

PRIVATE AND PUBLIC INTERESTS IN LEGAL REGULATION OF NATURAL RESOURCE AND ENVIRONMENTAL RELATIONS

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Abstract. *The article approaches the study of scientific representatives of domestic and foreign legal doctrine on the importance of interest in the legal regulation. Criteria ratio and separation of private and public interests in the legal regulation of natural resource and environmental relations.*

Key words: *natural resource relations, environmental relations, private interest, public interest, legal regulation.*

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ON THE ISSUE OF FORMING A NEW AREA OF LAW – ENVIRONMENTAL SAFETY LAW IN UKRAINE

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Abstract. *The article is a theoretical study of the problems of integration and differentiation in environmental law by raising the possibility of formation of environmental safety law as a separate branch of law. The analysis is carried out on the scientific and legislative approaches regarding the place of environmental safety in the system of environmental law. It is substantiated that the legal literature does not give a uniform approach to the understanding and role of environmental safety in environmental law, while the national legislation of Ukraine has no proper criteria for the selection of legal relationships in the field of ensuring environmental safety into a separate legislative area. According to the major strategic regulatory and legal acts of Ukraine, environmental safety is the main principle of natural resource and environmental protection legislation. Based on this approach, proposed is a model of common methodology of environmental safety law which consists of defining the subject, methods, principles and system of legal regulation of environmental safety, which will systematize the legal norms in this area, which will be useful not only for training and research, but also for systematization of international and national legislation on ensuring environmental safety.*

Key words: *environmental security, the formation of the field of law, scientific approaches, legislative approaches, environmental safety law, object of law, subjects of law, methods of legal regulation of environmental safety, principles of legal regulation of environmental safety.*

The growth of scientific knowledge is one of the key problems of modern cognition and research. The progress of each field of science is caused by the possibility of considering it as a holistic system. Moreover, knowledge is in the state of change, of becoming. One of the major mechanisms of formation and development of scientific cognition is its integration and differentiation.

Today, any industry and field of expertise is subject to the processes of integration and differentiation. Environmental safety is no exception.

Within the integration approach, environmental law solves the problems of regulation of social relations on the environment as a whole, as a single object. Within a differentiation one - the development of environmental law concerning the regulation of various relationships, including the use and protection of individual natural objects – land, minerals, water, air, forests, flora and fauna and more. In literature this approach is called sectoral. It is implemented in the form of land, mining, water, forest, fauna and atmosphere protection law and legislation.

Differentiation and integration approaches to the development of environmental law have objective grounds. Thus, the need for legal regulation of public relations for the use and protection of land, water, forests and other natural resources is caused by the interest of society in the detailed regulations taking into account the specificity of each object. Accordingly, social relations themselves are also specific.

The integration approach to the development of this area is due to the unity of the object - nature (the natural environment), interconnections and interdependence of processes and phenomena in nature. Changing the states of water, land, air entails - by operation of laws of nature – corresponding changes throughout the environment. All this requires a common approach, common principles and regulation mechanisms of social environmental relations. In the area of interaction between society and nature, there are many legal issues that cannot be solved in sectoral legislation – land, mining and other. These issues include the problems of production and consumption wastes, toxic and radioactive substances and materials, land use of chemicals, management and impact assessment of the planned activity on the environment, environmental assessment, environmental certification, auditing, declaring safety of objects of increased risk and others.

For a long time, there have been attempts to solve these questions with the help of purely environmental legislation, where natural resources have always been safety priority. However, with increasing industrial facilities and transport, and thus with increased harmful impact on the environment a question arose about the rapid environmental degradation and its impact on human life and health.

As a result of scientific debate on the issue of the structure of environmental law, in domestic science since the 90s of the twentieth century – on the basis of differential foundations of scientific knowledge within environmental law - there has been forming a separate area of public relations (anthropoprotective), the so-called environmental safety law, proposed to contain studies of the features of legal regulation of harmful chemical,

biological and physical effects on the environment and people along with such legal relationship as natural resource management legal relationship and legal environmental protection relationship.

One of the representatives of this position is Ukrainian scientist, Professor V. Andreitsev [1, p. 9-12], who proposed this legal category to be disclosed as a system of special legal measures aimed at protection of people's vital interests of from the harmful effects of the environment, and the other – a system of legislative and regulatory legal provision of regulating environmentally hazardous activities, usage of natural resources, protection of environment safe for life and health based on an inherent environmental risks.

The anthropoprotective goal of environmental safety is emphasized by a number of other scientists [2, p. 109-116; 3, p. 4-16; 4; 5]. In their view, to achieve that environmental safety is impossible without proper environmental management and natural environmental protection. A number of scientists notes that typically, each country determines for itself the greatest threat to environmental safety, but internationally under such threats one should understand the following: lack of natural resources; food security; climate change; military conflicts; the excessive extraction of mineral resources and the impact of climate change on the Arctic and Antarctic; pollution of the marine environment; depletion of marine biological resources; the use of GMOs etc [6].

