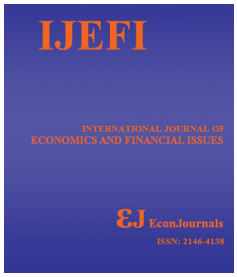

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Economics and Society in the Era of Technological Changes and Globalization

Some of the Corruptogenic Factors of Environmental Legislation in the Russian Federation

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ABSTRACT

The article investigates some of the shortcomings of environmental legislation, which lead to loss of valuable ecological systems in practice. The article examines two groups of regulations and their practical implementation. The first of the considered groups of normative legal sources regulates land and forest relations. It revealed corruptogenic rules that now allow to bypass the law to withdraw forest lands and specially protected natural reservations from these categories and transfer them to private ownership. In practice, this leads to deforestation and development of territories that are of great nature conservation value. The second group of normative legal acts relates to the regulation of resort relations. As a result of recent changes in environmental legislation, resorts and health and recreation areas were excluded from the specially protected natural reservations and were granted the status of just "conservation areas." At the same time, the criminal and administrative legislation has not changed. As a result, the legal regime of sanitary and mountain-sanitary conservation of resorts was left without adequate criminal and administrative protection, which may lead to the loss of natural medicinal resources and encourage corrupt activity.

Keywords: Environmental Legislation, Grant of Land, Regional Legislation, Corruption
JEL Classifications: Q23, Q24, Q28, R14, R52

1. INTRODUCTION

Over the last decade, the Russian Federation has been shaken with the corruption scandals related to illegal grant or turnover of land plots. Generally, they include bribes, abuse of power and fraud. Criminological researches are being conducted, including at the international level, to identify the causes and conditions of such criminal behavior (Hodgson and Jiang, 2007; Holmes, 2009; Karhunen and Ledyaeva, 2012).

Undoubtedly, many established cases of corruption in the area of natural resource management in Russia are historical and have long-standing social causes (Navasardova and Nutrikhin, 2011). Others are relatively new to the Russian practice and are caused by some peculiarities of modern corruption *per se*, which is also noted in modern research (Klukowskaya and Melekaev, 2011). However, with all the peculiarities of Russian Society at the present stage of its development, it should be noted that corruption to some extent is also peculiar to other countries and societies, as indicated by many foreign scientists (Habib and Zurawicki, 2002; Judge et al., 2011; Meschi, 2009).

A very large study was conducted in 2009 in 69 countries by the International Anti-Corruption Movement "Transparency International" to identify ways to improve the situation. The main focus was on improving the management system (The Earth Produces Corruption, 2012) or on the area of law enforcement, which is also noted in the majority of international studies on this

topic (Cuervo-Cazurra, 2006; Javorcik and Wei, 2009; Zekos, 2003).

But does the evil always lie in the violation of the legislation? Acts that, at first sight, should be regarded as unquestionable environmental offenses often do not violate formal law. This article will review just some of the most typical legal problems in the area of natural resource management, which are related to corruption and generated by the imperfection of Russian environmental legislation.

2. METHODOLOGY

We shall specify that the environmental offenses are understood not only as administrative delicts under Chapter 8 of the Code of Administrative Offences of the Russian Federation and crimes included in Chapter 26 of the Criminal Code of the Russian Federation, but also as those infringing natural objects as property categories. This is because, firstly, an integrated approach to the multifunctional value of certain natural sites is already recognized by the Russian legislator and, secondly, the economic nature of such violations may entail serious environmental consequences in the end, which today is widely recognized in science (Kramer, 2000).

We will analyze the specific situations of law enforcement, which, in our opinion, contain all the signs of environmental offenses, that is, first of all, entail undesirable and socially dangerous consequences for the environment.

We will try to determine the causes of making this possible at all and use them to identify the environmental regulations, the imperfection of which leads to such negative result.

We will evaluate these rules and the cases from law enforcement practice not only in terms of the corruptogenicity, but also from the standpoint of the Russian legislator not achieving the socially important objectives in the regulation of relations in the area of natural resource management, which, according to popular science opinion, leads to the deterioration of the environment as a whole (Rose, 2014).

