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Law Enforcement Issues in Natural Resource Legislation

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Abstract:

Natural resource legislation is determined by the fact that for its full functioning it is necessary to create an integrated system of legal measures. The relevance of the work is determined by the fact that the use of the environment is currently being considered in an industry context and there is no synergistic assessment of the balance between the legal assessment of environmental impact and the structural content of the natural resource legislation industry. The novelty of the study is determined by the fact that for the first time in the article the current complex of natural resource legislation is considered, which studies the environment not as a complex of differentiated industries, but as a single environment in which the interaction between man and nature takes place. The authors of the article determine the possibility and necessity of a unified regulation of environmental management and the formation of an integrated national system of not only natural resource, but also environmental legislation. The practical application of the study is possible in the development of economic methods and measures for environmental protection, which will take into account the possibilities of environmental compensation.

Keywords: application; natural resource legislation; greening law; environment; branch of law.

Jel Classification: P28; Q32.

Introduction

Among a large number of environmental and legal studies of recent years, much attention has been paid to the problems of systematization of environmental legislation, scientific conferences on this topic are regularly held with the participation of leading lawyers of the Ukraine. The problems of systematization of environmental legislation began to be given attention from the very beginning of the formation of the legal branch (Zakharchenko *et al.* 2018). One of the first views on the problem of systematization of environmental legislation was the position that stated that the provision on the need to preserve and develop specialized legislation on land, forest, water and subsoil, which should have been codified at the level of the USSR and Union Republics, was indisputable. As for environmental legislation, in the form of its codification, the preparation and adoption of the law "On Nature Protection" was to be carried out (Nosova *et al.* 2018). The development of the law "On the

Nature Conservation of the USSR" was to be carried out simultaneously with the work on codification of land, water, subsoil legislation and forest legislation (Daulenov 2018; Koniakhina 2013; Hetman 2015).

It was proposed to develop and adopt a law on the use of natural resources and their protection on the basis of differentiation and integration of legislation governing the use and protection of natural resources. In this law, it was advisable to give the main provisions defining the principles for specific branches of the legislation that govern the use of certain objects of nature, as well as their protection (Kostruba 2017; Sinkiene *et al.* 2017). The purpose of such a law was to be the rational use of natural resources and their protection as a national treasure. In fact, the authors proposed fixing the basic principles of the protection and use of individual natural objects in one law, which would further determine the content of resource legislation (Environmental protection in the Ukraine 1992).

Questions about ways to systematize environmental legislation and its codification, in particular, have been raised repeatedly in the works of scientists of the Soviet period. What was common to them was that, in the preparation of the Fundamentals of legislation or codes of the USSR, they should be based on the main provisions and principles on which the legislation on the protection and use of certain natural resources should be based in the future (Curley 1997; Vivcharenko 2010) Improving natural resource legislation requires the consistent implementation of its characteristic principles. These principles should be clearly formulated and enshrined in a single legislative act – the basis for the rational use and protection of natural resources, which will not replace the existing foundations of land, water, forest and other legislation, but will make the necessary adjustments and will act (Skorupskaite and Junevicius 2017).

The draft Law of the USSR "On Environmental Protection" provided for the consolidation, as a basic principle, of the state's national policy in the field of environmental protection, the priority of society's environmental interests over economic interests in their reasonable combination, in which the interests of the development of the national economy, material needs of citizens are satisfied and their guarantees are provided rights to a healthy and supportive environment (Rudenko *et al.* 2015; Khaustova 2017). Often, basic legislation on environmental protection is proposed as a codified legislative act, arguing for its point of view, integrating many years of proven experience in codifying legislation according to a system of basic codes. The proposed framework should become part of a kind of ecological Constitution, that is, the basic document for the development of an appropriate comprehensive, integrated branch of legislation, ensuring the unity of legal regulation of multifaceted relations on environmental protection and rational use of natural resources, since this is the sphere of legal influence of the foundations of land, water and other industries legislation (Zhuravleva *et al.* 2018; Prakash 2017).

