

Modern Issues of Development of the System of Specially Protected Natural Areas in the Context of the Concept of Sustainable Development

Współczesna problematyka rozwoju systemu specjalnych obszarów ochrony w kontekście koncepcji rozwoju zrównoważonego

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Abstract

The article proposes a new perspective on the issues of development of the system of specially protected natural areas (SPNAs) in the context of the concept of sustainable development. The authors suggest ways of finding a balance of economic, environmental and social interests in SPNAs, which will not lead to a decrease in their number or area, however, prevent a number of economic and social problems. The change in approaches to the management of the system of SPNAs including in terms of their creation, modification of their boundaries or termination of their operation will allow including SPNAs in the system of social economic relations of regions and certain countries, provide an opportunity to withdraw from the current one-sided bias solely in favor of environmental factors. This will ensure the necessary balance of the interests of the local population, business and protection of nature.

Key words: sustainable development, national park, balance of interests, subsurface use; entrepreneurs, specially protected natural areas

Streszczenie

W artykule zaproponowano nowe podejście do zagadnień rozwoju obszarów specjalnej ochrony w kontekście rozwoju zrównoważonego. Autorzy wskazują na sposoby równoważenia ekonomicznych, środowiskowych i społecznych celów na terenach chronionych, które nie będą prowadziły do zmniejszenia ich ilości bądź obszaru, zapobiegając zarazem powstawaniu ekonomicznych i społecznych problemów. Sugerowane zmiany w zarządzaniu obszarami chronionymi w kontekście ich tworzenia, zmiany granic czy ich zniesienia pozwolą na włączenie tych obszarów do systemu społeczno-ekonomicznych zależności w poszczególnych regionach i krajach, co oznaczać będzie wycofanie się z obecnego jednostronnego podejścia ograniczającego się wyłącznie do kwestii środowiskowych. W ten sposób zapewniona zostanie równowaga pomiędzy potrzebami lokalnych społeczności, biznesu i ochrony przyrody.

Słowa kluczowe: rozwój zrównoważony, park narodowy, równowaga interesów, użytkowanie podpowierzchniowe, przedsiębiorcy, obszary specjalnej ochrony

Introduction

In the second decade of the 21st century mankind is on the threshold of profound and irreversible changes. The ongoing process of globalization gave new dynamics to international relations, which manifests itself in strengthening of the interrelation of all states of the world. Full-scale development of even such world leaders as the USA and countries of the European Union is heavily dependent on the world economic situation and the ecological state of many other regions of the planet. All this fully applies also to Russia, which, as part of Europe and the bridge between Europe and Asia, is interested in the economic and environmental cooperation with all European countries including those in the EU.

Full international cooperation and collective settlement of the world economic, environmental and social issues is promoted by the fact that in the end of the 20th century European countries began to form a new policy the emergence of which was caused by to the increased risk of global threats to the life of all mankind. It is based on theoretical concepts the discussion of which was started still in the second half of 20th century by representatives of natural, technical and social sciences. The concept of sustainable development stands out among these concepts. With its emergence in European philosophical and legal thought we can observe the beginning of study of the interrelation between the state of the environment, economic and social problems.

Many scientists agree that the uncontrolled increase in anthropogenic pressure on nature (especially by economically developed countries) sooner or later will result in so-called *boomerang effect*, which means that the destruction of the natural environment will lead to serious economic and social losses. This fact is of particular importance for Russia, where according to the expert estimates about 300 000 people die annually due to the unfavorable environmental conditions. Environmentally unfavorable zones cover about 15% of the territory of Russia, where up to 60% of its population live. In accordance with the climate laws, every seventh year becomes critical for agriculture. Under these conditions, overcoming the increasing contradictions in the field of interaction of society and nature, resolution of conflicts between economic, social and environmental interests of citizens and their associations is impossible without taking into account the theoretical and practical developments related to the concept of sustainable development which aims to radically change worldviews, to be an alternative to the prevailing practice of consumer attitude of man to nature and its resources.

Analysis of such an essential guarantee of implementation of the theory of sustainable development as development of the system of specially protected natural areas (hereinafter SPNAs) plays a special role in this situation. Including natural ecological

systems SPNAs ensure the balance between economic, environmental and social interests of man and society, serve as filters, cleaning air, water and other natural components keeping the environmental balance and improving the quality of the environment. Meanwhile, the organization of the system of world SPNAs leaves open a number of questions.

1. Stages of formation of the concept of sustainable development and implementation of its provisions in international law and judicial practice

The main reasons for the emergence of the concept of sustainable development were prevalence of consumer psychology, irrational economic models and global environmental problems caused by all these factors.

The first attempt to assess the global environmental situation, systemize the causes of its aggravation and start searching for ways of resolution of environmental problems was made during the UN Conference on the Human Environment held in 1972 in Stockholm, one of the results of which was the approval of the United Nations Environment Programme (UNEP) – a special body coordinating activities of the international community to exercise the human right to a favorable environment.

