and assignment of dormitory;

12) Priority in providing of children with places in the children's pre-school establishments, specialized sanatorium establishments and payment of 90 roubles as monthly financial compensation for nourishment of child in the sanatorium;

13) 300 roubles monthly financial compensation to victims, and also to living with them children, who did not reach 14-year age, for buying foods;

14) Priority in providing with places in homes for the aged and disabled;

15) Monthly financial allowance as compensation of the harm, inflicted to health in connection with the radiation exposure as a result of the Chernobyl catastrophe or fulfillment of works on liquidation of the consequences of catastrophe on Chernobyl atomic power station, is as follows:

- for disabled persons of the 1 group - 5 000 roubles;
- for disabled persons of the 2 group - 2 500 roubles;
- for disabled persons of the 3 group - 1 000 rubles.

Article 15 of the Law includes the rules of compensation of harm and measure of the social support of participants in liquidation of consequences of the catastrophe on Chernobyl atomic power station.

There are some measures for compensation to liquidators.

1) Providing of citizens, being needed in improvement of housing conditions, by dwelling space;

2) Payment of allowance on temporary disablement in the size of 100 percent of average wage, regardless of working period;

3) 200 roubles monthly financial compensation for buying foods;

4) monthly financial allowance as compensation of the harm, inflicted to health in connection with radiation exposure as a result of the Chernobyl catastrophe and entailed the loss of ability to work, in the size of 250 rubles, regardless to degree of disability (without proof of degree of disablement).

Also the liquidators are able for:

- Use of the yearly regular paid leave (vacation) into the convenient time;
- Priority to entrance into the garage-construction cooperatives and the gardening cooperatives;
- Registration of liquidators, who need improvement of the housing conditions, in accordance with the housing legislation of the Russian Federation.

The age for the old age pension of citizens, who suffered as a result of the catastrophe on Chernobyl atomic power station can be for the men - 50 years and for the women - 45 years.

This Law makes it possible to realize, that state granted wide guarantees to victims from the radiation. However, the sums of compensation are very low. Therefore, under the present economic conditions victims of Chernobyl feel lack of

means. Victims have to prove, that they have right to social privileges, which were mentioned above. Thus, in the court the citizens have to proof the rights for designation of social privileges and compensations, which included to the Law "On social protection of citizens, who were exposed to radiation as a result of the catastrophe in the Chernobyl atomic power station". Practically it is not possible to prove infliction of moral damage at the moment of emergency, since this Law does not contain such damage.

The status "of victim" is necessary for demanding of social privileges. But performing of these procedures takes much time and requires the large number of documents. Therefore many people even do not know about the fact that they have right for social privileges and compensations in accordance with the Law.

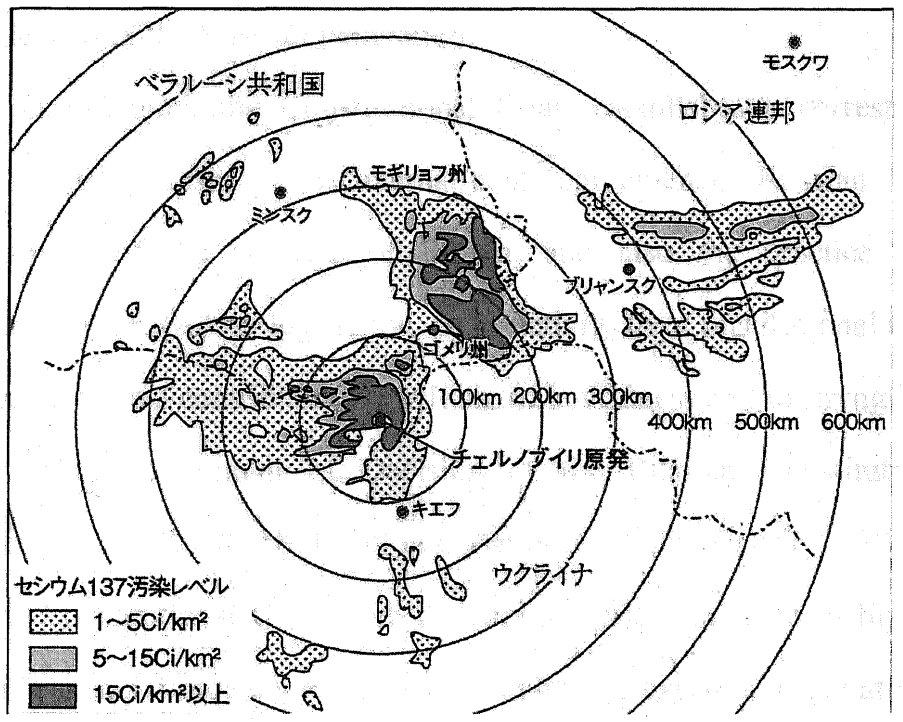
The complete data base of the general jurisdiction Court judgements on the victims of radiation has not yet created in Russia. Therefore it is sufficiently complicated to consider about the quantity of judgments on demandig of privileges and compensations in the Courts of general jurisdiction.

Article 1100 of the Russian Civil Code provides possibility of compensating the moral damage independently of the fault of harm-doer in the case, when the harm is inflicted to life or to health of individual by the source of increased danger. However, with the examination of the case on compensation of the harm, inflicted to life and health of individuals as a result of Chernobyl catastrophe, the Courts are taken into consideration the fact that the law, which was active in the moment of infliction of harm, was not provided for compensation of the moral damage for the victims of catastrophe.

As a positive example of protection citizen's constitutional rights to live in favorable environment and the compensation of harm related to violation of these

rights, can be found in the Decision of the Russian Constitutional Court on December 1, 1997 № 18- P " On case about checking of correspondence to the Constitution of separate norms of Article 1 of Federal Law on November 24, 1995 " On the amending of the Russian Law " On the social protection of citizens, who were exposed to radiation as a result of the catastrophe in the Chernobyl atomic power station"[71].

Map 2 Level of Contamination by the radioactive isotope Ceasium-137 on Chernobyl incident[72]



[71] Decision of the Russian Constitutional Court on December 1, 1997 № 18- P " On case about checking of correspondence to the Constitution of separate norms of Article 1 of Federal Law on November 24, 1995 " On the amending of the Russian Law " On the social protection of citizens, who were exposed to radiation as a result of the catastrophe in the Chernobyl atomic power station", *Digest of Russian legislation,* №50, art. 5711, 1997

[72] Hideyuki Kawana, *The Global Environmental Problems (Russia and former USSR republics)*, Volume 4, Ryokufu, Tokyo, 2009, p. 321 (川名 英之、『世界の環境問題(第 4 巻 ロシアと旧ソ連邦諸国)』、緑風出版、2009、321 頁)

In 1991, the Constitutional Court of Russia was created. Law "On the Constitutional Court of Russia" was enacted on July 12, 1991.[73] It was established for the following purposes:

- protection of the sovereignty of nations in Russia;

- protection of constitutional system;

- protection of basic rights and freedoms of man, accepted by constitution;

- protection of basic rights and freedoms of citizens and legal persons;

- maintenance of supremacy and direct action of the Constitution over the whole area of the Russian Federation.

Furthermore, the Constitutional Court establishes a correspondence to the Constitution (basic law) international agreements, Russian legislation and legislation of the subjects of Russia, and also the practice of enforcement (operation) of Russian legislation. In its activity the Constitutional Court, according to the law, must contribute to providing of lawfulness and to strengthening of law.

From the content of Decision of the Russian Constitutional Court on December 1, 1997 № 18- P follows, that in 1997 citizens "B", "G" and "Z" applied to the Constitutional Court with demand to verify constitutionality of the rules of Law "On social protection of citizens, who were exposed to radiation as a result of the catastrophe in the Chernobyl atomic power station". The reason for demands is the fact that in accordance with the law, soldiers, who became invalids as a result of Chernobyl catastrophe, received only retiring pension, but the compensation of harm was not provided. In the opinion of applicants, rules of the law contradict

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[73] Federal Constitutional Law on July 12, 1991, № 1599-1 (new version on July 21, 1994, № 1-FKZ) "On the Constitutional Court of Russia", *Vedomosti SND and VS,* №30, art. 1017, 1991, *Digest of Russian legislation,* №13, art.1447, 07.25.1994

with Section 4 of Article 15, Sections 1, 2 of Article 19, Section 1 of Article 39, Article 42 and Section 3 of Article 55 of the Russian Constitution.

The Constitutional Court decided, that soldiers, who became invalids as a result of the Chernobyl catastrophe, irrespective of receiving of retiring pension, according to sense of Article 42 of the Constitution, must have right to compensation of harm, like other citizens, who suffered from Chernobyl catastrophe.

As it follows from the content of disputed rules of the examined law, providing compensation of the harm, inflicted by extraordinary radiation catastrophe, legislator did not follow the constitutional - legal duty, contained in Articles 1, 2, 7, 18, 42 and 53 of the Russian Constitution. Accordingly, legislator diminished, and in some cases inadmissibly restricted protected by the Constitution rights and interests of citizens, who were soldiers and performed their duty on elimination of consequences of Chernobyl catastrophe.

The Constitutional Court acknowledged that state recognizes responsibility for consequences of ecological catastrophe as a result of the large-scale radioactive contamination of biosphere, which affected fates of millions people, who live in vast territories.

As a result, emergencies substantially violated not only right to the favorable environment (Article 42 of the Russian Constitution), but also, other constitutional rights and interests of citizens, related to the protection of life, health, dwelling, property, or right to free movement and selection of the place of a stay and residence. The rights were derogated so significantly, that inflicted harm becomes actually irrecoverable.

It generates the special nature of relations between citizen and state, which consisted in the fact that state incurs the responsibility of compensation of a harm, which, on the basis of its scale and a number of victims, cannot be compensated in order, established by civil, administrative, criminal and other legislation. In the Decision of Constitutional Court is noted, that stability in the sphere of constitutional- legal relations between state and citizen must not be less in its level, than in the sphere of other legal relationships, which are based on the standards of subject legislation. This constitutional obligation of state corresponds to the right of citizens to favorable environment, adequate information about its condition and to the compensation of the damage, caused to their health or to property by ecological catastrophe, and it follows from Articles 2, 18 and 53 of the Russian Constitution.

Using of nuclear energy, according to Subsection «i» Section 1 Article 71 of the Russian Constitution is under jurisdiction of the Russian Federation. The objects of nuclear power engineering also relate exclusively to federal property. This constitutional obligation of state is defined particularly in Federal Laws "On the use of atomic energy" on November 21, 1995, "On protection of population and territories from natural and industrial extraordinary situations" on December 21, 1994[74] and "On radiation safety of population" on January 9, 1996. The above legislation prescribes the system of measures, directed toward providing of radiation safety of population and its protection from the extraordinary situations, which also include the situation, arisen in connection with the catastrophe on Chernobyl atomic power station.

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[74] Federal Law on December 21, 1994, №68-FZ "On protection of population and territories from natural and industrial extraordinary situations", *Rossiyskaya gazeta (Российская газета)* № 250, 12.24.1994

The Constitutional Court proceeded from the principles of legal and social state, contained in Articles 1, 2 and 7 of the Russian Constitution. There are guarantees of the social protection of citizens, provided by state in accordance with the purposes, fixed in Article 7 of the Russian Constitution. The guarantees in relation with the right to favorable environment and protection of health can include the complex of privileges and compensation, which is beyond the limits of the compensation of damage, inflicted to health or to property by ecological delict.

In particular, such measures are provided by the Russian Law on November 26, 1998, which is directed toward protection of rights and legal interests of citizens of the Russian Federation, who were in the zone of influence of unfavorable factors, such as disposal of radioactive wastes into Techa river, arisen as a result of the emergency in 1957 on the industrial association "Mayak" in Chelyabinsk region[75]. This law also includes persons, who participated in elimination of the emergency consequences. Thus, operation of the law includes citizens who had been in the zone of radioactive contamination, arisen as a result of the emergency and the disposal of radioactive wastes into Techa river.

In accordance with the active laws, for obtaining of privileges and compensation for citizens it is necessary: 1) to prove the fact of residence in contaminated territory; 2) to establish the fact in judicial order; 3) on the basis of judicial decision to claim the benefits and compensations.

Law "On the social protection of citizens, who were exposed to radiation as a result of the catastrophe in the Chernobyl atomic power station"[76] does not cover

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[75] Federal Law on November 26, 1998, №175-FZ "On social protection of the Russian citizens, who were exposed to radiation as a result of emergency in 1957 on the industrial association "Mayak" and disposal of radioactive wastes into Techa river", *Didgest of Russian legislation,* №48, art. 5850, 11.30.1998

[76] Law on May 15, 1991, № 1244-1 "On social protection of citizens, who were exposed to radiation as

all categories of citizens, who were exposed to radiation; therefore many victims do not obtain compensation and benefits. Such categories comprised the children of the first and subsequent generations of citizens, exposed to radiation. Children, despite the fact that harm also inflicted to their health, do not obtain compensation, except yearly free sanatorium health treatment.

3.6 Compensation of harm as a result of emergency on "Mayak" plant

Article 42 of the Russian Constitution fixes right of each person to the favorable environment, adequate information about its condition and compensation of the damage, inflicted to health or property by ecological offense.

Domestic legislation does not give the definition of concept "favorable environment", although it has legally significant criteria, expressed, in particular, by the system of rules, regulations, and restrictions. The system of rules, as general requirements for development of "favorable environment" is determined by the Federal Law "On protection of the environment".

For example, contribution of atmospheric air pollution to the total sickness rate of adult population composes approximately 10%, and into the sickness of children - more than 30%. The diseases of respiration organs are about 50%. On the majority of known estimations, approximately 20% of sickness of population are caused by action of the factors of environment (natural climatic factors and the quality of environment), but this percentage is substantially higher in the separate territories. Specialists note, that at present the chronic diseases of those organs and

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a result of the catastrophe in the Chernobyl atomic power station", *Vedomosti SND and VS,* №21, art. 699, 1991

systems, which in essence fulfill the barrier functions between the organism and external environment - respiratory, immune systems, skin and others are increased.[77] Radiation pollution has significant influence on the quality of environment. Therefore the risk of such diseases considerably rises with the lasting effect of radiation.

Ecologists consider, that the natural environment, in which Russian population lives, corresponds to critical condition, and according to some parameters - catastrophic. Some territories in Russia became the zones of continuous and prolonged ecological disaster.[78]

According to the information of the soviet biochemist Dr. Medvedev: "Immediately after the successful testing of the first experimental reactor, the construction of large reactors for the production of plutonium was begun in the southern Urals, the first such reactor being put into operation in 1947. As was the custom in the Stalin era, this secret center was not setup as a normal scientific institution would be. Instead it arose within the inner recesses of the Ministry of State Security (the MGB). This was a "special camp", where the main work was done by Soviet prisoner-scientists and by experts deported from Germany. Of course there were also free workers, but they worked under contracts which denied them the right to travel freely in the country or to change job locations.

The technology of plutonium separation had not yet been completely worked out. In 1947 and 1948 the urgency of the project was so great that there was absolutely no time to work out all the details of the technology. Enough pure

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[77] Y. P. Gichev, *Environmental pollution and the human health*, Novosibirsk, 2002, p. 15, 34 (Гичев Ю.П., *Загрязнение окружающей среды и здоровье человека*, Новосибирск, 2002, с.15, 34)

[78] V.M. Dimov, V.N. Pautov, "Health of ethnos as the problem of its social safety", *Social-Humanitarian Knowledge*, №1, 2000, p.179 (Димов В.М., Паутов В.Н., "Здоровье этноса как проблема его социальной безопасности", *Социально-гуманитарные знания*, 2000, №1, с. 179)

plutonium for several bombs had to be obtained quickly. The requirement was that the first bomb be exploded before the official celebration of Stalin`s seventieth birthday. Kurchatov`s[79] group successfully coped with this task, carrying out the first bomb test in September 1949. But the methods for storing the waste from plutonium production were also being worked out as things went along"[80].

Thus, there were no appropriate safety measures for storage and processing of radioactive wastes.

The territory of Chelyabinsk region historically became the place for implementation of domestic nuclear program. A long-standing activity of industrial association "Mayak" (hereinafter "Mayak" plant) was accompanied by the radiation emergencies of industrial and anthropogenic nature. Such emergencies become unprecedented in the world practice. In the period 1949-1956, the liquid wastes with average and low level of radioactivity were dropped into Techa river. Local population used the river's water for drink and household purposes.

"Mayak" plant was created in the South Urals at the end the 40th years for producing of plutonium for weapons and processing of fissionable materials. There are some plants compose the enterprise:

- uranium-graphite reactor on natural uranium (Plant "A");

- radiochemical production on the separation of plutonium-239 from irradiated in the reactor, uranium (Plant "B");

- chemical-metallurgical production on producing of metallic plutonium (Plant "C");

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[79] Igor Vasilyevich Kurchatov was a Soviet/Russian nuclear physicist. Under his direction, the Soviet Union successfully tested its first plutonium-based nuclear device. For this reason he is remembered as "The Father of the Soviet Atomic Bomb"

[80] Medvedev Zhores. A. *Nuclear disaster in the Urals*, New York, 1979, p.27-28, 156

- the complex of the warehouses of radioactive wastes (Plant "S"). Process of increasing of Plutonium production on "Mayak" plant (during 1948-1955, there were 6 nuclear reactors put into operation), and also the absence of the reliable technologies of processing and storing radioactive wastes, led to dump of radioactive wastes into Techa river since 1949. Moreover, until July, 1951 dumping of wastes was practically uncontrolled. This led up to radioactive contamination of river system and exposure to radiation of inhabitants of the coastal areas.

It is customary to assume, that in the above mentioned period were dropped 76 million cubic meters of sewage water with general activity approximately 2750 thousand curie[81]. Only in the surrounding of the Chelyabinsk region on the river were located 26 inhabited localities, included about 15 thousand people. In these years occurred the pollution of flood land of river, which was used for hay field and pastures.

[81] "Curie" in physics, unit of activity of a quantity of a radioactive substance, named in honour of the French physicist Marie Curie. (1 Ci) is equal to 3.7×10^{10} becquerel (Bq). In 1975 the becquerel replaced the curie as the official radiation unit in the International System of Units (SI). キュリーは放射能の強さを表す単位。1 秒間に 3.7E10(＝37,000,000,000)

Map 3 Location of «Mayak» plant near the Ozersk city (Chelyabinsk-65)[82]

In September 1957 on the chemical division of "Mayak" plant occurred explosion of the warehouses with highly radioactive wastes. On its scales and consequences this radiation emergency is evaluated by experts as one of the largest in the world. Two million curies of radioactivity were spread on the area of approximately 20 thousand square kilometers in Chelyabinsk, Sverdlovsk and Tyumen regions. In the contaminated terrain lived about 270 thousand people. 10 thousand of these people were in the territory with the density of radioactive contamination more than 2 curies per square kilometer.

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[82] Hideyuki Kawana, *The Global Environmental Problems (Russia and former USSR republics)*, Volume 4, Ryokufu, Tokyo, 2009, p. 283 (川名 英之、『世界の環境問題(第 4 巻 ロシアと旧ソ連邦諸国)』、緑風出版、2009、283 頁)

Map 4 Location of "Mayak" plant among nuclear fuel plants[83]

"There are many ways of "storing" radioactive waste. The difficulties involved in storing liquid waste with a law concentration of isotopes (low-level waste) are the enormous volume of such waste. With high-level waste the main problem is that the continuing spontaneous radioactive decay gives off so much heat that water temperature is raised above the boiling point. Therefore containers with concentrated liquid waste must be constantly cooled. After a year or two of such forced-cooling the short-lived isotopes, can be treated in the same way as medium-level waste. The containers with concentrated waste may be above or under the ground. Medium-level waste is usually stored underground, sometimes at a great depth. Low-level waste is often simply dumped into rivers and large lakes.

In one of the CIA documents (the discussion of the hypothesis that an earthquake damaged containers with radioactive waste), a CIA [84] expert

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[83] Fujii Haruo, *The Soviet and Russian atomic energy development (since 1930 up to the present day)*, Toyoshyoten, Tokyo, 2001, p. 51 (藤井 晴雄、『ソ連・ロシア原子力開発(1930 年代から現在まで)』、東洋書店出版、2001、51 頁)

commented that the question of how highly active waste is stored in the USSR remains a secret and has never been discussed by Soviet scientists at international or other conferences or in the press".[85]

The next aggravation of radiation occurred in 1967. This year summer in Chelyabinsk region was rainless. In the period since April until May occurred the wind spreading of Karachay lake's radioactive bottom deposits (wastes). Since 1951 this lake was used for collection of medium-active liquid wastes. The radioactive dust, which includes 600 curies of radioactivity, in essence due to Caesium-137, was scattered in the territory of 1800 square kilometers. Only the above noted situations led to overexposure to radiation of several hundred thousand people, forced evacuation of 42 populated areas and temporary termination of use of agricultural lands at almost 68 thousand hectares. At present time on the Techa riverside in territory of Chelyabinsk region are four populated areas, which inhabitants continue to expose to radiation. Among the inhabitants of these places there are groups, which accumulated radiation dose, exceeds scheduled levels accepted today in the entire world. The maximum content of Strontium-90 is observed today in people, which on the period of especially concentrated discharges of radioactive wastes into Techa river (1949-1951) were teen-agers.[86]

Federal Law "On social protection of the Russian citizens, who were exposed to radiation as a result of emergency in 1957 on the industrial association "Mayak" and disposal of radioactive wastes into Techa river" indicates categories of the

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[84] The Central Intelligence Agency (CIA) is a civilian intelligence agency of the United States government, reporting to the Director of National Intelligence, responsible for providing national security intelligence to senior United States policymakers

[85] Medvedev Zhores. A. *Nuclear disaster in the Urals*, New York, 1979, p.158, 176-177

[86] V. N. Novoselov, V. S. Tolstikov V.S., *Atomic sign in the Urals*, Chelyabinsk, 1997, p.36-39 (Новосёлов В. Н., Толстиков В.С., *Атомный след на Урале*, Челябинск, 1997, с.36-39)

people, which are guaranteed to get benefits and compensations, established by this law. Thus, the state recognizes its responsibility, enacting special laws on social protection of citizens, who were directly exposed to radiation as a result of emergencies and other incidents.

However, pertaining to the persons, for whom the harm was inflicted mediately, as a result of radiation influence to the parents, grandmothers, grandfathers, "the legal mechanism" of protection is not effective.

The descendants of exposed to radiation people, who were evacuated and voluntarily left the contaminated areas after emergency on "Mayak" plant, proved to be without the proper social protection. The present legislation provides the benefits only for recover of health of victim's children. At present, there is no legal mechanism on the compensation of harm to the health and also of moral damage to subsequent generations, which were born from the diseased parents or parents with genetic deviations.

The compensation of harm does not cover all categories of citizens, which are suffered from the harm to health in relation with residence in radiation contaminated territories. Those people, who were exposed to radiation, have sick children in the first and in the second generation. The reason of disease of the children is an influence of radiation to their parents.

The population of the riverside villages underwent the chronic, long-standing radiation exposure, caused both by the external gamma-radiation and by internal radiation due to use of river water and local food products. The basic radionuclides were Stroncium-90 and Cesium-137. The injured organs of population, exposed to radiation were skeleton and bone marrow. For prevent overexposure of population, there were moved about 8 thousand people, who lived in the most contaminated

territories of Techa river. For the unknown reasons the inhabitants of Muslyumovo village were not moved, while the population of villages below and above of the Techa river were moved. Thus, at present Muslyumovo village is the nearest populated area to the place of dump of radioactive materials by association "Mayak". Muslyumovo village is located in Kunashakskiy district of Chelyabinsk region on Techa riverband. The location of the village is about 78 kilometers from the place of discharge of radioactive wastes in 1949-1956. Pollution of Techa river by radionuclides is shown in Table 4.[87]

Table 4 Average radionuclide composition of discharges into Techa river in 1949-1956

Radio-nuclide compo-sition	Stronciu m-90	Stronciu m-89	Caesiu m-137	Niobium-95, Zirconiu m-95	Ruthenium-103,106	Rare-earth element (lantha-nide)	Other
%	11,6	8,8	12,2	13,6	25,9	26,8	1,1

At present, the density of pollution by strontium-90 in Techa river in the limits of the village is 85 Ci/km^2, by cesium-137 is 71 Ci/Km^2. In the course of time, sinking of radionuclides to soil on depth 60 cm has occurred, but the basic part of activity (80%) is still concentrated in the depth 30 cm. It provides entering of radionuclides into grass on flood lands of Techa river.