1. Literature Review

The role of environmental law principles is to create a truly effective and mutually agreed system of legal regulation of certain types of environmental management based on common approaches to the basics of such regulation (Palekhov and Schmidt 2011). In the context of systematization of legislation, in addition to codification, it is necessary to consider such types as incorporation and consolidation. Consolidation is a type of systematization in which several acts are combined into a new document. In the process of consolidation, the law-making body creates a new regulatory legal act that completely replaces the previous ones; all normative provisions of previously adopted acts are combined in it without changes, although, as a rule, they are edited in order to eliminate contradictions, repetitions, and so on (Velichko 1999, Moroz 2018). This type of systematization is very similar to the proposed development and adoption of the Code of Environmental Laws of the Ukraine. However, the said code proposes to develop a new common part, and this can no longer be the result of consolidation. In addition, it seems necessary and advisable to review certain provisions of codes and laws on natural resources in order to bring them into line with the general part of the code. In addition, consolidation in the legal system of Ukraine has not received wide distribution and development. Therefore, it seems that in modern conditions it is futile to talk about the consolidation of environmental legislation and the prospects for the development of environmental law principles at the same time (Hagemann *et al.* 2014).

As for incorporation, due to the fact that there is no processing of an array of regulatory legal acts within the framework of incorporation, they themselves do not change, the development of principles of environmental management law does not occur. Incorporation has a slightly different function than the development of legislation (Elbakidze *et al.* 2013). The next direction in the development of environmental law principles is the approximation of the current legislation of the Ukraine to the requirements of the European Union and international legislation (Anischenko 1999, Kokhan 2017). Given the extremely large number of EU directives

and international legal documents in the field of environmental protection in general and its individual components, it is advisable to pay attention to the main aspects of the development of the principles of environmental law in this area.

The presence of a legislative provision, even the most perfect, does not necessarily affect human life and behavior. The existence of law is inextricably linked with the state's support of its obligation. If any legal provision provides for the implementation of certain uncomfortable behavior or entails negative consequences for the subject, its implementation without the use of a coercive mechanism can be excluded. To this end, the state and society create organizational mechanisms for the implementation of legal requirements in practice. If we use allegories, then law is the “spirit and mind” of the law enforcer, the organizational mechanism is its “physical body”, which allows the information contained in the law to be realized (Sergunin 2009). This unit will not deal with the problems and activities of the entire institutional enforcement or enforcement mechanism. Such a study, of course, relates to the subject of this work, but substantially goes beyond the scope of the subject of scientific research. The focus should be on how and by what means to achieve the effective implementation of the principles of natural law.

2. Materials and Methods

The study of the problems of the implementation of the principles of the law of nature in the practice of lawmaking and law enforcement made it possible to identify two main directions for increasing the effectiveness of the implementation of the principles of nature's law: informative and institutional. They are developed on the basis of scientific and practical provisions and the problems of implementing all the principles of law, fully relate to the principles of environmental law. It should be noted that both of these areas are in organic interaction, and it is impossible and inexpedient to clearly separate them (Rudenko *et al.* 2005).

The informational direction of increasing the effectiveness of the principles of environmental law is due to the fact that in real individual legal relations arising in connection with the use and protection of natural objects, it is possible to convey information about the content and essence of the principles of environmental law, since declaring rationality, efficiency, and balance in nature management is not enough, decision-makers based on the principles of environmental law cannot be sure of their effectiveness and it is necessary to realize their meaning and significance for use in those particular conditions of life. This direction includes two components: educational and informative-interpretative (Borshch 2014). The necessary connection between science, practice of law enforcement and lawmaking should provide and partially satisfy the scientific advisory component of the information on the directions of increasing the effectiveness of the implementation of the principles of nature law. This applies primarily to the creation and functioning of scientific bodies under certain state bodies.