These scientific approaches lead to a conclusion that environmental security is not just a matter of regulation of chemical, physical and biological effects, but much more – of the stability of wildlife on the planet. Therefore, it is believed that the principle of sustainable development should serve the basic principle of environmental security [7].

In this case, the position of the Russian scientist M.M. Brynchuk should be mentioned. While repeatedly addressing the problem of determining the ratio of environmental safety with the protection of the environment and nature use, as a result of the analysis of scientific papers and draft regulations, he came to the conclusion that some consider ensuring environmental security as part of environmental protection; others put an equal sign between them; others attach not only environmental protection to the content of "environmental security", but also rational use, reproduction and improvement of the quality of natural environment; still others appreciate it as an activity pursued simultaneously with environmental protection. The author himself considers ensuring environmental safety as a basic principle of natural environmental protection, as the most important long-term goal and objective of the activities to restore and maintain a favorable state of the environment. In this regard, he concludes that ensuring environmental safety is not an independent area of practice carried along with the natural environmental protection, and estimates the corresponding legal formulation as inappropriate. He later confirms his position by offering to understand the activities to protect the environment and natural resources by ensuring environmental safety in the interests of maintaining a healthy state of the environment and to protect environmental rights and lawful interests of individuals and businesses and is the basic environmental component of sustainable development [8, p. 30-42].

A variety of scientific approaches to determining environmental safety complicates perception of the category as a legal phenomenon. To find out which of the approaches outlined is customized, we will turn to the analysis of national legislation on the subject.

For example, according to Art. 50 of the Law of Ukraine "On Environmental Protection" on June 25, 1991 [9] environmental safety is understood as such a state of the natural environment at which the prevention of environmental deterioration and risks to human health is ensured. However, the Law does not specify the very mechanisms of "ensuring prevention of deterioration". Resolution of the Verkhovna Rada of Ukraine on March 5, 1998 № 188 "On the main directions of state policy of Ukraine in the field of environment, natural resources and environmental safety" [10] does not actually disclose specific mechanism of ensuring environmental safety, relating to this sector only environmental safety in the energy sector and the nuclear industry (Chapter 18).

The Law of Ukraine "On basic principles (strategy) of the State Environmental Policy of Ukraine till 2020" [11] in the basic principles of state environmental policy duplicates the constitutional provision of Art. 16, which specifies that environmental safety, maintaining environmental balance in Ukraine, Chornobyl disaster management is the responsibility of the state and is implemented through such purposes, including: 1) improving the environmental situation and improving level of environmental safety, implemented by protection of the environment and its individual components; 2) achieving safe-for-human-health state of the environment through compliance with sanitary requirements quality of natural resources and the implementation of special measures to ensure such quality, such as: environmental control, monitoring the environment, environmental insurance and so on. So and this legal act does not specify a separate mechanism of ensuring environmental safety, and reveals it through the proper environmental management and protection.

Decree of the President of Ukraine on January 12, 2015 number 5/2015 approved the Strategy for Sustainable Development "Ukraine - 2020" [12], one purpose of which was the introduction of European standards of living to Ukraine and getting Ukraine in a leading position in the world through the implementation of four vectors: the vector of development; vector of safety; vector of responsibility and vector of pride. Environmental safety alone is not paid attention to, but it is noted that special attention should be paid to the safety of human life and health and it is impossible without effective medicine, protection of vulnerable groups of the population, the safety environment and access to clean drinking water, safe food and industrial goods (vector of safety). The strategy identifies that to achieve this goal we should develop a Program to preserve the natural environment.

The position of M.M. Brynchuk is corroborated by the President's of Ukraine Decree on May 26, 2015 № 287/2015 "On the decision of the National Security and Defense Council of Ukraine on May 6, 2015 "On National Security Strategy of Ukraine" [13] which states that the priorities of ensuring

environmental safety are the following (para. 4.14.): 1) conservation of natural ecosystems, maintaining their integrity and life support functions; 2) creation of an effective system of environmental monitoring; 3) resource saving, providing sustainable environmental management; 4) reducing environmental pollution, providing monitoring sources of air pollution, surface and ground water, reducing pollution and restoration of soil fertility; cleaning areas from industrial and household waste; 5) formation of the system of waste processing and recycling of production and consumption; 6) minimizing the negative effects of the Chernobyl disaster; 7) preventing the uncontrolled import to Ukraine of environmentally dangerous technologies, substances, materials, transgenic plants and pathogens etc.

