

Public Participation in the Process of Environmental Decision-making

Designing, Implementing and Enforcing Environmental Standards

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I. Summary of the Meeting

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Public participation in the environmental decision-making process is a critical component in the legal mechanism of environmental protection. This process becomes even more important during the time of dramatic legal and political reform when ways to address environmental issues are being reevaluated and attitudes to public involvement reconsidered. Transition to democracy cannot be achieved without taking into account the interests of all groups. Citizens' right to timely and reliable information needs to be safeguarded; environmental rights of the public should be protected including legal protection in court. In a complex area such as environmental protection, which concerns all the sectors of the society, provisions should be made for every citizen to have their say.

However, there were numerous instances when Russian officials disregarded environmental rights of the public violating the Constitution of the Russian Federation, as well as its laws and regulations. This disrespect for law had adverse environmental impacts and put the lives and health of the public in peril. Not only do these violations have adverse environmental effects, but they also give rise to the public's disbelief in justice, which is particularly alarming when efforts to increase the legal awareness of the public and to create a viable mechanism of legal protection are still in the early development stage.

Therefore, public participation in environmental decision-making and access to information should be regulated and stipulated by law.

Conference: Objectives and Structure

The State Committee for Environmental Protection of the Russian Federation, the Russian-US Environmental Law Task Force, the United States Agency for International Development, United States Environmental Protection Agency and the Center for International Environmental Law, as a result of their cooperation, realized the need to hold a conference to address various aspects of public participation in the environmental decision-making process.

This seminar, sponsored by the aforementioned organizations, was held in Zvenigorod, outside of Moscow, on 28-30 May 1997.

Participants at the conference included representatives of various stakeholders (for complete list of participants see Attachment 1): governmental organizations, NGOs, and academic institutions. Discussions on problem areas related to environmental decision-making were diverse and productive thanks to the participation of practicing lawyers and members of the academic community. Their knowledge and experience contributed to the well thought-out decisions taken at the conference.

When plans for the conference were designed, it was resolved to address various aspects of environmental decision-making. Therefore, the following topic areas were selected for discussion:

- Environmental Impact Assessment (EIA)
- Designing and Implementation of Environmental Standards
- Enforcement

There were two plenary sessions: one at the opening and the other at the close of the conference. Discussions were held in three working groups, one in each topic area (Attachment 2). Participants were free to select the working group in which they wanted to participate. As a result, there was an adequate representation of all stakeholders in the working groups. Thus, the issues were discussed in a very detailed and professional manner.

Problem Areas

When discussing legal aspects of public participation in environmental decision-making and access to information, participants of the conference indicated that with all the regulations that are oftentimes declarative, an enforcement mechanism is lacking. There have to be procedures for public participation and access to information and effective guarantees of civil constitutional rights in the area of environment.

Current Russian legislation contains no definition of “environmental information,” “the public,” and “environmental decision.” There are no provisions for citizens’ right to file their comments regarding projected industrial facilities (within the EIA framework). Furthermore, governmental organizations and officials are not required to respond to such public inquiries in a well grounded manner or to take these public inquiries into account.

Participants also noted that there are no legal provisions for a clear procedure with regard to access to information. The issue of free and paid access to information remains outstanding, which is a problem in terms of equality and timeliness. Problems were also identified in relation to information being independent and unbiased. Independent sources of information need to be established. There are no clear regulations on timeliness, format, and access to background and analytical data behind environmental decisions made. In the same way, there is no procedure developed for cooperation and coordination between the public and governmental organizations that have environmental information and make environmental decisions.

Russian laws have no provisions for legal immunity of so called “whistle-blowers” – members of the public who notify governmental organizations of environmental violations and press for objective environmental conflict resolution. Once

this issue is solved, active public participation in the environmental decision-making can be ensured.

Having identified problem areas relating to public participation in the decision-making process, the working groups developed a number of recommendations on ways to improve these processes.

Working Group 1. Environmental Impact Assessment

This group reviewed issues of public participation in the process of environmental impact assessments (EIA). In Russia, this practice was introduced just a few years ago. EIA is a tool that can be used at an early stage of project development to take into account rights and legitimate interests of both natural resource users/investors and the local public which is going to be directly affected by a projected activity.

This working group reviewed three aspects of public involvement: access to information, access to decision-making, and enforcement. As a result, the following recommendations to improve the current mechanism of public participation were developed:

- Adapted environmental status reports should be made public. At the same time, access to original reports should be made available as well
- Declarations of intent to conduct an EIA should contain information on anticipated impact and a comparative analysis of an analogous facility (situation). Detailed information should be disseminated through mass media and made available to the public
- Feasibility study of projects should include a part of EIA that is open to the public and contains no trade secrets. Requirements for materials that are open to the public should be clearly defined in legislation
- There should be free access to the results of state environmental expert reviews. Lists of completed expert reviews should be published in the mass media. Redactions, as well as details on where complete information on results can be obtained, should be publicized
- To further develop mechanisms of post-project analysis and monitoring for compliance with recommendations developed as a result of state environmental reviews, independent public committees can be established under the auspices of local governments

One of the main proposals put forward by this group was to draft a Statute on Public Hearings. This statute can help streamline information exchange and ways to express public opinion. The Statute should address the following questions: (1) Who should organize public hearings? (2) Who should publicize information on intent and how? (3) How much time should be allocated between publication of information and the hearings? (4) What is the format and procedure for writing the final EIA and for

responding to comments? (5) What are the possibilities of conducting additional hearings?

EIA materials should be open to public review. The current Statute on Environmental Substantiation of Projected Economic and other Activities could be amended to include a provision requiring that EIA materials be open to public review.

EIA materials on facilities which contain information considered a state secret should not be kept outside of the public view. The right to access information on environmental impacts should be safeguarded. This can be achieved as follows:

- Experts who are exposed to state secrets should assume personal responsibility not to disclose them
- Documentation containing complete information on environmental impacts should be developed
- Article 24 of the Russian Federation Law on Environmental Expert Review (“Ecological *Expertiza*”) should be amended accordingly

Working Group 2. Environmental Standard Development and Setting

Discussions in this group began with definitions of relevant terms.

Standards: norms of compliance by enterprises with parameters set by authorized organizations (e.g. Maximum Allowed Concentrations, Maximum Allowed Emissions, Maximum Allowed Discharges, Temporary Allowed Emissions, sanitary standards and regulations, etc.)

Pursuant to an International Convention on EIA, the term “public” is defined as “one or several individuals or legal entities.” As a result of discussions, the group deemed it necessary to revise the definition as follows:

The public is one or several individuals or legal entities with the exception of:

- legislative organizations and individual lawmakers
- governmental organizations
- judicial organizations
- other decision-makers empowered to take decisions on related issues.

Therefore, the public includes: individuals or groups thereof, NGOs, other not-for-profit organizations, entrepreneurs, representatives of industries and local government.

This group focused on discussion and analysis of the procedures related to access to information in this particular area. Participants of the group made proposals to improve current information exchange mechanisms as described below.

There are two types of enterprises for which standards are set: (a) enterprises that are technically capable of meeting the maximum allowed concentration limits; (b) enterprises that due to their technical deficiencies cannot comply with general emission limits; such enterprises operate under temporary permits, which are valid for a certain designated period of time and which enable the enterprises to emit above the general maximum allowed concentrations.

These two types of enterprises are regulated differently in terms what type of information is required from them.

Access to information is required for maximum allowed emissions for enterprises of the first group. Information on temporary allowed emissions for the second group should be made available to the public. In addition, lists of enterprises operating under temporary permits should be published. Reasons why a given enterprise is included in the list should be specified as well.

Furthermore, background information concerning what the maximum allowed concentrations are for those enterprises in the second group in areas where these enterprises are located should be provided. This information can be kept by the enterprises themselves as well as by the environmental protection organizations that issue emission permits.

Both groups of enterprises should provide periodic reports on compliance with environmental standards.

Access to information on existing standards and anticipated revisions thereof (including information on standard developers, timelines and sources of scientific substantiation of such revisions) should be provided as well.

Among other types of data which should be made available to the public are: morbidity rate in a given community and available environmental technologies.

It is also important to ensure free and timely access to the results of outside audits for compliance with environmental standards.

One of the central issues of the information exchange process is timely access. Government authorities who issue standards should publicize information on the anticipated revisions of existing or the introduction of new standards annually. Such information should be made public no later than 90 days before the proposed revisions and the new standards are reviewed for approval. Members of the working group proposed that the organizations that make the decisions in this particular area should be

required to publish their plans for the next 3 years, at a minimum, for revisions of existing standards and for the introduction of new standards.

This information can be provided as follows:

- background information/data
- analytical information
- replies to inquiries by authorized organizations (photocopies can be made available as well)

Information collected at the expense of the state budget should be made available free of charge to NGOs, individuals, citizen groups, and public associations.

The only charges in connection with the provision on information should be for technical services such as:

- time spent searching for information
- copying (hard and electronic)

Charges for such services should be at their net cost. Information disclosed for public review should be published in central printed mass media in an abridged form (circulation: 10,000). Complete information should be distributed through subscription to a bulletin published in keeping with the Statute on Publication of Standards.

Based on the above analysis, the group developed the following legislative proposals:

Amend the Russian Federation Law on “Environmental Protection” and “Information, Dissemination and Protection Thereof.”

Access to decision-making

In the process of participation in law making the following should be distinguished:

- decision-making at the federal level (adoption of federal standards)
- decision-making with regard to specific enterprises (licenses for natural resource use and individual temporary permits for emissions).

It is proposed that the public participation at the federal level be reformed as described below:

Before a decision is made on the revision of existing or the introduction of new standards, ninety (90) days should be allocated from the date an authorized organization notified the public about its intention to do so.

This 90 day period would be comprised of three stages:

(1) During the first 30 days from the date of declaration of intent, the public is to proceed as follows:

- apply for participation in the working group developing a given standard
- develop and present various initiatives and proposals; provide their opinion on a given standard
- support active involvement of members of the public by encouraging them to submit as many proposals as possible.

An authorized governmental organization developing a given standard is then to hold a forum of all stakeholders who expressed their willingness to participate in this process. This forum should decide whether a working group to address the issue in question is needed, define its objectives, nominate its members, and set timelines.

The working group should include members of the public in the following cases:

- the issues in question are particularly complex and give rise to conflicts
- establishment of such a working group is considered necessary by the organization developing a given standard
- at least 20 NGOs and/or citizen groups expressed their interest to participate in such a working group

(2) During the following 30 days, an authorized governmental organization is to process proposals received during the first 30 days and develop a Table of Amendments to the first draft with the proposals included. When certain proposals are turned down, the organization is to provide reasons.

If it was resolved to establish a working group, the period for which the group is established should be determined (not to exceed 6 months). The composition of the working group should be approved by an authorized governmental organization. The working group protocol should be developed by the group itself.

On completion of the second stage (60 days from the date a notification of intent was made), a governmental agency is to publish the second draft standard with the Table of Amendments in the designated printed media.

(3) During this final stage, members of the working group may make additional proposals on revised/new standards and regulations. To resolve these outstanding issues, the group shall hold further discussions and amend the same accordingly. If the parties fail to reach an agreement, they may choose to refer the matter to independent arbitration.

On completion of the third stage, a governmental organization is to make a final decision on a given standard and publicize it in the same printed media. If time allocated

earlier is not sufficient to make a decision on the matter, the term may be extended for up to 2 months.

Access to enforcement through legal proceedings

In the event the public disagrees with the published final standards or regulations, it may proceed as follows:

1. Appeal to courts of general jurisdiction on behalf of individual citizens whose interests may be represented by public associations
2. To protect public interests in the area of environmental protection, specific allowances should be made for NGOs to appeal against regulations set by governmental organizations

It is proposed that Article 22 par. 2 of the Administrative and Procedural Code (APC) of the Russian Federation be amended pursuant to Article 10-11 of the Russian Federation Law on Environmental Protection and respective provisions of the Federal Law on Public Associations

3. In the event the above amendments are made, non-governmental organizations will be entitled to appeal to courts of arbitration in order to protect the public interest in the area of environmental protection
4. Appeal on behalf of individual members of the public to the Supreme Court against governmental regulations that violate rights to healthy environment
Appeals to court of various jurisdictions should be based on well-grounded legal claims
5. In addition to legal proceedings the following public actions may be taken:
 - pickets
 - protest meetings
 - public protest marches

Working Group 3. Enforcement

Discussions in this group were focused on the definition of the public. Even though the discussions were active, the participants did not produce a final definition. At the same time, it was noted that the term “public” can be used in connection with any public activities.

Subsequently, the group discussed matters related to public participation in the decision-making process, analyzed existing public participation mechanisms, and developed proposals to improve them.

Access to information

To ensure effective public involvement in the enforcement of the decisions made, the public should have access to adequate, reliable, and complete information.

Types of required information:

- information on decisions to be made
- potential environmental hazards associated with projects or anticipated decisions
- planned environmental protection activities
- extent of pollution
- environmental health
- decision-making process
- environmental costs
- social aspects of environmental protection
- information on developers of potentially environmentally hazardous projects and parties that have an interest in them

The group identified the following sources of information:

(a) Federal level: duly authorized governmental organizations, State Committee for Environmental Protection (SCEP), Ministry of Natural Resources, Ministry of Public Health, State Committee for Land Resources and Allocation, Ministry for Atomic Energy, Russian Federal Forestry Service, etc.

(b) Regional level: duly authorized governmental organizations, agencies within the structure of the State Committee for Environmental Protection, Ministry of Natural Resources, Ministry of Public Health, State Committee for Land Resources and Allocation, etc.

(c) Local level: duly authorized governmental organizations, agencies within the structure of the State Committee for Environmental Protection, Ministry of Natural Resources, Ministry of Public Health, State Committee for Land Resources and Allocation, industries, organizations, individuals, groups of individuals.

Currently, Russian legislation provides for the following in terms of the right to information: the right to request and obtain information, responsibility of those who have information to provide access to it, responsibility of governmental organizations to disseminate information on the projected construction of facilities that will have environmental and public health impacts, the right to appeal against information that fails to comply with the required criteria. However, environmental rights of the public are oftentimes declarative. Procedures supporting these rights are lacking. There is no provision in the law to obligate enterprises to provide information. Finally, the term “environmental information” as well as such issues as payment for information and information services are far from being well defined.

The group agreed that there should be clear legal provisions to obligate all those who have information to make it available to the public. In the same manner, there should be specific regulations on procedures for provision of information, timelines, formats, and responsible parties.

Access to implementation (enforcement)

Despite existing provisions for public participation in the enforcement of environmental decisions, there are numerous problems in this area. The public is not always clear as to which organizations it can appeal and their complaints are often forwarded to subordinate organizations which are sometimes the culprits themselves. There are no provisions defining the legal force of public monitoring and control. Procedures for public control are not regulated and the rights of the public inspectors are not safeguarded.

In view of the above, members of the group developed the following proposals:

- further develop the procedure of public appeals to the governmental organizations
- make legal provisions to make the results of public monitoring equal to official monitoring in legal force
- make legal provisions defining the procedure of public monitoring
- regulate the lobbying process in relation to environmental decision-making
- define notions and limits of environmental self-defense, so that the public could protect their environmental rights and interests before official decisions are taken.

Access to litigation

Participants noted that there is a fair dose of skepticism in the society regarding the environmental litigation process. It is largely due to the lack of information on what rights the public has. As a result of the discussion, the group agreed that this situation can be changed as follows: (a) ensure dissemination of information on rights the public has; disseminate, including in courts, information on incidents of successful environmental litigation; (b) give the public a right to take action to protect public interests, including in the area of environmental protection.

II. Materials Prepared for the Meeting

Russian Law and Practice

An Analysis of Statutory and Other Normative Acts Regarding The Problem of Russian Administrative Procedures

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Introduction

The text of this document consists of three parts, which correspond to the list of statutes and normative regulations, compiled by N.G. Zhavoronkova. These documents are related to the public's access to information. The parts are divided into three categories:

- (1) The legal procedure for preparing, passing and publishing laws in the Russian Federation (RF).
- (2) The legal procedure for preparing, passing and publishing Presidential Decrees, Governmental Regulations, and other resolutions or decrees of the Federal Assembly, including: (a) statutes and normative legislation regarding the procedures to be followed by government organs in deliberating, enacting and publishing decisions; (b) legislative acts concerning the publication of the work of government organs in the mass media, and; (c) normative acts concerning the protection of citizens' rights to information from government organs.
- (3) Legal regulation for public access to information, including; (a) legislative and legal acts regulating a citizen's right to access of information and conferring the right to appeal a refusal of access; (b) legislative and legal acts which determine the procedure of classifying confidential information, and; (c) legislative and legal acts which determine the procedures for access to ecological information.

The number in the parantheticals following each statute and normative regulation correlates to its number in the "Russian Administrative Procedures Bibliography."

The analyses of the statutes and normative regulations generally consists of four separate areas: content; effective implementation; weaknesses, and; possible improvements.

An analysis of the "RF Mass Media Act," dated 1992 (3.14) , and the RF Government's Provisional Regulations, dated August 2, 1995 (3.29) is not concluded.

1. The Legal Procedure for Preparing, Passing and Publishing Laws in the Russian Federation

Administrative procedures for drafting, adopting and publishing RF legislation is included in statutes and other acts of the RF which are analyzed below. These statutes and acts include rules for drafting federal statutes, constitutional statutes, and resolutions or decrees of the chambers of the Federal Assembly, the procedure for their adoption in their respective chambers, and for their publication in official sources.

The work of the Federal Assembly is reported in the mass media.

There is no provision in the law mandating public participation in drafting laws. Therefore, legislation only ensures official publication of adopted legislative acts.

The RF Federal statute dated June 14, 1994 "On the Legal Procedure for Publishing and Bringing Federal Constitutional Laws, Federal Laws and Resolutions or Decrees of the Chambers of the Federal Assembly into Effect" (1.1)

Content

The present Federal statute establishes a procedure for the publication and enactment of federal constitutional statutes, federal statutes and resolutions or decrees of the chambers of the Federal Assembly. It ensures that on the territory of the RF only federal constitutional statutes, federal statutes, and resolutions or decrees of the chambers of the Federal Assembly which have been officially published are effective (article 1). It establishes a seven day lay period for the publication of federal constitutional and federal statutes and a ten day lay period after adoption for the publishing of Federal Assembly chamber resolutions or decrees (article 3). The legislative acts are considered officially published after the first publication of their full text in "Rossiskaya Gazeta" or in the "Collection of Legislative Acts of the RF" (article 4). The laws become simultaneously binding over the entire territory of the RF ten days after the day of official publication, unless the particular legislative act states otherwise (article 6).

This statute also regulates the substance and structure of the official periodical publication "The Collection of Legislative Acts of the RF" (articles 7-9).

The present Federal statute advises the RF President and the RF government to enact their legislative acts in accordance with the statute (article 11).

This legislative act regulates all federal statutes and resolutions or decrees of both chambers of the Federal Assembly. It establishes a mandatory procedure for publishing these legislative acts. Along with the official publication, it is also possible to provide a wider distribution of the legislative acts through the mass media (article 5). As a result, the public is provided with information of these legislative acts in their final variant.

A single procedure for publishing and enacting all federal constitutional statutes, federal statutes and Federal Assembly resolutions or decrees creates the possibility for the public to become familiar with the legislative acts in official periodical publications and incorporate them into their activities.

Effective Implementation

This statute regulates all legislative acts and is used in for the adoption of federal constitutional statutes, federal statutes, and resolutions or decrees of the chambers of the of the Federal Assembly. The statute is effectively utilized. All federal laws are published in the regular official publication "The Collection of Legislative Acts of the RF"

Weaknesses

The statute only provides information to the public concerning the final variant of legislative acts. There is no procedure for informing the public about drafts of legislative acts – for their official publication. As a result, it is difficult for the public to become familiar with drafts of legislative acts of the chambers of the Federal Assembly. Therefore, the public cannot participate in the drafting of such acts by presenting their comments, proposals and criticism.

Possible Improvements

It is necessary to reexamine a mechanism for mandating the publication of statute drafts in official publications and for publishing information concerning the decision-making process of the legislative bodies.

Regulations of the Federation Council, dated August 8, 1996 "Establishing a Conference Committee on the Federal Law - On Introducing Amendments to the Federal Law on the Legal Procedure for Publishing and Bringing Federal Constitutional Laws, Federal Laws and Resolutions or Decrees of the Chambers of the Federal Assembly into Effect" (1.2)

Content

This regulation recognizes the necessity of creating a conference committee in order to resolve disagreements between the chambers of the Federal Assembly over a federal statute. The committee is comprised of elected members of the Federation Council.

This order allows one to take into consideration the fact that the federal statute named above has undergone changes which were not adopted by the Council of the Federation. However, this law continues to have an effect on the federal statute "On the Legal

Procedure for Publishing and Bringing Federal Constitutional Laws, Federal Laws and Resolutions or Decrees of the Chambers of the Federal Assembly,” dated June 14, 1994.

Effective Implementation

The regulation was implemented. A conference committee was created causing a change in the above legislation which has not yet been adopted.

On Regulations of the Federation Council, dated February 6, 1996 (1.3)

Content

The present document regulates the general procedures for the work of the Federation Council, a chamber of the Federal Assembly, and its participation in legislative activity.

According to the regulation, sessions of the Council of the Federation are generally open to the public (except for those which are closed sessions) and their acts are published in the Bulletin of the Sessions of the Russian Federation Council of the Federal Assembly. According to a decision of the Council of the Federation, representatives of government organs, public associations and scientific foundations are invited to present necessary information and conclusions concerning questions being examined by the Federation Council (article 51).

Questions of the Federation Council’s conduct are resolved through parliamentary hearings. As a rule these hearings are open to the mass media and the public. Questions connected to government secrets protected by legislation are discussed in closed parliamentary hearings which are closed to the mass media and the public (article 95).

The Federation Council itself decides which sessions and parliamentary hearings are open to the mass media.

The Federation Council’s participation in legislative activity includes: examining federal statutes adopted by the Government Duma (chapter 10); resolving disagreements between the Federation Council and the State Duma over statutes which were adopted by the State Duma but declined by the Federation Council (chapter 11); examining Federal constitutional statutes (chapter 13), and; initiating legislation (chapter 14). This statute regulates time periods for examining the laws, established the procedure for voting, and sets the time period within which adopted federal statutes must be transferred to the RF President for his signature and their publication Chapter 11 established the procedures of the Conference Committee for resolving disagreement between the Federal Council and the Government Duma.

Article 142 regulates the Federation Council’s right to initiative legislation by introducing new federal statutes, federal constitutional statutes and federal statutes

amending, adding or canceling RF legislation into the State Duma. The law further lays out the procedure for drafting bills, analyzing bills in sessions of the Federation Council and transferring bills to the State Duma.

The regulations also determine the procedure for examining questions arising from the RF constitution which are within the competency of the Federation Council. These include determining the boundaries between the subjects of the RF, confirming decrees of the RF President declaring a state of emergency in the country, deciding the question of the possible employment of the RF armed forces beyond the borders of the RF, examining a RF President's resignation, calling for the election of a RF President, appointing judges to the constitutional and supreme courts, etc.

As such, the present regulation establishes the procedures for the work of the high chambers of the RF Federal Assembly, the dissemination of information on its work in the mass media, and the procedure for deciding important questions which are in the competency of the Federal Assembly.

Effective Implementation

The regulations are implemented through the process of the Federal Council's work. By following the regulations the determined relationships between the Federal Council, the Government Duma, the RF president, and other government organs with the public are met.

The Federal Statute dated June 16 1995 "RF International Treaties Act" (3.18)

Content

This Federal statute ensures that international agreements, as according to the RF constitution, are elements of the legislative system of the RF. This statute regulates the procedure of concluding an international agreement, of fulfilling its requirements and for terminating an agreement.

The present federal statute also establishes the procedure for registering, storing and officially publishing international agreements. In accordance with this law, international agreements are brought into force in the RF. The obligations which the RF incorporates into national law must be officially published in the same manner as other federal statutes.

This statute also provides the same procedure for enacting international agreements as for Federal statutes.

Effective Implementation

This statute is used for all international RF agreements and is applied in the process of ratifying, storing and publishing international agreements.

2. The Legal Procedures for Preparing, Passing and Publishing Presidential Decrees, Governmental Regulations and Acts of Other Executive Branch Bodies

The legal procedures for preparing, passing and publishing presidential decrees, governmental regulations and acts of other executive branch bodies are defined in detail, especially in the sphere of government organs. Almost all of the proceeding legislative acts declare a principle of accountability and protection of the rights and freedoms of citizens and individuals.

However, in reality, these principles are only declarative. In practice the public receives access only to the adopted legislative or normative act, which is required to be published. The public obtains only some knowledge from the mass media regarding the drafting of these acts. The publication of drafts of legislative or normative acts of the RF President, the government of the RF or of organs of executive authority are not required to be published, even those concerned with the rights and freedoms of citizens and individuals, with the exception of several specific issues.

(a) Statutes and Normative Legislation Regarding the Procedures to be Followed by Government Organs in Deliberating, Enacting and Publishing Decisions

The Federal Law, dated July 5, 1995, "On the Bases of Public Service in the Russian Federation" (3.10)

Content

The above law establishes the legal basis for the RF government services and for government employees.

In accordance with this law, a government position is defined as a position in a federal government agency, a government agency of an RF subjects, or any other RF government agency (article 1).

Government service is the professional activity for ensuring that government duties are fulfilled (article 2).

The principles of the government service are established by the above law. A priority is placed on ensuring the rights and freedom of individuals and citizens. Their immediate duties in this area are to: recognize, observe and protect the rights and freedoms of individuals and citizens; to provide citizens with equal employment

opportunities in the government service based on one's abilities and professional training, and; to publicize government service activities (article 5).

The above law also confirms the basic duties of government employees. These include, among others provisions, for the observance and protection of the rights and lawful interests of citizens and, within the limits of his or her service, to examine the requests of citizens and public organizations promptly according to the procedure established by federal and other government laws.

In order to ensure citizens an equal opportunity for employment in the government service, competitions are held for filling vacant government positions in the government service (article 22). The procedure for this competition is established by the above law.

As such, the above federal law establishes the principles of government service and the duties of government employees, maintaining the obligation that employees observe the rights and freedom of citizens.

Effective Implementation

Many of the regulations included in this statute are declarative and not followed in practice. For example, in many cases government officials do not give regards to the rights and freedoms of citizens, do not offer equal opportunity employment and do not publicize their actions or decisions.

Weaknesses

The principle of accountability is often disregarded by the government in that it does not have an effective mechanism or procedure for informing the public about government official activity affects their interests.

Possible Improvements

Government officials should introduce a mechanism providing for public observation and accountability in this statute or at least make a reference to other pertinent statutes. However, at the present time, not one statute or normative act includes a real mechanism for public participation.

The Land Code of the RSFSR, dated April 25, 1991, with changes and additions introduced by the RF law dated April 28, 1993 and the RF President's decree, dated December 24 1993 (3.11)

Content

The RSFSR Land Code, regulating land use in the RF, contains normatives concerning administrative procedure, including a procedure for making preliminary agreements on granting land for investment projects (article 28). A main part of the agreement involves receiving permission from the local authorities to build on a specific plot of land. This process includes the participation of the local authorities, current landowners, landholders and tenants, representatives of the concerned government services, the enterprises, and organizations interested in the allotment of the land.

The local organs of authority must inform concerned citizens of the possible allotment of land for investment activities which could affect their interests. These organs ascertain the opinions of these citizens by means of a referendum, meeting or gathering of interested citizens.

Citizens, public organizations and businesses have the right to participate in the examination and discussions concerning the withdrawal and allotment of land which could affect their interests.

