

PROBLEMS OF THE EFFICIENCY OF ENSURING ENVIRONMENTAL SECURITY: DEVELOPMENT OF CONSTITUTIONAL AND LEGAL NORMS

PROBLEMAS DE EFICIÊNCIA PARA GARANTIR A SEGURANÇA AMBIENTAL: DESENVOLVIMENTO DE NORMAS CONSTITUCIONAIS E LEGAIS

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Abstract: Today, the nature of environmental threats, both natural and man-made, is changing across the world. The dangers and threats are becoming more interdependent. Society needs to not only introduce advanced technologies and respond to the challenges of environmental hazards in time but also create legal fail-safes to ensure environmental security. The present study aims to analyze constitutional and legal norms for the provision of environmental security and directions for their improvement. Based on an analysis of legislation and legal literature, the paper defines constitutional and legal provisions of environmental security and analyzes the provisions of the Russian Constitution that act as a legal base for the development, adoption, and implementation of the legal norms to ensure the country's environmental security. Proceeding from an expert survey, proposals are formulated for improving constitutional norms by making them environmentally friendly to better ensure environmental security. The authors conclude on the need to ensure further improvement of constitutional provisions in the sphere of environmental security in accordance with the theory and practice of modern constitutionalism and guaranteeing its stability and inviolability.

Keywords: Constitution of the Russian Federation. Environmental law. Environmental policy. Environmental requirements. Constitutional and legal norms.

Resumo: Hoje, a natureza das ameaças ambientais, tanto naturais quanto causadas pelo homem, está mudando em todo o mundo. Os perigos e as ameaças estão se tornando mais interdependentes. A sociedade precisa não apenas introduzir tecnologias avançadas e responder aos desafios dos perigos ambientais a tempo, mas também criar salvaguardas legais para garantir a segurança ambiental. O presente estudo tem por objetivo analisar normas constitucionais e legais para a provisão de segurança

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ambiental e diretrizes para sua melhoria. Com base em uma análise da legislação e literatura legal, o documento define as disposições constitucionais e legais de segurança ambiental e analisa as disposições da Constituição Russa que atuam como base legal para o desenvolvimento, adoção e implementação das normas legais para garantir a segurança ambiental do país. A partir de uma pesquisa de especialistas, são formuladas propostas para melhorar as normas constitucionais, tornando-as ambientalmente corretas para melhor garantir a segurança ambiental. Os autores concluem sobre a necessidade de assegurar o aperfeiçoamento das disposições constitucionais na esfera da segurança ambiental de acordo com a teoria e prática do constitucionalismo moderno e garantindo sua estabilidade e inviolabilidade.

Palavras-chave: Constituição da Federação Russa. Direito ambiental. Política ambiental. Exigências ambientais. Normas constitucionais e legais.

1. INTRODUCTION

A vital task of the environmental policy in Russia is effective assurance of the right to environmental security, protection of the natural environment from destruction, identification of mechanisms to overcome the environmental crisis to address the problem of human survival in the face of the threat of a global environmental catastrophe. The implementation of the right to environmental security necessitates the development of optimal forms and means of interaction between man and the natural environment, as well as constitutional and legal support in compliance with the environmental imperative of the survival of man and mankind (Yerkinbayeva et al., 2021).

The Constitution of the Russian Federation (hereinafter – the Constitution) (Konstitutsiya Rossiiskoi Federatsii, 1993), which has been in effect for nearly three decades, is the Basic Law of the country, has supreme legal force, and its norms are of direct action. Being an act of supreme legal force and the core of the state's legal system (Berezin et al., 2022), the Constitution acts as the legal basis for the development of all branches of law, including environmental law (Pushkarev et al., 2021). The fundamental nature of these laws defines the legal foundation of state environmental policy, the environmental doctrine, and the development of common and specific norms of environmental management (Martirosyan et al., 2022). The Constitution is an act of lasting effect, and one of its main legal features is stability. Yet the dynamics of social life and the advent of new economic and political reality must not, in our belief, be halted by constitutional norms. For this reason, amendments to the Constitution are critical and vital (Martirosyan et al., 2022; Mukhachev et al., 2022).

