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Original Theoretical Research



Complementarity of Environmental Rights of Human and Nature: Conceptual Measurement of Environmental Law within the Framework of the International System and Environmental Policy of the Russian Federation

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Abstract

Introduction. The concept of “rights of nature” is gaining popularity and being accentuated in the legal systems of various states. Analysis of foreign experience in the recognition and consolidation of the rights of nature creates a synergistic relationship between human rights to a safe environment and environmental rights of the Earth, which acts as a catalyst for practical actions on the part of mankind aimed at maintaining and protecting nature. In this regard, the purpose of the study is to find the optimal model of synergistic coordination of human rights and nature, taking into account the environmental, anthropological and axiological differences of society.

Materials and Methods. The methodological framework of the research is based on the data of the International Monitoring of Environmental Jurisprudence, the European project Horizon H2020, the European Green Pact, legislative documents of the countries of Europe, South and North America. Assessment of domestic and foreign environmental solutions reveals advantages and disadvantages of the studied approach in the field of environmental management. Modeling and forecasting allow us to systematize successful foreign experience and identify ways to improve the environmental policy of the Russian Federation.

Results. Analysis of specific normative approaches to the definition and implementation of environmental law in the environmental policy of different countries makes it possible to determine the value of the concept under study, as well as a number of practical grounds (methods of implementation, recognition of responsible parties, determination of the legal standing of nature) that regulate human and environmental relations. The study of environmental approaches to the legal protection of nature, implemented on the territory of the Russian Federation, makes it possible to redefine the concept of Earth’s rights and highlight sustainable legal solutions to pressing environmental problems.

Discussion and Conclusion. Having carried out the comparative analysis of the effectiveness of foreign experience in implementing environmental policy, taking into account numerous manifestations of nature rights: at the level of constitutional and legislative changes, regulatory decisions, court decisions, private environmental projects, etc., it was concluded that it is necessary to develop the concept of environmental jurisprudence in Russia with the development of provisions on the legal standing of nature.

Keywords: environmental law, legal standing of nature, environmental management, ecocentrism, anthropocentrism

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Комплементарность экологических прав человека и природы: концептуальное измерение прав окружающей среды в рамках международной системы и экологической политики РФ

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Аннотация

Введение. Концепция «прав природы» приобретает все большую популярность и акцентуализируется в правовых системах различных государств. Анализ зарубежного опыта признания и закрепления прав природы посредством конституционных, законодательных и муниципальных инициатив обуславливает синергетическую взаимосвязь прав человека на безопасную окружающую среду с экологическими правами Земли, что выступает катализатором практических действий со стороны человечества, направленных на поддержание и защиту природы. Целью исследования является изучение зарубежного опыта легитимизации субъектных прав природы и эффективность экологической политики разных стран в синергетическом согласовании прав человека и природы.

Материалы и методы. Методологическая база исследования основывается на данных международного Мониторинга Экологической Юриспруденции, Европейского проекта Horizon H2020, Европейского Зеленого пакта, законодательных документов стран Европы, Южной и Северной Америки. Оценка отечественных и зарубежных экологических решений выявляет преимущества и недостатки изучаемого подхода в области экологического менеджмента. Моделирование и прогнозирование позволяет систематизировать успешный зарубежный опыт и выявить пути совершенствования экологической политики РФ.

Результаты исследования. Анализ специфических нормативных подходов к определению и имплементации прав окружающей среды в экологическую политику разных стран позволяет определить ценность изучаемой концепции, а также ряд практических оснований (способы реализации, признание ответственных сторон, определение правосубъектности природы), регламентирующих отношения человека и окружающей среды. Исследование экологических подходов правовой защиты природы, реализуемых на территории Российской Федерации, позволяет переосмыслить концепцию прав Земли и выделить устойчивые правовые решения актуальных экологических проблем.

