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On Certain Issues of Application of Legislation Regarding Restitution of Environmental Damage

Everyone's right to a favourable environment is recognised and guaranteed by the Constitution of the Russian Federation (Article 42).

One of the vital means of environmental protection and ensuring the citizens' right to a favourable environment is the imposition of duty to restore the damage in full upon a person that caused damage to the environment, as well as the imposition of duty to suspend, limit or terminate activities that create a danger of future damages. Thus the measures aimed at restoration of the environment, negatively impacted by economic and (or) other activities, are taken, and violation of environmental protection requirements, future environmental damage are prevented.

In order to ensure the correct and uniform court application of legislation stipulating the duty to restore environmental damage, the Plenary Session of the Supreme Court of the Russian Federation, guided by Article 126 of the Constitution of the Russian Federation, Articles 2 and 5 of Federal Constitutional Law No. 3 of 5 February 2014 "On the Supreme Court of the Russian Federation", hereby rules to provide the following explanations:

1. Environmental damage is restored in accordance with the Civil Code of the Russian Federation (hereinafter referred to as the CC RF), the Land Code of the Russian Federation, the Forest Code of the Russian Federation (hereinafter – the

ForC RF), the Water Code of the Russian Federation (hereinafter – the WC RF), Federal Law No. 7 of 10 January 2002 "On Environmental Protection" (hereinafter – the Law on Environmental Protection), other laws and normative legal acts regarding environmental protection and natural resource management.

When considering such disputes, the courts should take into account the principles of environmental protection, on which economic and other activities must be based. In accordance with Article 3 of the Law on Environmental Protection, these principles include, in particular, the "user pays" principle of natural resource management and restitution of environmental damage, presumption of ecological danger of planned economic and other activities, obligatory assessment of environmental impact in adoption of decisions regarding economic and other activities, admissibility of influence of economic and other activities upon the natural environment based on environmental protection requirements, duty of legal persons and individual entrepreneurs, engaged in economic and (or) other activities that lead or may lead to pollution, to finance the measures of prevention and (or) minimisation of negative environmental impact, clear the consequences of such impact.

2. In accordance with Article 75 of the Law on Environmental Protection, property, disciplinary, administrative and criminal liability is stipulated for violation of environmental protection legislation.

If a person is not held administratively, criminally or disciplinarily liable, this does not exclude the possibility that a duty to restore environmental damage will be imposed upon that person. Likewise, if a person is held administratively, criminally or disciplinarily liable, this does not constitute grounds to exempt that person from the duty to rectify the committed violation and to restore the damages caused.

3. Authorised public authorities of the Russian Federation, of constituent entities of the Russian Federation, a prosecutor, citizens, public associations and non-commercial organisations engaged in activities in the sphere of environmental protection may file claims for restitution of environmental damage (Articles 45, 46 of the Civil Procedure Code of the Russian Federation (hereinafter – the CPC RF), Article 53 of the Commercial Procedure Code of the Russian Federation (hereinafter – the ComPC RF), Articles 5, 6, 11, 12, 66 of the Law on Environmental Protection). Local self-government bodies may also file such claims, taking into account that the sixth paragraph of Article 3 of the Law on

Environmental Protection makes them responsible for ensuring a favourable environment and ecological safety in the corresponding territories.

4. By implication of Article 79 of the Law on Environmental Protection, environmental damage is subject to restitution independent of whether the damage caused by negative impact of the environment (resulting from economic and (or) other activities) to the health of citizens or the property of natural and legal persons, has been restored. Likewise, if a person restores environmental damage, this does not constitute grounds to exempt that person from liability for damage to health of citizens or the property of natural and legal persons, caused by negative environmental impact resulting from its engagement in commercial and (or) other activities and violation of environmental protection legislation. For example, if a person uses toxic chemicals for agriculture, which do not dissolve in the environment, this person may be obliged to restore the environmental damage, as well as losses caused to certain owners (users) of land (forest) plots (in particular due to crop failure, death of animals belonging to those persons, etc.).