By laps of time, tendency of gradual reduction of the level of radionuclides in the river water was noted. The specific activity of strontium-90 in the river water near Muslyumovo village in 1999-2000 was about 15 Bq per liter (permissible level - 5 Bq per liter). The specific activity of cesium -137 in the river water in

[87] Akleev A.V., Kiselev M.V., *Muslyumovo: results of 50-year monitoring,* The Ural practical-scientific center of radiation medicine, Chelyabinsk, 2001, p. 1-3 (А. В. Аклеев, М. В. Киселёв, *Муслюмово: итоги 50-летнего наблюдения*, Уральский научно-практический центр радиационной медицины, Челябинск, 2001, с. 1-3)

1999-2000 composed 0.2 Bq per liter (permissible level - 11 Bq per liter). At present time, according to decisions of administrative bodies, use of flood lands and river water for personal and economic purposes are prohibited.

Some cases show the difficulties in proving of radiation harm. In May 2001 one of the district courts of Chelyabinsk region tried the claim of citizen "I" (plaintiff) to "Mayak" plant (defender) on compensation of the harm, inflicted by damage of health, and recovery of financial compensation for the moral harm. Citizen "I" is invalid of the third group. Cause of disease is unfavorable influence of environment, an influence of radiation to the health of her parents, grandmother and grandfather. All lineal relatives of plaintiff lived in areas, which were exposed to radiation as a result of defender's emergency. Plaintiff's mother was conceived after the irradiation of the father, who worked as a building engineer in Chelyabinsk road company in the period 1948-1951 years. The company had been built a bridge over the Techa river.

At present plaintiff suffers of serious chronic diseases. The negative influence of natural environment caused by activity of defendant, led to the inborn disease of plaintiff "the inborn immunodeficiency condition", "agammaglobulinemia". Agammaglobilinemia is a group of the congenital or acquired diseases, which are characterized by absence or critical decrease in the level of immunoglobulins in the blood plasma. This leads to reduction in the resistibility of organism, increased sensitivity to infection causative agents. Possible treatment: lifelong injection of medical preparations of immunoglobulins, antibiotics.[88] The disease is confirmed by the conclusion of Regional Expert Council for identification of the causal

[88] Immune Deficiency Foundation "IDF", *Guidance on primary immunodeficiency diseases for patients and members of their families,* 2007

relation of diseases, disability or death of those, who were exposed to radiation. In the conclusion of Expert Council noted, that the disease of plaintiff is connected with the radiation exposure to the parents during their residence in the territory, contaminated with radionuclides as a result of radiation emergency.

Court based the judgement on follows. "Mayak" plant is legal person and according to Article 32 of the Civil Code of Russian Soviet Federative Socialist Republic (RSFSR), enacted on 1964 (hereinafter, CC RSFSR)[89], has an independent responsibility for the harm, caused as a result of its activity. Also, according to Articles 33, 444, 454 of CC RSFSR, state does not responsible for obligations of the state organizations, which are established as legal persons. Court rendered judgement for plaintiff and recovered from "Mayak" plant 431 rubles (Russian currency) monthly, as a compensation of harm to health. The claim on compensation of moral damage court did not satisfy, because on the moment of infliction of the harm to Plaintiff's parents, such responsibility was not established.

"Mayak" plant appealed the judgement of court. Judicial Chamber for Civil Cases of Chelyabinsk regional court by its decision on September, 2001 made reversal of the previous judgement. The reason for reversal was: the court used the rules of material and procedural law incorrectly. Judicial Chamber noted that court did not consider that Article 454 of CC RSFSR is the general rule, which regulates relations on compensation of the harm, inflicted by the source of increased danger. The harm was subject to compensation according to the rules of this Article, if law does not provide another responsibility of harm-doer.

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[89] The Civil Code of RSFSR on June 11, 1964, *Vedomosti VS RSFSR (Ведомости Верховного Совета РСФСР)*, №24, art. 407, 1964

Article 1 of the Federal Law "On social protection of the Russian citizens, who were exposed to radiation as a result of emergency in 1957 on the industrial association "Mayak" and disposal of radioactive wastes into Techa river" says, that in the order, established by present federal law, the operation of the Law "On social protection of citizens, who were exposed to radiation as a result of the catastrophe in the Chernobyl atomic power station" applies to the following categories of citizens:

1) to the citizens (including soldiers and reservists, called to the special assembly), who took in 1957 - 1958 direct part in the works on liquidation of the consequences of emergency in 1957 on industrial association "Mayak", and also to the citizens, including soldiers and reservists, called to the special assembly, occupied on the works on protecting measures and rehabilitation of the radioactively contaminated terrains along Techa river in 1949 - 1956;

2) to the citizens, evacuated (moved), and also who voluntarily left the inhabited localities (where the evacuation was provided partially), including the children and that children, who at the moment of evacuation were in the prenatal stage, which were exposed to radioactive contamination as a result of emergency in 1957 on industrial association "Mayak" and disposal of radioactive wastes into Techa river.

According to Article 2 of this Federal Law, to citizens, who has radiation sickness, other diseases, included in the list of diseases, appearance of which are conditioned by the action of radiation as a result of the emergency in 1957 on industrial association "Mayak" and the disposal of radioactive wastes into Techa river, are guaranteed the measures of social support, established for the victims,

indicated in the Law "On social protection of citizens, who were exposed to radiation as a result of the catastrophe in the Chernobyl atomic power station".

Article 2 of Law "On social protection of citizens, who were exposed to radiation as a result of the catastrophe in the Chernobyl atomic power station" indicates, that relations, connected with the Chernobyl catastrophe (operation of this law is extended to the citizens, who were exposed to radiation as a result of emergency on "Mayak" plant) are regulated by this law. Current Russian legislation can be applied, if it does not contradict this law and to other normative acts of Russian legislation, enacted in accordance with this law. Thus, the rules of the civil legislation could be used only in the context of special rules, of the Federal Law "On social protection of the Russian citizens, who were exposed to radiation as a result of emergency in 1957 on the industrial association "Mayak" and disposal of radioactive wastes into Techa river". It is important to note that, civil legislation operates within the bounds, which did not contradict special rules of above said law.

Explaining its judgement, The Judicial Chamber noted that, enacting this law, legislator considered that the state acknowledge responsibility for the consequences of industrial emergency. That is why, the harm, caused to citizens cannot be compensated in the order of civil, administrative, criminal and other legislation. In other words, the rules of civil legislation could be used only in the context of special rules of Law on social protection of the Russian citizens, who were exposed to radiation as a result of emergency in 1957 on the industrial association "Mayak".[90]

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[90] V. M. Shadrin, A. G. Ilyina, "Responsibility of compensation of harm as a result of radiation pollution", *The Journal of Russian Law*, №6, 2002, p. 69 (Шадрин В. М., Ильина А. Г., "Ответственность по возмещению вреда здоровью от радиационного загрязнения", *Журнал*

Analyzed case indicates a number of problematic questions, which arose in the process of applying above said laws. In particular, there are some problems: what rules of law regulate the such legal relationships; who is responsible for compensation of damage; the amount of plaintiff's claims; how the lineal descendants of citizens, who were exposed to radiation can defend their rights. These problems are still not regulated in legislation.

There is another case related to compensation of moral damage. In 1995 family "S" and family "N" sued to "Mayak" plant for compensation of moral harm in relation with the residence on radiation-contaminated territory of Kunashakskiy district in Chelyabinsk region. The claims were applied in Ozersky city court of Chelyabinsk region. Essence of the claims of families "S" and "N" is moral damage (physical and moral sufferings) in relation with residence on radiation-contaminated territory, as a result of industrial activity of "Mayak" plant. Prolonged residence in radiation-contaminated territory to the entire family "S" and to several generations of family "N" is inflicted harm to health. In the family "N" was born the child with heaviest pathology (without leg and with deformed arms). In the family "S" moral harm connected with the fact, that husband and two children died from leukemia. The wife and other children are also suffering from diseases.

Arising of diseases in the entire family "S" is the consequence of exposure to radiation and prolonged residence in the territory, which was exposed to radioactive contamination. Husband died, children can not help mother, because they were ill and needed medical aid. All their illnesses are confirmed by medical institutions. Death of husband and two children is in connection with exposure to radiation. Wife worked as an observer of meteorological station. Her house was located in

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российского права, 2002, №6, с. 69)

100 meters from the Techa riverside. Children constantly supported her in the work. They took samples of water and silt. The samples were stored in her house for 2-3 days. The moral damage is inflicted to wife in family "S" not only in connection with death of husband and two children, but also from the realization of the fact that she will survive them and become alone. These thoughts snatched her last hopes for serene old age.

The second case on the compensation of moral harm was filed by spouses "N" to "Mayak" plant (defendant). The case was sued as a result of born on September 8, 1992 of the son with congenital deformities. Happiness of born of the first son was darkened by a whole series of the tragic circumstances. Mother of the child long time was in condition of psychological shock. She could not believe that she is healthy woman, gave birth to invalid child. Subsequently, it became known, that besides the physical pathology the child has a whole series of the heaviest irremediable diseases. These circumstances after experience of shock were an additional terrible impact for the family. Reasons undoubtedly interested parents, and they achieved unanimous opinion that the reason is in lasting effect of radiation influence to all relatives of child from the side of father and mother. All lineal relatives of child in two generations lived in the territory of Chelyabinsk region in the areas, which were exposed to radiation as a result of the emergency on association "Mayak" and discharging of radioactive wastes into Techa river. Residence of several generations of the family in the zone of ecological emergency was reflected on the child's health.

Plaintiff demanded to compensate the moral damage in amount of 500 000 000 rubles. The court decided to recovery from "Mayak" plant in favor of family "N" 50 000 000 rubles.[91]

In the case of family "N", reports of medical experts confirmed assumptions about the reason of born of child-invalid and an influence of radiation to several generations of family. Serious genetic mutations arose under the influence of radiation. Genetic expertise was represented into court as the basic proof of wrong-doing (but also inaction) of defendant, which inflicted moral damage to families "N" and "S".

Data of expertise became the basic proof of the causal relation of wrong-doing of defendant (owner of the source of increased danger). The wrong-doing was expressed in damage to favorable environment, where families "S" and "N" lived. The environmental pollution by radionuclides and inaction of defendant in restoration of the favorable environment is the main reason for infliction of moral damage.

The legal reason for filing such cases was the rule on compensation of moral damage introduced into the Basis of civil legislation of the Union of Soviet Socialist Republics (USSR) on 1991[92](Article131). The Basis was put into effect in the territory of Russia since August 3, 1992 in accordance with the Decision of the Supreme Soviet of Russia (former Russian Parliament)[93]. The content of this article

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[91] E. B. Skukin, *The rights of radiation victims,* The library of Russian newspaper, Moscow, 2003, p. 123-135 (Скукин Е. Б., *Права пострадавших от радиации*, Библиотечка «Российской газеты», М., 2003, С. 123-135)

[92] Basis of civil legislation of the USSR on 31.05.91 № 2211-1, Vedomosti SND and VS of the USSR, №26, art.733, 06.26.91

[93] Decision of the Supreme Soviet of Russian Federation on 03.03.93, №4604-1 "On some questions of application of legislation of the USSR in the territory of Russian Federation", *Vedomosti SND and VS of the Russia,* №11, art.393, 03.18.93

subsequently with some changes entered into new Russian Civil Code on 1994 (Article 151).

Content of the concept of "moral damage" according to Article 131 of the Bases of civil legislation is "physical and moral sufferings". Thus, filing this case, it is necessary to prove that wrong-doing (inaction) to plaintiff is the reason of not only moral, but also physical sufferings (harm, inflicted to health). But, after turning into the court with claim, plaintiff must prove the circumstances, which led to moral sufferings. The presumption of moral damage does not follow from the Russian legislation. Accordingly, plaintiffs must fully prove the fact of infliction of harm, so that the court would decide a question about compensation in favor of plaintiff.

The part, which filed the claims (plaintiff), must find proofs itself, pass the most complex medical examinations, pay this work and present to the court all proofs. It is very difficult for plaintiff to prove the fact of radioactive influence on his organism and to pass in connection with this objective medical examination. There is a problem of objective evaluation of health condition in radioactive-contaminated territory.

According to Decree of Ministry of Health and Care of Russia on October 16, 1992, № 279 "On rendering of medical aid and establishment of causal relation of diseases, disablements and deaths to persons, who were exposed to radiation"[94] the only medical institution was authorized to provide examination. It is the Russian Interdepartmental Expert Council at the Moscow Research Institute of Diagnostics and Surgery of the Ministry of Health and Care of Russia (former branch of the

[94] Decree of Ministry of Health and Care of Russia on October 16, 1992, № 279 "On rendering of medical aid and establishment of causal relation of diseases, disablements and deaths to persons, who were exposed to radiation", *The library of Russian newspaper,* №10, 1995

Institute № 4 of Biophysics). For a long time this Institute collected statistics of radiation influence to human organism. During soviet period this information was confidential. At present the Institute works with "Mayak" plant in close collaboration.

In accordance with the above mentioned Decree was established the list of the diseases, connected with radiation exposure to the man. If disease was not included into the list, then it was not possible to prove causal relation with radiation influence.

Since 2001 this Decree was nullified. But there is a lack of institutions, which are able to provide a complex examination of radiation influence.

Citizens, who suffered from ecological offenses, are put aside by state to the lowest social level. They realize that damages are inflicted to their health, but imperfect legislation does not make possible for them to clime in judicial order for compensation of harm, restoration of violated rights, guaranteed by the Russian Constitution.[95]

The structure of the causal relation between the wrong-doing or inaction and moral damage in the majority of cases is implicit (indirect) moral harm. Current legislation does not provide presumption of moral harm. Presumption of harm makes possible to simplify procedure of proving of casual relation between action of wrong-doer and the health of suffered person. If this procedure will enter to legislation, an effective defense of rights and compensation of harm for ecological offenses can be provided.

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[95] A. G. Ilyina, "Rights of citizens, who suffered from radiation", *Advocate*, №11, 2000 (Ильина А. Г., "Права граждан, пострадавших от радиации", *Адвокат*, 2000, №11)

3.7 Procedural features of lawsuits for compensation of radiation harm

Right to compensation of harm, inflicted to health by unfavorable environmental effect, is a method of realization and protection of the right of citizens to favorable environment. The relations, which arise as a result of infliction of ecological harm to health, are the complex of civil, constitutional and administrative type of legal relationships. They appear correspondingly to doing of ecological offense.

Suffered person can apply for protection of the violated right directly to the harm-doer or into law court. First of all, he does not pursue the purpose of punishment and reeducation of harm-doer. He seeks the way to receive recovery for unfavorable consequences, caused by harm-doer's actions.[96]

In the real life ecological harm is the result of functioning of ecologically harmful industry, which determines condition of environment in particular territory. Frequently harm appears in connection with the natural phenomena of disaster and emergency character, which destroy any economic objects and lead to emergency pollution.

It is obvious, that the bases of the compensation of harm and respectively, the sources of compensation are different. In different situations the responsibility of economic subjects, state, governmental bodies is possible. The losses, born by citizens can be compensated in the judicial order (by suing) and extrajudicial order (periodic budgetary payments, special material support for injured population from budgetary reserve funds, insurance indemnity in case of the preliminary insurance

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[96] S.M. Sagitov, "The juridical procedures of application of civil responsibility for infliction of harm to the environment", *Jurist,* №2, 2008 (Сагитов, С.М., "Отдельные юридические процедуры применения гражданско-правовой ответственности за причинение вреда окружающей среде", *Юрист,* 2008, №2)

against risks and others).

In decisions of the Russian Constitutional Court are formulated the principles of: full compensation of harm, inflicted by the state; prohibition of discrimination in relations between the citizen and the state with compensation of harm and the payment of different allowances. Absence in the legislation of the general legal bases of state's responsibility for inflicted harm, allows to state to "solve problem" in imperative order, whether accept responsibility or not. In ecological relations compensation of harm by the state is provided in cases, directly established by legislation (compensation of harm to the victims of Chernobyl catastrophe and emergency on "Mayak" plant), but not on general reasons. This approach contradicts not only principles of juridical responsibility, but also general principles of the construction of rule of law (constitutional) state.[97]

Analysis of legislation and judicial practice makes it possible to realize the conclusion that the natural right to favorable environment and to compensation of harm to the health of citizens, inflicted by violation of the right, is still insufficiently filled with particular content.

Russian legislation on compensation of harm to health as a result of radiation exposure is complex and volumetric. Therefore it is necessary to focus attention on basic normative acts.

Basic Federal laws, which act at present time, are:

- Law on May 15, 1991 "On social protection of citizens, who were exposed to radiation as a result of the catastrophe in the Chernobyl atomic power station";

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[97] G.A.Misnik, "Principles of civil responsibility for ecological harm", *The ecological law*, №2, 2008 (Мисник Г.А., "Принципы гражданско-правовой ответственности за причинение экологического вреда", *Экологическое право*, 2008, №2)

- Federal Law on November 26, 1998 "On social protection of the Russian citizens, who were exposed to radiation as a result of emergency in 1957 on the industrial association "Mayak" and disposal of radioactive wastes into Techa river".

It is possible to divide citizens, who were exposed to radiation, into two categories.

The first category is citizens, who fall under operation of laws, which provide for assignment a social benefits and compensations for harm to health, but by different reasons do not obtain it.

In order to obtain social protection (benefits), provided by law, it is necessary for citizens, in accordance with the current legislation, to obtain specific status, provided in the law, for example "evacuated person", "emergency liquidator" and so forth. In such situation, it is necessary to apply to regional administrative bodies of social protection and present the documents, which confirm the fact of living in radiation damaged areas, exposing to radiation and other documental proofs of radiation influence. In case of unsubstantiated refusal, all documental proofs should be filed in law court. The documental proofs should have necessary references to the Russian Constitution and current legislation.

At present time there is an important problem, that many citizens don't know how to prove the juridical fact of residence on radiation-contaminated area. In accordance with Russian Civil Procedural Code, it is possible to establish with assistance of court, juridical fact of living on the contaminated territory, i.e. to prove in judicial procedure and to establish the fact of residence on radiation - contaminated area. Proofs play the predominant role in litigation.

Proof in the court can be witness testimony, documents, examinations, photographs and other. In case of the acknowledgement of juridical fact in a court,

the judgement should be passed to administrative bodies of social protection. Social benefits, provided by the law, can be demanded on the basis of judgement.

The second category is citizens, who were exposed to radiation, but did not obtain benefits and compensation, because of absence in the law of direct rules about their status. First of all, it concerns the children of first and other generations of persons, who were exposed to radiation. For effective protection of their rights, it should be used a legal institute of compensation of harm.

One of the basic problems of compensation of harm to health of person, who was exposed to radiation, is determination of the causal relation between harm and wrong-doing (delict) of legal or physical person. If enterprise caused harm to natural environment and as a result an aggravation of health has begun. It is possible to determine a causal relation between the enterprise activity and aggravation of health.

Therefore, one of the consequences of environmental pollution can be aggravation of health. Casual relation and reasons of responsibility must be proven in trial.

In the Decree of Constitutional Court on June 19, 2002, № 11-P indicated:

"Procedure of designation and determination of compensatory allowance, provided by the base law, does not require proving of extent (volume) of harm, inflicted to health. At the same time, compensation of harm on the basis of civil legislation rules is not excluded, if citizen files himself to court for protection of his rights. The possibility of payment of additional allowances, according to judicial decision and inadmissibility of decrease of the already established amount of

compensatory allowances can increase guarantees of the protection of rights and legitimate interests of citizens, who suffered from Chernobyl catastrophe".[98]

The civil legislation rules are follow: Chapter 59 of the Civil Code, which establishes not only general regulations of compensation of harm, but also contains special rules, which provide responsibility of legal person for the harm, inflicted to workers (Article 1068) and also responsibility of state administrative bodies, local government or their officials (Article 1069).

In accordance with Article1064 of the Russian Civil Code "General grounds for liability for damage" , is intended, first of all, the material damage, which is manifested by decrease of the property of suffered person as a result of violation his substantive right and (or) the depreciation of nonmaterial comforts (life, health etc). A volume of compensation according to the general rule of Article 1064, must be full, i.e. suffered person are able to get compensation of real damage and lost profit (Articles 15, 393 of the Russian Civil Code).

Before filing a lawsuit, it is necessary to present proofs of substantiation of demands, namely:

- suffered person lived in contaminated territory;

- conclusions of doctors (experts) about the fact, that reason of disease is influence of radionuclides.

Expanded definition of the concept of "moral damage" is contained in Decree of the Plenum of Russian Supreme Court on December 20, 1994 "Some questions of the application of legislation about the compensation of moral damage"[99].

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[98] Decision of the Russian Constitutional Court on June 19, 2002 № 11-P " On case about checking of correspondence to the Constitution of separate norms of Russian Law on May 15, 1991 "On the social protection of citizens, who were exposed to radiation as a result of the catastrophe in the Chernobyl atomic power station" (amended on June 18, 1992, on November 24, 1995), *Rossiyskaya gazeta (Российская газета)* № 118, 07.02.2002

Furthermore, separate rules, which regulate order of compensations for harm, inflicted to citizens, are contained in the laws, enacted since 1991. Such laws include, for example, Federal Law on January 10, 2002 "On protection of the environment".

3.8 Concluding remarks

According to Federal Law " On radiation safety of population" citizens, who live in the territories, which are adjoined to plants with sources of radiation emission, have a right to social support, if there is a possibility of exceeding established basic limits of radiation doses. An order of providing of social support must be established by law. At present time this Law is not enacted.

Federal law "On protection of the environment" says about adoption of the special law on the zones of ecological emergencies, which would determine the order of declaration and establishment of regime of these zones. Actually, the same law must establish the content of the regime in zones of ecological emergencies. The corresponding law project was developed ("On status of the zones of ecological emergency and regulation of economic and other activity to this areas"), but has not enacted yet.

It is necessary to create long-term state programs on different aspects of radiation problem, especially within the framework of the concepts of demographic evolution of the Russian Federation. Genetic fund is one of the natural objects, which needs regard and protection. This concept is applicable to the whole animal

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[99] The decree of the Plenum of Russian Supreme Court on December 20, 1994 "Some questions of the application of legislation about the compensation for moral damage", *Rossiyskaya gazeta (Российская газета)* № 29, 02.08.1995

and plant world, but it is possible to mean also the gene pool of people, nation. The degradation of environment can bring and leads up to irreversible changes of the man.[100]

The building of new atomic power plants must be accompanied by fulfilling severe ecological requirements during selection of the place of location and during construction. Since the atomic power plants are potentially ecologically dangerous objects, estimation of correspondence to the ecological requirements of this economic solution is completely logical measure.[101]

According to legislation, the responsibility for damage carries an operating organization, which obtained a license for operation of nuclear plant. Another important requirement is observance of the principle of objective responsibility (regardless of the fault of harm doer). Since the damage in terms of money can reach big sizes, appears the necessity for development of special mechanisms for financial guarantee of responsibility. One of the methods of solution of this problem is creation of special insurance fund, which includes the payments of operating organizations.

The state enacted special laws on the compensation of radiation damage in connection with Chernobyl catastrophe and emergency in "Mayak" plant. The damage became so significant, that these laws could not provide full compensation. Thus, legal relations between persons, who were exposed to radiation and the state,

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[100] S. A. Bogolubov, *Commentary to the Law "On protection of the environment"*, Moscow, 1997, p.14 (Боголюбов С.А., *Комментарий к Закону РФ «Об охране окружающей природной среды»*, М., 1997, с. 14)

[101] A. I. Constantinov, "Location and construction of the atomic power stations: ecological- legal problems", *The Journal of Russian Law*, №7, 1998, p.98 (Константинов А. И., "Размещение и сооружение атомных электростанций: эколого-правовые проблемы", *Журнал российского права*, 1998, №7, с.98)

turn to the new stage. State assumes obligation to compensate damage, and citizens have right to use this obligation and prove the damage in court. At the same time, legislation contains the complex and imperfect system of the compensation of radiation harm judicially. Therefore, citizens have little opportunities to obtain compensation.

Suffered person must prove that particular substantive or moral damage arose, and this damage is consequence of defender's behavior. Proving of this consequence is the most difficult task. Entire complex of proving can be conditionally divided on several components. For proving of harm it is necessary:

- To confirm the ecological nature of inflicted harm (causal relation between harm to health and radiation pollution). It is required to establish the harmful substance (radiation), which caused disease or another injury to health, and the biomedical aspects of its action and determine possible ways and moment of its penetration into the human's body.

- To determine belonging of this substance (radiation) to any source of emission (causal relation between environmental pollution and the activity of atomic objects).

- To specify degree of participation of the contaminator in forming of harm (causal relation between ecological offense and the volume of caused harm).

It is obvious that above-mentioned procedures are extremely complicated for citizens.

A number of problems appear in the territories, contaminated by radiation.

