



The Axiological Approach to the Regulation of the Right to a Favourable Environment

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Abstract: The article is devoted to the problems of the integrative function of axiology as a special philosophic area which studies the axiological phenomena of objective reality. The analysis of different interpretations of values in philosophical, general legal and ecological sense is fulfilled. The axiological approach in regulation of the right to a favourable (healthy) environment is expressed in its allotment with particular primacy in relation to other main human rights and freedoms. In this article the ecological problems of the Arctic and the questions of its development are examined. Attention is focused on the problems of international cooperation in the field of environmental protection of the Arctic as well as on the ways of preserving its sustainable development. In the present article the ecological situation in Arctic countries is examined in terms of the Arkhangelsk region of the Russian Federation. The significance of law enforcement in protection of ecological human rights and the role of the axiological approach in the practice of the Constitutional Court of the Russian Federation (CCRF) are investigated. In the article the problems of compensation for damages caused by infringements on ecological law are determined, and an attempt is made at solving these. Significant attention is paid to the necessity of theoretical and practical usage of the axiological approach in the regulation of the right to a favourable (healthy) environment on the international and domestic levels.

Keywords: Arctic, axiology, ecology, value, right to a favourable environment, health, best existing technologies.





1. Introduction

The axiological problems of law as a whole and of certain human rights become more and more actual, because after the Second World War the law began to encourage the arrangements of social conditions assuring worthy life and free development, and an individual with his rights and freedoms was recognized as the supreme value. Though in the Human Rights Declaration 1948, the International Covenant on Civil and Political Rights 1966, European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, the approach of law and human self-value supremacy was used, man's rights and freedoms are not always observed and defended, and the axiological approach to the regulation of rights and freedoms is legally formalized only on an exceptional basis (for example, Spain Constitution 1978, Germany Nature Conservation and Landscape Management Law 2010 (the latter mentions nature value)).

2. Concept and Importance of the Axiological Approach

In philosophy, “values” means specific social definitions of surrounding world objects which reveal their positive and negative value for man and society (e.g., benefit, good, evil, the beautiful and the ugly contained in social and nature phenomena). To a man, values serve as the points of his interests, and for his consciousness fulfil the function of everyday landmarks in object and social reality, designation of his different practical attitudes to surrounding objects and phenomena.¹

The essential role in the explanation and development of the value theory was played by Immanuel Kant, who considered the behaviour committed by “the sense of duty” as “a moral value.” Kant described this point the following way: The sense of duty objectively requires the action to be committed in full accordance with the law, and subjectively it means “a respect for law” as the only way of a will determination. In the first case actions are committed “according to the duty,” in the second from “the sense of duty.”²

On this basis, coincidence of statute and its subjective estimate in the long run promote the efficiency of legal regulation.

1. Philosophical dictionary / Philosophical digital library, <http://filosof.historic.ru/enc/item/f00/s12/a001248.shtml> (accessed November 3, 2010). *Filosofskiiy slovar / Filosofskaya tsifrovaya biblioteka.*
2. Immanuel Kant, *Lectures on ethics*, “Republic” Press, Moscow 2000, pp. 344–345. Immanuel Kant, *Lektsii po etike*, Izdatelstvo “Respublika,” Moskva, 2000, 344–345.





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There are enough doctrinal developments in the sphere of axiology as a philosophical theory to speak about integrative function which may be applicable, including ecological rights, meanwhile taking into account not formally dogmatic but sociological aspects of these rights.

Talcott Parsons determines values as generally accepted conceptions of a desirable social system in the presentation of its own members.³ In his opinion abstract normative systems turn into functioning systems in reality simply due to their allotment by value content.⁴ So, we can speak about a kind of legalization; the discharge of legal, moral and other standards by means of their value content investment and inclusion in value relations.⁵ The given statement seems to be justified because due to the priority nature of the values, standards endowed with similar content arrange a certain hierarchy in which corresponding collateral subordination is formed.

Nikolai Nenovsky supposes that a “value” can not be understood without any reference to a man; values are objects addressed to men, they are to be seen from the viewpoint of their significance for men.⁶

Values serve as an expression of concerned human attitude to the outside world, they are not just the statement, but the relation with needs, interests, affections, and wishes – and they exist only in social life.⁷ Therefore value of objects is based on their connection with man, and their ability to satisfy his demands and promote the development of his essence.⁸

The author of this article considers that this position can be admitted only partly, because values can't and shouldn't depend on their ability to satisfy the demands of man. Here the significance for man is seen in the ability of provision, not only demands but the fact of its existence, i.e., values cover the whole complex of human vital activity, starting from the value of life itself and completing with the satisfaction of his demands and development possibilities. In other words, value is not a feature, quality or meaning of the object, sequential from its applicability features. A value always exists and depends on the subject.

3. Talcon Parsons, *American sociology: Prospect, problems, methods*, Progress, Moscow 1972, p. 368. Talson Parsons, *Amerikanskaya sotsiologiya: Perspektivy, problemy, metody*, Progress, Moskva 1972, 368.

4. Ibid.

5. Ibid.

6. Nikolai Nenovsky, *Law and values*, Progress, Moscow 1987, pp. 25–26. Nikolai Nenovskiy, *Pravo i Tsennosti*, Progress, Moskva 1987, 25–26.

7. Ibid.

8. Ibid.





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The opinion expressed by Moses Kagan is considered by the author to be true. He supposes that value consciousness should gain a new content and a new structure, which will provide a successful practical solution of the whole complex of modern interdependent tasks.⁹ For this purpose the philosophical value theory should explain the possibility of ecological catastrophe's overcoming.¹⁰ The catastrophe is inevitable in the value hierarchy which has been formed in the industrial society.¹¹ Besides, it is essential to prove why it is necessary to form such a value system, in which existential values of mankind as a single subject will undoubtedly prevail over values of the different "partial," socially grouped subjects – racial, ethnic, class-specific, professional, confessional, etc., proving by this the unacceptability of permission to solve by force any social conflicts, which threaten world-wide disaster on the reached level of the military equipment, technologies of material sphere and genetic engineering.¹²

The author of this article supposes that the aim of the axiological approach to the right to a favourable environment is to rethink the present government and society's attitude to environmental issues, its influence on a human being and, in the end, to improve legislation, legal culture, and system of education in accordance with the significant level of this institute. The examination of the right to a favourable environment through the prism of values lets us talk about its priority while providing the basis for the regulation of social relations arising in connection with the environment, where no measures can be seemed excessively strict.

