

## Public and municipal environmental control: problems and prospects of development in the Russian Federation

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The authors consider some problems of realization of public and municipal ecological control as types of public control in the sphere of environmental protection, including forms and methods of participation of the local population. Moreover, the effectiveness of municipalities in organizing appropriate control measures is evaluated.

The methodological basis of the study is the analytical method. It helps to consider the practice of regulation of environmental control, a method of comparative law that allows to reveal the system connections in legal regulation, regulatory features of legal acts, law enforcement practice in Russia and abroad.

Normative legal acts, decisions of law enforcement bodies, acts of official interpretation of law and doctrinal positions stated in scientific sources are materials for the study.

The authors identify practical problems and suggest measures for further legalization and improvement of public and municipal environmental control in the framework of the formation and development of civil society institutions in the Russian Federation.

**Keywords:** monitoring, supervision, ecology, law, state, municipality, community. environmental control, municipal environmental control, public environmental control.

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## Общественный и муниципальный экологический контроль: проблемы и перспективы развития в Российской Федерации

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Рассмотрены отдельные проблемы реализации общественного и муниципального экологического контроля как видов публичного контроля в сфере охраны окружающей среды, в том числе форм и методов участия местного населения, а также оценки эффективности деятельности муниципальных образований в организации обеспечения соответствующих контрольных мероприятий.

Методологическую основу исследования составили аналитический метод, позволяющий рассмотреть практику регламентации вопросов организации экологического контроля, метод сравнительного правоведения, позволяющий раскрыть системные связи в правовом регулировании, регулятивные особенности правовых актов, правоприменительную практику в России и за рубежом.

В качестве материалов для исследования использованы нормативные правовые акты, решения правоприменительных органов, акты официального толкования права и доктринальные позиции, изложенные в научных источниках.

Определены практические проблемы и предложены меры по дальнейшей легализации и совершенствованию общественного и муниципального экологического контроля, а также комплекс мероприятий, требуемых к реализации в рамках формирования и развития институтов гражданского общества в Российской Федерации.

**Ключевые слова:** контроль, надзор, экология, право, государство, муниципалитет, общество, экологический контроль, муниципальный экологический контроль, общественный экологический контроль.

Market economy considers environmental control as an integral part of public administration which helps to promote rational environmental management, ensuring environmental protection and environmental safety. Nowadays the issue of developing the basics of state policy in the field of ecology in Russia and abroad is urgent. The concept of environmental safety in Europe has long been discussed in the scientific community [1–3] as an integral element of national security. In the Russian Federation, legal support of the state environmental policy requires the stability of legislation, strengthening of the control and supervision over its implementation [4, 5].

Foreign law considers the control and supervising activities of authorized public authorities as part of administrative-state management [6], including the sphere of ecology and environment. Currently, they are implementing state environmental supervision, keeping its federal and regional level of implementation as a type of control activity. In accordance with this distinction determined by the form of state structure, there are federal and regional state environmental supervision.

The practice of foreign countries shows a high level of effectiveness of civil society institutions in the field of environmental protection, including environmental control [7]. The role of public participation significantly increases [13] in processes of environmental protection and implementation of the sustainable development concept [8–12]. In the 1970s there appeared the practice of public participation in the discussion of issues related to environmental protection in some states [14]. The early 90s brought the concept of “public participation” in the development of environmental protection decisions, which allowed citizens to control the activities of both private production organizations and public regulatory authorities, and it came into use in Europe [7–8, 14–16].

The local nature of environmental problems confirms the effectiveness of their solution by local communities that have the necessary information about the negative factors of economic activity in certain territories.

At the same time, public environmental control promotes realization of citizens' constitutional rights [17–19]. As for the Russian law, we mean the realization of the right to a favorable environment [20], and participation in the state management. Self-control is able to some extent to increase the confidence of citizens and organizations in conducting control activities.

Public environmental control should become an integral part of environmental management [21].

The purpose of this work is to determine the main directions of development of legislation and organizational and legal mechanisms aimed to increase the effectiveness of environmental control, and fully realize the rights of citizens to a favorable environment.

### **Public control as an element of local public administration**

Public environmental control is ecological function of the state, and its implementation is strategic in nature [22, 23]. An analysis of the basis of state policy of the Russian Federation in the field of environmental development up to 2030 [24] shows that the state does not pay significant attention to public environmental control in ensuring environmental protection.

