How to determine the efficiency of the land legislation: a few notes and considerations from Russia

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Abstract
In many countries, the authority of the legislative bodies falls in the estimation of the public, which is confirmed by surveys of sociologists. The reason for this is the inefficient activity of legislative bodies, which adopt laws being negatively evaluated by the electorate. The authors of the article propose a set of criteria for evaluating the efficiency of the land legislation, for the analysis they use the Land Code of the Russian and the Law governing the expropriation of lands in Sochi for the construction of Olympic facilities. It is proved that the law cannot be considered effective if it restricts the rights and legitimate interests of citizens in violation of the Constitution, but the implementation of its rules nevertheless led to the achievement of the objectives of a legislator. In order a law could be considered effective, it is necessary to perform an additional assessment on the basis of economic, axiological, psychological and other criteria. Environmental criteria related to the negative impact of the rules of the land legislation on the environment take a special place in the system of such criteria. The authors suggest their own model to strengthen the public participation in the legislative work, allowing to enhance the legislation efficiency.

Key words
Efficiency; federalism, environment protection; land legislation; evaluation category; natural resource.
Introduction

The category “efficiency” was widely used in the description of the legal processes in the Soviet Union, and it is still applied in the legislation of Russia and CIS countries, regulating a variety of issues. The matters regarding the use of natural resources are not an exception.

The evaluation of the legal regulation efficiency in the sphere of natural resources use and protection can be in three areas: efficiency of the legislation, activities of the executive branch, judicial system.

At first glance, the evaluation of the executive authorities’ efficiency is the easiest task, as a series of decrees of the President of the Russian Federation and resolutions of the Russian Government are devoted to this issue.

As an example, let’s consider the Presidential Decree dated September 10, 2012 No.1276 “On the evaluation of the performance efficiency of heads of federal executive authorities and senior officials (heads of the highest executive bodies of the government) of the Russian Federation on the ease of doing business”.

It identifies the efficiency criteria such as increase in the availability of bank loans or optimization of the state registration of rights to immovable property. Although these criteria are not clear and specific, the very fact of their presence allows the President of Russia and other heads of state bodies say that the work aimed to improve the efficiency of the state apparatus is carried out. But we cannot agree with their statements due to the fact that according to the Corruption Perceptions Index, which is calculated by the international organization “Transparency International”, Russia is annually among the most corrupt countries in the world (Russia in Corruption Perceptions Index - 2012).

In the ranking of countries by business conditions “Doing business”, orienting businessmen of the world to the possibilities of investments in the economy of foreign countries, in 2013 the Russian Federation was ranked 92nd in the list of 189 countries (Ease of doing business rank, 2013).

There it seems to be clear criteria for evaluating the efficiency of the judicial system. The main criterion for this is that the judge's decisions should not be discharged by higher courts. Therefore, while considering the issues on the promotion or imposition of penalties on judges at Judicial Qualifications Boards the percentage of discharged decisions by appeal and cassation instances is taken into account.

However, the official statistics prevents the recognition of such an approach as effective, according these statistical data tens of thousands of cases are considered for several years in Russian courts, including cases involving direct violations of statutory deadlines. In legal literature there are cases when the consideration of labor disputes in Russia lasted for about 8 years, and cases in the area of consumer protection were repeatedly delayed and considered for more than 10 years in total, binding judicial decisions were not executed for four, five, six or more years. In addition the decisions of the Constitutional Court of Russia, as well as the European Court of Human Rights are often not enforced (Mamay, 2011).

However, determination of the criteria regarding the efficiency of legislative authorities’ performance and accordingly laws adopted by them is more complicated. If we evaluate the efficiency based on the number of adopted laws, then the quantitative indicator will displace the qualitative indicator.
It is possible to suggest another option: to evaluate the law quality based on the number of amendments made. In this case a certain number of alterations and amendments of a law made annually will show that deputies worked inefficiently while adopting this law. On the other hand, alterations and amendments of the law are often caused by objective reasons relating to the dynamic development of the society.