Here we should speak no longer about axiological notion in general, but about legal values. While determining the notion of legal values, Andrei Babenko has reached the conclusion that legal values are formed by legal theorists and are proclaimed by the government, creating the ideal model of law.¹³ A personality, while mastering these values makes them the motives of his/her legal conduct, translates them into the legal reality. Babenko supposes legal values to be the forms of human positive relation (felt by people and determined by culture) to the legal system of

9. Moses Kagan, *Philosophical value theory*, LLP TC "Petropolis," Saint Petersburg 1997, p. 204. Moisei Kagan, *Filosofskoiy teoriiy tsennosti*, TOO TK "Petropolis," Sankt Peterburg 1997, 204.

10. Ibid.

11. Ibid.

12. Ibid.

13. Andrei Babenko, *Legal values and their mastering by a personality: thesis of doctor in Law*. 12.00.01. – Moscow, Management academy of the Ministry of Internal Affairs of the Russian Federation, 2002. Pp. 2 and 14. Andrei Babenko, *Pravovye tsennosti i osvoenie ikh lichnostyu: dissertatsiya doktora yuridicheskikh nauk*. 12.00.01. – Moscow, *Academiya upravleniya Ministerstva vnutrennikh del Rossiyskoiy Federatsii* 2002.





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the society, which stipulate the choice of behaviour corresponding to one or another system and besides the events' legal evaluation.¹⁴

The author of this article is of the opinion that the axiological approach is the way of cognition and personal perception of the researched object through the prism of value for a man, society and state, based on the principle of humanity.

3. The Problems of Compensation of Environmental Damage

Scientific literature reviews, both in the field of ecological and constitutional law and in the field of philosophy, show that it is advisable to examine the right to a favourable environment in the terms of axiological approach. Owing to this approach the right to a favorable environment is granted a special priority in relation to other human rights and fundamental freedoms. The "value" category is inseparably connected with the subjective perception and assessment of events. One and the same phenomenon or institution may be interpreted in different ways by different people. It is mainly connected with a man's upbringing and with the construction in him of the value foundation which is adopted by the state he lives in, by the nation he belongs to, by the social group he refers to, etc. A man will use this value foundation in his future. But it is possible that a man and a society as a whole can revalue this or that phenomenon and work out the value approach it deserves. This is not connected with large time expenditures; revaluation may take place even within one generation.

Bertrand Russel also agreed with the subjective character of the value perception. He said: "When we affirm this or that 'has a value' we express our own emotions and not the real fact free of our feelings."¹⁵

In Russian legal doctrine there is no polarization of opinion on the notion "a favourable environment." The most optimal definition of this notion was given by professor Mikhail Brinchuk: "the environment is favourable if its condition corresponds to the established by ecological legislation requirements and norms, concerning cleanness (immaculacy), resource intensity (inexhaustibility), ecological stability, species diversity and aesthetic richness."¹⁶

14. *Supra* note 13.

15. Bertrand Russel, *Philosophical dictionary of intellect, matter, morality*, Port-Royal Press, Kiev 1996, p. 162. Bertran Rassel, *Filosofskiiy slovar razuma, materii, morali*. Izdatelstvo Port-Royal, Kiev 1996.

16. Mikhail Brinchuk, "Favourable environment – the most important category of law," *Russian Law Journal*, (Vol. 9) 2008, p. 47. Mikhail Brinchuk "Blagopriyatnya okruzhayutchnaya sreda – vazhneishaya kategoriya prava," *Rossiyskiiy zurnal prava*, (9) 2008.





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Jamila Velieva supposes that law realization on favourable environment consists in the possibility to use the favourable condition of the environment, to live in healthy environment, which does not threaten life and health and promotes full and free personality's development. Velieva writes: "The favourable condition of the environment is the obligatory component of the right to worthy living standards."¹⁷

Under Article 42 of the Constitution of the Russian Federation (CRF) everybody has a right to a favourable environment, reliable information about its condition and on the reparation of health or property damages caused by ecological breaking of the law. However Russian legal system in the field of environmental protection and also the system of its financing does not meet the efficiency criteria in the observance of the right to a favourable environment because it has a disconnected and contradictory character. It has an impact on the practice of its realization, for example, it concerns the problems of compensation of harm caused to a person by unfavourable environmental impact. So the existing system of approving of that damage prevents the full human defense from unfavourable environmental factors. In the case of the damage as an ecological breaking of the law, a person, whose constitutional right is broken, when making a claim, is obliged to adduce following evidence: 1) environmental pollution evidence pointing out the multiple exceeding of the maximum permissible concentration (MPC), written by ecological monitoring or sanitary- epidemiological supervision body, 2) personal injury evidence, and 3) the existence of causal relationship between damnification and unfavourable environmental impact.

The difficulty of proving the causal connection between health damage and environmental pollution is the main argument hindering developing of court practice on the defense of citizen's ecological rights.¹⁸ Besides a person may not feel immediately the negative influence on his health as from the environment and that is why he has an increased risk of impossibility of finding the cause of this or that disease; diseases become chronic.

17. Jamila Velieva, "The notion of constitutional ecological rights and their significance in the system of the existing legal regulation," *Constitutional and municipal law*, (3) 2011, pp. 75–80. Jamila Velieva, "Ponyatie konstitutsionnykh ekologicheskikh prav i ikh znachenie v sisteme deistvuyutcheho pravovogo regulirovaniya," *Konstitutsionnoe i munitsipalnoe pravo*, (3) 2011.
18. Andrei Anisimov ed., *Theoretical and practical commentary to the Federal law "About environmental protection" (item-by-item)*, Business yard: Moscow, 2010. *Commentary to the Article 79.* Andrei Anisimov, *Teoreticheskii i prakticheskii kommentariy k Federalnomy zakony "Ob okhrane okruzhautcheiy sredy" (postateinyiy)*, Delovoiy dvor: Moskva, 2010. *Kommentariy k statie 79.*





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This example illustrates the problem occurred when rights and freedoms are guaranteed by the Constitution but cannot be realized because of discrepancy between *de jure* and *de facto* relations. It is worth noting that for law assurance, its formal laying down in law is not enough. An effective system of realization is necessary, which will be able to consider all the circumstances of this or that case.

From the axiological approach viewpoint it is necessary to introduce presumption of harm-doer's guilt, i.e., a producer or another person negatively influencing the environment should prove the absence of harm for a person in its activity.

4. Application of the Axiological Approach to the Ecological Rights

Along with the value notion in philosophical interpretation and value from the law viewpoint there is also an ecological value notion. According to Stuart Bell and Donald McGillivray the ecological value is something that is allotted with significance to the environment by people and thereby is in priority for ecological policy and finally for environmental law.¹⁹ Herewith to prevent competition values should be arranged by priorities.²⁰ Speaking about revaluation of any social relations' institutions, Bell and McGillivray connect it with the possibility of new law adoption.²¹ However it is supposed that the adoption of a new law will not be able to involve phenomenon revaluation, furthermore it should be of mass type. The subject may withhold action under the threat of sanction. But such a marginal behavior will not promote the social relations' development because if its own perception contradicts privacy law prescription, the danger of law-breaking remains. A similar situation fits itself in the scheme, which was given a short sketch of by Kant, i.e., people act "according to the duty" but not from "the sense of duty."

