

## HISTORICAL AND LEGAL ANALYSIS OF THE FORMATION OF THE STATE FISH PROTECTION AUTHORITIES

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*In the article current issues on conducting of historical and legal research of the formation of the state bodies in the sphere of fish protection are considered.*

***Fish protection authorities, executive bodies, state administration.***

Nowadays there is an urgent need for legal study of historical aspects of the formation of executive power bodies represented by the fish protection authorities, determining their legislative development, stages of formation and their legal nature. This will enable a deeper understanding of the essence of the institute of fish protection authorities.

In recent years a number of scientists – lawyers, including: V.B. Averianov, J.P. Bytiak, A.O. Dehtiar, T.V. Ivanova, V.I. Kurylo, V.J. Malynovskyi and some others to some extent investigated this problem.

The purpose of this article is to study historical and legal aspects of the formation of the legislative development of the fish protection authorities.

The development of the fish protection authorities is closely linked to the development of the fishing industry. Its prototypes existed even in times of Kievan Rus. With time government and social order was changing, fish protection survived Cossack, freemen and imperial power, weekdays of reformist socialism and entered the epoch of capitalism.

Historical analysis of the formation of the state fish protection authorities should begin from Kievan Rus, because exactly at this stage the origin and formation of the principal elements of the state institutions including the fish protection authorities took place.

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Exactly that time of development forced legislators to give a wide range of power to the fish protection authorities, to create in its structure local administrations and local divisions. Thus, the accumulated historical experience, subject to its appropriate generalization and critical reflection, can be taken into account in the further development of the state fish protection authorities.

At that time Kievan Rus was not a state in the modern sense of this term: it did not have neither a centralized management, nor a comprehensive and extensive bureaucratic system, but a national legal framework was consistently formed, the fish protection authorities were developing and improving. Relations between the representatives of the government and the people, especially in the early period of the development of the Kievan state, were manifested mainly in the form of tribute collection. Political conflicts that arose due to imperfection of these relationships were often resolved by force [1, p. 58].

In the X century the process of unification of all Eastern Slavs into a single state took place. «Ruska Pravda» was a prominent source of ancient law, which contributed to the aforementioned integration process. This led to the increase of the administrative apparatus at all levels and to the clear separation of functions of officials.

Returning to the sphere of fish protection, set of laws "Ruska Pravda" of the princely state contained many provisions concerning time and terms of hunting for certain fur animals; prohibitions to catch some species of fish during the spawning season; beekeeping, brewing and other crafts and trades. At the same time some punishments, usually monetary, for violation of the provisions of «Ruska Pravda» were foreseen. For example, for the murder of a stork and a man often the same punishment was used. In the princely times, actually of the conservation areas – the so-called hunting grounds, on which hunting and fishing were allowed only occasionally, started to form [2, 3].

That is, after the creation of the set of laws «Ruska Pravda», we can trace the specific features of the creation of governing bodies that are intended to carry out management functions in this public sphere.

In the Cossack hetmanate period «The Statutes of Lithuania» and «Magdeburg Law» as traditional sources of law continued to operate on Ukrainian lands and formed the basis for the rest of codification projects prepared in Ukraine – Hetmanate. Sources of Ukrainian environmental legislation were: customary law, everyday traditions, traditional legislation of princely and Lithuanian-Russian period, legislative activity of the national state, which is represented primarily by hetman universals. Due to the peculiar situation of Ukraine the requirements of neighboring countries – Poland, Russia, Austria and others had pressure on the national legislation at that time. «Collection of Ukrainian rights» of 1807 in the section «About

the price of things», «On the unauthorized activity» provides exhaustive characteristic of environmental principles. The price and punishment for corresponding actions, defined property and territorial principles of nature use are regulated by them. As it is known, on the territory of Cossack «Liberties» many rivers, mainly tributaries of the Dnieper river leaked. Consequently, fishing was one of the leading activities in the region either for the Cossacks, and for peasants. Aquatic lands were part of the complex of legal documents of the central and local governments. They established rules on the use of water resources [2, 4, p. 225].