The applicant for the land plot has the right to protest the preliminary agreement within ten days in cases where there is a disagreement with one of the owners of the land, landholders, or tenants regarding the preliminary agreement.

Effective Implementation

In practice the Land Code is frequently violated. Local organs of authority either do not inform the public about proposed projects or inform them only after the final decision is made. The opinion of the public is often not considered.

Weaknesses

The above law does not provide an effective mechanism for taking the opinion of the local population into account during the course of the preliminary agreement. The regulations give the local organs of authority an inadequate method of attaining a real evaluation of the public's opinion because it does not require the authorities to take the recommendations into account or react to them. Also, although public participation in the preliminary agreement process is declared, there is no mechanism for its implementation. There is no indication of how this participation should take place.

Only landowners, landholders, tenants of the land and the population whose interest is directly affected by the grant of the land are able to protest the decision confirming the

preliminary agreement. Those who are not landowners, landholders or renters do not have such a right.

In conclusion, all the regulations for taking the public interest into account in the process of concluding a preliminary agreement are only declarative and do not provide any guarantee for their implementation.

Possible Improvements

A practical mechanism for taking the interests of the population into account during the procedure of allocating land should be included in this law. These mechanisms should include:

- (1) a public hearing with the participation of all interested parties;
- (2) an obligation that government officials take the opinions of the population, its suggestions, and its criticism into account in preparing a decision. If the suggestions, criticisms and commentaries are not used in preparing a decision there must be a statement explaining why they were not considered;
- (3) an implementation provision allowing citizens and public organizations to participate in the preparation of the preliminary agreement; and
- (4) a right for all persons whose rights, freedoms, and interests are affected by the allocation of the land to protest the preliminary agreement by

The Decree of the Council of Ministers and the RF Government dated June 23, 1993, "On Enacting Rules for Preparing Normative Acts by Agencies" and "Rules for Preparing Normative Acts by Agencies" (2.6)

Content

The present rules regulate the preparation of normative regulations prepared by central government executive agencies governing the rights, freedoms, and legal interests of RF citizens which are of an interdepartmental character. In so doing, they regulate the relationships of central federal executive agencies and subdepartmental agencies.

It is very important, under article 1 of these rules, that agency normative regulations on the rights, freedoms and legal interests of RF citizens and regulations which have an interdepartmental character are registered and officially published. This is done according to the procedure proscribed by relevant RF legislative acts.

These Rules establish the procedure for the preparation and compliance of agency normative regulations. In correspondence with article 6, the prepared draft of the normative regulations must be checked for compliance with RF laws and approved by the head of the judicial service before being signed by the head of the central federal executive agency. This way compliance with the existing RF legislation is guaranteed.

The central federal executive agencies send the departmental normative regulations which have been confirmed by them to the attention of the relevant government agencies of the RF, enterprises, organizations and establishments (article 12).

According to section 12, it is impermissible to send normative regulations which must undergo government registration and publication to executive agencies. It is also forbidden to send out agency normative regulations which were priorly registered, but have not yet been published according to the prescribed procedure.

Effective Implementation

The regulations concerning the use of normatives which have not been registered or published are regularly violated. In addition, despite the proscribed mechanism for checking whether a normative act complies with RF legislation, some acts are enacted which contradict existing laws and the rights and freedoms of citizens.

Weaknesses

In preparing normative regulations, issues have arose which did not seem relevant to the rights, freedoms and interests of citizens, but in practice affected those rights. Therefore, those citizens whose interests were affected by the departmental normative regulations did not have the opportunity to familiarizing themselves with the regulation prior to its enactment because it was not published according to the above rules.

Possible Improvements

As a result, it appears that all departmental normative regulations should be published. Departmental normative regulations, affecting the relations between the central organs of federal executive authority with sub-department enterprises, establishments and organizations should be published in departmental periodical journals. Also, it is necessary to strengthen the mechanism for public participation, especially in normative regulations affecting the rights and freedoms of citizens.

Decree of the RF President dated April 13, 1996, “On Enacting the Regulation on the Collaboration Between the President of the RF and the Federal Assembly of the RF Within the Law Making Process,” confirmed by the (2.2)

Content

This Decree confirms and regulates the President's right to initiate legislation. Article 1 states that it is the duty of the Chief Administration Department of the RF President and other departments under the President's Administration to, at the request of the President or the Cheif of the President's Administration, introduce drafts of laws as legislative intiates of the President to the Government Duma.

It is important to recognize the section in this decree giving citizens and public organizations the right, along with government organs of various levels to initiate their own legislation by sending draft proposals to the attention of the Chief of the RF President's Administration (section 2).

Furthermore, the Decree gives a detailed procedure for drafting laws, for introducing them into the Government Duma, for amending them when necessary and for introducing them into the Federation Council. The law further defines the functions of the RF President's representatives in the Government Duma and Federation Council.

In order to form sound bases for drafts of laws which are initiated by the RF President, members from federal agencies and scientists are invited to attend Federal Assembly committee meetings examining new laws (article 9) and to attend discussions about remarks or proposals concerning them (point 12).

In accordance with this Decree, the Chief of the RF President's Administration plays a large role in the procedure for implementing legislation from the RF President. This official's role extends from presenting the president with draft proposals for a new law (article 2) to finishing with a final document ready for the President's signature which will then either be published as law or rejected (article 16). The Chief also determines the President's official position on a draft of a law passed by the Government Duma for publicity purposes in the mass media.

In summary, this law regulates the procedure for implementing the RF President's draft legislation as well as his participation in the process of creating new laws.

Effective Implementation

This regulation is an example of the interaction between the RF President, his Administration and the RF Legislature.

Citizens, public organizations, and government agencies exercise their right to initiative legislation by presenting proposals to the President's Administration. However, it is not clear to what extent this initiative is taken into consideration as the decree does demand that the Administration reply to the initiators. Hence, in reality, the legislative initiative of the public is not effective.

Weaknesses

Unfortunately, the participation of the public in the legislative drafting process is only declarative -- the same may be said concerning the information the public obtains during the legislative process. In reality the public's ability to participate is dependent on the Head of the President's Administration and is insufficiently regulated by the procedure required by the decree. The law does not include a procedure for examining the proposals or for replying to citizen comments on the Administration's decisions.

It is my view that the Head of the Administration has too large a role in the legislative procedure. It is the same person who receives legislative proposals and interprets the position of the President for publication in the press. This provides a great opportunity for abuse of authority. The Chief could give an incorrect presentation of the President's position or misrepresent the law to the President.

Possible Improvements

It is necessary to determine a procedure requiring the President's Administration to examine proposed legislation from the public and government organs as well as requiring a reply regarding the decision making process.

Measures should be provided for public and government control of the Head of the Administration's activity or for giving part of his or her authority to another responsible body.

The Decree of the RF President dated May 2, 1996, "On Preparing Draft Decrees of the RF President for Acceptance of RF Government Decrees or Resolutions" (2.3)

Content

This Decree establishes a procedure calling for an agreement on Decree drafts and orders of the RF President with the interested organs of government authority and with the RF Government. The latter is obliged to accept the resolutions and orders of the RF Government no later than the end of the month after the corresponding decrees and resolutions of the RF President become effective.

This decree is an example of how the President interacts with government organs during their discussions and agreements.

Effective Implementation

This decree is implemented in the work of the President during the preparation of decrees.

The RF President's Decree dated May 23, 1996 "On the Procedure for Publication and Enforcement of Presidential and Governmental Acts of the RF and Legal Normative Acts of Federal Executive Bodies" (2.4)

Content

This Decree establishes the procedure for publication and implementation of the RF President's and RF Governments Laws. The orders of the RF President and the resolutions and orders of the RF Government must be officially published excluding those which are a government secret.

There is a seven day lay period from the publication date after which the RF Presidents Laws which have a normative character as well as RF Government Laws which may affect the rights, freedoms and duties of individuals and citizens and which establish the legal status of federal organs of authority become effective. Other laws of the president and the RF Government are effective on the day of their signature.

The present Decree also states that normative regulations of federal agencies of executive authority related to the rights, freedoms and duties of individuals and citizens and those regarding the legal relationships between such agencies and organization or between departments, which have been registered in the Ministry of Justice, must be officially published. Those normative regulations which are registered but not published in the official manner do not have any legal effect.

Effective Implementation

This decree is concerned with normative regulations of all RF executive agencies. The decree is effective after publication of the decrees in the official publication "Collection of RF legislation"

Weaknesses

The federal agencies of executive authority have the right not to publish normative regulations which they consider as not affecting the rights, freedoms and duties of individuals and citizens. Although some of these regulations actually do affect the interests of citizens, there is no opportunity for the public to become familiar with them because they were not published.

Possible Improvements

It is necessary to require the publication of all normative regulations of federal agencies of executive authority except for those sections which are considered state secrets.

The RF President's Decree dated November 25, 1995, "On Measures Providing Openness and Availability of Normative Acts" (3.20)

Content

The present RF President's Decree contains an order to the Head of the RF President's Administration, to the RF Government and to RF Federal Subject agencies to take measures for providing a procedure for publicity and general availability of unpublished normative regulations which establish the legal status of federal executive agencies, of federal subject's executive agencies and of RF local self-government agencies as well as regulations concerning the rights, freedoms and duties of citizens. An implementation procedure for the above measures must also be established, excluding regulations related to government secrets.

Weaknesses

There is no procedure for implementing or supervising this regulation. As a result, this decree can be made ineffective through its unscrupulous execution by officials.

The RF Law dated July 10, 1993 with amendments introduced to the Federal Law, dated December 1995 "On Standardization" (2.1)

Content

The present law requires that standards be set in the RF for all government administrative agencies, enterprises, businesspersons and public organizations. The law provides protection for the government and consumers by requiring the development and use of documents containing the set standards.

Normative regulation documents for standardization are related to government standards, industrial branch standards, enterprise standards, scientific - technical standards, engineering societies and other public society organizations (article 2).

Government standards are designed for products and services which have inter-branch importance. The requirements with which government standards must comply are legally binding. Requirements, established by government standards for securing production safety related to the natural environment, life, health and property of the population and the country are mandatory for government administrative agencies and subjects of economic activity.

The law "On Standardization" protects the interests of consumers through mandatory observation of government standards for all kinds of production, work and services.

Effective Implementation

The present statute is implemented when new government standards are passed and applied to the production of goods and services. In some cases, as in the production of goods and services, mandatory government standards are infringed. The RF statute dated July 10, 1993, "On the Certification of Produced Goods and Services," requires that produced goods and services meet government standards.

Possible Improvements

The above weaknesses can be corrected by combining the above mentioned legislative and normative acts into a single statute thereby making them easier to follow.

The RF Government Decree dated June 5, 1994 “Regulation on Creating State Sanitary Epidemiological Norms” (2.8)

Content

The present decree determines that the chief purpose of the government Sanitary-Epidemiological Norms is to confirm sanitary rules and hygienic regulations which play an important role for securing the sanitary and epidemiological well-being of the population.

Sanitary rules must correspond to sanitary rules and all other regulations based on the normative regulations decided upon by the professional group, the Committee for Government Sanitary-Epidemiological Norms, under the Government Committee for Sanitary-Epidemiological Inspection of the RF. The decree also establishes the confirmation and effectuation of sanitary rules. The Federal sanitary rules are confirmed by an order of the Government Committee on Sanitary-Epidemiology of the RF and are effective from the moment of publication. Thus, this procedure provides for the mandatory publication of these normatives.

As a result, the present Decree confirms the purpose and sphere of sanitary norms and rules as well as providing a procedure for their implementation.

Effective Implementation

The present regulations must be changed because this decree provides for the elimination of the independent government committee (Government Committee for Sanitary-Epidemiological Inspection) whose work will now be fulfilled by a new section of this ministry. This situation hinders the realization of these Government Sanitary-Epidemiological Norms because an appreciable time period is required in order to distribute the eliminated committee's functions to members of the newly formed section.

In reality, an enormous number of sanitary rules and norms exist. As a result, it is practically impossible to comply with all of them.

Weaknesses

The regulations do not provide procedures for publishing sanitary rules even though there is a regulation stating that the rules are effective from the moment of publication. Because the procedure for publication is not provided, it is not clear which rules are effective.

Beside this, there is not a procedure for monitoring compliance with the sanitary rules. If such a procedure is provided in other normative regulations, then there should be a reference to those pertinent documents.

Possible Improvements

Definite procedures should be provided for the publication of norms and sanitary rules as well as for informing concerned agencies, enterprises, and the population about when they become effective.

A procedure should be provided for monitoring compliance with the sanitary rules.

The Decree of the RF Government dated February 12, 1994 "On the Legal Procedure for Publishing State Standards and all Russian Technical-Economical Information Classifier" (2.7)

Content

The exclusive right for publishing the official publication of newly introduced standards as well as revised standards belongs to the RF Committee for Standardization, meteorology and certification and the RF Government Committee for Architecture and Construction.

Information concerning the acceptance, cancellation and amendment of government standards and the all-Russian classification, and for the introduction of changes, additions or corrections in these texts are published in the monthly issues of "RF Government Standards." The list of current government standards in effect on the territory of the RF and the All-Russian classifier are published in the monthly issues of "RF Government Standards".

This Decree provides the procedure for publishing Government Standards and classifiers and determines the government agency which has exclusive rights to its official publication.

Effective Implementation

This regulation is effective on the publication of quantitative new standards which in some cases replace former effective government standards. The regulation is quite effective.

Weaknesses

As mentioned above, the Regulations contain a procedure for publishing government standards which are not included in the statute "Concerning Standardization." It would be more effective if these documents were united in order to combine regulations which are related to one subject. This would simplify the task of informing concerned enterprises, organizations and citizens of the norms.

The RF President's order dated August 3, 1996 "On Changes in the Proceeding for Preparing Presidential Decree Drafts" (2.5)

Content

This decree changes the procedure for introducing drafts of decrees and orders of the RF President. It states that after the drafts and orders are agreed to by the RF Government, they are sent to the President's Administration. The administration then directs them to the President's Chief Governmental-Juridical Department for judicial expertise. If the expertise is favorable, the drafts are sent to the Head of the President's Administration who determines if the drafts are ready for presentation to the President or whether they need further amendment.

Effective Implementation

In practice, this potentially useful order concerning the process for obtaining legal expertise on a draft order and decree does not prevent the President from making decisions which conflict with RF legislation.

Construction norms and rules of the RF dated January 7, 1995 "Instruction on the Procedure for Development, Coordination, Approval and Composition of Design Documentation for the Construction of Enterprises, Buildings and Structures" (3.30)

Content

These instructions establish the procedure for developing, approving, confirming and originating the design documentation for the construction of enterprises in the territory of the RF. They state that it is necessary to follow the legal and normative regulations of the RF and its subjects in the development of design documentations. The

basic design document for the construction of these business undertakings is the technical and economic basis for the construction. All projects are subject to a state expert examination in accordance with the RF Laws. A rationalized deviation from the normative documents' requirements is permitted only with the permission of the organs who confirm and/or implement these documents.

Weaknesses

These instructions do not contain any provisions for informing the public of these proposals, for coming to an agreement on the proposals between interested enterprises, organizations, and the population or for taking the public opinion into account.

Possible Improvements

The instructions should include a mechanism for informing the public about proposed projects. This mechanism should allow for public dissemination of proposals, public discussion, hearings, etc.

(b) Legislative and Legal Acts Which Determine the Procedure of Classifying Confidential Information

The Federal Statute dated December 15, 1994 "On Amending the Law on Mass Media" (3.15)

Content

In order to comply with the Federal Statute "On the Coverage of the Activities of State Bodies by State Owned Mass Media," changes have been made in the "RF Mass Media Act." This law requires state owned mass media distributors to publish announcements and documentary material of the Federal Organs and Subject Organs of the RF.

The Federal Statute dated December 15, 1996 "On the Coverage of the Activities of State Bodies by State Owned Mass Media" (3.16)

Content

The present federal statute regulates the relationship between the state owned mass media and Government organs of the RF or RF Subjects concerning the earlier publishing information concerning the latter's activities.

In compliance with article 4, the press service of Federal organs conduct audio and visual recordings of all official activities in which the RF President participates and

of all sessions of the Federal Council, the Government Duma, and the RF Government and its Presidium. Journalists of the state owned mass media have the right to familiarize themselves with recordings and make copies of them, excluding those of secret activities. This article does not limit the right of accredited journalists to conduct their own audio and video recordings at sessions, meetings and other open official activities.

In correspondence with the above federal statute, information is provided to the public concerning official activities of Government organs excluding secret activities. The public, through state owned mass media journalists, may become familiar with the audio and video records and other journalists may make their own recordings of such activities.

(c) Normative Acts Concerning the Protection of Citizens' Rights to Information From Government Organs

Decree of the RF President, dated March 7, 1996 “Regulation on Establishing the General Department for Constitutional Guarantees of Citizens’ Rights” (3.23)

Content

In the present regulation, the functions of the General Department for Constitutional Guarantees of Citizens’ Rights is strengthened in terms of its tasks and authority. The General department has the authority and the duty to guarantee the rights and freedom of individuals. Among its tasks it has the authority to monitor compliance with decrees and orders of the President related to citizenship, political asylum, amnesty and reception of citizens, to provide restoration to citizens who have had their rights infringed, to inform the head of the RF President's Administration on the number and content of applications for citizenship, to inform citizens of the decisions made, to interact with the state owned mass media, to inquire into questions relating to the competency of the Administration department and others.

Among the powers of the General Department, concerning citizens constitutional rights, it has the right to receive necessary documents from Government organs of all levels, to check information concerning violations of citizens’ rights, to receive an explanation from officials regarding their violations, to make recommendations concerning the restoration of citizens’ infringed rights and freedoms, and to receive a notice of decisions made.

In conclusion, the regulations may serve citizens whose constitutional rights and freedoms have been violated as well as serving public organizations defending citizens' rights.

Effective Implementation

This decree is beginning to be used by the General Department of the RF President concerning the constitutional rights of citizens. From my point of view, its activity as yet has not led to any appreciable results. However, they have received some praise in the press.

Weaknesses

Despite of the rather large list of tasks and functions, in practice the General Department does not have effective authority concerning questions of citizens constitutional rights. It can only make recommendations on questions concerning the restoration to citizens who have had their rights violated. No mechanism is provided for helping citizens in the restoration of their rights. The General Department cannot require government organs to restore the infringed rights and freedoms of a citizen -- it can only give a recommendation for its restoration. In addition, the General Department's authority on citizens' constitutional rights is rather limited and insufficient for effective work concerning the restoration of infringed rights of citizens.

Possible Improvements

A mechanism affording real help to citizens in restoring their infringed rights is needed. In order to do this, the General Department must be provided with the authority to require government organs to restore infringed rights and freedoms as well as the authority to control its compliance. In order to enforce compliance with the General Department's decisions, it is necessary to provide a procedure for access to the courts.

3. Regulation of Public Access to Information

General Situation: The law on public access to information is divided into several groups:

- a) legislative and legal acts regulating a citizen's right of access to information and conferring the right to appeal a refusal of access;
- (b) legislative and legal acts which determine the procedure of classifying information as confidential;
- (c) legislative and legal acts which determine the procedures for access to ecological information.

However this right is only declarative as there is no mechanism provided for its implementation. The only example of a statute in which such a mechanism is provided for protecting the right of access to information is the RF statute "On Protection of Consumers Rights."

(a) Legislative and Legal Acts Regulating a Citizen's Right to Access of Information and Conferring the Right to Appeal a Refusal of Access

The Decree of the RF Supreme Council dated February 25, 1993 "On the Legal Procedure for Enacting the Law 'On Appealing Actions Violating Human Rights in Court'" (3.26)

Content

The RF Supreme Council passed an order to bringing into effect the RF Law "On Appealing Actions Violating Human Rights in Court."

The RF Law dated April 27, 1993, with amendments introduced to the Federal Law dated December 14, 1995 "On Appealing Actions Violating Human Rights in Court" (3.3)

Content

According to this federal law, rights of citizens are further protected in that a person may appeal to a court if he or she feels that his or her rights and freedoms were infringed by anomalous actions (article 1) or by inaction (article 2) of government organs or of organs of local self government, establishments, enterprises, associations of enterprises, public organizations, or officials.

This law also confirms citizens' right to familiarize themselves with documents and other materials directly concerning their rights and freedoms (article 2) and confirms official's duty to facilitate their obtainment. Citizens have the right to appeal the denial of these rights including decisions made which were used as a basis for these denials (article 2). The present law is important for confirming citizens right to information because it not only confirms this right but it requires officials to implement it and affords citizens the right to protest the validity of the information.

This law includes a procedure is for appealing to a court or higher government organ, an organ of local self-government or an official. A superior organ of government is required to examine the appeal within a month. If a citizen does not receive a response within the set time, or if he or she considers the answer unsatisfactory, he or she may appeal to a court (article 4).

A three month time period is established for appealing to the court beginning from the day the citizen learns of the infringement (article 5).

In correspondence with the procedure for examining citizen complaints against organs whose actions were anomalous, the organs must prove the legality of their action in writing and the citizen must prove that his or her rights and freedoms were violated (article 6). This is an important procedure because it lessens the burden on the citizen for proving his or her appeal in that he or she only has to prove the facts as evidence that his or her rights have been infringed. On the other hand, proving the facts that a citizens'

rights and freedom have been violated may be difficult because he or she must prove that the anomalous action directly affected his or her interests. Regardless, the present law affords citizens the possibility to effectively defend their rights and freedoms.

Effective Implementation

This statute is effective and citizens have used it to defend their infringed rights and freedoms.

A potential problem in this statute may be the burden on the citizen to show that his or her rights and/or freedom were infringed by an official decision.

An example of a case is one which was brought by 350 citizen plaintiffs and 30 organizations addressed to the RF Supreme Court complaining that the President's decree and the Government's decision to build a high speed highway between Saint Petersburg and Moscow was illegal. They claimed that this decision by the higher organs of authority violated the rights of citizens to live in a pleasant, healthy and natural environment (article 42 of the RF Constitution) and harms their material interests as tax payers. The ecological legal organization, Ecojuris and other public ecological societies initiated the case.

Weaknesses

The short three month period in which a complaint may be brought addressing illegal decisions and actions limits the rights and freedoms of citizens to obtain judicial protection (article 46 of the RF Constitution).

Possible Improvements

The three month period specified for addressing an appeal against illegal actions and decisions should be canceled -- the right to an appeal should not be limited by any time period.

The RF President's Decree, dated December 31, 1993, "On Additional Guarantees for Citizen's Rights to Access to Information" (3.19)

Content

This decree on access to information confirms one of the most fundamental citizen's right in that it provides a freedom to obtain information concerning the work of the organs of the legislative, executive and judicial branches of government. It confirms that government organs, enterprises, public organizations, officials and other organizations are required to operate in an open fashion -- meaning that citizens should have access to information concerning their personal interests and that citizens should be systematically informed of decisions and proposals. Such systematic information is

needed so that citizens can monitor and influence the actions of government organs, other organizations, enterprises, public organizations and officials affecting the interests, rights and freedoms of citizens.

Effective Implementation

This decree is poorly practiced by government organs, organizations and enterprises. There is an obvious attempt to hide information or to distort it.

Weaknesses

The above democratic laws concerning the citizens' right of access to information and government accountability are only declarative in that they do not provide specific mechanisms for their implementation. There are no established procedures for systematically presenting citizens with information so that they may more effectively influence government organs' activity.

Possible Improvements

It is necessary to work out and legislatively confirm specific procedures for implementing these laws. These procedures should include a description of the specific obligations of government organs and a specified time period within which information must be presented. Officials should be required to present complete information and an effective court appeals procedure should be established for when information is not presented.

The Federal Statute dated February 20, 1995 "RF Information Act" (3.6)

Content

The present Federal Statute supports the citizens' right to information because it requires the government information sources to be open and available to the public, with the exception of information which is classified as containing state secrets. However, it is forbidden to classify legislation or normative acts establishing citizens' rights and freedoms, documents containing information concerning extremely dangerous situations, ecological information, sanitary-epidemiological information, documents needed for practicing one's rights, and information on the freedoms and duties of citizens as classified (article 10).

Citizens, organs of government authority, local self-government, organizations, and public societies all have equal access to government information sources and are not required to give a reason to the owner of these resources in order to receive the required information (article 12).

This article is very important because it is the equivalent of the constitutional right of access to information. Also, it solidifies the fact that information should be presented on request without an explanation regarding its necessity. The procedure for making the information available is determined by the owner or the proprietor of the information sources. A refusal of access to information sources may be appealed to a court (article 13).

Those who receive free official copies of government publications are required to register them. Such recipients are major libraries and scientific and information organizations (article 17).

A separate article of the law is devoted to listing the libraries and science and information centers which must receive free copies of government publications. The recipients are required to inform potential users of these publications. As a result, this statute enables the implementation of citizens' rights to access information because it gives citizens the possibility to become familiar with all kinds of documents issued by government organs.

Effective Implementation

In the current economic crises when government publishers and libraries are suffering financial difficulties and when many private publishers have appeared, implementing this statute has become a problem. Far from all publications are received by the libraries listed for receiving free copies or are found in the libraries but access to them is no longer free.

Weaknesses

There is no procedure for monitoring compliance with the statute.

Possible Improvements

It is necessary to monitor compliance with the statute and to provide the required governmental financial support.

The RF Government's Order dated July 24, 1996 "On Mandatory Copies of Editions" (3.25)

Content

This Government order was passed in order to keep a bibliographical and statistical account of government publications. The order gives a list of libraries, scientific and information organizations and public associations which shall receive free copies of federal government publications. It also sets a procedure for delivering paid copies of publications to Central scientific library book providing establishments.

This Order supports the citizens' right to access information because it requires free copies of publications to be sent to libraries where they will then be available to citizens at no cost.

The Federal Constitutional order dated October 3 1995, "On the Referendum in the Russian Federation" (3.8)

Content

In correspondence with the Federal Constitution, this statute requires the entire population to vote on matters of state importance. Referendums afford the highest expression of the opinion of the people. All RF citizens who have reached the age of 18 on the day on which the referendum is held have the right to vote in referendums. This statute states that a referendum shall be held for the acceptance of a new RF Constitution. It also confirms a list of questions which may not be put on a referendum. This statute also states that questions voted on in a RF referendum must not limit or cancel publicly recognized rights and freedoms of citizens and constitutional guarantees.

As a result, a referendum is the highest expression of the peoples will and may serve as a means for implementing the right of the people to participate in deciding important national questions and their right and freedom to vote.

Effective Implementation

There have not been any RF referendums since the adoption of this statute. Hence it is difficult to evaluate its effectiveness..

The Federal statute dated August 12, 1995 "On the Basis of Public Service in the Russian Federation" (3.10)

Content

This Federal statute states that organs of local self-government and other organs which have authority to decide questions of local importance which are not in the competence of the system of government organs shall be elected.

The statute defines a deputy as a member of an organ of self-government who is subject to recall by his voters in accordance with the statutes of the RF Subjects (article 18).

This statute also states that all normative regulations adopted by the the organs of local self government and officials, which affect the freedoms and duties of citizens, will

become effective only after their publication so that the voters may become acquainted with them.

The legal regulations of the municipal service is determined by the statutes of the municipal organ (city, rural settlement) in correspondence with the statutes of the RF Subjects and Federal statutes (article 21).

Separate chapters of this Federal statute are devoted to the means for expressing the will of the local citizens. The first mean is the local referendum which is held at the initiative of the local organ of the population or at the request of the local population according to the statute on municipal formation. The decision adopted by a referendum does not require the confirmation of any government organ of authority. The decision adopted by the local referendum and its results must be published (article 22). Other means for expressing the populations will are municipal elections, meetings, and local gatherings of citizens (articles 23 and 24).