3. Results and Discussions

After the Ukraine gained independence, the Law of Ukraine "On Environmental Protection" was adopted, which is still valid today. On its basis, the system of environmental legislation of the independent Ukraine is developing and improving. Over the course of several years, new versions of the main environmental codes and laws were developed and adopted, but the problem of systematizing this legislation only deepens. The reason for this is that for a long time since Ukraine gained independence, the development of environmental legislation actually happened only through the differentiation of legal regulation in the field of environmental protection and the use of natural resources. This, in turn, necessitated the development of a draft Environmental Code of the Ukraine. The first and actually the only draft of this code submitted to the Verkhovna Rada of Ukraine was developed in 2004.

At that time, the need for its adoption was explained by the fact that more than a ten-year period of development of the environmental legislation of Ukraine can be described as a period of rapid accumulation of the legal and regulatory array in this area (Palekhov and Schmidt 2014). There was a situation when the environmental legislation of the Ukraine was (and remains) a branched hierarchical system of legislative acts of different regulatory levels, different legal force, different areas of application. This, on the one hand, was a positive fact, since there are practically no subject areas left in domestic environmental legislation. On the other hand, even specialists are not able to cover the entire array. The problem is complicated by the complex nature of the relationship between the rules of purely environmental legislation and those governing relations on environmental protection and the use of natural resources, which have so-called double or even triple registration in various sectors of the Ukrainian legislation (Sukhorebra 2009).

Therefore, the authors of the bill reasonably believed that the first ten-year period of the substantial development of the environmental legislation of the Ukraine should be followed by a period of systematization of

the relevant legislation, that is, bringing normative acts into a single, streamlined system. At the same time, the need for systematization today is due to the multiplicity of acts issued by law-enforcement bodies on the relevant range of issues, the rapid changes in the legislation, and the appearance of gaps that duplicate its provisions (Denysiuk and Liubov 2018). The authors of the project also linked the implementation of systematization in this area with the need to improve law enforcement practice, to assist law enforcement agencies in the quick search and the correct interpretation of the rule of law. The importance of adopting the proposed bill is due to the need for further greening of economic activity, strengthening the impact of government measures aimed at ensuring environmental safety in the country, including legislative measures that should ensure an environmental policy in Ukraine of a systemic nature, and intensify activities in the field of public relations of all public authorities and local governments (Palekhov *et al.* 2008). The development of the draft Environmental Code of Ukraine at one time was provided for by the main directions of the state policy of Ukraine in the field of environmental protection, the use of natural resources and environmental safety, approved by the Verkhovna Rada of Ukraine on March 5, 1998 No. 188, and the recommendations of parliamentary hearings on compliance with environmental legislation of Ukraine approved by the Verkhovna Rada of Ukraine on February 20, 2003 No. 565-p.

The need for such an act was obvious due to the fact that the current Law of Ukraine “On Environmental Protection” in 2004, in fact, and since 2012, did not legally play the role of the main law in the field of environmental protection, environmental safety, in accordance with which natural resource and other special legislative acts should be developed. This, in particular, is manifested in the fact that it does not have a significant impact on the development of environmental legislation, and is influenced by external factors. Thus, the law on environmental insurance has not yet been adopted, although the norm on environmental insurance in the mentioned Law of Ukraine “On Environmental Protection” appeared in 1991, remaining a paper regulation. All this indicated the need to update the legislative framework in the field of environmental protection. But such an update should happen automatically, by replacing one law "On Environmental Protection" with another, albeit in an improved version, and above all in the form of systematization of environmental legislation, adoption of a new codification act, which should become the Environmental Code of Ukraine.

Indeed, the codified law retains all positive amendments to the Law of Ukraine “On Environmental Protection” and, taking into account current trends in the development of environmental legislation, should create the conditions for its further development. However, today the status of this bill according to the official website of the Verkhovna Rada of Ukraine is aimed at the conclusion of the Government (05/06/2004). In addition, there was a lot of work and publications before and shortly after the bill was submitted to the Verkhovna Rada of Ukraine “On the Content, Improvement, Structure, Changes and the Sphere of Application of the Environmental Code of Ukraine”. The scientific community was almost unanimous in its support for the adoption of the Code (Kostrytska 2019; Uvarova 2012).