5. If a person owns a land plot, and its activities lead to pollution or other deterioration of that land plot, this cannot by itself serve as grounds for exemption of that person from the duty to restore the land plot to its initial state and restore the environmental damage (Article 1064 of the CC RF, Item 1 of Article 77 of the Law on Environmental Protection).

6. Causing of damages in the form of adverse changes of the environment (in particular its pollution, depletion, deterioration, destruction of natural resources, degradation and destruction of natural ecosystems, perishing or injury of flora and fauna species, as well as other unfavourable consequences) constitutes grounds for property liability of a person (Articles 1, 77 of the Law on Environmental Protection).

7. By implication of Article 1064 of the CC RF, Article 77 of the Law on Environmental Protection, the person filing a claim for restitution of environmental damage presents evidence that confirms the existence of damage, substantiates, with a reasonable degree of certainty, the amount of damage and the causal link between the actions (failure to act) of the defendant and the damage caused.

If a legal person, individual entrepreneur exceeds the stipulated norms of authorised environmental impact, it is supposed that its actions result in damage (Article 3, Item 3 of Article 22, Item 2 of Article 34 of the Law on Environmental

Protection). The burden of proof of the facts indicating that the negative consequences were caused by other factors and (or) that they would appear independently from the committed violation lies on the defendant.

8. By general rule, in accordance with Article 1064 of the CC RF and Article 77 of the Law on Environmental Protection, the person that caused environmental damage is obliged to restore it, if it is guilty of damage. The law may also stipulate restitution of damage in the absence of guilt of the person causing the damage.

For example, by virtue of Article 1079 of the CC RF, legal persons and citizens engaged in ultrahazardous activities are obliged to restore damages caused by the source of the hazard independent of their guilt, unless they prove that the damages were caused due to a force majeure (Item 1 of Article 1079 of the CC RF). In this regard, for example, the owner of an oil pipeline will be held responsible for environmental damage caused by third persons that made an illegal stub-in.

The lists of hazardous and extremely hazardous activities are stipulated, for example, in the City-Planning Code of the Russian Federation (Part 1 of Article 48^{1}), Merchant Shipping Code of the Russian Federation (Sub-item 3 of Item 2 of Article 327), Inland Water Transport Code of the Russian Federation (Item 1 of Article 86), Federal Law No. 29 of 3 April 1996 "On Financing of Extremely Radiation-Hazardous and Nuclear-Hazardous Activities and Facilities" (Article 1), Federal Law No. 116 of 21 July 1997 "On Industrial Safety of Hazardous Production Facilities" (Annexes 1 and 2), Federal Law No. 225 of 27 July 2010 "On Mandatory Civil Liability Insurance of Owners of Hazardous Facilities against Damages Resulting from Accidents at Hazardous Facilities" (Article 5).

By implication of Item 2 of Article 1079 of the CC RF, the owner of an ultrahazardous object is not liable for the damage caused by that object, if it proves the simultaneous existence of two conditions: that the ultrahazardous object went out of its possession as a result of unlawful actions of other persons, and herewith that the owner is not guilty of losing possession of that object (in particular, since third persons had (were granted) access to the object, since the object was not duly guarded, etc.).

The law may stipulate the grounds on which the owner of an ultrahazardous object may be exempt from liability, e.g. Articles 317, 328, 336^{2} of the Merchant Shipping Code of the Russian Federation.

9. Persons that jointly caused environmental damage are jointly and severally liable (first paragraph of Article 1080 of the CC RF). The joint nature of such actions may be confirmed by their consistency, coordination and common intent. For example, a customer that ordered the performance of works that damage the environment and the contractor that performed the works may be held jointly and severally liable. The customer may be exempt from liability if it proves that the contractor exceeded the limits of the task set before it by the customer.

10. If environmental damage is caused by several ultrahazardous objects, their owners bear joint and several liability (Item 3 of Article 1079 of the CC RF). For example, the owner of an oil pipeline and the owner of construction equipment may bear joint and several liability for the spill of oil products occurring as a result of use of that equipment.