3. RESULTS

Let us consider several cases that reflected a whole range of problems, which are based on imperfection (accidental or intentional) of the current legislation. In one case, the socially dangerous consequences of this imperfection are already evident and managerial decisions based on its standards are adopted. In another, they will certainly arise, and, unfortunately, in the near future.

3.1. Case One

It's about land and forest, or rather about the current legal regime of land plots occupied by forests. These natural objects have not just natural connection, but, for some time now, a single general legal regime, which is also noted by foreign authors (Albrecht, 2003; Smith, 1998; White, 2007).

The reaction of people unaware of the intricacies of the legal regulation of land and associated relationships to these situations is unequivocal – offenses are committed. They create a remonstrative committee to collect signatures in defense of nature, report cynicism of the officials involved in the situations to law enforcement agencies, write petitions to higher officials of the subject of the Federation. Indeed, the external signs of the acts suggest illegal behavior that violated the constitutional rights and responsibilities, as we are talking about the environmental wellbeing protected by Article 42 of the Russian Constitution, about the duty to protect nature guaranteed by Article 58 of the Constitution. None of the members of the public has doubt that these "offenses" are based on specific corruption schemes.

3.1.1. What is it actually about?

The further described situation with the illegal, as already noted, from the point of view of the public, and the legitimate, from the point of view of local authorities and the courts (including the Supreme Court of the Russian Federation), destruction of the forest near Stavropol has sparked great public outcry. It concentrated a number of problems related to the defects of legislation.

The theory of the case is as follows. Several years ago, a campaign on gardeners' partnerships' land divisions launched in the country. Now most of them have acquired the status of gardeners' non-commercial partnership (gross national product [GNP]). A number of GNP chairmen began to accept new members to GNPs with the grant of lands neighboring to the GNP before even starting the procedure for cadastral registration of the partnerships' lands, which have already been divided into individual plots, and their ownership was already registered. We shall emphasize that neighboring lands were not owned by GNPs.

But the land plots are different. The authorities located GNP "Mechanizator," which was established back in the last century, on forest land. The area is called "Russian Forest," and the GNP is considered the most prestigious in the city. "Russian Forest" is not only an environment protective, anti-landslide, water protective and health-promoting ecological frame of Stavropol (please note that Stavropol region has only 1.5% of forest cover). This is also a unique azonal (uncharacteristic for the steppe zone) forest system. There are 400 species of trees, shrubs and herbaceous plants originating from different parts of Eurasia – Nordic, Mediterranean, West Asia, Caucasus and local (endemic) species, more than 30 species of rare and endangered plants listed in the Red Book of Russia and Stavropol region. "Russian Forest" gained worldwide fame thanks to the fossil layers of Neogene sediments with remains of insects (12 orders, 38 families) and tropical plants that lived here 15 million years ago. There are four significant archeological sites. The forest preserves 21 species of vertebrates and invertebrates (Conclusion of Public Environmental Assessment, 2012).

The legal characteristic of "Russian Forest" lands is as follows: Until 2009, a part of the area included forest lands (protective forest in the federal property), nature reserve (property of Stavropol region), after 2009 – the urban forest (lands of the village).

GNP "Mechanizator" encroached upon these lands, more precisely – on the part of these lands, to expand the area of the partnership from 29.3 to 83.3 ha. The legality of registration of the ownership of 50 additional hectares sparked scandal, given the fact that 11.4 ha, according to the Environmental Prosecutor's Office and the Ministry of Natural Resources and Environmental Protection of Stavropol region, are lands of the forest and the state nature reserve of regional importance.

3.2. Scheme of Land Replotting

Briefly, the scheme of this "legitimate scam" is as follows: As already noted, the future owners of the newly granted plots have applied for membership in GNP "Mechanizator." Administration of Industrial district of Stavropol issued a decree on grant of land plots to its new members. Curiously enough, some of the new GNP members were granted several plots for free: From 21 to 32 (The Complete List…, n.d.). The plots were included in the state cadastral register. Borders of new plots were installed in the area. Ownership of these garden plots was registered.