Describing value approach to ecological rights, Bell and McGillivray conclude that starting with the judicial authority and ending with individual interests, environment protection should lie in the root of everybody's actions.²² But Bell and McGillivray say that this general agreement disguises fundamental differences in choice people could make.²³

In the Russian law doctrine and also in the practice of the CCRF on human rights and freedoms; the supremacy of law, justice and equality; democratic, feder-

19. Stuart Bell and Donald McGillivray, *Environmental law*, sixth edition, Oxford: Oxford University Press, 2006, pp. 46, and 48.

20. *Ibid.*

21. *Ibid.*

22. *Ibid* at p. 52.

23. *Ibid.*





ative, legal and social state; separation of powers, parliamentarism; legal economy are presumed as constitutional values,²⁴ however, given examples although being of a particular importance, are largely of abstractedly uncertain nature, that's why there are contradictions in practice.

Artificial exaggeration of the value category is presented to be inadmissible because it may lead to substitution of one value by another, appearance of anti-values which will be used as a guideline and finally it may lead to the depreciation of true priorities. In author's opinion only several rights and freedoms may have a status of a constitutional value. Here the constitutional value acts as a variety of legal values and values in whole. The value gains its status of constitutionalism at the expense of its assignment in the Constitution as the Basic State Law. In this case the right to a favourable environment acts as a constitutional value due to the special importance of this right and the character of the failure's consequences.

The meaning of the axiological approach to the right to a favourable environment is seen first of all in the growth of a man's role himself, his inner characteristics, i.e., orientation on ecologically significant behaviour. Such orientation may be expressed in agreement of given tasks, achievement the targets and decisions with ecological component. It means that if human targets, tasks and decisions may negatively influence the environment, we should give up them or correct in such a way that they don't contradict ecological reasonability. Here we may face the danger that a man will prefer to realize easily his need to the detriment of environment, particularly as ecological breaking of the law is of latent character. Nevertheless, in the Arkhangelsk region, Russia, in 2010–2011 a considerable amount of breaches of the environmental legislation are revealed. The distinguishing feature of such cases is that actions in most cases are filed not by citizens, foreigners or apatrides, but by prosecutors in favour of general public and the Russian Federation. This prosecutor's right is enshrined in Article 45 of the Code of Civil Procedure of the Russian Federation (CCPRF).²⁵

According to Part 1 Article 45 of the CCPRF a public prosecutor may apply to a court for the defense of rights, freedoms and legitimate interests of citizenry, general public or interests of the Russian Federation, subjects of the Russian Federation, municipal units. A petition for the defense of rights, freedoms and

24. Valery Zorkin, "The axiological approach in constitutional regulation of rights and freedoms," *Russian Law Journal*, (12) 2008, pp. 13–14. Valery Zorkin, "Tsennostnyiy podkhod v konstitutsionnom regulirovanii prav i svobod," *Zhurnal rossiyskogo prava*, (12) 2008.

25. The Code of Civil Procedure of the Russian Federation, dated November 14, 2002, №138-FL [the official text accepted by the State Duma of the Russian Federation on October, 23, 2002] // the Code of laws of the Russian Federation. 2002. № 46. P. 4532. Grazhdanskiy protsessualnyy kodeks Rossiyskoy Federatsii.





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legitimate interests of a citizen may be submitted by a public prosecutor only in the case when the citizen is not available to apply to a court himself due to the state of health, age, incapacity and other reasonable excuse. The above-mentioned restraint is not expanded for the prosecutor's petition, the reason for which is the appeals of citizenry to him ... the assurance of the right to a favourable environment. Thus, the appropriate inter-district prosecutors applied for the district courts of Kotlas and Krasnoborsk of the Arkhangelsk region with the demands to the administrations of the municipal units to invalidate inactivity and to oblige them to remove the unauthorized dumps.²⁶ In the both cases the courts correctly took into consideration all the facts of the case and made the decisions to satisfy the announced claims.

In other case, "an inter-district prosecutor on nature conservation applied for the city court of Koryazhma of the Arkhangelsk region in behalf of general public and the Russian Federation to the public corporation " ... " about obliging it to remedy failures of environmental legislation."²⁷

During a check a prosecutor determined that in the public corporation " ... " with the affiliate in the city of Koryazhma, the affirmed in accordance with established legislation of the Russian Federation plan on prevention and liquidation of oil and oil products spills on the fuel and lubricant storage of the warehouse complex of the directorship on market and logistics is missed.²⁸

The fuel and lubricant storage of the affiliate is a dangerous industrial object. The plan on prevention and liquidation of oil and oil products spills on the fuel and lubricant storage of the affiliate was developed in 2003 and its duration has already expired.²⁹ The enterprise conducts its business on the industrial ground located on the river Vychegda in close vicinity to the residential development of

26. The decision of the district court of Kotlas of the Arkhangelsk region: "Recognition of inactivity illegal and obliging to remove illegal dumps", <http://kotlasgrsud.arh.sudrf.ru/index.php>, (accessed October 27, 2010); *reshenie okruzhnogo suda g. Kotlas Arkhangelskoiy oblasti: "Priznanie bezdeistviya nezakonnym i obyazanii udalit nesanktsionirovannuyu svalku;"* the decision of the district court of Krasnoborsk of the Arkhangelsk region: "To assign duties to eliminate unauthorized dumping in the settlement", <http://krasnud.arh.sudrf.ru/>, (accessed October 27, 2010); *reshenie okruzhnogo suda g. Krasnoborsk Arkhangelskoiy oblasti: "obyazanie udalit nesanktsionirovannuyu svalku.*

27. The decision of the city court of Koryazhma of the Arkhangelsk Region: "To assign duties to eliminate violations of environmental laws" of 05.05.2011 №2-164 <http://koryazhmasud.arh.sudrf.ru/>, (accessed October 27, 2010). *Reshenie gorodskogo suda g. Koryazhma Arkhangelskoiy oblasti: "obyazanie ustranit narushenie prirodookhrannogo zakonodatelstva.*

28. Ibid.

29. Ibid.





the city Koryazhma, and this endangers the infringement of the constitutional rights of citizenry on favourable environment.