The Constitution sets high environmental requirements. These issues take an important place in the test of the Basic Law both among the primary principles of the

constitutional order of the state and other important provisions concerning human and civil rights and freedoms, the powers of public authorities, etc. However, environmental problems, which have become more aggravated in the past few decades, give rise to new approaches to the organization of the life of society (Anisimov & Ryzhenkov, 2021; Kuzubova et al., 2022). Thus, current conditions necessitate further improvement of constitutional and legal norms for the provision of environmental security.

In line with the above, the purpose of the article is to analyze the constitutional and legal foundations of environmental security and directions for their improvement.

Review of regulations and legal literature. The term "environmental security" is a variation of a broader concept of "security" and constitutes a component and prerequisite of national security, as explicitly indicated in the "Environmental Security Strategy of the Russian Federation for the period until 2025" (President of the Russian Federation, 2017).

The Fundamentals of the state policy in the field of environmental development of the Russian Federation for the period until 2030 (President of the Russian Federation, 2012) stipulates that the strategic goal of state policy in environmental development includes, among other things, ensuring environmental security. Consequently, the legal regulation of environmental security is among the priority tasks of the state.

The Environmental Security Strategy (President of the Russian Federation, 2017) defines the goals of the state environmental security policy as the preservation and restoration of the natural environment, ensuring the quality of the environment necessary for comfortable human life and sustainable economic development, and elimination of accumulated environmental damage caused by economic and other activities in the face of increasing economic activity and global climate change.

The Russian Federal Law "On Environmental Protection" (State Duma of the Federal Assembly of the Russian Federation, 2002) enshrines the definition of environmental security as a state of protection of the natural environment and vital human interests from the possible negative impact of economic and other activities, natural and man-made emergencies, and their consequences.

In specialized literature, environmental security is commonly understood as the level of protection of the vital interests of the human, as well as society, the environment, and the state, from real or potential threats caused by man-made or natural factors (Vagina et al., 2018).

What should be considered as the constitutional and legal objects of environmental security are the highest values defined in Article 3 of the Constitution – the

lives and health of citizens, their rights and freedoms, legal interests, security, as well as the surrounding natural environment as a certain integrated community and the highest social good (Brinchuk, 2014).

Of importance for environmental security is the understanding of the natural environment specifically as a unified, somewhat abstract object, which usually does not deny its separability into individual natural objects, but still with all the connections between them (Krasnova, 2019). Indeed, in legal relations on the protection of natural objects, their use, and reproduction, the objects can be particular land plots, forest areas, etc. (Brusnitsyna, 2013). Yet to achieve the goal of regulatory influence of environmental security assurance, natural objects need to be viewed not as the carriers of some natural resource (i.e., in terms of their economic, national economic importance), but as elements of the environment in its dialectical relationship to the human being, in which life and death on the one hand and volitional action (as phenomena immanent to the human being) on the other are a kind of contact points of man and the natural environment, and, consequently, the destinators of environmental security (Gabieva & Kurbanalieva, 2015).

In light of the above, of primary social purpose of ensuring environmental security is mainly providing people with a special good (Brusnitsyna, 2014) – the ability to live in a natural environment that does not pose a threat to life and health, that is, the protection of life and health, as well as a safe environment. Environmental security is the ultimate direction of norms of the relevant branch of law and serves as the primary means of protecting these public values, the life and health of the person. Given the inseparability of these values from the subject of environmental security (which every person is) become the criteria under which the state of legal relations in society can be considered environmental security (Kharkov, 2019). Such an opinion is also voiced by T.V. Prikhodko and A.K. Rozhkova (2020), who note that the average expected lifespan can be regarded as an integral indicator of the level of environmental security.

