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IMPLEMENTATION OF THE POLLUTER PAYS PRINCIPLE: COMPARATIVE LEGAL ISSUES

Vadim A. Vinogradov, Larisa V. Soldatova
The All-Russian State University of Justice (RLA of the Ministry of Justice of Russia), Moscow, Russia

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The subject. The article is devoted to the study of the polluter pays principle from the point of view of the mechanism for its implementation to ensure the right to a favorable environment. The purpose of the article is to identify the degree of implementation of polluter pays principle in Russian legislation in comparison with the OECD countries.

The methodology. The study is based on the comparative legal method, which allows us to analyze the strengths and weaknesses of the models of legal regulation of relations in the field of environmental protection chosen by different countries and international organizations. The study also relies on general scientific and private scientific methods, including formally legal method, interpretation of legal acts.

The main results and scope of their application. The content of the polluter pays principle is determined, as well as the goal of its establishment and the methods used by legislator to achieve this goal. The effectiveness of the polluter pays principle is determined by an integrated regulatory approach. It includes several elements: not only the obligation to compensate for the harm caused in full, but also to take all necessary measures to prevent the possibility of harm at all stages of the activity, including design, construction, etc. The analysis of international legal regulation, as well as the regulatory legal acts of different countries shows that this principle is implemented in the legislation of many countries and an effective mechanism for its application is created in developed countries. Genuine implementation of this principle lets create balance between economic and environmental relations and protect the vital interests of human and society.

Conclusions. A comparative analysis of the legal regulation of relations on environmental protection in terms of applying the polluter pays principle allows us to conclude that there is a rather formal approach to its implementation into Russian legislation. There is no comprehensive approach to the regulation of economic activity at all stages of its implementation, from planning and design to decommissioning and waste management.

This, in turn, does not allow creating a balanced management mechanism of environmental protection in Russia. In this connection, a list of priority measures to create an effective legal regulation mechanism is proposed.

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1. Introduction

The development of human society has always been a complex process. The desire to create more comfortable living conditions, often leads to an increase in the burden on the environment, which, in turn, entails the need to revise their attitude to both production technologies and the environment. Achieving a new stage of development is possible only after overcoming a number of difficulties. Understanding and awareness of the new values that must be defended, - is in itself an achievement: this is also the case with environmental protection. Centuries of relatively consumer attitude to the natural environment accustomed people to fight against it, it was perceived as an obstacle to good living conditions. And suddenly there is a need to reconsider our attitude to nature as a whole, to realize that the obstacle is no longer the natural environment with its resources and objects, but our usual way of life, requires a deep transformation of relations in society.

The first, far not the most simple step made. States, both at the international and national level, have agreed on the need to protect the natural environment, conserve resources, and assist each other in forming environmentally oriented policies. The next stage raises an even more difficult question: how to do it? How to ensure the conservation of biodiversity, how to reduce the degree of pollution of air, water bodies, soil? The process of transition from recognition of the facts of objective reality to concrete actions in Russia reveals the immaturity of both the management system in our country and society as a whole. Meanwhile, the effectiveness of activities depends on a competent and well-thought-out mechanism of implementation.

One of the most pressing issues - the correlation of environmental protection requirements with the needs of economic growth-has not been resolved in the Russian Federation to this day. The actions taken in this direction indicate that there are attempts to implement environmental policy, but, as a rule, it is limited to declarations or half-measures. A typical problem in this area is the regulatory requirements that are not provided by the enforcement mechanism. For example, the obligation of economic entities to monitor and control emissions and discharges of harmful substances is established, but many enterprises do not have the equipment to carry out this control. Moreover, these entities do not intend to establish it, citing the high cost, low level of negative impact, etc. the legislation stipulates the duty of the logger to carry out reforestation, but there is no system of effective control over its implementation. And similar examples are found at every step. Such a management system itself provokes a violation, a vicious circle is created: the longer economic entities have the opportunity to work without taking into account the costs of environmental protection, the greater the degree of resistance to the introduction of new technologies, methods of production.

Thus, we can talk about the urgent need to consider ways to achieve the goals of environmental protection and environmental management in the context of economic development, in connection with which it is necessary to dwell on the implementation of the principle of "polluter pays principle", which has proven itself as the most effective way to solve these problems.

2. International legal framework for the application of the polluter-pays principle»

The foundations of society's relationship to the environment were laid in the 1972 Stockholm conference on the environment, which adopted a synthetic approach to the relationship between Economics and ecology: "economic and social development is essential for ensuring an enabling environment for human life and activity and for creating the conditions necessary for improving the quality of life on earth." Moreover, an integrated and coordinated approach to development planning is seen as the basis for ensuring that development is compatible with the need to protect and improve the environment for the benefit of peoples in order to achieve better resource management and, therefore, to improve the environment.