The respondent did not admit the claim and insisted that in 2008 the specialists of the enterprise developed, endorsed with the Directorate of the Federal Service for Supervision in the Sphere of Natural Resource Use for the Arkhangelsk Region and considered by the department of civil defense, emergency and mobilization work of Koryazhma administration. “The plan on liquidation of oil products emergency spills on the fuel and lubricant storage of Kotlas affiliate of the public corporation “ ... ”.”³⁰ The maximum predictable amount of oil products’ spill may be 90,0 tons (by the destruction of one of the above-ground storage tank) and 9,0 tons (by the destruction of the truck tank). According to Paragraph 3 of the Main Demands to planning the prevention and liquidation of emergency spills of oil and oil products affirmed by the Resolution of the Russian Federation Government dated by August 21, 2000 №613,³¹ the level of possible emergency planning belongs to the category of local significance. The proceeding resulted by the dismissing of the claim”.³²

In another case, “ ... ” the district court of Solombala of Arkhangelsk City on January 25, 2011 in Arkhangelsk tried a civil case in open court on the suit of the acting Arkhangelsk inter-district prosecutor on nature conservation to the close corporation “L” concerning the obligation to rectify the discovered violations of environmental legislation.³³

In the law suit explanation the prosecutor stated that the Prosecutor’s Office conducted an inspection of environmental legislative execution in the close corporation “L” activity. During which it was established that statutory requirements were executed unduly: the absence of the special training in the field of environmental protection of the executive director, on whom the general management

30. *Supra* note 27.

31. The Resolution of the Russian Federation Government “On the urgent measures on the prevention and liquidation of emergency spills of oil and oil products” dated by August 21, 2000 №613 “Rossiyskaya Gazeta,” September 1, 2000, №170. Postanovlenie Pravitelstva Rossiyskoy Federatsii “O neotlozhnykh merakh po preduprezhdeniyu i likvidatsii aviariynykh razlivov nefi i nefteproduktov.”

32. The decision of the city court of Koryazhma of the Arkhangelsk Region: “To assign duties to eliminate violations of environmental laws” of 05.05.2011 №2–164 <http://koryazhmasud.arh.sudrf.ru/>, (accessed October 27, 2010). Reshenie gorodskogo suda g. Koryazhma Arkhangel'skoy oblasti: “obyazanie ustranit narushenie prirodookrannogo zakonodatelstva.”

33. The decision of the district court of Solombala of Arkhangelsk city: “To assign duties to eliminate violations of environmental laws” of 25.01.2011 №2-52 <http://solombsud.arh.sudrf.ru/>, (accessed October 27, 2010). Reshenie okruzhnogo suda Solombala g. Arkhangel'sk: “obyazanie ustranit narushenie prirodookhrannogo zakonodatelstva.”





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and responsibility on the estate of work safety and environmental legislation are laid by the order dated by October 1, 2010. Registration certificates on 16 types of dangerous waste products Class 1–4 are absent. The scheme of the layout of taking of water resources wasn't drawn out and coordinated. In the channel Maymaks and in the Isakogorka River a waste water disposal is carried out with a surplus of enforceable standards.³⁴ In this case the Court satisfied plaintiff's claim and obliged the close corporation "L" to eliminate the revealed violations."³⁵

Thus, as can be seen from above examples, the human relation to the environment is built both theoretically and practically. The theory is expressed in the cognitive study of environmental possibilities, resource intensity, etc. The practice is in actions (inactivity) of a man connected with the use of natural resources. The interlink between the theory and the practice is the axiological approach, expressed in the idea of the value interdependence and interaction of the outside world. Outside a man and without a man the notion of a value can't exist because it represents a special human type of the significance of objects and phenomena. On this basis a favourable environment has undoubtedly a special significance for a man; however the today's relation of the states, society and a man is directed to an economic growth's gaining while an ecological component is considered to be more an exception than a key point.

The axiological approach also may be used not only on the level of an individual but of a state in whole. Legislatively it is necessary to assign regulation according to which not only a man, his rights and freedoms are considered to be of the supreme value (Article 2 of the C RF), but also a favourable environment is a value because it is in interdependent and interacting state with him. Besides a special role belongs to the Constitutional Court and other courts of the judicial system which should judge according to the axiological approach, on the basis of the ecological priority. The CCRF pointed out the value potential of the ecological human rights not once, however this practice is not enough to speak about formed judicial constitutional axiology. Thus, "Russian citizenry went to the Constitutional Court of the Russian Federation requesting to recognize Article 11 of the Federal Law dated by November 23, 1995 №174-FL "On ecological expertise"³⁶ contradictory to Articles 42 and 55 (part 2) of the CRF. In the first one there is a list of objects subject to an ecological expertise of the federal level. Since January 1, 2007, after introduction by the Federal Law of December 18, 2006 № 232-FL "On the Amendment of the

34. *Supra* note 33.

35. *Ibid.*

36. The Federal Law "On ecological expertise," 23.11.1995 №174-FL "Code of laws of the Russian Federation," 27.11.1995, №48, p.4556. Federalnyy zakon "Ob ekologicheskoiy ekspertize."





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Urban Development Code of the Russian Federation and certain Legislative Acts of the Russian Federation”³⁷ of changes to the Federal Law “On ecological expertise,” the list of objects of the state ecological expertise of the federal level was reduced.

The CCRF in its decision pointed out that during the realization of the constitutional demands in the sphere of environmental protection and ecological safety assurance, the federal legislator for the purpose of ecological safety should create an effective legal mechanism of the rational exploitation of natural resources and environmental protection from harmful impacts. The main elements of such a mechanism are particularly: an estimate of human economic activity’s impact on the environment and an environmental expertise.

While analyzing the regulations of the CRF, of the Land Code of the Russian Federation³⁸ and of the Federal Law “On ecological expertise,” the CCRF concluded that in economic activity realization it is forbidden to follow only the interests of economic growth to the detriment of nature. The main task of the state is to solve ecological and economic conflicts and to balance public and private interests so that under the conditions of the economic development, the activity of business entities gains the ecologically compatible nature.

Concerning the amendments to Articles 11 and 12 of the Federal Law “On ecological expertise,” the CCRF decided that this didn’t result in cancellation of the demand to conduct an environmental expertise in preparing project documentation for construction activity. The form of checking has changed—instead of state environmental expertise, state sanitary-epidemiological expertise and some others, the integrated state expertise of planning documentation and results of engineering survey in concordance with the Urban Development Code of the Russian Federation and the organizational Regulation of the state expertise of the planning documentation and the results of engineering survey, affirmed by the resolution of the Government of the Russian Federation of March 5, 2007 №145.³⁹

37. The Federal Law “On the Amendment of the Urban Development Code of the Russian Federation and certain Legislative Acts of the Russian Federation,” 18.12.2006 №232-FL “Parlament-skaya Gazeta,” №214-215, 21.12.2006. Federalnyy zakon “O vnesenii izmeneniy v gradostroitelnyy kodeks Rossiyskooy Federatsii i otdelnye zakonodatelnye akty Rossiyskooy Federatsii.”
38. The Land Code of the Russian Federation, October 25, 2001 №136-FL: [the official text was adopted by the State Duma of the Russian Federation September 28, 2001] // Code of laws of the Russian Federation. (44) 2001. Pp. 41 and 47. Zemelnyy kodeks Rossiyskooy Federatsii.
39. The Resolution of the Government of the Russian Federation “On procedure of organizing and conducting of state expertise of the planning documentation and the results of engineering survey,” 05.03.2007 №145 “Code of laws of the Russian Federation” 12.03.2007 №11, p.1336. Postanovlenie Pravitelstva Rossiyskooy Federatsii “O poryadke organizatsii i provedenii gosudarstvennoy ekspertizy proektnoy dokumentatsii i rezultatov inzhenernykh izyskaniy.”