Обсуждение и заключение. Проведя сравнительный анализ эффективности зарубежного опыта реализации экологической политики с учетом многочисленных проявления прав природы: на уровне конституционных и законодательных изменений, нормативных постановлений, судебных решений, частных экологических проектов и т. д., сделан вывод о необходимости развития концепции экологической юриспруденции в России с разработкой положений о правосубъектности природы.

Ключевые слова: экологические права, правосубъектность природы, экологическое управление, экоцентризм, антропоцентризм

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Introduction. The issue of environmental law and human obligations, as well as their socio-political reinforcement, has been at the head of scientific discussions for several decades, but the concept of nature and environmental law is virtually absent in the system of domestic legal protection.

On the global stage, the legislative consolidation of the rights of nature was carried out in 24 countries [1], including the participation of 23 states in the conclusion of international agreements in this area [2]. The total number of countries considering environmental rights as a separate legal category is 29 states [2]. The recognition of the rights of nature, based on the Universal Declaration of Human Rights and the Earth Charter [3], defines the deep relationship of man with the environment as “an indivisible community of diverse and interdependent beings with whom we share a common destiny and whom we must treat in such a way as to benefit our planet” [4].

The allocation of environmental law as a separate legal category raises the question of the possibility of applying the concept of legal standing to nature [5] and planet Earth. The differentiation of nature as a separate subject of legal relations causes many disputes in the modern scientific community. Adherents of anthropocentrism, which develops the ideas of scientific objectivism, reject this approach, arguing that it is impossible to implement partnerships between man and nature [5]. This is opposed by supporters of naturocentrism, “equalizing man with natural phenomena and denying the subjectivity of man” [5, p. 75].

In relation to the legal system of the Russian Federation, today nature is not distinguished as a separate legal entity and does not have its own set of rights, which is determined by a pragmatic approach to protecting the environment, which forms resources for human life.

Within the framework of cultural and socio-philosophical sciences, the assertion of natural environmental rights is a reinforcement of the idea of nature's perfection in its original manifestations, which is justified by the principles of environmental ethics [6]. However, this raises a logical question about the ratio of anthropological values of human society and inalienable rights of the ecosystem, which are transforming in the light of constantly updated civilizational achievements.

In this research, we are trying to assess the legitimacy of recognizing nature's rights as a factor in maintaining a sustainable development of society and ecosystem, as well as to identify the socio-philosophical and cultural context of the heterogeneous process of improving the environmental policy of different countries. In this regard, the purpose of the study is to find the optimal model of synergistic coordination of human rights and nature, taking into account the environmental, anthropological and axiological differences of society.

Materials and Methods. This study was carried out on the basis of methodological data of the international monitoring of environmental jurisprudence (Eco Jurisprudence Monitor) [7], the European project Horizon H2020 [8], as well as targeted planning of the European Green Deal in the field of sustainable development and ecology [9]. To understand the extent of the dissemination of the concept of environmental law, existing legal provisions from various documentary lists in the USA, Latin America and Europe were studied.

Analysis of legislative developments and innovative measures used to implement a set of rights inherent in nature and man in need of favorable environmental conditions is carried out through comparison and structuring of factors that determine the approaches of different countries to the representation of nature as a subject of legal relations and the description of a set of inherent rights in legislation, environmental policy and sociocultural perception.

Applying an ethical approach to the justification and solution of environmental gaps is aimed at overcoming sociocultural, ethnic and environmental-economic barriers to the establishment of philosophical and value-based principles of sustainable development. The philosophical method of substantiating environmental ethics seeks to solve the following research problems:

1. Determining the ratio of the degree of impact of man and society on nature and vice versa;
2. Recognition of the value of nature and life of all elements of the biosystem [6];
3. Identification of "the limits of the application of ethics and the boundaries of the spread of moral norms" [6, p. 33–34] within the framework of the philosophical justification of the significance of the rights of nature.