Finally, it could be possible to offer the results of the examination of draft laws that enforced by prosecutor’s institutions and the Ministry of Justice (if they are laws of the entities of the Russian Federation, then by territorial subdivisions of the Ministry of Justice) as a criterion of the efficiency. However, during the examinations these authorities often pursue their institutional interests, and do not always have a staff of qualified experts. There is the only formal criterion left, which is associated with the counting of laws declared (fully or partially) invalid by the Constitutional Court of Russia. However, it should be noted that a number of laws that include ineffective norms violating human rights have not yet been invalidated by the Constitutional Court of Russia just for the simple reason that its duties do not involve monitoring of the of legislation quality.

This brief review generates the need for theoretical researches related to the search of criteria of the legislation efficiency with the possibility of practical application of its results for the recall of ineffective legislators or completes dissolution of the representative government bodies. The need for such legal researches is also stipulated by the fact that according to the results of opinion polls in Russia and in some European countries many citizens negatively evaluate the work of their legislative authorities.

Thus, the opinion poll conducted in September 2010 in Bulgaria showed that Bulgarians undervalue their legislation. 50% of interviewed citizens stated that the main drawback of the legislation is its frequent changes, while 41.4% of citizens directly blamed the National Assembly. Moreover, this opinion poll covered only the legislation enacted from January to June 2010. During these six months, the National Assembly voted for 71 draft laws, 6 new laws and 43 amendments to existing 39 laws. The authors of this opinion poll note that in the opinion of citizens the laws in Bulgaria are altered extensively, that leads to the instability and unpredictability of the legislation. It also reduces the credibility to the National Assembly, discredits the legislation quality (Raicheva, 2013).

Opinion polls in Russia with regard to the Russian State Duma (lower house of parliament) show similar results. For example, in 2012 38% of Russia's population appreciated the work of the State Duma as "poor" and 17% believed that the adopted laws are "anti-national". While 29% of respondents considered that it would be better if the State Duma did not exist, and its functions were implemented by the Government. In this regard, it is not surprising that 73% of Russians are not interested in the work of the State Duma of the Russian Federation (State Duma, 2014).

In our opinion, in order to improve the efficiency of a legislative body and to regain the public trust, it is necessary to clearly understand what the «efficiency» of the legislation and of the Parliament that enacts it is, and what the criteria of this efficiency are.

Different countries and nations have different criteria for understanding the legislation and enforcement efficiency. Do not forget that in one country in different historical epochs the criteria of the legislation efficiency may vary. For example, in the Soviet Union it was considered fair and effective to apply the criminal sanctions for transactions with land plots
Representatives of legal science and civil society in European countries and the USA are increasingly looking over the question of the legislation efficiency. In their respective studies, they paid a lot of attention to the general issues of the law efficiency (Cooter, 1987), as well as energy efficiency (Tweed, 2012), economic efficiency in law and economics (Zerbe, 2001), efficiency of the medical law (Gregg, 1998), legal liability (de Meza, 1986), etc.

Under the Soviet legal science the legislation efficiency was closely linked to economic factors, which was due to the dominance of Marxist-Leninist methodology in the Soviet social science. Several authors believed that the category of "law efficiency" means the ratio between the results actually achieved and the purpose for which the relevant legal provisions were adopted (Samoshchenko and Nikitinsky, 1969). In the Soviet legal literature some discussions whether it is necessary to talk only about the positive or even about negative goals and results took place. It worth paying attention to present-day attempts to use an integrated approach to the study of the “efficiency” category, proposed by V.S. Nersesyants. He believed that the legislation efficiency is determined by a sophisticated complex of socio-economic, political, legal, moral and other similar factors. He attributed the quality of the legislation, the efficiency of law enforcement activities, the level of legal awareness of a law enforcer and population to the basic legal components of the legislation efficiency (Nersesyants, 1999).

Highly appreciating the Russian and foreign researches in the field of concepts and criteria of the legislation efficiency, we note that most of them are devoted to general theoretical issues such as the impact of social, economic, psychological and other factors on the content of the legislation or study of the legislation efficiency as itself without specifying the problems of the efficiency of individual areas, including civil, constitutional, criminal, etc.

In this regard, the purpose of our study will be examination of the legislation efficiency on the example of the land law, which has the worldwide considerable specificity due to the fact that the land is not only the real estate and economic resource, but also a part of nature. Accordingly, economic, political, moral, axiological, psychological, and a number of other aspects of the legislation efficiency will be used only to the extent required for reasoning of our findings. As a first step let us analyze the rules of the land legislation of Russia.