Later in the report of the World Commission on Environment and Development (Brundtland Commission) theoretical and practical developments on the issues of interaction between nature and society were arranged in the concept of *sustainable development*, which was defined as development which meets the needs of current generations without compromising the ability of future generations to meet their own needs. This definition did not mention the environment, and this aspect of sustainable development was discussed at the United Nations Conference on Environment and Development in Rio de Janeiro in 1992, which resulted in adoption of important decisions. In particular, at this conference, many countries of the world signed a number of program documents establishing the general coordinated policy to ensure sustainable development and save the Earth's ecosystem, including *Agenda 21*, which is a global action plan of all countries with regard to sustainable development (Dikusar, 2007).

Ways and methods for assessing the effectiveness of efforts aimed at sustainable and safe development became the basis of *sustainability* of states. The main instrument of this assessment is sets of indicators of sustainable development. Agenda 21 adopted at the conference contains more than 120 indicators of sustainable development grouped into 40 chapters and characterizing sustainable development of state in all its possible aspects. Division of all the indicators into 4 categories (social, economic, environmental and institutional) allows highlighting the main aspects of sustainable development through a number of comparable indices and ranking countries formally by

their *progress* according to the scale of sustainability both by a certain index and by each individual category of indices (Kodolova, 2013).

The concept of sustainable development moves to a new level after adoption of the *Johannesburg Declaration on Sustainable Development* (2002) as well as the United Nations Conference, Rio+20, from the materials of which it follows that sustainable development is balanced social and economic development implemented in compliance with environmental requirements and standards, taking into account the interests of not only the present but also future generations of people. In the materials of the conferences it was stated that in order to ensure success in the way of sustainable development, all the peoples of the planet should take part in this process, and only in this case people can exist in harmony with the natural environment. The conference Rio+20 had two main themes: formation of a green economy in the context of sustainable development and poverty eradication; strengthening the institutional framework for sustainable development. If the necessary measures are taken to achieve the green economy, it should be accompanied by strengthening of the control carried out by international organizations. This will improve the integration of three components of sustainable development – economic, social and environmental components, lead to better coordination and management ensured by the UN, which will contribute to achieving the goals of sustainable development (Horn, 2013).

Meanwhile, global economic agreements were based on the expectation that rich countries would provide the poorer ones with new sources of funding so that they could achieve these objectives, but this remained unimplemented. The tension between developed and developing countries is still significant and results from the history of colonialism, economic exploitation, military adventurism, nationalism, etc. Developing countries are concerned that their dreams of improving the quality of life give way to the global needs of richer countries facing significant environmental threats (Bryner, 2002).

Therefore, the concept of sustainable development is an issue not so much of preservation of the environment as the issue of development of the economic and social field, maintenance of its functioning, provision of a certain level of life and its quality. On the basis of the mentioned international instruments, the environmental protection is just one of the areas within the framework of which the concept of sustainable development can be implemented. However, in Russian legal science in the discussion of *sustainable development* a rather significant *shift* to its environmental *section* can be observed, though adverse impact on the environment in Russia is not large, while development of the economic and, especially, social area raises concerns. Despite all the undoubted importance of the issues in the field of environmental protection, it is not correct to attach purely

environmental content to the concept of sustainable development.

The specified complexity of social relations covered by the concept of sustainable development led to the fact that some researchers count more than 70 different definitions of this term (Lafferty, 1996). The most common one is the statement that *sustainable development* is environmentally sound economic and social development achieved by integrating environmental considerations in the preparation, adoption and implementation of environmentally significant decisions in the interests of the present and future generations (Vershilo, 2008).

This classical definition is often supplemented by other elements necessary according to the authors. For example, E.F. Pushkareva draws attention to the need to preserve peace in the course of social, economic environmental development (Pushkareva, 2008). K. Peters adds *national security* to the triad under consideration (Peters, 2010). Undoubtedly, such views are worthy of attention, however, we will still continue to adhere to the *classical* definition, in which we focus attention on a number of management aspects within the boundaries of SPNAs.

Despite the adopted international instruments, many members of the scientific community consider the idea of sustainable development insufficiently reasoned, since it is rather a vision. Critics often call it a *manipulative and confusing slogan*, a *myth*, a *utopian reformer's fantasy*, or even a *buzzword concealing a threat to roll back existing environmental laws* (Eisen, 1999). Hence it follows that acceptance of *development* and *sustainable growth* will result in approval of previously unprecedented and expanding consumption of scarce resources. But can you agree with it? Karl Marx in his time reasonably believed that *man must prove the truth, i.e. the reality and power, the this-sidedness of his thinking in practice* (Marx, 1845), or, to put it simple: practice is the criterion of the truth. From this perspective, let us ask ourselves: is the concept of sustainable development is implemented in Russia in practice, and how exactly does it manifest itself?

