

# Problems of Civil Responsibility in the Russian Environmental Law

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## 要 旨

「自然環境の保護」という問題は、現在世界の重大な問題の内の1つである。科学技術の進行及び自然に対する人間活動の影響は環境状況を悪化させる一方であろう。具体的には、天然資源の埋蔵量の枯渇、環境の汚染、人と自然との自然な関係の緩み、精神的財貨の損失、人間の身体や精神の健康状態の低下、世界の資源市場や生活空間のための経済・政治的な戦いの激化などである。

ロシア連邦は、環境状況が最悪である世界の国々の中に入っている。環境汚染は先例がない規模に達した。住民健康、および環境への損害の原因は環境汚染である。一方、現在、環境の損害の予防及び補償の有効な方法がない。他方、環境の損害と人間の健康への影響との直接的な因果関係を証明するのは非常に困難である。従って、環境法における民事責任と損害賠償の問題は大切になっている。

**Keywords: civil liability, environmental offence, environmental damage**

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## **Introduction**

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.

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.<sup>1</sup>

In the majority of the industrial regions of the country one third of inhabitants have various forms of immunological insufficiency.

Ecological 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 ecological 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.

## **1. The general structure of environmental legislation**

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.<sup>2</sup>

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 environment", adopted on December 19, 1991<sup>3</sup>, has been the main law regulating the ecological sphere in Russia till 2002. It is important to note that the law contradicts 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<sup>4</sup> (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)<sup>5</sup>;
- Law “On Protection of the Environment” (January 10, 2002);
- Water Code (June 3, 2006)<sup>6</sup>;
- Law “On subsurface Resources” (February 21, 1992)<sup>7</sup>;
- Law On Sanitary and Epidemiological Welfare of Population” (March 30, 1999)<sup>8</sup>;
- Law “On Industrial and Domestic Wastes” (June 24, 1998)<sup>9</sup>;
- Land Code (October 25, 2001)<sup>10</sup>;
- Law “On Protection of Atmospheric Air” (May 4, 1999)<sup>11</sup>;
- Forest Code (December 4, 2006)<sup>12</sup>;
- Law “On Protection of Wildlife” (April 24, 1995)<sup>13</sup>;
- The Tax Code (Chapter 25.2 “Water tax”)<sup>14</sup> + corresponding laws on payment for using land and forest.

Liability is regulated in the Civil Code (1995) and under the laws are also important, if not even more important, because framework laws require specifications by decrees. For example standards for water quality and the regulations for applying licences for use of natural resources are set by decrees.

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. One good example is the Forest Code,

which the Republic of Karelia and the Territory of Khabarovsk took before the Constitutional Court claiming that the federal law contradicted with the Constitution. The Constitution allows private, state and municipal ownership of forests (Art. 9.2), while the Federal Forest Code declared the whole forest fund under state ownership and to be federal. Some republics had allowed private ownership and even more of them declared that natural resources were property of the subject of the federation. The Constitutional court, however, ruled that the Federal Forest Code did not contradict the Constitution, since both the federation and the subjects decide on the use of forests and most of the income (60%) goes to the budget of the subject. The court also reasoned its decision with stating that there is a long tradition in Russia of state ownership of forests (Decision of the RF Constitutional Court on January 9, 1998)<sup>15</sup>.

According to the Land Code, land is divided to agricultural land, inhabited areas for housing, land for industrial and similar purposes, protected areas, the forest fund, the water fund and reserve land.

One additional problem in the federal structure are treaties which the federation has made with individual subjects (regions, territories, republics). The first of these treaties was the Tatarstan Treaty which was an association treaty with the federation, according to the regional interpretation. According to the Constitution of Tatarstan, the natural resources of the republic belong to it.

Under President's centralization, this policy tendencies have grown stronger and the power which had been decentralized to the subjects is gradually taken away from them. 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. The other reason for legislative work is that after the last parliamentary elections the parliament is now able to find political compromises or form majorities and has good relations with the president. A lot of such laws which have earlier been blocked because of the lack of political consensus are now drafted again. 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 more reasonable is to pay attention to federal legislation, even if it does not give a complete overall picture, because it ignores the differences in the circumstances in different regions.

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 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).

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, Item 4). This regulation which is repeated in several general laws such as the Water Code, clearly deviates from the traditional soviet doctrine of the state having exclusive jurisdiction in its area. The new principle allowing international monitoring and advice constitutes a radical change in the doctrine of Russian international law.

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.

## **2. 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 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 Russian Civil Code).<sup>16</sup>

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 harm. This point of view is substantiated, since the term "losses" characterized only property component of harm.<sup>17</sup>

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.<sup>18</sup>

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.

### 3. Legal bases of civil responsibility for environmental delicts

The legal basis for legal responsibility is Law "On protection of the environment" and 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 said about the ecological harm, there are different terms used 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)<sup>19</sup> - 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 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.<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup>

Thus, a sequence 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.