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The CCRF specified that federal legislator while regulating the relations in the field of environmental protection and the ensuring of ecological safety possesses discretion both in the choice of the objects for environmental expertise and the forms of conducting a check of compliance of obligatory ecological requirements. Instead of conducting the state environmental expertise and some others, the integrated state expertise can be conducted if there is a balance of such constitutionally protected values as a necessity of economic development from one side, and ecological safety and satisfaction of future generations' requirements from the other.

For these purposes while conducting an expertise it is necessary to take into consideration that the most effective procedure will be one which basing on independence of experts, publicity, responsiveness to public opinion, will enable to give an integrated assessment of the implementation of economic activities on natural environment. As a result the court denied the processing of citizenry's complaint.²⁴⁰

This case demonstrates the searching for the balance between ecological and economic interests and shows us a treatment of the supreme body of the constitutional justice to the environment as a value. However, the axiological approach shouldn't be framed by the constitutional justice because even if the Constitutional Court admits the value of the environment and of the ecological human right, the finite law enforcement body and executive officers, in the given case this is the Federal Service for Environmental, Technological and Nuclear Supervision, may treat the case more or less formally. Thus, the axiological component should be in activities of each body which carries out ecological control and supervision. This means that the governmental authority, on the basis of the principle of environmental threat of the economic activity, should leave the priority for the favourable environment and if there is any suspicion on environmental threat, it should demand the excluding of violations or prohibit the activity connected with the influence on the environment.

40. The decision of the Constitutional Court of the Russian Federation "On the refusal to accept for consideration the complaint of citizenry Kulakova Natalya Anatolyevna and Lisitsina Natalya Aleksandrovna on the violation of their constitutional rights by the Article 11 of the Federal Law "On the environmental expertise," September 30, 2010, №1421-O-O in "Vestnik of the Constitutional Court of the Russian Federation," 2011, №2. Reshenie Konstitutsionnogo suda RF "Ob otkaze v prinyatii k rassmotreniu zhaloby grazhdan Kulakovoi Natalyi Anatolyevny i Lisitsinoi Natalyi Aleksandrovny na narushenie ikh konstitutsionnykh prav staŕey 11 Federalnogo zakona "Ob ekologicheskoiy ekspertize."





5. Value of the Arctic as an Object Environment

However criticism of the axiological approach also takes place. It is expressed in the opinion that there is no necessity in the construction of such rights because it may lead to the social priorities' conflict.⁴¹ Argumentation that environment value consists in allotment the possibility for future generations and nations to live in favourable (healthy) environment don't speak well for the balance of this institution with other values or rights.⁴² Further it is told that it is unobvious whether the acceptance of these rights will lead to a better environmental protection or not and this can be done just through the better legal regulation.⁴³

Certainly the conflict between the right to a favourable environment and other rights and social interests may occur. But speaking about no necessity in this institution's examination in terms of value priority meaning, you should pay attention to the danger carried by the existent level of environmental pollution which has a tendency for expansion. Adding to this climate changes and natural resources' exhaustion, environmental threat is certainly one of the most serious modern problems.

In the author's opinion, the favourable environment is a condition for the correct and secure functioning of the social relations' system not only in a single state but also in other countries. Therefore while examining this institution in terms of value approach; we may say that it plays a security role in realization of other human rights and freedoms. Professor Nadezhda Chertova notes that the ecological component is revealed more or less in every type of rights.⁴⁴ The right to a favourable environment in varying degrees really ensures the full realization of civil (private), social as well as political, economic and cultural rights.

A dangerous situation in the Arctic speaks well for the allotment with a matter of priority of the right to a favourable environment. The experts suppose that in

41. Patricia Birnie, Alan Boyle Alan, and Catherine Redgwell, *International Law & the Environment*, Oxford: Oxford University Press, 2009, p. 269.

42. *Ibid.*

43. *Ibid.*

44. Nadezhda Chertova, *Environmental laws in the constitutional system of human rights // Russian and European law: traditions and development strategy in conditions of globalization: the materials of the international theoretical and practical conference, dedicated to the 15-th anniversary of the faculty of law of the Pomor State University (Arkhangelsk, 30–31 October, 2007) / Melentyeva Marianne ed., Arkhangelsk: The Pomor State University, 2008, p. 256. Nadezhda Chertova, *Ecologicheskie prava v konstitutsionnoy sisteme prav cheloveka i grazhdanina // Rossiyskoe i evropeyskoe pravo: traditsii i strategiya razvitiya v usloviyakh globalizatsii: materialy mezhdunarodnoy nauchno-prakticheskoy konferentsii, posvyatshennoy 15-letiyu uridicheskogo fakulteta Pomorskogo universiteta (Arkhangelsk, 30–31 oktyabrya 2007 g.) / sost. i otv. red. M.G. Melentyeva. Arkhangelsk: Pomorskiy Gosudarstvennyy universitet, 2008.**





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the Arctic environmental degradation scale is becoming dangerous, breach and destruction of natural eco-systems seriously damage the health of indigenous people of the North and migrants,⁴⁵ many of which are still engaged in traditional way of life.

The examining of the materials of the Federal infobase of social-hygienic monitoring has shown that the high levels of water objects' pollution are observed in the Nenets and Yamalo-Nenets Autonomous Districts, the Murmansk and Arkhangelsk Regions.⁴⁶ The author considers that ecologically-unfavourable situation in the Arctic zone may now obtain irreversible effects because the environment in the Arctic is unsustainable and practically cannot be reconstructed.