On the one hand, in fact, Russia does not have a separate law which would contain a special mechanism for implementing the concept of sustainable development. On the other hand, all necessary legal rules allowing implementing this concept are dispersed in various regulations. Analysis of judicial practice also leads to this conclusion. As we have no possibility to show the full range of these decisions, we will limit ourselves just to two very illustrative examples. The European Court of Human Rights confirmed the priority of social and environmental rights of citizens over the economic interests of the state in the case of *Burdov v. Russia* related to non-payment of the compensation and social benefits to the participant of the liquidation of the accident at the Chernobyl NPP (Judgement of the ECHR of 07.05.2002). District courts in Russia often face the issues of sustainable

development as well. For example, on April 29, 2013, the Council of Deputies of Boristsevo Rural Settlement adopted a decision on approval of the plan of driving cattle in the villages of Dubrovka, Semenovskoe and Yakutino located in the rural municipal entity *Boristsevo Rural Settlement*. A number of citizens thought that this decision violated their rights because cattle driving was carried out in close proximity to their homes, which had an adverse physical, sanitary and psychological effect on them. The adverse physical effect consisted in the fact that cows damaged elements of street amenities, which were provided by citizens at their own expense. The adverse sanitary effect consisted in the fact that during driving cows left their waste (dung) on the ground of the streets. In this regard, the citizens experienced serious moral discomfort. After consideration on the merits of the case the court made the following decision: to declare the decision of the municipal Council of Deputies of Boristsevo Rural Settlement of April 29, 2013 illegal regarding the approval of the plan of driving cattle (Decision of Torzhok Town Court of Tver Region of August 1, 2013).

It appears that in this case the court actually applied the concept of sustainable development (though it is not mentioned in the text of the very court decision), having performed the reasonable search for a balance of the three groups of interests – economic (cattle grazing), environmental (sanitary condition of the street) and social (the villagers' right to health). Arguments in favor of the found compromise between these three interests are set out in detail in the text of the court decision. There are a fairly large number of such court decisions based on the current laws in Russia, which allows us to speak about not purposeful but *spontaneous implementation* of the concept of sustainable development in Russian law enforcement practice.

From this perspective, we note that the scope of the concept of sustainable development can be both the entire territory of the country and its part. Such an approach does not contradict provisions of the international instruments, but rather, on the contrary, follows directly from them. Meanwhile, a part of the country (even to the extent of one village) can fall within the scope of the concept of sustainable development in two ways: in case of practical problems that require authorization in the territory with the common legal regime; in case of problems in areas where special laws establish a certain legal order.

SPNAs are a typical example of the latter field. Exactly in them the balance of environmental and economic interests is either inclined almost uniquely in favor of the environment (in reserves) or a compromise is formed (in national parks), which allows limited use of especially valuable and protected natural sites for economic or other purposes. At the same time creation of SPNAs should be considered not only within the framework of the concept of sustain-

able development but also as a condition for the exercise of environmental human rights.

2. Role of SPNAs in sustainable development

2.1. Formulation of the problem or some statistics

Thus, one of the elements of sustainable development (and guarantee of the exercise of environmental human rights) is unique and valuable ecosystems (SPNA) located in the territories which are granted a special legal status. Natural processes which are of interest to science happen there, and this is why they are subject to special protection. Work on creation of SPNAs is carried out in all countries of the world quite successfully. If we consider only large SPNAs of over 1000 ha each, we can observe their greatest number in: the USA (1500), Australia (900), Canada (650), Germany (500) China (470), Indonesia (380), Brazil (280), Republic of South Africa (240), Spain and Sweden (215 each), Russia (200), United Kingdom (190) (Specially protected natural areas of the world, 2016)

The Russian Federation today has over 13 000 specially protected natural areas (SPNA) of federal, regional and local significance, the total area of which comprises over 200 million ha (including the offshore zone), or 11,95% of the area of Russia. The share of SPNAs of regional significance is 90,1% of the total number of SPNAs and 58,3% of the total area, and SPNAs of local significance – 7,6% and 12,6% accordingly (State report On the State and Protection..., 2015).

These figures become more compelling if we look at the area of individual SPNAs. For example, the Putoransky State Nature Reserve covers an area of 1887251 ha; Ust-Lensky Nature Reserve – 1433000 ha. In the central and more populated parts of the country this area is still significant, though smaller. For example, the area of the Caucasus Nature Reserve (Krasnodar Krai, Republic of Adygea, Karachay-Cherkess Republic) is 277076 ha. In national parks we observe a similar situation: Tunkinsky (Republic of Buryatia) – 1183662 hectares; Yugyd Va (Komi Republic) – 1894133 hectares. In the central part of the country the area of national parks is less but also extensive: Paanajärvi (Republic of Karelia) – 104473 hectares; Meschera (Vladimir Region) – 118758 hectares, etc.

Hence it follows that there is a quite clear interrelation between the density of population of the region and the size (area) of SPNAs. At the same time a few years ago it was pointed out that only 28 SPNAs have fully registered boundaries. The total area of SPNAs in which cadastral registration and surveying of boundaries have not been definitely completed comprise more than 26 million ha, including 53 reserves with an area of 17,99 million ha and 24 national parks with an area of 5,02 million ha. The main reason for this situation is the lack of funds to pay for services associated with surveying of bound-

aries (Report On the Situation with the Protection..., 2005).

