ARTICLES

Tamara Zlotnikova

Head of the Department of Land Law and State Registration of Real Estate of the Faculty of Territorial Management of the Moscow State University of Geodesy and Cartography, Doctor of Legal Sciences, Professor, Honored Ecologist of the Russian Federation, Honorary Worker of Nature Protection, Academician of the Russian Ecological Academy

JUDICIAL PROTECTION AS AN EFFECTIVE MECHANISM FOR ENSURING ENVIRONMENTAL RIGHTS OF CITIZENS

DOI 10.30729/2541-8823-2022-7-1-6-20

Abstract. *The author examines various aspects of the judicial protection of the violated rights of citizens in the environmental sphere. The constitutional and legal foundations of judicial protection of the rights of citizens, including the rights to a favorable environment, are disclosed. Analyzed the provisions of international acts that contribute to the protection of violated environmental rights: the Universal Declaration of Human Rights and the European Convention on Human Rights. The effectiveness of specific cases on the protection of environmental rights in the European Court is considered. An analysis of the variability of environmental and legal protection depending on violations of various norms of the Federal Law "On Environmental Protection" is given. The indicators of measures of prosecutorial supervision and modern judicial statistics on the consideration of cases in the environmental sphere are analyzed. The reasons for the low negotiability and low effectiveness of court decisions to protect the environmental rights of citizens are considered. A specific example of a case with personal participation on violated environmental rights of citizens in Moscow was given. Violations are associated with changes to Moscow urban*

planning and environmental legislation and the loss of large areas. Specially protected natural areas under the "garage amnesty". The reasons for such legislative decisions are identified, and a measure is proposed to eliminate the gaps in such innovations.

Keywords: *environmental rights, guarantees of constitutional rights, judicial protection, compensation for environmental damage, "garbage reform", specially protected natural areas, environmental legal awareness.*

The environmental and legal component of the Russian Constitution, both in terms of the rights of citizens and in terms of their duties, is its undoubted advantage[1]. The leading role belongs to the trinity of environmental rights of Russian citizens, proclaimed in Article 42 of the Basic Law of the country. Only a few, mostly new constitutions of foreign states, in various forms, secure the right of their citizens to a favorable environment. The constitutional right of everyone to health protection (Article 41) serves as another fundamental and comprehensive norm affecting the subjective rights of a person, the foundations of his life. But the guarantees of the above rights of citizens cannot be considered outside the context of the fundamental general legal norms of Articles 2, 17, 18 of the Basic Law of the country. Moreover, article 15 of the Constitution proclaims its unconditional supremacy and direct effect.

From the totality of the above constitutional provisions, it follows that the environmental rights of citizens are fundamental, natural and inalienable civil rights, the recognition, observance, and protection of which is guaranteed by the state. One of the main guarantees of all, and not just environmental rights, is judicial protection, which is extremely important for ensuring the rights of citizens to a healthy environment. It is protection in courts of different jurisdictions that provides the constitutional goal of protecting environmental rights provided for by the specified norms of the Basic Law. At the same time, the proper state of the environment in this case is the object of judicial protection.

These constitutional postulates on the basic environmentally oriented rights of citizens have found their own, quite logical, development in the relevant norms of federal laws. Thus, Article 11 of the Federal Law "On Environmental Protection" provides for the rights of citizens, similar to those specified in Article 42 of the Constitution, but somewhat expands them. In particular, it specifies "other activities", including emergency situations of a natural and man-made nature[2]. Similar rights to a "favorable living environment" are provided for by the norms

---

[1] The Constitution of the Russian Federation, adopted by popular vote on December 12, 1993; with changes // Consultant.ru›document/cons_doc_LAW_28399/.

[2] Federal Law of January 10, 2002 No. 7-FZ "On Environmental Protection" // Consultant.ru›document/cons_doc_LAW_34823/.

of sanitary and epidemiological legislation[1]. Often violated, leading to judicial protection of the rights of citizens, is the norm of paragraph 2 of Article 13 of the Federal Law "On Environmental Protection" in terms of taking into account the opinion of the population when planning the placement of facilities that can harm the environment with their economic activities.

Additional, but very significant legal arguments in the judicial protection of citizens are the principles that must be used in the process of applying and interpreting the current legislation, which does not always happen. First, this concerns the basic principles of environmental legislation, defined in Article 3 of the Federal Law "On Environmental Protection". Certain principles of legislation on urban planning may become important for judicial environmental protection, for example, the principles named in paragraphs 2, 3, 5, 6, 9 of Article 2 of the Town Planning Code of the Russian Federation[2].