This provision is further referred to in principle 16 of the 1992 Rio Declaration on environment and development . At the same time,

we are not talking about a mechanical limitation of economic growth and production, we are proposing an integrated approach to planning, that is, it is reasonable to change the approach to planning economic development. For example, we can talk about the criteria taken into account when making decisions about implementing a particular type of economic activity: previously, mostly it was about profits and production, jobs, and now, along with economic factors, will be considered the volumes of raw materials and technologies of their processing, volumes of air emissions, effluents, water bodies and waste, etc.

The activities of enterprises and economic entities should not be considered in isolation from the impact on the environment. This approach is reflected in the application of the polluter pays principle. Initially, this principle was introduced in order to force organizations that caused damage to the environment as a result of accidents, to eliminate the consequences, which led to increased responsibility of organizations. The effectiveness of the application of the principle has led to an increase in its understanding. Currently, the polluter company is not only obliged to pay its production costs, but also any costs associated with the negative impact on the environment. Thus, for example, it is impossible to increase the amount of profit by switching to cheaper toxic raw materials, since with a decrease in raw material costs, waste disposal costs, payments for emissions of harmful substances into the atmosphere and others will increase [1, p. 3]. That is, the principle of "polluter pays" provides that an enterprise that produces pollution as a by-product of its production will have to make payments to compensate for the costs of society for the restoration of the natural environment, natural complexes and objects that were not previously taken into account. In this case, it is not provided that the cost of compensation should be fully covered by the manufacturer, he can transfer the cost of payments to the consumer, which means an increase in the price of products.

3. Implementation of the polluter pays principle in foreign countries

The polluter pays principle is at the heart of many countries ' environmental policies. This principle is actively implemented and promoted by the EU [2, p. 154]: first it was enshrined in The Rome Treaty of 1957, then-the Maastricht Treaty of 1992, and is also included in EU integration agreements, for example, in the Association agreement with Moldova in 2014, Georgia in 2015.

Thus, the "polluter pays principle" set out in the Treaty on the functioning of the European Union and Directive 2004/35 / EC of the European Parliament and of the Council of 21 April 2004 on environmental liability to prevent and remedy harm to the environment .

Article 4 of the Charter of the environment of France provides that everyone is obliged, under the conditions provided by law, to contribute to the elimination of any damage that he may have caused to the environment [3, pp. 178-179].

In Switzerland, the polluter pays principle is the basis for waste management (for example, the fee is included in the cost of garbage bags (for municipal solid waste), resulting in a doubling of recycling rates over the past twenty years).

The environmental damage regulations 2009 of England and the environmental damage Regulations 2009 of Wales also contain the polluter pays principle [4, p. 23].

In U.S. law, the polluter pays principle is a fundamental one: it is applied in all major U.S. pollution control laws - the clean air Act, the clean water Act, the resource conservation and recovery (solid and hazardous waste management) Act, and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

This principle is implemented not only in Europe, the United States and Canada. In Ghana, for example, the polluter pays principle was introduced into law in 2011 . Zimbabwe's environmental protection act 2002 prohibits the discharge of pollutants into the environment. Under the polluter pays principle, the law requires the polluter to cover the costs of decontaminating the contaminated environment . This principle is also implemented in Chinese legislation [5, p. 6].

4. The polluter pays principle in OECD activities

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In 1972, this principle was enshrined in the Guidelines for international economic aspects of environmental policy of the Organization for economic cooperation and development (OECD). The experience of OECD regulation is all the more interesting because the activities of this organization are aimed at developing economic relations, improving the quality and standard of living of people.

In accordance with the Council's Recommendation of 26 may 1972 on the guidelines on international economic aspects of environmental policy (C(72) 128), "the Principle used to allocate the costs of pollution prevention and environmental control measures is the so-called polluter pays principle . The implementation of this principle "will encourage the rational use of rare natural resources". In accordance with the Council's Recommendation of 14 November 1974, on the implementation of the polluter-pays principle, it is assumed that " the polluter must bear the costs of pollution prevention and the implementation of control measures imposed by public authorities in member countries to ensure that the environment remains in an acceptable state. In other words, the costs of these measures should be reflected in the price of goods and services that cause pollution in their production and / or consumption." In the same Recommendation, the Council stated that" as a General rule, member countries should not make it easier for those who pollute the environment to bear the costs of environmental control, in the form of grants, tax breaks or other forms".