Thus, in millions of hectares occupied by current Russian SPNAs there are hundreds of settlements, agricultural lands, roads, forests and other natural and man-made objects which belong both to public owners (the Russian Federation, subjects of the Federation and municipalities) and private owners, which constantly face the issues of sales, lease or privatization of their plots.

2.2. Conflicts of economic and environmental interests within the boundaries of SPNAs between citizens and public authorities

These conflicts include both a list of common issues inherent to any extent to all kinds of SPNAs and special issues that become most apparent within certain types of SPNAs. The common issue consists in the fact that SPNAs occupy thousands of hectares, and for centuries inside their boundaries they have been inhabited by people engaged in various types of economic activity (usually agriculture). Creation of SPNAs takes place without public hearings or other forms of consideration of the opinion of the population that often finds out about the creation of SPNAs within certain boundaries at the moment of adoption of this decision. After that citizens begin to have problems related to the limitation of economic activity, the impossibility to acquire ownership of land plots or lease them, change the type of permitted use of land plots, etc. The need to minimize the economic activities often entails social consequences associated with poverty, unemployment and necessity to migrate to other regions of the country. Here one could argue that even in some areas of the reserve, as follows from Article 9 of the Federal Law *On Specially Protected Natural Areas*, not including especially valuable ecological systems for maintenance of which the reserve was created, it is permitted to carry out activities which aim to support the functioning of the reserve and life of the citizens residing in its territory.

However, this possibility, first, is often not sufficient for the citizens to conduct economic activities to the same extent; second, such a rule contradicts the general principles of land law regarding the need to use land plots for the intended purpose; third, the authorization granted to reserves enabling them to deal with ecotourism leads to the fact that the reserve starts to resemble a national park, also implying a number of ancillary commercial activities (along with protection of valuable natural complexes and research) within its boundaries.

Nevertheless, in our view, the toughest conflict of economic, environmental and social interests in SPNAs can be observed in the following cases:

1) for many years the Russian legislation distinguished resorts among the types of SPNAs. A resort is a town or a city (which are sometimes quite large)

where sanatoriums and natural curative resources are located. This town is inhabited by local residents engaged in business activities (cafes and restaurants for tourists, outlets), they also have houses there, in which they live. For many years legislation and law enforcement practice considered these resort towns and cities not as settlements but as SPNAs. Accordingly, restrictions on some types of construction, privatization of land plots, conclusion of agreements for sale of land plots or lease were imposed in these towns and cities. Until recently, the courts took an extremely tough stance: privatization of land plots within the boundaries of resort towns is impossible, provision of land plots for construction by local authorities is forbidden (because resorts were considered as SPNAs of federal significance, though the federal ownership of land plots in most cases was not legally registered). All attempts of citizens to appeal against the refusal of local authorities to provide them with land plots were not supported by the courts.

For example, the court found that the disputed plot was transferred to the company and the factory as joint property under the sales agreement. Immovable property items belonging to the company and the factory on the basis of the right of ownership are located on the land plot. The land is fully included in the second zone of the sanitary protection district of the resort town of Pyatigorsk. The court considered the materials of the case and came to the conclusion about nullity of the sales agreement dated 12.05.2010, as concluded in respect of a land plot from the lands of specially protected natural areas (resort) which is limited in turnover and not subject to privatization (Decision of the Supreme Commercial Court of the Russian Federation of July 14, 2014).

Dozens of similar examples associated with the courts supporting the refusal of the local administration to sell land plots to citizens and legal entities under the procedure of privatization can be observed in the resort cities of Gelendzhik (Decision of the Supreme Commercial Court of the Russian Federation of November 21, 2011), Kislovodsk (Decision of the Supreme Commercial Court of the Russian Federation of June 26, 2013) and many other cities. The main argument usually boiled down to the fact that a resort was not a town or a city but a SPNA in which (in contrast to a town or a city) land plots were limited in turnover, especially if it was a resort of federal significance. In our view, all these restrictions made no rational sense, because, in order to protect the natural curative resources, it would be rather enough to protect them from development or economic activities by means of urban development legislation, and not to create artificial barriers to residents for living, leisure and business. At the end of 2013 resorts were finally excluded from the list of SPNAs, but even after that many of the old problems in a number of re-

sort towns and cities remained. In addition, the judicial practice went in two ways, according to the federal district where one or another resort is located.

The first way includes the resorts of the Black Sea coast. With respect to these resorts the courts considering (already after the exclusion of resorts from the list of SPNA) cases of privatization of land plots by citizens under the items of immovable property belonging to them noted that since the disputed land plot was located in the second zone of the mountain sanitary protection district of the resort, it related to the lands of specially protected natural areas of federal significance created before the entry into force of the law excluding the resorts from the list of SPNAs. The status of SPNA previously acquired by the resort region was not terminated automatically, and, therefore, alienation of the disputed plot for private ownership contradicted it. 2 of Art. 27 of the Land Code and other legal acts (Resolution of the Commercial Court of the North Caucasian District of November 6, 2015).