Results. The idea that the inalienable right of every man is the right to a favorable environment implies the maintenance of the ecological safety of natural resources, biological diversity and various ecosystem's components. Such an approach cannot be implemented without fulfilling the corresponding responsibilities of people in relation to the environment, which is reflected in various international and domestic documents: Convention on Biological Diversity of 1992, Convention on the Protection of Wild Fauna and Flora and Natural Habitats in Europe of 1979, Federal Law of the Russian Federation "On Environmental Expertise" of 1995, Political Strategies in the Field of Environmental Development of Russia and Other Countries, etc.

These and other regulatory prescriptions agree on the definition of the basic task – "the preservation of biological diversity is a common concern of all mankind" [9, p. 5]. Since biological diversity constitutes a natural value not created by man, the question arises of the existence of specific rights of nature inherent in a legal entity that does not have its own will and ability to fulfill legal obligations but at the same time distinguished by the individuality of various components that need legal protection from destructive external influences.

In this direction, it is advisable to consider the complex of rights inherent in every living creature, including human and representatives of flora and fauna: 1) the right to existence and reproduction; 2) the right to the necessary habitat; 3) the right to participate in the constantly updated processes of nature; 4) the right to maintain their identity and integrity as a separate self-regulating species; 5) the right to be protected from destruction, pollution, genetic modifications of the structure or methods of functioning that threaten its integrity or healthy existence; 6) the ability to interact with other beings and realize biological needs [10], etc.

Adopting the concept of the realization of the rights of nature, the scientific community a priori agrees with the postulate that nature is not responsible for what it has done (loss of life and destruction of property in cases of natural disasters), does not participate in bilateral relations with humans, and does not support equality between participants in their own ecosystem. This concept applies only in the context of human interaction with nature and assigns responsibilities only to people [10].

Taking into account the specifics of the legal categories applied to the environment, it becomes obvious that the most appropriate legal approach in this case is to protect nature's own rights, which is defined as "requirements correlating with the duties of others" [11, p. 18]. In other words, the rights of nature motivate humanity to take actions that can contribute to the maintenance and protection of the environment. Let's consider examples of how various states implement this approach in practical jurisprudence.

According to the results of Environmental Jurisprudence Monitoring, 64% of the provisions for the implementation of nature rights are implemented in the United States at the local (subnational) level through the work of organizations such as Community Environmental Legal Defense Fund (CELDF) and the Earth Rights Center; as well as the legal provisions of the Earth appear in a number of European countries (Belgium, France, the Netherlands) and Latin America (Colombia, Brazil, Ecuador, Peru, Mexico) and other territories [1].

Since 2015, at least 57 environmental initiatives have been implemented in the United States to legitimize environmental rights [12]. Unlike other Western countries, in the USA this direction developed at the level of individual

states (Pennsylvania, Wisconsin, etc.), municipal regulations (which are subject to state and federal legislation), charters of internal rules and tribal laws, some of which are adopted at the level of national legislation, others are canceled over time or challenged in court [12]. Subsequently, two states introduced the category of nature rights at the legislative level and several state political parties included nature rights in their official platform, in addition, several US-based NGOs are currently focusing their work on advocating for environmental rights.

Such legal regulations imply a transition from an abstract declaration of ecosystem rights to a more tangible approach, which provides for the proclamation of the possibilities of individual natural entities (such as specific lakes, rivers, plants and animals) to possess specific rights. This legal move focuses on specific natural features that matter to local communities. The effectiveness of tribal rights under US environmental initiatives is illustrated by the practical cases of litigation won in favor of nature: in 2022, the Sauk-Suyutle Indian tribe filed a lawsuit against the city of Seattle in a tribal court in order to declare, based on tribal law, that salmon living in water bodies in this territory “have inalienable rights to existence, reproduction and development, as well as inalienable rights to restore their own species” [12, p. 161].

Summarizing, we can say that in the United States there is no single legislative adoption and regulation of the rights of the Earth. Many researchers consider this concept to be a losing one in comparison with the systematization of national legislation towards ecologization, adopted, for example, in Panama in 2022 as a consolidation of nature rights in order to ensure their state protection. However, sustained initiative in cases of assertion of tribal environmental rights confirms the practical effectiveness of this approach.