The population also has the right to propose statutes on issues of interest to the local population. The drafts of the the proposals must be examined at an open meeting with the participation of a public representative. The results of the deliberations must be officially published (article 25). Citizens may also, individually or collectively, make requests to the organs of local self-government and to officials. The organs of local self-government must give an answer concerning these requests within one month (article 26).

Effective Implementation

Securing the citizens right to participate in the legislation process is important. One should pay special attention to the fact that a citizen may request a referendum and that the organ of local self-government must consider that request within a specified time period. The inclusion of these regulations in this statute gives citizens the possibility of realizing their right to participate through initiating laws as well as having the right to access information.

It should be noted that the implementation of this statute depends, to a great extent, on the details of the acts of the federal subjects which regulate the affairs of the local self-government.

An example where citizens were able to express their will is the referendum which was held in Kostpomskii oblast at the end of 1996 against building the Kostromskii AES at the initiative of the local public ecological associations. These associations succeeded in gathering the necessary number of signatures in order to propose a referendum. The result was that 87% of the population voted against building the AES.

The RF statute dated January 9, 1996 "On Protection of Consumer's Rights" (3.7)

Content

This statute protects consumer rights by publicizing the rights, setting standards for the quality of goods, establishing rights and duties of manufacturers (or service providers or salesmen), determining the responsibility of the salesperson, manufacturer, or service provider for giving proper information about the goods, and for informing the public about a product's manufacture.

This statute states that a product, under ordinary conditions of usage, storing, transportation and utilization will not be dangerous to the health of the consumer or to the natural environment. The manufacturer is required to secure the safety of the goods and to indicate the special rules for utilization, storage and transportation when necessary. If the consumer, while following the rules for usage of the goods, experiences harm to his life, health or property, or if the natural environment is harmed, the manufacturer of the goods must immediately cease production of the goods (article 7).

The consumers' right to receive information concerning the manufacturer and the goods includes information concerning the manufacturing and use of the goods that he or she has acquired. Information on concluding agreements of commercial transactions must be made available to the consumer in an easily discerned and understandable form (article 8).

Article 9 also requires that information about the manufacturer, including its name, location, official address, information concerning its government registration and license be made available to the public. In article 10 it is stipulated that the information be given on data concerning the goods (or operation or services). This data must include the government standards, the time period in which it can be used, the place of manufacture, certification, etc.

This law also gives the seller, manufacturer or operator the responsibility of providing proper information about the goods and about their manufacture (article 12). Article 13 gives the procedure for compensating consumers when their rights have been violated.

A separate article in the statute deals with the rights of public organizations and consumers. Among these rights is the right to participate in drafting requirements for the safety standards of goods, the right to conduct an independent expert evaluation on the quality and safety of the goods, the right to monitor the rights of consumers, to participate jointly with federal executive organs in regulating prices, to present materials instituting proceedings against individuals responsible for producing goods or services which violate consumers rights, to appeal to the courts in order to protect consumers' rights (Article 45). Public associations jointly with corresponding federal executive organs and organs of local self-government are authorized to bring suits in which they are representing an indefinite amount of consumers. Furthermore, after a decision is afforded, the court

orders the violator, according to the rules of the court, to publish in the mass media, or inform the consumers in another way, of the decision (article 46).

In conclusion, the statute "On Protection of Consumers Rights" establishes wide possibilities for access to information on the activities of citizens as consumers and provides guarantees for its implementation and consumer protection. This statute is addressed for its provision that manufacturers provide information about their products to consumers. Also, the manufacturer is responsible for any incorrect information which is provided in violation of consumers' rights. Along with this, a wide range of options is given to public associations representing consumers, including control and expertise power and the right to represent an indeterminate group of consumers as plaintiffs. This statute is an example of one of the most well written legal acts protecting the rights of citizens.

Effective Implementation

Because this statute is considered to be a well written guarantee for consumer protection and provides a wide range of freedom of action to consumer associations, it is effective. Also, the general interest of everyone, including the judges, in the protection of consumer rights, provides for the statutes success in court.

(b) Legislative and Legal Acts Which Determine the Procedure of Classifying Confidential Information

The RF statute dated July 21, 1993 "On Classified Information" (3.4)

Content

The present statute regulates information regarded as state secrets, the removal of information from such classification, and the protection of the RF interest in its safety. The statute contains a list of information related to government secrecy in the military sphere, in the economic sphere, in science and technology, in external affairs and in intelligence and counterintelligence activities (article 5).

Article 6 addresses the principle of classifying information as secret together with issues of legality, requirements for its safety, and requirements on the time period necessary for its safety.

Article 7 contains a list of information which cannot be classified as secret, including information concerning extremely dangerous accidents and catastrophes which threaten the safety and health of citizens, concerning the state of the natural environment, of public health, of facts concerning violations of the rights and freedoms of citizens and individuals and of facts concerning violations of the law by the organs of government authority and their officials. This statute gives officials the responsibility to decide

whether information should be classified as state secrets and guarantees the right of citizens to appeal such decisions to a court.

The importance of this statute lays in the fact that there is a list of information which cannot be classified as secret. Furthermore a considerable part of this list contains information concerning the interests, rights and freedoms of citizens. Therefore all of the information which this list describes must be made available and accessible to the public.

Effective Implementation

The statute is effective in that it may be used by citizens and public ecological organizations in requesting information referred to in the list of information concerning the state of the natural environment. People requesting information may refer to this statute as one of the legal guarantees for such information.

Weaknesses

In the part of the statute "Concerning Government secrecy" the term "ecology" is used in the list of information which cannot be classified as secret. However, it is not clear whether drafters of the law meant "the state of the ecology" or "the state of the natural environment" or something else. Because of the lack of clarity in the terms, requests for information concerning the state of the natural environment or concerning its influence on the health of individuals may be illegally refused. The use of unclear terminology is found not only for this term but also for term in the list of information which is classified as secret.

Possible Improvements

It is necessary to better formulate the terminology in this statute.

Regulation of the Supreme Council dated September 21, 1993 “On the Legal Procedure for Enacting the Law on Classified Information” (3.24)

Content

This statute made the law “On Classified Information” effective at the moment of its publication.

Decree of the RF President dated November 30, 1995 “On Approving the List of Information Classified as State Secrets” (3.21)

Content

This order of the President approves the list of information and gives permission to the RF Government to organize work on bringing normative acts in conjunction with the list of information classified as state secrets into effect.

Decree of the RF President dated January 20, 1996 “Regulation on Establishing the Committee on Preserving State Secrets” (3.27)

Content

Under the present regulations the interdepartmental committee for the protection of governmental secrecy is a collegial organ, whose basic function is the coordination of government activities for the protection of government secrecy. Along with its duty to protect government secrecy, this statute gives the committee the duty to formulate a list of information it regards as government secrets. The Committee examines and presents a proposal for the legal regulation of questions concerning the protection of secret information to the RF President and Government. This proposal determines the procedure of removing the obligation to maintain secrecy over information including the determination of using the 30 year time length for which information should be classified.

The heads of federal organs of executive authority and the RF president's Administration are members of the Inter-departmental Committee.

Effective Implementation

The proposals made by the Committee are normative acts applying the Statute "On Classified Information." It is difficult to determine the effectiveness of the Inter-departmental Committee at this time and therefore is difficult to evaluate the effectiveness of this statute.

Weaknesses

There is no mechanism included in this statute for informing the public about decisions adopted by the Inter-departmental Committee which concern the interests, rights and freedoms of citizens or for publishing a list of information which is not included in government classified information.

Possible Improvements

A mechanism for informing the public of the activities of the Inter-departmental Committee and for publishing these lists should be installed.

Order of the RF Government dated September 4, 1995 “Rules of Including Classified Information into Defferent Levels of Secrecy” (3.28)

Content

The present rules establish the procedure by which organs of government authority which have the power to classify information as government secrets and to assign the degree of secrecy to it shall create a list of information comprising government secrets.

The procedure includes drafting a list including the information to be identified as secret, achieving confirmation of the list and also then informing interested government organs of authority, enterprises, and establishments about the list.

The RF President's decree dated December 5, 1991 "On the List of Information That Cannot be Classified as State Secrets" (3.22)

Content

This decree was passed in order to make information concerning the activity of the government tax service, law maintenance and controlling organs available. In this list is included founding documents for commercial enterprises and information on their financial reports.

Effective Implementation

This decree is used by government controlling organs in their activities. It requires enterprises, foundations and organizations to follow the instructions of government organs.

This decree does not take account of citizens' rights to information and does not provide a procedure for this right because it does not include a list of information which directly affect the interests of citizens' rights and freedoms.

Possible Improvements

One should prepare a new normative act which responds better to a real practical situation and is more complete. It should include a more inclusive list of information which cannot be classified as secret. This information should be data concerning citizens' rights and freedoms, the effects of projects on the natural environment and the health of the population.

(c) Legislative and Legal Acts Which Determine the Procedures for Access to Ecological Information

The Statute of the RSFSR dated April 19, 1991 "On Sanitary Epidemiological Well-Being of the Population" (3.1)

Content

This statute regulates the issues for securing sanitary-epidemiological safety. It must be in such a state that the public health and the environment in which the population lives experiences no danger or harmful effect of any amount and has a positive effect on their lives.

Article 3 established the sanitary rules, norms, and hygienic normatives which are required for all government organs and public associations, enterprises and other economic organizations of the subjects and other organizations and foundations independent of their subordination and form of property. Sanitary rules are drafted, confirmed, published and put into effect in correspondence with the procedure established by the RF government.

Among other citizens' rights, Article 5 provides a favorable living environment, the right to request and receive information concerning the work of enterprises or other organizations, the right to receive full and correct information concerning the living environment and the health of the population, the epidemiological situation, current sanitary norms, measures being taken and the results of those measures for securing a sanitary-epidemiological favorable state, and the quality of the production of goods, including food products and drinking water. Article 9 requires enterprises and organizations to provide information to citizens..

In conclusion, citizens' rights to information in this statute is not only declared but there is a mechanism for ensuring this right in that enterprises and organizations have a duty to give information about their products and production of goods to the public.

Effective Implementation

The statute may be implemented in practice as a result of the mechanism requiring organizations and enterprises to give information to the public. However, the liquidation of the Government sanitary-epidemiological inspection department may have a negative effect on the implementation of this statute.

Weaknesses

This statute, although requiring enterprises and organization to provide information to the public, does not have a similar requirement for government organs.

Possible Improvements

An obligation to provide information to the public should be included in the list of duties and obligation for government organs.

The RSFSR statute dated December 19, 1991 "On Environmental Protection" (3.2)

Content

This statute regulates the relationship between society and nature. It contains the basic principles for protecting the natural environment including the role of the government in this field.

Section 2 is devoted to citizen and public association rights in the sphere of protecting nature. Among the various rights of citizens and public associations is the right to demand full, correct and timely information concerning the state of the natural environment and measures for its protection from the corresponding government organs. This section also describes the procedure for protecting citizens' rights in court by demanding illegal decisions be overturned (article 12 and 13) and demanding that ecologically harmful activity be stopped (article 91). A specially authorized RF government organ in the field of protecting the natural environment has the duty to create normatives concerning the quality of the natural environment and set ecological requirements for production activities.

Effective Implementation

The statute is implemented in the course of activity of organs in their ecological work and of the public Citizens and public associations widely use the authority presented to them. the realization of this statute is shown by the activity of more than 1000 public ecological associations. Nevertheless, deficiencies in the developed procedure , and in the formulations hinder its effective use.

Weaknesses

There is no gaurantee for ensuring the citizens' rights to access information. The statute does not ensure that government organs present information to its citizens. Standards are set for the quality of the natural environment, licenses are granted for using natural resources and permission is given for the release of harmful substances all without the participation of public associations and without providing the population with any information on these activities.

Also, the term "public associations" includes citizens and ecological associations -
- it does not include interested government organs, enterprises, and informal groups of citizens.

Possible Improvements

There should be concrete procedures for providing information to the public. The public should also be included in the issuance of licenses and other permissions. The

government's duty to provide information to the public should be enforced. Citizens should have the right to appeal any improper activities to a court.

The ability to achieve information about the environment and to participate in environmental decision-making should be expanded to include individual citizens who are not members of official organizations.

The RF federal statute, dated October 20, 1995 "On the Use of Nuclear Energy" (3.13)

Content

The present RF federal statute regulates the use of atomic energy for civil and military use. Access to information concerning atomic energy, as long as the information does not contain state secrets, is one of the legal principles included in this statute. Citizen and organization participation is necessary in the government decision making process concerning atomic energy legislation (article 2). Federal norms and rules, which must be confirmed by the RF government, will establish the safety requirements in the use of atomic energy. Drafts of these norms and rules, with the exception of information dealing with state secrets, must be published in official publications (article 6). Organizations and private citizens have the right to request and receive information from competent organs of executive authority concerning the safety of structures being designed or constructed, nuclear plants, and radiation sources and storage locations, with the exception of information containing state secrets.

Citizens also have the right to receive information concerning the level of radiation in a region without paying a fee. Also, citizens who have been exposed to radiation have the right to receive a document confirming the radiation exposure and the amount of exposure. Organization managers are obligated to make the above information available. The release of false information is punishable. Also, citizens have the right to visit nuclear plants, radiation sources, and nuclear material storage sites. The RF government establishes the procedures for such visits.

Effective Implementation

The unwillingness of government organs to release information on atomic energy has hindered the application of this statute.

Weaknesses

Even though the law requires citizens to have access to information, there is no guarantee for achieving for this. Much of the information is denied to the public under the status of state secrets and the government has yet to establish a procedure for having public visits to atomic energy sites. Also, drafts of norms and rules pertaining to atomic energy have not yet been published due to the fact that many of the documents are said to

contain state secrets. Therefore, there has been no public participation in the decision making process in this area.

Possible Improvements

At the moment, public access to information about atomic energy is only declarative. It is necessary to provide information to the public even though some documents may contain state secrets. The government should provide a special document which enables the public to receive information concerning the dangers of proposed norms and rules even though much of the information will be kept secret.

The RF Federal Statute dated December 5, 1995 "On Radiation Safety" (3.12)

Content

This statute gives citizens and public associations the right to receive objective information from organizations or businesses exploiting radioactive sources. The information should contain levels of radiation and safety measures being taken (article 23). The organizations and/or businesses which must provide information to the public include those using radioactive substances for medical purposes (article 24).

Effective Implementation

The application of this statute is also hindered by the negative attitude of discussing radiation and because there is no procedure on how to present the information.

Weaknesses

The required access to information rules are only declarative. The statute is unclear as to the definition of objective information and who determines its objectivity. There are no sanctions for those who refuse to provide the public information. Only public associations have the right to access organizations which are exploiting radiation sources. Finally, the statute gives no procedure on how to provide to such access.

Possible Improvements

A procedure for providing information to the public and sanctions for those who do not do so should be provided.

The Federal statute dated November 23, 1995, "On Ecological Examination" (3.5)

Content

This statute regulates the conduction of ecological expertizas. Included in this law is the principle on public participation (article 3). However, regardless of the declaration of this principle, public participation is only mentioned in article 14 under the heading “concerning the discussion of the object of government ecological expertizas with citizens and public associations and organizations of organs of local self-government. However, there is no statement on how such a discussion should be conducted.

In general, there is no procedure for presenting materials to the public organizations which are conducting public expertizas nor is there a procedure for public participation. As a result of the ambiguity of the “discussion with the public,” no public opinion is taken into account in performing the state expertiza. The only information the public receives are newspaper articles praising the work of officials.

Chapter IV of this statute discusses the rights that citizens and public associations have in the performance of ecological expertizas as well as the procedure for conducting public ecological expertizas. Among their rights, citizens and public associations have the right to receive the results of the expertizas from the specially authorized organs. However, citizens do not have a right to receive information from the party which ordered the expertiza.

Effective Implementation

The law states that even though a project must receive a favorable evaluation from the ecological expertiza in order to proceed, this rule is often disregarded because an expertiza is never performed. The problem is that the list of projects which need to undergo an ecological expertiza is very long and the government does not have the means to review them all.

Public associations continue to perform public ecological expertizas despite the limitations with which they are presented.

Weaknesses

There are too many projects listed as projects needing to undergo an ecological expertiza. Also, although this statute states that it includes the principle of public participation, there is no procedure for including the public in the process of conducting the expertiza. Further, there is no procedure for providing information on projects to the public associations conducting public ecological expertizas.

Possible Improvements

The list of projects which need to go undergo ecological expertizas should be narrowed to include only those projects which are potentially harmful to the environment. The remaining projects may undergo an OVOS.

Also, there should be specific rules relating to public participation which should include requirements that the project initiator inform the public about the project so that the public may evaluate the potential ecological harm, should require that projects have a projected date of completion, should require that public hearings of projects be held, should give a process for taking account of public comments and should require that the public be given information on the project during the course of the ecological expertiza and upon its completion.

Conclusion

Administrative procedure is weakly developed in Russia. This weakness is reflected in the definitions of terms in the practical operating rules for "administrative procedure," which were discussed during the conference.

In spite of a declaration concerning the public's access to information, not a single law possesses a developed procedure for its application. With regard to government organ decisions, only the final document is required to be published -- proposed statutes and regulations are not published. Therefore, in spite of the declaration of public participation in the decision making process in many statutes and normative regulations, public participation is not guaranteed because there is no mechanism for its application. There are no provisions for informing the public of proposed laws, there are no provisions for the opportunity for the public to make proposals and commentaries, and there are no provisions for responding or reacting to public comment.

Analysis of Legislation Regulating Classified Information Issues

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This report analyzes the following normative regulations:

1. The RF law "On Classified Information" dated July 21, 1993, No. 5485-1, (the "RF Law")
2. The resolution of the RSFSR Government, dated December 5, 1991, No. 35, "On the List of Information That Cannot be Classified as Trade Secrets" (Resolution No. 35)
3. The resolution of the RF government, dated September 4 1995, No. 870 "Rules of Including Classified Information into Different Levels of Secrecy" (Resolution No. 870) and the Rules confirmed by it relating to information which contains government secrets (Rules);
4. The decree of the RF President, dated November 30, 1995, No. 1203, "On Approving the List of Information Classified as State Secrets" (Decree No. 1203), and the list of information confirmed by it (the List);
5. The decree of the RF President, dated January 30 1996, No. 71, "Regulations on Establishing the Committee on Preserving State Secrets" (Decree No. 71), and the Regulations confirmed by it concerning the Interdepartmental Committee for the protection of government secrets (the Regulations).

In addition to the above listed normative laws, the regulation of information containing government secrets -- their protection and their declassification -- is also affected by the following normative documents:

- 1.1 The Decree of the RF president, dated March 9 1996, "On Government Programs for Ensuring the Protection of Government Secrets in the RF During 1996-1997;"
- 1.2 The RF law, dated March 31 1993, "On the Introduction of Changes and Amendments to the Criminal Code of the RSFSR and the Civil Law Code of the RSFSR on the Procedure for Examining Cases Relating to Government Secrets;"
- 1.3 The resolution of the RSFSR Government, dated March 30 1993, No. 256-16, "On the Introduction of Changes and Amendments to the Provisional List of Information Slated as Government Secrets." This resolution has been stamped "Secret." There is no information on the declassification of this document. The declassification will be occur during the public exhibition of documents connected with the criminal investigation related to V. Mirzoyanov who is accused of bringing government secrets into the open. The resolution provides for the classification of all existing information in the fields of chemical and biological weapons and also any information describing the work being done in those fields."
- 1.4 The resolution of the RF government, dated August 7 1995, No. 798, "On Implementing the Measures for the Organization for State Safety and Cooperation in Europe", including:

- the "Viennese Document of 1994," pertaining to discussions of methods for strengthening trust and state safety;"
- the "Global Exchange of Military Information;"
- the "Codex of Behavior Related to the Military-Political Aspects of State Safety;"
- the "Definition of Principles Regulating the Nontransference of Atomic Weapons."

1.5 The resolution of the RF Government, dated June 26, 1995, No. 608 (according to its edition dated April 15 1995), "On Certifying Information Concerning Means of Defense."

1.6 The Decree of the RF President, dated February 11, 1995, No. 73-rp and its confirmation of the list of officials of government authority who have information which is classified as government secrets available to them.

1.7 The resolution of the RF Government, dated April 15 1995, No. 333 "On licensing companies, establishments and organizations in fields related to the use of information classified as government secrets, on the protection of such information, and also on carrying out measures and/or providing services for the protection of government secrets" and the regulations confirmed by it which has an analogous title.

1.8. The Decree of the RF President, dated June 6 1996, No. 290-rp, the Decree of the RF President , dated June 21 1996, No. 333-rp, "On the additional inclusion of a list of officials and organs of government authority given permission to avail themselves to information related to government secrets."

1.9 The letter of the RF Government Tax Service, Dated May 11 1995, No. YuB-6-18/261, "On the explanation of the procedure for making limited information available for questions posed by outside organizations"

1.10 The Decree of the RF President, dated November 24 1995, No. 1178, "On measures for ensuring public availability of normative regulations."

1.11 On the City of Moscow level, the mayor confirmed the Decree, dated May 27 1996, No. 316-PM, "On the organization and conduct in the city of Moscow of special expert evaluations on the suitability of companies, establishments, and organizations carrying out work which is connected with the use of information classified as government secrets."

In addition to the above, because Decree No. 35 was proposed for inclusion in the list of information for analysis which does not contain commercial secrets, it should be noted that the following terms exist: "official secret," "confidential information," "medical secrets," "personal and family secrets," "insurance secrets," bank secrets," and "privacy in mailing and other means of communication."

Also, it should be mentioned that an analysis of laws regulating the protection of government secrets should be carried out simultaneously with an analysis of normative material concerned with civil rights for obtaining information. These two legal fields concerned with government secrets and the right to information are logically related to each other in legal practice. If a citizen wishes to receive information, he looks to the corresponding law in order to see who is obligated to provide such information and the time period in which it will be done. However, since the laws on access to information are a problem in contemporary Russia, it is necessary to examine laws concerning

government secrets in order to demonstrate ones right to public and not secret information.

In correspondence with the proposed scheme (content, effectiveness, character, clarity of application, problems in application, possible reform) an analysis of the normative laws listed in item Nos. 1-5 is presented.

An RF law regulating the use of information which is a government secret may be examined in eight aspects:

- 2.1 General regulations;
- 2.2 Information related to government secrets;
- 2.3 Classified information and those who are familiar with it;
- 2.4 The declassification of information and those who are familiar with it;
- 2.5 The disposal of information which is a government secret;
- 2.6 The protection of government secrets;
- 2.7 The financing of measures for the protection of government secrets;
- 2.8 Regulation and inspection measures providing for the protection of government secrets;

The regulations of the above laws given in item Nos. 1-5, are binding on al organs of government authority, of local self-government, for enterprises, establishments and organizations of all forms of ownership, for RF citizens who have taken on themselves the obligation or duty connected with their status or employment for observing the requirements of the RF Laws concerning government secrets.

The laws list classified information (which must not be disclosed or explained) related to government secrets, enumerated in the following manner:

- 3.1 Information in the military field;
- 3.2 Information in the field of economics, science, and technology;
- 3.3 Information in the field of foreign affairs;
- 3.4 Information in the field of the secret service, counterintelligence, and criminal investigation.

Each of these enumerated items have several explanatory subsections.

These laws define information which must not be classified and includes the following:

- 4.1 extremely dangerous situations and catastrophes which endanger the safety and health of citizens;
- 4.2 the state of the economy, health administration, sanitation, demography, education, culture, agriculture and also the state of criminality;
- 4.3 privileges and advantages provided by the government;

- 4.4 facts relating to the deprivation of human rights and personal freedom of individuals and citizens;
- 4.5 the state of health of higher government RF officials;
- 4.6 the gold reserves of the RF;
- 4.7 the breaking of RF laws by organs of government authority and their officials.

Officials who attempt to classify the enumerated items 4.1-4.7 as secrets will be subject to disciplinary, administrative and criminal responsibility.

Three categories of secrecy are established for secret information: "especially important", "absolutely secret", and "secret".

The degree of secrecy and the fact that something is a secret must be reviewed at least once in five years -- the maximum period of classification must not exceed 30 years.

Restrictions on the human rights of officials and individuals provided with government secrets, such as permission to leave the RF, the right to distribute information which is a government secret, the right to privacy in personal life and subjection to checking and investigation measures are defined.

Normative rules for the conduct of RF laws on secrecy have been confirmed. They include: definitions for determining the degree of secrecy; the formulation of requirements for determining whether information is considered a government secret; the procedure, preparation, confirmation and distribution of such information to interested individuals, and; the review, amendment and addition of such information. The laws on secrecy refer to above item 1 above.

The List defined in above item 3 is a very large document in which the role played by government organs who have been given the authority to distribute information considered a government secret, has been defined. This List has been confirmed in order to implement the RF Law referred to in item 1. In the List a detailed description of the information determined to be government secrets is given. This information is in basic agreement with the definitions in the Law referred to in item 1, article 4. This List is also classified.

The Normative Regulations referred to in above item 5, which is based on the RF Law of item 1, defines the authority and composition of the Interdepartmental Committee for the Protection of Government Secrets.

The above mentioned normative Regulations and Rules sufficiently define the rules concerned with government secrets. Their use, together with other normative regulations directed in the same direction, effectively provide for the protection of government secrets in the RF. Factually, the RF Law of item 1, the List of item 4, the Rules of item 3, and the Normative Regulations of item 5, under various formulations, cover an enormous volume of information which defines, in detail, government secrets. It is even impossible to obtain the list of information which cannot be classified

according to the RF law of item 1 when the requirements of the List referred to in item 4 are satisfied.

For example, in accordance with article 7 of RF Law of item 1, it is unlawful to classify information concerning extremely dangerous situations, events and catastrophes threatening the safety and health of citizens and the results that follow and the state of the RF ecology and health administration. However, in article 7 of the List it is stated that "information related to the military, chemical, nuclear properties of weapons and the procedure for employing and using armaments and military equipment is classified as government secrets." Consequently, citizens who have suffered as a result of explosions due to chemical or nuclear polygons can never obtain information concerning the negative effects of how his or her health was negatively affected. Article 10 on the List is related to government secret information concerning the design, equipment, exploitation or provision of safety of installations of the nuclear complex." In the country which has suffered the Chernobyl catastrophe, such information, even in a guarded form, should be under public examination and regulation. Article 20 of the List provides for the classification of information concerning the use of technology in military operations which has a dual purpose, i.e. objectives of an absolutely civilian use may be classified.

The situation which requires, in practice, application to the RF Constitutional Court is even more surprising than the large volume of information which may be classified according to existing laws.

Thus, it was necessary for lawyers to apply to the RF Constitutional Court in connection with the RF Law "On State Secrets" which required that the lawyers obtain "the first level of admittance to government secrets" before they can act in defense of their client who was accused of divulging government secrets. As a result, RF citizens are deprived of the possibility to choose their own attorney and are compelled to the decision of a competent organ to choose one for them. The Constitutional Court, on March 14, brought down a decision that the right to a defense attorney in court could not be restricted under any circumstances. Now lawyers may participate in court cases regulated by article 21 of the RF law "On State Secrets" without any admittance to information.

The Constitutional Court, on December 20, 1996 also examined a case connected with the application of the RF law "On State Secrets." In particular it determined that the list of information which comprises government secrets must be officially published and available to the public in accordance with the RF law.

As a whole, the law concerning government secrets is used everywhere in the activity of practically all government enterprises, establishments and organizations where "secret" departments and positions for implementing the requirements of the above law exist. An enormous volume of classified information creates a situation in which dispute or published article may result in a case of criminal responsibility. Therefore, it is not accidental that the RF Constitutional Court examined two cases in 1996 concerning the constitutionality of the RF Law "On State Secrets."