- The special laws establish the right of citizens to obtain privileges and the allowances, connected with residence in the radiation contaminated territories. But,

if person changed residence to another territory, all privileges are to be ceased.

- The movement of citizens into the clean areas for permanent residence is extremely difficult, because the federal budget allots insufficient money means. In this relation the constitutional rights of citizens to health, indicated in the Russian Constitution are violated.

- The rehabilitation and decontamination of polluted territories are almost not provided. As a result, there are no clean pastures for cattle farms and pure clean water.

Position of suffered persons becomes difficult by the fact that infliction of radiation harm to health is frequently extended in time. Accordingly, the moment of infliction of harm is not clear and cannot be definitely connected with the fact of particular environmental offense on any object or territory.

Chapter 4. Protecting of Rights of the Russian victims of Radiation in the European Court of Human Rights

4.1 Introduction

After the Soviet period human rights began to play an important role in the state policy of Russia. Respectively, the legislation was improved. The international-legal standards brought influence to Russian legislation. Russia joined to the international Conventions: the Convention for the Protection of Human Rights and Fundamental Freedoms, the Vienna Convention on Civil Liability for Nuclear Damage. Thus, the European and world standards in the sphere of protection of human rights (including compensation for harm) began to play significant role in domestic legislation.

The Constitution of the Russian Federation also includes a stipulation that international treaties ratified by the federation are above national legislation and will supersede national legislation in case of contradictions (Art. 15, I tem 4). The new principle allowing international monitoring and advice constitutes a radical change in the doctrine of Russian international law.

The legislation of Russia granted many possibilities to radiation victims for protection of their rights. Nevertheless, imperfect judicial system and the system of judgments execution make obstacles to obtaining of compensations for harm to health. Even if Russian courts rendered judgment on the compensation for harm to health, then a deficiency of means in the budget makes it impossible to execute judgments or defers the periods of their performance.

From the moment of ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter as "the Convention") in 1998, Russian citizens received the possibility of using mechanism of legal protection by the European Court of Human Rights (hereinafter as "the European Court"). This mechanism helps to correlate Russian legislation with principles of the Convention and to increase the effectiveness of the protection of rights.

Imperfection of domestic judicial system, low level of legal culture, difficult financial position and lingual problems does not allow victims to actively use this possibility.

The persons, who are under the Russian jurisdiction (citizens) have right to access to the European Court with the complaints of wrong acts of the state authorities, which violate their rights and freedoms. Russia has been directed to the very complex task, caused, in particular by a question about legal significance of the decisions, made by the control organs of the Convention. The Convention proceeds from the fact, that the European Court judgments acquire binding nature for the parties participating in the case. It is necessary to keep in mind, that the basic conditions of the Convention are elaborated and interpreted in the judgments of the European Court. Within the framework of the Council of Europe the precedent (case) law has been actually formed.

At the same time the realization of precedent practice of the European Court in activity of participants in civil justice is the guarantee against violation of standards of the rights of a man in realization of justice. Precedents (case law) of the

European Court have undoubtedly important significance in the establishment of legality in the domestic civil procedural relations.[102]

4.2 Russia in the structure of the Council of Europe

Council of Europe is the oldest international political organization in Europe. Its basic declared purpose is construction of united Europe, which is based on the principles of freedom, democracy and protection of human rights and supremacy of law.

On May 5, 1949 Statute of the Council of Europe was adopted. This day the first step was made for creation of the Council of Europe. The Council of Europe is a separate organization from the 27-member of the European Union (EU). No country has joined the EU without first joining the Council of Europe. The Council of Europe includes 47 countries.[103]

According to Article 1 of Statute of the Council of Europe (hereinafter as "the Statute"): "the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage and facilitating their economic and social progress. This aim shall be pursued through the organs of the Council by discussion of questions of common concern and by agreements and common action in economic, social, cultural, scientific, legal and administrative matters and in the maintenance

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[102] A. S. Fedina, "Significance of the European Court judgments in realization of the principle of legality in the civil procedure", Jurist, №3, 2007 (Федина А. С., «Значение решений Европейского суда по правам человека в реализации принципа законности в гражданском судопроизводстве», Юрист, 2007,№3)

[103] Article 26^1 of "Statute of the Council of Europe, *Digest of Russian legislation*, №12, art. 1390, 03.24.97

and further realization of human rights and fundamental freedoms".

Some principles is reflected in Article 3 of the Statute: "every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realization of the aim of the Council".

Article 4 of the Statute says that: "any European State which is deemed to be able and willing to fulfill the provisions of Article 3 may be invited to become a member of the Council of Europe by the Committee of Ministers".

Five countries have observer status with the Council of Europe: the Holy See, the United States, Canada, Japan and Mexico. All residents in Council of Europe member states may bring cases before the European Court of Human Rights against states which have breached their commitments under the European Convention on Human Rights.

Russian Federation entered into the Council of Europe on February, 1996[104] and on March, 1998 the Convention for the Protection of Human Rights and Fundamental Freedoms was ratified.[105] Thus, Russia confirmed its adherence to ideals and principles of humanism and democracy, and also the readiness to correct a whole series of laws, which contradict to positions of the Convention. Being joined to the Council of Europe, Russia has assured organization to the fact that it had been ready to bring its legislation and political system into correspondence with European standards.

The European Court was created to ensure the observance of the engagements

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[104] Federal Law on 02.23.1996 № 19-FZ "On annexation of the Russian Federation to Statute of the Council of Europe", *Rossiyskaya gazeta (Российская газета)*, №38, 02.24.96

[105] Federal law on 03.30.1998 № 54-FZ "On ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols", *Rossiyskaya gazeta (Российская газета)*, №67, 04.07.98

undertaken by the High Contracting Parties (members of the Council of Europe) in the Convention and the Protocols thereto. The European Court functions on a permanent basis.[106]

The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and its Protocols. The Court may receive applications from any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the Parties of the Convention of the rights set forth in the Convention and its Protocols. Thus, the European Court is able to receive individual complaints. The Parties of the Convention undertake not to hinder in any way the effective exercise of this right (Articles 32, 34 of the Convention).

The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognized rules of international law, and within a period of six months from the date on which the final decision of domestic court was taken.

The Court shall not deal with any individual application, if it is:

- anonymous;
- substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information (Article 35 of the Convention).

If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the

[106] Article 19 of the Convention for the Protection of Human Rights and Fundamental Freedoms

injured party (Article 41 of the Convention).

The Convention took into force on May 5, 1998 (the Convention shall come into force at the date of the deposit of its instrument of ratification)[107]. However, actually the European Court Secretariat began to take complaints from Russia only a year later, when the judge from Russia was finally appointed to the European Court.

There are only three necessary conditions, which get an applicant the great probability of successful examination of applicant's complaint in the European Court. The first, applicant must exhaust all domestic methods of judicial protection. The second, complaint must fall into the office of the European Court not later than six months after the final judgment of the Court of last resort on this case. Finally, making complaint, applicant must refer and operate only within articles of the Convention.

According to Federal Law №54-FZ on March 30, 1998 "On ratification of the European Convention of protection of human rights and basic freedoms and its protocols", the Russian Federation in accordance with Article 46 of the Convention, recognizes the jurisdiction of the European Court of human rights without the special agreement.

This jurisdiction is required on interpretation and application of the Convention and its Protocols in cases of presumed violation by the Russian Federation of the clauses of this Convention, when violation has occurred after the Convention came into effect for the Russian Federation.

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[107] Article 59 of the Convention for the Protection of Human Rights and Fundamental Freedoms

It is possible to make important conclusion: the decisions of the European Court, adopted against Russia are obligatory for the rule-making bodies, executive and judicial bodies of state power, and also for local governments.[108]

The European Court will examine only complaints of violation of the rights, fixed in the Convention and its protocols. In this case the applicant must complain of state administrative bodies, which disrupt his rights, provided by the Convention. Under no circumstances the European Court will not receive complaints to examination, if they are directed toward individuals or commercial organizations.

All decisions, taken by the European Court, regardless of the fact, they are the acts of application of the Convention or the acts of interpretation of the Convention, become very important and binding documents for the states, which ratified the Convention.[109]

The European Court judgments, brought with respect to the Russian Federation, have precedent significance. But, if there are judgments, brought to another state, they also should be considered by Russian courts. This can help to avoid violations, which were already the object of examination by the European Court, which has been created its legal positions pertaining to other states. One should be noted, that the role of judicial practice (case law) in the legal system of the Russian Federation constantly grows. Correspondingly, Russian courts with examination of complaints, analogous to the complaints, in which the European Court had brought judgment against Russia, must be guided both by the

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[108] E. A. Ershova, "Legal nature of decisions of the European Court of Human Rights", *Labour law*, №2, 2009 (Ершова Е.А. "Правовая природа постановлений Европейского Суда по правам человека", *Трудовое право*, 2009, №2)

[109] M. N. Marchenko, "Juridical nature of resolutions of the European Court of human rights", *The state and law,* №2, 2006 (Марченко М. Н., «Юридическая природа и характер решений Европейского Суда по Правам Человека», *Государство и право*, 2006, №2)

Convention and by the European Court judgments, which were brought earlier.[110]

The European Court gives significant attention to performing procedures in all possible court levels of state to eliminate violation of the right of citizen, which filed to the European Court in Strasbourg city. That is why inexpedient to ignore national means of judicial protection with a view to the fact, that everything will be solved in the European Court. Otherwise it is necessary to prove the ineffectiveness of the domestic court.

It is necessary to note, that the fact of access to different public organizations for protection of human rights is not a necessary condition for filing a complaint into the European Court. Moreover, access to public organizations is not examined as effective and required mechanism of the protection of violated rights.

4.3 Legal nature of the European Court of Human Rights judgments

In the process of adopting Decree of Plenum of the Russian Supreme Court on December 19, 2003, № 23 "On the judgment"[111], discussion about legal nature of decisions of the European Court was arisen.

Plenum of the Russian Supreme Court is the organ of the Supreme Court, which is the meeting of all Supreme Court judges. Plenum does not execute justice, but provides correct and unified application of laws by courts, making explanations and interpretations of the rules of law by means of decrees.[112]

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[110] I. V. Vorontsova, "On the requirement of the European Court decisions", *The Russian judge*, 2009, №6 (Воронцова И. В., "Об обязательности постановлений Европейского суда», *Российский судья*, 2009, №6)

[111] Decree of the Plenum of Russian Supreme Court on December 19, 2003, № 23 "On the judgment", *Rossiyskaya gazeta (Российская газета)*, 12.26.2003

[112] Articles 57, 58 of Law of the Russian Soviet Federative Socialist Republic (RSFSR) on July 8, 1981 "On judicial system in RSFSR" *Vedomosti VS RSFSR (Ведомости Верховного Совета РСФСР)*,

In the minority were supporters of the position, whose essence consisted in the fact that decisions of the European Court are judicial precedents, independent form of right. As a result in Item 4 of Decree of Plenum of the Russian Supreme Court "On the judgment" in accordance with the Russian Constitution and general theory of law is explained: "In view of Part 4 of Article 198 of Russian Civil Procedural Code[113] in the judgment must be indicated which law the court was guided. The motivating part of judgment must include the material law, applied by court to juridical relationships, and rules of procedure, applied by the court. Court should consider the decisions of the European Court of Human Rights, which contains interpretation of the rules of the European Convention for the protection of human rights and basic freedoms, which are subject to application in the case".

In the Items 10, 11 of Decree of Plenum of the Russian Supreme Court on October 10, 2003, № 5 "On application by the Courts of general jurisdiction of universally recognized principles and rules of international law and international treaties of the Russian Federation" is said following: "Application by courts of the Convention must be achieved taking into consideration of the European Court's practice. It helps to prevent of any violation of the Convention".[114]

The European Convention possesses its own mechanism, which includes the obligatory jurisdiction of the European Court of human rights and systematic control of performance of judgments by Committee of Ministers of the Council of Europe. According to Item 1 Article 46 of the Convention, judgments accepted

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№28, art. 976, 1981

[113] Russian Civil Procedural Code, *Digest of Russian legislation,* 11.18. 2002, №46, art.4532

[114] Decree of the Plenum of the Russian Supreme Court on October 10, 2003, № 5 "On application by the Courts of general jurisdiction of universally recognized principles and rules of international law and international treaties of the Russian Federation", *Rossiyskaya gazeta (Российская газета),* №244, 12.02.2003

finally by the European Court with respect to Russia are obligatory for all state administrative bodies of the Russian Federation and for courts.

The performance of the judgments, which are concerned Russia, assumes an obligation from Russia to take particular measures to eliminate of violations of human rights, provided by the Convention and the consequences of these violations for applicant. It is also obligatory to take general measures in order to prevent repetition of similar violations.

Domestic courts within their jurisdiction must act so as to ensure performance of the state obligations, which arise from participation of Russia in the Convention.

If during the trial were identified circumstances, which contributed to violation of rights and freedoms of citizens, guaranteed by the Convention, domestic court is able to make a decision, turned to organisations and public officials, to adopt necessary measures for elimination of violations of these rights and freedoms.

According to Item 4 Article 15 of the Russian Constitution, "generally recognized principles and rules of international law and international treaties of Russia are the component part of its legal system. If international treaty of Russia establishes other rules, than provided by domestic law, then the rules of international treaty are applied". Consequently, application of the Convention is a priority in the national law system.[115]

It is obviously that, judgments of the European Court should be recognized as part of the law, entering as major part together with rules of the Convention to the

[115] M. L. Belkin, "Legislative reasoning of application in the judicial practice of judgments of the European Court of Human Rights as source of law", International public and private law, 2010, №1 (Белкин М.Л., "Законодательное обоснование применения в судебной практике решений Европейского суда по правам человека как источника права", Международное публичное и частное право, 2010,№1)

Russian legal system (Item 4 Article 15 of the Russian Constitution). On this opinion is able to build mechanism of influence of jurisprudence of the European Court of human rights on judicial practice of Russian courts.[116]

Thus, putting of the precedent elements into judicial practice testifies about deepening of integration of the Russian judicial system into international judicial system. A number of subjective and objective factors are bringing influence to forming of application practice of the European Court's judgments by Russian courts.

1. The legal system of Russia relates to codified. Rules of law are the basic source of the law in it. Respectively, judgments of courts are based on the rules of law. It is obvious, that difficulty of applying the European Court's practice by Russian judges consists in absence of skill of using judgment as legal source for making of the subsequent judgment. For substantiation of judgment, legal position of the European Court should be taken into consideration.

2. The reference of Russian courts to the judgments of the European Court assumes their knowledge. It is problematic for Russian judges, because of absence in Russia of the source of official publication of the European Court's practice.

The judgments of the European Court are published in the periodic editions "Russian justice" and "Bulletin of the European Court of Human Rights". Neither of these editions have an official status of the European Court's practice publication.

3. Habit of Russian judges to work on the old ways, when for substantiation of the judgment is more easily find necessary rules in domestic legislation, than to

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[116] V. I. Anishina, G.A .Gadzhiev, *Independence and autonomy of the judicial power in Russian Federation,* M., Jurist, 2006, p. 148 – 149 (Анишина В.И., Гаджиев Г.А., Самостоятельность и независимость судебной власти Российской Федерации, М., Юрист, 2006, с.148 – 149)

give its own interpretation to positions of the European Convention and the European Court's judgments. This interpretation might not coincide with the opinion of the court of superior jurisdiction and is able to become the reason for reversal of judgment.

There are some theoretical problems with practical consequences, which occur during interrelation of judicial- legal system of Russia and Europe.

- Relationship of the European Court's jurisdiction (which is subsidiary remedy of legal protection) to domestic remedies of legal protection and to constitutional principle of independence of judicial power.

- This problem from time to time appears in connection with judgments of courts of appellate jurisdiction in Italy, France and other European countries, when subordination of domestic and European judicial systems is doubtable.[117]

Russian Civil Procedural Code does not indicate judgments of the European Court as the base for review of judgments of general jurisdiction civil courts (Article 392). Different approaches of law-makers to significance of the European Court's judgments as to base for review of judicial decisions in the system of general jurisdiction courts have not been accepted. These differences are not reasoned in the sphere of civil justice, implemented by general jurisdiction courts.

It does not mean that judgments of the European Court are not obligatory to performance for general jurisdiction courts. Obligation of general jurisdiction courts to use in its practice, including with the examination of civil cases, follows from Item 4 of Decree of Plenum of the Russian Supreme Court "On the judgment". The Decree does not indicate review of the concrete judgment, which was

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[117] A. I. Kovler, "European right of human rights and the Russian Constitution", *The journal of Russian Law*, №1, 2004 (Ковлер А.И., "Европейское право прав человека и Конституция России", *Журнал российского права*, 2004, №1)

recognized by the European Court as containing the facts of violation of the Convention by the state powers. There is a forming of future judicial practice.

The European Court does not interfere in realization of justice by domestic courts it does not review judgments of national courts, since it is not superior body to them. The European Court builds up judicial practice, which serves for courts in the states - members of the Convention as the base on observance of human rights, guaranteed by the Convention, including with the realization of justice in the civil cases.

The Russian Supreme Court has adopted Decree concerning realization by general jurisdiction courts of international law rules on domestic level. The Supreme Court also determined methods of how Russian judges are to be informed about practice of the European Court. In complete accordance with the juridical procedures of the European Court, general jurisdiction courts gradually create practice of application in the concrete case of the Convention and the European Court's judgments.[118]

4.4 Relation of decisions of the Russian Constitutional Court and the European Court of Human Rights

More correct is understanding of legal positions of the Russian Constitutional Court as generalized ideas of the Court for concrete constitutional - legal problems. Legal positions of the Constitutional Court are legal conclusions and notions of the Curt as the result of:

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[118] V. M. Zhuykov, Practice of the application of the Russian civil procedural code, M., 2005. p. 60-68 (Жуйков В. М., Практика применения Гражданского процессуального кодекса РФ, М., 2005, с. 60 – 68)

- interpretation of intent and letter of the Constitution,

- interpretation of constitutional sense (aspects) of the rules of subject (active) laws and other normative regulations within the limits of his capacity. These legal positions of the Constitutional Court remove uncertainty in concrete constitutional - legal situations and serve as legal basis of final decisions of the Constitutional Court.

Specific character of constitutional justice includes the fact, that the Russian Constitutional Court solves exclusively problems of law (Item 2, Article 3 of Federal Constitutional Law "On the Russian Constitutional Court")[119] from positions of the Russian Constitution, providing its supremacy and direct operation in the entire territory of Russia. However, it does not mean that the Constitutional Court does not consider the right of a man, principles of law, which are not directly fixed into the Constitution, or generally recognized rules and standards of international law. This consideration is based on the fact that it is allowed by the Russian Constitution itself. Thus, the Constitution proclaims inalienability and belonging of the basic rights and freedoms of man to everyone by nature. Moreover, the rights of man and citizen are directly operated. The sense, content and application of laws, activity of the legislative, administrative powers and local authorities are determined according to the content of human rights and provided by justice (Article 18 of the Constitution).

Legal positions of the Constitutional Court have two important features.

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[119] Federal Constitutional Law on July 12, 1991, № 1599-1 (new version on July 21, 1994, № 1-FKZ) "On the Constitutional Court of Russia", *Vedomosti SND and VS,* №30, art. 1017, 1991, *Digest of Russian legislation,* №13, art.1447, 07.25.1994

1) Legal position of the Constitutional Court has general nature, i.e., it is reached not only to the case, examined in the Constitutional Court, but also to all similar cases, which occur in legal practice.

2) Legal position has an official, obligatory nature. Legal positions of the Constitutional Court have the same juridical force as the court decisions, and are required in entire territory of Russia for all legislative, administrative and judicial bodies of state power, local authorities, enterprises, organizations, officials, citizens and their associations (Article 6 of Federal Constitutional Law "On the Constitutional Court of Russia").

Therefore, legal positions of the Constitutional Court are not only recommendations. On the juridical force they are equal to juridical force of the Constitution itself.

Legal positions of the Russian Constitutional Court can be divided into two basic forms:

1) legal positions of the Court, which present the result of direct official interpretation of the Russian Constitution and solution of disputes about competence on its basis;

2) legal positions, which have been the result of disclosing (interpretation, exposition) of the constitutional sense of subject (branch) legislation.[120]

Item 2, Article 87 of Federal Constitutional Law "On the Russian Constitutional Court" says: "The acknowledgement of normative regulations, agreement or separate positions not corresponding to the Constitution is the base of

[120] N. V. Vitruk, "Legal positions of the Russian Constitutional Court: concept, nature, juridical force and significance", The constitutional law: Eastern European review, №3 (28), 1999 (Витрук Н. В., "Правовые позиции Конституционного Суда РФ: понятие, природа, юридическая сила и значение", Конституционное право: Восточноевропейское обозрение, 1999, №3(28))

cancellation of the clauses of other normative acts, based on the normative act or agreement, which were acknowledged as unconstitutional. The provisions of these normative acts and agreements cannot be used by courts, other organs and officials".

The Constitutional Court makes the practice, when its legal positions, formulated in the final decisions by concrete cases, have general nature and obligatory for all public organs, local authorities and officials in all similar legal situations. It is one of the basic requirements of constitutional lawfulness. Legislators and law enforcement bodies independently, on their initiative must change the content of normative regulations and make all necessary legal actions in accordance with the requirements of direct action of the Constitution's rules and legal positions of the Constitutional Court. According to abovementioned, the Constitutional Court rejects examination of complaints, if legal dispute is already resolved in analogous case and the corresponding legal position had been created.

Legal positions of the Constitutional Court play an essential role in development of constitutionalism, which has special importance in the period of passage to democracy and to the rule-of-law state.

Legal positions of the Constitutional Court develop the theory of the constitution, constitutional right and constitutionalism as a whole. The Constitutional Court makes a significant contribution to the theory of constitutional rights and freedoms, obligations of citizens, separation of powers, federalism, local authorities. Constitutional bases of rights and freedoms of man and citizen in Russia found their development in legal positions of the Constitutional Court for problems of:

- person's dignity and follow from it inherent rights and freedoms of man, equality of citizens to law and court,

- compensation of damage, also inflicted to citizens as a result of industrial catastrophes (radioactive contamination),

- content of the right of citizens on judicial protection.

The Constitutional Court deepened understanding of constitutional sense of special legal statuses of different categories of citizens (victims of political repressions, the pensioners, suffered persons and other participants in the civil and criminal procedures), according to requirements of the constitutional rules.

With the adoption of the Russian Constitution in 1993 and beginning of the process of entrance into the Council of Europe, the legislation activity, which significantly changed legal order in Russia and personal legal status was substantively activated.

Thus, the new civil, criminal, civil procedural and criminal procedural codes were adopted. At the same time it is not difficult to understand that application of these laws in real situations was problematic. In such situation were useful European standards as the universal scale of values, which correlated to national legislation standards.

As for civil procedure, the case "Burdov v. Russia" (№ 59498/00, decision dated May 7, 2002) was concerned precisely the duration of judicial procedure and non execution of the judgment for a few years. There was non payment of the social benefit, awarded by court, because of "the absence of money means" in the bodies of social welfare. It indicates the incompleteness of procedure itself.[121]

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[121] A. I. Kovler, "European law of human rights and the Russian Constitution", *The journal of Russian Law,* №1, 2004, p. 4 (Ковлер А.И., "Европейское право прав человека и Конституция России", *Журнал российского права*, 2004, №1, с.4)

There is a position of the Constitutional Court concerning application of a judicial precedent. The Russian Constitutional Court in the decision dated June 16, 1998, № 19- P "On case about interpretation of the separate rules of articles 125, 126 and 127 of the Russian Constitution" noted that only Constitutional Court is able to make official decisions, which have general obligatory nature (obligatory for all domestic courts and administrative authorities), while judgments of general jurisdiction courts and arbitrage courts do not possess such specific features of decision. The decisions (judgments) of general courts are not obligatory for other courts on other cases, since general courts independently interpret applicable normative rules, following in each case to the Constitution and Federal laws.[122]

Problem of compatibility of the constitutional - legal system of Russia with the legal system of the Council of Europe and the jurisprudence of the European Court arise the theoretical problem, which has practical consequences. This problem includes relationship of the European Court's jurisdiction as subsidiary mean of legal protection pertaining to the national legal protection means and fixed in the Russian Constitution principle of independence of judicial authority.

