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# Environmental Courts in Russia: To be or Not to be?

ALEKSEY PAVLOVICH ANISIMOV\* AND ANATOLY YAKOVLEVICH RYZHENKOV\*\*

## Abstract

*This article presents an analysis of the theory and practice of the establishment of national specialized environmental courts. It is suggested that Russia ought to be included in the list of countries that have such courts. The authors consider this issue in the context of a discussion about the necessity for an international environmental court, as well as offer certain suggestions concerning the structure and the competence of a Russian environmental court. The establishment of a Russian environmental court is impeded by the government and the legal community's misunderstanding of the importance of the problem. But the establishment of environmental courts in the majority of other countries was preceded by many years of academic discussions. The authors of the article suggest commencing such a discussion.*

## Introduction

Politicians, lawyers, economists, and representatives of public authorities worldwide increasingly discuss environmental protection issues as a relevant problem. These issues are the subject of hundreds of international documents urging countries and peoples to mitigate their negative impact on the environment at a national and international level.

On top of environmental requirements for various types of activity or protection of natural sites, the international community devotes much attention to environmental justice issues. We will not refer to every relevant document regarding this issue but instead mentioning the following important examples: the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus, Denmark, June 25, 1998)<sup>1</sup> and the declaration adopted at The World Summit on

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1. Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, June 25, 1998, 2161 U.N.T.S. 447, available at <http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>.

Sustainable Development 2002 in Johannesburg.<sup>2</sup> During this World Summit, a number of suggestions were made regarding the necessity for further development of environmental justice.<sup>3</sup>

Regardless of the effectiveness of international environmental justice, it is clear that the problem of ensuring a favorable quality of environment, both at a local and global scale, should be solved at the national level as close as possible to any direct source of negative environmental impact.

At this level, the effective solving of environmental problems often depends not only on objective factors, but also subjective factors associated with the political will of the government, availability of financial funds, the number of professionally trained staff, etc.

The countries that have established specialized environmental courts at the national level are not just wealthy countries, but also ones with rather moderate incomes.<sup>4</sup> The annually increasing number of the countries that have specialized environmental courts shows that the legal mechanisms for solving this issue do work toward the protection of the environment, albeit rather slowly. The Russian Federation is no exception in this sense.<sup>5</sup> There are many problems relating to environmental protection procedures that give great cause for concern, including the reduction in ecological emphasis of legislation, the prosecution of environmental activists, and the destruction of natural environments during major construction projects (for example, the construction of the Olympic facilities in Sochi).

But we should note another more positive trend, solving specific environmental issues through the establishment of specialized law enforcement authorities. The establishment of the environmental prosecutor's institution and the environmental police at the end of the 20th century had a positive effect, because these law enforcement authorities were able to focus solely on solving environmental issues, rather than dissipating their energies across dozens of diverse legal issues.

For example, during the course of inspections performed in 2011, the Volga Inter-Regional Environmental Prosecutor's Office<sup>6</sup> revealed 32,455 breaches of environmental legislation, comprising 11 percent of the total number of similar breaches revealed by the prosecutors in the whole country (297,114); among them 3,878 illegal acts, comprising 46 percent of the total number of all illegal acts in this area in the whole country (8,458).<sup>7</sup> In order to rectify the revealed environmental breaches, 5,454 proposals were made, or 12 percent of the total number of 44,581.<sup>8</sup> On the initiative of the prosecutors, 2,652 persons

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2. World Summit on Sustainable Development, Aug. 26 – Sept. 4, 2002, *Johannesburg Declaration on Sustainable Development*, U.N. Doc. A/CONF.199/20 (Sept. 4, 2002).

3. *Id.*

4. GEORGE PRING & CATHERINE PRING, *GREENING JUSTICE: CREATING AND IMPROVING ENVIRONMENTAL COURTS AND TRIBUNALS* 106, Appendix 1 (2009), available at <http://www.law.du.edu/documents/ect-study/greening-justice-book.pdf> (listing the environmental courts and tribunals as of publication in 2009).

5. *Id.*

6. The scope of its activities include only subjects of the Russian Federation located at the river Volga; see *History of Prosecution Service of the Russian Federation*, THE PROSECUTOR GENERAL'S OFFICE OF THE RUSSIAN FEDERATION, <http://eng.genproc.gov.ru/history/> (last visited Jan. 29, 2014).

7. GOSUDARSTVENNYJ DOKLAD "GOSUDARSTVO I OKRUŽAŖEJ SREDY ROSSII FEDERACIÄ V 2011 GODU" [STATE REPORT "STATE AND ENVIRONMENTAL RUSSIAN FEDERATION IN 2011"] 299 – 300 (2012), available at <http://www.mnr.gov.ru/upload/iblock/a76/gosdoklad2011.pdf>.

8. *Id.*

were held administratively liable, or 7 percent of the total number of 39,590.<sup>9</sup> Two hundred nineteen requests for adoption of a decision regarding criminal prosecution were submitted to the inquiry and investigation bodies on the basis of the general regulatory inspections, 14 percent of the total number of such environmental case requests submitted by the prosecutors to the investigation authorities in 2011 (1,650).<sup>10</sup> But one of the most efficient measures of the impact of the prosecutor's office is recourse to legal proceedings with claims and statements. The environmental claims of the prosecutor's office tend to be characterized by a high level of social importance and they often cause great public resonance.<sup>11</sup>

The establishment of an environmental court in Russia would be a natural further development of this latter positive strategy aimed at improving the competence of the public authorities in the field of environmental justice. Unfortunately, the establishment of specialized environmental courts in Russia is little discussed in the scientific community and completely ignored by the political elite. In this regard, we believe that any good cause needs to be initiated. We hope that this article will serve as a stimulus for the discussion of environmental justice issues in the Russian Federation, the solution of which will improve the quality of the environment in Russia and in the world.

## I. International Environmental Court

The environment knows no national borders, and its protection may be efficient only in terms of the joint efforts of as many states as possible. Russian scientists distinguish the following three main problems hindering further development of international environmental cooperation: the lack of a unified international universal environmental legal act, the lack of an international intergovernmental universal environmental organization, and the lack of an International Environmental Court.<sup>12</sup>

In relation to the latter, it should be noted that at the present moment there are more than fifty different international courts and courts of arbitration, for example, the International Court of Justice of the U.N., the International Tribunal for the Law of the Sea, the Permanent Court of Arbitration, the Dispute Settlement Body of the World Trade Organization, the Court of Justice of the European Union, etc. (all of which settle various environmental disputes).<sup>13</sup>

In July 1993, the Chamber for Environmental Matters of the International Court of the UN was established in accordance with Article 26, paragraph 1 of Statute of the International Court of the UN.<sup>14</sup> But its efficiency cannot be considered satisfactory.<sup>15</sup> The Permanent Court of Arbitration (PCA) adopted the Optional Rules for Arbitration of

9. *Id.*

10. *Id.*

11. *Id.*

12. Mikhail N. Kopylov & Alexander M. Solntsev, *Me\_dunarodnoe Èkologiceskoe Pravo Pered Vyzovami Sovremennosti (Èkologiceskaâ Konstituciâ Zemli)* [*International Environmental Law Before Modern Challenges (Environmental Constitution)*], 12 EURASIAN L. J. 53 (2012).