Thus, the content of the polluter-pays principle in OECD documents is reflected in the following provisions:

- the price of the product should reflect the costs of reducing pollution and achieving a better allocation of resources;

- the polluter must bear the cost of implementing measures taken by public authorities to ensure that the environment is in an acceptable state;

- it is unacceptable to allocate subsidies that will create significant imbalances in international trade and investment.

With regard to the risks associated with accidental pollution, the domestic legislation of OECD member countries in order to protect human health and the environment, the polluter pays principle implies that the owner of the source of danger must bear the cost of providing appropriate measures to prevent and control accidental pollution from the source.

The national legislation of States regulating relations on compensation for harm should establish that the costs of ensuring appropriate measures to control accidental pollution of the environment after an incident should be compensated as soon as possible by the legal or natural person who is the culprit of the incident, in accordance with the principle of "polluter pays".

In most cases, despite the causes of the accident, the cost of taking appropriate action by the authorities is initially borne by the owner of the source of danger due to the ease of administration. When a third party is responsible for the incident, it shall reimburse the owner for the costs of implementing appropriate measures to control accidental pollution after the incident.

If accidental pollution of the environment is caused by an event in which the owner of the source of danger cannot be clearly identified as liable under national law, for example, if the damage was caused by a natural disaster that the owner could not have adequately foreseen, then, in accordance with the principle of "polluter pays", the public authorities do not collect from the owner the costs of implementing control measures.

Accidental pollution prevention and control measures are considered broadly, including all measures that are taken to prevent accidents at specific facilities and to limit the effects of such accidents on human health or the environment. These may include, inter alia, measures aimed at improving the safety of hazardous facilities and accident preparedness, developing contingency plans, acting quickly in the Wake of an incident to protect human health and the environment, carrying out clean-up operations and minimizing, without undue delay, the environmental consequences of accidental environmental pollution. The measures in question do not include measures of a humanitarian nature or other measures the costs of which cannot be recovered in favour of state bodies under the

applicable law, nor do they include measures to compensate victims.

Public authorities in OECD countries that are "responsible for implementing policies to prevent and respond to hazardous substances incidents" can take specific measures to prevent accidents occurring at hazardous facilities and to control accidental pollution. While the costs of these measures are generally covered by the General purpose budget, public authorities may, in order to achieve a more cost-effective allocation of funds, provide for special payments for more hazardous activities (e.g. licence fees), the proceeds of which should be allocated to the prevention and control of accidental environmental pollution.

It is necessary to pay attention to specific features of application of the considered principle. First, special payments are established at the level of national legislation of States in order to better cover the costs arising from measures to prevent and control accidental pollution of the environment (for example, special licensing procedures, detailed inspections, contingency plans for a particular installation or the establishment of special response means by public authorities to be used in relation to a plant that is a source of danger), provided that, that such measures are appropriate. Secondly, according to domestic legislation, the owner of the source of danger is charged the costs of appropriate pollution control measures decided by the authorities in connection with the accident, for example, to stop the negative impact, the construction of floating barriers on the water body, to limit such pollution of the environment (for example, by cleaning or decontamination, degassing, decontamination) or to limit the environmental consequences of this damage (for example, by restoring the polluted natural environment).

The assessment of these measures as appropriate will depend on the circumstances in which these measures are applied, their nature and extent, the threats and risks that exist at the time the decision is made, the laws and regulations in force, and the interests to be protected. Prior consultation between hazard owners and public authorities should facilitate the selection of measures that are appropriate, cost-effective, and that provide appropriate protection for human health and the environment.

The measures taken in the implementation of the polluter-pays principle should not entail severe socio-economic consequences, distortions in international trade and investment, and the obligations imposed should be proportional to the harm caused.

The OECD guidelines for multinational enterprises 2011 include section V "environment", according to which enterprises, in addition to complying with environmental laws, regulations, standards and international treaties, are encouraged to exercise caution in relation to the environment and to conduct activities with the greatest positive effect on the environment. OECD industry guide on due diligence in mineral supply chains from conflict and high-risk areas 2016 (CETA) sets out principles to ensure that responsible business practices are followed when delivering, as well as risk mitigation measures and indicators to measure improvements. In CETA contains a reference to the Manual (Chapter 24). Companies are encouraged to identify the environmental context in their production and supply activities, study the environmental reports of international and national organizations when developing a risk management system, and reflect environmental impact assessments in their own regular reports. The OECD is also developing standards aimed at simplifying administrative steps to incorporate environmental issues into regional trade agreements.