The main argument in dozens of similar cases consists in the fact that item 3 of Article 10 of the Federal Law of 28.12.2013 No. 406-FZ *On Amendments to the Federal Law On Specially Protected Natural Areas* and individual legislative acts of the Russian Federation (which excluded resorts from the list of SPNA) established that SPNAs and their protective zones created before the entry of this law into force remained within the same boundaries. On this basis the courts conclude that the status of SPNA acquired by the resort region of the city of Sochi many years ago is not terminated. This allows continuing to prevent citizens in the acquisition of the ownership of the claimed land plots. Meanwhile, the specified item 3 of Article 10 refers to all types of SPNAs (reserves, national parks, etc.) mentioned in the law, and *their boundaries* really, despite some changes in their legal status, remain unchanged. That is what is stated in it. 3 of Art. 10 of Law No. 406-FZ.

Resorts are not a type of SPNAs anymore, though a number of limitations of economic activities are still in force there, and *their boundaries* (boundaries of the sanitary protection districts) are still kept the same. Therefore, the courts' interpretation of the law in the sense that, despite the direct exclusion of resorts from SPNAs, they are still a type of SPNAs, is just very surprising.

Probably, such an unusual interpretation of the provisions of the law by the courts was due to the desire to preserve mainly lease relations within the boundaries of resort towns and cities, which allows local budgets to receive bigger payments from for the use of land plots by citizens. And this is also an example of a conflict of economic and environmental interests now in the ex-SPNA.

We observe the second (and more reasonable) way of interpretation of this law in a number of other regions also including resorts. For example, in Kaliningrad Region a company turned to the court after

the refusal of the local administration to sell the land plot occupied by the company under the procedure of privatization. References of the administration to the fact that the plot was located within the boundaries of the resort were rejected by the court due to the exclusion of resorts from the list of SPNAs in 2013. Moreover, the court specially stated that within the boundaries of settlements the legal regime of land plots is determined by means of zoning. The disputed land plot is located not in specially protected areas but in a residential area, which excludes establishment of the regime of restrictions on the turnover (Resolution of the Thirteenth Arbitration Court of Appeal of February 15, 2016). The number of such decisions grows every day, which gives hope for generalization and explanation of this judicial practice by the Supreme Court of the Russian Federation.

2) While the situation with the search for a balance of economic and environmental interests of citizens and authorities is gradually improving, similar conflicts in natural parks are still not resolved. A natural park is a variety of SPNAs of regional significance, very similar to a national park, but (in contrast to it) financed from the budget of the subject of the Russian Federation. The problems of natural parks under study can be observed for many years in terms of the regional SPNA – the Volga-Akhtuba Floodplain Natural Park located in Volgograd Region. It occupies a huge area – 154 000 hectares, and includes not only unique natural complexes but also settlements, the residents of which carry out various types of economic activities. Moreover, beautiful natural landscapes lead to the high demand for construction of cottages within the boundaries of the natural park. These circumstances led to the quite extensive judicial practice which is in a varying degree inherent in all other natural parks located both within the boundaries of Volgograd Region and in other regions.

Let us distinguish the most common categories of land disputes.

1. Attempts of citizens and legal entities to privatize (buy out from state to private ownership) land plots within the boundaries of the natural park as a variety of SPNAs. The standard judicial dispute consists in the fact that a citizen owns one or more immovable property items and he wants to buy out the land plot under them. The local administration refuses, and its wording is supported by courts, which explain this stating that the citizen's land plot is located within the boundaries of the natural park as a variety of SPNAs (usually within the boundaries of a settlement), and lands of SPNAs are limited in turnover and may not be transferred into the private ownership of citizens (Resolution of the Federal Commercial Court of Povolzhsky District of July 23, 2013). At the same time there is an absurd situation: privatization (buy-out) of a land plot implying its transfer into private ownership from state (or municipal) ownership is denied to citizens (legal entities) with reference to the fact that this is a SPNA; former

rights of citizens and legal entities to land are reserved because there is no money in the budget to buy out their buildings and other immovable property items to state ownership. For example, the court stated that within the boundaries of the SPNA of the Moskvoretsky Natural and Historical Park the legal order excluded transfer of the ownership of land plots but did not deprive the applicant of the right to conclude a land lease agreement (Resolution of the Commercial Court of Moskovsky District of July 17, 2015). A simple question follows from this: why the presence of citizens and legal entities – tenants within the boundaries of SPNAs does not violate the regime of special legal protection of SPNAs, while the transfer of the ownership of these plots to citizens will considerably violate it?

2. A big problem for citizens within the boundaries of the natural park is the change of the type of permitted use of their plots, for example, for the purpose of construction of cottage settlements in the natural landscapes. These citizens (and more often non-profit associations established by them) turn to local authorities with applications for provision of land plots for construction of individual houses, but they receive a well-founded refusal, since cottage construction is expressly prohibited by law within the boundaries of SPNAs. Accordingly, in the natural park it is also prohibited to change the type of permitted use of the territory implying this private construction (Resolution of the Federal Commercial Court of Povolzhsky District of January 31, 2012).