In Latin America, most of the legal provisions at the national level are in Ecuador, reflecting the stable legal consolidation of nature rights over the past decade. The Constitution of Ecuador in the field of protecting the rights of nature is by far the most extensive. The definition of the legal status of the Earth in the preamble of the Constitution is reduced to a subject that reproduces and supports life [13]. Such an extended explanation, without offering any legal clarifications, is designed consciously and purposefully to show the magnitude of the rights of nature inherent in all ecosystems of the Earth, including those outside the borders of Ecuador [13]. At the moment, Ecuador remains the only Latin American country that has constitutionally fully approved environmental rights.

Chilean voters rejected a proposed initiative to introduce the rights of nature into the national Constitution in September 2022 [2]. In Colombia, the recognition of the rights of nature is reduced to one of the necessary conditions for the protection of environmental human rights. A practical case of protecting the environmental rights of the Earth was the trial of citizens against Colombian government bodies in 2018 in the case of Amazon deforestation which contributed to climate change [14]. The plaintiffs argued that deforestation violated their right to a healthy environment; The Supreme Court of Colombia declared Amazonia a legal entity and ordered the government to develop an action plan for reforestation [15].

In 2019, the President of Panama adopted legislation proclaiming the rights of nature and the responsibilities of the government to protect the national ecosystem [12]. In Europe, issues of adoption and development of the legal status of the Earth are raised in many states (France, Great Britain, Switzerland, Estonia, Hungary, Italy, Spain, etc.). For example, in 2021, several members of the Swiss National Council submitted to the Swiss parliament an initiative to amend the constitution recognizing the rights of nature [2], but this process continues to this day and the question remains open.

Spain has a Law on Natural Heritage and Biodiversity, which defines the concept of natural resources, which are any component of nature that is subject to human use to meet their needs and has current or potential value such as natural landscape, water bodies, soil, subsoil and land for their effective use [9]. In France, back in 2004, the environmental charter was adopted, providing the obligations of every citizen to preserve and improve the environment (Article 2), which implies the prevention of destructive actions by humans and/or limiting the consequences of such actions, as well as compensation for damage caused to nature (Article 3–4) [16]. In Italy, until 2022, the legal system did not directly provide legal protection in relation to nature and environment. Until the revision of the Italian Constitution in 2022, nature protection had been considered exclusively in the context of human rights to a healthy environment [17], but due to legislative changes, nature was given autonomous rights to the necessary protection of ecosystem biodiversity [9], which led to an improvement in the environmental situation in a number of regions.

Within the framework of the study, the Dutch approach to legitimizing the rights of nature is of particular interest. Despite the fact that at the level of federal legislation the legal standing of nature is not recognized by the state, several large campaigns are currently being carried out based on legislative mechanisms of legal regulation, which contributes to the development of the environmental organization Zoöconomic Foundation, which actually integrates nature rights into the internal decision-making processes of various organizations (private or public, commercial or non-commercial) that agree to represent the interests of the environment [18]. Such a governance model is based on private law and aims to integrate environmental interests into the organizational system, which contains significant potential that can be transferred to other legal systems and used as an alternative in political contexts of consideration of nature rights at the national level [18].

In our opinion, the main factor that determines the differences in the environmental policy of the noted states is the heterogeneity of national cultures and the originality of social settings. “It is safe to say that laws “do not work” primarily because they do not meet the needs of each person, and the level of environmental knowledge and the resulting attitude towards nature do not contribute to increasing the environmental orientation of economic activity” [19, p. 118]. Therefore, the implementation of the sustainable development concept should be based on the development of worldview, value, cultural and competence principles in the context of the prevention and resolution of variable environmental problems.

With regard to the environmental policy of the Russian Federation, which does not recognize the legal standing of nature, the main issue that requires urgent solution is the development of fundamental personal forms of environmental ethics: environmentally oriented thinking, environmental culture, environmental competence [19, p. 117]. As a basic tool for environmental regulation in Russia, the Federal Law “On Specially Protected Natural Areas” is applied, however, even in the domestic scientific community, various methods of public administration regulate primarily the categories of “nature management”, which contradicts the global trend of treating nature as an equal partner. The allocation of specially protected natural zones (reserves, national parks, natural complexes, etc.) does not give absolute legal protection to local representatives of flora and fauna, small natural objects and other ecosystem components that directly affect the maintenance of a healthy environment.