The Russian Federation attempts to bring its law enforcement practice into correspondence with the European standards, which include acknowledgement as binding of interpretation of the standards of the Convention and its Protocols. The judgments of the European Court, which have significance of the precedent, must become the guideline for the Russian judicial authorities with examination of disputes on violations of rights and freedoms of a man.[123]

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[122] Decision of the Russian Constitutional Court on June 16, 1998, № 19- P "On case about interpretation of the separate rules of articles 125,126 and 127 of the Russian Constitution", *Rossiyskaya gazeta (Российская газета)* №121, 06. 30. 1998

[123] M. V. Kuchin, "Human rights and the problem of application in the Russian Federation of precedent law of the Council of Europe", *The Journal of Russian Law*, № 4, 1998, p. 83 (Кучин М. В.,

Requirement to exhaust all domestic means of protection remains basic for the entire system of the Convention. But the most important thing, if there is only effective means of protection would be exhausted. In this sphere some new participating countries can encounter difficulties in reformation of their judicial system, but they are obligated to make it without delay. International system of the protection of human rights can collapse without proper and effective functioning of judicial system inside the participating countries.[124]

The universalisation of the person's legal status in accordance with the world and European standards has an adequate expression in the Constitution as the acknowledgement of possibility of international-legal protection of human rights: "Everyone shall have the right in accordance with international treaties of the Russian Federation to appeal to interstate bodies for the protection of human rights and freedoms if all available internal means of legal protection have been exhausted" (Item 3, Article 46 of the Constitution). This rule is the obvious analog of the rule in Article 34 of the European Convention "individual complaints": "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right".[125]

"Права человека и проблема применения в Российской Федерации прецедентного права Совета Европы", *Российский юридический журнал*, 1998. № 4. с. 83)

[124] R. Bernhardt, "The European Court of Human Rights in Strasbourg: new stage, new problems", *State and Law*, №7,1999, p. 57-62 (Бернхардт Р., «Европейский Суд по Правам Человека в Страсбурге: новый этап, новые проблемы», *Государство и право*, 1999, №7, с. 57-62)

[125] V. A. Tumanov, L. M. Entin, *Commentary of the Convention for the Protection of Human Rights and Fundamental Freedoms and the practice of its application*, M., Norma, 2002, p.235 (Туманов В.А., Энтин Л. М., Комментарий к Конвенции о защите прав человека и основных свобод и практике её применения, М., Норма, 2002, с.235)

After signing and ratifying the European Convention, Russia according to Article 46 of the Convention acknowledged jurisdiction of the European Court and obligatory nature of implementation of Court's decisions. In practice it means, that Russia as a state-defendant in case of acknowledgement by the European Court of violation of applicant's right, provided by the Convention, is obligated to take measures of:

- individual nature (restoration of situation, which dated before disturbance of convention, for example, the revision of judgment, which entered into force or compensation for material and moral damage, if the consequences of violation are fully or partly irremediable),
- general nature (for example, revision of some rules of domestic legislation, adoption of the special regulating acts and so forth).

The increasing role of the courts of general jurisdiction in realization of international law rules at domestic political level is fixed in the Decree of Plenum of the Russian Supreme Court on October 10, 2003 "On application by general courts of universally recognized principles and rules of international law and international treaties of the Russian Federation". The Decree on the basis of Item 1 Article 46 of the Constitution, had been taking into consideration guarantees of judicial protection of rights and freedoms of man, explained to courts, that according to Item 4 Article 15, Item 1 Article 17, Article 18 of the Constitution rights and freedoms of a man in accordance with the generally recognized principles and standards of international law, and also international treaties of Russia are directly acting in the limits of Russian jurisdiction.

The Decree also indicated: Russian Federation as a participant of the Convention recognizes jurisdiction of the European Court as obligatory on

questions about interpretation and application of the Convention and its protocols in case of assumed violation by Russia of the clauses of these treaties, when the violation occurred after their entrance into the force for Russia (Article 1 of Federal Law on March 30, 1998 № 54-FZ "On ratification of the Convention about protection of human rights and basic freedoms and its protocols"). Therefore, application by courts of the Convention must be achieved considering practice of the European Court to avoid any violation of the Convention.

Analyzing nature of judgments of the European Court, it is possible to find out, that in their content and influence on legal system they range with the decisions of the Russian Constitutional Court. As is known, decisions of the Russian Constitutional Court are final; they are not appealable and reviewable, including exceptional circumstances. Laws and subordinate legislation or their parts, acknowledged unconstitutional are losing their force.

However, in contrast to decisions of the Russian Constitutional Court, the order of performance and responsibility for non-performance of which are established by Federal Law, the judgments of the European Court are not provided with necessary legal protection of their performance in the territory of Russia.[126]

In the near-term perspective this situation can lead to reduction in effectiveness of protection of rights and freedoms of Russian citizens in the European Court. Legally speaking, judgments of the European Court, which establish the nonconformity of legal rules to the Convention are obligated for

[126] B. A. Edidin, "Execution of judgments of the European Court of Human Rights: the contemporary problems of theory and practice", *Arbitration and civil procedure,* №41, 2004 (Едидин Б. А., "Исполнение решений Европейского суда по правам человека: современные проблемы теории и практики", *Арбитражный и гражданский процесс*, 2004, №41)

Russia and contain rules, required for performance in the concrete case and which are being considered with introduction of changes to legislation.

Fulfillment of the European Court's judgments, concerning Russia, assumes an obligation from state to take measures of:

- private concernment, to eliminate disturbances of the rights of man, provided by the Convention, and consequences of these disturbances,
- general concernment, in order to prevent repetition of similar disturbances.

4.5 Precedent practices (case law) of the European Court of Human Rights

In connection with consideration of the complaints to the European Court, essential importance has its practice on examination of cases about violation of rights. These rights are accepted as an object of civil- legal regulation, especially if it concerns an explanation of legal nature and content of rights. The basic rules of the Convention are already embodied in the Civil Code and the Russian Constitution, and between them and domestic standards there are no serious contradictions. Rules in the sphere of personal non-property and property rights, fixed in the Convention are not so much important for domestic law, as an experience of realization of positions of the Convention in the practice of European supervisory bodies. Taking into consideration the novelty of many rules of the Convention for Russian legal system, practice of the European Court makes possible to fill them with real content.

Are there any limits in interpretation of positions of the Convention by the European Court with examination of the concrete cases and in what degree this interpretation can be accepted by Russian courts as binding? With the ratification of

the Convention Russia made statement on the acknowledgement of jurisdiction of the European Court as obligatory on questions of interpretation and application of the Convention and its protocols in cases of violation by the Russian Federation of clauses of the Convention and its Protocols.

The practice, which was built with examination of cases concerning participation of Russia is obligatory. A question about significance of precedent practice of the European Court for domestic civil legislation, which had been formed without participation of Russia, is still unsolved.

Formally, judgments of the European Court are not obligatory for states, which did not participate in the Convention, but actually these states follow this practice, since "the control organs of the Convention recognize themselves connected with precedent".[127]

Another aspect of interpretation of the Convention is connected with the diverse variants of its application. Since the Convention can be used as the part of the Russian legal system, therefore, interpretation of its clauses by Russian courts is able. But interpretation provides by the European Court himself. In this connection is possible the situation when interpretation of the Convention by domestic courts will differ from interpretation of its rules in the European Court. It is obvious that priority has interpretation of the European Court.[128]

Regulation on Russian authorized officer at the European Court of Human Rights includes into his basic functions "analyzing of legal consequences of the

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[127] D.Gomen, D. Harris, L.Zvaak, European Convention of human rights and European social charter, Moscow, 1998, p. 29 (Гомьен Д., Харрис Д., Зваак Л., *Европейская конвенция о правах человека и Европейская социальная хартия.* М., 1998, с. 29)

[128] T. N. Neshataeva, "On the competence of European Court of Human Rights with respect to property rights", *Vestnik VAS RF,* №4, 1999, p. 96 (Нешатаева Т. Н., «О компетенции Европейского суда по правам человека в отношении имущественных прав», *Вестник ВАС РФ*, 1999, №4. С. 96)

European Court's judgments for the states, which are members of the Council of Europe and making of recommendations regarding with improvement of Russian legislation and law-enforcement practice, taking into consideration the case law (created by the European Court) of the Council of Europe."[129]

Significance of the precedents, created within framework of the Council of Europe, consists of the fact that they are the model of interpretation of the Convention rules. Taking into consideration that Russia is not pledged with the European Court decisions for other cases, application of the approach to understanding of the Convention rules, based on domestic legislation and judicial practice, without taking into account an interpretations of the European Court, is able to lead to violation of the Convention and, as a result, to responsibility of the state.[130]

Acknowledgement of judicial precedent as the source of law is only a general point of view. It is not expedient to give an obligatory force to precedents regardless of the concrete circumstances, in which they apply.[131]

Judicial precedent acts in the legal system together with the sources of Russian law. Precedents (case law) have an influence to domestic legislation. Thus, the activity of the European Court, on the one hand, reflects specific European practice and on the other hand has the specific effect itself on the legislation of states -

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[129] Item 4 of President's Decree on March 29, 1998, "On Russian authorized officer at the European Court of Human Rights", *Didgest of Russian legislation*, № 14, art. 1540, 1998

[130] M. V. Kuchin, "Human rights and the problem of application in the Russian Federation of precedent law of the Council of Europe", *The Journal of Russian Law*, № 4, 1998, p. 84 (Кучин М. В., "Права человека и проблема применения в Российской Федерации прецедентного права Совета Европы", *Российский юридический журнал*, 1998. № 4. с. 84)

[131] M. V. Kuchin, "Judicial precedent as source of law (controversial points)", *The Journal of Russian Law*, № 4, 1999, p. 77-78 (*Кучин М. В.*, "Судебный прецедент как источник права (дискуссионные вопросы)", Российский юридический журнал,1999, № 4, с. 77-78)

participants of the Convention and creates of unified approaches to regulation of civil - legal relations.

Together with the sources (forms) of law it is accepted in science to emphasize category "legal regulator". It does not substitute category "source of law" and does not identical to it. In the legal system of state have been acted and applied not only its own rules of law, but also rules of other legal systems: international rules of law and rules of foreign law. Category "source of law" is called to constitute the rule of behavior as the rule of law and therefore, it has tough connection to legal system of the concrete state or to international legal system. Category "legal regulator" designates all rules of law (national, foreign, international) which have been applied on the territory of state, i.e. already constituted within the framework of corresponding domestic legal systems. Thus, the regulated effect of international standards included in the practice of the European Court, makes it possible to characterize them as legal regulators, but not the sources of Russian law.[132]

The conclusion, which logically follows from the above-mentioned, that the state itself determines the forms of existence of the rules of law. Consequently, the precedents of the European Court can be examined as legal regulators and occupy the separate position in domestic legal system.

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[132] V. A. Kanashevskiy, "Precedent practice of the European Court of Human Rights as regulator of civil relations in Russia", *The journal of Russian law*, №4, 2003 (Канашевский В.А., «Прецедентная практика Европейского суда по правам человека как регулятор гражданских отношений в РФ», Журнал Российского права, 2003, №4)

4.6 Cases of the European Court concerning radiation victims in Russia

a) Burdov v. Russia (1st case)

According to the data on official web resource of the European Court[133], since 2002 to present time the Court has been examined more than 70 judgments in favor of victims of Chernobyl nuclear disaster. The applicants were awarded compensations for non-pecuniary (moral damage).

The content of the cases, which presented here, was constructed on the electronic data base of case law of the European Court.

This case was filed against Russia by Russian citizen. The judgment was delivered on April 18, 2002.

The case originated in an application (№ 59498/00) against the Russian Federation lodged with the Court under Article 34 of the Convention by a Russian national, Mr. Anatoliy Tikhonovich Burdov ("the applicant"), on March 20, 2000. The applicant alleged, in particular, that the failure to execute final judgments in his favour was incompatible with the Convention.

The circumstances of the case are as follows.

On October 1, 1986 the applicant was called up by the military authorities to take part in emergency operations at the site of the Chernobyl nuclear plant disaster. The applicant was engaged in the operations until January 11, 1987 and, as a result, suffered from extensive exposure to radioactive emissions. In 1991, following an expert opinion which established the causal relation between the applicant's poor health and his involvement in the Chernobyl events, the applicant

[133] http://www.echr.coe.int/echr/Homepage_EN

was awarded compensation.

In 1997 the applicant brought proceedings against the Shakhty Social Security Service as the compensation had not been paid. On March 3, 1997 the Shakhty City Court found in the applicant's favour and awarded him 23 786 567 Russian roubles of the outstanding compensation and an equal sum in the form of a penalty (The amount is indicated without regard to the denomination in 1998. In accordance with the Presidential Decree on August 4, 1997 "On the modification of face value of Russian currency and standards of value" 1000 "old" roubles became 1 "new" rouble from January 1, 1998).[134]

On April 9, 1999 the Shakhty Bailiff's Service instituted enforcement proceedings for recovery of the penalty awarded on March 3, 1997.

In 1999 the applicant brought an action against the Social Security Service to challenge a reduction in the amount of the monthly payment and to recover the unpaid compensation. On May 21, 1999 the Shakhty City Court restored the original amount of the compensation and ordered the Social Security Service to make monthly compensation payments of 3011 roubles with subsequent indexation. The court also ordered the payment of outstanding moneys totalling 8752 roubles.

On September 16, 1999 the Shakhty Bailiff's Service notified the applicant that even though the proceedings to enforce the judgment of March 3, 1997 were pending, the payments to the applicant could not be made because the Social Security Service was underfunded. Rostov Regional Department of Justice notified the applicant that the two judgments could not be complied with because the defendant did not have sufficient funds.

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[134] Decree of the President of Russia on August 4, 1997 "On the modification of face value of Russian currency and standards of value", *Didgest of Russian legislation,* №32, art.3752, 08.11.97

On January 2000 the Rostov Regional Prosecutor's Office informed the applicant that the non-enforcement could in no way be attributed to the Bailiff's Service, and that the debts would be discharged as soon as proper allocations had been made from the federal budget. On March 2000 the Rostov Regional Department of Justice notified the applicant that compensation of Chernobyl victims would be financed from the federal budget. But, on May 2000 the Shakhty prosecutor informed the applicant that even though the Social Security Service had recalculated the amount of compensation due to the applicant in accordance with the judgment of May 21, 1999, the payments had not been made because of lack of funding.

On March 9, 2000 the Shakhty City Court ordered the indexation of the amount of the penalty awarded on March 3, 1997, which had still not been paid to the applicant. An additional writ of execution for the amount of 44 095 roubles was issued. Following a decision of the Ministry of Finance, on March 5, 2001 the Shakhty Social Security Service paid the applicant the outstanding debt of 113 040 roubles.

Here is an explanation of status of victim (applicant).

The applicant contended that the substantial and unjustified delays in the execution of the final judgments violated his rights under the Convention. The Court will examined this complaint under Article 6 § 1 of the Convention and Article 1 of Protocol №1.

According to the Government explanation, the applicant ceased to be a victim of the alleged breach of the Convention as a result of the payment of the debt on March 5, 2001. The Government submitted that since the entirety of the applicant's claims had been satisfied, the damage to his pecuniary interests, allegedly caused

by the non-enforcement of the Shakhty City Court's decisions, had been fully redressed.

The Government also argued that the sum of 113 040 roubles paid on March 5, 2001 should be taken to include compensation for the delay in the enforcement, as the main debt amounted to only 45158 roubles, whereas the remainder of the sum consisted of the penalty for late payment of the applicant's benefits and its revaluation.

Lastly the Government submitted that it was open to the applicant to make a court claim for non-pecuniary (non-material) damage arising from the failure to enforce the judgments should he wish to do so.

The applicant did not accept this line of reasoning. In his submission, the penalty imposed by the domestic courts for late payment of his monthly allowance was substantially lower than it should have been, and since the sum 113040 roubles received on 5 March 2001 comprised the judicial awards made in 1997, 1999 and 2000, it obviously could not include any compensation for the non-enforcement of the court's decisions between March 9, 2000 (the date of the last court decision) and March 5, 2001 (the day of receiving awarded sum). Furthermore, the judgment of May 1999 was still being ignored as the monthly payments currently being made to the applicant were still lower than they should have been. According to information provided by the social security service on February 11, 2002, the compensation to be paid to the applicant for the period between April 2001 and June 2002 has been assessed at 2500 roubles per month. But, according to judgment it must be 3011 roubles monthly.

Turning to the facts of the present case, it may be that the applicant has been paid the outstanding debt in accordance with the judgments of the domestic courts.

Nevertheless, the payment, which intervened only after the present application had been communicated to the Government, did not involve any acknowledgment of the violations alleged. Also the Government did not afford the applicant adequate redress. In these circumstances, the Court considered that the applicant may still claim to be a victim of a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol № 1.

There are some peculiarities of application of Article 6 of the Convention "Right to a fair trial" and Article 1 of the Protocol №1 to the Convention "Protection of property".

The relevant part of Article 6 § 1 of the Convention provides: "In the determination of his civil rights and obligations, everyone is entitled to a fair hearing by tribunal, established by law."

The Court noted that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way it embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. It would be inconceivable that Article 6 § 1 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States (in this case Russia) undertook to respect when they ratified the Convention. Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6.

It is not open to a State authority to cite lack of funds as an excuse for not honouring a judgment debt. In this case, the applicant should not have been prevented from benefiting from the success of the litigation, which concerned compensation for damage to his health caused by obligatory participation in an emergency operation, on the ground of alleged financial difficulties experienced by the State.

The European Court noted that the Shakhty City Court's decisions of March 3, 1997, May 21, 1999 and March 9, 2000 remained unenforced wholly or in part at least until March 5, 2001, when the Ministry of Finance took the decision to pay in full the debt owed to the applicant. The Court also noted that this last payment took place only after the application had been communicated to the Government. By failing for several years to take the necessary measures to comply with the final judicial decisions in the present case, the Russian authorities deprived the provisions of Article 6 § 1 of all useful effect.

Article 1 of Protocol № 1 reads as follows: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law".

The Shakhty City Court's decisions of March 3, 1997, May 21, 1999 and March 9, 2000 provided the applicant with enforceable claims and not simply a general right to receive support from the State. The decisions had become final as no ordinary appeal lay against them, and enforcement proceedings had been instituted. It follows that the impossibility for the applicant to obtain the execution of these judgments, at least until March 5, 2001, constituted an interference with his right to peaceful enjoyment of his possessions, as set out in Article 1 of Protocol №

1.

By failing to comply with the judgments of the Shakhty City Court, the national authorities prevented the applicant from receiving the money he could reasonably have expected to receive. The Government have not advanced any justification for this interference and the Court considers that a lack of funds cannot justify such an omission. Thus, there has also been a violation of Article 1 of Protocol № 1.

Claims of the applicant were as follows. In his application form the applicant claimed, however, non-pecuniary damage in the amount of 300 000 United States dollars.

The European Court took the view that the applicant has suffered some non-pecuniary damage as a result of the violations found which cannot be made good by the Court's mere finding of a violation. The particular amount claimed was, however, excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awarded the applicant the sum of 3000 euros as non-pecuniary (moral) damage.

b) Burdov v. Russia (2nd case)

The present case was filed by Burdov A.T. to the European Court. The judgment was done on January 15, 2009.

The case was originated in an application (№ 33509/04) against the Russian Federation, lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms by a Russian national, Mr. Anatoliy Tikhonovich Burdov ("the applicant"), on July 15, 2004.

On April 17, 2003 the Shakhty Town Court ordered the Directorate of Labour and Social Development of Shakhty to pay the applicant 15 984 roubles as compensation for delays in payment of benefits in accordance with Article 208 of the Code of Civil Procedure. *On July 9, 2003* the judgment was upheld by the Rostov Regional Court and became final.

During 2003-2005 the applicant consecutively submitted the writ of execution to the defendant authority, to bailiffs, to the Federal Treasury and then again to the defendant authority. On August 19, 2005 the authorities transferred the amount of the court's award to the applicant's account.

On March 9, 2006 the Shakhty Town Court granted the applicant's request for correction of an arithmetic error and ordered the Directorate of Labour and Social Development to pay the applicant 108 251 roubles as default interest for delays in payments between 1999 and 2001. On October 18, 2006 the authorities paid the latter amount to the applicant.

On March 24, 2006 the Shakhty Town Court ordered the Department of Labour and Social Development of Shakhty to index-link the monthly food allowance. The court set the amount of monthly payments at 1 183 roubles with subsequent indexation and ordered a one-off payment of 36877 roubles for compensation for shortfalls in previous monthly payments. In addition, as of January 1, 2006 the Department was ordered to proceed with monthly payments of 1 972 roubles with subsequent indexation in respect of compensation for health damage. On May 22, 2006 the judgment was upheld by the Rostov Regional Court and became final.

On November 2, 2006 the judgment of March 24, 2006 was executed in its major part: a total of 67 940 roubles were credited to the applicant's account. At the

same time, the Ministry of Finance did not upgrade the monthly payments (food allowance, compensation for health damage) as ordered by the court's judgment and the applicant continued to receive such payments at a lower level. Only on July 1, 2007 (after 14 months since the final judgment) the Ministry decided to upgrade them. On August 17, 2007 the applicant received 9 112 roubles as compensation for shortfalls in monthly payments accumulated until that date.

After 2006 there were two judgments by applications of Burdov concerning compensations for shortfalls in monthly payments. These two cases are as follows.

1) *On May 2007* the Shakhty Town Court decided that the Department of Labour and Social Development was to pay the applicant as of June 1, 2007 the amount of 17 219 roubles monthly, with subsequent indexation, in respect of compensation for health damage. In addition, the Department was to pay 188 566 roubles as compensation *for shortfalls* in previous monthly payments. This judgment became final on June 4, 2007 and was enforced on December 5, 2007.

2) *On August 2007* the Shakhty Town Court ordered the Federal Labour and Employment Agency to pay the applicant 225 821 roubles as compensation *for certain delayed payments* in respect of health damage between 2000 and 2007. The judgment became final on September 3, 2007 and was enforced on December 3, 2007.

Article 9 of the Federal Law №119-FZ on July 21, 1997 "On Enforcement Proceedings"[135] as in force at the material time provided that a bailiff was to set a time-limit up to five days for the defendant's voluntary compliance with a writ of execution. The bailiff was also to warn the defendant that coercive action would

[135] Federal Law №119-FZ on July 21, 1997 "On Enforcement Proceedings", *Digest of Russian legislation,* №30, art.3591, 07.28.1997

follow should the defendant fail to comply with the time-limit. Under Article 13 of the Law, the enforcement proceedings had to be completed within two months of the receipt of the writ of execution by the bailiff.

There was a systematic violation by the Department of Labour and Social Development of the periods of enforcement proceedings.

On the latter point, the Court observed that Article 208 of the Code of Civil Procedure only allows the courts to upgrade the amounts awarded in line with an official price index, thus compensating for depreciation of the national currency. The compensation so awarded thus covered only inflation-related losses but not any further damage sustained by the applicant, either pecuniary or non-pecuniary. The Government did not provide any argument to the contrary. The Court has already considered the issue in other cases concerning Russia and concluded that compensation for inflation losses alone, however accessible and effective in law and practice, does not constitute the adequate and sufficient redress required by the Convention. The Court accordingly concluded that the applicant (Burdov A.T.) was not granted adequate and sufficient redress in respect of the alleged violations and can thus still claim to be a victim under Article 34 of the Convention. The Government objection was dismissed.

The complexity of the domestic enforcement procedure or of the State budgetary system cannot relieve the State of its obligation under the Convention to guarantee to everyone the right to have a binding and enforceable judicial decision enforced within a reasonable time. Nor is it open to a State authority to cite the lack of funds or other resources (such as housing) as an excuse for not honouring a judgment debt. It is for the Contracting States (in this case for Russia) to organise their legal systems in such a way that the competent authorities can meet their

obligation in this regard.

There are some points concerning the long period of judgment execution, which has been made by the European Court.

The time taken by the authorities to comply with a judgment should accordingly be calculated from the moment on which it became final and enforceable, that is, on July 9, 2003, until the moment when the judicial award was paid to the applicant, that is, on August 19, 2005. The time taken to comply with the judgment of April 17, 2003 was two years and one month. Such a long delay in payment of a judicial award is on its face incompatible with the Convention requirements stated above and the Court found no circumstance to justify it.

It is noted, in particular, that the enforcement was not of any complexity: the judgment required payment of a sum of money. The applicant made no obstacle to the enforcement. Nor can he be blamed for his attempt to seek relief with the bailiffs and the Federal Treasury after having waited in vain for more than nine months for the defendant's voluntary compliance with the judgment. On the other hand the Court noted that the writ of execution fruitlessly stayed with various authorities for lengthy periods, notably nine months with the defendant Department, four months with the bailiffs and eleven months with the Federal Treasury. The Court found no justification for this inaction. The complexity of the multilevel budgetary system referred to by the Government cannot justify the lack of appropriate coordination between the authorities and their inaction during the above periods.

However, the lack of general regulations or procedures on a federal level cannot justify such a long delay in compliance with a binding and enforceable judgment. In the Court's view, the right to a court would not be effective if the

execution of a binding and enforceable judgment in a particular case were made conditional on the adoption by the administration of general procedures or regulations in the area concerned.