11. By implication of Article 1064 of the CC RF, if several persons acted independently from each other and the actions of each of them resulted in environmental damage, these persons, by general rule, bear shared liability. In particular, the volume of share of each of the persons that caused the damage may be determined by the hazardousness of their activities, their intensity, etc. For example, if two persons independently store solid waste on a land plot that is not designated for such purposes, they may be held liable in shares proportionate to the volume of waste (e.g. calculated with regard to the number of transport vehicles used to take away the waste, their load capacity, hazard category of waste resulting from the activities of the aforementioned persons, as well as to other factors). If it is impossible to establish the share of each person's responsibility for the damage caused, they are held liable in equal shares (Article 321 of the CC RF).

12. Environmental damage is subject to restitution in full volume (Item 1 of Article 77 of the Law on Environmental Protection, Article 1064 of the CC RF). The court may decrease the volume of restitution of environmental damage caused by a citizen, taking her/his property status into account, unless the damage resulted from deliberate actions (Item 3 of Article 1083 of the CC RF).

13. Restitution of damage may take the form of recovery of damages and (or) the imposition of duty to restore the damage to the environment upon the defendant (Article 1082 of the CC RF, Article 78 of the Law on Environmental Protection). When applying to court, the plaintiff chooses the manner of restitution of damage.

Herewith, taking into account the need for effective measures aimed at restoration of the previous state of the environment, the public interest for a favourable environment, the court may, taking into account the position of persons participating in the case and the concrete facts of the case, apply such a manner of restitution of damage that most suits the aims and tasks of environmental protection legislation (Items 1 and 2 of Article 78 of the Law on Environmental Protection, Part 1 of Article 196 of the CPC RF, Part 1 of Article 168 of the ComPC RF).

14. The rates and methods of calculation of damage (harm), caused to the environment, separate components of the natural environment (lands, waters, forests, the fauna, etc.), established in the stipulated manner, are subject to application by the courts in order to determine the amount of restitution of damage caused by a legal person or an individual entrepreneur (Item 3 of Article 77, Item 1 of Article 78 of the Law on Environmental Protection, Parts 3, 4 of Article 100 of the ForC RF, Part 2 of Article 69 of the WC RF, Article 51 of the Law of the Russian Federation No. 2395-I "On Subsoil").

If there are no rates and methods, the amount of environmental damage caused by violation of legislation in the sphere of environmental protection and natural resource management is determined based on the actual costs that were incurred or must be incurred in order to restore the damage to the environment, taking into account the incurred losses (including lost profits), as well as in accordance with the plans of recultivation and other remedial works (second paragraph of Item 1 of Article 78 of the Law on Environmental Protection).

The aforementioned provisions are likewise subject to application in calculation of the amount of environmental damage caused by citizens (Item 1 of Article 77 of the Law on Environmental Protection).

15. The costs incurred by the person that caused the environmental damage in restoring that damage are to be taken into account when determining the amount of damage subject to restoration in monetary form in accordance with the rates and methods. The manner and conditions of taking those costs into account are stipulated by the authorised federal executive bodies (Item 2^1 of Article 78 of the Law on Environmental Protection).

Until the aforementioned manner is adopted, the courts need to proceed from the premise that in determining the amount of damage subject to restitution it is

allowed to take into account the costs incurred by the wrongdoer in rectifying the environmental pollution, where a person unintentionally causes environmental damage and then (before enforcement acts are adopted in its regard) acts in good faith, actively engaging in actual rectification of the environmental damage (rectification of the violation) at own expense, thereby incurring material costs. When said acts are being adopted, the facts determining the form and degree of guilt of the wrongdoer must be taken into account (except where the law stipulates restitution of damage in the absence of guilt); whether the violation was perpetrated for economic profit, the wrongdoer's following behaviour and the consequences of the violation, the amount of costs incurred by the wrongdoer in rectifying the violation must also be taken into account.

16. 100 % of the compensation sums awarded by courts in claims on restitution of environmental damage are to be directed to the budgets of municipal districts, city circuits, city circuits with intracity division, federal cities of Moscow, Saint-Petersburg and Sevastopol at the place where the environmental damage was caused (second paragraph of Item 6 of Article 46 of the Budgetary Code of the Russian Federation).

It is not necessary to draw the corresponding financial bodies to participation in the case.