Because of the tendency for developing a democratic society, one would expect some narrowing of the list of information which composes government secrets. However, the opposite picture is evident today.

Decree no. 35, is distinguished in the list of laws proposed for analysis. This decree lists information and documents which cannot be commercial secrets. They including the following:

- 5.1 Constitutive documents;
- 5.2 Documents which give the right to conduct business activity;
- 5.3 Information concerning the number of employees, their wages, and working conditions;
- 5.4 Information concerning the pollution of the natural environment, disregard of safe working conditions, sale of production and damages to the health of the population.

Additionally, information is defined which may not be considered commercial secrets for government and municipal structures in the process of their privatization.

The unsuitableness of applying the normative regulations of Decree no. 35 to information related to government secrets is indicated.

Legal Basis for the Collaboration of the State and Public Organizations in Russia

Nina J. Beliaeva
Interlegal

Introduction

Reforms carried out in Russia will not take root in public conscience and grow a part of everyday life, if civil society remains underdeveloped. A stable civil society is necessary to create a truly democratic regime. Without an organized, structured, public environment, the democratic institutions themselves will hang in the air without touching the ground. A specific feature of modern evolution in Russia is the simultaneousness of processes of development of civil society and the creation of a new democratic state; both processes are interwoven and interdependent.

It is not accidental that in the very first Message by the President of Russia to the Federal Assembly (1994) he presented a goal to encourage the development of institutions for civil society¹. The second Message (1995) already contained a whole chapter on *State power and public institutions* which provides that encouragement of the development of civil society is a duty of the state².

Thus, it appears to be a declaration of support for public associations (PA, “non-governmental organizations”) at a political level. PAs build an integral part of civil society. Nevertheless, ideas about interactions between the state and civil society are not solely reflected by declarations of politicians. These ideas are laid out in Russian legislation too. The legislation is the subject of my report.

Review of legislation

There are a number of legislative acts determining legal relations between public associations and state agencies. Databases of acting legislation contain more than 200 normative acts concerning activity of public associations at the federal level only. There are several levels of classification.

The first level is a volume of norms regulating the creation and activity of public associations. These acts may be divided into:

Basic laws (as well as Decrees of the President and Decrees of the Government) directly adopted for the regulation of the status of public associations as a whole, or of some particular public associations. The basic laws contain the following laws: *On public associations, On state encouragement of youth and children’s associations, On labor unions, their rights and guarantees of their activity*, as well as draft laws *On political parties, On persons of liberal professions and their unions*; the Decree of the

¹Russian newspaper, 02.25.94.

²Russian newspaper, 02.17.94.

President of the RF *On the state support of public associations of disabled workers*, the Decree of the Government of the RF *On the encouragement of a public movement for the protection of consumer's rights*.

Another level of classification is for those laws which regulate the activities of associations. For example, within a sphere of social protection, there are a lot of acts aimed at the social support of vulnerable social classes.

Interaction between the state and public associations is reflected through the following principles:

ENCOURAGEMENT
COOPERATION
ACCESS TO INFORMATION
RIGHT TO BE HEARD AND PARTICIPATE IN AGREEMENTS
PARTICIPATION IN DEVELOPMENT OF DRAFT DECISIONS
PARTICIPATION IN WORK OF STATE AGENCIES
INSPECTING FUNCTIONS

One must emphasize that the above mentioned norms are “scattered” among legislative acts of various legal force extending from federal law to regulations by the interdepartmental commission established by the government. One can not be sure that a federal law provides a higher degree of legal protection for cooperation than a sublegislative act. All that these laws portray is an absence of a single system of legal norms concerning the subject.

Let us consider the above principles in detail paying attention to their appearance in corresponding normative acts and they are used in practice.

ENCOURAGEMENT

ENCOURAGEMENT

the state protects rights and legal interests of associations, encourages their activity and regulates granting of tax or other privileges and advantages

State encouragement consists in:

- subsidies for specific socially wholesome projects after requisitions by associations (state grants)
- contracts with PAs, including ones on services and works
- social competitive contracts

FL *On public associations*, 04.14.95,
Article 17 *State and public associations*.

The Decree of the President of RF 727,
May 16, 1996, *On state encouragement of public associations engaged in war and patriotic education*

FL 98-fz, 07.28.95, *On state encouragement of youth and children's associations*

FL 88-fz, 07.14.95, *On state encouragement of minor business in the RF*, article 19; Federal administration, administrations

of subjects of the federation and local administrations **encourage** activity of unions (associations) of minor business **created as public associations** in order to provide favorable environment for development of business and protect their interests

Decree of the President of the RF, *On the state support of public associations of disabled workers*, clause 3. Ministry of economics of the RF and Ministry of Finances must **annually** when drafting the state investment plan **take into account well grounded suggestions by All-Russian unions of disabled workers on investments** to cover their social and medicine programs

Article 17 of the Federal Law *On public associations*. is a basic norm which establishes rights of the state and public associations (see the article). It provides the general duties of the state to PAs, but does not describe their content in detail. Departmental legislation and legislation of subjects of the federation give specific interpretations of these basic norms. Legislation on youth and children's associations provides the most detailed norms concerning state support. The Law *On state encouragement of youth and children's associations* itself is clearly-defined. It defines which associations are objects of state encouragement (article 4) and provides the main methods of support (chapter 2), which include: access of information, training of personnel (article 6), granting of privileges to youth associations (article 7), work of associations after orders by the state (social and other services, projects) (article 8), federal programs for the support of youth associations (article 9), state support of specific projects by youth associations (article 10) and financial grants (article 11).

After this law was enacted, the Russian youth committee adopted a decree on February 26, 1996, which provides a detailed and well thought-out procedure for implementing the law, specifically on state support of association.

This decree regulates the procedure for compiling the federal register of youth and children's association encouraged by the state. These regulations include such details as: application forms for registration, references to the number of members in an association and its structural divisions, summary extracts on projects performed by these associations including the number of children and young people to whom services are provided, and a sample of the federal register itself.

The Decree of the Russian committee on youth has also adopted a regulation on the procedure for funding youth and children's associations, and a regulation on the

procedure for competition between youth and children's association projects for state grants. I give much attention to these regulations because they are rare examples of scrupulous attitudes of executive officers to legislative provisions. However, it is this type of attitude which implements legislator's ideas and makes laws work.

COOPERATION

COOPERATION

Moscow City Law, 06.26.96, *On physical culture and sport*, Article 3 — **city state agencies of physical culture and sport management work in close cooperation with ... PAs**

See, e.g., *Regulation on the procedure of monitoring state ecology by officers of the Ministry of Environment and natural resource of the RF and its territorial branches* (adopted by a decree of Ministry of Nature of the RF 04.17.96) — **cooperation of above persons with public associations**

Regulation on the Ministry of Ways of Communication of the RF (adopted by Decree 848 of the Government of the RF, 07.18.96, Clause 3. MWC of Russia **cooperates** with other federal agencies ... and nonprofit agencies and **public associations**

In practice, the term *cooperation* is loosely interpreted and normative acts do not usually contain a strict definition, thus giving executive agencies the ability to interpret this form of interaction. In addition, in spite of the fact that cooperation is a state agency duty, no enforcement is provided. As a result, agency cooperation is at the discretion of the agency.

An example of constructive cooperation between state agencies and PAs is the interaction between agencies of the Moscow Government and public and nonprofit associations. On April 30, 1996, the Moscow Government adopted special decree 392 *On cooperation of Moscow Government with public associations on fulfillment of the Law of the Russian Federation "On public associations"*. It should be noted that public association participated in the development of this law.

In particular, the decree provides for allocation of state grants to PAs and competitive contracts on social orders and governmental programs. At present, a package of documents clarifying provisions of the decree is under development. These documents

include a regulation on grants by the Moscow Government, a regulation on social competitive contracts and others.

Subjects of the RF federation have also developed ideas contained in Article 17 of the above normative act. For example, Moscow, Saint-Petersburg and Nizhny Novgorod have developed local laws on state social order which clarify norms of the federal law.

In accordance with the decree, representatives of PAs have become members of a newly created expert group attached to the Department of public and international relations. During their group sessions they discuss conditions and procedures for joint actions of PAs and government. They discuss ideas for creating specialized public councils attached to the City Hall which would address social, ecological, national and other problems.

Besides cooperation between PAs and the Moscow government, equally intensive cooperation exists between PAs and the Moscow City Duma. There is a City Charitable council, which includes on a parity basis, representatives of the Duma, City Hall and PAs. In March 1996 the Moscow City Duma held a conference on problems of state social order. A considerable number of public associations from both Moscow and Russian regions, as well as deputies of the State Duma, Moscow City Duma and Moscow government participated in the conference. The initiators of the conference was a public foundation called, *Say "No" to Alcoholism and Narcomania*. In January 1997, another association named, *Inter-legal* led another conference entitled, *Legal initiatives of public associations*, where representatives of public associations discussed legal initiative issues with representatives of the Government of Moscow, the Federal Government and the President's Administration.

Committees of the State Duma of the RF also actively cooperate with public associations.

RIGHT OF ACCESS TO INFORMATION

RIGHT OF ACCESS TO INFORMATION	FL 24-fz 02.20.95 <i>RF Information Act</i> , Article 12 Right for access to state information resources
citizens, state agencies and public association have equal rights of access to state information resources and need not explain their reasons for wanting the information to the owners of the information.	FL <i>On Radiation Safety</i> 01.09.96 Article 23. <i>Right of citizens and public associations for information — PAs have a right to obtain reliable information from agencies working with sources of ionizing radiation, including information on radiation safety</i>
There is an exception for information with limited access	
Access of individual and incorporated persons to state information resources is a	FL <i>On participation in international information exchange</i> , 07.04.96 Article 7

basis for public monitoring of state agency activity as well as the economy, ecology and other aspects of social life

*Information on documents of which export is not limited. **Export from Russia** ... of documents containing ... ecological, weather, demographic and other information ... necessary to secure safety of foreign citizens **is not limited***

Implementation of these norms have been poor. Despite the laws regulating access to information: the Constitution of the RF (Article 29, clause 4 ... to freely search, obtain, exchange, process and distribute information); the Law *On Mass Media*; Decrees of the President of the RF 2334, 12.31.93, *On Additional Guarantees of Citizens Rights to Information* and 11.24.95 *On Provision of Openness and Public Access to Normative Acts*, it is not easy for a citizen or a public association to obtain information. Those who attempt to distribute obtained information could suffer state prosecution similarly to Captain Sergey Nikitin who was charged with breaching professional secrecy. Therefore, judicial protection of the right to information needs further improvement.

RIGHT TO BE HEARD AND PARTICIPATE IN AGREEMENTS

RIGHT TO BE HEARD / HEAR DECISIONS

FL *On forced migrants* 11.22.95 Clause 3 article 13 *Issues affecting the rights of public associations in cases provided by the present Laws ... are resolved in agreement with public associations*

FL *On state encouragement of youth and children's PAs* May 26, 1995 *federal executive agencies take into account suggestions by youth and children's associations when drafting laws which affect them*

The importance of this norm is that the right of public associations to make suggestions to state agencies corresponds to the duty of state agencies to take these suggestions into account. The federal law *On Public Associations*, states that public associations have the right to participate in the decision-making process on issues affecting their interests (part 3, article 17)

PARTICIPATION IN THE DECISION MAKING PROCESS

PARTICIPATION (RIGHT TO PARTICIPATE) IN DEVELOPMENT OF DRAFT LAWS, OTHER NORMATIVE ACTS AND DECISIONS AT VARIOUS LEVELS

FL *On Advertising* 07.18.95. Article 28 states that *Public associations* may participate in developing regulations on advertising, including draft laws and other normative acts

FL On the Use of Nuclear Power Article 14 **right of public associations to participate in discussions on draft laws in the field of nuclear power**

FL On Consumers Rights 01.09.96. Article 45 *Rights of consumer public associations* ... consumer public associations **have a right to participate in the development of safety requirements for goods (works, services) as well as in the development of draft laws and other normative acts of the RF in the field of consumer protection**

FL On insertion of amendments into the Law of the RF “On employment in the RF” Clause 1 *Participation of labor unions ... in employment encouragement* Labor unions have a right to participate **in development of state politics** in the field of employment encouragement

FL On the Social Protection of Disabled Workers in the RF 11.24.95. Article 33 — federal executive agencies and executive agencies of subjects of the RF ... **have a right to ask authorized representatives of PAs of disabled workers to help in the development and adoption of decisions affecting interests of disabled workers ... decisions made without representative input violate this provision and may be made void in a court of law**

This principle of participation in the decision-making process is important for ensuring that public associations have a voice in making state decisions. It is being used more often in departmental legislation. The most valuable example of its use is the law on associations of disabled workers because it includes court ordered sanctions for violating the requirement of public participation. One can only hope that such norms become more frequent in departmental legislation.

PARTICIPATION IN WORK OF STATE AGENCIES

PARTICIPATION IN WORK OF STATE AGENCIES

FL *On State Encouragement of Youth and Children's PAs* May 26, 1995 Article 5 — **representatives of youth and children's associations and their coordinating boards have a right to participate in sessions of federal agencies when making decisions on issues affecting the interests of youth and children**

Decree 1045 of the Government of the RF 10.28.95 *On State Committee of the RF in Encouraging Small Businesses* — **within the State committee a college is established, which may include representatives of public associations as its members**

Decree 1009 of the President of the RF 07.01.96 *On the Federal Commission for the Securities market* clause 13. An advisory agency — Council of Experts — is established under the Federal Central Credit Bank of Russia. It consists of ... 25 persons ... including ... 7 representatives of **autonomous associations of professional securities market participants**, their unions, other public associations ... representatives ... of public associations **are elected** members of the Council of Experts by **the associations**

Decree 1304 of the Government of the RF 12.31.95 *On Improving the Activity of Coordination and Advisory Agencies Under the Government of the RF* Clause 2 — **more actively attract representatives of PAs to the work of commissions and boards and their working groups**

The last of the above mentioned pieces of laws is especially valuable. This law applies the duty of attracting representatives from public associations to the work of various collective agencies (mainly interdepartmental advisory boards) to all areas on concern and encourages executive agencies to follow this practice.

INSPECTING FUNCTIONS

INSPECTING FUNCTIONS

Labor Law Code of the RF article 248. Public control over compliance with labor legislation is conducted by labor unions, public inspectors and commissions of corresponding labor union elective agencies

FL On Radiation Safety 01.09.96 Article 12. *Public control over radiation safety* — **PAs, in accordance with the law, have a right to inspect compliance with standards, regulations and norms concerning radiation safety**

FL 196-fz On Road Safety 12.10.95 article 8. *Participation of public associations in measures on road safety* ... these associations have a right ... **to investigate causes and circumstances of road accidents, to file documents to the public prosecutor's office and be represented by their members in court**

Decree 838 of the Government of the RF On Encouraging the movement for consumer protection 08.26.95 Clause 1. ... **to attract representatives of PAs to inspect compliance with the requirements the RF legislation on consumer protection**

FL On state regulation of production and distribution of ethyl alcohol and other spirits Article 19 Public inspection over compliance with the present federal law **is carried out by citizens and public associations. State agencies and officers must help citizens and public associations** in performing corresponding audits on violations of the present FL and **inform the applicant on decision made within 10-days term**

Including the participation of the public in monitoring compliance with the laws has become widespread, especially in environmental and health protection. Public inspection over production and distribution of spirits has also become more prominent. It

important to note that this FL does not mention what kind of public associations are authorized to conduct inspections. One could conclude that ALL public associations have such a right however, this would result in immense number of potential inspectors. Judging by the lack of tax enforcement in the sale of alcohol, it is apparent that the law is not very effective. Supposedly, not all public associations are aware of their inspection rights. As a result, it is vital to educate the public on their legal rights.

Conclusions

1. Specific rights are provided by the general and the departmental legislation concerning the rights of different public associations.

2. Those rights are most applicable to fields of high social tensions (road safety, protection of disabled workers, radiation safety, use of nuclear power, and some economic issues — encouragement of small business, investment fraud and the securities market).

3. Rights in the legislation area are granted to those PAs, which have proved their endurance and ability to competently and persistently protect the interests of their members, assert themselves before state agencies, make constructive suggestions and carry out inspections.

Future authorizations of public associations in the legislative field will depend on two factors:

- (1) society awareness to the vital problems of ecology and public health; and
- (2) self-initiative on behalf of public associations in proposing solutions to problems.

In conclusion, legislation in this field exists, is immense and quite specific. The legal possibilities for cooperation are varied. Sometimes there is lack of legal obligations for state agencies in the area of cooperation, but in practice, those state agencies which take the initiative to cooperate with public associations are successful in their work.

**Public Access to Ecological Information and Public Participation in
Making Decisions**

Summary of the EPT Projects

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Moscow 1997

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FORMULATION OF THE TASK AND METHODOLOGY

The present research is carried out according to an assignment given by the leader of the Russian-US Environmental Law Task Force for the project, *Development and Adoption of Ecological Decisions (Administrative Procedures)*, Robert Teets.

The aim of the research is to compile a list of projects occurring on the Russian territory relevant to the following fields:

- development and adoption of ecological decisions (including development, adoption and publishing of normative legal authorities);
- public participation in making ecologically important decisions;
- public access to information.

This paper begins with a list of projects carried out in Russia with USAID support in the above fields. Then the projects are discussed in more detail focusing of the following three aspects:

- Development, adoption and publishing of normative documents
- Public access to information
- Public participation in making ecologically important decisions

In the author's opinion, the most complicated problem is public access to ecological information. The projects, which demonstrate the aspects of this problem are as follows

- legal grounds of public access to information
- Informational limitations and barriers hindering distribution of ecological information
- ways of penetration of the barriers

This discussion will not focus on the projects by ECOJURIS but will refer to them when it is necessary.

LIST OF PROJECTS

The most important ecological projects carried out in Russia with the help of USAID are:

1. Grants for environmental protection and for encouragement of public associations. Responsible organization: ISAR. Leader of the project — Mila Bogdan.

2. Regional projects, *Environmental policy and technology (EPT)* project:

- Novokuznetsk: Control over multifactor sources of pollution.
- Moscow region.: Water management.
- Volgograd: Air management.
- Nizhnii Tagil: Environmental management in industry.
- Ussuri basin, Gornoaltaysky region: Sustainable development and land-use.
- Baikal: Sustainable development and land-use.

- Khabarovsk/Vladivostok: Nature conservation and conservation of biodiversity.

3. Ecology and public health. Responsible organization: *Save the Children*. The work is also carried out in conjunction with the EPT program and regional projects.

4. *Eurasia* foundation.

There are also some other funds and projects, including the TACIS program, MATPA foundation, private American foundations, and others, supporting activity of public associations in the above fields. When projects financed by different sources made a contribution to democratic development in regions and have had a combined effect on accessibility of ecological information and public participation this paper assess the situation as a whole.

RECOMMENDATIONS

1. The situation in Russia in the field of public participation in making ecologically important decisions and public access to ecological information has rather recently successfully developed, mainly to the support of international organizations. The project on environmental policy and technology is especially important. The projects directed toward strengthening public associations were also helpful.

2. Public participation in making ecologically important decisions is sometimes hampered by inadequacy of both legal normative and instructing methods. I consider the work on developing useful methods as a very fruitful one, including the work at the regional level.³

3. One of the most important outlets of the EPT program is implementation of ecological audits and environmental impact assessments (EIA). Both procedures have practically no legal basis in Russia. It seems fruitful to develop such a basis. In regards to international implementation of ISO 14000 standards, it seems especially important that the development of these bases should follow the spirit of proposed international approaches. As a result, the role of international ecological organizations with practical experience in performing EIAs and ecological audits is very important.

³ This conclusion could not be drawn directly from the present analysis and reflects a personal point of view by the author. As an argument the author may produce results of researches carried out within the framework of different projects.

PROJECT “GRANTS FOR ENVIRONMENTAL PROTECTION AND FOR ENCOURAGEMENT OF PUBLIC ASSOCIATIONS”

Leader of the project is M. Bogdan, ISAR.

The project is directed toward support of public ecological initiatives, encouragement of public associations and development of international cooperation-operation. Among the main goals of the project is encouragement of public participation in making ecologically important decisions and making the public access to ecological information process easier. The most important part of the project is support of public associations with minor grants and partner projects. During the project, 466 projects and 351 organizations have been financed. Accordingly, the main achievements of the project are demonstrated by regional successes.

Initial Information

- Official reports by ISAR (Moscow)
- Conversations with managers of the projects

Development, Adoption And Publishing Of Normative Documents

No legal normative authorities were adopted as a result of the project. Nevertheless there has been participation of ecological SIAs (scientific and industrial associations) in work on the restatements of laws (amendments, drafts of laws, normative grounds). Some of the SIAs which took part in that work were supported by ISAR: Ecojuris, TsKI SoES, ECOLINE, Center for ecological politics, Center for nuclear ecology and energy politics, TsODP, TsNEP, Center for ecological projects, Center for assistance to ecological initiatives (Saratov) etc.

The most impressive event in the field of publishing legal normative authorities is the publishing of a collection of legal normative authorities by Ecojuris.

Public Access To Information

Easing public access to ecological information is one of the main aims of the project and is why all its components include an informational aspect. An important part of the project is an Information and Publishing Service. After all, ISAR is limited as to how much information it may gather and distribute, as well as with how much financial and technical aid it may give to public associations.

All the projects financed by ISAR helps solve the problem of access to information. There are several methods of solving the problem of public access to ecological information.

Public access to official (state) information

Many regional organizations noted that in their regions ecological information is hardly accessible and, as a result, dialog between public associations and state bodies is hampered. This problem has been partly solved through completion of projects within the framework of the *Democracy Seeds* program. Many organizations have mentioned in their scope of works that cooperation-operation with the state bodies has improved.

Creation of alternative information channels

Many projects are directed toward the creation of alternative informational channels. The experience of many public associations supports the idea that availability of an alternative informational channel considerably improves accessibility of official information.

As an example of such a project is a project by ECOLOGY (Pennsylvania) *Assistance to civil initiatives in the field of ecological monitoring*, financed by ISAR/AID within the framework of joint grants. The project provides for the creation of a network of non-governmental ecological monitors in Russia. The results of the project show that the creation of an alternative informational channel has eased access to official ecological information in the regions where the project has been carried out.

Creation of alternative informational channels was an aim of dozens of minor projects carried out within the framework of the *Democracy Seeds* program. Among the most effective projects are *research of public health near Techa river* (Chelyabinsk, a movement *For nuclear safety*), *Integrated independent monitoring of Chermlyanka river* (Chermlyanka club, Moscow) and the *Research of drinking water quality in Povolzhye* (Ecocentre *Dront*) among others

Information centers

The problem of public access to ecological information partly depends on the absence of bodies capable to obtain and distribute information in a form acceptable to the public. That is why assistance to information centers was one of the priorities of the program.

Within the framework of the program on joint grants, a project on scientific-technical information on the environment for public associations (ECOLOGY) has been financed. This project provided for the creation of an information center which provides scientific-technical information on the environment for public associations in Russia. Implementation of the project has resulted in the development of an information center at a national level. During the project a proposed model was adopted for a regional level and tested in three regions.

Within the framework of the *Democracy Seeds* program, an assistance to 15 regional information centers and organizations functioning as information centers has been carried out. Successful examples of such a project are the information centers *Volgograd-Ecopress*, Center for assistance to ecological initiatives (Saratov), and the information agency, *Ecofact*.

Public Participation In Making Ecologically Important Decisions

Many projects have public participation in the environmental decision-making process as a goal. Some examples of those projects are listed below:

- 1) Maintenance for the protection of the natural park *Russian North* (Vologda). A result of this project was the termination of the erection of a polygon for burial of solid consumer waste on the park territory.
- 2) *Public ecological expertise of technical and economic assessment of rise of Ceboksary reservoir level*. Chuvash branch of SoES. A decision was made to stop the rise in reservoir water.
- 3) An independent inspection in Georgievka township which suffered after a radiation accident at the Tomsk Siberian chemical plant (TsHEP). The result of the project was a Tomsk regional decision to evacuation children from the Georgiyevka township.

REGIONAL PROJECTS UNDER THE “ENVIRONMENTAL POLICY AND TECHNOLOGY” (EPT) PROJECT

NOVOKUZNETSK: CONTROL OVER MULTIFACTOR SOURCES OF POLLUTION

Leader of the project — Kupchik Miron Borisovich

The project is aimed at environmental pollution control and public health improvement through the refinement of drinking water quality and abatement of air pollution. Sustainable development of the city will be provided by: 1) development of a strategic plan for city development directed toward ecological and economic implementation; 2) training of novice businessmen and establishing contacts with American companies.

Initial information

- A package of documents prepared for participants of a working meeting on dissemination of information on the ROLL project;
- *Environmental Information: principles and practice of management at the local level*, June 1996, scope of work by ECOLOGY;
- Conversations with the members of the project.

Development, adoption and publishing of normative documents

There were no normative documents developed concerning the project.

Public access to ecological information

This part of the project is well developed. There are a few non-governmental organizations in the region. As a whole, one can see an extremely high level of public activity.

Public access to official information

Compared to other regions, the public is well informed on environmental conditions. The activities of public associations has helped to overcome resistance by the bureaucracy. Many public associations cooperate-operate with the state bodies and obtain official information on the conditions of the environment. Of course, there are problems in this field. However, on a whole, the situation is good. A seminar by ECOJURIS in 1996 made a considerable contribution to the improvement of the situation in this field.

Nevertheless, there are number of problems concerning public access to ecological information.

Informational limitations

A seminar by ECOLOGY in June, 1996, *Environmental Information: principles and practice of management at the local level*, has helped in discovering a number of problems in the field of public access to ecological information. These problems exist in the majority of Russian regions and is the reason why an analysis of these problems is of interest to all. Public access to ecological information, besides the resistance of bureaucracy, is limited by two factors:

Departmental barriers, which inhibit circulation of information between different state agencies

This aspect is especially prominent in the Novokuznetsk. Information circulation within a single department is embarrassingly poor. Even worse, this problem is a reality for a plethora of departments.

Methods for overcoming these difficulties were discussed in a seminar, *Environmental Information: principles and practice of management at the local level*. The establishment of an independent information center provides an opportunity to bridge the gap between departments. According to the experiences of other regions, the best way for creating such a center is to base it upon an independent organization at the regional level. Such an approach removes competition from different departments. SIA is capable of dealing with representatives of the state and have experience in information processing. Therefore it is a potential which may be used to unite information resources from different departments.

The seminar recommendations were to create such a center in Novokuznetsk on the basis of the informational agency *INEKA*.

Insufficient initial informational processing

Very often the public is poorly informed because of the lack of processed information. Initial information retrieved by the state agencies is poorly analyzed and insufficiently interpreted. Usually, there are no recommendations concerning results of observations. The weakest area is in information adapted for the public. When not processed, such information is useless for public. However, the state inspecting bodies have neither experience, nor resources for this work.

According to members at the seminar, this problem is characteristic of Novokuznetsk. Absence of a traditions of information processing and adaptation creates a number of problems affecting more than just the public. A large array of data obtained by different state agencies is not used when they make decisions mainly due to an historical lack in information processing and use.

Problems with interpretation and adapting information for the public is not a simple problem. Creation of an information center at the regional level may help to lessen the problem but a successful solution requires combined efforts of all the specialists of the

region, as well as additional training in information interpretation and adaptation for users of different levels.

The general conclusion is that the problem of accessibility of ecological information (in Novokuznetsk region) is rooted in the informational sphere. Considerable improvement in this field may be achieved through the development of an information culture.

Specific recommendations

One of the most important aspects of the project is risk evaluation. It would be extremely interesting and helpful to evaluate the risks in social acceptability. It seems that implementing risk communication in Russia would be especially fruitful. EPA uses this method in the USA. In Russia, it was used in a few projects and was highly effective. Implementation of this method could help to better understand collisions existing in the region, contribute to their diminishing and encourage involvement of the local community in solving local ecological problems.