13. *Id.*

14. See *The Court: Chambers and Committees*, INT'L CT. OF JUST., <http://www.icj-cij.org/court/index.php?p1=1&p2=4> (last visited Jan. 29, 2014).

15. Rona Koifman, *An International Environmental Court*, POINT OF LAW (Sept. 23, 2009), <http://www.pointoflaw.com/columns/archives/2009/09/an-international-environmental.php>.

Disputes Relating to Natural Resources and/or the Environment in 2001 and the Optional Rules for Conciliation of Disputes Relating to Natural Resources and/or the Environment on April 16, 2002.<sup>16</sup>

The International Tribunal for the Law of the Sea has also covered marine environment protection issues in a number of its decisions, including the Southern Bluefin Tuna Case, the MOX Plant Case, and the Swordfish Stocks Case.<sup>17</sup> Regional judicial bodies for the protection of human rights play the most important role in the matter of environmental protection. According to rough estimates, the European Court of Human Rights has adopted more than 700 decrees relating to more than fifty different legal acts of the Community, directly or indirectly regulating environment-related issues.<sup>18</sup>

Attempts have been made to establish an international environmental court based on arbitration principles. One such attempt resulted in the International Court of Environmental Arbitration and Conciliation, which was established by an action team formed by lawyers in 1994 as a non-governmental organization.<sup>19</sup> The competence of this court includes compensation for harm caused by cross-border pollution, disputes about the suspension of environmentally harmful activities, disputes about the protection of natural resources and natural systems (specially protected natural areas), disputes about protection of the environmental rights of citizens, etc.<sup>20</sup> Because the court is guided by the principles of arbitration (proceedings are possible only if the parties agree to settle the dispute at this court and admit that the decision of the court will be binding for both of them), the number of the cases is small.<sup>21</sup>

Given this situation, it is not surprising that repeated attempts have been made to discuss the concept of an International Environmental Court, the decisions of which would bind all countries.

Discussions on the need for its establishment date back to the late 1980s.<sup>22</sup> After several conferences in support of establishment, a draft Charter of the Court was drawn up in 1992.<sup>23</sup> Its supporters believed that the Court was to consider environmental disputes related to the responsibility of the states before the international community, as well as any other disputes relating to environmental damage caused by activities of public or private organizations when, because of their size or peculiar features, the damage would af-

16. See *Environmental Dispute Resolution*, PERMANENT CT. OF ARB., [http://www.pca-cpa.org/showpage.asp?pag\\_id=1058](http://www.pca-cpa.org/showpage.asp?pag_id=1058) (last visited Jan. 29, 2014).

17. Judge Dolliver Nelson, Sensitization Seminar on the Work of the International Seabed Authority (Mar. 28 – 30, 2011), available at <http://www.isa.org.jm/files/documents/EN/Seminars/2011/ITLOS-DNelson.pdf>.

18. Francis Jacobs, *The Role of the European Court of Justice in the Protection of the Environment*, 18 J. OF ENVTL. L. 185, 185 (2006).

19. *International Court of Environmental Arbitration and Conciliation*, UNITED NATIONS MULTILINGUAL TERMINOLOGY DATABASE, <http://unterm.un.org/DGAACS/unterm.nsf/8fa942046ff7601c85256983007ca4d8/579980ad1402d18685256b9c00560b0?OpenDocument> (last visited Jan. 29, 2014).

20. Kopylov & Solntsev, *supra* note 12.

21. TIM STEPHENS, INTERNATIONAL COURTS AND ENVIRONMENTAL PROTECTION 34 – 35 (2009); MIKHAIL M. BRINCHUK, *ÉKOLOGICESKOE PRAVO: UČEBNIK* [ENVIRONMENTAL LAW: TEXTBOOK] 590 – 91 (2011).

22. Susan Hinde, *The International Environmental Court: Its Broad Jurisdiction as a Fatal Flaw*, 32 HOFSTRA L. REV. 727, 731 (2003).

23. *Id.*

fect the interests that are fundamental for protection of the human environment on earth.<sup>24</sup>

Ole W. Pedersen suggests dividing the arguments for the international environmental court into two categories.<sup>25</sup> The first category relates to the efficiency of the current international regimes and the second relates to the procedural practice of the international courts.<sup>26</sup> Though they are interwoven, Pedersen supposes that the current regimes of the international settlement of disputes are not adapted to serious environmental problems.<sup>27</sup>

Indeed, international environmental law (as well as national law) has significant specific features associated with the close interrelation of legal issues with natural, scientific, physical and chemical issues and the achievements of other sciences.<sup>28</sup> Consideration of environmental cases requires not only the judge to be specially qualified, but also the wide involvement of experts from different fields of scientific knowledge, which is not required for justice in many other categories of cases.<sup>29</sup>

The supporters of the International Environmental Court note that environmental justice must be available for states, international intergovernmental and non-governmental organizations, and citizens.<sup>30</sup> But in order to avoid paralysis of the Court caused by claims of non-governmental organizations and citizens, it is suggested that the Court should be a second instance for them after the regional courts of human rights.<sup>31</sup>

By contrast, opponents of the International Environmental court make the following arguments:

1) The international community is unlikely to agree to the presence of such a judicial institution to implement its decisions.<sup>32</sup> Taking into account the deep roots of the conflicts existing in the field of international environmental law and policy, it is doubtful that the countries can come to an agreement on the establishment of the international environmental court. It is not so much about a conflict between the developed and developing countries, as the fact that not even the industrially developed countries, let alone the majority of states worldwide, are likely to achieve a consensus.<sup>33</sup>

2) The right to a healthy environment is recognized at the regional level, but the international community has yet to develop and consolidate its core elements within a special international act.<sup>34</sup>

24. See DINAH SHELTON & ALEXANDRE KISS, UNITED NATIONS ENVIRONMENT PROGRAMME, JUDICIAL HANDBOOK ON ENVIRONMENTAL LAW (2005).