5. The "polluter pays principle" in the Russian legislation

Consideration of the legislation of the Russian Federation in the field of environmental protection indicates that attempts to implement this principle have been made, but an integral system of its application has not been formed.

Article 77 of the Federal law "On environmental protection" stipulates the obligation to compensate for damage caused to the environment. But the analysis of the application of the article shows the low efficiency of its implementation, since compensation in practice is

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often possible only in the presence of approved taxes and methods for determining the amount of damage caused as a result of violation of legislation in the field of environmental protection. The mechanism of action of this norm is quite cumbersome. First, the decision of the competent authority establishing the fact of the offence which has caused or expressed in causing harm to the environment is required. Secondly, methods and fees are needed to determine the amount of damage caused. The recovered funds go to the budget, which does not guarantee the adoption of measures to restore the disturbed natural complexes and objects. Moreover, recently there has been a tendency to reduce the area of relations for which fees and methods have been adopted, which leads to a reduction in the grounds for compensation for harm.

Speaking about compensation of harm to the environment caused as a result of legal activity (for example, violation of natural complexes and objects as a result of construction works on the natural territory, development of mineral deposits, etc.), it should be noted that the norm of Article 77 in this part is rarely applied, primarily due to uncertainty in the question of the procedure for determining the amount of compensation. We should not forget about the attitude of economic entities to these rules, which base their position on the fact that if they carry out legitimate activities, it cannot be about charging them for harm caused to the environment, as this harm they consider "permitted".

In addition, it is worth noting a number of reasons that complicate the application of the "polluter pays" principle: the problem of identifying the polluter, the source of pollution (cumulative or chain pollution) [6, p. 23-24], the imperfection of legislation in the field of environmental monitoring [7, p. 152], the determination of the amount of negative impact, economic interests [8, p.24].

In itself, the procedure for compensation of harm does not fully correspond to the idea underlying the principle of "polluter pays", since the main purpose of the latter is, first, to take all measures to prevent harm to the environment, and secondly, if any, to restore the disturbed natural complexes and objects.

The effectiveness of the polluter-pays principle is determined by an integrated approach to regulation. As noted earlier, it includes several elements: not only the obligation to compensate for the damage caused in full, but also to take all necessary measures to prevent the possibility of harm at all stages of the activity, including design, construction, commissioning, operation, etc. [9, p. 12; 10, pp. 32-33; 11, pp. 28-31; 12, pp. 29-35; 13; 14; 15, p. 150].

In this regard, the application of the polluter-pays principle is impossible without an assessment of the environmental impact of an activity, including at the planning and design stages. In the Russian Federation, the impact assessment is regulated in detail only in relation to objects of environmental expertise. In other cases of business planning, the impact assessment is practically not regulated.

6. Conclusions

The comparative analysis of the legal regulation of relations in the field of environmental protection in terms of the application of the principle "polluter pays" allows us to come to the conclusion of a rather formal approach to its integration into Russian legislation. There is no comprehensive approach to the regulation of economic activity at all stages of its implementation, from planning and design to decommissioning and waste management. This, in turn, does not allow for a balanced management mechanism in the field of environmental protection.

Thus, priority measures include:

- creation of a legal mechanism aimed at the implementation of the assessment of the impact of any planned economic and other activities on the environment;
- consolidation of legal means ensuring the obligation to compensate for damage to the environment, with the first place goes to a set of measures to prevent negative effects on the environment;
- addressing organizational issues, including funding arrangements, public participation, monitoring and evaluation of the effectiveness of measures taken to prevent negative impacts.

It seems that the consistent consolidation of

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the principle of "polluter pays" in the regulation of all stages of economic activity and providing a mechanism for its implementation will ultimately create favorable conditions for the development of economic relations both within the country and to overcome the difficulties arising when entering the world market.

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INFORMATION ABOUT AUTHORS

Vadim A. Vinogradov – Doctor of Law, Professor, Head, Department of Constitutional and International Law
The All-Russian State University of Justice (RLA of the Ministry of Justice of Russia)
46/1, Molodogvardeiskaya ul., Moscow, 121351, Russia
e-mail: vinvad@mail.ru
RSCI AuthorID: 690204

Larisa V. Soldatova – PhD in Law, Associate Professor; Associate Professor, Department of Constitu-

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tional and International Law
The All-Russian State University of Justice (RLA of the Ministry of Justice of Russia)
46/1, Molodogvardeiskaya ul., Moscow, 121351, Russia
e-mail:larisas130281@mail.ru
RSCI AuthorID: 690807

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