Among them, an important principle in urban planning is indicated regarding the balanced consideration of all factors, including environmental ones. But this norm does not fully ensure the environmental priority in the implementation of such activities. At the same time, in another principle of urban planning, it is determined to comply with environmental requirements, which does not always happen, and will be shown below. The basic principles of land legislation contained in Article 1 of the Land Code of the Russian Federation (clauses 1, 3, 4, 6, 8, 10, 11)[3] are also very significant in much litigation related to violations of land legislation. In addition, the basic principles of both urban planning and land legislation provide for a provision on the participation of citizens and their associations in the implementation of urban planning activities and in resolving issues related to land rights.

When applying to the courts for violated environmental rights, a number of provisions of strategic planning acts, as well as documents relating to the country's environmental policy, may be useful and appropriate. For example, the postulate of the Environmental Doctrine of the Russian Federation[4] is important, where the environmental priority is directly defined, which is literally indicated in the document as: "priority for society of the life-supporting functions of the biosphere in relation to the direct use of its resources".

---

[1] Federal Law of March 30, 1999 No. 52-FZ "On the sanitary and epidemiological well-being of the population" // Consultant.ru›document/cons_doc_LAW_22481/; Town Planning Code of the Russian Federation // Consultant.ru›document/cons_doc_LAW_51040/.

[2] Town Planning Code of the Russian Federation // Consultant.ru›document/cons_doc_LAW_51040/.

[3] Land Code of the Russian Federation dated October 25, 2001 No. 136-FZ // URL: base.garant.ru ›Land Code.

[4] Environmental Doctrine of the Russian Federation, approved by Decree of the Government of the Russian Federation of August 31, 2002 No. 1225-r) // URL: docs.cntd.ru›document/901826347.

In almost any case of forensic environmental protection, it is appropriate to use the postulates of another long-term strategic act. Clause 8 of the Fundamentals of the State Policy in the Field of Environmental Development of the Russian Federation for the period up to 2030[1] (hereinafter referred to as the Fundamentals) provides for principles that are largely synchronized with the principles of the above-mentioned basic environmental law (Article 3 of the Federal Law "On Environmental Protection"). At the same time, in this strategic document, the principles relating specifically to the rights of citizens are strengthened and concretized. Thus, an extremely important addition has been made to the principle on the participation of citizens in solving environmental problems and in ensuring environmental safety to take into account the opinion of citizens in making decisions affecting their environmental rights, including when planning and further implementing various types of potentially environmentally hazardous activities. These strengthening expand the legal possibilities of judicial protection in relation to the rights of citizens in the environmental sphere.

However, the violation of environmental rights may be associated not only with the immediate unsatisfactory state of the environment and its consequences. Often, violation of the basic environmental right (to live in a relatively clean environment) is associated with illegal actions or inaction of persons making responsible decisions: whether they are representatives of state, municipal or other authorities. In such cases, citizens are forced to defend their violated rights by appealing to the courts against actions, as well as inaction, and in some cases decisions, of officials involved. Regularly, in order to restore violated environmental rights, citizens have to seek the recognition of acts of both a normative and non-normative nature as illegal. Such a judicial mechanism regularly becomes dominant in the dynamics of judicial restoration of violated rights of citizens in the environmental sphere.

Protection in court of any, including environmental, rights is based on the norms of Articles 45 and 46 of the Basic Law of the country, which establish guarantees of judicial protection of the rights and freedoms of any citizen. An additional important legal argument in the protection of environmental rights is the existence of norms of international legal acts, of which Russia is a full participant. And although this year Russia withdrew from the Council of Europe and all its relevant institutions, including the European Court of Human Rights, this human rights mechanism has played a significant role in protecting the environmental rights of the country's citizens. This right of citizens is also enshrined in the aforementioned Article 46 of the Basic Law and allows everyone who has exhausted all domestic Russian mechanisms of judicial protection to apply to international courts.

---

[1] "Fundamentals of the state policy in the field of environmental development of the Russian Federation for the period up to 2030", approved by the President of the Russian Federation on April 30, 2012 // URL: kremlin.ru›events/president/news/15177.