However, after a while, interest in the project began to fade because the legislator completely ignored this work; the project was not considered, and the corresponding environmental legislation continued to develop in the same way, by developing new and improving existing specialized regulations (Kuznyetsov 2006). Indeed, the development of the Environmental Code of Ukraine is not mentioned in the Law of Ukraine “On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the Period Until 2020”, adopted in 2010. One can see that one of the reasons for this is the different views on the structure of the Environmental Code and, so to speak, the predominance of the subject of its legal regulation. The bill did not include the protection and use of certain natural resources in the scope of regulation of the Environmental Code. Researchers noted that the natural resource aspects of environmental protection today are quite well regulated at the level of special legislation, including codification (Land Code of Ukraine, Water Code of Ukraine, Forest Code of Ukraine, Code of Ukraine “Concerning Subsurface Resources”, laws of Ukraine “On the Protection of Atmospheric Air”, “Concerning Fauna”, “Concerning flora”, “On the waste”, “On the hunting”), which are comprehensive and take into account the specifics of each natural resource (land, water, forests, mineral resources, etc.) that regulate issues their protection rational use and reproduction (Möllers 1999).

Revealing the structure of the Environmental Code, it can be noted that in the legal literature the problem of codification of environmental legislation sometimes comes down to the inclusion in the Environmental Code of all natural resource legislation: land, water, forest codes, the Code of Mineral Resources Laws, laws on the protection of atmospheric air and wildlife, and etc. The authors do not share this point of view, because it is not a codification and systematization of legislation. Natural resource legislation is generally codified at an acceptable level. As for the environmental code, it should be filled with system-forming norms. Its relationship with natural resource legislation can be determined in the form of a formula for the ratio of integrated and differentiated

components in the regulation of environmental relations. Such a code could, in general, contain the objectives of the legislation and the subject of legal regulation, objects and principles of legal environmental protection, legal regulation of property rights and the like, as well as in a special legal regime for the protection and use of natural resources. You should not take into account the large volume of this legislative act, because such a code would be convenient for use in regulating environmental and legal relations. Only after the creation of the Environmental Code were scientists able to reach a level of understanding of what an environmentally friendly Constitution should be. Considering the methodology of codification of environmental legislation, it is worth pointing out the special importance of enshrining the principle of balancing the needs of society and the state's ability to protect the environment in environmental legislation, taking into account international experience in codifying environmental legislation and the tasks of scientists regarding their mandatory participation in the development of the draft Environmental Code of Ukraine (Kuznyetsov 2008, Moroz 2016).

Based on this, a structure of the Code of Environmental Laws of Ukraine is proposed, which includes general and special parts and may contain the following sections: General part – general provisions; environmental legislation; objects of regulation; ownership of natural resources, the right to general and special use of natural resources; organizational system of public administration in the field of environmental management and environmental protection; management functions; measures to ensure environmental safety; economic regulation in the field of environmental management and environmental protection; resolution of environmental disputes; legal liability for violation of environmental laws; a special part is the use and protection of certain natural resources. The proposed structure is defined as approximate and may have relevant clarifications, additions and changes. The role of the principles of law in the construction and functioning of the code is separately noted.

It is necessary to support the opinion that it is necessary to include in the codified act environmental legislation both the main institutions of environmental law and the regulatory regulation of the protection and use of certain natural resources. The reason for this is that, within the framework of the evolutionary and qualitative development of enterprises, the bulk of the legislative regulation of the environmental and natural resources sphere develops uniform approaches to the management of each natural object, given its organic connection with the environment and other elements. Taking into account the positions of scientists in the General Part of the Code, general provisions of the legal institute of environmental law with all its characteristics and principles will be developed, and due to the fact that this will be the Institute of the general part of the Code, its requirements will be fully taken into account in the special part of the Code regulation of the use and protection of each individual natural object. The described problems of securing under different concepts the principles of environmental management law or the complete absence of such concepts as the Code of Ukraine "On Subsoil" and the "The water Code of Ukraine" will disappear.