1. Some problems of using the category of “efficiency” in the Russian land legislation

The Russian land legislation uses the efficiency criterion in two main cases. First, to evaluate the efficiency of the use of federally-owned lands (if the Commission specifically established for this purpose considers that the use of land by federal enterprises and institutions is ineffective, these lands are transferred to the public authorities of entities of the Russian Federation and local authorities for the further allocation with the aim of housing
construction or other purposes, but there are no clear and transparent criteria how to determine the "efficiency") (Government Decree dated August 22, 2008).

Second, Article 34 of the Land Code of the Russian Federation states that public authorities and local governments are obliged to ensure the management and disposal of lands, which are in their possession and (or) under the supervision on the principles of efficiency, equity, publicity, openness and transparency in the provision of such lands. This article also covers the way to achieve this goal. Local governments are obliged:

- To adopt an act establishing procedures and criteria for granting such lands, including the order for consideration of applications and decision making. All applications submitted prior to a certain date which is specified in these procedures are subject to consideration. It is prohibited to set priorities and special conditions for certain categories of citizens, other than those specified in the law;
- To authorize a special body for the management and disposal of lands and other real estate;
- To ensure the development of the information regarding lands provided to citizens and legal entities on certain terms and conditions (for a fee or for free), and advance publication of such information.

These general rules are specified in the laws of the Russian Federation and acts of the local government. For example, the City Council of the city of Rostov-on-Don in accordance with the Land Code of Russia adopted Guideline No. 143 dated 25.12.02 “On the basis for land relations regulation in the city of Rostov-on-Don”. According to paragraph 12 of the Guideline, lands supposed for retail trade facilities are provided on a tender (auction) basis. The Federal Arbitration Court of the North Caucasus District has recognized that this rule corresponds to the principles of fairness, openness and transparency regarding the provision of lands for purposes not related to the construction, which are specified in Article 34 of the Land Code of Russia (Desicion of the Federal Arbitration Court of the North Caucasus region dated December 16, 2004).

Similarly, decision of the Civil Chamber of the Supreme Court of Russia dated July 1, 2008 No. 18-40-BIP08-40 stated that the lower court properly invalidated a land sales contract and applied consequences of invalidity of void transactions, as the local authority sold the land not on a tender basis, having violated the principles of efficiency, equity, publicity, openness and transparency of land allocation regulated by the land legislation as well as the interests of unspecified persons. (Determination of the Investigative Committee for Civil Cases). Thus, the evaluation category of “efficiency” stipulated by the federal law (Article 34 of the Land Code of the Russian Federation) is specified in regulatory enactments of regional and local authorities, by pointing to the need of a tender for the allocation of lands for purposes not related to the construction, and the courts decisions confirm the correct understanding of the requirements of Article 34 of the Land Code of Russia.

According to ideas of the representatives of Russian legislature and judicial system it follows that the efficiency of the land laws is guaranteed by the adoption of certain regulations of the federal, regional and local level, containing procedures for implementation of regulations of the federal Land Code. This approach to understanding of the efficiency is not so much stipulated by the familiarity of Russian statesmen with the normative concept of Hans Kelzen (Kelzen, 1928) whose works are hardly translated into Russian, but established
practice to reduce all enforcement problems to the legislation quality without considering not legal factors affecting it.

It is worth noting that in the Russian Federation neither legislators no courts determine and delimit the content of the principles of equity, efficiency, publicity, etc., referred to in Article 34 of the Land Code. Meanwhile, it seems that such a distinction should be made, as measures stipulated by some authority may be fair, but not effective, or effective but not open or transparent. Having stated in general terms the regulatory and judicial approaches to understanding the category of “land legislation efficiency”, we will try to formulate our own position on this issue and make some constructive suggestions.

2. Search for a model to determine the legislation efficiency (in terms of the Russian land legislation)

The Russian legal science comprises different opinions what the law should be regarded as effective. We will try to summarize and organize them in relation to the land legislation.

2.1. Achieving the goal as a criterion of the legislation efficiency

The term "effective" comes from the Latin word “effectus” (action) and means effective, providing the desired effect, which gives a positive result, leading to some desired results (Russian Thesaurus, 1975). On this basis, it is not surprising that the majority of Soviet and Russian authors attribute the legislation efficiency to the achievement of its goals. For example, N.L. Liutov writes that the efficiency of international labor law “is defined as an indicator of the extent to which the goals and objectives are achieved” (Liutov, 2013). Similarly, I.A. Ikonitskaya notes that the efficiency of legal norms is the ratio of quantitative characteristics, which directly or indirectly indicate the achievement (or not) of a goal of legal norms (Ikonitskaya, 1979).