Thereafter, the environmental prosecutor's office has filed several dozen lawsuits (according to the number of plots granted that were in the territory of the forest fund and the regional land reserve). The claims were as follows: To recognize the decree of the Head of Industrial district of Stavropol on grant of land plots in GNP "Mechanizator" illegal and revoke it; to annul the decision of the Federal State Institution "Land Cadastral Chamber" on registration of land plots in the state cadaster; to annul the entries in the Unified state register of rights to immovable property and transactions with it about the state registration of property rights. The prosecutor's office brought arguments, in addition to pointing at ownership of the land to the reserves and the state forest fund, such as a violation of the order of admission of new land owners to GNP "Mechanizator."

Of the filed claims, the courts of first instance sustained ten, wholly or in part. The claims under other cases were denied. The courts of second instance and the Supreme Court of the Russian Federation put the end to the case, leading to a common denominator and ruling to dismiss the claims in all the cases.

Let's look at this situation from the standpoint of legal realities. Let's start from the allegedly illegally occupied lands and their legal regime. Recent data on the lands of the state forest fund and the regional state reserve related to "Russian Forest" is contained in the materials of forest inventory in 1977. However, a decree related to the lands of the reserve was issued in 1997 by the Governor of Stavropol Region, dated August 26, 1997 No. 547 "On the establishment of nature reserves of regional significance," as if to confirm the decision of the Soviet period of the legitimacy of the existence of this state reserve.

3.3. State's Loss of Rights to Forest

It would seem that no problem can arise with these lands. Their borders are described in forest management documents, boundary marks are installed at the borders. In reality, the situation is much more complicated. According to the civil, land and forest legislation, that is far not enough to recognize ownership of the Russian Federation and the Stavropol region to them. These forest plots, as well as plots of citizens and legal persons, should be registered in the cadaster and the ownership should also be registered (Anisimov et al., 2009). However, neither the Russian Federation nor Stavropol region allocated money on these expensive measures at the time. And it's not just a problem of Stavropol region. As we know, the vast majority of powers that constitute the forest management are delegated and own powers of the subject of the Federation.

As for the Russian Federation, it mainly sided with policy making, placing much of the responsibility on its subjects. At the same time, the powers transmitted for execution should be financed in the form of subventions from the federal budget, calculated on the basis of a special technique. However, when it comes to the distribution of subventions to subjects of the Federation, they are allocated with financial resources calculated not according to the techniques but by the distribution of limits of budgetary obligations, depending on the amount budgeted. This requires improvement of the methods of calculating subsidies, which must contain the basic minimum rates of the cost of the planned activities. A clear lack of funding the execution of delegated powers in the field of environment and natural resources should be noted.

The situation is aggravated by the downward trend in the volume of subsidies over the last few years. Moreover, according to Report of the Russian Ministry of Natural Resources on the results and main directions for 2014 and the target period of 2015 and 2016, the proportion of the area of forest land registered in the cadaster in the total area of forest land is one of the performance indicators of rational natural resource management. However, the cadastral activities are not even mentioned in the expected results of solving the tasks of the state program "development of forestry."

The federal budget deficit should also be taken into account, which means a reduction of expenses, including, if not in the first place, for environmental needs (Kolesnikova, 2012).

Is it possible to resolve the question of maintaining the lands of the forest fund, and, consequently, of preserving the rights of federal ownership of forest lands? It is. It is enough to supplement the Federal Law dated December 4, 2006 No. 201-FZ "On introduction of the Forest Code of the Russian Federation" with the norm of recognition of the previously established boundaries of forest lands according to the most recent forest management data. It should have been done back at the time of the adoption of the law, given that the Federal Law "On state registration of rights to immovable property and transactions with it" was adopted back in 1997 (that is, 9 years before the adoption of the current Forest Code of the Russian Federation), and the Federal Law "On Land Management" – in 2001.