3. Citizens, having learned about creation of the SPNA which includes their homes or farmlands, often try to challenge the lawfulness of establishment of the boundaries of the SPNA. Their arguments boil down to the fact that settlements may not be included in the SPNA without their consent, as this entails strong restrictions of their property rights. The defendant's arguments boil down to the fact that the legislation of Russia does not require public authorities creating SPNAs to buy out the property from citizens or to confer with them. Courts always support these arguments and deny citizens' claims (Decision of the Supreme Court of the Russian Federation of September 11, 2013).

2.3. Conflicts within the boundaries of SPNAs with the participation of entrepreneurs

Millions of hectares of lands occupied by SPNAs may include various natural resources (minerals, fauna, forest, waters, etc.) which are of interest to commercial entities. Moreover, valuable natural resources may be located in the territories surrounding SPNAs, but protective zones limiting economic activities in the territories surrounding SPNAs are provided not for all types of SPNAs. Therefore, threats to SPNAs can be grouped into *external* and *internal* categories (Auslander, 2006).

On the one hand, falling of one or another land plot within the boundaries of SPNAs meaning that identification of new mineral deposits is not carried out and mining licenses are not issued could only be welcomed from the point of view of conservation of ecosystems in their natural state.

On the other hand, the regions, already having a limited list of sources of income due to the specificity of the tax legislation, are deprived of the opportunity to fulfill their economic potential, for example, through lease of the land. As a result, for example, in Kamchatka Krai due to the inclusion of gold deposits in the regional SPNA raw materials at the cost of over 100 billion rubles were withdrawn from the economic turnover. The creation of Tunkinsky National Park in the Republic of Buryatia led to the social and economic degradation of the region, growth of unemployment, financial losses, eliminated the possibility of local residents to use natural resources for their needs (Orlov, Golubinskaya, Davydova, 2010). The lack of any statutory mechanism for the search for a balance of environmental, economic and social interests of local residents, entrepreneurs and authorities representing public interests leads, on the one hand, to violation of the regime of special protection of SPNAs, and, on the other hand, to attempts of *manual control* over the situation, with issue of individual permits for certain types of entrepreneurial activities in SPNAs (for example, those associated with subsurface use), which creates ideal conditions for the growth of corruption. The scientific literature describes dozens of such examples. For instance, in Yugyd Va National Park, the activities relating to exploration and extraction of gold were carried out even before its creation. After the creation of the park this caused conflicts between officials, mining companies and the *greens*. On January 14, 2010 the order of the Ministry of Natural Resources and Environment of Russia approved a new Regulation on this park, as a result of which its territory reduced by almost 2000 ha, and not on the border with unprotected lands but in the depth of the national park. Just a month later, Gold Minerals Company obtained a license for exploration and extraction of gold. On August 21, 2013 the Supreme Court of Russia ruled the gold extraction in Yugyd Va National Park illegal (Vorontsova, 2013). Other examples of economic activities associated with subsurface use within the boundaries of SPNAs are, for instance, development of Talnikovskoe deposit (located within the boundaries of the Kondinsky Lakes Natural Park), construction of the Altai gas pipeline (within the boundaries of the Ukok Quiet Zone and the Uch Enmek Natural Parks) as well as economic activities within the boundaries of wildlife sanctuaries and wetlands. In addition, it is noted that in accordance with the legislation of other countries (Australia) mining operations within the boundaries of SPNAs (national parks, reserves, World Heritage sites) are

also possible, but it focuses on various activities aimed at environmental protection and safety which subsurface users undertake to carry out to avoid (minimize) the negative impact of their activities on the environment (Skibin, 2015).

Similar conflicts of economic and environmental interests are often observed in other countries of the world as well. However, if before, for example, in the USA the threats to SPNAs were quite standard in nature (construction of mine facilities or electric power stations in the territory adjacent to the national park, or other development of the related territories), in recent years the threats to national parks moved to a new level due to the emergence of new technologies of shale oil production (Antolini, 2009). Researchers note that in 2016 in the USA there were 13 national parks where there was active power generation by means of shale oil production carried out within the boundaries of the parks.

In addition, it is supposed that 30 other national parks will probably have the same oil and gas development. While some regulations are designed to protect the environmental value of the park, other instructions on natural resources contain the opposite requirements. In essence, the right to regulate drilling activities in national parks stems from the role of the federal government as the surface landowner. The fact is that in most cases the mineral rights were severed from the property when the land was conveyed to the federal government to create the park. Some SPNAs (national parks) were created in areas long known for oil and gas resources. Other SPNA territories do not have a history of oil and gas usage but are under pressure today due to investments in shale oil and gas production. At the same time, today in the USA there are over 50 old wells in national parks which are out of operation but not closed. Some old wells have not been used for production for over ten years. Many out-of-operation wells pose threat to the safety of park visitors and staff.

Old, decaying equipment often sits idle without any appropriate monitoring or oversight and nobody can guarantee that the wells remain properly capped and no threat to the environmental safety comes from it. Authorities are able only to suspend drilling operations for noncompliance with the requirements, but they are not able to have any impact on wells that are not being used and are not generating revenue. Another problem consists in the fact that shale oil drilling in the parks comes into conflict with the interests of visitors to the park willing to relax. The current policy requires the park administrators to balance the satisfaction of the needs of the owners of mineral rights against the interests of visitors to the park and future generations. As such, the current practice is to encourage locating well pads outside national park borders because such locating eliminates threats to the park and other direct and indirect impacts (Geltman, 2016).