25. Ole W. Pedersen, *An International Environmental Court and International Legalism*, 24 J. ENVTL. L. 547, 551 (2013).

26. *Id.*

27. *Id.*

28. Eckard Rehinder & Demetrio Loperena, *Legal Protection of Environmental Rights: The Role and Experience of the International Court of Environmental Arbitration and Conciliation*, 31 ENVTL. POL'Y & L. 282, 283 (2001).

29. *Id.*

30. Amedeo Postiglione, *A More Efficient International Law on the Environment and Setting Up and International Court for the Environment Within the United Nations*, 20 ENVTL. L. 321, 327 (1990).

31. Kopylov & Solntsev, *supra* note 12.

32. Ole W. Pedersen, *An International Environmental Law Court?*, INT'L L. OBSERVER (Nov. 29, 2008, 3:52 PM), <http://www.internationalallawobserver.eu/2008/11/29/an-international-environmental-law-court>.

33. *Id.*

34. *Id.*

3) There are unresolved problems relating to the punishment of countries and companies responsible for environmental offenses.<sup>35</sup> The difficulty lies in understanding the distinct characteristics of pollution or the maximum emissions, and in the sovereign right of states to dispose of their own natural resources.<sup>36</sup>

4) States will not want to let non-governmental institutions or the International Judge dictate their domestic policy, which is why they state that the establishment of the Court fundamentally threatens their national sovereignty.<sup>37</sup>

5) Another problem is the polycentric nature of environmental disputes. One party believes that this dispute is certainly about the environment and the other one claims it is economic.<sup>38</sup> Both parties will inevitably express considerations on justice and speak of those who would suffer without economic development, as well as the people whose air, water, and land will be polluted as a result of such activities.<sup>39</sup>

6) Another problem relates to jurisdictional issues. Since it would be rather difficult to distinguish “environmental” and “non-environmental” disputes, what if such disputes arise in the field of international trade law or the law of foreign investments?<sup>40</sup> Which body should consider disputes on trade in greenhouse gases, the Dispute Settlement Body of the WTO in accordance with the provisions of the GATT or the International Environmental Court in accordance with the Kyoto Protocol?<sup>41</sup>

7) How should the court balance economic, social, and environmental interests in terms of the court’s consideration of complex cases? For example, if the termination of environmentally unfriendly activities (such as hunting for rare and endangered species or the use of flora) leads to economic difficulties for local communities of indigenous people, who should compensate for these costs, the plaintiff or the international community?<sup>42</sup>

Whilst acknowledging the importance of these questions, we would like to note that many are rhetorical; appropriate answers can be obtained only in the course of the actual work of the court with consideration of the particular circumstances of each individual case. Searching for a balance of private and public interests—as well as economic, social, and environmental issues—is a philosophical, rather than a legal problem. The result of the consideration of specific cases will depend on the qualification of the judges and experts, as well as on the quality of the international and national acts that will apply to those judges and experts.

It appears that the International Environmental Court has not been established yet because the degradation of the environment, although resulting in health deterioration and property losses, has not become a pressing *political* problem and is yet to have an impact on the mood of the electorate or cause mass protests.<sup>43</sup> While this remains the case, states

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35. *Id.*

36. *Id.*

37. See Murray Carroll, *It's High Time for an International Environmental Court*, POL’Y INNOVATIONS (Apr. 24, 2013), <http://www.policyinnovations.org/ideas/innovations/data/000240>.

38. *Id.*

39. *Id.*

40. Hinde, *supra* note 22, at 746 – 747.

41. *Id.*

42. *Cf. id.* at 749.

43. See ORG. FOR ECON. COOPERATION AND DEV., ENVIRONMENTAL POLICY AND REGULATION IN RUSSIA, THE IMPLEMENTATION CHALLENGE (2006), available at <http://www.oecd.org/env/outreach/38118149.pdf> [hereinafter OECD, ENVIRONMENTAL POLICY AND REGULATION IN RUSSIA].

will ignore the calls of the environmental community as long as it does not threaten the stability of power of the political elites.

Returning to the subject of our research, we would like to note that the existence of a specialized body of environmental justice at the international level, despite its importance, would be just one of many factors leading to the achievement of the overall objective of international environmental protection. The main sources of negative impact on the environment stem from national industries, including transport, agriculture, and energy.<sup>44</sup> The international environmental court will not become a part of the national legal systems of signatory countries; it is inconceivable that it would be a body capable of considering the hundreds and thousands of claims that would fall upon it.

But the ability of the Court to respond to the most serious environmental offences will have a disciplining effect on states. Thus, the situation where specialized environmental courts are established at the national level, and citizens and non-governmental associations, having exhausted the national possibilities to protect environmental rights, are able to appeal to the International Environmental Court, is an ideal worth striving for. This ideal International Environmental Court should be a structural subdivision of the United Nations and consider (along with applications made by citizens and their associations) disputes between states regarding environmental issues. In general, the very fact of public discussion on the establishment of the International Environmental Court (even before any specific outcome) is a step toward environmental justice.

## II. Foreign Experience in Creating Specialized Environmental Courts and the Prospects of its Use in Russia

Throughout the world, there are dozens of types of specialized courts dealing with economic, transportation, and social disputes, applying special procedures for the consideration of cases with the participation of minors, as well as other types of cases. For example, the judicial system of France consists of general and administrative courts (lower, specialized courts and the State Council).<sup>45</sup> The specialized courts include the Court of Auditors, the disciplinary courts (for example, for teachers, doctors, architects), and social security courts.<sup>46</sup>

It follows that the establishment of specialized environmental courts at the national level does not assume anything new in terms of the arrangement of their interaction with other units of the judicial system of the country, monitoring of their activities, or appealing their decisions. All of these issues in the majority of countries have been resolved based on the experience of other specialized courts at the time when environmental problems were not encountered.

According to estimates by Russian researchers, there are currently, approximately 380 domestic environmental courts and tribunals worldwide. Moreover, in some countries, there are several different courts dealing with certain categories of environmental cases.

44. Hinde, *supra* note 22, at 736 – 737.

45. §5 *Administrativnye Sudy* [Administrative Courts], in ADMINISTRATIVNOE PRAVO V ZARUBE\_NYH STRANAH [ADMINISTRATIVE LAW OF FOREIGN COUNTRIES] (Alexander N. Kozyrin ed., 1996), available at [http://www.pravo.vuzlib.org/book\\_z2054\\_page\\_18.html](http://www.pravo.vuzlib.org/book_z2054_page_18.html).