The powers of the European Court of Human Rights are determined by the relevant European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the European Convention), to which Russia has been a party since 1998[1]. Both in this international legal act and in the Universal Declaration of Human Rights (hereinafter referred to as the Declaration)[2], the rights of citizens in the field of environmental protection are not singled out as an independent variety of subjective rights. To the extent that environmental rights and interests are related to human health, they are covered by the right to life. However, the text of this Convention does not directly contain a provision on environmental rights. Apparently, this is due to the peculiarities of the Western legal doctrine, which does not consider environmental law as basic independent rights, but includes it in the expanding content of other fundamental rights. Therefore, consideration of the protection of environmental rights is carried out according to the rules of the European Court within the framework of the protection of the fundamental right to life, or within the framework of the rights to respect for private life (or family life), provided for in Articles 2 and 8 of the said Convention, respectively. The most general but effective rule in the case of environmental protection is Article 3 of the Declaration, which protects the right to life and personal integrity. It is also appropriate to refer to Article 8 of the Declaration, which, along with the mentioned constitutional norms of Articles 45, 46, concerns the right of citizens to judicial protection.

It is appropriate to recall the most famous and resonant environmental cases of Russians in the European Court, for example, such as Fadeeva v. Russia[3] and Ledyaeva and Others v. Russia[4], which were ruled in favor of the violated environmental rights of residents living in the area affected by hazardous and toxic emissions from the Cherepovets Metallurgical plant "Severstal". The claims of the plaintiffs, who came to the high international court in defense of their environmental interests, consisted in a reasonable and legitimate desire to relocate to the ecologically safe territory of the city. Living in the immediate vicinity of the hazardous industries of this enterprise, i.e., within the boundaries of the previously

---

[1] Convention for the Protection of Human Rights and Fundamental Freedoms, ratified by the Federal Law of 30.03.1998. No. 54-FZ "On the ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols" // base.garant.ru›12111157/

[2] Universal Declaration of Human Rights // un.org›ru/documents/decl_conv/declarations/.

[3] Description of the case: Fadeyeva v. Russia (Judgment of the ECtHR dated 09.06.2005 on application no. 55723/00) // business-humanrights.org›ru…cases…against Russia/.

[4] Judgment of the European Court of Human Rights dated … Case "Ledyayeva and Others v. Russian Federation" (Applications nos. 53157/99, 53247/99, 53695/00 and 56850/00) // base.garant.ru› 71760266/.

established size of the sanitary protection zone of 1 km, contrary to the norms of domestic legislation. Consequently, resettlement from a residential area with high levels of atmospheric air pollution, significantly exceeding the established limit standards for a residential area, is quite natural. However, they were denied resettlement outside the dangerous sanitary protection zone of the enterprise. Having exhausted all the possibilities of domestic justice, these citizens applied for the protection of environmental rights to a high international court, which satisfied both claims. The court decision recognized the fault of the Russian authorities in the failure to regulate the consequences of environmental pollution by the said enterprise, which led to "deterioration in the quality of life" of the applicants. In addition, the highest European court recognized violations of the rights to respect for private life and home, i.e., Article 8 of that Convention.

In addition to the constitutional provisions to ensure judicial protection for any violated rights of citizens, the protection of rights in the environmental sphere is additionally enshrined in the aforementioned basic environmental law — the Federal Law "On Environmental Protection". In addition to the application of the above norms of articles 11, 12, which provide for the rights of citizens and their associations in the environmental sphere, another fundamental article applied to the majority of environmental violations disputed in courts related to the unfavorable state of all natural spheres is article 20 of the said law, which regulates quality standards. Other equally important provisions are concentrated in Chapter 7 of the Federal Law "On Environmental Protection", where environmental requirements are concentrated in the implementation of various types of economic activity.

In addition, article 76 of this law contains a reference rule on the resolution of disputes in the environmental sphere in a judicial way, which, first, regulates the Civil Procedure Code of the Russian Federation, including its articles: 3, 4, 46 and others. Citizens are often forced to seek judicial review of illegal actions and decisions that violate their environmental rights. At the same time, a great difficulty for such judicial protection related to challenging certain managerial decisions is the latency of these violations at the initial stage, when from the moment the relevant body makes a decision that affects the interests of citizens (until the moment when citizens really learned, saw, discovered this is a violation), months, and sometimes even years, pass. Legislation in this matter does not protect citizens who are given a 3-month period to appeal such decisions, but stands guard over stability in the activities of state and municipal bodies that make such decisions. The described legislative approach gives rise to the illusion or even confidence in the non-obligation of responsibility for such decisions that are insufficiently environmentally sound or even dangerous in terms of underestimated consequences.