17. When resolving whether to satisfy a claim for restitution of environmental damage in kind (in accordance with Item 2 of Article 78 of the Law on Environmental Protection), the court determines whether it is objectively possible to take the measures aimed at restoring the damage to the environment. With regard to Item 1 of Article 308^3 of the CC RF, the court should proceed from whether it is possible to rectify the adverse environmental changes, if the defendant conducts remedial works using its own resources (if it has the technical and other capacities), as well as by calling upon third persons.

If it is only possible to partly restore the original state of the environment through remedial works (in particular due to irretrievable and (or) hardly retrievable ecological losses), the restitution of damage in the remaining part is possible in monetary form.

18. By virtue of Item 2 of Article 78 of the Law on Environmental Protection it is possible to oblige the defendant to restore the damage to the environment depending on whether there is a plan of remedial works, elaborated and adopted in

accordance with the requirements of acting legislation. Therefore, when the court satisfies the claim for restitution of damage in kind, it should base its decision on the corresponding plan and refer to it in the operative part of the decision (Part 5 of Article 198 of the CPC RF, Part 5 of Article 170 of the ComPC RF). If there is no such plan, the court adopts a decision on restitution of damage in monetary form.

19. The court may, upon the request of the plaintiff, oblige the wrongdoer (its legal successor) to present the authorised public authority or local self-government body in the sphere of environmental protection with reports regarding the measures aimed at restoration of the environment, taken on the basis of the court decision, regarding their effectiveness and results (Article 206 of the CPC RF, Article 174 of the ComPC RF).

20. Based on Item 1 of Article 308^3 of the CC RF, in order to prompt the defendant to timely take measures aimed at restoration of damage to the environment, the court may award monetary funds to the creditor-recoveror in the event of failure to execute the corresponding judicial act (court forfeit).

In its decision, the court may also indicate that the plaintiff has the right to perform remedial works in accordance with the plan of remedial works, using its own resources or with the help of third persons, recovering the necessary costs from the defendant, if the defendant fails to execute the court decision within the stipulated time (Article 397 of the CC RF, Part 1 of Article 206 of the CPC RF, Part 3 of Article 174 of the ComPC RF).

21. In order to correctly resolve issues that require special knowledge (in particular in order to determine, what is the source of damage, how the damage was caused, to determine the amount of damage, the volume of necessary remedial works, whether it is possible to conduct them and how much time is required for those works), corresponding expert examinations may be held in the case, and specialists (environmental experts, environmental health officers, zoologists, ichthyologists, game managers, soil analysts, foresters, etc.) may be drawn to participation (Article 79 of the CPC RF, Article 82 of the ComPC RF).

22. Claims for restitution of environmental damage may be filed within twenty years (Item 3 of Article 78 of the Law on Environmental Protection). The statute of limitations in claims for restitution of damage caused by radiation impact on the environment is three years from the day on which a person learned or must have

learned about the violation of its rights (Article 58 of Federal Law No. 170 of 21 November 1995 “On the Use of Atomic Energy”).

23. If the defendant (its legal successor) fails to perform the necessary works in full volume and in full accordance with the plan of remedial works, or if there are other circumstances indicating that it is hard or impossible to execute the judicial act, the parties to the dispute or a bailiff may apply to court with an application for amendment of the way of execution of the judicial act by recovery of damages, calculated in accordance with the rates and methods of calculation of damage, and in their absence – based on the actual costs that were incurred or must be incurred for the restoration of damage to the environment and of the lost profits (Article 203 of the CPC RF, Article 324 of the ComPC RF).

24. If the damages caused are consequences of use of a factory, building or of other activities undertaken in violation of environmental protection legislation, and these activities continue to cause damage or present a danger of new damage, the plaintiff may apply to court with a claim to oblige the defendant to limit, suspend or terminate the corresponding activities (Item 2 of Article 1065 of the CC RF, Articles 34, 56, 80 of the Law on Environmental Protection).

The violation of environmental protection requirements that constitutes grounds for limiting, suspending or terminating the corresponding activities may, in particular, take the form of use of a factory or building without the necessary permits or licenses issued for the purpose of compliance with the environmental protection requirements, or such use in violation of terms of those permits or licenses, excess of limits of emission or discharge of polluting agents and microorganisms into the environment, violation of requirements in the sphere of waste processing, failure to comply with industrial safety requirements.