46. *Id.*



For example, today, Brazil has four federal courts for law enforcement in the Amazon region; some states in Brazil have their own environmental courts as well).<sup>47</sup> The Land and Environmental Court of New South Wales (Australia) has been operating for over thirty years.<sup>48</sup> The Environmental Court, with twenty-year's experience, operates in the United States (in Vermont).<sup>49</sup> In 2010 the National Green Tribunal was established in India<sup>50</sup> and the Environmental and the Lands Tribunals were established in England and Wales.<sup>51</sup> Other countries have also made progress in this regard.<sup>52</sup>

The main factors that caused the increase in the number of specialized environmental courts are usually considered to include (1) growth in the number and scope of environmental problems, (2) adoption of a comprehensive environmental legislation in many countries, (3) more active manifestation of the civil position (including active participation of non-governmental organizations in court hearings), and (4) a failure of the courts of general jurisdiction to effectively administer justice in the field of environmental protection.<sup>53</sup>

There are three types of environmental justice models in the world.

First, there are specialized environmental courts in some countries (including Australia and New Zealand) that are not engaged in the consideration of cases other than environmental cases.<sup>54</sup>

Second, some countries have a separate chamber or bar established under the court of general jurisdiction that considers only cases associated with environmental disputes. These bars can operate on a permanent basis or be summoned only when a legal action involves environmental issues. This less expensive approach is used in Kenya, Thailand, Sweden, the Netherlands, Belgium, Greece, etc.<sup>55</sup>

A third model of environmental justice takes place in cases when environmental disputes are considered by a judge of a non-specialized court that may have no special qualification. Russia provides a typical example of this model of environmental justice is.<sup>56</sup>

The low efficiency of the administration of environmental justice in Russia and the lack of training given to district court judges on how to consider specific environmental disputes calls for a discussion on the establishment of a Russian environmental court. There

47. Hon. Justice Brian J. Preston, *Characteristics of Successful Environmental Courts and Tribunals: Presentation to the Eco Forum Global Annual Conference Guiyang 2013: The 3rd Environmental Justice Seminar* (July 19 – 21, 2013), available at [http://www.lec.lawlink.nsw.gov.au/agdbasev7wr/\\_assets/lec/m4203011721754/characteristics%20of%20successful%20ects%20-july%202013.pdf](http://www.lec.lawlink.nsw.gov.au/agdbasev7wr/_assets/lec/m4203011721754/characteristics%20of%20successful%20ects%20-july%202013.pdf).

48. LAND AND ENV'T CT., <http://www.lec.lawlink.nsw.gov.au/lec/index.html> (last visited Feb. 4, 2014).

49. *Vermont Superior Court Environmental Division*, VERMONT JUDICIARY, <https://www.vermontjudiciary.org/GTC/Environmental/default.aspx> (last visited Feb. 4, 2014).

50. *National Green Tribunal (NGT)*, MINISTRY OF ENV'T & FORESTS, GOV'T OF INDIA (Oct. 10, 2010), available at <http://envfor.nic.in/rules-regulations/national-green-tribunal-ngt>.

51. Richard Macrory, *Environmental Courts and Tribunals in England and Wales – A Tentative New Dawn*, 3 J. OF CT. INNOVATION 62 (2011).

52. ME\_DUNARODNOE ÈKOLOGICESKOE PRAVO: UCEBNIK [INTERNATIONAL ENVIRONMENTAL LAW: TEXTBOOK] 594 (Revol M. Valeev ed. 2012).

53. Brian J. Preston, *Operating an Environmental Court: The Experience of the Land and Environmental Court of New South Wales*, 25 ENVTL. & PLANNING L. J. 385 (2008).

54. See George Pring & Catherine Pring, *Specialized Environmental Courts and Tribunals at the Confluence of Human Rights and the Environment*, 11 OR. REV. INT'L L. 2, 5 (2009).

55. *Id.* at 11.

56. Cf. OECD, ENVIRONMENTAL POLICY AND REGULATION IN RUSSIA, *supra* note 43.

are arguments both for and against establishment of this specialized judicial instance. These arguments were expressed at different times and in different countries by various authors and were then summarized by Alexander M. Solntsev in a number of his works. The arguments for the establishment of a specialized court are as follows:

1) *Specialization of courts is ensured by the deep knowledge of the judges.* It is assumed that the judges in the environmental courts will have extensive experience in the consideration of environmental disputes and will have experts specializing in technical fields;<sup>57</sup>

2) *Efficiency.* The high workload currently experienced by the courts of general jurisdiction leads to longer and more expensive cases; separating out environmental claims would enable them to be processed faster and more efficiently.<sup>58</sup>

3) The possibility for the government to *show its citizens its real concern regarding environmental issues* and an intent to change the current situation towards its positive settlement.<sup>59</sup>

4) *Reduction of costs* by the establishment of Russia's own procedures.<sup>60</sup>

5) *Uniformity of judicial practice* regarding environmental issues. This provides the parties with an opportunity to predict the possible outcome of a case on the basis of an earlier decision and to eliminate the negative impact of "forum shopping," where the parties can choose the court where the decision is more likely to be in their favor.<sup>61</sup>

6) *Ability to expand the subject structure of the court proceedings,* since it is possible to bring claims arising out of the public interest, class suits, etc.<sup>62</sup>

7) *Possibility to set priorities* for consideration of cases requiring urgent settlement; environmental cases in courts of general jurisdiction are usually considered according to the time of their arrival and are often delayed due to their complex nature.<sup>63</sup>

8) Possibility to actively use *alternative methods of settlement* for environmental disputes (mediation, amicable agreements, etc.).<sup>64</sup>

There are also arguments against the creation of environmental courts, which include the following:

1) Taking into consideration the *complex nature of environmental law*, critics state that there are areas of law that govern issues that are not less complicated (for example, information law); therefore, environmental law should not be distinguished through the establishment of specialized judicial instances.<sup>65</sup>

2) There are *doubts about the need for environmental courts due to an insufficient number of cases* to warrant forming a separate unit of the judicial system. For example, in the Republic of Bangladesh, prior to consideration by a specialized environmental court, cases are

57. ALEXANDER M. SOLNTESEV, SOVREMENNOE MEZDUNARODNOE PRAVO O ZAŠITE OKRUŽAŠEJ SREDY I ĖKOLOGIČESKOJ PRAVAH ČELOVEKA [MODERN INTERNATIONAL LAW ON THE PROTECTION OF THE ENVIRONMENT AND ENVIRONMENTAL HUMAN RIGHTS] 60 – 61 (2013).