Such a legal dissonance, unfortunately, does not contribute to the strengthening in legal reality and in the legal consciousness of citizens of the constitutional postulate

that Russia is a state of law. And if earlier, by virtue of the norms of Chapter 25 of the Code of Civil Procedure, as well as the Law of the Russian Federation "On Appeal to Court of Actions and Decisions Violating the Rights and Freedoms of Citizens", it was not so difficult to restore the almost always missed deadline for appealing decisions of this kind, now time, the courts, as a rule, refuse to restore the missed appeal period. At the same time, judges easily refer to the Internet accessibility and publicity of decisions and legal acts. Thus, figuratively speaking, citizens are simply "not allowed" to enter the court with such appeals, which leads to a decrease in judicial opportunities for citizens with such violations of their rights.

A large group of cases on judicial protection of rights in the environmental sphere can be considered to be appeals with lawsuits for compensation for environmental damage. Sometimes it is formulated as "harm to the environment", in others — "human habitat". Such claims are filed both by the citizens themselves (as subjects of the exercise of their constitutional environmental rights), and by authorized special state bodies. The most important bodies exercising supervision over the environmental rights of citizens are the bodies of the prosecutor's office. Thus, according to the General Prosecutor's Office of the Russian Federation, in the first half of 2021, more than 178,000 offenses in the field of environmental legislation were detected[1]. At the same time, more than 15,000 applications were sent to courts of different jurisdictions and about a thousand criminal cases were initiated. In addition, a separate Order of the Prosecutor General of the Russian Federation, concerning prosecutorial supervision over the implementation of environmental legislation, draws special attention of all prosecutors to the intensification of activities in terms of bringing claims for compensation for environmental damage[2].

Chairman of the Supreme Court of the Russian Federation V. M. Lebedev was a speaker at the World Environmental Judicial Conference organized by the United Nations Environment Program (UNEP) in 2021. The Chairman named the current data on the role of the judicial system of the Russian Federation in terms of protecting the environmental rights of citizens. He also pointed out that only the Plenum of the Supreme Court addressed this category of cases more than fifty times, and the Presidium of the Supreme Court of the Russian Federation, dealing with the environmental agenda, formed its legal position in 150 resolutions[3].

---

[1] Prosecutors have identified more than 178 thousand violations … // procrf.ru›news…bolee-178…zakonodatelstva.html.

[2] Order of the Prosecutor General of the Russian Federation dated April 15, 2021 No. 198 "On the organization of prosecutorial supervision over the implementation of legislation in the environmental sphere." // RuLaws.ru›…Prikaz-Genprokuratury…15.04.2021-N-198/.

[3] Lebedev spoke about the legal positions of the RF Armed Forces on cases … // legal.report›lebedev…pravovyh…vs-rf-po…svyazannym…

At the same time, the effectiveness of judicial decisions on environmental issues in Russia in 2020 alone is indicative: the courts satisfied more than 60% of applications to challenge and cancel the decisions of officials, as well as public authorities in environmental and related areas (sanitary and hygienic, land, urban planning etc.). According to V. M. Lebedev, in 64% of cases the courts upheld claims or declarative claims for compensation for environmental damage for a total amount recovered of 152 billion rubles. At the same time, more than 5,200 violators were convicted for environmental crimes in 2020 alone, and 52,000 people were brought to administrative responsibility for committing environmental offenses.

Do such indicators indicate the effectiveness of judicial protection of environmental rights guaranteed to citizens by the Constitution? More recently, one could agree with the position of N. I. Khludeneva, who noted the rather rare use by citizens of the means of judicial protection of environmental rights[1].

A characteristic feature of litigation to protect the environmental rights of citizens is the fact that there are very few lawyers among the legal community who specialize in this category of judicial protection (the exception is land disputes). This circumstance reduces the real possibilities not only of a positive outcome in legal proceedings to protect violated environmental rights, but also seriously reduces the initiation of such cases at the initial stage. In addition, these circumstances are further exacerbated by a certain inconsistency and the presence of gaps, the specificity and complexity of domestic legislation in this area. These objective reasons hinder the judicial and legal activity of citizens, which catalyzes the already numerous violations of the environmental rights of citizens who remain without judicial satisfaction, i.e., violated rights are not restored.

But in the last few years, the activity of citizens and public associations in such court competitions has increased significantly. The main reason for this is the unwillingness of citizens to put up with the placement of environmentally hazardous objects in the immediate vicinity of their place of residence. Such protest moods of the local population became especially noticeable during the "garbage" reform unfolding in the country. Insufficiently thought-out decisions on the placement of waste incineration plants with environmentally imperfect, outdated technologies stimulated the unification of citizens in many Russian regions to create environmental protection[2].