By the way, due to the lack of registered rights to forest lands, which, by the way, are not subject to privatization, hundreds of hectares of forest in the subjects of the Federation go into private hands, as the Federal Law "On introduction of the Forest Code of the Russian Federation," following the Federal Law "On introduction of the Land Code of the Russian Federation," allows

local governments to dispose of lands that are not differentiated by forms of public property.

3.4. Corruptogenicity of Urban Development Laws

But let us return to our example and the court rulings that followed it. During the court hearings, it was found out that part of the plots was granted from the lands of inhabited locality (Stavropol) and urban forest located on them. How could it be that this was revealed only in court? How could the area of forest land be a part of the lands of inhabited locality? It turns out that another scheme based on the imperfection of the legislation was employed here.

During the period of distribution of today's disputable land plots, a master plan of Stavropol came into force (it was approved on September 9, 2009) that set new boundaries of the city, which lie exactly on the territory of forest land and the regional reserve lands.

The question is: How could the environmental authorities of Stavropol region, and, first and foremost, the Regional Ministry of Natural Resources and Environmental Protection, in whose jurisdiction there is the state regional reserve and which is a body carrying out the delegated powers in the field of forest relations, approve a draft master plan in such a form?

It turns out that the ministry did not approve this plan – not because it wasn't submitted for approval in violation of the law, but because the administration of Stavropol hasn't received the approval from the ministry within 3 months. According to Article 25 of the Urban Planning Code of the Russian Federation, if no conclusions to the draft master plan from the from the competent authorities are received by the due date by the head of the urban district, the plan is considered to be approved by such bodies.

As a result, you can just miss the signature of the Regional Minister, and the area of the inhabited locality will be replenished with the lands of all categories just by its own, including forest lands and lands of specially protected natural reservations. In the meantime, the official, who did not approve the master plan, bears no responsibility.

Another fact is that, according to the Land Code of the Russian Federation, the lands within the boundaries of the inhabited locality are recognized as the lands of inhabited locality, and no existence of other categories of land in the residential areas is allowed. That is, if forest lands, contrary to expectations, appeared within the borders of the inhabited locality, they lose their status of forest land. Local authorities can dispose of them, if, again, it is not proved that, despite the location of the land within the boundaries of the inhabited locality, the ownership of them belongs to the Russian Federation or the subject of the Federation.

The situation might have turned out differently. Forest lands could be legally converted into lands of inhabited locality, which is allowed by the Federal Law dated December 21, 2004 No.172-FZ "On the transfer of land or land plots from one category to another," including for the purposes of establishing or changing the boundaries of the inhabited locality. But this procedure is lengthy, and, most importantly, costly, associated with the same cadastral registration of land plots. And since the laws are formally met, there is a legal opportunity to grant third parties the plots of land located in the forest – As the organization that developed them now indicates on its website, in a clean area.

Indeed, a number of controversial plots are now developed with luxury cottages, and they are sold at prices unheard of in the provincial towns, namely, as indicated in the above website, for 150 million rubles. The fact is that the plots were distributed for free, including to the owners (and those close to them) of one known construction organization. Moreover, they were distributed not by one, but, as noted above, by several at a time. That is, citizens (or rather the construction organization they own) received hectares (!) of land for future business activities for free.

Another question is: How could the local authority grant several free plots to the future "gardeners," each of which is from 0.8 to 0.10 ha? According to paragraph 2 of Article 28 of the Land Code, granting land for the ownership of citizens and legal persons may be free of charge in cases envisaged by the Land Code of the Russian Federation, federal laws and laws of subjects of the Russian Federation. By virtue of the regional law dated August 1, 2003 No. 28-kz "On management and disposal of land in Stavropol region" in force at the time, the maximum size of plots for gardening is 0.15 ha. Therefore, the provision of even 2 plots for free violated the rules of the regional law.

3.5. Case Two

While the described situation with "Russian Forest" in Stavropol can be considered as a special case (although there are quite a lot of similar examples), the changes in legislation on specially protected natural reservations, introduced by the Federal Law dated December 28, 2013, can't but cause anxiety and bewilderment, to say the least. What will follow the implementation of the rules adopted by the law can now be called an environmental disaster, the loss of resorts.