25. The court may adopt a decision to limit or suspend the activities undertaken in violation of the environmental protection requirements, if such violations are remediable (e.g. wastewater discharge in excess of the effluent standard or emission of harmful (polluting) substances into the atmosphere without the necessary permit).

When adopting a decision, the court must indicate the conditions under which such activities may be renewed in the future (e.g. positive ecological expert conclusion, introduction of treatment facilities, acquisition of a permit for emission of polluting

substances), as well as the time within which it is necessary to rectify the violations (Part 2 of Article 206 of the CPC RF, Parts 1, 2 of Article 174 of the ComPC RF).

Failure to rectify the violation within the stipulated time may constitute grounds for application to court with a claim for termination of the corresponding activities.

26. If the violations of environmental protection legislation are irremediable, the court may oblige the defendant to terminate the corresponding activities (e.g. in case of storage of production and consumption waste at sites not subject to entry into the state registry of waste disposal sites).

If there is no evidence in the case that there are sufficient grounds for termination of the defendant's activities, undertaken in violation of environmental protection legislation, the court may, taking into account the public interest in ensuring ecological safety and preservation of a favourable environment, suggest it to the persons participating in the case to discuss the issue of limiting or suspending such activities (Article 56 of the CPC RF, Article 65 of the ComPC RF).

27. When considering disputes on limitation, suspension or termination of activities undertaken in violation of environmental protection legislation, the court must keep the balance between the public need for preservation of a favourable environment and ensuring of ecological safety, on the one hand, and the realisation of socioeconomic objectives, on the other hand. Herewith, the court should take into account not only the factors that ensure the normal life of people and organisations (e.g. where this applies to the activities of town-forming enterprises, co-generation power plants, treatment facilities), but also the proportionality of consequences of termination (suspension, limitation) of activities to the environmental damage that may occur both if such activities continue or are terminated.

In order to clarify whether there is such a contradiction to the public interests, the court may suggest it to the persons participating in the case to discuss this issue and to submit the corresponding evidence (Article 56, Part 1 of Article 57 of the CPC RF, Article 65, Part 2 of Article 66 of the ComPC RF).

The court may refuse to satisfy the claim for limitation, suspension or termination of activities undertaken in violation of environmental protection legislation, if such suspension or termination is contrary to the public interests (second paragraph of Item 2 of Article 1065 of the CC RF).

Refusal to satisfy such claims does not preclude from filing a claim for restitution of damage caused by such activities.

28. The courts should take into account that the danger of future environmental damage, in particular due to the use of a factory, building or other activities, may constitute grounds for prohibition of activities creating such a danger (Item 1 of Article 1065 of the CC RF). The plaintiff must prove that the activities of the defendant present a real danger, both if such activities violate the stipulated environmental protection requirements and if they correspond to those requirements at the moment of filing the claim, and must prove that it is necessary to prohibit the corresponding activities (e.g. during planning of construction or during construction of new industrial facilities at the habitat of rare and endangered animals, plants and mushrooms).

If the defendant has the necessary approvals and permits for activities that present a danger to the environment or a positive ecological expert conclusion, this does not constitute grounds for refusal to accept the claim for proceedings.

29. In view of adoption of this Ruling, Items 30, 35, 36, 37, 38, 39, 40, 41, 43, 46 of the Ruling of the Plenary Session of the Supreme Court of the Russian Federation No. 21 of 18 October 2012 "On Court Application of Legislation regarding Liability for Violations in the Sphere of Environmental Protection and Natural Resource Management" (as amended by Ruling of the Plenary Session No. 19 of 26 May 2015) are abrogated.

Ruling of the Plenary Session of the Supreme Commercial Court of the Russian Federation No. 22 of 21 October 1993 "On Certain Issues of Application of the Law of the RSFSR "On Protection of the Natural Environment" is not subject to application.

Chief Justice of the Supreme Court of
the Russian Federation V.M. Lebedev

Secretary of the Plenary Session, Judge of
the Supreme Court of the Russian Federation V.V. Momotov