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. Dmitri G. Averchenko, *Specializirovannye Sudy v Sisteme Organov Sudebnoj Vlasti: Teoretiko-pravovoe Issledovanie* [Specialized Courts in the Judicial System: Theoretical and Legal Research] (2002) (unpublished candidate thesis, Russian Academy of Public Service), available at <http://www.dissercat.com/content/spetsializirovannye-sudy-v-sisteme-organov-sudebnoi-vlasti-teoretiko-pravovoe-issledovanie>.

sent to the Ministry of Environment for a decision on whether the case complies with the criteria of admissibility. Only, a small number of cases reach the court; therefore, judges also have to consider cases that have no relation to environmental issues.<sup>66</sup>

3) The establishment of a new body requires *significant investments* in the remuneration of judges, personnel, premises, equipment, training, etc.<sup>67</sup>

4) The *complexity of the determination of jurisdiction* in complex cases. Critics question how it will be determined whether a case "with an environmental element" is related to the jurisdiction of a general court or an environmental tribunal.<sup>68</sup>

We believe that most of the objections expressed by different theorists and practitioners as to the wisdom of creating a specialized environmental court are of minor importance. For example, at a time when billions of dollars are being spent annually on the preparation for the Olympics in Sochi, the investment required for the establishment of a specialized environmental court would be comparatively insignificant.

The need to increase the number of specialized courts is certain and without any doubt, and we already see it in both developed and developing countries. The question regarding the number of activities required for the establishment of a court, as well as the correctness of their solution, lies beyond serious debate and strongly depends on the development of the civil society, the environment, and the background of judges in each individual country.

With regard to the topic of this article, we can conclude that the feasibility of creating a specialized environmental court was discussed (more or less for a long time and intensively) in each of the countries where such courts are functioning today, and in most cases the decision to establish such a court has proved its value.

### III. General Characteristics of the Judicial System in Russia in the Context of the Possibility of Establishing a Specialized Environmental Court

A specialized court in the most general terms shall be understood to be a government body that exercises judicial authority and, as a rule, has the exclusive competence and jurisdiction to review certain categories of cases. Russian lawyers define the competence of specialized courts using the following criteria: objective criteria, where competence is defined according to the category of cases considered by a court; and subjective criteria, where the competence of the court is defined depending on the specific characteristics of the participants in a case considered by a court.<sup>69</sup>

At the moment, the judicial branch, which forms the judicial system, in Russia includes the federal courts, constitutional (charter) courts, and magistrates' courts of the Russian Federation.<sup>70</sup> Prior to the beginning of the next stage of judicial reform carried out in 2013, the federal courts included the Russian Constitutional Court, the Supreme Court of

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66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. Federal'nyj Konstitucionnyj Zakon o Sudebnoj Sisteme [Federal Constitutional Law on the Judicial System], SOBRAINE ZAKONODATEL'STVA ROSSISKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 1996, No. 1-FKZ, available at <http://www.legislationline.org/documents/id/4255>.

the Russian Federation, lower-level courts of general jurisdiction, the Supreme Commercial Court of the Russian Federation, and subordinate commercial courts.<sup>71</sup>

According to Article 1 of the Federal Constitutional Law No. 1-FKZ dated December 31, 1996, (Courts in the Russian Federation), the federal courts of general jurisdiction included the Supreme Court of the Russian Federation; republican supreme courts; territorial, regional courts; courts of federal cities; courts of autonomous regions; courts of autonomous districts; district courts; municipal courts; inter-district courts; military courts; and specialized courts whose authorities, mechanism for establishing themselves, and rules of procedure were determined by the federal constitutional law.<sup>72</sup> The federal constitutional law has not been implemented; therefore, there are none of the latter category of specialized courts falling into the category of general jurisdiction in Russia. In principle, the military courts are specialized, but Russian legislators include them in the courts of general jurisdiction.<sup>73</sup>

The Supreme Commercial Court of Russia is a higher court than the federal district commercial courts, commercial appeal courts, and commercial courts of the constituent entity of the Russian Federation and specialized commercial courts. In contrast to the system of courts of general jurisdiction, the only specialized court in Russia (the Court for Intellectual Property Rights) was established in the system of commercial courts, whose mission was to consider disputes relating to the protection of intellectual property rights, as a trial and appeal court.<sup>74</sup>

Thus, the mere possibility of the existence of specialized courts within the courts of general jurisdiction and commercial courts during the course of judicial reform was permitted by Russian law, but in practical terms it was implemented only once in relation to the system of commercial courts in the area of intellectual property rights. But there were obstacles to further development.

On June 21, 2013, the Russian President, Vladimir Putin, proposed to merge the Supreme Court and the Supreme Commercial Court of the Russian Federation (SCC) and make the appropriate alterations in the Constitution.<sup>75</sup> In accordance with the draft law developed by the President, the SCC of the Russian Federation is to be abolished within six months from the date of the Constitutional amendment, and its powers are to be transferred to the jurisdiction of the newly created Supreme Court.<sup>76</sup> On November 22, 2013, the State Duma adopted in the third reading a presidential draft law on amendments to the Constitution regarding the merger of the Supreme Court and Supreme Commercial Courts.<sup>77</sup>

The revised version of Article 126 of the Russian Constitution provides that the Supreme Court is the highest judicial authority in civil, economic, criminal, administrative,

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71. *Id.*

72. *Id.*

73. *Id.*

74. Dara Kim, *Russia Establishes Specialised Court For Intellectual Property Rights*, INTELL. PROP. WATCH (Mar. 1, 2013, 4:05 PM), <http://www.ip-watch.org/2013/03/01/russia-establishes-specialised-court-for-intellectual-property-rights/>.

75. *Russia Lawyers Protest Putin's Court Reform*, RIA NOVOSTI (Nov. 11, 2013, 12:47 PM), <http://en.ria.ru/russia/20131120/184808408.html>.

76. Sergey Yuryey, *Russian Supreme Commercial Court to be Abolished in 2014*, CMS RUSSIA (Dec. 2013), [http://www.cms-russia.info/legalnews/2013/12/cms\\_client\\_alert\\_2013\\_12\\_05.html](http://www.cms-russia.info/legalnews/2013/12/cms_client_alert_2013_12_05.html).

77. *Id.*

and other matters under the jurisdiction of the court organized under federal constitutional law; it supervises the activities of these courts in accordance with federal procedural forms; and provides explanations on judicial practice.<sup>78</sup> It seems that the merger of courts does not prevent, but rather will contribute to, the development of specialized courts. For example, the military court will retain its autonomous status within a unified court, which it had earlier in the court of general jurisdiction.<sup>79</sup> The Court for Intellectual Property Rights created in the system of the commercial courts will retain its autonomy within the new hierarchy of the judiciary.<sup>80</sup>

At the same time, reform of the Russian courts is the most appropriate moment to argue the necessity to expand the role and importance of specialized courts and create a system of specialized courts in the structure of the new (unified) Supreme Court of the Russian Federation. At the moment in Russia, the necessity of establishing specialized courts in labor,<sup>81</sup> tax,<sup>82</sup> administrative,<sup>83</sup> and juvenile matters is under discussion.<sup>84</sup> As noted earlier, the environmental courts are discussed less often.