This criterion can be considered to be the natural environment that does not pose a threat to human life and health in the case of unacceptable risks with the environment being an indicator of danger (Bogoliubov, 2018). Thus, if society has a secure environment, human life and health are not threatened. Consequently, this condition is considered protected and ecological security is achieved (Volkov, 2018).

The other case is if the natural environment poses a threat and human life and health require protection by means of providing environmental security. Here life, health, and the natural environment become the qualitative characteristics of environmental safety

as the object of ensuring environmental security. In turn, environmental security is the main guarantee and legal means of protecting human life and health (Rednikova, 2019). Human life and health, the natural environment, and environmental safety constitute a unique dialectical unity, which should be considered the main object of legal provision of environmental security (Timofeev & Abanina, 2014).

Legal relations in the provision of environmental security are marked by their imperativeness and are essentially relations of public administration (Krasnova, 2018). These relations are also of a protective nature, since they are aimed at the protection of the natural environment and human life and health from the hazardous effects of economic activity, at preventing technogenic and natural emergencies, liquidating and localizing them, and compensating for the damage caused by violations of environmental legislation (Shenshin, 2018). Protective relations realize the issues of economic subjects' responsibility for non-fulfillment or improper fulfillment of the duties imposed on them in the sphere of environmentally hazardous activities in the context of positive and retrospective legal responsibility (Broslavskii, 2020; Naranjo Luzuriaga et al., 2022).

Based on the above, we can define the constitutional and legal provision of environmental security as the constitutional and legal regulation of public relations in ensuring the proper state of the environment and vital interest of society, human beings, and citizens being protected from the possible detrimental influence of economic and other activities, as well as from the threats of natural and technogenic emergencies in the present and future.

2. METHODS

The study utilized the qualitative approach to scientific research.

The methods employed include an analysis of scientific sources on the research problem and an expert survey. The study was conducted in three stages from October to December, 2022.

At the first stage, the normative-legal base and scientific and analytical works on the research problem were studied. The legal and regulatory base of the study included the Constitution of the Russian Federation and federal laws and bylaws within the sphere of environmental law.

Scientific sources were selected using the Russian Science Citation Index and the Web of Science and Scopus international databases by key words and phrases:

environmental security, legal provision of environmental security, constitutional law, and environmental law, limited by the date of publication no more than 10 years ago. The analysis of publications allowed us to identify the main constitutional requirements for the provision of environmental security.

The second stage involved the selection of the expert pool via Google.com by the parameters of: (I) having publications on the research problem (at least three); (II) having experience in environmental legal relations (at least 5 years).

The resulting expert pool consisted of 42 experts meeting these criteria. They were sent e-mails describing the purpose of the study and the results obtained in the first stage. Responses were received from 39 experts. All participants in the survey were made aware of the purpose of the study and the plan to publish its result in a summarized form. Thus, we recruited experts who fit the established criteria and consented to take part in in-depth interviews on the studied problem.

In the third stage of the study, in the course of in-depth interviews conducted via a videoconferencing service, the experts were tasked to evaluate the results obtained in the first stage and formulate proposals to improve constitutional norms by making them environmentally friendly in order to better ensure environmental security. The average duration of one interview was 25-30 minutes. Subsequently, the interviews were transcribed using the zapisano.org service.

3. RESULTS

The performed analysis of constitutional provisions in the field of environmental security allows us to distinguish them into three main groups of norms (Table 1).

Table 1. Analysis of constitutional provisions in the field of environmental security

No.	Group of norms	Art. of the Constitution of the Russian Federation
1	Norms governing the human right to environmental security	Article 42
2	Norms specifically devoted to environmental safety requirements, including those containing relevant provisions on the environmentally safe use of natural resources	Articles 36, 58
3	Norms establishing the functions and powers of the Russian Federation, its constituent entities, and State bodies in the sphere of ecology and environmental management	Articles 71, 72, 114

Note: compiled from the analysis of the Russian Constitution and scientific literature.

This division of constitutional norms gives a more detailed and systematic view of them.