---

[1] *Khludeneva N. I.* Defects in legal regulation of environmental protection: monograph. M.: Institute of Legislation and Comparative Law under the Government of the Russian Federation; INFRA-M, 2014. P. 136–139.

[2] See more: For a forest in which they wanted to arrange a landfill, they will ask for the status of a specially protected area, vladimir-smi.ru›item/290282; What ended the protests against the landfill at Shies. Silent victory — after two years of hopeless struggle, medialeaks.ru›news/0906mmg-shies-win/; Protests against landfills in Russia, 2019, vyvoz.org›blog/protesty-protiv-svalok-v-rossii/.

The list of regions in which active and mass protests of the local population could reverse plans for the deployment of environmentally hazardous facilities is quite impressive: Arkhangelsk, Vladimir, Kirov, Moscow, Saratov regions and other regions.

The author of these lines has repeatedly taken part as a forensic expert, plaintiff, applicant or their representative in similar court proceedings, some examples of which with personal experience of judicial protection are described in more detail in other publications of the author[1].

But in the context of the stated topic, it is advisable to dwell in more detail on one eloquent example of judicial protection against legislative consolidation of the unlawful seizure of large areas of specially protected natural areas in Moscow during the implementation of the so-called "garage amnesty". In 2012, the Moscow City Duma adopted a legislative act that unreasonably and unacceptably worsened the state of specially protected natural areas in the capital region. This act served as a very dangerous, anti-environmental example of lawmaking for other subjects of the Russian Federation[2]. These changes allowed to exclude from the composition of Moscow specially protected natural areas land plots on which "garage facilities" were previously located, many of which already had court decisions on demolition as illegal buildings. At the same time, according to the data of the relevant subdivision of the Government of Moscow (Department of Nature Management and Environmental Protection), later declared in court, one-time irretrievable losses as a result of these changes in Moscow legislation amounted to 4% of the area of all specially protected natural areas in Moscow.

The same law legalized another measure dangerous for the "green lungs" of the capital region: the construction of buildings on the natural and green areas of the city for the placement of children's educational institutions (schools and kindergartens), and later for religious, administrative and other institutions. Such

---

[1] See more: *Zlotnikova T. V.* Modern trends in the legal regulation of the protection and use of specially protected natural areas // M. "Ecological Law", No. 2, 2019, P. 13–19; *Zlotnikova T. V.* Investment and urban planning interests and the fate of green and protected natural areas in the Moscow metropolis // in the collection of materials of the International Scientific and Practical Conference "Ecological and Legal Support for the Sustainable Development of Russian Regions", / comp. and resp. ed. S. A. Bogolyubov, N. R. Kamynina, M. V. Ponomarev. M.: MIIGAiK, 2015, Pp. 192–200; *Zlotnikova T. V.* The priority of public interests on the lands of protected areas as objects of national heritage: personal experience of judicial protection // in the collection of materials of the International Scientific and Practical Conference dedicated to the memory of the Corresponding Member of the Academy of Sciences of the Republic of Tatarstan, Doctor of Law, Professor, Honored Lawyer of the Republic of Tatarstan A. A. Ryabov "Actual problems of protecting the ownership of natural resources and objects: an interdisciplinary approach", Kazan, 2018, Moscow: Statute, 2019. 302 p.; pp. 60–66.

[2] Law of the City of Moscow dated April 11, 2012 No. 12 "On Amendments to the Law of the City of Moscow dated June 25, 2008 No. 28 "Urban Planning Code of the City of Moscow" and Article 8 of the Law of the City of Moscow dated May 5, 1999 No. 17 "On the Protection of Green Plantations", mos.ru›Law No. 12 On Amendments to the Law of the City of Moscow dated 25…

urban planning decisions can lead, especially taking into account the need to supply transport and utility infrastructure to them, to tangible losses in the green areas of the ecologically unfavorable Moscow metropolis. It is important that prior to the introduction of these changes, such construction was prohibited by the relevant Moscow law[1], which fully corresponds to similar prohibitions of federal law.

Characteristically, even the negative opinions on the draft Law prepared by the Moscow Prosecutor's Office and the Legal Department of the Moscow City Duma itself did not stop the Moscow City Duma from adopting changes that contradicted the current legislation, which, by the time our complaint was considered in court, had changed their legal position to the exact opposite.