In a similar way to the International Environmental Court, the creation of a specialized environmental court in Russia will raise the question of delimiting the categories of cases considered by it, as well as discussions on the feasibility of the formation of a specialized court claiming a portion of categories of cases currently considered by courts of general jurisdiction.

Nowadays, the concept of land courts is under consideration in Russia. Professor Vasilii M. Dikumar is the most active supporter of it<sup>85</sup> and proposes the establishment of special land courts with

the authority to delve deeply into the issues of land management, up to the substitution of executive-administrative functions of local authorities in certain cases. And if

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78. *Judicial Branch Of The Russian Federation*, BODIES OF RUSSIA (Jan. 18, 2013), available at [http://www.gov.ru/main/page10\\_en.html](http://www.gov.ru/main/page10_en.html).

79. Vladimir Novikov, *Five myths about Russian Judicial Reform*, RAPS (Nov. 26, 2013, 6:52 PM), [http://rapsnews.com/legislation\\_publication/20131126/269861221.html](http://rapsnews.com/legislation_publication/20131126/269861221.html).

80. Olga Anisimova, *New Russian IP Court Marks a Step Toward Strengthening Protection of Trade Secrets and Other IP Rights in Russia*, JD SUPRA (Oct. 23, 2013), <http://www.jdsupra.com/legalnews/new-russian-ip-court-marks-a-step-toward-29884/>.

81. Yana B. Getman, *Administrativnaâ Otvetstvennost' za Narušenie Trudovogo Zakonodatel'stva i Inyh Normativnyh Pravovyh Aktov, Soderžaših Normy Trudovogo Zakonodatel'stva* [Administrative Responsibility for Violation of Labor Legislation and Other Normative Legal Acts Containing Norms of Labor Laws] (unpublished candidate thesis, Rostov Institute of Law of Russian Ministry of Internal Affairs) (on file with author).

82. Ekaterina I. Spector et. al, *Koncepciâ Razvitiâ Finansovogo Zakonodatel'stva* [The Concept of Financial Legislation Development], in KONCEPCIÂ RAZVITIÂ ROSSIJSKOGO ZAKONODATEL'STVA [THE CONCEPT OF THE RUSSIAN LEGISLATION DEVELOPMENT] 214 (2010).

83. Sergey D. Budak, *Konstitucionno-pravovoj Status Obšestvennyh Èkologičeskikh Ob'edinenij v Rossii* [The Constitutional and Legal Status of Non-Governmental Environmental Organizations in Russia] (Mar. 23, 2004) (unpublished candidate thesis, Volga Region Academy of Public Administration) (on file with author).

84. Alla A. Gravina, *Koncepciâ Razvitiâ Zakonodatel'stva o Sudebnoj Sisteme* [The Concept of Development of Legislation on the Judicial System], in KONCEPCIÂ RAZVITIÂ ROSSIJSKOGO ZAKONODATEL'STVA [THE CONCEPT OF THE RUSSIAN LEGISLATION DEVELOPMENT] 701 (2010).

85. Vasilii M. Dikumar, *Meždunarodno-pravovye Problemy Ohrany Okružaišej Sredy* [International legal problems of environmental protection] (2007) (unpublished Ph.D. dissertation, Institute of State and Law of the Russian Academy of Sciences) (on file with author).

this occurs the courts of general jurisdiction will only supervise the decisions of a land court, with the right to leave the verdict of a land court standing, or to cancel it, but without the right to consider a dispute on the merits.<sup>86</sup>

Such land courts could consider land disputes regarding boundaries, area, admeasurement, eviction from illegally occupied and/or built-up lands, statements regarding the legitimacy of legal responsibility, and appeals relating to statements for the provision<sup>87</sup> of land, etc.<sup>88</sup>

B.V. Erofeyev believed that if special bodies (land commissions and land courts) were established for the resolution of land disputes, a question about the formation of special procedural laws for land cases would arise.<sup>89</sup>

We would find it difficult to accept these approaches for the following three reasons:

1) The law authorities are not entitled to exercise any executive and administrative activities, as it is contrary to Article Ten of the Constitution of the Russian Federation, which enshrined the concept of separation of powers.

2) Along with the unquestionable benefits, establishing specialized land courts would also have a number of disadvantages. There is an argument that if specialized land courts were created, then it would be necessary to also create water courts, forest courts, and mountain courts (to consider disputes in the sphere of subsurface use), etc. But there is a more efficient option of creating an environmental court that will consider disputes in the use of natural resources as well as those in the sphere of environmental protection.

3) There should not be special procedural laws for land cases, as any cases regarding the use and protection of land (and other natural resources) are already adequately considered in the framework of criminal, civil, administrative, or constitutional proceedings. Adding an additional "land procedural law" to the existing procedural areas would require an artificial formation of the procedure on the basis of the existing areas, borrowing current procedures; this does not make sense.

It seems that, given the current conditions in Russia (as its judicial authorities are being reformed), the most appropriate model for a specialized court would be for trial and appeal cases to be heard at the level of a specialized environmental court and then for any appeals against the decisions of the court of appellate jurisdiction to be heard by the Supreme Court of the Russian Federation, overseeing the entire judicial system of the country, which would ensure unity of practice.

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86. *Id.*

87. In Russia, the land plots can be transferred from state ownership into private ownership in accordance with the procedure of "land allocation" (*predostavlenie zemelnikh uchastkov*). This procedure consists of a citizen filing an application to the public authority, where he asks to transfer (lease) the ownership of the public land plot, which is not occupied and is not used. In some cases specified in the Land Code, the land plot becomes the property of a citizen or a legal person following the results of an auction. Otherwise the ownership of the land plot is transferred to individuals or legal entities for free. *Zemelnyi Kodeks Rossiiskoi Federatsii* [ZK RF] [Land Code] arts. 15, 38 (Russ.), available at <http://www.unece.org/fileadmin/DAM/hlm/prgm/cph/. . /russia/. . /landcode.doc>.

88. Vladimir V. Soldatenkov, *Pravovoe regulirovanie kupli-prodazhi prava arendy zemel'nykh uchastkov po konkursu v gorode Moskve* [Legal regulation of purchase and sale of land lease rights on a competitive basis in Moscow] (2001) (unpublished candidate thesis, Moscow State Academy of Law).