Therefore, the presence of prohibitions itself does not guarantee anything. It appears that the prohibitive ideology of statutory regulation conventional in respect of environmental protection worldwide initially could be explained by the tendency of the state to create favorable conditions for the preservation of unique natural ecosystems in protected areas, but in terms of constant expansion of the SPNA boundaries, which start including settlements and industrial facilities (or sites with high production potential), we get the opposite effect, which boils down only to *freezing* of traditional types of activities and limits the activity of the native population, prevents creation of new jobs, has a negative impact on the revenues of regional and local budgets. The established prohibitions, including those on exploration and extraction of minerals within the boundaries of SPNAs, significantly impede the development of these territories and are often a factor lowering the standard of living of their population, whose interests are not considered during their formation. A striking example of this situation is the Baikal natural territory, which prohibitive regime in respect of certain types of activities (including those carried out in connection with the location of the Baikal Pulp and Paper Mill there) resulted in the excessive limitations of economic activities and the drop in the standard of living of the population.

The tendency to continuous growth of the number of SPNAs in the country and expansion of the boundaries of the already created areas is also a dangerous trend. Planning should take into account all the possible consequences of a fundamental change of the legal regime, especially given the fact that many Russian SPNAs occupy vast spaces often comparable to the areas of individual states and sometimes exceeding their size. In the territory of SPNAs there are very often mineral deposits which have not been taken into account in the course of its establishment as a result of ignoring the expert opinions of geologists. Given the significant mineral resources within the boundaries of SPNAs, we consider it reasonable to expand possibilities for rational subsurface use in them, use of new criteria for identifying individual zones in SPNAs. In addition, a part of the profit from mining operations can be spent on the development of SPNAs (Orlov, Golubinskaya, Davydova, 2010). On the basis of the regime of special protection of SPNAs taking into consideration the practice of economic activities related to subsurface use within the boundaries of SPNAs, it is necessary to find the line between protection of SPNAs and economic activities permissible within its boundaries. We believe that within the boundaries of state natural reserves, natural monuments, as well as dendrological parks and gardens it is not acceptable to carry out any type of subsurface use established by the legislation, except formation of specially protected geological sites. Within the boundaries of national parks the le-

gal regime of subsurface use should include the following prohibitions: geological survey conducted by methods that admit a substantial violation of the integrity of the subsurface and other natural objects, construction and operation of underground facilities not related to mining operations, gathering of mineralogical, paleontological and other geological collection materials. Exploration and extraction of minerals within the boundaries of national parks must be prohibited, except the cases when subsurface use is carried out beyond the border of the national park by means of horizontal drilling under the specially protected zones of the subsurface (Skibin, 2015). It is quite possible to discuss also other options of search for a balance of interests in SPNAs.

3. Possible ways out of the situation

1. Transfer to sustainable development implies the search for a compromise between the interests of the environment, economy and social field. At the moment in Russia there is no search for a compromise in respect of the field of creation of SPNAs, and the absolute priority is given to the interests of the environment. This entails an entire complex of economic and social problems. For example, the business bears losses, vast territories where people live become depressed and the residents leave them. The creation of SPNAs does not involve conferring with residents of rural settlements that are included in SPNAs. Public hearings are not held, positive and negative effects of the inclusion of the territories in the SPNAs are not explained to the citizens. At the same time, it is notable that in case of adoption of a general layout or other documents, these hearings are held, and the citizens are considered to be quite competent to participate in them.

In this regard, we should mention that the original version of the Urban Development Code of Russia of 29.12.2004 provided for publication of information about the supposed SPNA and their boundaries in the special territorial planning schemes. Therefore, citizens were informed of the supposed creation of SPNAs in advance and could express their opinion. Later this rule was excluded from the Code, which we consider as an erroneous decision that should be corrected.

2. Our proposal for the need to take into account the economic and social interests of the citizens does not mean ignoring of the interests of the environment, including the protection of valuable natural complexes (SPNA). We refer to the need to search for balance between them, and regulations on anthropogenic load on the environment which are designed yet only for Lake Baikal could serve as its criterion. Until a framework (common) mechanism for consideration of economic, environmental and social interests in SPNAs is created, these issues will be addressed pointwise, as it was done, for example, by Decree of the Government of the Russian Federation

of 23.04.2012 No. 603-r in respect of four biosphere polygons of state reserves, where a number of types of economic activities were permitted to a different extent. We also propose development of a new variety of SPNAs resembling a national park in its inner structure but with another set of functional zones. It appears that partial legalization of subsurface use and other economic activities within the boundaries of this new variety of SPNAs will reduce the risks of corruption, establish clear and transparent legal procedures, as well as the fee for these types of activities, which can be later spent on reconstruction and development of SPNAs. Otherwise, economic activities in SPNAs will still continue, but this will affect the revenues of the budget and residents of the settlements in SPNAs.