Several groups of citizens applied to the Moscow City Court at the same time with statements about the abolition of the norms of the mentioned law of Moscow as violating the environmental rights of residents of the city of Moscow. All statements, including those from the author of this publication, were combined into a single legal proceeding. The contested changes actually cancel (as the very text of the contested Moscow act says — "do not apply") many norms of the existing Moscow laws concerning a clear legal prohibition of adjusting the area of specially protected natural areas in the direction of reduction: this is the already mentioned law "On Specially Protected Natural Territories in city of Moscow"[2] and "Urban planning code of the city of Moscow"[3].

It follows from the meaning of several norms of the Federal Law "On Environmental Protection" (clause 3 of Article 4, clauses 3 and 4 of Article 58, and clause 2 of Article 59) that federal legislation prohibits the seizure of lands of the natural reserve fund, as well as activities that have a negative impact on nature, the environment and can lead to degradation, destruction of natural objects under special protection, i.e., any urban specially protected natural and green areas. In addition, Article 61 of this Federal Law provides for severe restrictions and prohibitions for territories from the green fund of cities. The ban restricts any activity that has the potential to have a negative impact on such areas and prevent them from carrying out their envisaged basic functions of an ecological, recreational and sanitary nature. Moreover, the innovations of the Moscow law also violated Articles 35, 44, 52 of the Federal Law "On Environmental Protection". In addition, other norms of the

---

[1] Law of the City of Moscow dated March 17, 2004 No. 12 "On the protection of green spaces", mos.ru›eco/documents/zelenye-nasazhdeniya/view…

[2] Law of the City of Moscow dated September 26, 2001 No. 48 "On Specially Protected Natural Territories in the City of Moscow", base.garant.ru ›5610089/.

[3] Law of the City of Moscow dated June 25, 2008 No. 28 "Urban Planning Code of the City of Moscow", docs.cntd.ru›document/3692117.

law were also violated, among them: paragraph 1 of article 61, articles 103,107 of the Forest Code of the Russian Federation[1], article 27 of the Federal Law "On Specially Protected Natural Territories"[2], part 1 of article 10 of the Federal Law "On the transfer of land or land plots from one category to another"[3], paragraph 4 of Article 12 of the Federal Law "On Ecological Expertise".

Separately, it is necessary to dwell on violations of the Land Code of the Russian Federation. The stipulation in the challenged law of the possibility of excluding all land plots occupied by garage facilities from specially protected natural areas without assessing the possibility of using them for their intended purpose and without conducting a state environmental review also contradicts the requirements of land legislation. The norms of part 3 of article 95 of the Land Code of the Russian Federation prohibit the misuse of lands of specially protected natural areas, including natural monuments (which were most of the territories given by the disputed citizens to the innovations of the Moscow law for garages), as well as their withdrawal for needs that contradict their purpose.

The placement of capital construction objects of educational institutions (schools, kindergartens), provided for by these innovations in natural areas (urban forests) and green areas, the use of which is allowed for recreation of citizens and tourism, is a violation of Part 9 of Article 85 of the Land Code of the Russian Federation. This construction in the natural and green areas of the city will lead to significant irretrievable losses of forest vegetation in such an ecologically unfavorable metropolis as Moscow.

Before the disputed amendments, Article 8 of the Law of Moscow "On the Protection of Green Spaces" provided for a special procedure for the implementation of urban planning activities for the protection of green spaces and prohibited development that was not related to the designated purpose of natural and green areas in Moscow. Now, after the contested changes were made in terms of replacing the applied concept of "purpose" purpose with another definition — "functional" purpose, there are legal possibilities to carry out construction in these protected areas for any new function, i.e., only at first for the construction of children's educational institutions. In addition, a new paragraph was introduced into the same article 8, which determined the priority of urban planning relations over environmental ones and literally read: "Such changes are actually equivalent to

---

[1] Forest Code of the Russian Federation of December 4, 2006 No. 200-FZ, Consultant.ru›document/cons_doc_LAW_64299/.

[2] Federal Law of March 14, 1995 No. 33-FZ "On Specially Protected Natural Territories", zakonrf.info›doc-13487218/.

[3] Federal Law "On the transfer of land or land plots from one category to another", docs.cntd.ru›document/901918785.

the legal leveling of most of the norms of the Law of the City of Moscow "On the Protection of Green Spaces".

At the same time, according to clause 9.12 of the updated edition of "BNaR 2.07.01-89* Urban planning. Planning and development of urban and rural settlements"[1], the share of green areas within the development of cities should be at least 40%. According to another legal act — the "General scheme of greening the city of Moscow for the period until 2020"[2], the level of greenery in Moscow is less than 40% of the city's area, and in order to achieve the required indicator, Moscow needs additional greening of the territory in the amount of more than 8,000 hectares (which, for comparison, is much larger than the area of one of the largest administrative districts of the capital — the Central Administrative District of Moscow, whose area is 6,620 hectares). Thus, in Moscow there is a great shortage of green areas in its densely populated town-planning developed areas and there are no special opportunities for straightening greenery indicators to the recommended parameters.