This approach has the right to exist, and can be determined as “a formal logical approach”. In fact, what is the point in making a federal law? The answer is obvious - for regulating important social relations. And if owing to the law operation (e.g., prohibiting anything) the content of these relations has changed, so the law reaches its objectives, and therefore it is effective.

Not objecting to the fact that the achievement of the law objective is an express condition to consider it effective, but we would like to note that this approach is too narrow, as it excludes a number of important aspects of understanding of the legislation efficiency. For example, if we analyze Chapter 1 of the Constitution of Russia of 1993, we will find that many of its provisions (e.g., that the Russian Federation is a democratic, legal and social state) have not been achieved yet. Moreover, neither the President of Russia, nor the Federal Assembly has a plan for achieving the goals in the near or distant future. Hence, it follows that under the formal approach some provisions of the Constitution are not effective.

At the level of the federal laws we also find a significant number of rules that on the contrary are well implemented, but their efficiency is doubtful. For example, Article 4 of the Federal law dated December 28, 2012 No. 272 -FZ “On measures against persons involved in violations of fundamental human rights and freedoms, rights and freedoms of citizens of the Russian Federation” (better known as the “Law of Dima Yakovlev”) prohibits the adoption of Russian orphans by U.S. citizens. The purpose of this law is fully achieved - Russian orphans
cannot find a family and go to the USA, and continue to live in orphanages. But can we assume such a law effective? On this account we have big doubts.

No less brightly this trend is seen through the example of the Federal Law dated December 1, 2007 No. 310-FZ “On the organization and holding XXII Olympic Winter Games and XI Paralympic Winter Games of 2014 in Sochi, Development of Sochi as a mountain resort and Amendments of certain legislative acts of the Russian Federation” (hereinafter - the Law on the Olympic Games). This law includes rules and procedures relating to the forced termination of private property rights and other rights to land plots. In general terms, they consist in the fact that all the terms within the procedure of land expropriation are reduced; right holders are notified only by means of publications in official print media, requirements for the availability of approved land planning documents, documents of the cadastral registration, registration of land rights which are obligatory for a standard procedure are not applied. However features to supervise the land expropriation are largely reduced, the weaker party’s interests (land owners) are not protected to an adequate degree. Finally, the Law on the Olympic Games stipulates unreasonable restrictions on the amount of the repurchase price and right owners’ losses indemnified at the land expropriation (Sonina, 2012), and the amount of the repurchase price was determined by appraisal companies that actually were in the explicit dependence on the state (The market price for lands…)

Furthermore, in accordance with paragraph 33 of Article 15 of the Law on the Olympic Games, any court decisions on the lands expropriation and / or expropriation of other real property located on them for the purpose of Olympic facilities locating or developing areas adjacent to Olympic venues are subject to immediate execution. This provision contradicts to the general rule stipulated by Art. 209, 210, 321 of the Civil Procedure Code of the Russian Federation, according to which the court’s decision is enforced after its entry into force, ie after one month from the date of its adoption in final form, if it is not challenged on appeal. In other words, the rule of the Law on the Olympic Games contradicts the applicable law, as a citizen is deprived of the right to judicial protection of the rights and freedoms provided for in Article 46 of the Russian Constitution.

Thus, the purpose of the Law on the Olympic Games was fully achieved as the lands of private owners were confiscated, and the stadiums, ice palaces, hotels, etc. were built there. However, the citizens' opinions as to the advisability of holding the Winter Olympics in the subtropical climate of the city Sochi and the amount of adequate indemnification was ignored. A certain issue that goes beyond the topic of this article is the reasonability of the fact that the expropriation of lands belonging to private owners for the construction of stadiums, hotels and other facilities is attributed to “state requirements”, moreover these lands were transferred to private ownership of various entities engaged in the construction or financing of such facilities. Is it possible to consider such legislation effective? It seems that the mere achievement is not enough, and to evaluate the efficiency of the land legislation additional criteria are required.