To the first group of norms should be attributed the provisions of Article 42 of the Russian Constitution, according to which each person has a right to a favorable environment, which is interpreted as a state of the natural environment in which the deterioration of the environmental situation and the occurrence of danger to the life of the population in a particular locality, region, or entire country are prevented. Criteria for the safe state of the environment are defined by a set of interrelated social, economic, environmental, organizational, legal, medical, technical, and technological requirements, particularly those stipulated by ecological standards and regulations, sanitary and hygienic norms, construction, transport and energy rules, and other requirements for the existence and protection of a safe environment.

Article 42 of the Russian Constitution also entrenches two critical components for the realization of environmental rights by the country's citizens: the guarantee of the right to receive and use environmental information and compensation for damage caused to one's health or property by an environmental offense. Thus, Article 42 of the Constitution guarantees the right of free access to information on the state of the environment and the right to spread it. Such information cannot be classified by anyone. The conditions and procedure for exercising the right to information, including information on the state of the environment, are set forth in the Federal Law of the Russian Federation "On Information, Information Technologies and Information Protection" (State Duma of the Federal Assembly of the Russian Federation, 2006).

Concerning the constitutional provision on compensation for losses to nature resulting in the deterioration of the environmental situation, Article 11 of the Russian Federal Law "On Environmental Protection" provides that every citizen of Russia has the right to submit to the court claims for compensation of damage to the environment, as well as their health and property due to adverse influences on the natural environment, as well as to appeal in court against the decisions, actions, or inaction of public authorities, local governments, and their officials on violations of environmental rights of citizens in the manner prescribed by law.

To the second group of constitutional norms containing relevant provisions on the environmentally safe use of natural resources, belong the norms of Articles 36, and 58 of the Russian Constitution. Specifically, under the related provisions of Article 36 of the

Basic Law, owners of land and other natural resources are subject to certain environmental burdens, in particular, they must not cause damage to the environment.

Another important provision is Article 58 of the Constitution, which states that everyone has an obligation to preserve nature and the environment and to treat natural resources with care.

The provided constitutional requirements are of major importance for ensuring the quality of the natural environment. The distinctive features of the considered group of constitutional norms is that they provide a legal foundation for defining the legal boundaries of the exercise of the right to land and other natural resource property and enshrining legal restrictions on the exercise of the right to use natural resources.

The third group of constitutional norms enshrining the functions and powers of the Russian Federation, its constituent entities, and public authorities of various levels in the field of environmental protection is common and is found in various sections of the Constitution of the Russian Federation. According to Article 72 of the Constitution, the issues of natural resource use, environmental protection, and environmental security are under the joint jurisdiction of the Russian Federation and its constituent entities. Meanwhile, Article 71 of the Constitution states that the Russian Federation has the exclusive authority to establish the fundamentals of federal policy, whose implementation under Article 114 is the responsibility of the Russian Government, as well as federal programs in the field of Russia's environmental development. At present, the federal policy in environmental development is governed by the Fundamentals of the state policy in the field of environmental development and the Environmental Security Strategy, which are realized through the adoption of individual government legal acts.

A notable fact is that none of the examined constitutional norms on the use of natural resources, protection of the environment, and the provision of environmental security has undergone any changes or amendments, which is indicative of their sustainable existence and stable action. Nevertheless, for example, the law "On Environmental Protection", which has been in force for over twenty years, has undergone many changes and amendments.

4. DISCUSSION

Having examined the presented analysis of constitutional norms and the practice of their application, the experts formulated some proposals to improve constitutional

norms through making them more environmentally friendly, which we arrange in the following order.

1. First, a major gap in the regulation of constitutional environmental relations is the Constitution having no reference to the category of environmental security. Specifically, Article 114 defines among the powers of the Russian Government "implementation of a unified state policy in the Russian Federation in the field of ... ecology". The absence of an indication of environmental security does not favor the constitutional provision of environmental security.