All of the above violations are contrary to the legitimate environmental interests and constitutional rights of the inhabitants of the city of Moscow, namely: to protect health and a favorable environment, which are guaranteed in the aggregate by the norms of Articles 2, 9, 17, 18, 36, 41, 42 of the Constitution of the Russian Federation; to protect the environment from negative impacts (Article 11 of the Federal Law "On Environmental Protection"); on a favorable living environment (Articles 8, 23 of the Federal Law "On the sanitary and epidemiological well-being of the population"); to ensure a balanced consideration of environmental, economic, social and other factors and compliance with the requirements of environmental protection and environmental safety in the implementation of urban planning activities (paragraphs 2, 9 of Article 2 of the Urban Planning Code of the Russian Federation); to the priority of protecting human life and health, according to which land relations should be carried out (paragraph 3 of article 1 of the Land Code).

Thus, the disputed Moscow law also contradicts the constitutional provision of paragraph 5 of Article 76, which does not allow the adoption of regional legislation of the constituent entities of the Russian Federation, which is contrary to federal norms.

---

[1] Building norms and rules "BNaR 2.07.01-89* "Urban planning. Planning and development of urban and rural settlements", approved by the order of the Ministry of Regional Development of the Russian Federation of December 28, 2010 No. 820, [Electronic resource], base.garant.ru ›Urban planning.

[2] Decree of the Government of Moscow dated November 13, 2007 No. 996-PP "On the General Scheme of Greening the City of Moscow for the Period up to 2020", [Electronic resource], docs.cntd.ru›document/3685966.

Also, we, as the Applicants, noted the contradictions between the contested Moscow Law and Articles 21, 25 of the Charter of the City of Moscow[1], in terms of the prohibition to alienate lands of specially protected natural areas and "land use in the city of Moscow, based on the priority of protecting human life and health, … ensuring favorable environmental conditions for its life", as well as paragraph 3.4. Law of the City of Moscow "On the General Plan of the City of Moscow". The specified norm of the general plan of the city of Moscow, among other things, provides for "Withdrawal of third-party users whose functioning does not correspond to the goals and objectives of specially protected natural areas". To this end, the master plan includes a comprehensive list of measures "to restore the disturbed landscape and biological originality of specially protected natural areas", including by 2025 it was envisaged to withdraw third-party objects and complete work on the rehabilitation of disturbed ecosystems within specially protected natural areas, and also carry out other necessary measures to regulate the recreational load on specially protected natural areas at a level corresponding to their status. Thus, as a result of the withdrawal of sites from specially protected natural areas, instead of ecosystem rehabilitation, the withdrawn territories are allocated for capital construction.

At the same time, there is another, opposite judicial practice, about which the Applicants submitted relevant materials. In particular, the analysis of the current judicial practice indicates that the Supreme Court of the Russian Federation often supports the decisions of lower courts on the abolition of legal acts that provide for the reduction of lands of a specially protected natural area (for example, the ruling of the Supreme Court of the Russian Federation of November 18, 2009, No. 8-G09–33).

It turned out that all this is not of decisive importance if an erroneous legislative decision that contradicts the current legislation and the constitutional rights of citizens is taken at the highest level of power. All of the above norms of legislation were ignored both when the disputed innovations of Moscow legislation were adopted, and in the courts. The result of the trial in the Moscow City Court, both in the first instance and in the Supreme Court of the Russian Federation, was a complete refusal of citizens to satisfy their demands.

The question arises why, with such obvious and numerous violations of federal and Moscow legislation, as well as the rights of residents of the city of Moscow, we, the citizens, lost? Perhaps the reason is the legislatively fixed priority of urban planning interests over environmental and environmental ones.

From this revealing judicial history, an obvious conclusion suggests itself. If we really want to ensure effective protection and guarantees of the constitutional rights

[1] Charter of the city of Moscow, docs.cntd.ru›document/3607978.

of Russian citizens to a favorable environment, it is necessary to change the norm of Part 3 of Article 4 of the Town Planning Code of the Russian Federation, which actually proclaims the priority of urban planning interests over the environmental interests of the population, guaranteed by the Basic Law of the country. Until this legal bias is eliminated, urban planning, commercial, narrow departmental interests will be resolved at the expense of environmental degradation, by violating the environmental rights of the majority.