MOSCOW REGION: WATER MANAGEMENT

Initial Information

- A package of documents prepared for participants of a working meeting on dissemination of information on ROLL project;
- Conversations with the members of the project;
- Documents of a seminar *Public participation in making ecologically important decisions*, Istra city, September 1996.

Development, Adoption and Publishing of Normative Documents

There were no normative documents developed concerning the project.

Public Access To Ecological Information

Public access to information in the Moscow region is provided within a public appraisal framework of the projects including open doors days, informational excursions etc. These forms of advertising are very valuable for the dissemination of information on the project. It is necessary to develop and strengthen this work in order to achieve success. At the same time, when our goal is to encourage local community mobilization, other forms of work which require public activity prove to be more effective.

An important success in the field of public access to ecological information is the creation of a local monitoring network by schoolboys. This active approach to obtaining and distributing contributes to positive changes in environmental quality at the local level.

Public Participation In Making Ecologically Important Decisions

Projects in the Moscow region were initially directed toward involving only specialists and were just recently, since the beginning of 1996, supplemented with a public participation component. As a result, the first stages of the project experienced limited public participation. Nevertheless, some successes in this field have been achieved.

Istra Project

The creation of a 2-mile long protective zone near Pavlovskaya Sloboda (Istra district) by local schoolboys and a local school water quality monitoring network is very impressive. It is action such as this which creates a basis for public participation in making ecologically important decisions. This work is supported by the initiative of local citizens — teachers, schoolboys, parents — and we hope that the efforts made will not go waste. Most likely, this part of the Istra project will exist later on at the expense of local resources.

The basin public council was created in 1996 and it is still difficult to estimate its effectiveness. At the first stage, its activity could be considered administrative, with no basis for public participation. Nevertheless, the immediate creation of this council at the local level in rural districts is an important positive development. This decentralization gives us a hope that in the future the situation can be improved.

Public participation has recently attracted much attention. Work continues in encouraging local SIAs, to develop cooperation-operation between SIAs and project members. These tactics provide a solid ground for public participation in the decision making process.

VOLGOGRAD: AIR MANAGEMENT

In Volgograd, a few international projects which involve participation of public associations, have recently been carried out. The most important of the projects is RAMP (EPT/USAID). ISAR/AID has financed several projects within the framework of the *Democracy Seeds* program and program of joint grants. Projects financed by European sources (MATPA foundation and TACIS program) have also promoted public access to ecological information and encouraged public participation. Because accessibility of information depends on the regional situation in general and all of the projects in Volgograd have worked on removal of informational barriers, this section discuss the situation in Volgograd as a whole, without analyzing achievements of specific projects.

Initial information

- A package of documents prepared for participants of a working meeting on dissemination of information on the ROLL project;
- Conversations with the members of the project;
- Answers to V.A. Kotovets by Mr. Azarov (Appendix 1).

Development, adoption and publishing of normative documents

There were no normative documents developed concerning the project on the regional level.

Public access to ecological information

In Volgograd, the problem of public access to ecological information is being solved rather successfully.

Openness of ecological information

Many years of efforts by public associations such as, *Volgograd-Ecopress*, *Ecology club*, *Volga ecoparliament* and the movement *Let us help the river*, have helped overcome informational barriers. Usually relations between the public and state organizations are that of constructive cooperation-operation. A few round tables and public hearings which have taken place in Volgograd within the framework of different projects have portrayed a satisfactory informational openness characteristic for this region. Creation of alternative channels of ecological information within frameworks of international projects (project by ECOLOGY *Assistance to civil initiatives in the field of ecological monitoring*, Russian-Dutch project *Volga*) have considerably helped to provide informational openness.

Ecological education of population

Informational activity carried out within the framework of the RAMP project has developed rather successfully in this field (Appendix 1). This project is aimed at educational activity. Within the framework of the RAMP project, there are three sub-projects directed toward encouragement of public participation:

1. *Exhibition*

A Povolzhye inter-regional exhibition of textbooks on ecology and ecological education was organized. The exhibition lasted for one year. This exhibition has been demonstrated in cities in Povolzhye nine times (twice in Volgograd). Plans are to open two branches of the exhibition in Volgograd.

2. *Work with mass-media*

Several press-releases, leaflets and more than 10 articles on different questions concerning environmental pollution have been published within the framework of the sub-project.

3. *Guide-book*

The first Volgograd guide on ecological associations in different fields of activity is ready to be published.

4. *Volgograd is a green city*

Three public actions are planned within the framework of the sub-project on restoration of parks in three districts of Volgograd

As a whole, these activities considerably help promulgate an ecological mentality in the region.

Problems in the field of public access to information and ways of solution

Nevertheless, in the field of public access to ecological information there are still a number of problems. A round table carried out in June 1996, within the framework of the project *Assistance to civil initiatives in the field of ecological monitoring* (sponsored by ISAR/AID) by the public associations *Volgograd-Ecopress* and *ECOLOGY* supported by the state agencies for nature protection provides a possibility to identify these problems (Appendix 2).

1. *Insufficient circulation of information between the state bodies responsible for water quality monitoring and water quality management and absence of coordination-ordination between the activities of these agencies;*
2. *Mismatch of activity of the state bodies belonging to different departments results in an absence of an integrated pattern of water quality in Volgograd;*

3. *The activity of these bodies is directed toward obtaining experimental evidence. They pay much less attention to analysis and interpretation of the data obtained thereby reducing the effectiveness of data application;*
4. *State agencies for public distribution of ecological information lack on money.*

One should note that the problems discovered are similar to those found out in Novokuznetsk. Members of the round table have proposed possible solutions. One of the recommendations by the round table is:

It is necessary to develop a regional model of information circulation, paying much attention to the interpretation of data obtained and to the elaboration of recommendations at all levels — from the regional level down to an individual one. The most important aspect is adaptation of ecological information for public and elaboration of recommendations for citizens. It is reasonable to use the public association Volgograd-Ecopress as a coordinating- center.

Public participation in making ecologically important decisions

The Volgograd region has had a positive experience with public participation in making ecologically important decisions. Activity of some ecological associations (*Volgograd-Ecopress*, club *Ecology*) is directed toward encouragement of public participation in making decisions. They have had a positive experience with cooperation-operation between state bodies and public associations both in the fields of information circulation and of joint actions (e.g. a number of joint expeditions carried out by Goshydromet (the State committee of hydrology and meteorology) and *Volgograd-Ecopress*).

The tendency of public associations to provide public dialogue between the three social sectors (state, commercial and non-commercial) is very important. A positive example of such a dialogue is the public hearings on mercury pollution which took place in Volgograd in October 1996. A merit of this project is that it has managed to overcome confrontation between public associations and a polluting enterprise (*Kaustik* plant) and started a constructive dialogue directed toward cooperation-operation between the production sector and public associations. This project was financed by MATPA foundation. Members of the project are: the program *Let us help the river*, Volgograd club *Ecology*, *Volgograd-Ecopress* and *ECOLINE*. Additional information may be sent upon request.

Initial information

- A package of documents prepared for participants at a working meeting on dissemination of information on the ROLL project;
- Conversations with the members of the project.

The main direction of the project is ecological auditing of industrial enterprises.

Development, adoption and publishing of normative documents

There were no normative documents developed concerning the project.

Public access to ecological information

The following assessment is preliminary.

Informational work with citizens is mainly directed toward the development of ecological education. The creation of a committee on priorities which includes representatives of public associations and active partisans of ecological movements contributed to the broadening of public access to ecological information.

Strengthening of public associations is an important component of improvement in accessibility of ecological information. There has been considerable work carried out in Nizhnii Tagil concerning this topic by both a regional EPT project and the *Democracy Seeds* program.

Public participation in making ecologically important decisions

The creation of a Committee on priorities attached to the Administration is an important initiative. The Committee includes leaders of public associations and active partisans of the ecological movement. The goal of the Committee is to develop a strategy for pollution abatement and a list of priorities.

The value of this initiative is that the main criteria for arranging priorities is effects on public health. The fact that the Committee includes representatives of all the social sectors provides the public with an opportunity to take part in making ecological decisions.

Specific recommendations

The work of the project has created a base for informational openness and for further development of public participation in making ecologically important decisions in the region. The following methods are fruitful for continued successes:

1. Ecological audit and public participation.

An endemic feature of Russian conditions is that there is no dialogue between the commercial sector and the public. As a result, information for the public is a highly desirable component of each large-scale economic project. Russia has had a positive experience with public participation in performing ecological audits (under observance of commercial information confidentiality). Additional information may be sent on request.

2. Creation of an information center which obtains information, processes the information obtained by different departments and adapts the information to different levels.

Experiences in other regions show that problems of public access to the ecological information is a serious one for the bulk of the Russian regions and is mainly a result of absence of required information. This problem may be successfully solved at the regional level through the creation of an information center. The creation of such a center is not an easy task and it could not be carried out in each region. However, successes achieved during the implementation of such projects lead us to believe that this experience may be implemented in Nizhnii Tagil.

FAR EAST

Initial Information

- A package of documents prepared for participants at a working meeting on distribution of information about ROLL project;
- Conversations with the participants of the project;
- Personal impressions of a trip to Vladivostok and Khabarovsk.

The main goal of the project is effective environmental exploitation.

Development, Adoption And Publishing Of Normative Documents

There are no normative documents developed concerning the project.

Public access to ecological information

The problem of public access to ecological information in the Far East region has its own characteristics. As the region possesses rich environmental resources, official agencies put most of their attention to the information on availability of environmental resources. Problems with environmental pollution and degradation of environmental resources are not considered priorities and are not recognized by official agencies or by the public.

In other respects the problem of public access to ecological information in the Far East region is of the same character as in the central Russian regions. The following features are dominant: mismatch of activities of the state agencies belonging to different departments and insufficient circulation of information between the state agencies; absence of adequate information for the public, and; inadequate resources in state agencies for distribution of the information and for adaptation of ecological information to the public. For details, see the report *Environmental information: principles and practice of management at the local level*.

Information centers

The EPT project puts much attention on information work in the Far East. In the region, there are different information agencies which attempt to supply ecological information. *Educational line* is the most developed one. The region has several non-governmental centers specialized in ecological education including workshops for the ecological education of children (Vladivostok), methodical advisory center *Blue Bird* (Vladivostok), the ecological educational tourism firm *Pacifictour* (Vladivostok), a tourist center for children *Exotour* (Komsomolsk-na-Amure) and the *Ecological center for children* (Pereyaslavka, Khabarovsk region). These agencies work primarily with schoolboys. Nevertheless, they have their own informational resources at their disposal, which may be used (and are used) by adults as well.

An important specialized center is the *Wild animals foundation* (Khabarovsk, WAF). This agency corresponds more with the idea of “an information center” than the others. However, WAF specializes in biological diversity and other problems of legal priority vital for the region.

The ISAR Far Eastern office is importance in the field of information. A publishing project carried out by ISAR-FE provides considerable contributions to the development of ecological information in the Far East.

Problems connected with access to ecological information have been discussed during the workshop *Ecological information: principles of management at regional and local levels* (Appendixes 1, 2). Participants of the workshop have expressed the opinion that the main problems in the field are caused by lack of experience in exchanging information, inadequate development in the market for ecological information and an inadequate legal framework. Activity directed toward the development of a legal framework at the regional level looks promising.

The situation surrounding the building a demercurization plant (Appendix 3) illustrates the necessity for better access to information. The situation is a paradoxical one, as both state and public agencies recognize the necessity of this building. Nevertheless, the population actively objects building the plant at the selected site. As a result, the administration has issued an order to terminate the already started building. The cause of the conflict is a violation of the procedure of public participation at earlier stages in making the decision. The only way to solve this problem is to provide information to the public. However, information must not be substituted by a propaganda campaign, which may have an undesirable effect. A plan for working with the public was developed at the round table (Appendix 3).

Alternative information channels

In the author’s opinion, little is done in this field in the region. One of the most important projects was an ecological audit of the Far East A-plant, organized by V. Desyatov. There has been much access to information in this project as the audit has provided an opportunity to summarize and publish alternative information from independent sources on ecological aspects of the building proposed. Whether this activity will contribute to a process of public participation in decision making or prove to be just an educational one is difficult to say, as the decision on the building has not yet been made.

Public Participation In Making Ecologically Important Decisions

The following projects are aimed at supporting public participation in making ecologically important decisions:

Encouraging public associations and helping them to gain authority at a regional level. This has been successful mainly due to ISAR-FE activity.

Participation of public associations in the management of the EPT project (public representatives are members of the coordinating council).

ECOLOGY AND PUBLIC HEALTH.

Responsible association — Save the Children

Leader of the project — Steven Wolf

Within the framework of this project, initiatives from scores of non-governmental associations working in the field of “Ecology and Health” were being supported. Many of those projects are focused upon public access to ecological information and public participation in making decisions. However, it is premature to sum up the results of this project as the bulk of them are planned for a 1 year period and the program only started in the Spring of 1996.

APPENDICES

APPENDIX 1. WATER QUALITY MONITORING IN VOLGOGRAD: COOPERATION OF STATE BODIES AND PUBLIC ASSOCIATIONS

On July 5 a round table on *Water quality monitoring in Volgograd: cooperation-operation between the state and public associations* took place in Volgograd. The *VOLGOGRAD-ECOPRESS* information center and ECOLOGY, an international non-governmental association organized the event. Representatives from the state nature-protective and inspecting bodies responsible for water quality monitoring and water quality control in Volgograd including, Gorkomprirody (the City committee of nature), VGTsSEN, BTsRM, Gorvodokanal (the City water canal), Direction of water management of Lower Volga basin as well as representatives of public ecological associations have taken part in the work of the round table.

The agenda included the following questions:

1. Ecological monitoring and control: distribution of powers between departments. Possibility of public participation.
2. Ways of obtaining data: Prior sources and factors of impact.
3. Levels and ways of information distribution: interpretation of factual data, search for casual relations and development of recommendations.
4. Information circulation: search for missed opportunities and new sources of information.

Members of the round table have noted that in the region has had a number of considerably positive experiences with cooperation between state and public bodies in the field of obtaining and using the information on water quality. Cooperation between the Center of hydro-meteorology and environmental monitoring, the City center of the State sanitary inspection, the City committee of nature and the public association *Volgograd-Ecopress* has created a good base for joint actions and promoted a openness of ecological information to the public and public associations.

At the same time, there is a number of problems inhibiting effective circulation of information on water quality and hindering the State from making optimal decisions. The main problems are:

1. Insufficient circulation of information between the state bodies responsible for water quality monitoring and water quality management and an absence of coordination between the activities of these agencies
2. Mismatch between the activities of state bodies belonging to different departments resulting in an absence of an integrated pattern of water quality in Volgograd
3. Activity of these bodies is directed toward obtaining experimental evidence. They pay much less attention to analyzing and interpreting the data obtained thereby reducing the effectiveness of applying the data;
4. State agencies for public distribution of ecological information lack money.

The following suggestions are recommended as specific measures for addressing the problems at hand:

1. It is necessary to develop a regional model of information circulation, paying careful attention to interpretation of data obtained and to elaboration of recommendations at all the levels — from the regional level to an individual one. The most important aspect is adaptation of ecological information for public and elaboration of recommendations for citizens. It is reasonable to use the public association, *Volgograd-Ecopress*, as a coordinating- center.
2. It is necessary to assess the effectiveness of a mechanical sludge drying shop which is in operation at city treatment plants. Cooperation between Gorvodokanal and the *Volgograd-Ecopress* information center could proved to be effective.
3. It is logical to develop a new method for obtaining independent ecological information in Russia, such as ecological auditing, taking into account accumulated positive experience of cooperation between state and public agencies in the field of ecological monitoring. An external audit of one of the polluting enterprises could be helpful. We ask the information center *Volgograd-Ecopress* and Gorvodokanal to consider the possibility of performing such an audit.

Appendix 1.1 Workshop Participants

	Family name, first name, patronymic	Association, position
1	BEDINA Nadezhda Mikhailovna	Club <i>Ecology</i> , chairman
2	VAYSHLE Anatoly Iosifovich	Direction of water management of Lower Volga basin, chief engineer
3	VASILYEVA Elena Alexandrovna	<i>VOLGOGRAD-ECOPRESS</i> , director
4	BREDIKHINA Nadezhda Andreyevna	Gorvodokanal, aeration station, chief of chemical and bacteriological laboratory
5	BUNDE Yulia	ECOLOGY
6	GUSEVA Tatiana Valerianovna	Russian Chemical Technological University, chair of industrial ecology
7	GUSAROVA Lidia Petrovna	MIPP Gorvodokanal, chief of water resources inspection
8	ROSHYINA Tatiana Petrovna	Volgograd center of hydro-meteorology and environmental monitoring, chief of laboratory of pollution monitoring
9	LIPATOV Sergey Viktorovich	Gorvodokanal, chief of department of long-term planing and investments
10	KONDRATYEVA Lyudmila Ivanovna	VTsGSEN, doctor-laboratory assistant
11	KOTOVETS Valeria Alexeyevna	Volga ecoparliament
12	LUTY Douglas	Peace corps, USA
13	KHODOVA Nataly Anatolyevna	Green movement
14	FOKINA Lyudmila Nikolayevna	Gorkomprirody, chief of department of industrial inspection
15	KHOTULEVA Marina Vladilenovna	ECOLOGY, coordinator ⁴ of network of non-governmental ecological monitoring
16	YASHYENKO Vyachelav	<i>Ecograd</i>

**APPENDIX 2: “ECOLOGICAL INFORMATION: PRINCIPLES AND PRACTICE OF MANAGEMENT AT LOCAL AND REGIONAL LEVELS.”
FINAL DOCUMENT OF THE WORKSHOP. VLADIVOSTOK,
FEBRUARY 27 - MARCH 1, 1997.**

The workshop Ecological information: principles and practice of management at local and regional levels, took place in Vladivostok, February 27 — March 1, 1997. The workshop was organized by the Project on environmental policy and technology with the help of the international organization ECOLOGY (Moscow).

Representatives of state agencies for environmental protection and forestry, hydrometeorological service, scientific research institutions, methodological associations and schools, conservation area services and non-governmental organizations (Appendix 1.1) participated in the workshop.

Participants of the workshop discussed problems of access to information on environment and natural resources, legal aspects and regional features on the issue, ways of obtaining independent ecological information, informational aspects of ecological evaluation and environmental impact assessments and ecological audits. Much attention was given to issues of organizing information centers, of adaptation of ecological information for different audiences and distribution of information. During individual consultations, the principal topic was organization of nets of information at different levels, an ecological monitoring net and possibility of using prior experiences to create a regional net of information centers.

Participants of the workshop acquainted themselves with modern media of obtaining ecological information (such as Internet).

When discussing regional problems of access to information on environment and natural resources, participants of the workshop have expressed an opinion that the Far East project of the EPT project had made a considerable contribution to development of an information net in the region. Within the framework of EPT projects, a number of information agencies have been formed, e.g. Minor academy of marine biology, foundation for support of ecological initiatives Eco-Logos, Primorsky regional (that is Vladivostok regional) society of technical ecology and several methodical, consultative and educational centers. As a whole, access to information on environment and natural resources has greatly improved.

At the same time, participants of the workshop have stated, that there are still a number of problems in access to information on environment and nature-use, including:

An endemic problem of the region is access to information on natural resources, their extinction or degradation. Legal aspects of access to information on natural resources are poor as compared to access to information on pollution.

There is no market for ecological information services. As a result, there is no set price for information and the market is not used to a culture of paying for information.

At the regional level, there is lack of methodical and normative ground concerning ecological audit and environmental impact assessment, experience in this field is insufficient.

There are only a few methodical publications on environment devoted to problems in the region.

Inadequate circulation of information is not exclusively caused by a mismatch of activity between state agencies belonging to different departments. Circulation of information in the region is hampered between public association as well. Causes of the problem are the following:

- inadequate resources (money, etc.) for interpretation and distribution of information;
- lack of experience in adaptation of ecological information for the public;
- low efficiency on providing information by public associations.

Participants of the workshop have developed the following recommendations:
In order to improve public access to information it is necessary to join efforts of different information agencies of regional and local levels. Establishment of an additional agency at the regional level is not advised.

In order to improve access to information in the region one must pay more attention to the delimitation of functions of existing information agencies. Especially important is communication between different information agencies.

According to conclusions of the discussion during the workshop, two ideas seem to be fruitful:

- establishment of an information center based on existing information agencies with set functions (data collection and interpretation, adaptation of information for different social groups, distribution);
- creation of a regional network of information centers.

It is necessary to hold a round table to discuss specific forms of cooperation-operation between existing agencies. Proposed term — end of March.

Among other measures directed toward better communications between acting information agencies, there should be an inventory of information resources in the region. It is helpful to discuss the possibility of creating a network of “green” libraries, and to compile a joint catalogue of libraries in the region.

**APPENDIX 3: “ECOLOGICAL INFORMATION: PRINCIPLES AND PRACTICE OF MANAGEMENT AT LOCAL AND REGIONAL LEVELS.”
FINAL DOCUMENT OF THE WORKSHOP. KHABAROVSK,
MARCH 3-5, 1997.**

The workshop, Ecological information: principles and practice of management at local and regional levels took place in Khabarovsk March 3-5, 1997. The workshop was organized by the Project on environmental policy and technology with the help of the international organization ECOLOGY (Moscow).

Representatives of the state agencies for environmental protection and forestry, hydrometeorological service, scientific research institutions, methodological associations and schools, conservation area services and non-governmental organizations (Appendix 1.1) participated in the workshop.

Participants of the workshop discussed problems of access to information on environment and natural resources, legal aspects and regional features of the problem, ways of obtaining independent ecological information, informational aspects of ecological evaluation and environmental impact assessments and ecological audits. Much attention has been given to the organization of information centers, criteria for more efficient information centers, problems of adaptation of ecological information for different audiences and distribution of information.

When discussing regional problems in the field of access to information on environment and natural resources, participants of the workshop have stated that in the there are several information agencies in the region which focus on specific issues. The most efficient are: Wild animal foundation (Khabarovsk), non-governmental organization Black dragon and some methodical, consultative and educational centers. As a whole, access to ecological information is favorable.

At the same time, participants of the workshop have stated that there are a number of problems in the field of access to information on environment and nature-use, including:

Lack of regional experience in using environmental impact assessments and ecological audits as instruments of public participation in making ecologically important decisions. Normative and methodological bases are inadequate. Social dialogue is not developed in that there are no public hearings. All of the above problems are illustrated by a situation arising from the building of a demercurization plant, which was deemed necessary by all social groups. This topic was been discussed “at the round table”, which took place on March 5 at the Wild animals foundation (Appendix 2).

Because there is no market for ecological information services, there is no operative “public information.” There is no set price for information and there is not a culture for selling or buying information.

Inadequate circulation of information is not caused exclusively due to a lack of communication between the activity of state agencies belonging to different departments.

Circulation of information in the region is also poor between public association. This situation is caused partly by the fact that most information centers are highly specialized. At the same time participants of the workshop have noticed a lack of “aggressiveness” in distributing ecological information.

Participants of the workshop have developed the following recommendations:

Developing a regional network of ecological information.

In order to improve public access to information it is necessary for public and state centers to join efforts. Attention should be paid to information interpretation and distribution.

As opposed to inventing a united information agency, it is more promising to use existing agencies, including highly specialized ones. It is necessary to continue to encourage these centers and projects, paying attention to their mutual cooperation.

The best way to encourage cooperation between different centers in the region is through joint projects.

Conduct an inventory of information resources in the region, both governmental and non-governmental.

It is desirable to create a regional information center. This center must be a public association which has public credit and is supported by the administration.

**APPENDIX 4: PROBLEMS IN UTILIZING MERCURY WASTE IN
Khabarovsk Region, Discussion “At the Round Table.”
Khabarovsk, March 5, 1997**

The discussion about building a demercurization plant in Khabarovsk took place during a workshop called Ecological information: principles and practice of management at local and regional levels in Khabarovsk. The discussion arose spontaneously during individual consultations. The following persons participated in the discussion:

- 1) Yu.I. Zhuravlev, chief, department of state ecological audit, Khabarovsk region;
- 2) A.G. Istigichev, Regional committee of nature;
- 3) V.M. Desyatov, Far East department of SOES;
- 4) Yakov Grigoryevich Pokutsa, Far East department of All-Russian society of nature protection;
- 5) T. Ezhelya, environmental procurator's office;
- 6) N.V. Bolshova, Wild animals foundation;
- 7) T.V. Guseva, ECOLOGY, Moscow;
- 8) M.V. Khotuleva, ECOLOGY, Moscow.

All the participants of the discussion have stated the following:

Building a plant for demercurization of municipal waste is vital for the region. Such a building will provide the possibility to control mercury pollution and improve the ecological situation from settlements;

The confrontation between the local population and regional administration is over the location for the building;

During the process of making the decision to build the demercurization plant, gross violations took place. In particular, the design had not been agreed upon by the local population. Thus, the Regulation on environmental impact assessment in the Russian Federation had been violated. As a result, the building, which was already under construction, was suspended after an order by the Head of Administration of the Khabarovsk region.

In order to improve the situation and to avoid further confrontation between state agencies, agencies of environmental protection and local population, it is necessary to organize a formal dialogue. An ideal instrument for such a dialogue is a public hearings. The following steps are necessary in order for the hearings to be efficient:

Discover the focuses of mercury pollution in Khabarovsk city. This task should be performed by agencies which have the necessary experience and equipment (list is enclosed);

Research pollution near the designated area;

Collect information on ecological consequences of activity of other similar facilities in other regions (Cheboxary);

Educate the public through mass media and public associations, a compilation of ecological documents of different levels and through specialized lessons in school. ECOLINE could provide methodical help. Committee for ecology of Khabarovsk region and public associations must take part in preparation of public hearings.