4. In order to protect interests of citizens and business, it is necessary to move from today's strategy of *gigantomania*, when SPNAs with an area of tens of thousands of hectares are created, to the cluster approach, and instead of one huge SPNA to create a few small zones which are under the control of a single management and with the same protection regime. This strategy has already been implemented in Orenburg State Reserve, consisting of five isolated zones located in five different municipal districts of the region. Implementation of this approach makes it possible not to include in SPNAs settlements, roads, rivers, and territories surrounding villages where residents are engaged in cultivation of agricultural products and cattle grazing. In fact, if creation of SPNAs involves establishment of the regime of increased protection for especially valuable and unique natural complexes, what is the point to include in SPNAs villages and pastures, where it is clear that no valuable natural complexes can be located in principle? Creating giant SPNAs, we just try to deceive ourselves. It is necessary to withdraw from this practice in favor of consideration of economic and social interests of the population.

Creation of clusters will allow avoiding the problem associated with the need to transfer land from one type of ownership to another one (for example, federal zones of forestry funds included in the boundaries of a regional SPNA to the ownership of a subject of the Federation) as well as charges of misuse of the territories of SPNAs (any road in their territories, settlement, agricultural activities carried out by the reserve staff, etc.). Creation of small SPNAs will also facilitate land management procedures, because at the moment the majority of SPNAs has no clearly fixed boundaries and their establishment on the ground is too expensive.

5. We should specifically mention the exclusion of resorts from the list of SPNAs, which we fully support. A resort is a town or a city where people live. Undoubtedly, curative natural resources must be properly protected (the law establishes sanitary protection districts for this purpose) from construction or the impact of economic activities. However, it is

not reasonable to impose restrictions on land turnover or development in the rest part of a resort town or city. Similarly, it is necessary to withdraw from the restrictions on turnover or consumer (non-industrial) use of land plots in settlements included in natural parks or other large SPNAs. If plots occupied by citizens really have a special value – they should be bought out according to the established procedure to state ownership. If this does not happen – there is no sense to create artificial problems for people. Implementation of this buy-out and relocation strategy can involve use of the experience gained in the course of construction of facilities before the Olympics in Sochi in 2014. Then, the specially adopted law provided for the possibility for citizens – owners of plots and houses withdrawn for location of the Olympic facilities, to obtain the ownership of other land plots. In a similar way, the procedure for granting land plots to citizens in lieu of the withdrawn ones can be applied in case of creation of other types of SPNAs, when citizens acquire plots near the boundaries of SPNAs free of charge.

6. From the point of view of the concept of sustainable development, the strategy for development of ecotourism should be supported in all types of SPNAs including reserves (though the concept of sustainable ecotourism is still to be developed) (Butler, 1999). State funding of creation of the ecotourism infrastructure will lead to the growth of the number of visitors and the increase in funding of environmental programs of SPNAs. For example, in the USA the number of visitors to national parks has almost doubled over the last 30 years, rising from approximately 133 million visitors to almost 270 million, which created a number of problems with tourist services (Fretwell, Podolsky, 2003).

Development of tourism in SPNAs often raises the question of the balance of the interests of tourists and local residents. Putting the needs of tourists before the interests of local residents can lead to unlawful interference with the life of the latter and cause damage to the environment in SPNAs. On the contrary, if no conditions are created for tourists, they will not come to the country (which is especially painful for developing countries), and this country will lose the foreign currency, which is quite necessary for it. A more creative approach should develop ways that allow finding a balance of the interests of both groups, while ensuring protection of the environment (Roberts, 2004). If wildlife can be managed so that local residents receive significant material benefits from this, they are most likely to cooperate with travel agencies and implement environmental protection measures.

7. We should point out that private SPNAs could play a great role in ensuring sustainable development. Now such a possibility is not available in Russia, though there is very interesting international experience. For example, in the USA, private non-governmental organizations are involved in territorial

protection of nature along with state agencies. NATURE CONSERVANCY (NC) manages the largest system of private natural reserves in the world, the size of which ranges from a few to many thousands of hectares. Only in the USA it owns more than 1 600 private reserves. Some republics of the former USSR also have positive experience. For example, according to Article 4 of the Law of the Republic of Uzbekistan *On Specially Protected Natural Areas* of 07.05.1993, especially protected natural areas are the property of the state and are protected by it. Botanical gardens, dendrological and zoological parks can be based on other forms of ownership as well. This experience can be used in Russia and other republics of the former USSR through creation of private resorts, dendrological parks and botanical gardens, which will attract new investments and promote creation of unique collections of plants, tourism business, including due to economic incentives of the state.

Conclusion

Our proposal to take a new look at the development of the system of SPNAs from the perspective of sustainable development and to create the system for search of a balance of economic, environmental and social interests in SPNAs is not aimed at reduction of the number or the area of SPNAs. We refer to the change in their management system, including creation, modification of the boundaries or termination of operation. It is necessary to embed all types of SPNAs in the system of social and economic relations of the regions and the country in general, withdraw from the current one-sided bias solely in favor of environmental factors. This will help to find the balance of the interests of the local population, business and protection of nature, which is so necessary for the country.

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