Exploration of the Arctic demands a special ecological attention because it influences climate and weather formation on the Northern hemisphere a lot and it possesses a unique naturally-ecological space. The Russian Arctic zone is characterized by: the local nature of the economic exploration of the territories, the remoteness and the inaccessibility of transport, the emergency vulnerability and

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45. Anatoly Buganov, *Issues of Preventive Medicine in the Yamal region*. Nadym: Medicine, 2002; Anatoly Buganov, *Voprosu profilakticheskoiy meditsiny v Ymalskom regione*; Vladimir Bykov, Alexey Zotov, and Valery Chashchin, *Environment and risk assessment for public health Kola Polar Region*, *Bulletin of St. Petersburg State Medical Academy*, (4) 2005, pp. 172–173; Vladimir Bykov, Alexey Zotov, and Valery Chashchin, *Okruzhayushchaya sreda i otsenka riska dlya zdorov'ya naseleniya Kolskogo Zapolyaria*; Tatiana Cochlin and Galina Kushnikova, *Ecological and health effects of oil pollution of the geological environment*, *Hygiene and sanitation journal*, (4) 2008, pp. 23–26; Tatiana Cochlin and Galina Kushnikova, *Ekologo-meditsinskie posledstviya zagryazneniya nefteproduktami geologicheskoiy sredy*; *On sanitary and epidemiological situation in the Russian Federation in 2009: National Report of the Federal Service for Supervision of Consumer Rights Protection and Human Welfare*, 2010; *O sanitarno-epidimiologicheskoiy obstanovke v Rossiiyskoiy Federatsii v 2009 g.: Natsionalnyiy doklad Federalnoiy sluzhbu po nadzoru v sfere zashchity prav potrebiteley i blagopoluchiya cheloveka*, 2010; Valery Trufakin, Vyacheslav Khasnulin, *Medical and environmental health problems of the northern regions in Complex socio-hygienic studies in Siberia. Looking into the XXI Century*. Novokuznetsk: SO RANM, 1998, pp. 3–16; Valery Trufakin, Vyacheslav Khasnulin, *Mediko-ekologicheskije problemy okhrany zdoroviya naseleniya severnykh regionov*.
46. *On the sanitary-epidemiological situation in the Russian Federation in 2009: National Report of the Federal Service for Supervision of Consumer Rights Protection and Human Welfare*, 2010, 456 p. <http://34.rosпотребнадзор.ru/files/documents/doclad/33932.pdf>, (accessed March 01, 2012). *O sanitarno-epidimiologicheskoiy obstanovke v Rossiiyskoiy Federatsii v 2009 g.: Natsionalnyiy doklad Federalnoiy sluzhbu po nadzoru v sfere zashchity prav potrebiteley i blagopoluchiya cheloveka*, 2010.





slow reducibility of natural ecosystems.⁴⁷ A major oil and gas deposits are concealed in the Arctic area. However, specialists note that oil-producing, oil-refining and gas industry are huge environmental pollutants and negatively affect chemical and physical influence on all natural components: lands, subsoil, forests, atmospheric air, water bodies, fauna, landscapes and ecosystems in whole.⁴⁸ According to Vladimir Komissarenko, in those subjects of the Russian Federation where enterprises of the industry are concentrated, the ecological situation is characterized as unfavourable and the environmental contamination level is evaluated to be high.⁴⁹

The environmental threat concealed in the Arctic's exploration dictates the necessity, first of all, in its scientific study including not only concerning searching and developing of natural resources but also protecting of the Arctic and arctic states environment; and secondly, in domestic and international monitoring of the environment. In the case of obvious threat of violation or actual violation of environmental legislation and effective international standards, all the activities on the Arctic's exploration should be blocked till the danger or violation are eliminated.

The state of environment in arctic countries is very important for the Arctic. It is necessary to examine this question through the example of the Arkhangelsk Region. According to the data on the state of the environment in the Arkhangelsk Region in 2009, the quality of water in water pools which don't correspond to the hygienic norms is set in 16 districts of the region.⁵⁰ The high level of samples, not answering the hygienic norms on sanitary-chemical pointers, is in Severodvinsk, Koryazhma (more than 90%).⁵¹ The exceeding of regional pointer is seen in Arkhangelsk as well (64, 4%).⁵² Furthermore it is said that one of the main reasons of unsatisfactory condition of water bodies in the places of water use is the

47. The order of the Arkhangelsk Region Government, November 05, 2009 №249-go "On the concept of the establishment and the development of the Northern (Arctic) Federal University," <http://www.dvinaland.ru/files/sfu/docs/rp249.pdf>, (accessed October 27, 2010). *Rasporyazhenie Pravitelstva Arkhangel'skoiy oblasti*, 5.11. 2009 g. №249-go "O kontseptsii sozdaniya i razvitiya Severnogo (Arkticheskogo) federal'nogo universiteta."

48. Vladimir Komissarenko, "The problems of the legal environmental protection during the development of oil and gas fields," *Energy law*, (2) 2005, pp. 24–25.

49. Ibid.

50. The Agency of natural resources and ecology of the Arkhangelsk region: Environmental condition and protection in 2009, <http://www.dvinaland.ru/power/departments/comeco/envir/> (accessed October 27, 2010). *Agentstvo prirodnikh resursov i ekologii Arkhangel'skoiy oblasti: Sostoyanie i zashchita okruzhaushchei sredy v 2009*.

51. Ibid.

52. Ibid.





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discharge of uncleaned (or not enough cleaned) sewage from plants, containing pollutants.⁵³

In addition, in this document it is stated that while analyzing the quality of water in central water supply source, it was revealed that in 2009 all 100% of samples did not answer the hygienic norms on sanitary-chemical pointers in Velskom, Lenskom and Shenkurskom districts.⁵⁴ More than 90 % of samples appeared to be nonstandard in Koryazhma, Primorsk and Ustyansk districts and also in Severodvinsk, more than 80% of samples- in Arkhangelsk and Krasnoborsk district.⁵⁵

Needless to say that one of the most important parts of the human environment is the open air. According to the data about the environmental condition in the Arkhangelsk Region in 2009, the high level of the open air pollution remains in Arkhangelsk, Novodvinsk, and Koryazhma.⁵⁶ The main pollutants which determine the high level of the open air pollution are suspended materials, sulfur and nitrogen dioxides, carbon oxide, formaldehyde, benzopyrene, hydrogen sulphide and methylmercaptan.⁵⁷ It is stated that considerable contribution in the air pollution is made by the municipal public utility companies of the regional districts which are engaged in heat and water supply⁵⁸ A frequent change of owners of the boiler installations belonging to the municipal units, dilapidation of boiler installations and heating systems, ageing of boiler equipment and also nonfulfillment of planned measures with the aim of achievement of norms on maximum permissible emissions of harmful (polluting) substances in the atmosphere- all these are the main reasons of increasing amount of pollutants in the atmosphere.⁵⁹ Alarming fact is that in regard to the year 2008, the situation in 2009 was practically the same.

Besides, in the Russian Federation in conditions of the financial and economic crisis, in 2009 there happened a drastic reduction of funds, assigned by budget for environmental measures. Besides, charges of natural resources' users, directing on the solution of its manufactures ecological matters were also reduced.⁶⁰

These statements seem to be unconvincing taking into account the tendencies of atmospheric pollution during the period of 2006–2010. In “The report about the ecological situation in the Arkhangelsk Region in 2010” it is stated that over the last 5 years the level of the open air pollution of the city by the nitrogene oxide,

53. *Supra* note 50.