The Decree of the President of Ukraine on April 23, 2015 № 238/2015 "On approval of the Annual National Programme Ukraine – NATO cooperation for 2015" [14] says that Ukraine will continue the practice of initiating and implementing environmental projects under the Law of Ukraine "On basic principles (strategy) of state environmental policy of Ukraine till 2020" and National Action plan on environmental protection for 2011 - 2015 approved by the order of the Cabinet of Ministers of Ukraine on May 25, 2011 № 577-p.

One of the medium-term strategic goals of this program is defined as interoperability with NATO for introduction in Ukraine progressive experience of countries - NATO members in the field of environmental safety in order to restore degraded lands that are used by the Defense Ministry of Ukraine, and in the creation of protected sites on land that were used by the Defense Ministry of Ukraine.

The Program's priority tasks for the current 2015 are to continue work on:

- studying the countries – NATO members' experience of implementing an environmental management system of the armed forces in order to develop appropriate methods and adapting it to the Armed Forces of Ukraine, as well as instructions for environmental protection during the exercise;
- exchanging of experience with countries – NATO members to develop economic and administrative incentives to encourage the implementation of environmental management systems in the Armed Forces of Ukraine, environmentally safe nature in the course of operational and combat training during military exercises and training;
- the development of a modern system of forecasting, monitoring, warning and mitigation of harmful effects of water and the creation of information-measuring system of control, the formation and forecasting of floods and floods on the rivers and so on.

The new Military Doctrine of Ukraine approved the Decree of the President of Ukraine on September 24, 2015 № 555/2015 [15] is no exception. It uses such a term as "security environment", the shaping and development trends of which are: global climate change, depletion of natural resources, shortage of drinking water, food, increased migration, and increase the risks of large-scale emergency situations of natural and man-made character.

Instead, a group of deputies in the face of Y. I. Samoilenko and V. B. Hazan prepared draft Law of Ukraine "On the Concept of Ukraine's transition to sustainable development" [16]. According to this draft law, environmental safety is an integral part of national and transnational security which guarantees security of citizens' right to a safe and healthy environment and provides the necessary conditions for restoration of natural resources through monitoring and regulation of technological activities.

Thus current legislation of Ukraine defines environmental safety as a basic principle of natural resource and environmental law, proper implementation of which guarantees safe and healthy environment. On a scientific level, it enables us to argue about the formation of a new approach to the essence of environmental law, where, due to the rapidly increasing anthropogenic load, it is offered to be considered as the law of environmental safety.

Offer to create, within the framework of current international trends, a new model of environmental law as a branch of law – the environmental safety law, which we consider to be understood as law-regulated system of social legal relations in the sphere of ensuring a proper state of protection of the environment and of the vital interests of society, individual and citizens from possible negative impact on them by the economic and other activity, as well as from the threat of emergency situations of natural and man-made character, now and in the future, which is guaranteed by a system of political, legal, economic, environmental, technological and other social measures at the national and international levels.

The subject of such a legal regulation are, social relations regulated by rules of environmental and other branches of law, which are designed to protect human life and health from the harmful effects from man-made and natural factors. By its nature such legal relationships can be both regulatory and protective. According to the level of personalization – they may have both absolute and relative character.

The main object of legal regulation of environmental safety is a person, a person's life and health, the environment and the environmental safety. The man in this context acts a single, basic object of legal protection. At the same time, totality, organizations of people create larger objects-systems. The latter rather than every single person in isolation from such a system could reasonably be protected, if properly guaranteeing and ensuring the rights, freedoms and interests of everyone who is part of the object. Defending the entire system, we keep each of its structural elements. These associations are a family, local community, society, state (both political and territorial associations of citizens) mankind. Based on these objects we may have environmental safety classification – individual, regional, social, national, global. However, such objects are ancillary or derivatives for the reason that in accordance with Art. 3 of the Constitution of Ukraine a man, his life and health is a basic social value in the state.

It has been established that the methods of legal regulation of environmental safety is a set of methods, tools, techniques, whereby the legal effect is made on social relations in the field of environmental safety by legal

definition of objects that should be protected from the impact of human activities; bodies and persons who are obliged to ensure environmental safety and environmental requirements for all kinds of industrial and other economic activities that affect the environment, the use of contractual relations, characterized by equality of the parties and legal responsibility for the violation of environmental and legal requirements and rules that are implemented within the mandatory, discretionary and mixed methods to establish the powers of these legal relations.

It has been established that the main method of legal regulation of the environmental safety is the method of ecologization, since any kind of environmental and natural resources law is dangerous, so it should take into account the laws of nature and obey them. For it not to happen spontaneously, but it is rather organised, it is needed to ecologize every act of the impact on the environment of this area. Method of ecologizing is used by the definition in the legislation:

- of the objects of the natural environment to be protected from the impact of human activities or the use of which requires special legal regulation;
- of the bodies that regulate the use of natural resources, monitor compliance with the rules of nature and the environment;
- environmental rights and responsibilities of owners of nature and natural resources;
- environmental requirements for all kinds of industrial and other economic and recreational activities that affect the environment;
- legal liability for violation of environmental and legal requirements and regulations.