89. BORIS V. EROFEEV, *LAND LAW OF THE RUSSIAN FEDERATION* 326 (1998).

Consequently, the hierarchy of specialized environmental courts in Russia could be, first, the district (city) environmental court, then, the regional (territorial and republican) court. Ideally, of course, it would be appropriate to form the appellate jurisdiction not at the level of the entities of the Russian Federation (region, area, or republic) but at the level of the federal district,<sup>90</sup> but this would only be possible if the whole system of courts of general jurisdiction were transferred to such a standard, which is not planned in Russia.

#### IV. Structure and Possible Jurisdiction of an Environmental Court

We believe that it is more advantageous to form the jurisdiction of environmental courts not on a subjective basis (as is done in the military courts considering cases on particular categories of participants, military servicemen), but on an objective basis (civil and administrative matters relating to the use of natural resources or environmental protection would be within their jurisdiction). The question of when criminal cases would be subject to the environmental courts' jurisdiction (considering environmental crimes) is beyond the scope of the traditional understanding of the competence of a specialized court existing in Russia, although it does not preclude a discussion on the matter.

But the question now arises regarding which kinds of civil and administrative cases a specialized environmental court should consider. Where is the line that separates, for example, private economic interests and public environmental interests, where the ecological value of land property is greater than its economic value?

Obviously it is impossible to describe in a single article all the possible types of competing jurisdiction between a specialized court and court of general jurisdiction. The specific findings in this section can give only a generalization of the law-enforcement practice of environmental courts, should it ever be established in Russia; but some proposals that are repeatedly discussed at Russian scientific meetings, as well as with representatives of the legal community, can be formulated now. The main principle of the environmental court may relate to the necessity to protect not just individual rights, but also to protect the environment for the population as a whole, as noted by Sir Harry Woolf.<sup>91</sup>

The Indian experience, where the environmental nature of a dispute depends on two factors, is very interesting. These two factors are (1) the impact of ecological consequences on the public, including the degree of environmental damage or property damage and whether there is damage to the health of the population as a result of a direct violation of a specific statutory environmental obligation and (2) the presence of ecological consequences related to the specific activity or the source of the contamination.<sup>92</sup>

While creating an environmental court in Russia, we should be ready to face the multifaceted problems already described in detail in the legal literature: the establishment of independent guarantees against abuse by the administrative authorities, reasonable and fair decision making, and adherence to traditional judicial values and approaches, as well

90. In Russia the territory of the country is divided into eight federal districts, each of which includes six to eighteen entities of the Russian Federation. This division exists to coordinate the work of bodies of executive power of the entities of the Russian Federation. The meaning of the authors' sentence is to use the experience of the "supra-regional" coordination for the judiciary. *Russia, CITY POPULATION* (Aug. 26, 2013), <http://www.citypopulation.de/Russia.html>.

91. Sir Harry Woolf, *Are the Judicially Environmentally Myopic?*, 4 ENVTL. L. 1, 4 (1992).

92. Gitanjali Nain Gill, *A Green Tribunal for India*, 22 ENVTL. L. 461, 469 (2010).

as accountability within the overall system of justice.<sup>93</sup> The effectiveness of the court depends on the solution of these problems.

We believe that the environmental court should consider four categories of environmental cases that are based on scientific and practical ideas existing in Russia.

1) *Violation of the requirements for individual activities.* Russian environmental legislation contains a significant number of environmental requirements in the field of industry, agriculture, transport, energy, etc.<sup>94</sup> The specificity of most of these requirements is that they are complex and involve not only natural resources (land, water, mineral resources, etc.), but also have a complex effect on them. For example, what natural objects did the accident at Chernobyl nuclear power plant influence in 1986? It seemed to affect many natural resources simultaneously.<sup>95</sup> This led to the introduction of special requirements relating not to the rational use of individual natural objects, but rather to certain activities (energy, transport, agriculture, etc.).<sup>96</sup>

Violations of these requirements may occur through the emission of hazardous substances in excess of limits and standards, waste disposal and consumption without obtaining the necessary permits, construction of energy facilities in violation of environmental regulations and restrictions, etc. Failure to comply with these environmental requirements involves violation of the constitutional right of citizens to a healthy environment.

Most cases on compensation for damage to life, health, or property due to violations of environmental laws will be considered within this subgroup of environmental cases. We note that the main threat to the life and health of citizens comes from the consumption of toxic substances that are harmful to their health. In this case, proof of the cause-and-effect relationship between the negative impact on the environment and its effects on health is a known problem not only in Russia, but also in countries with developed rules of law.<sup>97</sup>

2) *Violations of environmental requirements in the sphere of the use and protection of specific natural resources (water, land, minerals, forests, fauna, air).* The essence of these requirements is that special protective measures may be determined for certain natural objects that are not relevant to other natural objects. For example, the rules for the protection of forests from fires are not relevant for the purpose of water protection and, conversely, environmental restrictions for hunting and fishing are not relevant to the protection of forests, etc.<sup>98</sup> Violations of these requirements should also be considered by a specialized environmental court.

3) *Violation of the legal regime for specially protected areas (nature reserves, national parks, etc.) or areas of ecological disaster (it is desirable to create them, for example, in the area of the accident at Chernobyl nuclear power plant).* Unlike the two previous groups, which are classified

93. Patricia Ryan, *Court of Hope and False Expectations: Land and Environment Court 21 Years On*, 14 ENVTL. L. 301, 308 (2002).

94. OECD, ENVIRONMENTAL POLICY AND REGULATION IN RUSSIA, *supra* note 43.

95. Jonathan Oldfield, *Russia's Crumbling Environmental Safeguards*, THE CONVERSATION (July 31, 2013, 4:26 PM), <http://theconversation.com/russias-crumbling-environmental-safeguards-16366>.

96. OECD, ENVIRONMENTAL POLICY AND REGULATION IN RUSSIA, *supra* note 43.

97. Alexander J. Bandza, *Epidemiological-Study Reanalyses and Daubert: A Modest Proposal to Level the Playing Field in Toxic Tort Litigation*, 39 ECOLOGY L.Q. 247, 259 – 261 (2012).

98. OECD, ENVIRONMENTAL POLICY AND REGULATION IN RUSSIA, *supra* note 43.



according to the principle of environmentally damaging activities, the territory under special protection, where the offense was committed, is a qualifying characteristic for the third category of environmental court jurisdiction. At the same time, we note that, in contrast to the extensive network of protected areas, other areas with a special kind of environmental-legal status (areas of ecological disaster) are only mentioned in various laws and regulations, but no practical actions have yet been taken to establish them in Russia.