54. *Ibid.*

55. *Ibid.*

56. *Ibid.*

57. *Ibid.*

58. *Ibid.*

59. *Ibid.*

60. *Ibid.*





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sulphur dioxide has increased, also the containment of suspended materials has increased, average annual concentration of benzopyrene has declined, of carbon oxide-in a less degree.⁶¹ Concerning surface water it is said in this document that the annual average oil-products content near the villages Severoonezhsk and Porog composed 3 and 1 of maximum permissible concentration accordingly, in other sections there were isolated cases of the maximum permissible concentration's exceeds in 2.4–5.2 times.⁶² Also in 2010 on the territory of the Arkhangelsk Region there were 6 cases of the extremely high pollutions of surface water and 8 cases of high pollutions of surface water.⁶³

Thus, the main ecological problems on the territory of the Arkhangelsk Region are: the high level of the open air pollution, the high level of the water bodies' pollutions; the problem of utilization of industrial, domestic and medical wastes.

At last all these at a greater or lesser degree influence the Arctic, and this speaks well for the allotment of ecological rights by a special axiological feature which could encourage the refocusing of the ecological politics of the state, legal regulation, etc.

We should agree with the scientists' opinion that one of the trends towards the improvement and stabilization of the Arctic ecology condition is the development and installation of the environmental quality's norms specifically in the Arctic.⁶⁴ The development of such norms should be realized by all the arctic countries and after their assumption the norms of the environmental quality in the Arctic should be obligatory for these countries.⁶⁵ The enforcement of the norms will be realized through the mutual control and supervision of the arctic countries.⁶⁶ To the participation in development and control there can be engaged other states which don't have the exit to the Arctic Ocean because the Arctic environment bears global significance which influences also the condition of the environment in the whole on the planet.

For the effective observance of the right to a favourable environment a reliable system of international cooperation in the field of environmental protection is

61. Government of the Arkhangelsk region, Ministry of Natural Resources and lumber industry of the Arkhangelsk region, Agency of Natural Resources and Environment of the Arkhangelsk region: The report about the ecological situation in the Arkhangelsk Region in 2010, <http://www.dvinaland.ru/power/departments/comeco/envir/> (accessed December, 22 2011). Doklad ob ekologicheskoy situatsii v Arkhangel'skoy oblasti v 2010 godu.

62. Ibid.

63. Ibid.

64. Timo Koivurova and Eric J. Molenaar, "International Governance and Regulation of the Marine Arctic. Overview and Gap Analysis," (WWF International Arctic Programme, Oslo, Norway, 2009), pp. 36–37.

65. Ibid.

66. Ibid.





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needed. Today's interaction between states is mainly fragmentary but actual international organization's directions are of "soft" character and are not obligatory for implementation. It appears that environmental crisis makes it necessary to allot such directions with obligatory character.

According to Patricia Birnie, Alan Boyle, and Catherine Redgwell, at present the right to a favourable environment on the international level remains largely non-provided because there are no global and regional agreements.⁶⁷ This question is to be concerned if ecological interests will gain an essential value. Meanwhile they should be concerned in the context of the balance of other economic, social and cultural rights,⁶⁸ including which realization they are directed on.

The author of the article supposes that this statement can be agreed only partially because a great number of both international and regional acts is currently functioning. The most famous among them are: Stockholm Declaration and Rio Declaration, where the major principles are embodied, including the international cooperation on realization of human right to exist in conditions corresponding to his demands. Thus, principle 1 of the Rio Declaration states that "Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature."⁶⁹ However there is an essential neglect: full international protection of the right to a favourable environment in the European Court of Human Rights depends on the fact whether the right of the applicant on respect for private and family life is broken (Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms⁷⁰).

International cooperation in the field of the Arctic ecosystems' safety provision has started not long ago. So the beginning of inter-ministerial level of interaction of Arctic countries was in 1993 after the adoption of declaration on the environment and development in Nuuk, Greenland.⁷¹ This declaration was part of the Arctic Environmental Protection Strategy between the eight Arctic states and was merged into the Canadian initiative the Arctic council in 1996.⁷² In this declaration

67. *Supra* note 41, p. 302.

68. *Ibid.*

69. The Rio Declaration on Environment and Development (adopted in Rio-de-Janeiro 14.06.1992) // Existing international law. V.3. – Moscow: Moscow independent institute of international law, 1997, pp. 687–692.

70. Convention on human rights and main freedoms protection (transacted in Rome 04.11.1950) // Legislation collection of the Russian Federation, 08.01.2001, №2, p.163.

71. Timo Koivurova and David L.Vanderzwaag, "The Arctic council at 10 years: retrospect and prospects," *U.B.C. Law Review*, p.126, <http://arcticgovernance.custompublish.com/international-governanceand-regulation-of-the-marine-arctic-overview-and-gap-analysis.4640536-142902.html>(accessed January 31, 2012).

72. *Ibid.*, p. 128.





it is stated that the Arctic continues to be the place of settlements of emissions of a great number of persistent organic pollutants such as PCB and DDT, transferred from far off from industrial and agricultural areas of Asia, Europe, Northern and Central America and from local sources.⁷³ Persistent organic pollutants are accumulated in fat tissues of wild animals. In the Arctic local population eat lipid-reached wild animals' meat, that's why people are concerned of penetration of these pollutants in human organism.⁷⁴ The research shows that in the Arctic regions where heavy metals emissions are the most considerable, the influence on ecosystems is especially felt.⁷⁵ In some regions the level of their influence on people exceeds the norms of the World Health Organization. In some regions in marine environment mammals organisms contain the increased concentration of heavy metals, especially mercury and cadmium.⁷⁶

All these show the necessity of international cooperation in the field of environmental protection and besides of the mutual control over productions negatively influence the environment.

One of the most important organizations acting for the protection of the northern hemisphere's unique nature is the Arctic Council that includes 8 states – Russian Federation, the USA, Canada, Iceland, Denmark, Norway, Sweden, and Finland – and 6 “permanent participants” – associations of indigenous peoples of the North. “The supreme body of the Arctic Council is the ministerial sessions which meet biyearly, as a rule. During them the work since the previous session is summarized, the tasks for the future are set and this is depicted in accepted political declarations according to the results of the sessions.”⁷⁷

Within the seventh ministerial session of the Arctic Council, the ministers met again in Nuuk on May 12, 2011. The resulting document was the Nuuk Declaration. In this Nuuk Declaration 2011 the agreement on preparing of a new document for the Arctic countries aimed at cooperation, for the cases of oil spills in the Arctic Ocean is recommended.⁷⁸

73. The Nuuk Declaration on Environment and Development in the Arctic. Adopted in Nuuk 16.09.1993, <http://docs.pravo.ru/document/view/18464390/16135821/> (accessed December 03, 2010).