In view of the foregoing, the Court concludes that by delaying the execution of the Shakhty Town Court's judgments of April 17, 2003, December 4, 2003 and March 24, 2006 the authorities failed to respect the applicant's right to a court. There was accordingly a violation of Article 6 of the Convention.

The Court noted that the Civil Code lists a very limited number of situations in which compensation for non-pecuniary damage is recoverable irrespective of the respondent's fault (notably Articles 1070, Item 1 and 1100)[136]. Neither excessively lengthy proceedings nor delays in enforcement of judicial decisions appear in this list. The Code provides, in addition, for damage caused by the administration of justice to be compensated if the fault of the judge is established by a final judicial conviction (Article 1070, Item 2). That compensation of non-pecuniary damage in non-enforcement cases is conditional on the respondent authority's fault is difficult to reconcile with this presumption. Indeed, enforcement delays found by the Court are not necessarily due to failings of the respondent authority in a given case but may be attributable to deficient mechanisms at the federal and/or local level, not least to excessive complexities and formalism of the budgetary and financial procedures which considerably delay transfers of funds between responsible authorities and their subsequent payment to final beneficiaries.

The Court noted at the outset that non-enforcement or delayed enforcement of domestic judgments constitutes a recurrent problem in Russia that has led to

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[136] The Russian Civil Code on 30 November, 1994, *Didgest of Russian legislation,* №32, art.3301, 12.05.94

numerous violations of the Convention. The Court therefore found it timely and appropriate to consider this second case brought by the same applicant under Article 46 of the Convention, which reads as follows:

"Article 46, Binding force and execution of judgments

1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

The Court noted that the problems at the basis of the violations of Article 6 and Article 1 of Protocol № 1 found in this case are large-scale and complex in nature. Indeed, they do not stem from a specific legal or regulatory provision or a particular lacuna in Russian law. They accordingly require the implementation of comprehensive and complex measures, possibly of a legislative and administrative character, involving various authorities at both federal and local level.

Article 41 of the Convention provides: "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

The applicant claimed a sum of 40 000 euro in respect of pecuniary and non-pecuniary damage. He referred to sufferings caused by the State's repeated and persistent failure to comply with the domestic judgments notwithstanding his first successful application to the European Court.

In the present case the same applicant suffered from comparable enforcement delays in respect of similar judicial awards under three other domestic judgments. Accordingly, the violations found by the Court would, in principle, call for a just

satisfaction award equal or very close to the one decided by the judgment of May 7, 2002. The Court bore in mind that distress and frustration arising from non-enforcement of domestic judgments may be heightened by the existence of a practice incompatible with the Convention since it seriously undermines, as a matter of principle, the citizen's confidence in the judicial system. This factor has however to be carefully balanced against the respondent State's attitude and efforts to combat such a practice with a view to meeting its obligations under the Convention. Indeed, it must be accepted that the applicant's distress and frustration were exacerbated by the authorities' persistent failure to honour their debts under the domestic judgments notwithstanding the first finding of violations by the Court in his case. As a result, *the applicant had no choice but again to seek relief through time-consuming international litigation before the Court.* In view of this important element, the Court considered that an increased award would be appropriate in respect of non-pecuniary damage in the present case.

Having regard to the foregoing and making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awarded the applicant 6000 euro in respect of non-pecuniary damage.

c) Butenko, Markushin, Karasev, Bragin v. Russia

Here is represented the case of four Russian citizens against Russia. The judgment was done on May 20, 2010.

The case was originated in four applications (№ 2109/07, 2112/07, 2113/07 and 2116/07) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms

("the Convention") by four Russian nationals: Butenko Aleksandr Nikolayevich, Markushin Mikhail Nikolayevich, Karasev Valeriy Vasilyevich, Bragin Yevgeniy Fedotovich. The applicants alleged in particular that judgments given in their favour had not been enforced.

As victims of the Chernobyl nuclear disaster they were entitled to social housing under domestic law. Because the authorities had failed to provide them with housing in good time, the applicants sought relief in courts. In October and December 2004 the Pervomayskiy District Court of Krasnodar ("the District Court") held for the applicants, the judgments became binding.

In March 2006 the writs of execution were issued in respect of the judgments. According to the writs, the applicants were to be granted housing, as ordered by the domestic court.

In 2006 the respondent authority offered the applicants to settle the case by providing them with cash payment in the amount allegedly representing the value of the flat. The applicants submitted that the amounts proposed were manifestly lower than the market value of the flats granted by the domestic judgments. By written statements the applicants refused the offer. They stated in their refusals that in accordance with the judgments in their favour and with the writs of execution the authorities were under obligation to provide them with flats, and not with the sums of money.

On May 24, 2007 the District Court instructed the bailiffs to enforce the judgments in accordance with the writs of execution. The bailiffs informed the applicants that the execution of the judgments in compliance with the writs was impossible, "since the Administration of the Krasnodar Region could only use the monetary funds allocated from the federal budget".

The authorities sought to alter the mode of enforcement of the judgments from in-kind provision of flats to delivery of housing certificates, but the District Court refused to change the mode of execution of the judgments.

Article14, Item 3 of the Law on May 15, 1991, № 1244-1 "On social protection of citizens, who were exposed to radiation as a result of the catastrophe in the Chernobyl atomic power station"[137], set out that disabled victims of the Chernobyl explosion were to be granted social housing within three months from submitting an appropriate application, provided that their existing accommodation did not comply with the minimum housing standards.

Under Article 13 of the Federal Law №119-FZ on July 21, 1997 "On Enforcement Proceedings", the enforcement proceedings should be completed within two months upon receipt of the writ of enforcement by the bailiff.

The Government initially contended that by refusing to accept housing certificates the applicants had obstructed the only possible way of enforcement of the judgments. In their further observations the Government suggested that the enforcement period to be taken into consideration should start running from May 7, 2009, the day on which the mode of enforcement of the judgments had been definitely clarified.

Turning to the case at hand, *the Court noted that the judgments have not been enforced to date*. Their enforcement has lasted for more than five years since the day they became binding.

The Court considered that, the applicants cannot be blamed for having refused to accept the housing certificates.

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[137] Law on May 15, 1991, № 1244-1 "On social protection of citizens, who were exposed to radiation as a result of the catastrophe in the Chernobyl atomic power station", *Vedomosti SND and VS,* №21, art. 699, 1991

First, it does not transpire from the judgments that grant of housing certificates was an appropriate way of enforcement of the judgments.

Second, the domestic courts explicitly dismissed the authorities' action aimed at changing the mode of execution of the judgments to delivery of housing certificates.

The Court concluded that there has been a violation of Article 6 § 1 of the Convention and Article 1 of Protocol № 1. The applicant also complained that they had no effective domestic remedy against the non-enforcement of the judgments. Article 13 of the Convention reads as follows:

"Everyone whose rights and freedoms as set forth in the Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Article 13 guarantees an effective remedy before a national authority for a prolonged non-enforcement of a binding judgment. The Court has found that the remedies suggested by the Government could not be considered as effective. There has, accordingly, been a violation of Article 13 of the Convention.

The applicants asked the Court to oblige the Government to enforce the judgments given in their favour. Each applicant also claimed 4,000 euros in respect of non-pecuniary damage.

As to pecuniary damage, the Court explained that the violation found is best redressed by putting the applicant in the position he would have been if the Convention had been respected. The Government shall therefore secure, by appropriate means, the enforcement of the domestic courts' judgments. As to non-pecuniary damage, the Court accepted that the applicants must have suffered distress caused by the prolonged non-enforcement of the judgments. Making its

assessment on an equitable basis, the Court awarded 4 000 euros to each applicant under this head.

d) Tayanko v. Russia

The judgement was done on September 2, 2010.

This case originated in an application (no. 4596/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Yuzef Ivanovich Tayanko ("the applicant"), on September 18, 2001.

The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant was born in 1954 and lives in Ryazan town. In 1986 the applicant was engaged in emergency operations at the site of the Chernobyl nuclear plant disaster. The applicant's entitlement to certain social benefits is linked to the category of disability assigned to him due to deterioration of his health as a result of these events.

In 1999 the applicant, who has been residing in a hostel room of 11 square metres with his wife and two daughters, asked the relevant local authority to provide him with free housing. The authorities found that his housing conditions were substandard and he was placed on a waiting list for concluding a social tenancy agreement.

The applicant brought proceedings against the Ryazan Town Administration to challenge its failure to make free housing available to him within three months after

placing him on the waiting list. On *July 5, 2000* the Sovetskiy District Court of Ryazan ruled in the applicant's favour and ordered the Ryazan Town Administration to provide the applicant with an appropriate housing for a family of four, in accordance with the housing and sanitary standards.

On appeal, the Ryazan Regional Court upheld the judgment. On February 5, 2001 enforcement proceedings were opened. But, on February 9, 2001 they were stayed pending the examination of the authorities' request for supervisory review.

On July 2001 the Prosecutor of the Ryazan Region lodged request for supervisory review of the judgment of July 5, 2000 with the Supreme Court of Russia.

On *August 10, 2001* the Supreme Court of Russia held a supervisory review hearing in the presence of a representative of the defendant, the Ryazan Town Administration, and a prosecutor of the Prosecutor General's Office, who argued that the applicant should be provided with a flat in accordance with the order of precedence on the waiting list for improvement of housing conditions. Having heard the defendant's representative and the prosecutor and having examined the facts of the case, the Supreme Court modified the judgment of the Sovetskiy District Court of Ryazan of July 5, 2000 and held that the applicant was to be provided with a flat in accordance with the order of precedence on the waiting list.

On September 2003 the applicant requested the Presidium of the Supreme Court to initiate supervisory review of the Supreme Court's decision of 10 August 2001 and to quash it. On November 12, 2003 the Presidium of the Supreme Court of Russia quashed the decision of August 10, 2001 and affirmed the validity of the Sovetskiy District Court's judgment of July 5, 2000. The Presidium noted that, in accordance with law and that judgment, the applicant was to be provided with

housing immediately. It underlined that applicant, a disabled person, resided with his family in a hostel.

On January 21, 2004 the enforcement proceedings based on the writ of execution of January 25, 2001 issued in accordance with the judgment of July 5, 2000 were recommenced. On March 2004 the bailiff requested the local authorities to provide the applicant with housing in accordance with the judgment of July 5, 2000.

In the present case the authorities have acknowledged a violation of the applicant's rights in the first set of re-trial proceedings and restored the validity of the first judgment in the applicant's favour.

The modification of judgement made in the first round of the supervisory review proceedings frustrated the applicant's reliance on the judgment in his favour and brought to naught its beneficial effect for a prolonged period of time, that is from 10 August 10, 2001 when the Presidium of the Supreme Court modified the said judgment, to November 12, 2003 when the validity of this judgment was restored.

As a result of the first set of re-trial proceedings the applicant, a disabled person residing with his wife and two daughters in a 11 square metres hostel room, could not, for a significant period of time, rely on and benefit from the final judgment of July 5, 2000 as to his immediate provision of housing.

The applicant complained in substance under Article 6 of the Convention and Article 1 of Protocol No. 1 that the judgment of July 5, 2000 was not enforced in good time. The Government argued that the period of non-enforcement was short and there were no periods of the authorities' inactivity. The Court observes that the judgment of July 5, 2000 remained unenforced for more than four years and that

the major part of this delay was due to the modification of this judgment via the first round of supervisory review.

The applicant claimed 10 000 euros in respect of non-pecuniary damage.

The Court decided that there has been a violation of Article 6 of the Convention and of Article 1 of Protocol № 1 on account of modification, to the applicant's detriment, of the final judgment of July 5, 2000 via supervisory review and obligated the respondent State (Russia) to pay the applicant 3000 euros in respect of non-pecuniary damage.

e) Pugach, Pavlenko, Putilin, Kartashov, Barygin, Andreas, Reutov, Tokarchuk v. Russia

The judgement was done on November 4, 2010.

The case was originated in eight applications (nos. 31799/08, 53657/08, 53661/08, 53666/08, 53670/08, 53671/08, 53672/08 and 53673/08) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by eight Russian nationals: Pugach Svyatoslav Fedorovich, Pavlenko Vladimir Nikolayevich, Putilin Ivan Mikhailovich, Kartashov Petr Petrovich, Barygin Petr Viktorovich, Andreas Vladimir Viktorovich, Reutov Viktor Ivanovich, Tokarchuk Viktor Alekseyevich ("the applicants").

The applicants took part in the cleaning-up operation at the Chernobyl nuclear disaster site. They were registered disabled and became entitled to various social benefits, including food allowance.

The applicants sued the competent authorities for adjustment of the monthly

food allowance in line with the inflation rate. By two separate judgments of *June 4, 2007*, one in favour of Mr Pavlenko and another in favour of the remaining applicants, the Mineralniye Vody Town Court of the Stavropol Region upheld their actions in part. The court ordered the local department of the State Treasury to pay 1283.86 roubles to Mr Pavlenko and 1925.45 rubles to each of the remaining applicants in monthly disability pension payments, to be adjusted in accordance with legal requirements. The court further ordered the local welfare authority to provide monthly the Treasury with the documents necessary to make the payments. It was also awarded 67616.22 roubles to Mr Pavlenko and 104405.82 roubles to each of the seven other applicants in respect of the outstanding benefits, to be paid by the Ministry of Finance of the Russian Federation.

The judgments were not appealed against and became final on June 19, 2007. The enforcement proceedings were opened and the lump sums and the monthly payments were made in accordance with these judgments. Thus, as from July 2007 all the applicants were receiving the monthly payments in good time. On September 2007 the applicants (except for Mr Pavlenko) received 104405.82 roubles each. On October 2007 Mr Pavlenko received 67616.22 roubles due to him under the judgment of June 4, 2007.

But, the Ministry of Finance applied to the Stavropol Regional Court requesting to institute supervisory-review proceedings in respect of the judgments in the applicants' favour. On November 29, 2007 the Presidium of the Stavropol Regional Court, by two separate judgments, quashed the awards of June 4, 2007 and remitted the cases for a fresh examination. The Presidium found that the lower court had erred in applying the provisions of the Law on May 15, 1991 "On social protection of citizens, who were exposed to radiation as a result of the catastrophe

in the Chernobyl atomic power station" ("the Chernobyl Law") and, as a result, incorrectly determined the defendant authority in the case. The Presidium had not specified a due defendant.

In December 2007 the State Treasury discontinued the monthly payments in respect of food allowance due to the applicants under the quashed judgments. Instead, the authorities started to pay the applicants monthly disability benefits in accordance with the relevant legislation.-In February 2009 the Ministry of Finance of the Russian Federation brought proceedings against all applicants claiming repayment of the lump sums they had received pursuant to the quashed judgments. On 4 March 2009 the Town Court rejected the claim. It appears that the judgment was not appealed against and became final.

The Government asserted that the final judgments were quashed to correct a fundamental judicial error, because the lower courts had awarded the payments against a wrong State authority. The domestic law of procedure did not provide for any other way to correct the miscarriage of justice apart from the supervisory-review proceedings. In any event, there was no interference with the applicants' property rights, because the judgments had been enforced and the sums paid pursuant to them had never been claimed back from the applicants.

The applicants maintained their claims. They submitted, in particular, that the respondent authority could have made use of the replacement of the defendant procedure instead of applying for the supervisory review of the judgments. In any event, the initial judgments had been issued in accordance with substantive and procedural law. As a result of the quashing, monthly payments due to them had been reduced by 1283.86 roubles in case of Mr Pavlenko and 1925 roubles in case of the remaining applicants.

The Court further observed that by virtue of the judgments of June 4, 2007 the applicants' pensions were considerably increased. The annulment of the enforceable judgments frustrated the applicants' reliance on a binding judicial decision and deprived them of an opportunity to receive the money they had legitimately expected to receive. In these circumstances, even assuming that the interference was lawful and pursued a legitimate aim, the Court considered that the quashing of the enforceable judgments in the applicants' favour by way of supervisory review placed an excessive burden on the applicants and was incompatible with Article 1 of the Protocol № 1.

As regards the applicants' claims in respect of enforcement of the quashed judgments of June 4, 2007, the Court noted that the applicants have been receiving the judicial awards in their favour until the moment when the relevant judgments were quashed via supervisory review. The Court also observed that after the judgments of June 4, 2007 had been quashed, the authorities started to pay the applicants monthly disability benefits in accordance with the relevant legislation. Accordingly, the Court made no award in respect of the pecuniary damage in the present eight cases.

The Court furthermore found that the applicants have suffered non-pecuniary damage as a result of the violation which cannot be compensated by the mere finding of a violation. Thus, the Court awarded each applicant 3000 euros in respect of non-pecuniary damage.

Summarizing these cases, it is possible to present approximate picture about compensation of harm to the victims of radiation. There are several ways of claiming of the compensation of harm.

- Within the framework of Russian legislation it is possible to demand the

compensation of harm, inflicted by radiation including of moral damage.

- If according to the Russian legislation all means of protection were exhausted, and harm had been not compensated, then it is possible to require the compensation of non-pecuniary damage in the European Court for non fulfillment or not proper performance by the authorities of the Russian judicial decisions. In this matter the European Court will notify Russian authorities about their obligation of implementation of domestic judicial decisions.

The European Court indicates the concrete violations of the Convention rules and circumstances (disturbance or deficiencies in domestic legislation) which contribute to such violations.

Accession of Russia to the Convention gives hope for improvement of Russian legislation through the view of European standards and expansion of the possibility for effective protection of the rights given by domestic law.

4.7 Concluding remarks

The judgments of the European Court on the complaints of Russian citizens about violations of their rights, guaranteed by the Convention, with the realization of justice on civil cases, concern establishment of the facts of non fulfillment of judgments, violations of the reasonable periods of trials. The necessity for revision of domestic judgments in such violations of the Convention does not appear. Significance of the European Court's judgments for domestic general jurisdiction courts, as a rule, designed for the creating of future judicial practice to avoid such violations of the Convention.

The European Court of Human Rights can receive complaints from persons and non-governmental organizations. Judicial practice shows that basically physical persons apply to the European Court. The role of public non-governmental organizations for protection of the rights of radiation victims is still weak. If these organisations had a sufficient financial and legal support, they would be able to provide: preparation of necessary documents into the European Court and effective protection of the rights of victims.

The periods of the examination of complaints in the European Court can be sufficiently long, because it is necessary to prepare documents from state authorities and domestic courts and make their translation. It would be expedient for state authorities to develop an effective procedure of preparation and receiving of the documents from the Russian courts and state bodies for making a complaint to the European Court. These measures will considerably reduce the periods of the examination of the case in the European Court.

The Convention does not have retroactive force. Accordingly, from the moment of its ratification by Russia on May 1998, responsibility to fulfill concrete international legal obligations has been appeared for the state. This position follows from Article 1 of Federal Law № 54-FZ on 03.30.1998 "On ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols". According to the criterion of time Russian citizens can file to the European Court only on the circumstances, which has been arisen after May 5, 1998 (taking into force of the Convention for Russia). In order to protect the rights of these citizens it is necessary to develop national legislation and to increase the level of legal culture by improving the authority and reputation of domestic judicial

system. For these purposes an effective system of fulfillment of the judgments is required.

For the purposes of fulfillment of the European Court judgments, it is expedient to draft a Federal Law "On execution of decisions of the European Court of Human Rights". This law should also include the forms of responsibility for non execution of the decisions. With help of this law the Russian authorities would be able to provide an appropriate control for the execution.

Chapter 5. Conclusion and Prospective Proposals

For creation of the effective legal guarantee for realization of the mechanism of compensation of harm, inflicted by violation of legislation on protection of the natural environment, it is necessary:

- to develop a new system of legal regulation on the compensation of harm, inflicted by the violation of legislation on protection of the environment;

- to determine purposes, principles, directions of legal regulation, and also propose the system of legal acts, in which central place is assigned to special federal law. In this law on the base of the basic principles of civil- legal responsibility should be regulated wide complex of questions, related to the compensation of harm in the environmental sphere;

- to elaborate the particular procedure of suing for environmental delicts.

The research of legal responsibility for radioactive contamination, which was taken at present thesis, makes possible to assert that the main priority purposes and tasks for the state today in the sphere of legal responsibility for the harm, inflicted by radioactive contamination, are:

- To fix in the legislation differentiation of the sources of increased danger depending on the scale of the inflicted harm and impose the legal responsibility for the scale harm directly on the state;

- To establish that the state cannot be free from the legal responsibility in the case of infliction of the scale harm by radioactive source as a result of the action of irresistible force or fault of suffered person;

- To reflect in the legislation the possibility of compensation for moral damage (physical and moral sufferings), inflicted by the radioactive contamination. In this

case is necessary to provide the possibility of compensation for moral damage even when the fact of the action of radiation had occurred before entering into the force of such legislative act.

It would be expedient to enter into the Federal Law "On protection of the environment" the following rule:

"The moral damage (physical and moral sufferings), caused by the negative environmental effect as a result of economic and other activity of legal and physical persons is subject to compensation in the order, established by the legislation of the Russian Federation. The moral damage, inflicted by the negative environmental effect as a result of economic and other activity of legal and physical persons is subject to compensation also in the case of its infliction before adoption of the present Federal Law".

It is necessary to apply a rule with definition of "moral damage, inflicted by radiation exposure" to Federal Law "On the use of atomic energy". It would make the responsibility for damage more transparent.

There are some important measures for estimation of responsibility in using of nuclear objects.

- Novelty of nuclear right in Russia and inconsistency of actions by legislative and executive branches of state authority is one of the reasons of insufficient legal regulation of nuclear safety. It is related to the fact that urgency of such coordination does not follow from the practice of using of atomic energy where serious failures are extremely rare. Project, scientific, operating organizations, and in official bodies the personal official responsibility is highly developed at decision-making, cultivated since the times of beginning of nuclear industry. It is a tradition. But it is still no tradition of civil responsibility for possible and occurred

damages as a result of radiation contamination. There is no precise legal mechanism for proving and compensation for damage.

- Legal rules defining arising of responsibility are not coordinated among them and allow various interpretations. For example, there is no equal understanding of the term "nuclear safety" in legislation. The practice of management for using of atomic energy and regulation of safety has not adequate legislative substantiation and needs it. The absence of precise mechanism of arising of responsibility finally has an adverse effect to the safety of atomic objects;

- Atomic engineering really requires clearness and discipline which are maintained by clear legislation, education, selection and control. But, in many cases legislatively enacted measures were taken at infringement of the laws at all stages of life cycle of the objects - from placing till withdrawal conclusion from operation. And absence of measures for arising of responsibility causes more harm to the sphere of using of atomic energy. Inconsistency of laws in various spheres of human activity can result in improper arising of responsibility of various legal and natural persons. Denial of responsibility connected with various interpretations of similar concepts in different legislative and legal acts in sphere of using atomic energy. Thus, some measures for elimination of denial practice should be taken.

- Creating of the laws in conformity with establishing of clear, transparent system of arising of responsibility of all participants of using of atomic energy is the measure of achievement the basic purpose of nuclear technology. This purpose is creation of conditions in which full safety is guaranteed.

Information about condition of atomic objects is important component of providing of civil liability. This component was absent in the Soviet time. The state must facilitate citizens in sphere of civil rights protection. Citizens should be

informed about: law, which provides their radiation safety; procedures of protection their rights and obtaining compensation in case of radiation influence. It would be expedient to fill term "nuclear safety" with additional content: concept of "personal safety from radiation influence". In this case the mechanism of civil-legal responsibility would become more transparent and comprehensible.

Basic complexities in establishment of causal relation are connected with difficulties of obtaining necessary information. The problem of openness and accessibility of environmental information remains topical. There is no proper system for providing the population of environmental information by dangerous industrial plants. The reasonable periods of time for providing of environmental information are not established. It is important to note, that sufficient data base about the influence of natural environment factors (including radiation) to the health of population for making of judicial decisions is not created.

Special legislation on the compensation of harm to the citizens as a result of Chernobyl catastrophe and emergency on "Mayak" plant has some deficiencies.

On the special Laws about Chernobyl and "Mayak" emergencies is said, that "relations, connected with the Chernobyl catastrophe and emergency on "Mayak" plant are regulated by present Laws and active legislation. The rules of Russian active legislation shall not contradict to these special Laws".

Thus, according to the special Laws, the rules of other laws, concerning compensation of harm (including the Civil Code) cannot be applied to the victims.

In the Russian Civil Code is said, that "the rules of civil law, which are contained in other legislation, must correspond to the present Code". Consequently, there is a contradiction of the Civil Code and the special Laws. In this case, the priority has the Civil Code.

That is why, it is expedient to include into these special Laws the following rule:

"Relations, connected with the Chernobyl' catastrophe and the emergency on "Mayak" plant are regulated by the Constitution, the Civil Code, the present Law and other active legislation, which is not contradict to the present Law".