2. Article 42 of the Constitution secures the right of every person to a *favorable* environment. However, the experts believe that the real risks to human life and health caused by natural phenomena and elements and the accelerated development of industrial forces, which, while strengthening the socio-economic security of society and the state, are simultaneously fraught with negative environmental impacts, including deterioration of the quality of the environment and increasing threats to human life and health, cause the need to address this right from the perspective of environmental security.

Recently, this opinion has also been supported in the environmental law literature. V.N. Kharkov (2019) points out that the right to a *favorable* environment is the base of a more capacious concept – the right to a *safe* environment, to environmental security in general. The researcher proposes an interpretation of this right as a state of development of public legal relations and the respective legal connections under which the system of legal norms and other state legal and social means guarantees citizens' right to an environment safe for life and health, provides regulation of environmentally hazardous activities and prevention of deterioration of the environment and other consequences threatening the life and health of individuals, society, and the state, which needs to be clearly specified in the current legislation. The same opinion is held by M.M. Brinchuk (2014), who believes that the nature of the object of citizens' right to a safe environment and environmental security, as opposed to the object of the right to a favorable environment, causes an expansion of the content of this right. Hence, the proposed approach more accurately reproduces the need of people and citizens for environmental security and should find a place in the Constitution.

Regarding the right to free access to information on the state of the environment stipulated by Article 42 of the Constitution, the experts propose to, first, supplement it with the additional right to freely distribute relevant information (Demichev et al., 2021), and second, to support the conclusion reached in recent scholarly works on constitutional

law on the subjectivity of the legislator's approach to including some objectively existing subjective rights (to environmental information in the Basic Law while completely disregarding others (to participate in making decisions about the environment) (Goncharov et al., 2020).

From all of the above, it follows logically that the Constitution should incorporate only the basic environmental law – *the right to environmental security*, without reference to other environmental rights, which act as a means of its realization.

3. Another major aspect of the problems of environmental security and environmental human rights is the question of their limitations. Experts assert that the norm provided in Part 3 of Article 56 of the Constitution, which provides for the possibility of restricting environmental rights enshrined in Article 42, is unjustified in a state of emergency. Emergency state conditions cannot be legitimate grounds for restricting the right to a safe environment and others that relate to it. Furthermore, the Federal Constitutional Law "On the state of emergency" (Article 2) stipulates the following: "The purpose of the state of emergency is to eliminate the circumstances that have given rise to it and to ensure the protection of human and civil rights and freedoms" (State Duma and Federation Council of the Federal Assembly of the Russian Federation, 2001).

The opinion expressed by the experts is supported by S.V. Brusnitsyna (2014), who believes that this goal cannot be achieved without ensuring environmental security, so the right to a safe environment should not be subject to any legislative restrictions at all.

4. The norms of Articles 36 and 42 of the Constitution also cause expert comments regarding the establishment of environmental restrictions – "possession, use, and disposal of land and other natural resources" must not damage the environment (Alibayev et al., 2022), and "everyone is obliged to preserve nature and the environment".

Experts note that the restrictions stipulated in part 2 of Article 36 are of a general nature and apply not only to subjects of ownership of natural resources ("possession"), but also to subjects who use objects belonging to them under other title rights ("use and disposal"), so in fact they are duplicated in Article 42.

5. CONCLUSION

The Russian Constitution lays down a certain model of relations between the state and society, per which the state serves civil society, particularly in the environmental sphere, which is a critical component of national security and is expected to consistently

gain more importance. Thus, it appears to be a topical and crucial task to search for options for incorporating environmental protection, resource management and environmental security into the Constitution that would be appropriate for the realities of the 21st century. This will increase the efficiency of constitutional norms and create a proper system of guarantees of each person's right to environmental security.

Proceeding from the above, we argue for the need to further perfect constitutional provisions regarding the content of Russian constitutional law, particularly in the sphere of environmental security, in accordance with the theory and practice of modern constitutionalism and guaranteeing its stability and inviolability.

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