PUBLIC ACCESS TO THE DECISION-MAKING PROCESS IN RUSSIA

Alexey B. Ivanov
Center for International Environmental Law

Environmental decision-making initiated by the Government

<i>Agency</i>	<i>Agency actions</i>	<i>Public participation/input</i>
Government of the RF	<ul style="list-style-type: none"> i) receives laws and analyzes them determining which issues require subsequent elaboration and which regulations or procedures are necessary to implement them. ii) issues an order to an agency requesting a preparation of a draft. 	
State Committee on environmental protection (SCEP)	<ul style="list-style-type: none"> i) receives the governmental order. ii) the Chair of the SCEP reviews the order and decides which Department will be principally responsible for drafting the act and which Departments would also be involved in the work. iii) the Chair assigns the work to the Department. 	<ul style="list-style-type: none"> i) The State Environmental Expertiza of normative acts (organized by the SCEP) with representatives of the public invited. ii) The Public Environmental Expertiza
Department of the SCEP (appointed for the work)	<ul style="list-style-type: none"> i) prepares a draft. ii) approves it with other appointed agencies (almost every draft involves the Legal Department and the Department of Finance). iii) prepares a letter to the Government reporting on the completion of their task. iv) sends the draft and the letter to the Government. 	<ul style="list-style-type: none"> i) The State Environmental Expertiza of normative acts (organized by the SCEP) with representatives of the public invited. ii) The Public Environmental Expertiza iii) Draft acts could be published (decided by the SCEP in each individual case. There is no legal requirement to do so in the current Russian legislation)
Government of the RF	<ul style="list-style-type: none"> i) receives and reviews the draft ii) the document is signed by the Prime-Minister. 	<ul style="list-style-type: none"> i) The State Environmental Expertiza of normative acts (organized by the SCEP) with representatives of the public invited. ii) The Public Environmental Expertiza iii) The document is officially published

Environmental decision-making initiated directly by the President

<i>Agency</i>	<i>Agency actions</i>	<i>Public participation/input</i>
The President of the RF	<p>i) receives laws and analyzes them determining which issues require subsequent elaboration and which decrees are necessary to implement them.</p> <p>ii) issues an order to an agency requesting a preparation of a draft.</p>	
State Committee on environmental protection (SCEP)	<p>i) receives the Presidents order.</p> <p>ii) the Chair of the SCEP reviews the order and decides which Department will be principally responsible for drafting the act and which Departments will also be involved in the work.</p> <p>iii) the Chair assigns the work to the Department.</p>	<p>i) The State Environmental Expertiza of normative acts (organized by the SCEP) with representatives of the public invited.</p> <p>ii) The Public Environmental Expertiza</p>
Department of the SCEP (appointed for the work)	<p>i) prepares a draft.</p> <p>ii) approves it with other appointed agencies (almost every draft involves the Legal Department and the Department of Finance).</p> <p>iii) prepares a letter to the President reporting on the completion of their task.</p> <p>iv) sends the draft and the letter to the President.</p>	<p>i) The State Environmental Expertiza of normative acts (organized by the SCEP) with representatives of the public invited.</p> <p>ii) The Public Environmental Expertiza</p> <p>iii) Draft acts could be published (decided by the SCEP in each individual case. There is no legal requirement to do so in the current Russian legislation)</p>
The President of the RF	<p>i) receives and reviews the draft</p> <p>ii) the document is signed by the President.</p>	<p>i) The State Environmental Expertiza of normative acts (organized by the SCEP) with representatives of the public invited.</p> <p>ii) The Public Environmental Expertiza</p> <p>iii) The document is officialy published</p>

Environmental decision-making initiated by the State Duma

<i>State body</i>	<i>State body actions</i>	<i>Public participation/ input</i>
State Duma	i) One of the Committees (the environmental committee, the committee on natural resources etc.) sends the SCEP drafts of documents.	
State Committee on Environmental Protection (SCEP)	i) receives the drafts ii) does two letters: one to the Government notifying them that certain documents were received and the other to the Duma saying that the SCEP can not work directly with the legislative branch and that they would have to do their work through the Government.	
Government of the RF	i) receives the letter, analyzes it and issues an order for preparing a draft.	
State Committee on environmental protection (SCEP)	i) receives the governmental order. ii) the Chair of the SCEP reviews the order and decides which Department would be principally responsible for drafting the act and which Departments would also be involved in the work. iii) the Chair assigns the work to the Department.	i) The State Environmental Expertiza of normative acts (organized by the SCEP) with representatives of the public invited. ii) The Public Environmental Expertiza
Department of the SCEP (appointed for the work)	i) prepares a draft. ii) approves it with other appointed agencies (almost every draft involves the Legal Department and the Department of Finance). iii) prepares a letter to the Government reporting on the completion of their task. iv) sends the draft and the letter to the Government.	i) The State Environmental Expertiza of normative acts (organized by the SCEP) with representatives of the public invited. ii) The Public Environmental Expertiza iii) Draft acts could be published (decided by the SCEP in each individual case. There is no legal requirement to do so in the current Russian legislation)

Case Studies

O.A. Razbash

Public Center for Ecology and Human Rights

CASE INVALIDATING STATE ENVIRONMENTAL EXPERTIIZA DECISIONS, ON THE GROUNDS OF VIOLATION CITIZENS' ENVIRONMENTAL RIGHTS

Introduction

Through the decades decisions in the field of nature-use and environmental protection were not changeable or liable for prosecution. The decisions were performed secretly, without public access or participation and also without proper participation by experts. Finally, on the wave of democratic reforms in Russia there was adopted for the first time, the Law of the RF *On environmental protection*. This law provides the main democratic institutions which were later incorporated into the Constitution of the RF. For the first time in Russian legislation, this law gave basic rights to citizens and groups of citizens through public associations to access full, reliable and well-timed ecological information; to affect ecologically important decisions; to perform public ecological audits; to appeal actions (or omissions) of officers, violating ecological rights of citizens; and for compensation of harm resulting violations of ecological standards.

Thus, according to the part 2, article 38 of the Law of the Russian Federation *On environmental protection*, dated December 11, 1991 (as amended), an environmental impact assessment decision may be challenged before a court or an arbitration court.

For a long time it was not clear which courts would handle such claims. As stated in clause 1 of the co-decree by the Plenary Session of the Supreme court of the RF and the Plenary Session of the Supreme Arbitrary court of the RF, *On some questions concerning jurisdiction of courts and arbitrary courts*, dated August 18, 1992, a filed claim comes within the jurisdiction of a court or an arbitrary court according to the competence of latter which is set by the legal authorities of the RF. If the legal authority establishes an alternative jurisdiction (either court, or arbitrary court), or if there is a general instruction that the case is to go before the court, one must take into account the parties involved and the nature of their legal relation in determining which court, if no other procedure is provided by the law.

Description of the law proceedings

The Plaintiff

A procurator from Kemerovo region was representing the public interest before the court challenging an environmental impact assessment decision for re-starting a cokery at Kuznetsky steel works. He claimed the decision to be illegal and untenable.

Defender

Kemerovo regional committee on ecology and natural resources, which confirmed the decision by state assessment. The Defense argued that according to the state environmental impact assessment the environmental impact of the plant does not violate rights of citizens to live in a healthy environment

Judgment

The judgment of Leninsky district People's court of Kemerovo city was to allow the claim by the procurator and to declare the environmental impact assessment decision by Kemerovo regional committee of ecology and natural resources illegal as violating the rights of citizens to a healthy environment.

The defense appealed the case to the presidium of the Kemerovo regional court. After a protest by the chairman of the Kemerovo regional court, the judge nullified the judgment of the People's court claiming that it did not have jurisdiction over the case to give a judgment. The presidium of the Kemerovo regional court stated that due to the parties involved and their legal relations to each other, the case fell within the jurisdiction of an arbitration court.

Not agreeing with the conclusion made by the legal bodies, deputy of the State General-Procurator of the RF filed a protestation to a superior inspecting body — the Board of Justice for civil cases of the Supreme Court of the RF. He asked for a nullification of the above decree by the presidium of the Kemerovo regional court and for restoration of the first judgment of the People's court.

Nevertheless, the Board of Justice agreed with the conclusions by the presidium of the Kemerovo regional court. It mentioned in its reasoning that according to article 3 of the Arbitrary procedural Code of the RF (APC) the arbitration court receives cases after claims by the state procurator for the public interest, the above claim by the state procurator is out of jurisdiction of the People's court. Board of Justice has rejected arguments by the deputy of the State General-Procurator of the RF who stated that the contest in question affects interests of a vague set of persons. It has mentioned in its definition that decisions of the environmental impact assessment and other documents of the file show that the present decision is addressed to a specific enterprise and does not directly concern citizens (!). That is, this legal agency made an attempt to place such a class of decisions as environmental impact assessment decisions out of the procedure of legal challenge.

Deputy of the State General-Procurator of the RF again filed a protestation against the above definition by the Board of Justice to the Presidium of the Supreme Court of the RF. The protestation contained question on nullification of the decree by the presidium of the Kemerovo regional court and the definition by the Board of Justice for civil cases of the Supreme Court of the RF.

February 28 1994 Presidium of the Supreme Court of the RF has overruled the above legal documents concurring with the arguments contained in the protestation. Presidium of the Supreme Court of the RF has rejected arguments of the two inspecting agencies. It has declared that the state procurator in accordance with the \$\$\$ article 41 of the Civil procedural Code has a right to appeal before the court with a plea for protection of rights and interests of other persons, if these rights and interests are protected by the law. Presidium of the Supreme Court of the RF has emphasized that provided by the Board of Justice to the Presidium of the Supreme Court of the RF argument that procurator's claim is made not in interests of specific citizens, but in public interest is not a convincing one, because environmental impact assessment decision concerning re-run of a cokery at Kuznetsky steel works does not includes measures necessary to prevent adverse impact and thus could violate interests of Novokuznetsk inhabitants.

Brief description of corresponding legislation

The law of the RF *On environmental protection* (article 38, articles 40-42) provides obligation of designers, builders, all officers who make important economic and ecological decisions to take into account in full all the possible consequences and influences of planned economic activity on people and environment. To such a decisions belong also environmental impact assessment decisions. They must not violate rights of citizens for healthy environment; health protection; access to full, reliable and well-timed ecological information, provided by the Constitution of the RF. Duty of officers to give such a kind of important information provided by the Constitution corresponds also to these rights. One of the ways of fulfillment of this duty is a procedure of the state environmental impact assessment, during which ecological information is collected and processed. The state environmental impact assessment is based at principles of scientific approach, objectiveness and obligatoriness. Its decisions are liable to a court (or arbitration) "probation" through challenge procedure. These clauses of the law secure also equal access to the justice.

The Law of the RF *On the sanitary well-being of the population*. Requirements of the article 5 of the present Law provide Presidium of the Supreme Court of the RF an opportunity to recognize that conclusions by previous legal agencies are erroneous ones, as according to the environmental impact assessment decision plans of re-run of a cokery at Kuznetsky steel works, and plans of further by-product-coking operations as well, do not correspond to the decisions contained in *Outline of environmental protection in Novokuznetsk city*. Plans concerning ambient air protection do not secure obedience to sanitary regulations in the center of the city. Subsequent re-run of a cokery, after state procurator's statement, will not only have negative impact at the plant territory, but also will violate rights for healthy environment of citizens residing in the district (article 5 of Law of the RF *On the sanitary well-being of the population*, April 19, 1991).

The Law *On Public Prosecution Office* and article 41 of the Civil Procedural Code of the RSFSR give procurator a right to protect rights and interests of other persons, if the rights and interests are protected by the law, before courts of general jurisdiction. Article 38 of the Law of the RF *On Environmental Protection* provides a right to challenge state environmental impact assessment decisions before courts and arbitration courts.

The procurator has used this right and commenced a civil case for protection of a vague set of persons residing in the mentioned settlement.

According to the article 1 of the Law of the Russian Federation *On Arbitration Court* and the article 22 of the APC of the RF an arbitration court considers arguments, including that in the field of management, concerning nullification (full or partly) of documents by state and other agencies addressed to specific persons or set of persons.

In this situation, as Presidium of the Supreme Court of the RF has recognized in its definition, it was without sufficient grounds that presidium of regional court had closed the case because the claim filed is out of jurisdiction of the People's court, and the Board of Justice of the Supreme Court of the RF had declined the protect.

Efficiency of the legislation

In this case, the Law *On Public Prosecution Office in the RF* and provisions of the CPC of the RSFSR (article 41 of the CPC) prove to be very effective. These legal norms, together with provisions of the article 38 of the Law of the RF *On Environmental Protection* give the procurator an opportunity to react effectively and timely against rough violations of environmental legislation, violations of constitutional rights of citizens for healthy and safe environment.

Requirements of the article 5 of the Law of the RF *On Sanitary Well-Being of Population* have also an important influence on Presidium of the Supreme Court of the RF when taking decision in favor of the procurator.

Conclusions

1) State environmental impact assessment decision can be a subject of a complaint, if this decision could cause violation of right of citizens, even if a vague set of persons, for healthy environment. Hence, besides a procurator, single persons or sets of persons whose right for healthy environment is violated can be a plaintiffs in such an arguments.

2) It is very important that economic decisions (in the present case decision on re-run of a cokery and of further by-product-coking operations of the plant) should correspond to the regional or local decisions concerning plans of environmental protection. Specific decisions on ambient air protection should secure obedience to sanitary regulations in the housing areas of a city. Otherwise, they will be changeable and could evoke unnecessary conflicts.

3) In the present case the challenged environmental impact assessment decision on re-run of a cokery at Kuznetsky steel works affects a vague set of persons, that is why procurator has filed his claim on recognition the decision to be illegal and groundless to a court of general jurisdiction.

According to the article 1 of the Law of the Russian Federation *On Arbitration Court* and the article 22 of the APC of the RF an arbitration court considers arguments, including that in the field of management, concerning nullification (full or partly) of documents by state and other agencies addressed to specific persons or set of persons.

In this situation, as Presidium of the Supreme Court of the RF has recognized in its definition, argument by the two inspecting agencies that the claim filed by procurator in protection of rights of a vague set of persons (Novokuznetsk inhabitants) is out of jurisdiction of the People's court is untenable.

[Source: Bulletin of the Supreme Court of the Russian Federation, 1994, 18, pp.3-5]

CASE INVALIDATING THE DECISIONS OF A GOVERNMENTAL BODY OF THE VLADIMIR OBLAST, ON THE GROUNDS OF VIOLATING CITIZENS' ENVIRONMENTAL RIGHTS

Introduction

Public participation in making ecologically important decisions is a new concept for Russian legislation. Today, development of a state based on democratic principles acknowledged by the international society and the rule of law is the main problem. A successful resolution to this problem depends on both economic and social reforms. A necessary ingredient to a lawful state is an institution of public participation in making decisions, public access to information including ecological information, and the possibility to protect ones rights if they are violated, possibility to turn to legal agencies and access to legal advice.

For Russia, after decades of totalitarian regime, atmosphere of secrecy and isolation from the rest of the world, it is very important that her citizens should obtain self-respect and consider themselves fully-fledged members of society, whose opinion, constitutional and civil rights are respected by their state.

Analysis of judicial, arbitration and consultation practice shows that in spite of the fact that the Constitution, various federal Laws and regulations declare rights of citizens for access to information, and the right to affect decisions at different levels of government and of differing importance, in fact these rights are not secured. There is no *system* of regulations establishing a procedure for public access to information and public participation in making of important decisions. Absence of such a procedure results in many conflicts, decreases efficiency of economic management, and often leads to gross violations of existing environmental legislation. It makes economic decisions illegal and void, and if such decisions are implemented, the environment may suffer irreversible damage. Thus, it is clear that development of legislation in this field is extremely necessary.

This problem could be illustrated with a following example from court practice. Decree (1) 77, dated February 12, 1996, by the Head of administration of Vladimir region has confirmed a measurement of 50 hectares in 49th block of Stavrovo forestry in Sobinsky district to place there a regional center for burial of industrial and solid municipal waste; the decree has also defined some questions connected with erection of the center.

French corporation *Lavale service* took part in the project as an investor. The construction was planned on the territory occupied with the forest of the First Group,⁵ without environmental impact assessment. It was planned to import industrial and solid municipal waste in Russia from other countries.

⁵⁵ [translator's note: forests of the First Group are the most protected category of forests and include specially

Opinion of local population has not been studied and taken into account; no agreement with local government, required by the acting legislation, has been reached.

Description of the law proceedings

Plaintiffs

Muscovite Egorova O.A., who posses a house in a village near the proposed burial site, challenged the act by the Vladimir regional administration before the Vladimir regional court. In addition, public prosecutor's office of Vladimir region protested this act.

Defendant

The defendant — Vladimir regional administration — stated that no violations of legislation and no violations of rights of citizens had taken place.

Judgment

The case was heard in the regional Vladimir city court of first appearance. The court found the fact of violation of citizens' rights.

The defendant directed an appeal to the Supreme Court of the Russian Federation. During appeal hearing in the Supreme Court, a representative of public prosecution office of Vladimir region was absent.

Plaintiff Egorova asked to leave decision by the court of first instance without alteration. She claimed that the administration's decree was illegal, violated rights of citizens for healthy environment, rest and leisure, and public participation in making decisions on important questions.

Personal representative of Egorova O.A., environmental lawyer Davydova O.N., supported the plaintiff. She made a legal analysis of both the decisions by the Vladimir regional court and the administration on land allocation.

She pointed out to the court that the rights of citizens had been violated of ecological when determining the place of the building in question. The court agreed with this plaintiff's statement.

By appeal hearing, the Board of Justice for civil cases of the Supreme Court of the RF has made its judgment concerning defendant's statement that no rights of citizens will be violated during building works.

In addition, the Vladimir regional administration in its complaint stated that the court of first instance did not understand the importance of the burial center which, supposedly,

protected areas and forests whose primary functions are conservation and watershed protection.]

will have no negative environmental impact and does not concern the ecological interests of the population.

The Supreme Court of the RF found this statement untenable and wrong, as the question was not the purpose of the waste burial enterprise, but the consequences of its operations and procedure of its development and creation.

Board of Justice for civil cases of the Supreme Court of the RF (chairman Lavrentyeva M.N., judges Solovjova V.N. and Eremenko T.I.) during its session October 24, 1996 has considered the case after a plea by procurator of Vladimir region and a suit by citizen Egorova Olga Andreyevna against decree No. 77, dated February 12, 1996, by the Head (of administration) of Vladimir region and decree No. 396, dated August 13, 1996, by the deputy Head of administration of Vladimir region on appeal against judgment by the board of justice for civil cases of the regional Vladimir court, dated August 29 1996.

During the appeal, the representative of Egorova O.A. had an opportunity to make necessary motions in order to add to the file essential documents that strengthened the position of the court of first instance, but had not been used by them. She also made a legal analysis of the situation. All this helped the Board of Justice for civil cases of the Supreme Court of the RF give lawful and reasoned judgment.

After having heard a report by the judge of the Supreme Court of the Russian Federation, statements by representatives of Vladimir regional administration, representative of Egorova O.A. and findings by procurator, the Board of Justice for civil cases of the Supreme Court of the RF strictly examined circumstances of adoption of the above decrees, cleared out procedure of making decision on creation and location of the regional center for burial of industrial and solid municipal waste in 49th block of Stavrovo forest in Sobinsky district. The Board of Justice for civil cases of the Supreme Court of the RF accepted the conclusions of the Vladimir regional court on declaration of the decrees by the head of the regional administration under attack illegal and void since the very adoption of the above decrees.

In accordance with article 305 of the Civil Procedure Code (CPC) of the RSFSR, the Board of Justice for civil cases of the Supreme Court of the RF left the judgment by the board of justice for civil cases of the Vladimir regional court without alteration and appeal by the Head of Vladimir regional administration — without fulfillment.

Brief description of corresponding legislation

Plaintiff and his representative, and earlier in the court of first appearance plaintiff and procurator have listed normative acts violated by the defender when he had adopted the decree under attack. Among these acts are: Fundamentals of forest legislation of the RF (article 22), Land Code of the RF (article 28), the Law of the RF *On environmental protection* (articles 30, 37, 41, 54), the Law of the RF *On sanitary well-being of the population* (article 11), Water Code of the RF (articles 105, 111), Federal Law *On ecological audit* (article 12), Basel convention.

The court correctly paid noted that the Head of the regional administration, when signing the disputed decrees, ignored ecological requirements for industrial and municipal waste burial allocation; no agreement with local self-government was reached, and the attitude of local population to the building was not cleared out. Thus, articles 36, 37, and 54 of the Law of the RF *On environmental protection* articles 105 and 111 of the Water Code of the RF, and article 12 of the Federal Law *On ecological audit* have been violated.

Meanwhile, according to the article 54 the Law of the RF *On environmental protection*, burial of industrial and municipal waste is carried out in places allocated by the order of the local self-government in agreement with specially authorized state agencies of the Russian Federation in the field of environmental protection and sanitary inspection.

Decree of the administration is an act that could be challenged according to the chapter 24-1 of the CPC of the RSFSR and the Law of the RF on pleas against actions of officers which violate rights of citizens (as amended 1995).

The Law of the RF *On environmental protection* (articles 30, 37, 41 & 54) requires designers, builders, and all the officers who make important economic and ecological decisions to take into account all the possible consequences and influences of planned economic activity on people and the environment.

According to the article 41 of the Law of the RF *On environmental protection*, dated December 19, 1991, when making economic decisions connected with nature-use (ecologically important decisions), including allocation of enterprises, constructions and other objects, it is necessary to meet requirements on nature protection and conservation, and restoration of natural resources, and to take into account all the nearest and remote ecological, economic, demographic and moral consequences. Public health is high priority.

To these decisions belong decisions by state administration on land allocation for erection of industrial bodies. The decisions must not violate the constitutional rights of citizens for a healthy environment, public participation in making such decisions, right for rest and leisure, and access to full, reliable and well-timed ecological information.

At the same time, the above provision (clause 2, article 41) emphasizes that siting of enterprises, constructions and other economic objects is carried out in accordance with article 28 of the Land Code of the RSFSR and article 11 of the Law of the RF *On sanitary well-being of the population*. In addition, such siting decisions require: positive findings by the state agencies of the Russian Federation specially authorized in the field of environmental protection and sanitary inspection, and a decree by local self-government.

To these rights corresponds a constitutional duty of officers to provide the public with important information on ecologically destructive planned activity in a timely manner. One of the ways of fulfill this duty is a procedure of clearing up opinion of local

population and taking this opinion into account. According to the article 28 of the Land Code, during this procedure ecological information is captured, processed and disseminated. It is extremely important, that the Supreme Court of the RF has mentioned in its definition that “in certain cases involving the siting of objects that affect the ecological rights of the population, the final decision is to be made after public discussion or referendum”.

As we have seen in the present suit, Vladimir regional administration failed to fulfill the above requirements.

Besides, the court has taken into account the fact that the territory selected for waste burial is occupied with forests of the first group and thus performs important water protection functions. Allocation of this lot for burial of any waste threatens ecological safety, environment and rare species of wild animals inhabiting this territory.

According to the article 22 of the Fundamentals of forest legislation and clause 1 of the Decree No. 1064 of the Government of the RF dated October 23, 1993 *On the procedure of transfer of forest land into non-forest land intended to be used for purposes not connected with forestry and forest exploitation*, transfer of first-class forest land into non-forest land intended to be used for purposes not connected with forestry and forest exploitation is carried out in extraordinary cases after permission by the Government of the RF.

It was discovered that the administration received no such permission and had not applied to the Government for such permission.

In the present situation in Russia where unauthorized deforestation of valuable forests is carried out on a large scale, it is very important that both court of the first instance and the Supreme Court of the RF have pointed out these violations.

The Law of the RF *On sanitary well-being of the population*. Article 5 of the Law allows the Presidium of the Supreme Court to recognize that the conclusions by the Vladimir regional court were reasonable and that the act of the administration violated the right of citizens residing in the region to a healthy environment.

The Law *On Public Prosecution Office in the RF* and article 41 of the CPC of the RSFSR give the procurator the right to protect the interests of other persons before the courts of general jurisdiction, if these interests are protected by the law.

The procurator has used this right and commenced a civil case for protection of a vague set of persons residing in the mentioned settlement.

Effectiveness of the Legislation

1) The most effective legislation for judgment in favor of citizens and the environment in this case proved to be a legal norm established by clause 2 of article 41 of the Law of the

RSFSR *On environment protection*. According to this provision when siting new enterprises, constructions and other industrial objects it is necessary to follow requirements on high priority of ecological rights of citizens and rights for health protection, namely the requirements of article 28 of the Land Code of the RSFSR, article 11 of the Law of the RSFSR *On sanitary well-being of the population* and article 54 of the Law of the RSFSR *On environmental protection*. It is obligatory to have a positive findings of the state agencies of the Russian Federation specially authorized in the field of environmental protection and sanitary inspection, and permission by the local self-government. Thus an important role of public participation \$\$\$ in making ecologically important decisions is emphasized.

2) The main legal ground for a citizen to turn to the court with such a plea is provided by Law of the RSFSR *On environment protection* — article 12, Land Code of the RF — article 28, the Water Code of the RF, and the Regulation on water protection zones of small rivers and lakes.⁶

3) In this case, the Law *On Public Prosecution Office in the RF* and provisions of the CPC of the RSFSR (article 41 of the CPC) proved very effective. These legal norms, together with provisions of article 38 of the Law of the RF *On Environmental Protection* gave the procurator an opportunity to react effectively and quickly against violations of environmental legislation, and violations of the constitutional rights of citizens for healthy and safe environment. This support by local legal agencies made this case a landmark and strengthened position of a citizen-plaintiff.

4) Requirements of article 5 of the Law of the RF *On Sanitary Well-Being of Population* also have an important influence on Presidium of the Supreme Court of the RF when making judgment in favor of the citizens and the procurator. It substantiated the conclusion by the Vladimir regional court that location of waste burial site may cause health hazards for the district population and environmental hazard, as well as affect natural resources. In this case, the Supreme Court has acknowledge potential threat of harm a sufficient ground to overrule the administrative act and declare the act void.

Conclusions

1) Procedure of challenge secures the principle of equal access to the justice. Each act by the state agencies can be a subject of a complaint, if this act violates the rights of citizens, even if it is a vague set of persons, to a healthy environment. Hence, besides a procurator,

⁶ The court has correctly taken into consideration the circumstance that the lot selected is located at a watershed of rivers Peksha and Vorsha.

The general direction of subsurface water flow is toward river Vorsha which is the main left affluent of river Klyazma.

As findings by hydrogeological evaluation shows, 49th block is the least suitable for waste burial, as the border of Dnepr moraine deposits is situated in this block at the distance 0.6-1.0 km., and emptying of impervious Upper Alb deposits is situated at the distance 0.8-1.5 km.}

single persons or sets of persons whose right to a healthy environment is violated can be a plaintiffs in such a case.

It is very important that economic decisions (in the present case specific planning decisions — including disposition of industrial and municipal waste) should correspond to the environmental, land and other resource branches of acting Russian legislation. Otherwise, they will be changeable and could evoke unnecessary conflicts.

2) The court has correctly paid its attention to the fact that when signing the disputed decrees the Head of regional administration has ignored ecological requirements for industrial and municipal waste burial, no agreement with local self-government was reached, and the attitude of local population to the was not determined. At the same time, according to the Constitution of the RF and newly adopted federal legislative acts, local self-government posses much authority in the field. Thus, articles 36, 37 & 54 the Law of the RF *On environmental protection*; articles 105 & 111 of the Water Code of the RF; and article 12 of the Federal Law *On ecological audit* have been violated.

Meanwhile, according to article 54 of the Law of the RF *On environmental protection*, burial of industrial and municipal waste is carried out in places allocated by the order of the local self-government in agreement with specially authorized in the field of environmental protection and sanitary inspection state agencies of the Russian Federation.

In the legal resolution it is stated that the act on selection of place for waste burial had not been agreed with self-governments of village Kurilovo, settlement Stavrovo and Council of People's Deputies of Sobinsky district.

Under such circumstances, the court has made a well grounded conclusion that the above decrees by the Head of Vladimir region administration are illegal and void since their adoption.

3) In theory, it is an officer who bears or who must bear the burden of proving legality of his actions, but in practice it was the plaintiff and her representative who had to do this. That is why thorough and comprehensive professional preparation of such suits is so important. It is necessary to actively use the constitutional right for access to ecological information, in spite of the fact that often access to this information is embarrassed by the absence of well-developed procedure and mutual rights and duties of the parties in these legal relations.

4) Conclusion of legal instances on the need to apply the provisions of article 22 of the Fundamentals of forest legislation and clause 1 of Decree No. 1064 of the Government of the RF, dated October 23, 1993 *On the procedure of transfer of forest land into non-forest land intended to be used for purposes not connected with forestry and forest exploitation*, according to which the transfer of first-class forest land into non-forest land intended to be used for purposes not connected with forestry and forest exploitation is carried out in extraordinary cases after permission by the Government of the RF.

All the decisions made with violation of this regulation must be declared illegal.

5) Importance of local self-government and extension of their authority in the field of environmental protection and protection of rights of the population can not be overestimated. As I have mentioned above, according to provision of clause 2, article 41 of the Law of the RF *On environmental protection* determination of places for building of enterprises, constructions and other economic objects is carried out in accordance with the requirements of land and sanitary legislation provided there are positive findings by specially authorized state agencies of the Russian Federation and decree by local self-government in the field of environmental protection and sanitary inspection.