There are other important problems, which should be clearly solved by the Legislators in the special Laws.

- There are many citizens, who were exposed to radiation, but did not obtain benefits and compensation, because of absence in the special Laws of direct rules about their status.

- There are no rules on how the lineal descendants of citizens, who were exposed to radiation can defend their rights. First of all, it concerns the children of first and other generations of persons, who were exposed to radiation. For effective protection of their rights, it should be used a legal institute of compensation of harm. These problems are still not regulated in legislation.

Only in the eighties of the past century, in connection with the catastrophe on Chernobyl atomic power station and the processes of democratization of the Soviet society the questions of compensation for harm to the health in connection with the radioactive contamination were arisen. After the Soviet period human rights began to play an important role in the state policy of Russia. Respectively, the legislation was improved. The international-legal standards brought influence to Russian legislation. Russia joined to the international Conventions: the Convention for the Protection of Human Rights and Fundamental Freedoms, the Vienna Convention on Civil Liability for Nuclear Damage. Thus, the European and world standards in the

sphere of protection of human rights (including compensation for harm) began to play significant role in domestic legislation.

According to general ideology of the European Court of Human Rights the mechanism of the Convention for the Protection of Human Rights and Fundamental Freedoms is auxiliary, subsidiary, it applies only if national authorities did not performed their duty to guarantee protected by the Convention rights and freedoms.

The Convention does not have retroactive force. Accordingly, from the moment of its ratification by Russia on May 1998, responsibility to fulfill concrete international legal obligations has been appeared for the state. In order to protect the rights of these citizens it is necessary to develop national legislation and to increase the level of legal culture by improving the authority and reputation of domestic judicial system.

For the purposes of fulfillment of the European Court judgments, it is expedient to draft a Federal Law "On execution of decisions of the European Court of Human Rights". This law should also include the forms of responsibility for non execution of the decisions.

Creation of the universal effective system for protection of rights at the international level is very hard task. That is why the European Court of Human Rights determines only the framework of the guarantees against violation of legislation. Therefore, the Russian Federation must improve legislation on the protection of the rights of victims exposed to radiation and provide financial basis for its realization.

Bibliography

The Russian legislation

Basis of civil legislation of the USSR on 12.08.61, Vedomosti VS of the USSR, №50, art.525, 1961

Basis of civil legislation of the USSR on 31.05.91 № 2211-1, Vedomosti SND and VS of the USSR, №26, art.733, 06.26.91

Decision of the Russian Constitutional Court on June 16, 1998, № 19- P "On case about interpretation of the separate rules of articles 125,126 and 127 of the Russian Constitution", *Rossiyskaya gazeta (Российская газета)* №121, 06. 30. 1998

Decision of the Russian Constitutional Court on 01.09.1998), *Digest of Russian Constitutional Court*, №2, 1998 (*Вестник Конституционного Суда РФ*, №2, 1998)

Decision of the Russian Constitutional Court on December 1, 1997 № 18- P " On case about checking of correspondence to the Constitution of separate norms of Article 1 of Federal Law on November 24, 1995 " On the amending of the Russian Law " On the social protection of citizens, who were exposed to radiation as a result of the catastrophe in the Chernobyl atomic power station", *Digest of Russian legislation,* №50, art. 5711, 1997

Decision of the Russian Constitutional Court on June 19, 2002 № 11-P " On case about checking of correspondence to the Constitution of separate norms of Russian Law on May 15, 1991 "On the social protection of citizens, who were exposed to radiation as a result of the catastrophe in the Chernobyl atomic power station" (amended on June 18, 1992, on November 24, 1995), *Rossiyskaya gazeta (Российская газета)* № 118, 07.02.2002

Decision of the Supreme Soviet of Russian Federation on 03.03.93, №4604-1 "On some questions of application of legislation of the USSR in the territory of Russian Federation", *Vedomosti SND and VS of the Russia,* №11, art.393, 03.18.93

Decision of Federal Agency for Nuclear Energy of Russia (Rosatomnadzor) on 11.14.97 №9 "On enacting and implementation of normative document PNAE G-01-011-97 "General rules of providing safety in nuclear power stations. OPB-88/97" (Постановление Госатомнадзора РФ от 14.11.97 №9 «Об утверждении и введении в действие нормативного документа ПНАЭ Г-01-011-97 «Общие положения обеспечения безопасности атомных станций. ОПБ-88/97»)

Decree of the Central Committee of the Communist Party of the Soviet Union and Council of the Ministers of the USSR on May 7, 1986, № 524-156 "On the conditions of payment for work and material supply of workers of enterprises and organizations, located in the zone of Chernobyl atomic power station", Russian State Archive of the contemporary history, *National Archive of the Republic of Belarus, Chernobyl. April 26, 1986 - December 1991. Documents and materials, Minsk, 2006 (Чернобыль. 26 апреля 1986 – декабрь 1991.- Документы и материалы, Минск, 2006)*

Decree of the Council of Ministers of the USSR on June 5, 1986, № 665-195 «On the conditions of payment for work and for material support of workers of enterprises, organizations and establishments, which occupied on the works, connected with the liquidation of the consequences of the emergency on Chernobyl atomic power station and preventing of environmental pollution", *Russian State Archive of the contemporary history, National Archive of the Republic of Belarus, Chernobyl. April 26, 1986 - December 1991. Documents and materials, Minsk, 2006 (Чернобыль. 26 апреля 1986 – декабрь 1991.- Документы и материалы, Минск, 2006)*

Decree of the Plenum of Russian Supreme Court on December 20, 1994 "Some questions of the application of legislation about the compensation for moral damage", *Rossiyskaya gazeta (Российская газета)* № 29, 02.08.1995

Decree of the Plenum of Russian Supreme Court on October 10, 2003, № 5 "On application by the Courts of general jurisdiction of universally recognized principles and rules of international law and international treaties of the Russian Federation", *Rossiyskaya gazeta (Российская газета),* №244, 12.02.2003

Decree of the Plenum of Russian Supreme Court on December 19, 2003, № 23 "On the judgment", *Rossiyskaya gazeta (Российская газета),* 12.26.2003

Decree of the President of Russia on August 4, 1997 "On the modification of face value of Russian currency and standards of value", *Didgest of Russian legislation,* №32, art.3752, 08.11.97

Decree of the President of Russia on March 29, 1998, "On Russian authorized officer at the European Court of Human Rights", *Didgest of Russian legislation*, № 14, art. 1540, 1998

Decree of the Russian Government №172 on 03.21.2007 "On federal special purpose program "Children of Russia" to 2007-2010 (Постановление Правительства РФ №172 от 21.03.2007 «О федеральной целевой программе «Дети России» на 2007-2010 г.г.»), *Digest of Russian legislation*, №14, art. 1688, 04.02.2007

Decree of the Russian Government №1255-P on 08.31.2002 «On ecological doctrine of Russia» (Распоряжение Правительства РФ № 1255-P от 31.08.2002 "Об экологической доктрине Российской Федерации"), *Rossiyskaya gazeta (Российская газета)* № 176, 09.18.2002

Decree of Ministry of Health and Care of Russia on October 16, 1992, № 279 "On

rendering of medical aid and establishment of causal relation of diseases, disablements and deaths to persons, who were exposed to radiation", *The library of Russian newspaper,* №10, 1995

Federal Constitutional Law on July 12, 1991, № 1599-1 (new version on July 21, 1994, № 1-FKZ) "On the Constitutional Court of Russia", *Vedomosti SND and VS,* №30, art. 1017, 1991, *Digest of Russian legislation,* №13, art.1447, 07.25.1994

Federal Law №7 on January 10, 2002 "On protection of the environment", *Digest of Russian legislation,* №2, art.133, 01.14.2002

Federal Law on February 21, 1992 "On Subsurface Resources", *Digest of Russian legislation,* №10, art. 823, 03.06.1995

Federal Law on March 30, 1999 "On Sanitary and Epidemiological Welfare of Population", *Rossiyskaya gazeta (Российская газета)* №64-65, 04.06.1999

Federal Law on June 24, 1998 "On Industrial and Domestic Wastes", *Digest of Russian legislation,* №26, art. 3009, 06.29.1998

Federal Law on May 4, 1999 "On Protection of Atmospheric Air", *Digest of Russian legislation,* №18, art. 2222, 05.03.1999

Federal Law on April 24, 1995 "On Protection of Wildlife", *Digest of Russian legislation,* №17, art. 1462, 04.24.1995

Federal Law on January 9, 1996, №3-FZ "On radiation safety of population", *Didgest of Russian legislation,* №3, art. 141, 01.15.1996

Federal Law on November 21, 1995, №170-FZ "On the use of atomic energy", *Rossiyskaya gazeta (Российская газета)* № 230, 11.28.1995

Federal Law on December 21, 1994, №69-FZ "On fire safety", *Rossiyskaya gazeta (Российская газета)* № 3, 01.05.1995

Federal Law on July 21, 1997, №116-FZ "On industrial safety of dangerous industrial units", *Didgest of Russian Legislation,* № 30, art. 3588, 07.28.1997

Federal Law on December 21, 1994, №68-FZ "On protection of population and territories from natural and industrial extraordinary situations", *Rossiyskaya gazeta (Российская газета)* № 250, 12.24.1994

Federal Law №119-FZ on July 21, 1997 "On Enforcement Proceedings", *Digest of Russian legislation,* №30, art.3591, 07.28.1997

Federal Law on November 26, 1998, №175-FZ "On social protection of the Russian citizens, who were exposed to radiation as a result of emergency in 1957 on the industrial association "Mayak" and disposal of radioactive wastes into Techa river", *Didgest of Russian legislation,* №48, art. 5850, 11.30.1998

Federal Law on 02.23.1996 № 19-FZ "On annexation of the Russian Federation to Statute of the Council of Europe", *Rossiyskaya gazeta (Российская газета),* №38, 02.24.96

Federal Law on 03.30.1998 № 54-FZ "On ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols", *Rossiyskaya gazeta (Российская газета),* №67, 04.07.98

Forest Code on December 4, 2006, *Digest of Russian legislation,* №50, art. 5278, 12.11.2006
Land Code on October 25, 2001, *Digest of Russian legislation*, №44, art. 4147, 10.29.2001
Law of the Russian Soviet Federative Socialist Republic (RSFSR) on October 29, 1960 "On protection of the nature in the RSFSR", *Vedomosti VS RSFSR (Ведомости Верховного Совета РСФСР),* №40, art. 586, 1960
Law of the Russian Soviet Federative Socialist Republic (RSFSR) on July 8, 1981 "On judicial system in RSFSR", *Vedomosti VS RSFSR (Ведомости Верховного Совета РСФСР),* №28, art. 976, 1981
Law of the Russian Soviet Federative Socialist Republic (RSFSR) on December 19, 1991 №2060-1 "On protection of the natural environment", *Vedomosti SND and VS*, № 10, art. 457, 03.05.1992.
Law on May 15, 1991, № 1244-1 "On social protection of citizens, who were exposed to radiation as a result of the catastrophe in the Chernobyl atomic power station", *Vedomosti SND and VS,* №21, art. 699, 1991
Law on March 5, 1992, № 2446-1 "On the safety", *Vedomosti SND and VS*, №15, art. 769, 04.09.1992
Statute of the Council of Europe, *Digest of Russian legislation*, №12, art. 1390, 03.24.97
The Constitution of the USSR on October 7, 1977, *Vedomosti VS USSR (Ведомости Верховного Совета СССР),* №41, art. 617, 1977
The Constitution of the Russian Federation (December 12, 1993), *Rossiyskaya gazeta (Российская газета)* № 237, 12.25.1993
The Tax Code (Chapter 25.2 "Water tax"), *Parliament newspaper (Парламентская газета)* №140-141,07.31.2004
The Civil Code of RSFSR on November 11, 1922, *Izvestiya VTSIK (Известия ВЦИК),* №256, 11.12.1922
The Civil Code of RSFSR on June 11, 1964, *Vedomosti VS RSFSR (Ведомости Верховного Совета РСФСР),* №24, art. 407, 1964
The Russian Civil Code (first and second parts) on November 30, 1994, on January 26, 1996, *Didgest of Russian legislation,* №32. art.3301, 12.05.94, *Didgest of Russian legislation,* №5, art.410, 01.29.96
The Russian Civil Procedural Code, *Digest of Russian legislation,* 11.18. 2002, №46, art.4532
Water Code on June 3, 2006, *Digest of Russian legislation,* №23, art. 2381, 06.05.2006

Internet sources

Convention for the Protection of Human Rights and Fundamental Freedoms http://www.echr.coe.int/echr/Homepage_EN
Encyclopedia Britannica online, http://www.britannika.com (Curie, Becquerel)
European Court of Human Rights, http://www.echr.coe.int/echr/Homepage_EN

Materials of United Nations Development Programme (UNDP), 2002, http://www.undp.org
Public association "Union Chernobyl of Russia", http://www.souzchernobyl.ru
The Vienna Convention on Civil Liability for Nuclear Damage, http://www.iaea.org

Japanese sources

Fujii Haruo, *The Soviet and Russian atomic energy development (since 1930 up to the present day)*, Toyoshyoten, Tokyo, 2001 (藤井　晴雄、『ソ連・ロシア原子力開発(1930 年代から現在まで)』、東洋書店出版、2001)
Kawana Hideyuki, *The Global Environmental Problems (Russia and former USSR republics)*, Volume 4, Ryokufu, Tokyo, 2009 (川名　英之、『世界の環境問題(第 4 巻　ロシアと旧ソ連邦諸国)』、緑風出版、2009)
メドヴェジェフ・ゾレス・アレクサンドロヴィッチ、『ウラルの核惨事』、梅林宏道（翻訳)、技術と人間出版、1982

Russian and other sources

Abalkina I.L., Panchenko S.V., *Chernobyl radiation in questions and answers*, Moscow, 2005, p.4 (Абалкина И. Л., Панченко С. В., *Чернобыльская радиация в вопросах и ответах*, М., Комтехпринт, 2005, с.4)
Akleev A.V., Kiselev M.V., *Muslyumovo: results of 50-year monitoring,* The Ural practical-scientific center of radiation medicine, Chelyabinsk, 2001, p. 1-3 (А. В. Аклеев, М. В. Киселёв, *Муслюмово: итоги 50-летнего наблюдения*, Уральский научно-практический центр радиационной медицины, Челябинск, 2001, с. 1-3)
Anishina V.I., Gadzhiev G.A., *Independence and autonomy of the judicial power in Russian Federation,* M., Jurist, 2006, p. 148 – 149 (Анишина В.И., Гаджиев Г.А., Самостоятельность и независимость судебной власти Российской Федерации, М., Юрист, 2006, с.148 – 149)
Anokhin A.M., "Problems of legal responsibility in the sphere of environment protection and use of natural resources", *Courier of ecological education,* №1, 2, 2004, p.17 (Анохин А.М. "Проблемы правовой ответственности в сфере охраны окружающей среды и природопользования", *Вестник экологического образования,* 2004, №1,2, с.17)
Bazilev B.T., *Bases of juridical responsibility. Materials of scientific conference*, Krasnoyarsk, 1972, p.9 (Базылев Б. Т. *Основания юридической ответственности. Материалы научной конференции.* Красноярск,

1972, c. 9)

Belkin M.L., "Legislative reasoning of application in the judicial practice of judgments of the European Court of Human Rights as source of law", International public and private law, 2010, №1 (Белкин М.Л., "Законодательное обоснование применения в судебной практике решений Европейского суда по правам человека как источника права", Международное публичное и частное право, 2010,№1)

Bernhardt R., "The European Court of Human Rights in Strasbourg: new stage, new problems", *State and Law*, №7,1999, p. 57-62 (Бернхардт Р., «Европейский Суд по Правам Человека в Страсбурге: новый этап, новые проблемы», *Государство и право*, 1999, №7, с. 57-62)

Bobylev S.N., Sidorenko V.N., Safronov Y.V., *Macroeconomic valuation of human health loss from Environmental Pollution for Russia*, Moscow.: World Bank Institute, Nature Protection Fund.– 2002, p.32

Bogolubov S.A., *Russian ecological law*, Moscow, 2007, p. 300-306 (Боголюбов С. А. *Экологическое право*, М., Высшее образование, 2007, с. 300-306)

Bogolubov S.A., *Commentary to the Law "On protection of the environment"*, Moscow, 1997, p.14 (Боголюбов С.А., *Комментарий к Закону РФ «Об охране окружающей природной среды»*, М., 1997, с. 14)

Brinchuk M.M., "Providing of ecological safety as legal category", *State and Law*, №9, 2008, p. 42 (Бринчук М.М., "Обеспечение экологической безопасности как правовая категория", *Государство и право*, 2008, №9, с. 42)

Constantinov A.I., "Location and construction of the atomic power stations: ecological- legal problems", *The Journal of Russian Law*, №7, 1998, p.98 (Константинов А. И., "Размещение и сооружение атомных электростанций: эколого-правовые проблемы", *Журнал российского права*, 1998, №7, с.98)

Dimov V.M., Pautov V.N., "Health of ethnos as the problem of its social safety", *Social-Humanitarian Knowledge*, №1, 2000, p.179 (Димов В.М., Паутов В.Н., "Здоровье этноса как проблема его социальной безопасности", *Социально-гуманитарные знания*, 2000, №1, с. 179)

Dolgih A., Izhevskiy P., "Radiation and the health of man", *The basis of vital activity safety*, №2, 2000, p. 44 (Долгих А., Ижевский П., "Облучение и здоровье человека", *Основы безопасности жизнедеятельности,* 2000, №2, с. 44)

Edidin B.A., "Execution of judgments of the European Court of Human Rights: the contemporary problems of theory and practice", *Arbitration and civil procedure,* №41, 2004 (Едидин Б. А., "Исполнение решений Европейского суда по правам человека: современные проблемы теории и практики", *Арбитражный и гражданский процесс*, 2004, №41)

Erofeev B.V., *The ecological law*, Moscow, 2009 (Ерофеев Б.В., *Экологическое право России*, М., ИД «Форум», 2009)

Ershova E.A., "Legal nature of decisions of the European Court of Human Rights", *Labour law*, №2, 2009 (Ершова Е.А. "Правовая природа постановлений Европейского Суда по правам человека", *Трудовое право*, 2009, №2)

Fedina A.S., "Significance of the European Court judgments in realization of the principle of legality in the civil procedure", Jurist, №3, 2007 (Федина А. С., «Значение решений Европейского суда по правам человека в реализации принципа законности в гражданском судопроизводстве», Юрист, 2007,№3)

Fleyshits V.A., *Basic problems of civil liability for the damage of health*, The scientific notes, Moscow, 1955 (В.Т.Флейшиц В.А. *Основные вопросы гражданской ответственности за повреждение здоровья*, Учёные записки ВИЮН, вып.1. М., 1955)

Gichev Y.P., *Environmental pollution and the human health*, Novosibirsk, 2002, p. 15, 34 (Гичев Ю.П., *Загрязнение окружающей среды и здоровье человека*, Новосибирск, 2002, с.15, 34)

Gomen D., Harris D., Zvaak L., European Convention of human rights and European social charter, Moscow, 1998, p. 29 (Гомъен Д., Харрис Д., Зваак Л., *Европейская конвенция о правах человека и Европейская социальная хартия.* М., 1998, с. 29)

Goudina E., Khovanskaya T., A practical insight to environment law in Russia, Moscow, 2007

Ilyina A.G., "Rights of citizens, who suffered from radiation", *Advocate*, №11, 2000 (Ильина А. Г., "Права граждан, пострадавших от радиации", *Адвокат,* 2000, №11)

Immune Deficiency Foundation "IDF", Guidance on primary immunodeficiency diseases for patients and members of their families, 2007

Kanashevskiy V.A., "Precedent practice of the European Court of Human Rights as regulator of civil relations in Russia", *The journal of Russian law*, №4,

2003 (Канашевский В.А., «Прецедентная практика Европейского суда по правам человека как регулятор гражданских отношений в РФ», Журнал Российского права, 2003, №4)

Kolbasov O.S., "Compensation to the citizens of ecological harm", *State and Law*, №10, 1994, p. 107 (Колбасов О. С., "Возмещение гражданам экологического вреда", *Государство и право*, 1994, №10, с. 107)

Kovler A.I., "European law of human rights and the Russian Constitution", *The journal of Russian Law,* №1, 2004, p. 4 (Ковлер А.И., "Европейское право прав человека и Конституция России", *Журнал российского права*, 2004, №1, с.4)

Krasnova I.O., "The legal regulation of compensation of ecological harm", *The ecological law*, №4, 2005 (Краснова И.О., "Правовое регулирование возмещения экологического вреда", *Экологическое право*, 2005, №4)

Kuchin M.V., "Human rights and the problem of application in the Russian Federation of precedent law of the Council of Europe", *The Journal of Russian Law*, № 4, 1998, p. 83 (Кучин М. В., "Права человека и проблема применения в Российской Федерации прецедентного права Совета Европы", *Российский юридический журнал*, 1998. № 4. с. 83)

Kuchin M.V., "Judicial precedent as source of law (controversial points)", *The Journal of Russian Law*, № 4, 1999, p. 77-78 (*Кучин М. В.,* "Судебный прецедент как источник права (дискуссионные вопросы)", Российский юридический журнал,1999, № 4, с. 77-78)

Marchenko M.N., "Juridical nature of resolutions of the European Court of human rights", *The state and law,* №2, 2006 (Марченко М. Н., «Юридическая природа и характер решений Европейского Суда по Правам Человека», *Государство и право*, 2006, №2)

Medvedev Zhores. A. *Nuclear disaster in the Urals*, New York, 1979, p.176-177 (ゾレス・アレクサンドロヴィッチ・メドヴェ、「ウラルの核惨事」、梅林宏道（翻訳）、技術と人間出版社、1982)

Misnik G.A., "Principles of civil responsibility for ecological harm", *The ecological law*, №2, 2008 (Мисник Г.А., "Принципы гражданско-правовой ответственности за причинение экологического вреда", *Экологическое право*, 2008, №2)

Neshataeva T.N., "On the competence of European Court of Human Rights with respect to property rights", *Vestnik VAS RF,* №4, 1999, p. 96 (Нешатаева Т. Н., «О компетенции Европейского суда по правам человека в отношении имущественных прав», *Вестник ВАС РФ*, 1999, №4. С. 96)

Novoselov V.N., Tolstikov V.S., *Atomic sign in the Urals*, Chelyabinsk, 1997, p.36-39 (Новосёлов В. Н., Толстиков В.С., *Атомный след на Урале*, Челябинск, 1997, с.36-39)

Onishenko G., "Under the cover of half-life", *Rossiyskaya gazeta, federal issue (Российская газета)*, №4044, 04.14. 2006

Petrov V.V., *The Russian ecological law*, Moscow, 1995, p. 334 (Петров В.В. *Экологическое право России*, М., БЕК, 1995, с. 334)

Polyakov I.N., *Responsibility for the obligations due to harm*, Moscow, 1998, p. 19-23 (Поляков И.Н. *Ответственность по обязательствам вследствие причинения вреда,* М., Городец, 1998, с. 19-23)

Regional public organization The legal center "Rodnik", Materials of judicial practice, 2005

Revich B.A., Sidorenko V.N., "Human health damage from environmental pollution", *Center for Russian environmental policy, Bulletin "Towards a Sustainable Russia"* № 35, 2006, p.3-5)

Sagitov S.M., "The juridical procedures of application of civil responsibility for infliction of harm to the environment", *Jurist,* №2, 2008 (Сагитов, С.М., "Отдельные юридические процедуры применения гражданско-правовой ответственности за причинение вреда окружающей среде", *Юрист,* 2008, №2)

Shadrin V.M., Ilyina A.G., "Responsibility of compensation of harm as a result of radiation pollution", *The Journal of Russian Law*, №6, 2002, p. 69 (Шадрин В. М., Ильина А. Г., "Ответственность по возмещению вреда здоровью от радиационного загрязнения", *Журнал российского права,* 2002, №6, с. 69)

Shemshuchenko Y.S., Muntyan V.L., Rozovsky B.G., *Juridical liability in environmental protection*, Kiev, 1978, p. 16-30 (Ю.С. Шемшученко, В. Л. Мунтян, Б. Г. Розовский, *Юридическая ответственность в области охраны окружающей среды*. Киев, 1978, с. 16-30)

Skukin E.B., *The rights of radiation victims,* The library of Russian newspaper, Moscow, 2003, p. 123-135 (Скукин Е. Б., *Права пострадавших от радиации*, Библиотечка «Российской газеты», М., 2003, С. 123-135)

Smirnov V.T., *Obligations due to the harm*, Leningrad, 1973, p. 14 (Смирнов В.Т. *Обязательства, возникающие из причинения вреда*. Ленинград, 1973, с. 14)

Sobchak A.A., *Civil- legal responsibility for infliction of harm by the effect of the*

source of increased danger: An abstract of the thesis of the candidate of jurisprudence, Leningrad, 1964. p. 8 (Собчак А.А., *Гражданско-правовая ответственность за причинение вреда действием источника повышенной опасности*: Автореф. дис. канд. юрид. наук. Л., 1964. с. 8)

State report *On condition of the environment in the Russian Federation in 1999, 1998, and 1997*, Moscow, 2000 (Отчёт о состоянии окружающей среды в Российской Федерации, М. 2000)

Tumanov V.A., Entin L.M., *Commentary of the Convention for the Protection of Human Rights and Fundamental Freedoms and the practice of its application*, M., Norma, 2002, p.235 (Туманов В.А., Энтин Л. М., Комментарий к Конвенции о защите прав человека и основных свобод и практике её применения, М., Норма, 2002, с.235)

Vasilyeva M. I., "Legal problems of the compensation of harm, inflicted to health of citizens by unfavorable environment", *State and Law*, №10, 2008, p.28 (Васильева М. И., "Правовые проблемы возмещения вреда, причиняемого здоровью граждан неблагоприятным воздействием окружающей среды", *Государство и право,* 2008, №10, с. 28)

Vitruk N.V., "Legal positions of the Russian Constitutional Court: concept, nature, juridical force and significance", The constitutional law: Eastern European review, №3 (28), 1999 (Витрук Н. В., "Правовые позиции Конституционного Суда РФ: понятие, природа, юридическая сила и значение", Конституционное право: Восточноевропейское обозрение, 1999, №3(28))

Vorontsova I.V., "On the requirement of the European Court decisions", *The Russian judge*, 2009, №6 (Воронцова И. В., "Об обязательности постановлений Европейского суда», *Российский судья*, 2009, №6)

Yaroshinskaya A.A., *Chernobyl: Twenty years later. The crime without punishment*, Moscow, 2006, p. 493 (Ярошинская А.А. *Чернобыль: Двадцать лет спустя. Преступление без наказания*, М., Время, 2006, с. 493)

Yorysh A.I., "Law on the use of atomic energy", *State and Law,* №8, 1996, p. 38 (Йорыш А.И., "Закон об использовании атомной энергии", *Государство и право*, 1996, №8, с. 38)

Zhuykov V.M, Practice of the application of the Russian civil procedural code, M., 2005. p. 60- 68 (Жуйков В. М., Практика применения Гражданского процессуального кодекса РФ, М., 2005, с. 60 – 68)

Appendix
(Russian Legislation Concerning Radiation Harm)

The Constitution of The Russian Federation on 12.12.1993 (extracts)

Article 1

The Russian Federation - Russia shall be a democratic federal rule-of-law state with the republican form of government. The names "Russian Federation" and "Russia" shall be equivalent.