Key novelties contained in the law are related to the exclusion of health and recreation areas and resorts from the specially protected natural reservations, while lands occupied by them – from the lands of specially protected natural reservations. They are now classified as conservation areas.

We believe that the preparation of any draft normative act, especially legislative, should include the forecast of the consequences of its enforcement. However, the explanatory note to this draft law relates only to elimination of the contradictions existing in various sectors of the legislation somehow regulating public relations in the environmental field. Traditionally, the explanatory note only mentions the absence of additional financial costs from the federal budget as a consequence of the adoption of the law. Meanwhile, the changes have removed a number of significant restrictions previously imposed on federal resort lands.

Firstly, federal resort lands are back into the civil circulation. According to Article 27 of the Land Code of the Russian Federation, only lands within the specially protected natural reservations are limited in circulation (except public lands and nature reserves that

are withdrawn from circulation by the same article). This means that they are not granted for private ownership, except in cases established by federal laws. Therefore, the exclusion of the word "natural" now allows to transfer them to private ownership and to make transactions with them.

Secondly, while previously there was at least some, albeit quite fragile, barrier on the way of placing industrial facilities on resort lands – in the form of state environmental expertise, it is now removed. According to Article 11 of the Federal Law "On environmental impact assessment," the state environmental expertise is applied only to project documentation of the facilities, the construction or reconstruction of which is expected to carry, again, on the lands of specially protected natural reservations of federal significance.

Thirdly, and this is probably the most important thing, by depriving the resorts of the status of specially protected natural reservations, and, first and foremost, the resorts of federal significance, the legislator has "forgotten" to amend the Code of Administrative Offences and the Criminal Code of the Russian Federation in the part of the administrative and criminal penalties for non-compliance with the legal regime of these conservation areas. Both Article 8.39 "violation of rules of protection and use of natural resources in specially protected natural reservations" of the Administrative Code and Article 262 "violation of the regime of conservation areas and natural sites" of the Criminal Code refer to natural sites.

The first question is: Who benefits? First of all, the heads of municipalities located within the resorts do.

3.6. Consequences for Resorts

Let us illustrate this with a few examples. It will be about one of the most famous resorts of our country, the Caucasian Mineral Waters, which exists as such for over 200 years. Protection of sources of mineral waters with unique composition in this area goes back to Emperor Paul I. The official date of establishment of resorts of the Caucasian Waters is considered 1803, when Alexander I issued a rescript for the establishment of resort infrastructure. During the subsequent period, by the way, notwithstanding the ongoing Caucasus War, not only was the construction of the resort facilities conducted, but also the resort legislation was created and state financing of resorts was carried out.

The districts of mountain-sanitary protection, which are now left without legal defense, were protected by criminal law. Private land ownership was introduced in a very "metered" way and the sources of mineral water remained in state ownership. The following urbanization of this territory, which lasted throughout the existence of the Caucasian Mineral Waters resorts, eventually led to disastrous results. In Soviet times, the regime of the first zone of the district of mountain-sanitary protection was still maintained, as well funding for the development of resort infrastructure and activities on the maintenance of mineral water wells in working condition. In recent decades, the financial support of this unique national heritage is almost absent, despite the status of the resort as the federal specially protected natural reservation. With persistent regularity, local authorities of resort towns have tried (and often they succeeded) to grant lands, located in the first zone of the district of mountain-sanitary protection, for construction, where such construction is prohibited by law.

The situation reached the point that the administration of the resort town of Pyatigorsk appealed to the arbitration court requesting to change the boundaries of the first protection zone in order to reduce its area. To the credit of the Stavropol Court of Arbitration, claims in the court of first instance were not satisfied. But now, after the adoption of this law, local governments may not worry about the courts, as the legal liability is cancelled. The rules of the legal regime of protection zones were preserved, but now they are left without legal defense.

We believe that this situation is fraught with serious socially dangerous consequences, which, in the first place, will be the loss of sources of underground mineral waters as a consequence of the now unfettered development of the first protection zone.