1 The Russian law defines “rights holder” as a generic category that includes all subjects in who owns lands on the right of private property, limited real rights, as well as lease rights hold.
2.2. Axiological (value) criterion of law efficiency

“Efficiency is the way the social value of law is implemented, it is a degree of value achievement,” states A.V. Malko (Malko, 1990). It means that, besides achieving the law goals, it is possible to estimate it regarding the value. The authors have conducted numerous surveys with participation of law students in the cities of Moscow and Volgograd, in which the students were asked to express their opinion on the criteria of legislation efficiency. As a result, about half of the respondents (different years and different courses) note, that only just and fair legislation is efficient. The close relationship between “law” and “justice” in the Russian mentality has been studied in legal science many times (Bulgakov, 2002), and is not of a special interest for us.

Here it is important that notions of justice greatly vary in different categories of the population. For example, citizens living in the regions far from the city of Sochi have a neutral attitude to the fact of expropriation of land from the population of the city of Sochi for construction of the Olympic facilities. Representatives of the construction companies evaluate this legislation positively. Many residents of the city of Sochi, from which the property was expropriated (even in case of fair compensation at the market value) evaluate the Olympic legislation negatively as because of relocation they lost a source of income including accommodation of the tourists at home (private) hotels.

It implies the existence of a such legislation efficiency criterion which can be marked as “quality of life”, and it is not just about the material side of life. According to representatives of social science, quality of life is a complex concept which reflects a degree of human potential development, terms and conditions, forms and a subjective evaluation of its fulfillment in the course of life activity of people, social groups and society as a whole. R.R. Yapparova suggests the following criteria for evaluation of the quality of life of social groups: a) degree of human potential development; b) conditions for its fulfillment; c) forms of its fulfillment, d) subjective evaluation of potential fulfillment by an individual. On the basis of these criteria, she highlights the main components of quality of life: human potential, living standard and lifestyle, social well-being (Yapparova, 2007).

Thus, the quality of life of a country’s population or a part of it can be determined by life potential of society, its social groups, individuals and compliance of features of processes, tools, conditions and results of their life activity with the socially positive needs, values and objectives. Quality of life manifests itself in the subjective satisfaction of people in themselves and their life, as well as in objective features typical for human life as a biological, psychological (spiritual) and social phenomenon (Gusevskaya, 2011).

With respect to use and protection of land, quality of life and correspondingly the land legislation efficiency may be determined by the following indicators: material possibility of land purchase; availability of information about land plots for sale (for lease) and information on natural and economic features of these land plots, rights to them, as well as restrictions (encumbrances) of rights to land plots; a clear and efficient mechanism of formation and registration of land plots and rights thereto (transactions with them); warranty of rights to land, their stability and effective protection mechanisms; convenient location of the residential, social, commercial, transport and recreational infrastructure; real opportunity to bring to justice and to prohibit the activities of those persons who cause harm to the
environment, in particular persons using their land not in accordance with its intended purpose, and thus violating the rights and lawful interests of other persons; economically sound interest rate of the land tax and rent.

L.I. Spiridonov wrote that the true effect of the legal norm is the result of interaction of its requirements addressed to the population with the conditions of its life, as well as its social characteristics. “Therefore we can draw a conclusion important for the theory of management of social processes in the area of law and order: improving the efficiency of a legal act being adopted is possible not only by enhancement hereof, but also by changes in the social environment of its implementation. Moreover, changes in the social environment, i.e. social being, ultimately cannot prove less important than changes in the legal system itself” (Spiridonov, 2001).

We should fully agree with the latter point of view. Indeed, an important criterion of efficiency of particular legal norms is not only competent work of legislators, but also the level of legal culture of the population, the very state (quality) of the social environment. For example, despite the fact that the civil, land and urban legislative provisions defining the procedure of construction of real estate are formulated quite well, the amount of unauthorized construction in Russia only increases from year to year.

In terms of development of the land legislation acts exclusion of psychological and value aspects of perception thereof by the population, their assessment by land owners as unfair, leads to a conflict of the social value and the economic criteria of the land legislation efficiency. From the point of view of economy in the abovementioned example with the expropriation of land from private owners for construction of the Olympic facilities the land legislation is effective because the property was expropriated from citizens at a relatively low price. However, the citizens’ rejection of the legislation as unfair led to a series of spontaneous unauthorized protests of the citizens, their unwillingness to adhere to the law, as well to anti-state social activism, which still will bring negative consequences in the future. On the contrary, an open dialogue of government officials with citizens, compensation of not only the market value, but also for loss of profit from attractive tourist sites in the seaside area, creating conditions for business in a new place, as well as other similar measures would smooth this conflict.