Practical problems of implementing public environmental control are due to low level of awareness of citizens and public organizations about the state of the environment and sources of its impact within a particular municipality, lack of a clear definition of forms of public participation in control measures.

The information component in protecting the environment is an important condition for the necessary reaction of citizens to situations that can harm the environmental situation of a specific area. An environmental audit containing the necessary information about a particular object (enterprise) in terms of the environmental friendliness of its production processes (activities) can increase citizens' awareness of the risk of negative consequences for ecology and environment. Based on the analysis of this information, it is possible to develop appropriate measures (decisions) in relation to environmentally risky businesses. In this regard, the development and adoption of the Federal Law “On Environmental Audit” is important.

A dialogue between the government and society is of great importance in the framework of the democratization of public life management processes and widespread development of civil society institutions. As the state has an environmental function, it is necessary to achieve consensus between the two entities. The effectiveness of public environmental control is in real independence from government structures and department interests. The lack of necessary interaction, feedback, gives rise to serious negative consequences, resonant protests and

general dissatisfaction of citizens with the policies of the state in general, and local authorities in particular.

The low level of citizens' confidence in the effectiveness of environmental control by the state can be a factor in the development of local initiatives to protect their constitutional right to a favorable environment.

Effective control can be based on the institution of a public environmental inspector. Representatives of the public, residents of the relevant municipalities should be involved in the activities of official regulatory bodies.

Public environmental control can be carried out in various forms, including public hearings and their specific form – parliamentary hearings; referenda; public environmental review; appeals to the media; sending complaints, statements, claims to law enforcement agencies and the court.

Nowadays the mechanism of assessing the consequences of economic activity on the environment by the public is of particular importance. Its foundations are stated by the Order of the State Ecology Committee of the Russian Federation of 05.16.2000 No. 372 [25] and provide forms of participation of citizens (local communities) in decision-making regarding the economic activities of production facilities in the territories of municipalities. Specific forms are determined at the level of regulatory acts of local authorities and in some cases include public discussions (Khabarovsk Territory, Kurgan Region, Republic of Mordovia), in others – public hearings (Kaliningrad Region, Komi Republic, Novgorod Region).

The participation of the local population in assessing the consequences of economic activity is expressed in identifying and taking into account opinions on the location of capital construction projects within the boundaries of the municipality. Of course, such an opinion is not always necessary, if it concerns the construction of a residential building. But when it is supposed to place an object that can cause harm to the environment, then it is an ecologically significant object of capital construction. The consolidation of this concept, as well as an indication of the mandatory coordination of its construction with the local community in the legislation, is an important step towards democratization in the field of environmental management and control.

The experience of countries with a high level of anthropogenic pressure forces national governments to build a multi-stage system of environmental control and the countries of the

European Union are actively using the most optimal models [26]. For example, Germany has a three-level system of environmental control, an independent level forms municipal control, which includes control of the state of natural ecosystems, sanitary control, food safety control, etc. This system is focused on the initiative of the local population and allows citizens to actively participate in issues of local importance, including the field of environmental well-being [27].

We can state that the environmental control system, built on reasonable parity and the interaction of all levels of control activity (public and private), effectively ensures environmental safety interests of both the population of a particular municipality and the state as a whole.

### **Municipal environmental control in the mechanism of environmental protection: organizational and legal aspects**

The special importance of municipal environmental control is associated with the direct influence of harmful factors in the territories of municipalities at the local level.

In accordance with the provisions of the Federal Law from 10.01.2002 No. 7-FZ (amended on July 29, 2018) “On Environmental Protection” (hereinafter – the Law No. 7-FZ) [28], the municipal environmental control was a type of environmental control and was carried out from 2002 to 2008. However, there were amendments to the legislation in the field of environmental protection, and now the Law No. 7-FZ does not treat municipal environmental control as a type of control activity. At the same time, according to environmental legislation in the broad sense, municipal control has a number of functions in the field of use and protection of natural resources, in particular, land, forestry, specially protected natural territories. For example, according to Art. 84 of the Forest Code of the Russian Federation from December 4, 2006 No. 200-FZ (amended on December 18, 2018) [29], the scope of local authorities is related to forest management in the part of municipal forest control in relation to forest plots that are in municipal ownership. That is, municipal control in the field of use and protection of natural resources is formally fixed and implemented, and the so-called municipal environmental control is absent. The current Federal Law “On Environmental Protection” does not mention, for example, municipal land control as the control activity of municipal authorities, which is actually carried out at the municipal level.