At the same time, the most effective would be an appeal to the Constitutional Court of the Russian Federation to check the constitutionality of certain norms of the Urban Planning Code of the Russian Federation, leading to violations of the constitutional rights of citizens to a favorable environment. The facts of the application of environmentally discriminatory norms of the Town Planning Code of the Russian Federation, which have accumulated in the years since its adoption (which is a prerequisite for such an appeal to the Constitutional Court), are already enough.

Thus, more and more often citizens use the judicial method of protecting their constitutional rights to a favorable environment, which indicates the growth of the ecological legal awareness of the population. Unfortunately, such protection does not always end with the success of citizens and the triumph of legality, legal and environmental justice. Many widely publicized "environmental hotspots" on the map of the country indicate that the increase in the protection of public environmental interests does not always meet with an adequate readiness of our judicial system to impartially, solely on the basis of constitutionality, legality and fairness, to administer justice, especially when the dispute involves decisions authorities or the interests of large commercial structures.

References

Khludeneva N. I. Defekty pravovogo regulirovanija okhrany okruzhajushchej sredy: monografija [Defects in legal regulation of environmental protection: monograph]. M.: Institut zakonodatel'stva i sravnitel'nogo pravovedenija pri Pravitel'stve Rossijskoj Federatsii; INFRA-M, 2014. Pp. 136–139.

Zlotnikova T. V. Sovremennye tendentsii pravovogo regulirovanija okhrany i ispol'zovanija osobo okhranjaemykh prirodnykh territorij [Modern trends in the legal regulation of the protection and use of specially protected natural areas] // Zhurnal "Ekologicheskoe pravo" [Journal "Environmental Law"], No 2, 2019. Pp. 13–19.

Zlotnikova T. V. Investitsionno-gradostroitel'nye interesy i sud'ba ozelenennykh i okhranjaemykh prirodnykh territorij v Moskovskom megapolise [Investment and urban planning interests and the fate of landscaped and protected natural

areas in the Moscow metropolis] // V sbornike materialov Mezhdunarodnoj nauchno-prakticheskoj konferentsii "Ekologo-pravovoe obespechenie ustojchivogo razvitija regionov Rossii" [In the collection of materials of the International Scientific and Practical Conference "Environmental and Legal Support for the Sustainable Development of Russian Regions"] / sost. i sootv. izd. S. A. Bogoljubov, N. R. Kamynina, M. V. Ponomarev. M.: MIIGAiK, 2015. Pp. 192–200.

Zlotnikova T. V. Prioritet publichnykh interesov na zemljakh OOPT kak ob"ektakh natsional'nogo dostojanija: lichnyj opyt sudebnoj zashchity [Priority of public interests on the lands of specially protected natural areas as objects of national heritage: personal experience of judicial protection] // V sbornike materialov Mezhdunarodnoj nauchno-prakticheskoj konferentsii, posvjashchennoj pamjati chlena-korrespondenta Akademii nauk Respubliki Tatarstan, doktora juridicheskikh nauk, professora, zasluzhennogo jurista Respubliki Tatarstan A. A. Rjabova "Aktual'nye problemy okhrany prava sobstvennosti na prirodnye resursy i ob"ekty: mezhdistsiplinarnyj podkhod", Kazan' [In the collection of materials of the International Scientific and Practical Conference dedicated to the memory of Corresponding Member of the Academy of Sciences of the Republic of Tatarstan, Doctor of Law, Professor, Honored Lawyer of the Republic of Tatarstan A. A. Ryabov "Actual problems of protecting the right of ownership of natural resources and objects: an interdisciplinary approach", Kazan], 2018, Moskva: Statut, 2019. 302 p.

Information about the author

Tamara Zlotnikova (Moscow, Russia) — Head of the Department of Land Law and State Registration of Real Estate of the Faculty of Territorial Management of the Moscow State University of Geodesy and Cartography, Doctor of Legal Sciences, Professor, Honored Ecologist of the Russian Federation, Honorary Worker of Nature Protection, Academician of the Russian Ecological Academy (23 Mitinskaya St., apt. 84, Moscow, 125222, Russia; e-mail: tzlotnikova@yandex.ru).

Recommended citation

Zlotnikova T. V. Judicial protection as an effective mechanism for ensuring environmental rights of citizens. Kazan University Law Review. 2022; 1 (7): 6–20. DOI: 10.30729/2541-8823-2022-7-1-6-20.