The consolidation within the framework of one, albeit significant in scope, normative act of the entire legislative regulation of the protection and use of natural resources will not formally refer to this or that law as part of water or mining legislation, but will fully coordinate the provisions of the resource legislation with the basic requirements and principles set forth in the general part of the Code. One of the bodies providing the influence of the development of legal science on law-making is the Main Scientific and Expert Directorate of the Verkhovna Rada of Ukraine, among which the main tasks are:

- preparation of materials related to the development of bills and legislative proposals;
- development or participation in the development of draft laws, acts of committees and commissions of the Verkhovna Rada of Ukraine;
- examination of bills that are submitted to the Verkhovna Rada of Ukraine by the subjects of the right of legislative initiative, the organization of scientific examination in scientific institutions;
- examination of legislative acts for their compliance with the Constitution and laws of Ukraine;
- Submission of scientific and legal assistance to committees and commissions of the Verkhovna Rada of Ukraine in the preparation of bills;
- analysis of the practice of applying existing legislation in order to improve and facilitate the implementation of the parliamentary control function of the Verkhovna Rada of Ukraine and its bodies;
- development based on an analysis of the practice of applying the legislation of Ukraine and forecasts of its development of relevant industries;
- preparation of scientific conclusions on European integration and international relations.

In fact, this department of the parliament is an independent scientific and expert organization, which, unlike the councils in the courts, does not have a full-fledged two-way connection with science. However, this is due to the fact that this body primarily ensures the activities of the Verkhovna Rada of Ukraine, and therefore

independence and initiative should be manifested only in the context of the performance of its functions. At the same time, it is necessary to pay attention to the fact that only the conclusion of the indicated department is always attached to the draft legislative acts, other conclusions of scientific institutions should be taken into account by the department itself. This approach creates a risk of bias or bias towards specific draft legislative acts. Thus, the media mentioned the disagreement with certain conclusions of the Main Scientific and Expert Directorate regarding the consolidation of the principles of environmental management. Therefore, according to the thesis, it is advisable to provide for the possibility of other scientific institutions to directly submit their findings to bills, in particular by posting appropriate tools on the parliament's website. It is clear that it is unacceptable to give everyone the opportunity to send their impressions, including for reasons of information security of parliamentary resources. However, such an opportunity can be provided to leading scientific institutions and higher educational institutions.

The following part of the information on ways to increase the effectiveness of the implementation of the principles of nature law is a common component, which should require disclosure of the principles of nature law in the sources of judicial practice, since doctrinal interpretations or views on the content of principles presented in scientific sources are extremely rarely used by the first and appeal courts authorities have repeatedly attracted the attention of scientists. The Civil Code of Ukraine, in the framework of legislation on the foundations of justice, good faith and reasonableness, is a peculiar example of using the development of the practice of applying the principles. Repeatedly in the practice of the higher specialized courts of Ukraine, these foundations of civil law have been substantially disclosed in relation to specific cases. Regarding the principles of the right to use nature, it should be noted: in the course of the analysis of the legislation, no decisions of courts of general jurisdiction of any instance were revealed that would substantively disclose the principles of the right to use natural resources. At best, they contain references to Article 3 of the Law of Ukraine "On Environmental Protection" or to the memory of the principle itself.

It should be agreed with researchers who note that today there is a need for periodic generalization of the practice of courts of general jurisdiction of the principles of law, the results of which should be set out at the level of the decision of the Plenum of the Supreme Court of Ukraine. Similar proposals are put forward in other states. Thus, scientists studying the law enforcement role of principles in law draw attention to the need to generalize those categories of cases where gaps and conflicts are overcome by applying the principles of law, and lawful and justified application of the rule of law is achieved on the basis of the identified model principles. In addition, it is necessary to study the issue of including an environmental tax in environmental legislation. Environmental tax is a form that has long been used in most industrialized countries to raise funds for environmental protection. For the first time, the need for its application at the official level was enshrined in 1973 by the European Union Environmental Action Program, and it was associated with the implementation of the "polluter pays" principle.