It has been proposed to regard the principles of legal regulation of environmental safety as basic ideas that express the nature and the social purpose of this sphere, reflect its main characteristics and features. Therefore, these principles should guide all participants of the public environmental relationships – legislative, executive and judicial bodies, enterprises, institutions, organizations as well as individuals. Compliance with environmental safety principles may serve as a juristic indicator of legal and social nature of the state, of the efficiency of all activity aimed at ensuring a rational environmental management and environmental protection, of the protection of environmental rights and legitimate interests of an individual and a citizen.

Based on the abovementioned we propose to add the following to environmental safety principles:

- sustainable development which implies equal approach to its economic, social and environmental components as well as recognition of the impossibility of social progress with the degrading environment;
- prevention of the environmental risks, dangers, detrimental effects on the environment, life and health of people;
- paying for using natural resources and compensation to citizens and the environment for the damage caused by a breach of legislation on environmental safety;

- free access to environmental information;
- participation of all interested parties in the preparation, discussion, adoption and implementation of solutions in the sphere of environmental safety;
- international cooperation in the field of environmental protection.

However, we should at once note that the list of the principles of environmental safety law, mentioned above is not final and, given the constantly changing state of the national legislation, can be extended or further specified.

What also seems important nowadays is the question of definition on a scientific level of a general approach to the disclosure of the system of environmental safety law, which not only will simplify the methodology of its academic use in educational institutions but will also in certain way influence the formation of international and national legislation on these issues.

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ДО ПИТАННЯ ФОРМУВАННЯ НОВОЇ ГАЛУЗІ ПРАВА – ПРАВА ЕКОЛОГІЧНОЇ БЕЗПЕКИ В УКРАЇНІ

Ю.А. Краснова

Анотація. У статті проводиться теоретичне дослідження проблем інтеграції і диференціації в екологічному праві шляхом порушення питання про можливість формування права екологічної безпеки як окремої галузі права. Здійснюється аналіз наукових і законодавчих підходів щодо місця екологічної безпеки в системі екологічного права. Обґрунтовано, що в юридичній літературі відсутній єдиний підхід до розуміння і ролі екологічної безпеки в екологічному праві, а національне законодавство України не має належних критеріїв для виділення правовідносин у сфері забезпечення екологічної безпеки в окрему законодавчу галузь. Згідно з основними стратегічним нормативно-правовим актам України екологічна безпека виступає основним принципом природоресурсного та природоохоронного законодавства. На підставі такого підходу запропоновано модель загальної методології права екологічної безпеки, яка складається із визначення предмета, методів, принципів та системи правового регулювання екологічної безпеки, що дасть змогу систематизувати правові норми з даного напрямку. Це стане корисним не лише для навчальної та наукової роботи, а й для систематизації міжнародного та національного законодавства з питань забезпечення екологічної безпеки.

Ключові слова: екологічна безпека, формування галузі права, наукові підходи, законодавчі підходи, право екологічної безпеки, об'єкт права, суб'єкти права, методи правового регулювання екологічної безпеки, принципи правового регулювання екологічної безпеки.

К ВОПРОСУ ФОРМИРОВАНИЯ НОВОЙ ОТРАСЛИ ПРАВА – ПРАВА ЭКОЛОГИЧЕСКОЙ БЕЗОПАСНОСТИ В УКРАИНЕ

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Аннотация. В статье проводится теоретическое исследование проблем интеграции и дифференциации в экологическом праве путем поднятия вопроса о возможности формирования права экологической безопасности как отдельной отрасли права. Осуществляется анализ научных и законодательных подходов относительно места экологической безопасности в системе экологического права. Обосновано, что в юридической литературе отсутствует единый подход к пониманию и роли экологической безопасности в экологическом праве, а национальное законодательство Украины не имеет надлежащих критериев для выделения правоотношений в сфере обеспечения экологической безопасности в отдельную законодательную ветвь. Согласно основным стратегическим нормативно-правовым актам Украины экологическая безопасность выступает основным принципом природоресурсного и природоохранного законодательства. На основании такого подхода предложена модель общей методологии права экологической безопасности, состоящая из определения предмета, методов, принципов и системы правового регулирования экологической безопасности, которая позволит систематизировать правовые нормы по данному направлению, станет полезной не только для учебной и научной работы, но и для систематизации международного и национального законодательства по вопросам обеспечения экологической безопасности.

Ключевые слова: экологическая безопасность, формирование отрасли права, научные подходы, законодательные подходы, право экологической безопасности, объект права, субъекты права, методы правового регулирования экологической безопасности, принципы правового регулирования экологической безопасности.