2.3 Consideration of environmental impact as a criterion of the land legislation efficiency

Evaluation of every branch of legislation includes a specific feature of “side effects” associated with a possible not only positive but also negative impact on the state of public relations. In terms of criminal legislation such side effects imply a possibility of holding not guilty persons criminally liable and in case of the land legislation harm for the environment is one of the most important negative effects.

Let us suppose (just hypothetically) that in the above considered case of construction of the Olympic facilities the citizens were asked about their opinion and paid a reasonable compensation for their land plots and property located on them. In other words, all participants of land relations in the city of Sochi consider legislation efficient as it does not infringe their rights and freedoms. Moreover, it will be efficient as its objective was reached – the Olympic facilities were built. However, in the course of this construction harm was
done to the natural sites and complexes, including those under the special protection, which infringed the environmental rights of the citizens.

In this regard the following question appears: which harm done to the nature during the Olympic construction is acceptable, in order to consider the Olympic legislation efficient? According to the research of independent environmental experts, organization of Sochi Winter Olympic Games 2014 implied unprecedented violations of the environmental legislation and led to large-scale negative effects for citizens and nature of the Western Caucasus. Let us mention just a few facts:

1) for organization of the Olympic Games some amendments were made in the Russian environmental legislation; they raised a number of environmental bans and limitations, which made the harm to the nature legitimate. The experts of Yabloko Party cite the amendments to Federal Law “On Specially Protected Natural Territories” as examples; they made it possible not only to build sports facilities and engineering, transport and social infrastructure in the recreational areas of national parks, but also to construct tourist industry facilities and facilities “necessary for operation of settlements located within their boundaries” regardless of zoning of the territory of the national parks. In practice it turned out to be construction of numerous palaces in the territory of Sochi National Park as well as attack of business on other country's national parks under the guise of hotels for the Olympics;

2) as a result of the Olympic construction more than two thousand hectares of Sochi National Park and almost the same area of the Imereti Lowland lost their natural value. Moreover, in the most part of these areas restoration of natural systems is impossible. The organization of the Olympics 2014 extremely negatively affected the Western Caucasus UNESCO World Heritage Site;

3) as a result of pollution caused by the Olympic construction in the river Mzimta almost all living things died. Pollution of the river Mzimta is a real threat for the groundwater deposits of Nizhnee-Mzimtinskoe, the main source of water for the city of Sochi. Placing of garbage in Akhshtyrsky Quarry is dangerous for this groundwater;

4) despite the official principle of “zero waste”, significant amounts of untreated household waste are transferred from Sochi to the waste landfill of Belorechensk, as well as to the officially closed landfill in Loo;

5) for the Olympic construction more than one million cubic meters of gravel material of the riverbed of Mzimta was taken, that is the solid flow of the river for 20 - 30 years. This, like construction of the cargo port and engineering protection of Imereti Lowland, led to disappearance of beaches between the mouths of the Rivers Mzimta and Psou and degradation of the beaches to the northwest from the mouth of the Mzimta. The Olympic construction, water pollution and loss of beaches in the territory of the Greater Sochi have already led to a sharp decrease in the number of tourists;

6) the widespread destruction of natural landscapes in the city of Sochi has led to a sharp activation of landslides and mudflows. Landslides and mudflow processes are observed throughout the spoil banks of the recently constructed combined road and railway leading to the Olympic facilities. Large-scale anthropogenic landslides caused by the disposal of waste from the Olympic construction are observed in Sochi villages of Baranovka, Russkaya Mamayka, Blinovo and Veseloe; dozens of housing estates have been damaged. Such exogenous geological manifestations will intensify after the Olympics, as no funding of
measures for their prevention is foreseen (Organization of Sochi Winter Olympic Games 2014…).