Article 2

Man, his rights and freedoms shall be the supreme value. It shall be a duty of the state to recognize, respect and protect the rights and liberties of man and citizen.

Article 7

1. The Russian Federation shall be a social state, whose policies shall be aimed at creating conditions which ensure a dignified life and free development of man.

2. The Russian Federation shall protect the work and health of its people, establish a guaranteed minimum wage, provide state support for family, motherhood, fatherhood and childhood, and also for the disabled and for elderly citizens, develop a system of social services and establish government pensions, benefits and other social security guarantees.

Article 9

1. The land and other natural resources shall be used and protected in the Russian Federation as the basis of the life and activity of the peoples living on their respective territories.

2. The land and other natural resources may be in private, state municipal and other forms of ownership.

Article 15

1. The Constitution of the Russian Federation shall have supreme legal force and direct effect, and shall be applicable throughout the entire territory of the

Russian Federation. Laws and other legal acts adopted by the Russian Federation may not contravene the Constitution of the Russian Federation.

2. Organs of state power and local self-government, officials, citizens and the ir associations must comply with the laws and the Constitution of the Russian Federation.

3. The laws shall be officially published. Unpublished laws shall not be applicable. No regulatory legal act affecting the rights, liberties or duties of the human being and citizen may apply unless it has been published officially for general knowledge.

4. The commonly recognized principles and norms of the international law and the international treaties of the Russian Federation shall be a component part of its legal system. If an international treaty of the Russian Federation stipulates other rules than those stipulated by the law, the rules of the international treaty shall apply.

Article 17

1. In the Russian Federation human and civil rights and freedoms shall be recognized and guaranteed according to the universally recognized principles and norms of international law and this Constitution.

2. Basic human rights and freedoms shall be inalienable and shall be enjoyed by everyone from birth.

3. The exercise of human and civil rights and freedoms must not violate the rights and freedoms of other people.

Article 18

The rights and liberties of man and citizen shall have direct effect. They shall determine the meaning, content and application of the laws, and the activities of the legislative and executive branches and local self-government, and shall be secured by the judiciary.

Article 19

1. All people shall be equal before the law and in the court of law.

2. The state shall guarantee the equality of rights and liberties regardless of sex, race, nationality, language, origin, property or employment status, residence, attitude to religion, convictions, membership of public associations or any other circumstance. Any restrictions of the rights of citizens on social, racial, national, linguistic or religious grounds shall be forbidden.

3. Man and woman shall have equal rights and liberties and equal opportunities for their pursuit.

Article 35

1. The right of private property shall be protected by law.

2. Everyone shall have the right to have property and to possess, use and dispose of it both individually and jointly with other persons.

3. Nobody may be deprived of property except under a court order. Forced alienation of property for State requirements may take place only subject to prior and fair compensation.

4. The right of inheritance shall be guaranteed.

Article 36

1. Citizens and their associations shall have the right to have land in their private ownership.

2. The possession, use and management of the land and other natural resources shall be freely exercised by their owners provided this does not cause damage to the environment or infringe upon the rights and interests of other persons.

3. The terms and procedures for the use of land shall be determined on the basis of federal laws.

Article 42

Everyone shall have the right to a favorable environment, reliable information about its condition and to compensation for the damage caused to his or her health or property by ecological violations.

Article 39

1. Everyone shall be guaranteed social security in old age, in case of disease, invalidity, loss of breadwinner, to bring up children and in other cases established by law.

2. State pensions and social benefits shall be established by laws.

3. Voluntary social insurance, development of additional forms of social security and charity shall be encouraged.

Article 42

Everyone shall have the right to a favorable environment, reliable information about its condition and to compensation for the damage caused to his or her health or property by ecological violations.

Article 46

1. Everyone shall be guaranteed protection in court of his (her) rights and freedoms.

2. Decisions and actions (or inaction) of State government bodies, local self-government bodies, public organisations and officials may be appealed against in court.

3. Everyone shall have the right in accordance with international treaties of the Russian Federation to appeal to interstate bodies for the protection of human rights and freedoms if all available internal means of legal protection have been exhausted.

Article 53

Everyone shall have the right to compensation by the state for the damage caused by unlawful actions (or inaction) of state organs, or their officials.

Article 55

1. The listing of the basic rights and liberties in the Constitution of the Russian Federation shall not be interpreted as the denial or belittlement of the other commonly recognized human and citizens' rights and liberties.

2. No laws denying or belittling human and civil rights and liberties may be issued in the Russian Federation.

3. Human and civil rights and liberties may be restricted by the federal law only to the extent required for the protection of the fundamentals of the constitutional system, morality, health, rights and lawful interests of other persons, for ensuring the defense of the country and the security of the state.

Article 71

The Russian Federation shall have jurisdiction over:

a) the adoption and amending of the Constitution of the Russian Federation and federal laws, control over compliance therewith;

b) the federative structure and the territory of the Russian Federation;

c) regulation and protection of human and civil rights and freedoms; citizenship in the Russian Federation, regulation and protection of the rights of

national minorities;

d) establishment of the system of federal legislative, executive and judicial bodies, the procedure for their organisation and activities, the formation of federal State government bodies;

e) federal State property and administration thereof;

f) establishment of the basic principles of federal policy and federal programmes in the sphere of State, economic, ecological, social, cultural and national development of the Russian Federation;

g) establishment of the basic legal principles for the unified market; financial, currency, credit and customs regulation; money emission; the basic principles of pricing policy, federal economic services, including federal banks;

h) the federal budget, federal taxes and levies, federal funds of regional development;

i) federal power-engineering systems, nuclear power, fissile materials, federal transport, railways, information and communication, activities in space;

j) foreign policy and international relations of the Russian Federation, international treaties of the Russian Federation, issues of war and peace;

k) foreign economic relations of the Russian Federation;

l) defence and security; military production; determination of the procedure for selling and purchasing weapons, ammunition, military equipment and other military hardware; production of poisonous substances, narcotic substances and the procedure for their use;

m) determination of the status and protection of the State border, territorial sea, air space, the exclusive economic zone and the continental shelf of the Russian Federation;

n) the judicial system, public prosecution, criminal, criminal-procedural and criminal-executive legislation, amnesty and remission, civil, civil-procedural and arbitration-procedural legislation, legal regulation of intellectual property;

o) federal collision law;

p) meteorological service, standards, metric and time systems, geodesy and cartography, names of geographical units, official statistics and accounting;

q) State awards and honorary titles of the Russian Federation;

r) federal State service.

Article 72

1. The following shall be within the joint jurisdiction of the Russian Federation and constituent entities of the Russian Federation:

a) measures to ensure the correspondence of constitutions and laws of republics, the charters, laws and other normative legal acts of krays, oblasts, cities of federal significance, autonomous oblast and autonomous okrugs to the Constitution of the Russian Federation and federal laws;

b) protection of human and civil rights and freedoms, protection of the rights of national minorities, ensuring lawfulness, law and order, public security; border zone regimes;

c) issues of the possession, utilisation and management of land and of subsurface, water and other natural resources;

d) demarcation of State property;

e) use of natural resources, protection of the environment and provisions for ecological safety; specially protected natural territories, protection of historical and cultural monuments;

f) general issues of upbringing, education, science, culture, physical education and sport;

j) coordination of health care issues; protection of the family, maternity, fatherhood and childhood, social protection, including social security;

h) carrying out measures against catastrophes, natural disasters, epidemics and rectification of their consequences;

i) establishment of common principles of taxation and levies in the Russian Federation;

j) administrative, administrative-procedural, labour, family, housing, land, water and forest legislation; legislation on subsurface resources and on environmental protection;

k) personnel of judicial and law enforcement bodies; lawyers, notaries;

l) protection of the traditional habitat and the traditional way of life of small ethnic communities;

m) establishment of general principles of the organisation of the system of State government and local self-government bodies;

n) coordination of international and foreign economic relations of constituent entities of the Russian Federation, observance of international agreements of the Russian Federation.

2. The provisions of this Article shall be equally valid for republics, krays, oblasts, cities of federal significance, autonomous oblast and autonomous okrugs.

Article 125

1. The Constitutional Court of the Russian Federation shall consist of 19

judges.

2. The Constitutional Court of the Russian Federation, at the request of the President of the Russian Federation, the Council of Federation, the State Duma, one fifth of the members of the Council of Federation or of the deputies of the State Duma, the Government of the Russian Federation, the Supreme Court of the Russian Federation and the Supreme Arbitration Court of the Russian Federation, and legislative and executive government bodies of constituent entities of the Russian Federation, shall decide on cases on conformity to the Constitution of the Russian Federation of:

a) federal laws, normative acts of the President of the Russian Federation, the Council of Federation, the State Duma, the Government of the Russian Federation;

b) constitutions of republics, charters, and laws and other normative acts of constituent entities of the Russian Federation adopted on issues under the jurisdiction of State government bodies of the Russian Federation or under the joint jurisdiction of State government bodies of the Russian Federation and State government bodies of constituent entities of the Russian Federation;

c) treaties between State government bodies of the Russian Federation and State government bodies of constituent entities of the Russian Federation, treaties between State government bodies of constituent entities of the Russian Federation;

d) international treaties of the Russian Federation, which are not in force.

3. The Constitutional Court of the Russian Federation shall resolve disputes on authority:

a) between federal State government bodies;

b) between State government bodies of the Russian Federation and State government bodies of constituent entities of the Russian Federation;

c) between higher State government bodies of constituent entities of the Russian Federation.

4. The Constitutional Court of the Russian Federation, on receiving complaints about violations of the constitutional rights and freedoms of citizens and upon request of courts, shall check, in accordance with the procedure established by federal law, the constitutionality of a law which is used or is to be used in a particular case.

5. The Constitutional Court of the Russian Federation, upon request of the President of the Russian Federation, the Council of Federation, the State Duma, the Government of the Russian Federation, and legislative authorities of constituent entities of the Russian Federation, shall provide interpretation of the Constitution of the Russian Federation.

6. Acts or certain provisions thereof, which are recognized as unconstitutional, shall lose force; international treaties of the Russian Federation, which do not correspond to the Constitution of the Russian Federation, shall not be implemented or used.

7. The Constitutional Court of the Russian Federation, upon request of the Council of Federation, shall issue a resolution on the observation of the established procedure for bringing charges of treason or of other grave crimes against the President of the Russian Federation.

Article 126

The Supreme Court of the Russian Federation shall be the highest judicial body for civil, criminal, administrative and other cases under the jurisdiction of common courts; it shall exercise judicial supervision over their activities in the procedural forms envisaged by federal law and shall provide interpretation on issues of court proceedings.

Article 127

The Supreme Arbitration Court of the Russian Federation shall be the highest judicial body for settling economic disputes and other cases examined by arbitration courts; it shall exercise judicial supervision over their activities in the procedural forms envisaged by federal law and shall provide interpretation on issues of court proceedings.

The Russian Civil Code on 11.30.1994
(extracts)

Article 15. Compensation of the Losses

1. The person, whose right has been violated, shall be entitled to demand the full recovery of the losses inflicted upon him, unless the recovery of losses in a smaller amount has been stipulated by the law or by the agreement.

2. Under the losses shall be understood the expenses, which the person, whose right has been violated, made or will have to make to restore the violated right, the loss or the damage done to his property (the compensatory damage), and also the undeceived profits, which this person would have derived under the ordinary conditions of the civil turnover, if his right were not violated (the missed profit). If the person, who has violated the right of another person, has derived profits as a result of this, the person, whose right has been violated, shall have the right to

claim, alongside with the compensation of his other losses, also the compensation of the missed profit in the amount not less than such profits.

Article 150. The Non-Material Values

1. The life and health, the personal dignity and personal immunity, the honour and good name, the business reputation, the immunity of private life, the personal and family secret, the right of a free movement, of the choice of the place of stay and residence, the right to the name, the copyright and the other personal non-property rights and non-material values, possessed by the citizen since his birth or by force of the law, shall be inalienable and untransferable in any other way. In the cases and in conformity with the procedure, stipulated by the law, the personal non-property rights and the other non-material values, possessed by the deceased person, may be exercised and protected by other persons, including the heirs of their legal owner.

2. The non-material values shall be protected in conformity with the present Code and with the other laws in the cases and in the order, stipulated by these, and also in those cases and within that scope, in which the use of the ways of protecting the civil rights (Article 12) follow from the substance of the violated non-material right and from the nature of the consequences of this violation.

Article 151. Compensation of the Moral Damage

If the citizen has been inflicted a moral damage (the physical or moral sufferings) by the actions, violating his personal non-property rights or infringing upon the other non- material values in his possession, and also in the other law-stipulated cases, the court may impose upon the culprit the duty to pay out the monetary compensation for the said damage. When determining the size of compensation for the moral damage, the court shall take into consideration the extent of the culprit's guilt and the other circumstances, worthy of attention. The court shall also take into account the depth of the physical and moral sufferings, connected with the individual features of the person, to whom the damage has been done.

Article 1064. General Grounds for Liability for Damage

1. The injury inflicted on the personality or property of an individual, and also the damage done to the property of a legal entity shall be subject to full compensation by the person who inflicted the damage. The obligation to redress the injury may be imposed by the law on the person who is not the inflictor of injury.

The law or the contract may institute the obligation of the inflictor of injury to repay to the victims compensation over and above the compensation of damage.

2. A person who has caused harm shall be released from the redress of injury, if he proves that injury was caused no through his fault. The law may also provide for the redress of injury in the absence of the fault of the inflictor of injury.

3. Injury inflicted by lawful actions shall be subject to redress in cases, provided for by the law. Redress of injury may be rejected, if injury has been caused at the request or with the consent of the insured person and unless the actions of the inflictor of injury violate the moral principles of the society.

Article 1079. Liability for the Injury Inflicted by the Activity with Increased Hazard for People Around

1. Legal entities and individuals whose activity is associated with increased hazard for people around (the use of transport vehicles, mechanisms, high voltage electric power, atomic power, explosives, potent poisons, etc.; building and other related activity, etc.) shall be obliged to redress the injury inflicted by a source of special danger, unless they prove that injury has been inflicted in consequence of force majeure or the intent of the injured person. The owner of a source of special danger may be released by the court from liability in full or in part also on the grounds, provided for by Items 2 and 3 of Article 1083 of this Code. The obligation of redressing injury shall be imposed on the legal entity or the individual who possess the source of special danger by right of ownership, the right of economic or operative management or on any other lawful ground (by right of lease, by procuration for the right to drive a transport vehicle, by decision of the corresponding body on the transfer of the source of special danger, etc.).

2. The owner of a source of special danger shall not be liable for the injury inflicted by this source, if he proves that the source has retired from his possession as a result of the illegal actions of other persons. In such cases liability for the injury inflicted by the source of special danger shall be borne by the persons who have acquired the source contrary to law. If the owner of the source of special danger is guilty of the withdrawal of this source from his possession contrary to law, liability may be imposed both the owner and on the person who has acquired the source of special danger contrary to law.

3. The owners of sources of special danger shall bear joint liability for the injury inflicted as a result of the interaction of these sources (the collusion of transport vehicles, etc.) to third persons on the grounds, provided for by Item 1 of this Article. Injury inflicted as a result of the interaction of the sources of special

danger to their owners shall be redressed on general grounds (Article 1064).

Article 1082. Methods of Redressing Injury

While satisfying the claim for redressing injury, the court of law, in keeping with the circumstances of the case, shall bind the person responsible for the infliction of injury to redress injury in kind (to present a thing of the same sort and quality, to repair a damaged thing, etc.) or to recompense for the losses caused (Item 2 of Article 15).

Article 1085. The Extent and Character of the Redress of Injury Inflicted on the Person's Health

1. In case of maiming an individual or of any other injury to his health compensation shall be extended to the earnings (income) which has been lost by the injured person and which he had or could definitely have, and also to the expenses incurred by injury to his health, including the expenses on medical treatment, additional nutrition, the acquisition of medicines, prosthesis, care by other people, the sanatoria and spa treatment, the acquisition of special transport vehicles, retraining, if it is found out that the injured person is in need of aid of these kinds and care and has not the right to receive them free of charge.

2. In estimating the lost earnings (income) the disability pension, awarded to the injured person in connection with mutilation or any other injury to his health, and also other pensions, benefits and other similar payments, awarded both before and after the infliction of injury on his health, shall not be taken into account and shall not involve a reduction of the amount of the compensation for the injury (shall not be counted towards the redress of the injury). The earnings (income), received by the injured party after the impairment of his health, shall not be counted towards the redress of injury.

3. The extent and amount of the redress of injury due to the injured party in keeping with this Article may be increased by the law or the agreement.

Compensation for the Moral Damage

Article 1099. General Provisions

1. The grounds and the amount of compensation for the moral damage done to an individual shall be determined by the rules, provided for by this Chapter and Article 151 of this Code.

2. The moral damage inflicted by actions (inaction) that infringe the property

rights of an individual shall be subject to compensation in cases, provided for by the law.

3. The moral damage shall be compensated regardless of the property damage subject to compensation.

Article 1100. The Grounds for the Compensation of the Moral Damage

The moral damage shall be compensated regardless of the guilt of the inflictor of damage in cases where: injury has been inflicted the life or health of an individual by a source of special danger; damage has been done to an individual as a result of his illegal conviction, the illegal institution of proceedings against him, the illegal application of remand in custody as a measure of suppression or of a written understanding not to leave his place of residence, the illegal imposition of the administrative penalty in the form of arrest or corrective labour; damage has been inflicted by the spread of information denigrating the honour, dignity and business standing; in other cases provided for by the law.

Article 1101. The Method and Amount of the Compensation for the Moral Damage

1. The moral damage shall be compensated in monetary form.

2. The amount of the compensation for the moral damage shall be determined by a court of law depending on the nature of physical and moral suffering caused to the victim, and also on the degree of guilt of the inflictor of damage in cases when guilt is a ground for the redress of injury. In estimating the amount of the compensation it is necessary to take into account the requirements of reasonable and justice. The nature of physical and moral suffering shall be assessed by the court with due account of the actual circumstances under which the moral damage was inflicted and of the victim's individual features.

Federal law
"On protection of the environment" on 01.10.2002
(extracts)

Section XIV. Liability for violation of legislation on protection of the environment and settling of disputes in sphere of protection of the environment.

Article 75. Forms of liability for violation of legislation on protection of the environment.

Civil (material), disciplinary, administrative and criminal liability in accordance with the legislation is established for the violation of environment protection legislation.

Article 76. Resolution of the disputes in the sphere on protection of the environment.

The disputes in the sphere on protection of the environment are resolved in the judicial order in accordance with the legislation.

Article 77. Duty of total compensation of harm to the environment.

1. Legal entities and natural persons, which inflicted harm to the environment as a result of pollution, exhaustion, spoiling, destruction, irrational use of the natural resources, degradation and destruction of natural ecological systems, natural complexes and natural landscapes and another violation of legislation in sphere of protection of the environment, are obligated to compensate it fully in accordance with the legislation.

2. Harm to the environment, inflicted by the subject of economic and other activity, including to project of which is located the positive conclusion of state ecological examination, including activity in the withdrawal of the components of natural environment, should be compensated by customer and (or) by the subject of economic and other activity.

3. Harm to environment, inflicted by the subject of economic and other activity, compensates in accordance with the affirmed tariffs and the procedures of calculation of the amount of harm to environment. With absence of the tariffs, the harm compensates on the basis of the actual expenditures for the restoration of the disrupted condition of environment, taking into account the losses and lost profit.

Article 78. Order of compensation for harm to the environment, inflicted by violation of environmental legislation.

1. Compensation for harm to environment, inflicted by violation legislation in sphere on protection of environment, is accomplished voluntarily or in accordance with court decision or arbitrage decision.

Determining the amount of harm to environment, inflicted by violation of environmental legislation, is accomplished on the basis of actual expenditures for restoration of disrupted condition of environment, taking into account the losses and lost profit, and also in accordance with the projects of restoration works. In the absence of projects, in accordance with tariffs and procedures of calculation of the

amount of harm to environment, affirmed by administrative bodies, which accomplish a state administration in sphere of environment protection.

2. On the basis the court decision or arbitrage, harm to environment, inflicted by the disturbance of legislation in sphere of protection of the environment, can be compensated by placing on the defendant, the responsibility for the restoration of the disrupted condition of environment due to his values in accordance with the project of reducing works.

3. Lawsuits on the compensation for harm to environment, inflicted by violation of legislation in sphere of protection of environment, may be filed within twenty years.

Article 79. Compensation of the harm, inflicted to health and to the property of the citizens as a result of violation on legislation of protection of the environment.

1. The harm, inflicted to health and to the property of citizens by the negative environmental effect as a result of economic and other activity of legal entities and natural persons, is subject to full compensation.

2. The determination of volume and size of the compensation of the harm, inflicted to health and to the property of the citizens as a result of the violation of legislation in sphere on protection of environment, is accomplished in accordance with the legislation.

Article 80. Requirements about limitation, suppression or termination of the activity of persons, accomplished with the violation of legislation in sphere on protection of the environment.

Requirements about limitation, suppression or termination of the activity of legal entities and natural persons, accomplished with the violation of legislation in sphere on protection of the environment, are examined by law court or arbitrage.

Basis of civil legislation of the Union of Soviet Socialist Republics (USSR) on 05.31.1991
(Extract)

Article 131. Compensation of moral harm

The moral harm (physical or moral sufferings), caused to citizen by delicts, compensates by wrong-doer in case of his fault. Moral harm compensates in money

or other substantive form and in the amount, determined by law court, the independently from the compensation property harm.

Decision of the Supreme Soviet of Russian Federation on 03.03.1993 (Extract)

1. Basis of civil legislation of the USSR put into effect in the territory of Russian Federation since August 3, 1992 to those civil-legal relationships, which arose after the said date.