The conceptual basis for greening the tax system was the idea of double win (win-win solutions). It means that an environmental tax – a form of economic stimulation of environmental protection – must be accompanied by a proportional reduction in the tax burden associated with social payments. That is, such an approach should stimulate not only minimization of environmental damage, but also promote employment growth and maintain the competitiveness of national producers. The main goal of environmental payments is not replenishment of the state budget, but stimulation of the payer to environmental awareness. Of the developed countries in Europe, the richest experience in this area has been accumulated by the states of Scandinavia. In most European countries, part of the environmental tax paid by enterprises is returned to environmental projects. This practice is widespread in Sweden and France (up to 75% tax return), which were able to create conditions in order to make the work of their industrial enterprises almost "sterile". There are more stringent approaches to fees from industry. In some countries, the environmental tax becomes a "stick": it is set at such a level that it is more profitable for companies to invest in environmental projects quickly than to pay millions of taxes.

The share of "environmental" costs of Ukrainian enterprises is on average tens of times lower than in the EU, USA and Canada. There is no environmental tax as such in our country. There are fees for environmental damage. For example, a waste disposal payment system that has been used for almost 30 years. Previously, it was a serious incentive to reduce emissions from enterprises. However, over time, nature users have found ways to reduce environmental payments not by minimizing waste generation, but by hiding information. According to experts, with current methods of calculating payments for environmental pollution, it is often more profitable for a polluter to pay a fine than to invest in minimizing environmental damage. The minus of the current system, experts believe, is the lack of regional differentiation of payments: it doesn't matter whether an entrepreneur works in an environmentally disadvantaged region or not – he pays the same. The current option

for charging environmental pollution is low in efficiency, which is why state environmental programs are financed from other budget items. Revenues from payments for negative environmental impact to the consolidated budget in 2018 amounted to 8.1 billion UAH. It is planned that this year they will amount to 4.2 billion UAH. Tax innovations, including the introduction of an environmental tax, will significantly increase revenues.

It is assumed that a tax will be levied on the release of pollutants into the air, discharge into water bodies, as well as the storage and disposal of industrial waste. The environmental tax will be paid by enterprises and individual entrepreneurs whose activities damage the environment. Those organizations and individuals who work at facilities that have minimal negative impact on the environment will not pay tax. Organizations that generate only solid municipal waste will not be taxed. Budget institutions will not be taxed either. In addition, the tax will not be levied if waste is generated that does not have a negative impact on the environment, and also if the waste is disposed of within 11 months. In fact, the amount of the environmental tax will be equal to the sum of the current payment for the negative impact on the environment. As a result of transferring the fee to tax, the fiscal burden on the business will not increase. But at the same time, the introduction of an environmental tax will significantly increase environmental revenues, since it will be calculated on the basis of the necessary annual budget expenditures for environmental protection.

Conclusion

As part of the preparation of the legal doctrine of Ukraine, it can be noted that, first of all, the form of codification, the Environmental Code, is doubtful. This form does not have a clear completion. As the experience of Ukraine and other countries where land codes were distributed (as, incidentally, other environmental codes), they are limited to a hundred or more articles, usually of a general nature, which leads to the systematic introduction of amendments to them. A more appropriate form of codification is the adoption of the Code of Environmental Laws of Ukraine. The proposed form is due to the fact that today in the field of environmental legislation, as in one of the other sectors (civil, administrative, commercial law, etc.), there is an extensive system of codified legislative acts in the form of codes and laws. The subject of legal regulation of a significant part of them are homogeneous groups of environmental social relations, united by the sphere of relevant natural resources or their complexes. These are laws and codes of natural resources.

In addition, many codified legislative acts in the field of environmental legislation are comprehensive, in particular, these are the laws of Ukraine "On Environmental Protection", "On Environmental Expertise", "On Waste" and so on. The adoption of such legislative acts of the Environmental Code as a form of a codified act is inappropriate. Because the Environmental Code will not be able to combine existing codes and laws through its correlation in form with the adopted laws. Such a union is possible only in the form of the Code of Environmental Laws of Ukraine. Of course, it will not be mechanical, but it will have a meaningful content with the fundamental provisions of existing codes and laws of an environmental nature and will create a unified legislative framework for further legislative and law enforcement practice.

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