It seems that the development of the concept of “municipal environmental control” should have a broader sense. The determination of all its directions would solve not only the problems with the designation of the boundaries of the control activities of authorized bodies of local self-government, but also determine the responsibilities of the state and municipalities in the field of environmental safety.

Initially, the Federal Law of 06.10.2003 No. 131-FZ (amended on 04.24.2020) “On the General Principles of the Organization of Local Self-Government in the Russian Federation” (hereinafter – the Law No. 131-FZ) [30] assigned the powers to municipalities on the implementation of municipal environmental control. However, later, Law No. 131-FZ was amended according to which local authorities were deprived of the authority to implement municipal environmental control and the corresponding concept was withdrawn from the law. Such legal innovations were due to the fact that despite the allocation of municipal environmental control as a type of environmental control system, it did not receive the necessary implementation in practice. Most municipalities had serious difficulties in organizing control measures in the absence of sufficient budget funds.

The special role and importance of local self-government in solving environmental problems within a specific territory at the present stage determines the need to revive this type of environmental control. In addition, individual state powers in the field of state environmental control can be transferred to the local level with the provision of subventions from the respective budgets. It will allow local governments to solve environmental problems at the local level within the framework of solving state problems (for example, in relation to objects of social, cultural and other significance).

If such innovations are implemented in the current legislation, a functional separation of municipal environmental control and regional environmental control is necessary in order to avoid duplication of powers. These measures will ensure a reasonable balance between the need for economic development of the territories, taking into account the environmental friendliness of production and environmental protection from the activities of economic entities.

It should be noted that the implementation by local governments of their powers under Art. 18.1. Law No. 131-FZ (amended on April 24, 2020) “On the General Principles of the Organization of Local Self-Government in the Russian

Federation” requires a necessary assessment of effectiveness. In this regard, Decree of the President of the Russian Federation from April 28, 2008 No. 607 (amended on May 9, 2018) “On the evaluation of the effectiveness of local authorities in urban districts and municipal districts” [31] set performance indicators for the activities of local governments. An analysis of the provisions of the Decree shows that there are no necessary environmental performance indicators in relation to the activities of municipalities. Similar performance indicators were also established for public authorities of the constituent entities of the Russian Federation by Decree of the President of the Russian Federation from April 25, 2019 No. 193 [32]. However, they have no necessary values of the ecological situation in the region. Such environmental indicators should be included in indicators of sustainable development of territories, and should be taken into account in the group of environmental, social and economic indicators.

### Conclusion

Based on the analysis of the problems of ensuring environmental control at the municipal level, we suggest a number of comprehensive measures aimed to improve the organizational and legal mechanism for the implementation of the state’s environmental function in terms of public administration in the field of environmental protection.

1. When implementing regulatory decisions regarding the assignment of environmental control functions to municipalities, the list of available performance indicators should include environmental quality standards. At the same time, the implementation of this proposal on the use of environmental indicators in assessing the effectiveness of individual municipalities is possible only with the transfer of appropriate authority to the level of municipalities and the necessary funding for monitoring activities.

2. It is necessary to define the whole list in the legislation (without an expanded interpretation) of objects of public and municipal environmental control. It makes possible to exclude the possibility of interference by control and supervisory authorities of other levels of government in those areas that are outside the scope of their functional powers, and provides an opportunity for full-fledged economic development of territories and economic entities.

3. At the public level, important environmental tasks can be solved by municipalities

in their implementation of control over the use of land on the territory of the municipality, the organization of the disposal of household waste, and forest management in the city.

4. Non-governmental organizations (associations) and bodies of territorial public self-government may participate in resolving issues affecting the interests of the population and related to the seizure, including purchasing of land for state and municipal needs and providing these land for construction.

5. Among the issues that can be resolved in the framework of public environmental control measures at the municipal level, we can distinguish the following ones:

- compliance with environmental norms and requirements when using land, forests, water bodies of local importance, local common minerals, construction of underground structures of local importance;

- the presence of sanitary protection zones of an enterprise – nature user approved in the established manner;

- the impact of the nature user's activities on specially protected natural territories, on the state of water protection zones of water bodies and the green zone;

- the implementation of environmental measures, municipal programs, treaties and agreements to ensure the implementation of the environmental interests of the population;

- compliance with the use and protection of green spaces, landscaping.

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