The Civil Code of Russian Soviet Federative Socialist Republic (RSFSR) on 06.11. 1964
(Extracts)

Article 32. Responsibility of legal person

Legal person is responsible on its obligations belonging to it property, to which, according to the legislation of the USSR and the present Code (article 98, 101 and 104) can be recovered.

Article 33. Differentiation of responsibility of state and state organizations

State does not responsible on the obligations of state organizations, which are legal persons, and these organizations are not responsible for the obligations of state. Conditions and order of covering the debts of institutions and other state organizations, which use the state budget, if the debts can not be covered due to their funds, are established by the legislation of the USSR and RSFSR.

Article 444. General reasons of responsibility for infliction of harm

The harm, inflicted to person or to property of citizen, and also the harm, inflicted to organization, is subject to full compensation by the person, who caused the harm. Exceptions of full compensation are the cases, specially provided by legislation of the USSR.

The harm doer is escape from compensation, if he proves an absent of his fault in infliction of harm.

The harm, inflicted by lawful actions, is subject to compensation only in the cases, provided by law.

Article 454. Responsibility for the harm, inflicted by the source of the increased danger

Organizations and citizens, whose activity is connected with the increased danger for surrounding (transport organizations, industrial enterprises, construction companies, owners of cars, etc) are obligated to compensate the harm, inflicted by the source of the increased danger, unless they prove, that the harm arose as a result of irresistible force or intention of the suffered person.

Convention for the Protection of Human Rights and Fundamental Freedoms on 04.11.1950
(Extracts)

Article 6. Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

Article 34. Individual applications

The Court may receive applications from any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

Article 46. Binding force and execution of judgments

1. The High Contracting Parties under-take to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

3. If the Committee of Ministers considers that the supervision of the

execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the Committee.

4. If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two-thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1.

5. If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case.

Protocol №1 on 20.03.1952 to the Convention for the Protection of Human Rights and Fundamental Freedoms (Extracts)

Article 1. Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Federal Law "On the use of atomic energy" on 11.21.1995 (extracts)

CHAPTER I
General Provisions

Article 1. Legislative, Legal and Other Acts of the Russian Federation in the Sphere of the Use of Atomic Energy

Matters arising in the peaceful and defensive uses of atomic energy are regulated by the present Law and by other laws and legal instruments of the Russian Federation. Activity connected with the development, manufacture, testing, operation and use of nuclear weapons and nuclear power plants for military purposes is carried out in on the basis of other Federal laws and does not fall within the scope of this Federal Law.

Article 2. Principles and Aims of Legal Regulation in the Sphere of the Use of Atomic Energy

The main principles of legal regulation in the sphere of the use of atomic energy are:

- the ensuring of safety in the use of atomic energy - protection of the individual, the population and the environment against radiation hazard;
- accessibility of information connected with the use of atomic energy, provided that such information does not contain anything that is a State secret;
- the participation of citizens, commercial and noncommercial organisations (hereinafter - organisations), and other corporate bodies in the discussion of State policy, drafts of Federal laws and other legal instruments of the Russian Federation, and also in practical activity relating to the use of atomic energy;
- compensation for damage caused by radiation; provision of social and economic compensation for the adverse health effects of radiation and the additional risk factors for workers in plants using atomic energy; and,
- the guaranteeing of social protection for those who live and (or) work in areas where such plants are situated.

The main aims of the legal regulation of relations arising in the carrying out of all forms of activity in the sphere of the use of atomic energy are:

- establishment of the legal framework for the system of State control over the use of atomic energy and the system for regulation by the State of safety in the use of atomic energy;
- enactment of the rights, obligations and responsibilities of State authorities, local government bodies, organisations and other corporate bodies and citizens.

Article 3. Scope of this Federal Law

The present Federal Law applies to the following:

- nuclear installations - plants, structures and systems having nuclear reactors - including nuclear power plants, ships and other floating objects, space ships and aircraft, other means of transport and transportable devices; plants, structures and

systems having industrial, experimental and research reactors, critical and sub-critical nuclear testing units;
- plants, structures, systems, test grounds, installations and devices with nuclear charges for peaceful purposes; other plants, structures, systems and installations containing nuclear materials for the manufacture, use, processing, transportation and storage of nuclear fuel and nuclear materials;
- radiation sources - systems, installations, apparatus, equipment and components that, not being a part of nuclear installations, contain radioactive substances or give rise to ionizing radiation;
- storage facilities for nuclear materials and radioactive substances, repositories (hereinafter - storage facilities) for radioactive waste - stationary objects and structures not in the category of nuclear installations or radiation sources that are designated for the storage of nuclear materials and radioactive substances and the storage or disposal of radioactive waste;
- nuclear materials - materials containing or capable of generating fissile nuclear substances;
- radioactive substances - substances that, while not in the category of nuclear materials, emit ionizing radiation;
- radioactive waste - nuclear materials and radioactive substances, the further use of which is not envisaged.

The allocation of the objects specified to the categories enumerated is decided by the operating organisation and recorded in an appropriate document in the manner laid down by the Federal authorities for the regulation of safety in the use of atomic energy (hereinafter - the State safety regulatory authorities).

The operation of this Federal Law shall not extend to objects containing or using nuclear materials and radioactive substances in amounts and possessing an activity (and/or emitting ionizing radiation at an intensity or strength) below the levels laid down by Federal rules and regulations on the use of atomic energy as requiring a permit for their use from the State safety regulatory authorities.

Article 4. Forms of Activity in the Sphere of the Use of Atomic Energy

The present Federal Law applies to the following forms of activity in the sphere of the use of atomic energy:
- the siting, design, construction, operation and decommissioning of nuclear installations, radiation sources and storage facilities;
- the development, production, testing, conveyance, storage and use of nuclear charges for peaceful purposes, and their handling;

- the handling of nuclear materials and radioactive substances, including prospecting for and mining minerals containing these materials and substances, and the production, use, processing, conveyance and storage of nuclear materials and radioactive substances;
- the ensuring of safety in the use of atomic energy;
- monitoring nuclear, radiation, technical and fire safety precautions (hereinafter - safety) for nuclear installations, radiation sources and storage facilities, and monitoring the health of citizens in the use of atomic energy;
- the conduct of scientific research in all spheres of the use of atomic energy;
- the physical protection of nuclear installations, radiation sources, storage facilities, nuclear materials and radioactive substances;
- the recording and monitoring of nuclear materials and radioactive substances;
- the exportation and importation of nuclear installations, equipment, technology, nuclear materials, radioactive substances, special nonnuclear materials and services in the sphere of the use of atomic energy;
- State monitoring of the radiation situation in the territory of the Russian Federation;
- the training of specialists in the use of nuclear installations, radiation sources, storage facilities, nuclear materials and radioactive substances;
- the carrying out of other activity in the sphere of the use of atomic energy.

Article 5. Ownership of Nuclear Installations, Radiation Sources, Storage Facilities, Nuclear Materials and Radioactive Substances

The following shall be Federal property:
- all nuclear materials;
- radioactive waste containing nuclear materials;
- nuclear installations, radiation sources and storage facilities for defensive purposes.

Nuclear installations and storage facilities not for defensive purposes shall be Federal property unless otherwise provided by legislation.

Radiation sources and also radioactive substances that are not for defensive purposes and radioactive waste not containing nuclear materials may be either Federal property, or the property of the subject members of the Russian Federation, or municipal property, in the manner laid down by law. Ownership of the said objects shall be given legal expression in a certificate issued by the Government of the Russian Federation in the manner laid down by it.

The handing over of nuclear materials that are Federal property shall be permitted only for use by corporate bodies in possession of permits (licences) issued by the State safety regulatory authorities entitling them to conduct operations in the sphere of the use of atomic energy, and on the basis of agreements drawn up by a specially empowered State body.

The owners of nuclear installations, radiation sources, storage facilities, nuclear materials, radioactive substances and radioactive waste shall monitor their state of preservation and their proper handling in accordance with this Federal Law and other legal instruments of the Russian Federation.

Article 6. Federal Rules and Regulations in the Sphere of the Use of Atomic Energy

Federal rules and regulations (hereinafter - rules and regulations) in the sphere of the use of atomic energy shall lay down the safety criteria, compliance with which is obligatory in the conduct of any type of activity in the sphere of the use of atomic energy. A schedule of the Federal rules and regulations in the sphere of the use of atomic energy, and also amendments and additions to that schedule shall be approved by the Government of the Russian Federation.

The rules and regulations in the sphere of the use of atomic energy shall be drafted and approved in the manner laid down by the Government of the Russian Federation.

The procedure for the drafting and approval of rules and regulations in the sphere of the use of atomic energy must provide for prior publication of the said draft rules and regulations in an official printed organ, and provision must be made for their discussion, with the exception of rules and regulations that are State secrets.

These rules and regulations must take into account the recommendations of the international organisations in the sphere of the use of atomic energy in whose work the Russian Federation participates.

The rules and regulations in the sphere of the use of atomic energy shall be published in an official printed organ, with the exception of rules and regulations that are State secrets.

After the rules and regulations in the sphere of the use of atomic energy come into force they shall be binding on all persons who carry out activity in the sphere of the use of atomic energy and shall be in force throughout the territory of the Russian Federation.

CHAPTER III

The Rights of Organisations, Including Public Organisations (Associations) and Citizens in the Sphere of the Use of Atomic Energy

Article 13. The Rights of Organisations, Including Public Organisations (Associations) and Citizens to Obtain Information in the Sphere of the Use of Atomic Energy

Organisations, including public organisations (associations), and citizens have the right to request and receive information in the manner laid down by the legislation of the Russian Federation from the appropriate authorities and organisations, within their competence, on the safety of nuclear installations, radiation sources and storage facilities that are projected, in the planning stage, under construction, in use and being decommissioned, except such information as constitutes a State secret.

Citizens have the right to obtain information on the radiation situation in a given region free of charge from organisations of the State system for monitoring the radiation situation in the territory of the Russian Federation.

Citizens who have been irradiated have the right to obtain a document on the radiation dose received. The procedure for obtaining such a document and the form that it takes are laid down by the Federal health authorities.

Officials of organisations, including public organisations (associations) and the mass media shall be liable in accordance with the legislation of the Russian Federation for refusal to supply information, and for the wilful distortion or concealment of objective data on matters relating to safety in the use of atomic energy.

Citizens of the Russian Federation have the right to visit nuclear installations, radiation sources and storage facilities for the purpose of informing themselves. The procedure for visiting plants concerned with the use of atomic energy is laid down by the Government of the Russian Federation.

Article 14. The Rights of Organisations, Including Public Organisations, and Citizens to Take Part in the Shaping of Policy in the Sphere of the Use of Atomic Energy

Organisations, including public organisations, and citizens have the right to take part in the discussion of draft legislation and programmes in the sphere of the use of atomic energy, as well as in the discussion of matters connected with the

siting, planning, construction, operation and decommissioning of nuclear installations, radiation sources and storage facilities.

The authorities of the subject members of the Russian Federation and local government bodies in whose territory it is proposed to site nuclear installations, radiation sources or storage facilities are obliged, within the limits of their competence, to organize discussion of matters relating to the siting, planning and construction of plants concerned with the use of atomic energy, with the participation of organisations, including public organisations (associations), and citizens.

In accordance with the results of such discussion, the authorities and local government bodies concerned take decisions, which must be published in an official printed publication. Formal legal objections to these decisions may be lodged within the three months following their adoption by any corporate body or individual whose legal rights and interests may have been prejudiced.

Organisations, including public organisations (associations) are entitled to recommend their representatives to take part in the expert assessment of nuclear installations, radiation sources and storage facilities in the stage of siting, planning, construction, operation and decommissioning.

Article 15. The Right of Citizens to Compensation for Loss and Damage Caused by Radiation Exposure in the Use of Atomic Energy

Citizens who have suffered loss and damage as a result of radiation exposure in connection with the use of atomic energy are entitled to full compensation thereof in accordance with Articles 53, 60 of this Federal Law and other legal instruments of the Russian Federation.

Article 16. The Rights of the Workers of Plants Using Atomic Energy to Social and Economic Compensation

The workers of nuclear installations, radiation sources and storage facilities, persons sent on mission to them, and workers engaged on any other work with nuclear materials and radioactive substances have the right to social and economic compensation for the adverse effect of ionizing radiation on health and for the additional risk factors.

The right to social and economic compensation (including medical and health care) for the adverse effect of ionizing radiation on health is also enjoyed by persons previously employed in plants concerned with the use of atomic energy. The types and amount of the compensation for the adverse effect of ionizing

radiation on health and for the additional risk factors, and also the sources from which this compensation is financed are laid down by the legislation of the Russian Federation.

The procedure for the provision of this compensation is laid down by the Government of the Russian Federation.

Article 19. Civil Rights Regarding the Carrying Out of Medical Procedures Involving the Use of Ionizing Radiation

When requested by the patient, full information shall be given on the size of the dose planned and actually received in investigation or treatment.

The right to decide on the use of ionizing radiation or radioactive substances in carrying out medical procedures is left to the patient or his legal representative.

CHAPTER IV
State Control of the Use of Atomic Energy

Article 20. Federal Bodies Controlling the Use of Atomic Energy

State control of the use of atomic energy is effected by Federal bodies specially empowered for that purpose by the President of the Russian Federation or by the Government of the Russian Federation acting on his instructions (hereinafter the atomic energy control bodies) in the manner laid down by the present Federal Law, and by other laws and legal instruments of the Russian Federation.

In accordance with their Statutes, the powers of these control bodies include:

- implementation of State scientific, technical, investment and structural policy in the sphere of the use of atomic energy;
- formulating and carrying out safety measures for the use of atomic energy in the organisations that they administer;
- drafting rules and regulations in the sphere of the use of atomic energy;
- providing protection against fire for plants concerned with the use of atomic energy and monitoring compliance with the fire regulations;
- ensuring the physical protection of nuclear installations, radiation sources, storage facilities, nuclear materials and radioactive substances;
- arranging for manpower and resources to be ready to take action should emergency situations occur in plants using atomic energy and conducting State monitoring of the carrying out of preventive measures;

- participation in the organisation and implementation of the certification of equipment, components and technological processes for nuclear installations, radiation sources and storage facilities;
- ensuring State monitoring of compliance with the requirements of State standards and regulations for metrological examination and certification in the sphere of the use of atomic energy;
- ensuring State monitoring of the radiation situation in the territory of the Russian Federation;
- ensuring State recording and monitoring of nuclear materials and radioactive substances;
- ensuring State monitoring of the technical safety of ships and other floating structures that have nuclear installations and radiation sources;
- ensuring the formulation and carrying out of programmes for the handling of radioactive waste;
- carrying out other duties pursuant to the Statutes on atomic energy control bodies.

Article 21. State Monitoring of the Radiation Situation in the Territory of the Russian Federation

State monitoring of the radiation situation is carried out in the territory of the Russian Federation for the timely detection of changes in the radiation situation, for assessment, for the prediction and prevention of possible adverse radiation effects on the population and the environment, and also for the systematic provision of prompt and relevant information to the State authorities, the atomic energy control bodies, the State atomic safety regulatory authorities and organisations with a view to adoption of the measures needed to prevent or reduce radiation exposure.

The Government of the Russian Federation determines how the State system for monitoring the radiation situation in the territory of the Russian Federation is organized and operates, and defines the powers of the agencies that carry out the monitoring.

Article 22. State Recording and Monitoring of Nuclear Materials, Radioactive Substances and Radioactive Waste

Nuclear materials are subject to recording and monitoring at the Federal and departmental levels under the system for the State recording and monitoring of nuclear materials, while radioactive substances and radioactive waste are subject to monitoring at the Federal, regional and departmental levels to determine the actual amounts of such materials and substances in the localities where they are found, to

prevent loss, unauthorized use or misappropriation and to provide the State authorities and control bodies for the use and safety of atomic energy with information on the presence and movement of nuclear materials, radioactive substances and radioactive waste, and also on their exportation and importation.

The Government of the Russian Federation determines how the State system for the recording and monitoring of nuclear materials and the State system for the recording and monitoring of radioactive substances and radioactive waste are organized and designates the bodies that carry out the State recording and monitoring of nuclear materials and the State recording and monitoring of radioactive substances and radioactive waste.

CHAPTER V.
Regulation of Safety Aspects in the Use of Atomic Energy

Article 23. State Regulation of Safety Aspects in the Use of Atomic Energy

State regulation of safety aspects in the use of atomic energy is the activity of Federal executive agencies duly empowered by the President of the Russian Federation or by Government of the Russian Federation action on his instructions for the purpose of organizing the drafting, adoption and putting into practice of rules and regulations in the sphere of the use of atomic energy, the issuing of permits (licences) to carry out activity connected with the use of atomic energy, monitoring safety and carrying out expert assessments and inspections, and monitoring the development and application of measures to protect the workers of plants concerned with the use of atomic energy, the population and the environment in the event of an accident in the use of atomic energy.

Article 24. Federal Executive Agencies Carrying Out State Regulation of Safety in the Use of Atomic Energy

State regulation of safety in the use of atomic energy is carried out by duly empowered Federal executive agencies - State safety regulation authorities - that regulate nuclear, radiation and technical safety and fire precautions. These authorities are independent of other State bodies and also of organisations whose activity is concerned with the use of atomic energy.

The types of regulatory activity regarding nuclear, radiation and technical safety and fire precautions, and demarcation of the powers, rights and duties of the agencies concerned, as well as the powers of officials, are set out in the Statutes relating to the State safety regulatory agencies.

The activity of the State safety regulatory authorities is financed from the Federal budget.

Article 25. Powers of the State Safety Regulatory Authorities

The State authorities for the regulation of safety have the following powers within the limits of their competence:

- to submit, for the consideration of bodies with the power to initiate legislation, proposals on the drafting of legislation on matters relating to ensuring safety in the use of atomic energy;
- to draft, approve and bring into force rules and regulations in the sphere of the use of atomic energy in accordance with this Federal Law and the legislation of the Russian Federation;
- to grant licences for activity in the sphere of the use of atomic energy for the purpose of ensuring safety;
- to monitor compliance with rules and regulations in the sphere of the use of atomic energy, and the operating conditions of permits (licences) to carry out work in the sphere of the use of atomic energy;
- to carry out inspections on nuclear, radiation and technical safety, and on fire precautions;
- to inspect the physical protection of nuclear installations, radiation sources, storage facilities, nuclear materials and radioactive substances, and to inspect systems for the unified State recording and monitoring of nuclear materials and radioactive substances;
- to carry out expert assessments of the safety of nuclear installations, radiation sources and storage facilities, including assessments in conjunction with independent specialists;
- to carry out inspections associated with the performance of their functions;
- to participate in the organisation and carrying out of activities on the certification of equipment, components and production processes for nuclear installations, radiation sources and storage facilities;
- to monitor environmental protection and the use of natural resources in the use of atomic energy;
- to monitor the use of material and monetary resources earmarked for activity in the sphere of the regulation of nuclear, radiation and technical safety and fire precautions;
- to monitor compliance with the international undertakings of the Russian Federation relating to safety in the use of atomic energy;

- to apply administrative pressure in the manner laid down by the legislation of the Russian Federation.

Article 26. Permits (Licences) to Carry Out Activities in the Sphere of the Use of Atomic Energy

In this Federal Law, a permit (licence) granting the right to carry out activities in the sphere of the use of atomic energy is understood to mean an official document confirming the right to carry out a specified type of activity provided that the safety of the plant concerned with the use of atomic energy and of the activities carried out is ensured.

Permits (licences) to carry out operations in the sphere of the use of atomic energy are issued by the State safety regulatory authorities. The said permits (licences) are issued to operating organisations, and also to organisations that carry out activities and provide services in the sphere of the use of atomic energy.

The permit (licence) must indicate the holder of the permit (licence), the requirements and conditions necessary to ensure operational safety, and the period for which the permit (licence) is in force.

A schedule of the types of activity in the sphere of the use of atomic energy that require that a permit (licence) be obtained, and the procedures for the granting and revoking of such permits (licences), shall be established by the Government of the Russian Federation.

The introduction of new rules and regulations in the sphere of the use of atomic energy will not automatically entail the revocation of the permit (licence) to carry out activities in the sphere of the use of atomic energy or an alteration in the period for which it is in force.

No activity of any sort in the sphere of the use of atomic energy that has to be licensed by the State agencies for the regulation of safety may be carried out unless a permit (licence) for it has been obtained.

SECTION XII
Liability for Loss and Damage Caused by Radiation Exposure to Corporate Bodies and Individuals and to Health

Article 53. Liability for Loss and Damage Caused by Radiation Exposure to Corporate Bodies and Individuals and to Health

The operating organisation has civil liability in the manner laid down by the legislation of the Russian Federation for losses caused by radiation exposure to corporate bodies and individuals in the carrying out of operations in the sphere of the use of atomic energy.

Compensation must be given for damage to the life and health of citizens caused by radiation exposure, or by radiation exposure in conjunction with toxic, explosive or other hazardous effects.

If the losses caused by radiation exposure are accompanied by any other damage that cannot reasonably be separated from the losses caused by radiation exposure, such losses shall be compensated on the basis of the present Federal Law.

Article 54. The Foundations of Civil Liability for Loss and Damage Caused by Radiation Exposure

In accordance with the present Federal Law the liability of the operating organisation for loss and damage caused by radiation exposure arises whether or not the operating organisation is at fault.

The operating organisation is relieved of liability for loss and damage caused by radiation exposure arose as a result of force majeure, military operations, armed conflict or by the intention of the sufferer.

Should the operating organisation demonstrate that the radiation damage arose, wholly or in part, as a consequence of the intention or gross negligence of the person who suffered the damage, it shall be relieved, in whole or in part, from the obligation to compensate such a person. The lifting of the liability to compensate loss and damage shall be decided by the courts.

Article 55. The Types and Limits of Liability for Loss and Damage Caused by Radiation Exposure

The types and limits of the liability of the operating organisation for loss and damage caused by radiation exposure are fixed in relation to the type of plant concerned with the use of atomic energy by the legislation of the Russian Federation.

The upper limit of the liability of the operating organisation for loss and damage caused by radiation exposure for any one incident may not exceed the amount laid down by the international agreements of the Russian Federation.

Article 56. Financial Provision for Civil Liability for Loss and Damage Caused by Radiation Exposure

The operating organisation is obliged to make financial provision for the maximum liability laid down by Article 55 of the present Federal Law. The financial provision of the operating organisation in the event of the compensation of loss and damage is made up of the State guarantee or other guarantee, the availability of its own financial resources and an insurance policy (agreement).

The existence of documentary proof of the said financial provision is an essential condition for the obtaining by the operating organisation of the permit (licence) issued by the appropriate State safety regulatory authority to operate a nuclear installation, radiation source or storage facility.

The conditions and procedure of civil liability insurance against loss and damage caused by radiation exposure, the procedure and sources for formation of the insurance fund and also the procedure for the paying of social and economic compensation are laid down by law.

Neither the insurer not any other person who has provided a financial guarantee for the said liability in accordance with this article may suspend or terminate the insurance or any other financial guarantee without having given written notice of so doing three months before the suspension or termination of the insurance or any other financial guarantee to the State safety regulatory authority or in the course of transportation of nuclear material and radioactive substances when such insurance or other financial provision affects the transportation of nuclear material and radioactive substances.

Article 57. State Participation in Compensation of Loss and Damage Caused by Radiation Exposure

The Government of the Russian Federation provides for the payment of compensation for loss and damage that has been caused by radiation exposure and for which the operating organisation is liable, for that part of the liability of the operating organisation that exceeds the upper limit of the liability laid down in article 55 of this Federal Law by granting the sums required to make up full compensation for the loss and damage caused, and also in cases for which there is provision in the legislation of the Russian Federation.

Article 58. Time Limit for Compensation for Loss and Damage Caused by Radiation Exposure

No time limit exists for compensation for loss and damage caused by radiation exposure to the health and life of citizens. The time limit for claims for compensation of loss and damage to property or the environment caused by radiation exposure is set at three years from the day when the person was aware or should have been aware of the breach of his right.

Article 59. Compensation for Environmental Radiation Damage

The operating organisation is responsible for environmental radiation damage under the present Federal Law, the Law of the Russian Federation "On Environmental Protection", laws and other legal instruments of the Russian Federation, and also laws and other legal instruments of the subject members of the Russian Federation.

Claims for compensation of damage are brought against the operating organisation by the authorities and by the corresponding local government bodies and specially empowered State environmental protection agencies.

Article 60. Compensation of Radiation Damage Suffered in the Carrying Out of Their Duties by the Workers of Nuclear Installations, Radiation Sources and Storage Facilities

Radiation damage affecting the life or health of the workers (including workers drafted in) of nuclear installations, radiation sources and storage facilities and also to the life or health of workers engaged on any other work with nuclear materials and radioactive substances in connection with the carrying out of their duties is compensated in accordance with the legislation of the Russian Federation.