The courts of both instances have mentioned the following principle of public participation: when allocating objects which affect ecological interests of population, decision is made after a comprehensive discussion or a referendum. Decision made without comprehensive discussion and objective analysis may hazard public health and environment, and natural resources as well.

As the present case shows, administration of Vladimir region failed to meet the above requirements in the proper way, that is the main principles of adoption of ecologically important decisions have been violated.

Thus, public participation in making ecological decisions could hardly be overestimated. It is involvement of active citizens at the earlier stages of construction that helped to stop illegal action, which could destroy forests of the first group, monuments of history and culture of 11th-12th centuries, beaver and deer population, capercaille mating-places, and after all one of the most beautiful Russian natural landscapes.

This case has attracted noticeable public response in Vladimir region, Russian mass media. This response, as well as interest by deputies of Russian Duma and participation of the committee of ecology of the Russian Duma have influenced both public prosecution office of Vladimir region, which has protested before the court, and judges. Judges have no experience of ecological cases, and they have nothing to do but to take heed of advises by Egorova O.A., who was professionally prepared by expert ecologist lawyers during consultations; she has subjoined to the file a large package of ecological laws and sublegislative acts.

(Description of the civil case No. 86-Å 96-4 is compiled on the ground of documents kindly provided by O.A. Egorova, the plaintiff in this case, who made a report at a seminar *Ecojuris-WLED*, November 15, 1996, within framework of a project *Law as means of protection of ecological rights of citizens* organized together with the Dutch organization *Miliuekontakt*).

CASE BROUGHT BY THE NGO RUSSIAN SOCIO-ECOLOGICAL UNION AGAINST ILLEGALLY ADOPTED DECREES OF GOVERNMENT BODIES

In 1995-1996, the lawyers of “Ecojuris” won a remarkable victory and created an important precedent. They worked on and won a suit in the name of the Russian “Socio-Ecological Union” in the Vologodski Oblast arbitration court. In their case, the court acknowledged that the actions of the organs of government authority were illegal when the administration of the city of Kirillov decided to allow for the construction of a polygon for household garbage (a garbage dump) in the center of the Government National Park, “Russian North.”

V.D. Zvorkin, the local resident’s representative, went to “Ecojuris” for help in September 1994. “Ecojuris” helped him to form inquiries which he later addressed to the RF Ministry of Natural Resources, to the Government Committee on Sanitation and Epidemiological Inspection and Regulation, to the RF Forest Service, to the organs of local self-government, and to specially authorized organs for the protection of nature in the Volodski Oblast. Mr. Zvorkin did an enormous amount of work in preparing the information needed to file his communities case with the court. His application to court included references to the 1993 Constitution as well as existing laws concerning the right to obtain prompt, complete and reliable ecological information from the officials who did not provide him with his requested information. It should be noted, however, that in most cases where inquiries were made, answers were received.

After numerous consultation with the lawyers at “Ecojuris” and after gathering additional information at the request of the Union, Mr. Zvorkin decided to have Ecojuris use the RF Arbitration-Procedural Codex to make an application to the court from the Russian Social-Ecological Union requesting that the court acknowledge the illegal acts of the Vologodski Oblast and the city of Kirillov in deciding to allow the construction of a polygon for household garbage in the center of the Governmental National Park “Russian North.” They requested the court acknowledge that these actions are in violation of articles 36-68 of the RF Law “On Environmental Protection,” article 28 of the RF Land Code, the RF Law “Concerning Specially Protected Territories,” and the normative regulations “On the Evaluation of the Effect of Proposed Economic Activities (OVOS)” dated 1994.

The history of the decision taken by the administration of the city of Kirillov is described below.

In 1994, the administration of the city of Kirillov accepted a proposal concerning the construction of a polygon for household garbage in the center of the “Russian North,” a specially protected territory. The administration based their decision in approving the construction on the necessity for utilizing and burying the residue and by the fact that the current polygon was already full and could not accommodate future needs. As a result, the necessary papers for the construction were filed and approved by the local government including the committee for the protection of the natural environment and the sanitation physician.

The administration made their decision without taking the local residents opinion into account and without evaluating the effects of the future polygon on the state of the nearby lake which was a source of drinking water. As a result, the administration violated the above mentioned laws.

As a result, the administration began to receive complaints from organizations and individuals in the Kirillovski region. After receiving the complaints the federal services, including the Federal Government Sanitation Inspectorate and the Federal Forest Service rescinded the approval of the project which was given by the local authorities.

However, despite the protests of the local population and ecological organizations and the disapproval of the above mentioned authorities, without whose approval a project may proceed, the construction of the dangerous project on the especially protected territory began in 1995.

In response, the residents and their representative sent a stream of complaints to the RF Ministry of Natural Resources, the Government Sanitation Inspectorate, the Federal Forest Service, the President's Administration, Deputies of the Government Duma, the Federal General Attorney and the General Attorney of the Vologodski Oblast. Unfortunately, these attempts to stop the project produced no results outside of the court system. The administration of the city of Kirillov chose to ignore the law.

As a result, it was necessary to apply to the court in order to protect the environment, the citizen's rights to a healthy environment, and to stop the activity which would harm the protected "Russian North." The defendant in this case was the administration of the city of Kirillov in Vologodski Oblast.

Because the local residents feared a revengeful response from the local authorities if they applied to the courts, Ecojuris proposed a legal procedure in which the plaintiff in the suit against the illegal actions of the Kirillov Administration and for stopping the environmentally damaging activity would be the All-Russian Public Organization, the Russian Social-Ecological Union, whose statute allows it to take legal action in protection of public ecological interests and economic interests of citizens.

For the first time in the RF, a suit filed by a public organization for the protection of citizens' rights to a healthy environment was accepted by an arbitration court based upon article 22 of the RF Arbitration Procedural Codex. The suit proved to be successful -- the acts of the Kirillov administration were acknowledged as being illegal and the defendant administration was forced to cease both the financing and construction of the project.

Moreover, the court, before hearing the case in detail, granted a temporary restraining order stopping the financing and construction of the project. Such relief is virtually never given by Russian courts of general jurisdiction in cases involving economic issues.

Conclusions

1. Unfortunately, in the majority of situations, those government bodies who are responsible for making economic decisions are not prepared to enter into dialogue with the general public and have a poor knowledge of legal matters -- in fact they tend to disregard such issues entirely. Therefore, the Russian administrative regulations which could be used in resolving conflicts that arise from projects involving the extraction of natural resources are seldom used.

2. It is necessary for public organizations who wish to advance and protect the environmental rights of citizens to thoroughly prepare legal pleadings and use the RF Arbitration Procedural Codex in order to address the courts.

3. In many cases, the arbitration process is more expeditious and effective than any other course of action.

4. It is necessary for one to use his or her constitutional right to receive complete and reliable environmental information and to use legal means at the earliest possible stage.

5. The organs of governmental authority and local self-government must observe existing laws, including those which regulate the process of making economical decisions having a negative effect on the environment. They must take account of public opinion when making such decisions, perform an assessment of the effects the projects could have on the environment and respond to public complaints. They must also make use of administrative legal procedures for resolving conflicts.

6. Russia should create a system in the administrative court for handling such cases as this one in a more expeditious and effective manner than this case received.

**CASE OF A CITIZEN SUIT TO THE RUSSIAN SUPREME COURT
INVALIDATING PRESIDENTIAL DECREE NO. 72 “CONCERNING
GOVERNMENT SUPPORT OF THE STRUCTURAL REFORM AND
CONVERSION OF THE ATOMIC ENERGY INDUSTRY IN THE CITY OF
ZHELEZNOGORSK, KRASNOYARSKI TERRITORY**

Members of the Russian public organization “Greenpeace” brought a case concerning the invalidation of the Presidential Decree No. 72, dated January 25, 1995, “Concerning Government Support of the Structural Reform and Conversion of the Atomic Energy Industry in the City of Zheleznogorsk, Krasnoyarski Territory.” The defendant in this case was the RF President in the person of one his assistants.

Greenpeace’s public petition was based upon a new edition of article 116 of the Government Procedural Codex (GPK) of the RSFSR (as more recently amended on November 30, 1995 to become a statute of the RF), which provides (part 1) that a controversy which is “non-normative” (which does not have any general normative act or regulation of the RF President, of the RF Federal Assembly, or of the RF Government) must be presented to the RF Supreme Court. According to part 2 of article 116, GPF, RSFSR, is also possible to bring a “normative” controversy to the Russian Supreme Court if is related to the rights and freedoms of citizens. These important court procedures afford the public the ability to participate in the environmental decision-making process through the court process.

According to the literature, a law of non-normative character is classified as one with an individual objective, a law concerned with separate questions. Definitions of both normative and non-normative laws (the latter not appropriate for registration with the RF Ministry of Justice) are given in the explanation of the use of regulations for the procedure of government registration of normative statutes and other acts, confirmed by the acting RF ministry of justice, Yu. Kh. Kalnykov, dated May 31, 1993.

The Presidential decree which authorized the Gorno-Khimicheski Plant to accept and refine spent nuclear fuel from foreign atomic-powered electric generating stations was the focus of the court’s inquiry. According to a provision in this decree, the Plant was given the power to use the proceeds from its spent nuclear fuel storage to pay for the construction of another plant unit PT-2. This new facility would process such spent nuclear fuel from foreign atomic-powered electric generating stations for other uses.

The plaintiff’s based their complaint on the foreign origin of the spent nuclear fuel to be processed at Unit PT-2 of the Gorno-Khimicheski (GKP) plant and the fact that there had not previously been any re-processing conducted at that facility. Greenpeace argued that the importation of foreign spent nuclear fuel was in violation of the RSFSR statute “On Environmental Protection,” article 50, part 3, which prohibits the importation of foreign radioactive materials into Russia for long-term storage. They argued that the Presidential decree abridged the right of RF citizens to live in a healthy, natural

environment, guaranteed in article 42 of the RF Constitution and article 11 of the RSFSR statute “On Environmental Protection.”

Further, no state ecological expertiza examination has been done with regard to the unit PT-2 despite the terms of articles 40 and 41, part 3, of the RSFSR statute “On Environmental Protection.” Greenpeace’s mandate argued that a state ecological expertiza was precedent to any financing decision on the construction of an inherently dangerous facility.

After listening to both sides of the case, the Judicial Collegium for Civil Affairs of the RF Supreme Court held:

- (a) that the disputed Presidential decree was “non-normative” in character and was subject to RF Supreme Court examination under article 116 of the RSFSR GPK.
- (b) because the existing Gorno-Khimicheski plant did not yet have a spent nuclear fuel reprocessing facility, the receipt of such fuel could be considered the equivalent of receipt for purposes of storage.
- (c) That due to reduced levels of funding in 1990, the construction of the new PT-2 unit was halted. In 1992, RF Government regulations, dated February 13, 1992, required re-examination and review of previous re-processing methodology as well as burial protocols for radioactive residues in accordance with the new requirements of the RSFSR statute “On Environmental Protection.” A technical-economic evaluation (TEO) should have been prepared with regard to the PT-2 unit consistent with these new legal norms. The TEO should have included consideration of environmental impacts in the near and distant future as well as a review of economic, demographic, social and moral consequences required by the RSFSR statute “On Environmental Protection” when planning or designing industrial activity which will have an effect on the environment as well as social impacts.
- (d) Because a revised TEO had only been recently sent for a state environmental expertiza, the legal requirement for complete permission had not been fulfilled before the commencement of industrial activity as required by article 36, parts 1 and 2, of the RSFSR statute “On Environmental Protection.”

The resulting Supreme Court decision held the Presidential decree to contradict article 50, part 3, of the RSFSR statute “Concerning the Protection of the Environment” and the offending portion of that decree to be illegal. This decision applies to the foreign spent nuclear fuel excluding spent nuclear fuel from countries with whom international agreements had previously been made. This exception was made in accordance with Article 15 of the RF Constitution which makes such international norms superior to domestic enactments.

This was an important victory for the environmental rights of citizens. It is also an example of a legal strategy for addressing complex environmental problems such as the burial of hazardous nuclear wastes.

The of subjects of the Russian Federation also have the right to make submissions to the RF Supreme Court under article 116 of the GPK and has been partly addressed by

the order of the Plenum of the Court, dated July 1, 1996, no. 6/8. This order provides that legal as well as individuals may make applications to the Court under certain circumstances. Applications by foreign legal persons regarding alleged illegal acts of Russian Government organs must also be accepted.

Unfortunately, the RF President's decree, dated November 24, 1995, no. 117, "On Measures for the Provision of Publicity and the Availability of Normative and Non-normative regulations has not been observed.

Other Practice and Experience

PUBLIC ACCESS TO THE DECISION-MAKING PROCESS IN THE USA

Deborah Dalton
United States Environmental Protection Agency

PUBLIC ACCESS TO PROMULGATION OF RULES - USA

Governmental and Agency Actions	Public's Access to Information	Public's Access to Decision Making/Public Input
Statute is passed by Congress	Reported by press. Recorded in "The Congressional Record" (Federal Records Act)..	Hearings with selected parties. Lobbying by interest groups and individuals.
President signs law	Reported by press. Published in "Statutes at Large"	
ANALYSES OF LAW: Agency receives law and analyzes it to determine what regulations or procedures are necessary to implement.	Reported by trade press.	Informal lobbying by interest groups.
SEMI-ANNUAL REGULATORY AGENDA: Agency publishes list of all upcoming regulatory actions - "Regulatory Agenda" describing rule, schedule, contact persons. Required by presidential Executive Order (Executive Order 12044, 1977, renewed)	Published as official USG document. Reported by trade press.	Affected interest groups can contact informally Agency representatives to obtain information and provide information. Affected interest groups can track schedules and deadlines.
- OPTIONAL - ADVANCE NOTICE OF PROPOSED RULEMAKING: Agency may publish "Advance Notice of Proposed Rulemaking" (ANPRM) to solicit opinions, data. Agency establishes an official "docket" to receive comments	Published in the Federal Register. Reported by trade press. Affected interest groups and general public can review all submissions of information to the docket. Agency may hold public meetings to solicit information and opinions.	Affected interest groups and general public may send in written comment, opinions, data, analyses to the docket. Affected interest groups may meet with Agency staff to discuss concerns.
DRAFTING THE RULE: Agency conducts technical, scientific, economic studies. Agency reviews all available relevant data. Agency begins drafting the regulation. Agency may hold hearings or public meetings with affected interest groups (small business,	Affected parties, the press and general public can review information placed in docket. Activities of the Agency are reported in the trade press. Parties can request information from the Agency under the Freedom of Information Act.	Interest groups may invite Agency personnel to speak with them about a rule. Agency may hold hearings or public meetings with affected interest groups (small business, environmental groups, large business, state and local governments) separately or together for fact finding, information exchange

Governmental and Agency Actions	Public's Access to Information	Public's Access to Decision Making/Public Input
<p>environmental groups, large business, state and local governments) separately or together for fact finding, information exchange or consensus building (Required specifically by some pollution acts and by the Small Business Regulatory Enforcement Fairness Act, or by custom and policy of the agency). The proposed rule is reviewed by the Office of Management and Budget (required by presidential order).</p>		<p>or consensus building</p>
<p>- OPTIONAL - NEGOTIATED RULEMAKING: Agency may conduct a negotiation with affected interest groups to draft the text of the rule, optional procedure described by the Negotiated Rulemaking Act of 1990/1996</p>	<p>Negotiation meetings are announced in the Federal Register and in trade press. Minutes of the meetings are available to the public.</p>	<p>Negotiation committee must have members from all affected interest groups. Negotiation meetings are open to the public and the public may make statements. Negotiation committee including the Agency jointly develop the text or outline of the rule.</p>
<p>PROPOSED RULE: Agency publishes "Notice of Proposed Rulemaking" (NPRM) and requests comments to the docket. (Administrative Procedure Act)</p>	<p>Agency must explain the reasoning behind their choices of options in the "preamble" to the rule when it is published. Agency must put the data and analyses that it is relying on to support the rule in the docket. Rule is published in the Federal Register. Reported in the trade press and occasionally in the popular press. Affected interest groups, the press and general public may view the docket containing the data and comments of other interest groups. Agency may hold public meetings to solicit views of affected interest groups.</p>	<p>Affected interest groups and general public may submit comments, data, analyses, options to the docket for consideration. Affected interest groups may attend public meetings sponsored by the Agency and espouse their views.</p>
<p>DRAFTING OF FINAL RULE: Agency reviews the submissions to the docket. Agency deliberates and decides whether any changes will occur in the rule. Agency must address the comments submitted to the docket regarding the rule. (Administrative Procedures Act)</p>	<p>Reports by trade press</p>	<p>Meetings between the Agency and affected groups must be documented in the docket</p>

Governmental and Agency Actions	Public's Access to Information	Public's Access to Decision Making/Public Input
The final rule is reviewed by the Office of Management and Budget under order of the President (Executive Order 12866)		
RULE BECOMES FINAL AND ENFORCEABLE: Agency publishes final rule and preamble describing its reactions and incorporation of comments (Required by the Administrative Procedures Act - formats and depth of descriptions have been established by the courts as a result of litigation under the APA).	Rule published in the Federal Register. Reported in the trade press. Occasional reporting in the popular press.	
IMPLEMENTATION OF THE RULE: Agency implements the rule. Agency may publish interpretations, policies, guidances and other information to assist affected parties.	Interpretations, guidances, policies, and other information are available to the public upon request.	Affected parties may meet with Agency officials regarding the drafting or meaning of interpretations, guidances, policies, and other information.
- OPTIONAL - JUDICIAL REVIEW If a lawsuit is filed Agency will respond to directions of the court to provide information from the docket and other documents (Openness of the courts - Judicial Act of 1790)	Court dockets are open to the public and decisions of the court are published.	Affected parties and the Agency will make motions to the court.

Governmental and Agency Actions	Public's Access to Information	Public's Access to Decision Making/Public Input
<p>CONGRESSIONAL REVIEW: Congress conducts reviews of Agency rulemaking activities and recommend changes to Agency rules or may vote on changes to the law itself (several laws provide for this specifically - Small Business Regulatory Enforcement Fairness Act 1996, the Unfunded Mandates Act 1996, however Congress may always vote changes to a law)</p>		

CITIZEN ACCESS - ISSUANCE OF PERMITS

Agency Action	Public's Access to Information	Public's Access to Influence Decision Making	Public's Access to Justice or Remedies
EPA/State and facility meet to discuss permit needs (optional)			
Facility submits permit application (s) or modification request	Public may FIOA application and complete records throughout process		
EPA/State conducts review of application for completeness and technical adequacy			
EPA/State and facility prepare terms of draft permit			
EPA/State publishes a notice of the draft permit	At minimum, notice must appear in newspaper	Public may submit comments	
EPA/State considers comments on permit - holds public hearing if necessary	Notification of hearing is published	Public may testify at hearing	
EPA/State make final permit decision and issues or denies final permit			Administrative appeal via Environmental Appeals Board followed by Court Challenge

CITIZEN ACCESS - ENFORCEMENT OF STANDARDS AND PERMITS AT A FACILITY

Agency Activity	Public Access to Information	Public Access to Influence Decision Making	Public Access to Justice, Remedies
Agency compiles list of inspection targets based on inspection strategy guidance and citizen complaints	Available under FOIA	Complaints against specific facilities	
Agency inspector conducts inspection of facility	Inspection reports Available under FOIA	None, unbiased inspection by Credentialed Agency Inspector.	
If violations found, Agency sends facility Notice of Violation	Available under FOIA	None, based on credible evidence of violations	
Agency & facility meet to discuss NOV.	None, confidential.		
If NOV upheld, Agency initiates formal enforcement action, e.g. Administrative Orders or Civil Judicial action or Criminal action and announces final enforcement action	Available under FOIA	For Judicial, can intervene via CAA Section 304.	CAA Section 304
Agency and Defendant(s) attempt to negotiate a pre-filing/pre-hearing settlement.	None, confidential settlement discussions.	None, confidential settlement discussions.	
If no settlement reached, then go to Hearing for Administrative cases or to Court for Judicial cases.	Hearings are open to the public.	Intervene via CAA Section 304. Notice of proposed settlements published in the Federal Register.	Same
Following settlement consent decree or ALJ/Court Orders, Agency monitors facility compliance with Decrees/Orders.	Settlement documents are public and court decisions are published.		
Administrative appeals and Judicial appeals	Proceedings and their results are public	None	None, if not a party

FOIA = Freedom of Information Act
CAA = Clean Air Act
NOV = Notice of Violation
ALJ = Administrative Law Judge

**United Nations
Economic Commission for Europe**

**Guideline on Access to Environmental Information and Public
Participation in Environmental Decision-Making**

As endorsed by the Third Ministerial Conference
“Environment for Europe”
(23-25 October 1995, Sofia, Bulgaria)

III. Attachments

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Agenda

Public Participation in the Process of Environmental Decision-making

Designing, Implementing and Enforcing Environmental Standards

Purpose of the Workshop

The purpose of this workshop is to explore how the Russian government can make environmental decisions in the most transparent, accountable and effective manner possible. Specifically, the workshop will explore the importance of engaging the public (including general public, individuals, organizations, regulated community, other government agencies and other levels of government) in decision-making, and examine how the public can effectively be engaged in decisions that directly affect their environment and their lives.

Participants will be asked to identify obstacles to improved practice and opportunities for change, and to make concrete recommendations for change or improvement in Russian practice. Discussions will be held primarily within three subject area small groups focused on key environmental policy issues:

1. **Environmental Impact Assessment;**
2. **Development of Regulatory Standards and Passport Limits;** and
3. **Compliance and Enforcement**

Each of these issues will be explored to determine how public participation processes can strengthen the development and implementation of more effective policies. Specific participation mechanisms that will be explored are:

- *access to information* (including environmental background data, regulatory performance data and information about government decisions);
- *participation in rule-making* (including the right to submit questions, opinions, analyses or data); and
- *the right to judicial review* (including review of rule-making decisions and environmental performance)

Workshop Structure

The workshop will be structured to allow in-depth exploration of the issues and consideration of specific and concrete proposals for improving existing frameworks to more fully engage citizens in the process of environmental regulation.

The conference will begin with an opening plenary session where the general themes will be described. Experts will make brief presentations on the current state of Russian environmental process, and on comparative approaches.

Participants will then work in small groups to more fully examine how public participation processes can be integrated into each of the three substantive areas of Russian law under review. The small groups will consider existing Russian legal frameworks and explore opportunities for strengthening those frameworks by increasing citizen involvement.

Small group participants will be asked to make specific recommendations for improvement in each area of administrative procedures for each subject area. These recommendations will form the basis for specific proposals for legislative or regulatory reform.

Small group recommendations will be presented to a final plenary session for review and further elaboration.

Proposed Agenda

Time	Event	Notes
<u>Day 1</u>	<u>Wednesday May 28</u>	
09:00	Bus departs Moscow for Zvenigorodsky	
10:00 - 11:00	Arrive Zvenigorodsky, Registration	
11:30 - 13:30	Opening Plenary Session	
	Welcome	Sponsors
	<ul style="list-style-type: none"> • Russian Environmental Decision-Making Process 	Denis Dymov, State Committee on Environment
	<ul style="list-style-type: none"> • Russian Environmental Decision-Making Legislative Framework 	Sergei Bogolubov, Institute for Legislation and Comparative Law
	<ul style="list-style-type: none"> • Comparative Practice & Procedure 	Claudia Saladin, CIEL
	<ul style="list-style-type: none"> • Comparative Case Studies 	Eric Dannenmaier, USAID Environmental Law Program
	<ul style="list-style-type: none"> • Review and Reactions 	Natalia Zhavaronkova, Ecojuris Institute
14:00 - 15:00	Lunch	

15:15 - 18:15 **First Small Group Sessions:**

Three separate work groups:

1. EIA/Expertiza;
2. Issuance of Regulatory Standards and Passport Limits;
3. Compliance and Enforcement of Standards and Limits;

Each group will review background presentations, begin discussion, of specific aspects of Russian law and practice regarding:

- *access to information*;
- *participation* in rule-making and standard setting; and
- *the right to review* and access to justice

Each group will focus on what is working and what needs improvement – obstacles and opportunities – in light of local and comparative experience.

18:00 - 19:00 **Dinner**

19:30 **Reception**

Day 2 **Thursday, May 29**

9:00 - 10:00 Breakfast

10:00 - 14:00 **Second Small Group Sessions:**

Continue discussing experiences and identifying obstacles.

14:00 - 15:00 Lunch

15:00 - 18:00 **Third Small Group Sessions:**

Each group will focus on concrete possibilities for change or improvement in the present system, and develop a list of possible alternatives

18:00 Close for the day

Day 3 **Friday, May 30**

9:00 - 10:00 Breakfast

- 10:00 - 11:30 **Final Small Group Sessions:**
Each group will review lists developed on prior afternoon and attempt to set priorities for action. Groups will seek to reach consensus on 2-3 top priorities, and prepare a report to plenary. Where possible, concrete recommendations should be made, including specific language where applicable.
- 12:00 - 14:00 **Plenary**
Receive and review work group reports
- 11:30 - 12:00 **Final Plenary -**
Presentation regarding the ROLL Project - Susan Wobst
- 14:00 **Closing Luncheon**

Workshop on
Public Participation in
the Process of Environmental Decision-Making:
Designing, Implementing and Enforcing Environmental Standards

Facilitators Manual

May 1997

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Supported by USAID Award No. 118-0003-A-00-5311-00

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Introduction to the Facilitator's Manual⁷

The Workshop – *Public Participation in the Process of Environmental Decision-Making: Designing, Implementing and Enforcing Environmental Standards* – is a facilitated workshop. In a facilitated workshop, participants use their own experience and participation and those of their fellow participants from a variety of sectors/interest groups to reach conclusions and make recommendations on the subject matter of the workshop. This encourages the participants to think creatively and to work together to resolve problems.

This Facilitator's Manual is a guide to organizing and guiding the workshop. The manual provides both background materials and procedures for conducting all of the activities in the workshop. Following the Manual's notes will help you facilitate the workshop, emphasize the key workshop points, and create a smooth transition from one topic to the next. The most helpful notes, however, will be the ones you make for yourself; you may want to keep track of good examples and interesting questions. Facilitators should use this Manual as a guide, while being sufficiently flexible to fulfill the specific needs of the participants and the goals of the workshop.

This Manual is organized in three parts: (1) general guidance for effective facilitation, (2) specific background and discussion points for the three work groups and three topics, and (3) a glossary defining the meaning of specific terms.

General Structure of Conference

The general structure of the conference will include opening and closing plenary sessions, attendees participation in one of three subject area small groups. The three working groups are: (1) Environmental Impact Assessment and Land Use; (2) Development of Standards and Passport Limits; (3) Compliance and Enforcement. Each of these issues will be explored to determine how public participation processes can strengthen the development and implementation of more effective policies. Specific participation mechanisms that will be explored are:

- *access to information* (including environmental background data, regulatory performance data and information about government decisions);
- *participation in rule-making* (including the right to submit questions, opinions, analyses or data); and
- the *right to review* (including review of rule-making decisions and environmental performance)

⁷ This introduction was adapted from the following materials: INSTITUTE FOR SUSTAINABLE COMMUNITIES, FACILITATOR'S MANUAL TO PRINCIPLES OF ENVIRONMENTAL ENFORCEMENT (1993) and UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, FACILITATOR'S MANUAL MEXICO: PRINCIPLES OF ENVIRONMENTAL ASSESSMENT (December 1992).

The workshop will be structured to allow in-depth exploration of the issues and consideration of specific and concrete proposals for improving existing frameworks to more fully engage citizens in the process of environmental regulation.

The conference will begin with an opening plenary session where the general themes will be described. Experts will make brief presentations on the current state of Russian environmental process, and on comparative approaches.