The volume of this article does not allow to provide full, very negative information about the state of resorts of the Caucasian Mineral Waters. It is sufficient to note that, according to the online magazine "Management of Communications," the sanitary regime in the first zones of the district of mountain-sanitary protection has not been complied with in all the resorts of the Caucasus Waters for several years. The district of their mountain-sanitary protection includes about 13 emergency wells located in the unallocated subsoil fund, which lead to the degradation of mineral water. They require urgent work on their elimination or repair (Sanitary and Ecological Condition… 2009).

4. DISCUSSION

Is there a way out of the above and similar unwanted situations? First of all, an audit of the land and related legislation is required in order to identify corruption standards.

The need for monitoring of anti-corruption legislation has long been discussed, which is of particular relevance for the environmental sector (Wolf, 2009). However, aside from lack of amendments to the legislation, as shown in the example of changes in the rules about the resorts, new shortcomings are added to the existing ones.

We have already talked about the possibility of restraining unlawful granting of forest land. It is enough to supplement the rules of the Federal Law "On introduction of the Forest Code of the Russian Federation," and the situations with the "disappearance" of dozens, if not hundreds, of hectares of these lands (as well as forests growing on them) will not take place. At least, it is easy to eliminate the defects of the legislation that give reasons for the apparent corrupt behavior.

At the same time, the legislator should pay attention to the possibility of criminalizing such acts in the use of the land legislation.

It seems appropriate to supplement Article 170 of the Criminal Code of the Russian Federation with the rule establishing criminal liability for violating the rules of granting land plots.

This norm would protect both the resort lands and other categories of land that cannot be granted for private ownership by virtue of the rules established by regulatory acts, which currently lack protection from the criminal law.

Of course, it is possible to apply Article 19.9 of the Code of Administrative Offences of the Russian Federation, which establishes administrative responsibility for the satisfaction by the official of the application from a citizen or legal person to grant the land or forest plot or water body under state or municipal ownership, which in compliance with the law cannot be satisfied (Anisimov et al., 2010).

However, in our opinion, the situations related to the violation of land legislation and, in particular, illegal granting of land plots, are fraught with high danger to the public. It is sufficient to say that according to estimates by the experts, damage to forestry from the illicit transfer of forest land and land of regional reserve to GNP "Mechanizator" totaled 12,636,000 rubles. Compare this to the detriment of the provisions of Article 260 of the Criminal Code of the Russian Federation: Damage of only 5000 rubles is sufficient to bring the perpetrators to criminal liability for the illegal felling of forest plantations.

5. CONCLUSION

This article reviewed only two examples of corruptogenic imperfection of the current environmental legislation. Of course, there are many more examples in reality, and all of them require the prompt detection and the most careful study (Levin and Satarov, 2000).

In Russian regions, scientists in various fields – lawyers, environmentalists and experts in the use of natural resources – should bring such examples to the widest possible publicity, compile them, analyze, identify the causes and make proposals to change the rules of law which open the way to this kind of abuse. Such attempts have long been taken in science (Rodrigues et al., 2005), but they are still clearly insufficient.

Violations related to granting of land and other natural resources are already too numerous in practice to be aggravated even further with corruptogenic law, which itself pushes the law enforcer to commit unlawful acts. The legislation in its normal state should deter crime rather than trigger its commission. After all, corruption doesn't only corrode the social relations, but also leads to disruption of the ecological balance in the environment and hinders the normal economic development of society (Henisz, 2000).

In terms of this simple logic, the science should analyze all the norms of the Russian environmental legislation over time – both in a purely rational approach, which reveals the obvious corruptogenicity of the law and excludes the relevant factors for the future, and from the application positions. These positions often reveal in practice the corruption factors, the emergence of which would be hard, if not impossible, to predict at abstract theorizing (Luo, 2004). It is therefore important not only to study the law itself, but also to keep track of the most problematic areas in its practical application.

We dare to hope that this will greatly improve the Russian environmental legislation and truly harmonize natural resource relationships.

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