To be fair, we should note that inefficient regulation of land relations in the history of environmental law has caused a negative side effect many times. Thus, during the Great Migration to the West in the late XIX century the farmers of the USA ploughed up vast areas of pasture to plant wheat there. The result was catastrophic: as many as 2 500 000 people had to leave their farms because of the severe dust storms in 1933-1936. In order to save and restore the soil the USA had to adopt a special program. Later the history repeated when the Soviet Union fell into the same trap after about twenty years. Then, in order to expand grain production, the USSR ploughed up more pasture than it was planted with wheat in Australia and Canada combined. As a result, the same ecological disaster, dust storms, happened (Fromherz, 2012).

Hence, it follows that achievement of any goals associated with both land turnover or land expropriation, and definition of its intended purpose should always comply with the environmental standards and the best available technologies. The deviation from current international standards and requirements of environmental protection let us qualify the land legislation as inefficient regardless of its successful economic contents.

3. Problem of enhancement of the land legislation efficiency in federal states

The mechanism of enhancement of legislation efficiency in unitary and federal states has certain specific features. Russia is a federal state, which leads to existence of not only federal but also regional (subjects of the Russian Federation) legislation. In contrast to civil or criminal legislation related to objects of exclusive competence of the Russian Federation, the land legislation is related to objects of shared competence of the Russian Federation and its subjects. In its turn, it means that efficiency of the land legislation is possible only if Russia has a right balance of distribution of competence between the Federation and its subjects.

One of the problems is the fact that the legal regime of land as objects of immovable property is determined both by land and civil legislation. In order to settle most land issues at the federal level complex legal acts with norms for various branches are adopted. However, at the level of subjects of the Russian Federation adoption of such acts is complicated, as civil legislation is within the exclusive competence of the Russian Federation, and, therefore, subjects of the Russian Federation are not entitled to adopt acts which include civil norms.

The specific features of this problem can be traced most clearly in the Federal Law No.101-FZ of July 24, 2002 “On turnover of agricultural lands”. It is not possible to unambiguously determine the branch-wise nature of most of its norms governing the peculiarities of lease, sale of immovable property (land plots) or apportionment of participatory share from common ownership, which gives reasons to conclude that the legislator guided by practical considerations, in fact, has already deviated from dividing law into branches and from tight binding of legal norms and specific branches. In such complex acts norms of various branches constitute an indivisible whole.

Hence, it follows that loss of the legislation efficiency of subjects of the Russian Federation governing land relations is based on constitutional norms which distinguish civil
and land norms of legislation according to different objects of competence and govern a complex legal regime of land plots as objects of immovable property.

But why did the legislator choose this way? Doing research regarding this issue we could find out that, while governing issues of shared competence, the Constitution of Russia contains a number of norms which duplicate each other. For example, in accordance with Paragraph 1 Article 72 Constitution of Russia the shared competence of the Russian Federation and subjects of the Russian Federation includes issues of ownership, use and management of land, subsoil, water and other natural resources, issues of nature management and environmental protection, as well as land, water, forest and subsoil legislation.

Meanwhile, land, water, forest and other legislation mentioned in Paragraph 1 Article 72 Constitution of Russia just governs both issues of ownership, use and management of the relevant natural resources and the very nature management, which traditionally means the whole range of all forms of human impact on nature. Thus, in fact the Constitution of Russia mentions the same thing three times. Moreover, Article 72 Constitution of Russia identifies specially protected natural territories as a separate object of shared competence, their legal regime is defined by environmental protection legislation also referred to in Article 72 Constitution of Russia.

It appears that such duplication of legal norms was caused by developers of the Constitution of Russia at the same time applying two legal traditions, which are quite effective separately. On the one hand, the reference to branches of legislation each of which relates to an object of the federal or regional competence is a consequence of the Soviet legal tradition, which paid much attention to the legal system and the system of legislation. On the other hand, the reference to “nature management” or “specially protected natural territories” is a consequence of influence of the European legal tradition, which distinguishes areas of life activity, rather than governs their legislation.

Thus, according to the Basic Law for the Federal Republic of Germany of May 23, 1949, the Federation has the exclusive legislative competence (Article 73) regarding defence, citizenship, currency, post, etc. The competitive competence of the Federation and its subjects (lands) includes turnover of land, land law and agricultural lease, as well as residential affairs, etc. By the way, civil and business law are also within the shared (competitive) competence of the center and the regions. Thus, integration of all issues related to turnover or other land issues into the shared (competitive) competence makes it possible to avoid a breach of complex land relations between the center and the regions. However, the superimposition of law branches and areas of life activity in Germany can be traced as well.