74. Ibid.

75. Ibid.

76. Ibid.

77. Sergey Lavrov, “Nuukskaya Declaration: A new stage of cooperation between the Arctic states,” *The Arctic: Environment and Economy*, (3), 2011, p. 13. Sergey Lavrov, “Nuukskaya Deklaratsiya: novyyiy etap sotrudnichestva arkticheskikh gosudarstv,” *Arctika: ekologiya i ekonomika*.

78. Ibid.





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The tasks, set on the last ministerial session of the Arctic Council, point the intention of the countries-participants to solve the problems that have already been determined in the Nuuk declaration 1993 and underline the readiness to strengthen the ecological situation in the Arctic.

Thus the axiological approach should not be limited only by improvement of domestic legislation. The important role belongs to the international cooperation and also to perception both of existing experience and of positive innovations in the field of environmental protection.

6. Best Existing Technologies

It is appeared that the axiological approach supposes an evolution of the priority scheme in the society and the state. Applying it to the right to a favourable environment we can speak about ecologization not only of the whole state policy which means introduction of the best existing technologies in production but also about man's soul searching, who tends today to economic welfare.

The legal system of modern developed civilizations has many particular qualities which at the same time are the source both of their greatness and weakness. If to look at the fundamental principles of this system, we can notice the following. The majority of them aim to the increase of the gross domestic product and the economic potential's growth in whole. In general these goals are of positive character because they are directed toward the rise of living standards, the growth of welfare and maximum gratification of needs. However a cheerless prospect of environmental pollution is behind of this external well-being. In this case a collision between ecological values and economic priority is seen. Economic values also deserve its support and defense. The priority character of the right to a favourable environment is not to be considered as a denial or contraposition of this right to economic values. In such a situation an important role belongs to the Constitutional Court which should make a decision based on factual circumstances on the basis of the constitutionally protected values balance. But nevertheless it is offered that ecological values are the values of another qualitative level than economic ones. And if the defense of the last needs a significant depreciation of the first, it is required to proceed from the ecological priority.

While examining the risk of the environmental pollution and the competition between ecological and economic interests, Bell and McGillivray see a way out in establishment of a principle of pollutant outgoings.⁷⁹ From this viewpoint the

79. Stuart Bell and Donald McGillivray, *Environmental law*, sixth edition, Oxford: Oxford University Press, 2006, p. 80.





problem is solved only partially because first of all the pollution has already happened and its consequences in different situations are difficult to foresee. Secondly, the pollutant may have no those means which will be needed to cover the costs resulted from its breaking of the law.

The ecological component should have a substantial significance in the context of national priorities of modern economically developed countries because the development of one sector may inevitably lead to the degradation of the others. The wide involvement of business groups from the large international companies in support of ecological priorities is necessary, among other things by means of economic and other stimuli.

Researching the right to a favourable environment and problems connected with its realization, we can make a conclusion that an early introduction of the best existing technologies is necessary. But we should take into consideration that their step-by-step introduction will contravene purposefulness of their implementation because first of all these technologies can become out of date and secondly the amount of pollutants which will enter the environment at this time will negatively affect human life and health, meanwhile it is important to take into account their influence on demographic statistics. Therefore a non-recurrent introduction of such technologies is needed, excluding any exceptions. A State should of course be interested in such actions; that's why it is real to foresee a support of several economic entities with the further return of facilities having been given on ecologization.

7. Conclusion

Summing up we should say that the axiological approach in regulation of the right to a favourable environment is expressed in its allotment with particular primacy in relation to other main human rights and freedoms. According to which legal regulation, legal culture, sense of justice and upbringing should be developed.

Thus, the axiological approach is the way of cognition and private perception of the object under consideration through the prism of the values for the person, society and state, the foundation of which is the principle of humanity.

Concerning the compensation of the ecological harm it is more rational to speak about guilt presumption of the harm-doer. Such a presumption will release a man from the necessity of proving the cause-effect relation between the accomplished environmental offence and consequences which are the result of the chronic disease for example. However it is important to consider the possible misapplications from the applicants' side who could have gained the disease by their own fault, the court in this case should objectively estimate the adduced evidences and all





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the circumstances of such a case. The appliance of the axiological approach on practice has a range of problems because nowadays the CRF and also the current legislation in the sphere of environmental protection haven't accepted the idea of the axiological reorientation and protect, first of all, the economic interests except the cases when the actions of respondents are of illegal character.

The research has shown that the environmental condition in the Arctic can't be called favourable (healthy). Not all the countries of the Arctic zone accept this environment as a value which should be kept and protected for the benefit of today and future generations. One of the directions towards the improvement and stabilization of the Arctic ecology's condition is the development and establishment of environmental quality's norms in the Arctic. The development of such norms should be realized by all the arctic countries and after their establishment the norms of the environmental quality in the Arctic should be obligatory for these countries. The enforcement of the norms will be realized through the mutual control and supervision of the arctic countries.⁸⁰

To the participation in development and control there can be engaged other states which don't have the exit to the Arctic Ocean because the Arctic environment bears global significance which influences also the condition of the environment in the whole on the planet. For the effective observance of the right to a favourable environment a reliable system of international cooperation in the field of environmental protection is needed. Today's interaction between states is mainly fragmentary but actual international organization's directions are of "soft" character and are not obligatory for implementation. It appears that environmental crisis including the Arctic makes it necessary to allot such directions with obligatory character.

Besides in compliance with the axiological approach in regulation of the right to a favourable environment the best of the existing technologies should be adopted.

The axiological approach shouldn't be in the frames of one state in terms of the environmental significance for a person, its protection should gain the global character.

80. *Supra* note 41, pp.36-37.





Аксиологический подход к регулированию права на благоприятную окружающую среду

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Резюме

Статья посвящена проблемам интегративной функции аксиологии как специального философского направления, изучающего ценностные явления бытия. Актуальные проблемы обеспечения права человека на благоприятную (здоровую) окружающую среду диктуют необходимость рассмотрения данного института под новым углом зрения. В работе анализируются смысл и значение аксиологического подхода к праву на благоприятную (здоровую) окружающую среду, проводится анализ различных интерпретаций ценностей в философском, общеправовом и экологическом смыслах. Автор приходит к выводу, что аксиологический подход представляет собой способ познания и личного восприятия исследуемого предмета через призму ценностей для человека, общества и государства. Кроме того, в статье определяются основные направления в решении экологических проблем как внутри государства, так и на международном уровне. В статье также рассмотрены данные об экологической обстановке на примере Архангельской области (Российская Федерация) и исследуется значение правоприменительной деятельности при защите экологических прав человека и роль аксиологического подхода в практике Конституционного суда Российской Федерации.