4) *Environmental court disputes concerning the use of various natural resources (land, water, minerals, etc.)*. The necessity to distinguish this category is that all uses of natural resources are closely linked to the protection of nature; therefore, they cannot be considered according to the rules applicable to buildings, structures, and facilities. As such, the special laws—Land Code, Water Code, Forest Code, Federal Law “On Subsoil”, Federal Law “On the animal world”—were adopted in order to take into account such a specific use of natural resources in Russia.<sup>99</sup>

It is necessary to emphasize at least two other important problems that exist at the moment and which a specialized environmental court would have to face in practice. First, we are talking about the problems of compensation for non-pecuniary damage resulting from environmental offences. The whole point of the problem is that damage to the life and health of citizens entails non-pecuniary damage. Currently, the courts in Russia are extremely reluctant to recognize its presence in environmental offenses and even more rarely award decent compensation.<sup>100</sup> In this sense, the experience of Brazil, which also faces this problem, is worth noting. The courts of Brazil have not always been willing to recognize non-pecuniary damage as stated in the lawsuit.<sup>101</sup> But after amendments to several laws in 1994, it has now become possible (even in cases of violation of collective interests, including environmental ones).<sup>102</sup> Second, Brazilian legislation provides that the state is responsible for environmental damages, whether resulting from direct government action or inaction.<sup>103</sup> Russian legislation does not clearly define state responsibility for harmful acts or omissions,<sup>104</sup> and appropriate decisions will depend on the experience and qualifications of judges.

Creation of a specialized environmental court will require the resolution of a number of other important issues, such as those associated with the increase of the role and importance of public participation in the solution (or study) of environmental issues. In addition to a larger number of experts involved, there would be an option to conduct public discussions regarding the enforcement of environmental legislation by courts. In fact, this practice takes place in Russia right now and it is related to the discussion of draft documents

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99. *Id.*

100. ORG. FOR ECON. COOPERATION AND DEV., LIABILITY FOR ENVIRONMENTAL DAMAGE IN EASTERN EUROPE, CAUCASUS AND CENTRAL ASIA (EECCA): IMPLEMENTATION OF GOOD INTERNATIONAL PRACTICES (2012), available at <http://www.oecd.org/env/outreach/50244626.pdf>.

101. Nicholas S. Bryner, *Brazil's Green Court: Environmental Law in the Superior Tribunal de Justiça (High Court of Brazil)*, 29 PACE ENVTL. L. REV. 470, 504 (2012).

102. *Id.*

103. *Id.* at 519.

104. FED'N OF AM. SCIENTISTS, THE ENVIRONMENTAL OUTLOOK IN RUSSIA (January 1999), available at [http://www.fas.org/irp/nic/environmental\\_outlook\\_russia.html](http://www.fas.org/irp/nic/environmental_outlook_russia.html).

developed by the Plenum of the Supreme Court of Russia on the enforcement of environmental legislation.<sup>105</sup>

There is also an urgent need to amend the Civil Procedure Code of the Russian Federation, providing environmental non-governmental organizations (NGO) the right to sue in court to protect the environmental interests of unspecified persons.

While looking to solve organizational issues, we can learn from the experience of countries that already have environmental tribunals. For example, in India, the National Green Tribunal (NGT) (established in 2010) includes both judges and experts.<sup>106</sup> Technical experts with the knowledge of the fields of bioscience, physical science, engineering, or technology are involved as member experts.<sup>107</sup> But social scientists with relevant specialization were not included as members of the tribunal.<sup>108</sup> Any expert is required to have experience concerning environmental matters of at least fifteen years.<sup>109</sup> In India, the President of the Tribunal is appointed by the Central Government in consultation with the Chief Justice.<sup>110</sup> We propose not to amend the existing general (former) regime in the Russian Federation.

Along with the important legal issues, the creation of a specialized environmental court will have another aspect that was indicated by Patrick McAuslan.<sup>111</sup> He noted that the court, in considering environmental disputes and taking decisions, has an important educational role in raising public awareness of the need to integrate environmental considerations into decision making.<sup>112</sup> We support this view.

## V. Conclusion

The global history of law is replete with instances when “the idea took the world.” For example, the *Encyclopaedia: or a Systematic Dictionary of the Sciences, Arts and Crafts* (Diderot, Jean Le Rond d'Alembert, Voltaire, Rousseau, and others), on the surface a purely academic work written by modest Eighteenth Century French scientists, strongly influenced the content of the Declaration of the Rights of Man and of the Citizen, which in turn became the ideological foundation of the first phase of the French Revolution of 1789.<sup>113</sup> Modest armchair philosopher Karl Marx envisioned the communist utopia and millions of people lost their lives to implement it (or fighting against its implementation).

Fortunately, the idea of an environmental court is less bloodthirsty. But the mass circulation of the concept in high political circles in Russia and the ultimate creation of a specialized environmental court will have revolutionary implications for the development

105. *Verbovyj Sud Rossijskoj Federacii Obosit Èkologiceskie Narušenija* [Supreme Court of the Russian Federation Will Summarize Environmental Violations], BELLONA (Oct. 7, 2012), [http://bellona.ru/articles\\_ru/articles\\_2012/1341914638.84](http://bellona.ru/articles_ru/articles_2012/1341914638.84).

106. *National Green Tribunal*, *supra* note 50.

107. Gill, *supra* note 92, at 468.

108. *Id.* at 468.

109. *Id.*

110. *Id.*

111. See Patrick McAuslan, *The Role of Courts and other Judicial Type Bodies in Environmental Management*, 3 ENVTL. L. 195 (1991).

112. *Id.*

113. Oksana Pakhliovska, *Homo Europaeus*, THE UKRAINIAN WEEK (Nov. 25, 2013), <http://ukrainianweek.com/World/94888>.

of environmental justice in Russia; it will allow far more effective protection of the legitimate rights and interests of citizens. Taking into consideration the interconnection between natural processes of the entire Earth, the establishment of such courts in Russia and other countries of the former Soviet Union will contribute to improving the quality of the global environment as a whole.

The creation of a specialized environmental court in Russia would allow judges to focus on the analysis of the subtleties and nuances of environmental matters. This will not only improve the quality of the consideration of this category of cases, but also relieve the existing system of courts of general jurisdiction. In this case, the greatest effect will still be achieved through the development of mediation procedures and improvement of the arbitration system.

In all countries of the world where special environmental courts have been established, their creation was preceded by a lengthy discussion, accompanied by the careful consideration of all the pros and cons of such a decision. For example, the environmental court in England and Wales was established only after three periods of discussion of this issue, and only when the third period of debate was complete did the institutional changes take place.<sup>114</sup> In this regard, the authors hope that this paper will begin the first period of discussion about the need for a specialized environmental court in Russia and that it will bear fruit in the distant future.

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114. Oksana Pakhliovska, *Homo Europaeus*, THE UKRAINIAN WEEK (Nov. 25, 2013), <http://ukrainianweek.com/World/94888>.