According to A.A. Akhtyrsky, today in Russia there are socio-anthropological problems of the ecological culture formation, including: the insufficient level of public confidence in relation to authorities, institutions and organizations responsible for environmental activities, the lack of development of environmental values system, the negative impact of the information environment, etc. [20, p. 16].

From this point of view, we come to the need to improve environmental education as the foundation for building an ecological culture. However, it should be noted that here we are not speaking about formalized training but about the sociocultural formation of a “nature-loving personality” [19, p. 120], that is, education, “which is designed to form environmentally oriented thinking as a central motivational and meaning-forming component of environmental consciousness and behavior” [19, p. 120].

In relation to professional activities, as well as to the system of legal regulation, the implementation of this approach should be expressed not only in the formation of relevant knowledge, skills and competencies of the specialist, but also in public administration and monitoring measures, in particular, monitoring educational structures at all levels promoting environmental education, media, and digital platforms involving citizens in various environmental activities, as well as instruments of legislative stimulation of the population and organizations to the manifestation of an active environmental position.

From the point of view of philosophical scientific understanding, environmental gnosiology and epistemology require special attention as ecologically reasonable knowledge, understanding and human attitude to the environment. This section also examines the personal (objective and subjective) motives and needs of individuals, combined with the interests of the natural world, which leads us to non-anthropological singularity (“the singularity of man as a subject of thinking oriented towards the protection of the environment, characterized by such life values and beliefs that are based on the inherent importance of nature and the planet as a whole, as well as on the belief that, being homo sapiens, man is responsible for their preservation and sustainable development” [19, p. 120–121]).

Considering man as part of the surrounding world, nature seems to be the primary subject of global environmental processes, which confirms the existence of inalienable rights of the Earth, the responsibility for the implementation of which is transferred to man in the general system of law as the bearer of actual subjectivity. Thus, the partnership between man and nature is a reinforcement of the basic right to life and a safe environment for all participants in the ecosystem, which in the future will allow a transition to a non-anthropocentric approach to the development of society and science.

Discussion and Conclusion. At the current stage of the civilizational society development, humanity is on the verge of a global anthropocentric catastrophe [21]. Studying the causes, consequences and possible solutions to this problem, researchers around the world are calling on government leaders to form a transnational legal framework that assigns legal status to planet Earth and its ecosystems. The protection of natural objects in court is gaining international strength as a tool to combat environmental threats. Giving the environment a special legal status contributes to the development of conscious interaction between man and nature aimed at building partnerships and strengthening the environmental positions of vulnerable groups.

Environmental jurisprudence and judicial practice to protect the rights of the Earth affects many areas of human life: social, cultural, economic, political, philosophical and scientific. Accordingly, the study of such concepts makes it possible to compare the effectiveness of foreign experience taking into account the numerous differences in the manifestation of nature rights around the world [22], whether these are constitutional and legislative changes (as in Ecuador), regulatory decisions (USA), court decisions (Colombia) or private environmental projects (Netherlands).

However, having conducted a comparative analysis of the variable principles for the implementation of the system of environmental rights of nature by different states, we come to the conclusion that the unevenness of this process is explained by differences in the cultural, historical, socio-economic and territorial characteristics of state policy. This statement allows us to say that the primary task of the sustainable development system is to improve environmental education, upbringing and culture aimed at cultivating conscious and responsible subjects of environmental law.

Existing ideas about a legal system that functions exclusively for people are unrealistic, due to the fact that all earthly beings need protection and inviolability. The interdisciplinarity of environmental law, based on the idea that a person is only part of a larger community, supports the well-being of each component of this system, that is aimed at the well-being of all mankind and the Earth as a whole [22].

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