Participants will then work in small groups to more fully examine how public participation processes can be integrated into each of the three substantive areas of Russian law under review. The small groups will consider existing Russian legal frameworks and explore opportunities for strengthening those frameworks by increasing citizen involvement.

Small group participants will be asked to make specific recommendations for improvement in each area of administrative procedures for each subject area. These recommendations will form the basis for specific proposals for legislative or regulatory reform.

Small group recommendations will be presented to a final plenary session for review and further elaboration. These recommendations may be the bases for future Legal Task Force work and/or proposals to the ROLL project.

The conference will be conducted in Russian. Translation will be provided to American and other English speaking visitors, but discussions will primarily be made in Russian between Russian participants.

The Three Working Groups

Environmental Impact Assessment and Land Use. This group includes the process by which decisions are made regarding siting of projects, and large-scale land use planning, such as watershed management plans, approval of projects that will impact the environment, and decisions regarding mitigation of damages.

Regulatory and Permit Standard Setting Process. This group includes the process by which regulatory standards and permit standards are set. Regulatory standards are rules issued by government agencies, by which facilities must operate to comply with environmental laws, including emissions and discharge standard, reporting and record-keeping requirements, and technological requirements. Permit (passport) standards are the emissions and discharge standards set for individual facilities.

Enforcement and Compliance. Enforcement and compliance include both enforcement of legal and regulatory standards against facilities and techniques for gaining voluntary compliance with those standards. This can include government enforcement actions, or action brought by citizens, monitoring of both emissions/discharges and ambient

standards, by government inspectors or citizens, and schedules/plans for a facility to come into full compliance (compliance schedule).

Defining “Process of Environmental Decision-Making”

The “process of environmental decision-making,” sometimes known more generally as administrative process, is the legally required process for making government decision-making transparent and accountable to the public (see below). This is accomplished in large part through a number of processes, including access to information, notice of proposed government actions, a right to participate (including the right to submit questions, opinions, analyses or data), and the requirement that the government publish a public record of their decision, stating the basis for the decision and addressing the public’s comments and the right to appeal government decisions.

Defining “The Public”

The “public” includes the general public, individuals, organizations, the regulated community, other government agencies, as well as other levels of government (e.g., the federation, subjects of the federation and local levels). This broad definition of the public may be different from public as strictly defined in Russian environmental legislation. Inclusion of all these different interest groups and individuals provides credibility and political legitimacy within a democratic system to the decisions that are eventually made. It also assures the maximum creativity and practicality in terms of the options and alternatives that are considered. Facilitators will need to keep this broad definition of the public in mind and encourage and remind participants of it in each of the working group sessions. In working group sessions, the facilitator needs to determine which understanding of public is being used in recommendations.

Part I: The Facilitators' Role

Focus on Group Process

The role of the facilitator is to enable groups to function effectively in their pursuit of specific goals. She or he helps groups identify their needs and formulate responses or solutions to problems. The effective facilitator allows the group to see its tasks more clearly and to reach decisions. A facilitator's expertise consists of her/his ability to move people along through the process involved in performing a task; it does not necessarily require her/his guidance in providing substantive information.

One of the most important, and sometimes one of the most difficult roles, of the facilitator is to generate discussion amongst the participants. This may be difficult to do, if the participants are unfamiliar with each other or with the material. Often, they may hesitate to speak out. In this situation, the facilitator can draw on a variety of techniques to stimulate discussion - for example, asking an easy question of a specific participant, providing some initial ideas, or explaining the issue further.

Facilitation focuses on group process. The goal is to have the group work according to certain rules or criteria, including the following:

- The group should always show respect for each member
- The group should always listen to the opinions of each member
- The group should seek consensus whenever possible
- The group should be clear about its decisions and support them

Stimulating Discussion in Small Groups

The role of the facilitator is to clarify, as well as challenge the group if necessary. Facilitators may find themselves on different sides of issues from moment to moment to help stimulate discussion. Facilitation demands that the facilitator be unselfish, avoid offering opinions, listen carefully, repeat what has been said, and constantly clarify both the statements and the reactions of the members of the group. It requires an acute sense of timing and a keen awareness of conflict management. Above all, it demands respect shown to all the members of the group and the building of trust through gentleness, patience and good humor.

The following lists of "do's" and "don't's" should help you in being a successful facilitator.

Facilitators should:

- create a comfortable atmosphere for discussion: warm, open, friendly, enthusiastic and encouraging
- provide examples and participate if need be
- introduce material
- guide problem-solving
- stimulate discussions and ask questions
- keep discussions on track
- explain the goals and methods
- set out the ground rules and agenda
- make linkages to previous exercises
- be aware of and sensitive to group dynamics
- summarize and clarify key points
- emphasize application of ideas
- motivate participants

Facilitators Should Avoid:

- lecturing, except to introduce new material, provide examples, clarify goals, or review the results of a session
- dominating the discussion
- asking several questions at once
- letting one person dominate
- getting pulled into the discussion

Specific Techniques

Small Group Discussions and Report Backs

The use of small groups to explore certain issues provides an opportunity for greater participation among all the participants. Small groups are less intimidating than larger groups and allow for greater participation by all the individuals. Small groups also move faster and deeper into a problem. Each small group should have at least one facilitator to lead the discussion (and preferably one person to record the discussion). The facilitator is responsible for encouraging everyone to participate and for ensuring that one person does not dominate the entire conversation.

Critical to the success of small groups is the report back to the plenary session. Report backs are important for sharing and comparing information developed in the small groups. One person should be chosen by the small group to provide the report back to the plenary. Prior to the report back, the person should go over with the group what will be the group's report to the plenary. Consensus should be encouraged, but, where necessary, dissenting opinions can be reported back to the plenary.

Brainstorming

One useful approach for eliciting many different ideas in a short amount of time is known as "brainstorming." Brainstorming involves certain basic principles in order to work:

- Each person should have a chance to contribute
- Every idea is equal to every other idea
- Ideas are presented and recorded without judgment or criticism
- Everyone should be aware when the brainstorming comes to an end

The facilitator should frame the issue or question and seek suggestions from the participants. Brainstorming works best when there is a chalkboard or a flipchart to write down all suggestions as they are provided. As participants see that their ideas will be recorded, they will be even more willing to add to the discussion. It is easiest if one person facilitates the brainstorming by eliciting the specific suggestions from the participants, and a second person records the suggestions exactly as they are given.

Case Studies

The workshop will use case studies of actual issues or cases as examples for facilitating discussion and to keep discussions from becoming overly abstract and theoretical. While case studies are a useful tool, the group should not become diverted by delving too deeply into the details of an individual case. Although we have asked

participants to think about these issues in advance and to bring case studies if they have them, case studies are not intended to be formal presentations.

Icebreakers

Icebreakers refer to a category of exercises intended to make participants feel comfortable with each other. They are designed to get people over their fear of speaking by creating a more friendly environment. As icebreakers might at first seem silly or too informal, the facilitators' primary role is to participate with enthusiasm and encourage others to have fun in the exercise. The following points about icebreakers should be kept in mind:

- The goals of the icebreaker should be explained clearly either at the beginning or the end of the exercise.
- They should be used sparingly to give the group a sense of friendship, to break down initial fears or suspicions, or to re-energize the group during a long day.

Additional Tips for Facilitators

To avoid common traps of facilitating and to stay in the proper role, you must be very familiar with the workshop material and know the goals and objectives of the workshop.

Know the Goals and Objectives

- Facilitators must know the goals of the workshop as a whole and of each session, and move the participants to achieve those goals or objectives.
- Although the workshop should strive toward the stated goals, facilitators need not attempt to search for the "right answer" to any of the questions posed during the workshop. Rather, participants should work together to review the presented material to reach their own conclusions.
- The participants will better understand the concept and practice of open/transparent environmental decision-making -- and be better able to identify and evaluate problems and solutions and the inherent uncertainties in the process)if they are allowed to find the answers themselves.

Know the Case Studies and Other Materials

Read through the case studies and the facilitator notes until you are comfortable with the data that are presented and with the questions that are being asked of the group. In addition, you should recognize what information is not present and be ready to steer the group, when necessary, to deal with what is available. You may want to put together a list (on your own or with the group) of additional information you would like to have. We will have meetings with the facilitators before the workshop as well as during the workshop to discuss these issues and questions that arise. Do not feel constrained by the suggested questions or notes in the Facilitators' Manual, and pose your own questions when you think it's appropriate.

Know Your Group

Obviously, this will be difficult at first. Take some time during the introduction to try to identify, and later draw upon, the experiences and expertise of individuals in your group. This will help you bring more people into the discussion. The group can learn from other members, not just you. We will be distributing a participant survey in advance so that we will have some basic information on the members of each working group before the workshop begins.

Know Your Responsibilities and Roles

Responsibilities. A facilitator is an unbiased servant of the group who, during a working group session, has many roles. A facilitator does not evaluate the ideas or contributions of others, but tries to focus the energy of the group on the common task. A facilitator protects individuals and their ideas from attack and encourages participation. In the end, a facilitator has the responsibility to help the group solve problems.

To assist the group to find solutions, a facilitator must successfully start the discussion and end the discussion. This requires knowing and clearly articulating the objective for the discussion, and ensuring that the discussion moves toward that objective and that participants do not get stuck arguing or telling stories. Because the facilitator must assist the group to find solutions, a facilitator must know when to play a certain role. Clearly stating the objectives of the discussion will help a facilitator meet the objective.

The facilitator must budget time and when possible try to achieve agreement or consensus on recommendations. If this is not possible, she/he tries to assure that recommendations reflect the views of the majority within the group. Important points or disagreement may also be reported.

Using a flip chart to publicly record during the discussion helps the group know visually what it has covered. It also allows participants to correct statements that inaccurately reflect their views and brings them into the discussion.

Getting Started

- Make sure members of the group know something about each other by asking them to introduce themselves briefly.
- State the task (you should have the objective, goal and some questions to be discussed posted), and time available for work group discussion.
- If a rapporteur has not been selected in advance, the facilitator should ask for a volunteer (and in the absence of a volunteer, select someone).

If a number of topics are to be discussed, work with the group to decide how much time to allocate to each before you begin. Then monitor the time to make sure you leave enough time (1) to agree on what you will report out from discussion on each topic; and (2) to allow the reporter enough time to prepare a flip chart or overhead sheet.

Managing the Discussion

The critical step in running a good discussion is in selecting questions appropriately and being able to state them in such a way so that participants get recognition and encouragement and build self-confidence. Different types of questions can be used to reach your objective and to encourage active participation.

- **Open Questions.** Open questions are asked of the whole group to open a discussion or to give everyone a chance to comment. “What are some options we could explore to solve this problem?”
- **Direct Questions.** Direct questions are used by the facilitator to request specific information from a participant or to involve someone who has not participated. “What can you add to this from your experience?”
- **Relay Questions.** Relay questions are used to ask the group or another participant after a participant has asked the facilitator a question. The relay question is used to generate discussion from the group, rather than from the facilitator. The relay question also is an effective tool to use when you do not know the answer to a question by a participant. “Alex, what do think could be an option based on Tanya’s question?”
- **Return Questions.** Return questions are directed back at a participant who has just asked the facilitator a question. In this way, the facilitator avoids giving her/his own opinion and encourages the questioner to think for herself/himself or to form her/his own opinion. “What do you think this issue is here?”

Some specific examples of types of questions that can be used in certain situations are offered below:

- **Starting a discussion.** "What do you think about this problem?" "What has been your experience with this type of problem?" or "Can anyone suggest the information we need at this stage?"
- **Guiding the discussion.** "During this section of the workshop we will attempt to answer...."
- **Encouraging participation of a silent participant.** "How would you explain this conclusion to your colleagues?"
- **Encouraging or stimulating participation.** "How does what we have been saying so far sound to the rest of you?" or "What other aspects of the problem have we missed?"
- **Limiting overactive participation.** "You've made several interesting observations. Does anyone else want to add to them?"
- **Refocusing the discussion.** "That's an interesting point, but what do the data in this case tell us?" or "How can we put that thought into a succinct statement?"
- **Orient the discussion.** "Where do we stand now in relation to our objective?"
- **Moving the discussion along.** "Do you think we have spent enough time on this phase of the problem? Can we move on to another part of it?"
- **Pressing for a decision.** "Am I right in thinking that we have reached consensus on this point?" or "We seem to be moving toward a decision now, so let me try to articulate our consensus."
- **Getting more specific information.** "Can you tell me more about . . . ?"

Special Situations

- **How do I handle divergent topics?** At times, group discussions may stray from the intended focus of the discussion. The facilitator must determine if pursuing the flow of the discussion will benefit the group. If so, allow the discussion to continue. If not, the facilitator needs to tactfully suggest a change in direction, for example by asking a question to orient or move the discussion along.
- **What if the group asks a question that will be answered in a future session?** If the question logically follows from the discussion, usually a short answer is appropriate and then tell the participant that the question will be discussed in more detail later in the workshop. Record the question and make sure it is posed in the appropriate session.

- **What do I say to an arguer?** Try to find out what the motive for arguing is. Recognize that the participant may have a legitimate point to make. Allow some time to make a point, but if it goes on too long, try to reorient or move the discussion along. Sometimes recording the arguers point on the flip chart can accomplish this.
- **What if the group asks a question I cannot answer?** Refer the question back to the participants. Ask them their opinion or ask if anyone else knows the answer. If no one knows the answer, write down the question and try to find out the answer later and relay it back to the group. If all else fails, don't be afraid to say the words "I don't know."

Ending: Preparing for Report Backs

- The rapporteur should review briefly what will be reported and make any last minute adjustments.
- Thank every one for their participation when the time is up. Make sure they know where they are to go next, i.e., to the main room, lunch or whatever.

Part II: Specific Background on the Workshop

Session I & II: Exploring Participation Mechanisms in Russia⁸

During these sessions, the three working groups will review background presentations and begin discussion of specific aspects of Russian law and practice regarding:

- *access to information*;
- *participation* in rule-making and standard setting; and
- *the right to review* and access to justice

Each group will focus on what is working and what needs improvement – obstacles and opportunities – in light of local and comparative experience.

The following pages provide background on these three participation mechanisms to provide guidance to the facilitators.

Access to Information

To effectively contribute to the environmental protection process, the public needs access to information about proposed decisions, the decision-making process, the potential environmental effects of the activities undertaken, and what the government is doing to monitor and enforce the environmental protection system. Access to information allows members of the public to make their contributions as useful and accurate as possible. Information access is also a necessary safeguard for ensuring public accountability. Members of the public need to know what their government is doing in order to hold government institutions responsible for their actions. Governments can provide access to information both actively (through a duty to notify citizens, for example in notice requirements) and passively (through a duty to provide information on request, for example, under freedom of information laws). In many countries, citizens can also request and receive from the government environmental monitoring data, results of environmental studies done by the government, and information concerning proposed and existing environmental laws and policies.

These are questions to assist the facilitators in guiding the group discussion:

- What rights does the public have to access to information, including environmental data, monitoring data, procedures for documenting monitoring data, as well as laws and other normative acts?

⁸ This section was developed in part from a discussion paper on comparative practice in public participation in environmental decision-making being prepared by the Center for International Environmental Law and the Environmental Law Institute.

- Are there any problems encountered in exercising these rights?
- What are the reasons for the problem? Is the law or regulation not self-implementing? Do additional regulations need to be passed? Is there a lack of knowledge on the part of government officials or the public about the right?
- Does the information exist in a form that can be utilized?
- Does the public know who to contact? Is that person accessible?
- Are there costs involved in getting the information? Is it reasonable?
- Is there an enforceable deadline for receiving the information?
- Is there a clear procedure for submitting a request for the information?
- Is there an established site where citizens can obtain information (e.g., dockets, public information centers, clearinghouses)
- Is there a procedure for notification that a decision is taking place (i.e. does the public know that they need information about an issue)? Is that procedure adequate?
- Is there information on what the entire process looks like and what opportunities exist for input?
- What recommendations would the group make for improving the operation of existing laws and regulations with regard to access to information in their field? (e.g., changes in regulation, workshop for officials, judges, the public)

In the *Environmental Impact Assessment* working group, access to information could include for example, information that the process has been initiated for a proposed project, availability of studies conducted and data obtained, basic information about the proposed project and its impacts on the environment, and information regarding the schedule for decision-making and opportunities for public input.

In the *Regulatory and Permit Standard Setting* working group, access to information could include for example, information that a standard setting process is being initiated, access to the data the decision will be based on, access to a proposed regulation or permit, and information regarding the schedule for adoption of the final standard and opportunities for public input.

In the *Compliance and Enforcement* working group, access to information could include, for example, access to monitoring data, access to the permit document itself, information that an enforcement action has commenced, the schedule for settlement of the

enforcement action, access to the final decision, and access to information about compliance schedules.

Public Participation in Standard Setting/Access to Decision-Making

Public participation and access to decision-making refer to the ways in which the public, broadly defined can have access to and an opportunity to affect the decision-making process. This can be done through a variety of methods, including advisory committees, public hearings, and an opportunity to submit comments. Inclusion of all different interest groups and individuals provides credibility and political legitimacy within a democratic system to the decisions that are eventually made. It also assures the maximum creativity and practicality in terms of the options and alternatives that are considered.

These are questions to assist the facilitators in guiding the group discussion:

- What rights does the public (including general public, individuals, organizations, regulated community, other government agencies and other levels of government) have to participate in the decision-making processes as a matter of law and practice?
- Are there any problems encountered in exercising these rights?
- If so, what are the reasons for the problem? Is the law or regulation not self-implementing? Do additional regulations need to be passed? Is there a lack of knowledge on the part of government officials or the public about the right?
- Should these rights be expanded in any way? If so, how should they be expanded?
- Are there procedures to implement these rights? Are they clear? Are they followed?
- Does the public know who to contact? Is that person accessible?
- Is there a procedure for notification that a decision is taking place (i.e. does the public know that they need information about an issue)? Is that procedure adequate?
- Is there information on how the entire process works and what opportunities for access to decision-making exist?
- What recommendations would the group make for improving the operation of existing laws and regulations with regard to public participation in their field?

(e.g., changes in regulation, workshop for officials, judges, the public, handbooks)

In the *Environmental Impact Assessment* working group, public participation could include, for example, to know that the process has been initiated, to know the schedule for public input, the opportunity to submit comments, including data, interpretations, alternatives and mitigation, the opportunity for experts, other than the government's named experts, to participate in the decisions, responsibility of the government to address public's comments and concerns, the public ability to provide input into the scope of the EIA, and the right to receive a record of decision.

In the *Regulatory and Permit Standard Setting Process* working group, access to decision making might include, for example, the opportunity to submit comments on proposed regulations or permits, to submit information to be considered in the standard setting, the right to receive a response to comments, and opportunity to submit draft regulations.

In the *Compliance and Enforcement* working group, access to decision making could include, for example, the opportunity to submit comments to be considered in determining whether a facility is out of compliance and what actions should be taken to bring the facility into compliance, opportunity to have input on the action to be taken against the facility, opportunity to have input as to the remedy imposed on the facility, opportunity to submit documents to the court on behalf of the public or the facility.

Right to Review and Remedies (Access to Justice)

Access to justice allows the public an opportunity to seek review of government decisions and can include the opportunity for the public to bring an action against a violator, or to have input into the government's action.

These are questions to assist the facilitators in guiding the group discussion:

- What remedies exist if the laws, regulations and procedures are not obeyed?
- Who has standing to bring those actions, when and how?
- What information is necessary to bring such actions?
- Are there any problems encountered in bringing such actions?
- If so, what are the reasons for the problem? Is the law or regulation not self-implementing? Do additional regulations need to be passed? Is there a lack of knowledge on the part of government officials or the public about the right?
- Can the public stop or change the action as one of their remedies?

- What recommendations would the group make for improving the operation of existing remedies?

In the *Environmental Impact Assessment* working group remedies could include, for example, the ability of a petitioner to initiate the process and participate in it (if one has not been initiated), the ability to reverse or delay a decision if the procedures have not been followed, the ability to force the government to respond to comments, and the ability to insert requirement into the decision/permit (e.g., for mitigation or monitoring).

In the *Regulatory and Permit Standard Setting* working group remedies could include, for example, invalidation of regulations or permits adopted through closed/improper procedures, the remand of regulations or permits for revision, the ability to force the government to respond to comments.

In the *Enforcement and Compliance* working group remedies could include, for example, the ability to force the government to bring an enforcement action, the ability to force the government to diligently prosecute the action, the ability of the public to bring suit (either against the government for failure to act, or against the facility for harm), the ability to affect changes in the government's settlement of an action, the ability to force monitoring or inspection of a suspected violator.

Session III: Identifying Possibilities for Change

The purpose of this session is to move away from the identification of problems and possibly theoretical discussions of sessions I & II and to move on to identify concrete possibilities for change or improvement in the current system.

The outcome should be a list of possible changes or recommendations.

Session IV: Identifying Priorities for Action

This is the final session of the working groups. The goal here is to review the lists of possibilities for change identified in the previous session and to set priorities for action. The group should be ready to present a report on its priorities for action to the plenary session.

Reception and Icebreaker

Introductions

- Conference organizers welcome participants and introduce themselves.
- Conference organizers introduce translators.
- Facilitators introduce themselves.
- Participants introduce themselves

Icebreaker

- Designate four corners of the room as "tree," "air," "water," and "rock."
- Participants must decide which of these objects they are most like, and then go to the corner with that designation.
- Participants discuss with others in their corner why they identify with the object designated for that corner.

Social

- Participants socialize with each other for remainder of the evening.

Part III: Glossary of Terms

Action - An action is any policy, program, plan or project that may affect the environment.

Adjudication - Adjudication is the determination of past and present rights and liabilities.

Administrative Procedures Act (APA) - The US APA, adopted in 1946, imposes upon agencies certain procedural requirements for two modes of agency decision-making: rulemaking and adjudication. The purpose of the act was (1) to require agencies to keep the public currently informed of their organization, procedures and rules; (2) to provide for public participation in the rule-making process; (3) to prescribe uniform standards for the conduct of formal rulemaking and adjudicatory proceedings; and (4) to restate the law of judicial review.

Agency - Generally, agency refers to any body of the executive branch. As used in the US context, “agency” refers to any authority of the government of the United States, excluding the Congress and the courts.

Compliance - Compliance refers to a state in which environmental requirements are met and maintained.

Compliance Schedule - A compliance schedule is a regulatory tool used to bring a facility into compliance with a given set of environmental requirements. Where a facility cannot comply, instead of imposing a fine, an agency may impose a schedule of steps that a facility must take in order to come into compliance.

Docket - A docket, or information docket, is a means by which the government can provide public access to all pertinent information about a decision under consideration. A docket collects in one place all information and commentary about a proposed decision. An information docket will usually contain all written comments and documentary information received during the comment period, as well as drafts of the proposed decision and transcripts of any public hearings.

Enforcement - Enforcement refers to the use of legal tools to compel compliance with environmental requirements, and in some cases to establish liability or responsibility for harm to the public or environment from failure to comply with such requirements. Enforcement can also be used more broadly to include inspections and compliance monitoring.

Environmental Audit - An environmental audit is a preliminary evaluation of a site or property to identify and assess the magnitude of any existing environmental hazards and associated risks. An environmental audit is different from an environmental assessment which assesses possible future impacts of an action.

Environmental Impact Assessment (EIA) - The process of examining proposed projects and their reasonable alternatives for potential environmental impact prior to making decisions on implementation. EIA identifies the full range of affected environmental components, defines the geographical and temporal extent of effects, and identifies secondary and cumulative effects.

Federal Advisory Committee Act (FACA) - The US FACA requires that meetings of government advisory committees be open to the public. In addition, the agenda, minutes, and transcripts of the committee meeting are made available for public inspection and copying. These measures help ensure that the committee keeps abreast of the views and concerns of the public.

Freedom of Information Act (FOIA) - FOIA amended the U.S. administrative procedures act in 1966 to insist that federal agencies promptly provide requested information, unless the information sought fell within one of nine exceptions.

General Public - *see Public.*

Government in the Sunshine Act - This act provides that meetings of a sufficient number of agency members to transact business must be open to the public.

Mitigation - Mitigation is the purposeful implementation of decisions or activities that are designed to reduce or eliminate adverse environmental impacts of a proposed action. Mitigation may include: (1) avoiding impacts altogether by not taking a particular action; (2) minimizing impacts by limiting the magnitude of the action; (3) correcting impacts by repairing or restoring particular features of the affected environment; (4) reducing impacts over time by performing maintenance activities during the life of the action; and (5) compensating for impacts by providing addition to or substitutes for the environment affected by the action.

Negotiated Rule-Making - Negotiated rule-making is a method of formulating proposed regulations. Negotiated rule-making brings together representatives of the agency that will issue the rule and various interest groups to negotiate the text of a proposed rule. The goal is to negotiate a consensus among all participants. The resulting rule is likely to be easier to implement and the likelihood of subsequent litigation is diminished. Negotiated rule-making is a supplement to notice and comment rule-making. In the United States negotiate rule-making is governed by the Negotiated Rule-Making Act.

Notice and Comment Rule-Making - Notice and comment rule-making refers to the procedures required for developing agency rules in the United States under the Administrative Procedures Act. The basic elements are publication of notice of proposed rule-making in the Federal Register (an official government publication), an opportunity for public involvement, usually in the form of written comments, and final publication of the rule, usually at least 30 days before it becomes effective. When issuing a final rule the agency must respond to all comments received. Failure to adequately respond to comments can be grounds for legal challenge of the regulations in court.

Permit - A permit is a legal instrument that specifies the conditions under which a regulated entity may operate. These may include: the types and amounts of pollutants it may discharge, requirements for reporting, recordkeeping, operation, and maintenance, and all aspects of monitoring, including frequency, methodology and sampling locations. In addition to providing specific discharge limits, a permit may also specify a range of other requirements concerning operation, including the disclosure of important technical (and even financial) information about the business and its operations and emissions.

Public - The public refers to the aggregated of the citizens of a state, nation or municipality. The “public” includes the general public, individuals, organizations, the regulated community, other government agencies, as well as other levels of government (e.g., the federation, subjects of the federation and local levels). Inclusion of all these different interest groups and individuals provides credibility and political legitimacy within a democratic system to the decisions that are eventually made. It also assures the maximum creativity and practicality in terms of the options and alternatives that are considered.

Public Notice - Public notice of a proposed decision, such as a rule, a permit, or a development project generally provides complete and comprehensible information about the proposed decision and the process for submitting comments. Countries that provide for notice usually require that it be distributed in a manner that reaches the widest possible audience. For example, notice can be published in the official government register, local newspapers, clearly posted near the site of the proposed action, and publicized by radio or other means.

Public Participation - Public participation is the involvement of citizens and citizens’ groups in the decision-making process.

Record of Decision (ROD) - Generally, a ROD is a written record where the government agency explains its decision, how that decision was arrived at, and the reason for choosing a certain course of action over another. In the EIA context, the ROD must state the basis for the agency's decision, identify all alternatives that were considered, specify the environmentally preferable alternative, and explain any requirements for avoiding or mitigating environmental harm. Although the agency is not usually required to select the environmentally preferable alternative, it must explain its reasons for selecting a less environmentally protective alternative.

Regulated Community - The regulated community refers to the general category of businesses or facilities that are regulated by a particular agency or a particular area of law.

Regulation - A regulation is a legally binding document issued by a government agency in order to implement the law. Agencies issue regulations to guide the activity of those regulated by the agency and of their own employees and to ensure the uniform application of the law.

Remedies - The means by which a right is enforced or the violation of a right is prevented, redressed, or compensated.

Rule-making - Rule-making is agency action that regulates the future conduct of persons through formulation and issuance of an agency statement designed to implement, interpret, or prescribe law or policy. It is essentially legislative in nature because of its future general applicability and its concern for policy considerations.