We can observe more clear mentioning of life activity areas but not legislation branches in constitutional acts of Canada, which were thoroughly studied by E.P. Simaeva (Simaeva, 2008). Meanwhile, we should also note that the Civil Code of Quebec, one of Canada’s provinces, is a sample for research and a role model in the most developed law and order systems.

Thus, enhancement of efficiency of the land legislation directly depends on the quality of regulatory consolidation of objects of the exclusive and shared competence of the Russian Federation and its subjects in the Constitution of Russia, competent formulation of such items, exclusion of the possibility of their duplication. The most successful way to improve the efficiency of the legal regulation of land relations in a strategic perspective would be
transition from a mixed model of attributing objects of competence (legislation branches plus life activity areas) to a single, the Soviet or Canadian model, which would reduce the amount of unnecessary duplication.

4. Constructive suggestions aimed at enhancement of the land legislation efficiency in Russia and in the post-Soviet area

Disadvantages of the current legislation come at a high cost for the society. An effective way to reduce this risk is to reveal inefficient norms at the stage of bill development, and even better at the stage of discussion of its concept. The latter form of civil society participation in law making has been applied in Russia in recent years. It is referred to a public discussion of the draft law “On Police” and the law “On Education”, as well as the Concept of Civil Legislation Development 2009 (in five parts).

Particularly, many provisions of the Concept of Civil Legislation Development were publicly discussed at the meetings of its developers with the professional legal community, and after discussion a number of provisions were excluded from the original text of the Concept. Accordingly, during preparation of the draft Federal Law on Amendments to the Civil Code of Russia, a number of norms which failed the test were not included there, and subsequently failed to come into legal force. However, this example is not a rule, but an exception from the rule.

A peculiar feature of public life in Russia 2000 - 2014 is disregard of public opinion on almost any issue which does not coincide with the official interpretation by all the branches of the state authorities. Therefore, in order to widely implement a model for public discussion of legislation development concepts (including the land legislation) a qualitative revolution is necessary in the outlook of state authorities, and, primarily, the President of Russia. Today in Russia, constructive discussion of draft laws with the citizens is rare, as it is prevented, besides other factors, because of the mentality of deputies of the legislative authorities, which are not related and not accountable to the population, as well as by numerous falsifications in the parliamentary elections (in favor of the ruling party of United Russia), which in December 2011 resulted in mass protests of citizens in Moscow.

Gradual evolution of the outlook of the State Duma deputies and senior officials of the executive authorities of Russia, their dialogue with the civil society will help to overcome the negative evaluation of their work by a significant number of Russian citizens (especially lawyers). As a possible model for such a dialogue we can suggest a mechanism of mandatory parliamentary review of civil initiatives with a certain number of votes of citizens (for example, 50 000 or 100 000 people), which exists in many countries. And even if the parliament fails to pass such a law, the very fact of its discussion with the civil society representatives in the State Duma of Russia will have a quite positive effect.

Development of institutions of public control over the legislative, executive and judicial authorities is not less important, as it has already been numerous mentioned both by the President of Russia and the civil society representatives. Such public control should be aimed, first of all, to ensure the quality of laws, including land laws, adopted by the legislative authorities of the Russian Federation and its subjects.
Conclusion

In order to ensure public consent in the states of the post-Soviet area (including Russia), it is necessary to establish a dialogue between the parliament and the civil society. Many citizens’ negative evaluation regarding the parliament’s work, proved by sociological studies requires correction of its activity aimed at enhancement of its efficiency. Nowadays in Russia there are no methods for evaluation of legislation efficiency; in terms of a scientific doctrine the legislation efficiency often comes to the criterion of achievement of law objectives.

However, enhancement of legislation efficiency should be determined not only with improvement of the legal drafting methodology and goal-setting, but also with consideration of economic, psychological, environmental and other consequences, to which a certain law leads. Disregard of these factors causes alienation of the population from law, appearance of criminal mechanisms for settlement of disputes and conflicts. These problems most brightly manifest themselves in terms of expropriation of land plots for construction of the Olympic facilities. Achievement of the land legislation efficiency enhancement is now prevented by the mentality of the parliament deputies not accountable to the population and not considering its opinion. Improvement of the legal culture of the very population is not less important.

References


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