#### 4. Conditions of application of civil responsibility

The fundamental principles of Russian environmental law are set out in the 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 liability 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.<sup>23</sup>

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 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 law 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 were 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.

Art. 86 of Federal Law "On the protection of the surrounding natural 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 Art. 1064 of Russian Civil Code. The content of this principle is disclosed in Art. 1082 of Russian 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 Art. 15 of Russian 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 Art. 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 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 ecological 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.

## 5. The structure of environmental damages

Art.15 of 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.<sup>24</sup> 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 damages"<sup>25</sup> 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 Art.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 Art.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 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.<sup>26</sup>

In Russia, about 7 million people are ill with bronchial asthma — 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 addition, negative consequences may show even 10 years after lead impact in early childhood. In Russia, 2 million children may show excessive lead concentrations.<sup>27</sup>

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.<sup>28</sup> On the November 8, 2003 Segezhsy 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 30,000,000 rubles and compensate material expenditures for treatment and prosthetics of teeth of 50,000 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 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 lack 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 law 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 law 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 Art. 151, 1099, 1101 of the Civil Code the law court recovered from the defender in favor of plaintiff the compensation for moral harm in the amount of 50,000 rubles. With determining of the amount of compensation for moral harm the law 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 18,000 rubles, according to expert conclusion on 10.20.2003.

The bases for the lawsuit are Art. 42 of the Russian Constitution, Art. 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 Art. 151 of Civil Code “On compensation of moral harm” and Art. 1064 of Civil Code “On the fact that the harm to person is subject to full compensation by harm-doer”.

## **Conclusion**

There are some important measures to make more effective potential liability for ecological 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 the 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 connection 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) Municipalities are extremely weak in transition countries, like Russia. In environmental issues municipalities still seem to be remote stations of the state environmental policy. But also Russia seems to have a determined aim to develop its environmental legislation towards international standards. The creation

of the effective mechanism of the action of responsibility in the environmental law will require a time and revision of present legislation.

5) 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).

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) It is expedient at the legislative level to change the order of incoming and use of means, obtained on the lawsuits of compensation of the harm, inflicted by the violation of legislation about the protection of natural environment. Recovered sum must accumulate in the non-budgetary ecological fund for the corresponding level: federal, the subject of the Russian Federation or municipal (depending on that, in whose property belongs environmental object). Solving of this problem must be provided with the clear legal regulation of coordination of the activities of the public administrative bodies and also non-budgetary ecological funds in realization of restoration measures.

8) Russian government passed 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.

For purposes of creation of the effective legal guarantee for realization of the mechanism of compensation of harm, inflicted by violation of legislation about the protection of 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 ecological sphere;

- to elaborate the particular procedure of suing for environmental delicts.

Necessity of adopting this federal law is caused by the following circumstances. First, by the presence of the clearly expressed public-legal originations of the compensation of harm, inflicted to the environment and to the natural resources. In the second place, by the regional natural and economic special features of the objects of delicts, methods of the infliction of harm, forms of the manifestation of this harm and composition of the inflicted losses. Thirdly, by the Art. 72 of Russian Constitution, which relates questions of the regulation of use of natural resources and protection of environment to the subject of the joint jurisdiction of

the Russian Federation.

9) The harm, inflicted to environment, is the variety of civil-legal harm. However, it possesses the special features, caused by object and methods of infliction. In the case of the violation of legislation on the environment, the harm inflicts to the natural resources, which are the object of property rights and other material rights (real property etc.) and, furthermore, to the natural object, which is used and is protected in the Russian Federation as the basis of life and activity of nation.

Thus, the special feature of responsibility on compensation of this harm consists of the satisfaction of the interests not only of suffered environment user, but also owner, or society. The specific character of arising and content of harm to environment determines the special features of its compensation. Analysis of these features makes possible to consider public-legal and private-legal originations in the relations on compensation of harm, inflicted by violation of legislation on protection of the environment.

## **Appendix**

### **(Translations of Russian Legislation)**

#### **The Constitution of the Russian Federation**

##### **(Extracts)**

###### 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 their 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 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 72

1. The joint jurisdiction of the Russian Federation and the subjects of the Russian Federation shall include: a) ensuring compliance of the constitutions and laws of the republics, charters, laws, and other regulatory legal acts of the territories, regions, federal cities, the autonomous region and autonomous areas with the Constitution of the Russian Federation and the federal laws; b) protection of the rights and freedoms of man and citizen, protection of the rights of ethnic minorities; ensuring legality, law and order, and public safety; border zone regime; c) issues of the possession, use and management of the land, mineral resources, water and other natural resources; d) delimitation of state property; e) management of natural resources, protection of the environment and ecological safety; specially protected natural reserves; protection of historical and cultural monuments; f) general questions of upbringing, education, science, culture, physical culture and sports; g) coordination of health issues, protection of family, motherhood, fatherhood and

childhood; social protection including social security; h) implementing measures to combat catastrophes, natural disasters, epidemics and eliminating consequences thereof; i) establishment of the general guidelines for taxation and levies in the Russian Federation; j) administrative, administrative-procedural, labor, family, housing, land, water and forestry legislation; legislation on the sub-surface and environmental protection; k) cadres of judiciary and law-enforcement agencies; the bar, notariate; l) protection of the original environment and traditional way of life of small ethnic communities; m) establishment of general guidelines of the organization of the system of bodies of state power and local self-government; n) coordination of the international and external economic relations of the subjects of the Russian Federation, compliance with the international treaties of the Russian Federation.

2. The provisions of this Article shall equally apply to the republics, territories, regions, federal cities, the autonomous region and autonomous areas.

## **The Russian Civil Code**

### **(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).

## 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”**

**(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, to project of which has been the positive conclusion of state ecological examination, including activity of 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 of 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 decision, 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 restoration of the disrupted condition of environment due to his means 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 the environment, may be filed within twenty years.

## Article 79. Compensation of the Harm, Inflicted to Health and to the Property of Citizens as a Result of Violation of Legislation on Protection of the Environment

1. The harm, inflicted to health and to the property of citizens by 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 citizens as a result of violation of legislation in sphere on protection of environment, is accomplished in accordance with the legislation.

## Article 80. Requirements about Limitation, Suspension or Termination of the Activity of Persons, Accomplished with the Violation of Legislation in Sphere on Protection of the Environment

Requirements about limitation, suspension 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.

## Endnotes and references

- 1 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.
- 2 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).
- 3 RSFSR Law №2060-1 on December 19, 1991 “On Protection of the Environment”, *Vedomosti SND and VS*, № 10, art. 457, 03.05.1992.
- 4 Federal Law №7 on January 10, 2002 “On Protection of the Environment”, *Digest of Russian legislation*, №2, art.133, 01.14.2002.
- 5 The Constitution of the Russian Federation (December 12, 1993), *Rossiyskaya gazeta (Российская газета)* № 237, 12.25.1993.
- 6 Water Code on June 3, 2006, *Digest of Russian legislation*, №23, art. 2381, 06.05.2006.
- 7 Federal Law on February 21, 1992 “On Subsurface Resources”, *Digest of Russian legislation*, №10, art. 823, 03.06.1995
- 8 Federal Law on March 30, 1999 “On Sanitary and Epidemiological Welfare of Population”, *Rossiyskaya gazeta (Российская газета)* №64-65, 04.06.1999.
- 9 Federal Law on June 24, 1998 “On Industrial and Domestic Wastes”, *Digest of Russian legislation*, №26, art. 3009, 06.29.1998.
- 10 Land Code on October 25, 2001, *Digest of Russian legislation*, №44, art. 4147, 10.29.2001.
- 11 Federal Law on May 4, 1999 “On Protection of Atmospheric Air”, *Digest of Russian legislation*, №18, art. 2222, 05.03.1999.
- 12 Forest Code on December 4, 2006, *Digest of Russian legislation*, №50, art. 5278, 12.11.2006.
- 13 Federal Law on April 24, 1995 “On Protection of Wildlife”, *Digest of Russian legislation*, №17, art. 1462, 04.24.1995.
- 14 The Tax Code (Chapter 25.2 “Water tax”), *Parliament newspaper (Парламентская газета)* №140-141, 07.31.2004.
- 15 Decision of the Russian Constitutional Court on 01.09.1998), *Digest of Russian Constitutional Court*, №2, 1998 (*Вестник Конституционного Суда РФ*, №2, 1998).
- 16 S.A. Bogolubov, *Russian ecological law*, Moscow, 2007, p.300-306 (Боголюбов С. А. *Экологическое право*, М., Высшее образование, 2007, с. 300-306).
- 17 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).
- 18 V.V. Petrov, *The Russian ecological law*, Moscow, 1995, p. 334 (Петров В.В. *Экологическое право России*, М., БЕК, 1995, с. 334).
- 19 The Russian Civil Code on 30 November, 1994, *Didgest of Russian legislation*, №32. art.3301, 12.05.94.
- 20 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).
- 21 V. T. Smirnov, *Obligations due to the harm*, Leningrad, 1973, p. 14 (Смирнов В.Т. *Обязательства, возникающие из причинения вреда*. Ленинград, 1973, с. 14).
- 22 B. T. Bazilev, *Bases of juridical responsibility. Materials of scientific conference*, Krasnoyarsk, 1972, p.9 (Базылев Б. Т. *Основания юридической ответственности. Материалы научной конференции*. Красноярск, 1972, с. 9).
- 23 E. Goudina, T. Khovanskaya, *A practical insight to environment law in Russia*, Moscow, 2007.
- 24 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).
- 25 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.
- 26 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.
- 27 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).
- 28 Regional public organization The legal center “Rodnik”, *Materials of judicial practice*, 2005.

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