Significant changes in the sphere of the fish protection authorities took place in the Russian Empire in the reign of Peter I. These changes are interesting because they formed the basis of the provisions, under which the modern rules on the use of water living resources were worked out. By the Statute on fishing of 1704 emperor approved the basics of fishing regulations and prohibited exterminatory methods of extraction: mutinies, hooks without fish bait and others. Increasingly local prohibitions for the restoration of the strength of a particular species of fish in certain ponds were applied. In 1752 whitefish fishing was limited, in 1763 on the Neva river sterlet fishing of certain length was banned. In 1835 the legislative regulation of fish reproduction began – a decree on the protection of spawning sites was issued. Unfortunately, in the sphere of water protection initiatives of Peter I did not have practical success for a long time. Thus, naturalist P. Pallas observed in Russia the absolute disregarding of rivers and cleanliness of water, including drinking water. The Government attempted to change the situation, for example, in 1803, the prohibition to build factories, polluting the river above the cities downstream was issued. However, mostly acts on cleaning of rivers were adopted [2, 5].

Thus, during the reign of the Russian Empire, Ukraine had more or less complex organized system of state administration that thereby has gave impetus to the formation of a legal institute in the sphere of environmental protection.

On the 9 th of December, 1918 – General Directorate of fishery and fishing industry at the National Commissariat of food (hereinafter – Holovvryba) was created. And in 1920 the Council of People's Commissars of the USSR adopted the Decree «On the organization of fishery and fishing industry in Ukraine». According to this Decree leadership of Red Army received a directive on the immediate release from military service persons who were professionally engaged in fishing before conscription and exemption from conscription of such category of persons. Also the

requisition to the army of horses and equipment necessary for fishing were forbidden [2].

On March 7, 1923 the Decree of the All-Ukrainian Central Executive Committee «On the organization of management of fish industry», signed by its chairman Petrovsky and secretary Buzdalin, which established the transition of sea, lake and river lands to the state property. All the tools that are related to the work of the fishing industry were nationalized. By this Decree Fisheries Department of the People's Commissariat for Food of the USSR was established. In the article 12 of the Decree is stated: «Spontaneous fishing in the form of fishing in areas of national and local importance is punished under art. 136 of the Criminal Code». The central authority that managed the fishing lands throughout the country was Fisheries Department, which was the part of the People's Commissariat of the USSR. Fisheries Department was entrusted by fisheries regulation, general supervision and control over the implementation of fishing regulations which were established. Thus, by the Decree for the first time fishing industry was divided into two divisions: fish producing and controlling, and controlling officials «inspector-auditor» were determined. It turns out that the practical activities of fish protection at local level started with the release of the Decree of the All-Ukrainian Central Executive Committee of March 7, 1923 [2, 6 p. 440].

During the formation of the state authority «Department of fishery», it should be noted that it acted as authoritative legal state administration in the sphere of fish protection. That is, its functions and tasks were similar to the modern system of governance in the sphere of fish protection.

Before Ukraine's independence the Ministry of Fisheries of the USSR consisted of four large independent production subsection – All-Union fish production association «Azchorryba», General directorate for fisheries of inland waters of Ukraine «Ukrholovrybhosp», association «Ukrribpromzbut», General directorate «Ukrholovrybvod» and individual enterprises that were part of the «Sojuzrybholhospobjednannia», All-Union production associations «Remrybflot» and «Soiuzsitkosnast» and the All-Union scientific-production association for fisheries [7].

During the transition to the market economy by the transfer of economic entities to private property, restructuring through the unsoldering, i.e. privatization of property has been applied.

The general law of Ukraine on the privatization consisted of the Law of Ukraine «On Privatization of State Property» of March 4, 1992, the laws of Ukraine: «On privatization of small state enterprises» of March 6, 1992,

«About privatization papers» of March 6, 1992, «On the list of state property that can not be privatized» of 7 July, 1999, Decree of the Cabinet of Ministers of Ukraine «On privatization of integrated property complexes of leased state enterprises and their structural divisions» of May 20, 1993, «On privatization of land plots» of December 26, 1992 and other normative legal acts adopted in accordance with them.

The lack of effective state control caused the decline of the fishing industry, which led to its structural changes and the destruction of the single fishery complex. It had an impact on the structure of management structure of the industry, in which numerous reorganizations and transformations of the governing body took place.

By the Decree «On the State Committee of fisheries and fishing industry of Ukraine» of August 1, 1992 the State Committee of fisheries and fishing industry of Ukraine was established. According to this Decree the State Committee of fisheries and fishing industry of Ukraine is a central executive body, subordinated to the Cabinet of Ministers of Ukraine, and is part of the agro-industrial complex of Ukraine. The Committee implements the state policy of fisheries and fishing industry, contributes to the structural reorganization of the economy in this sphere, participates in the formation of the system of measures ensuring economic independence of Ukraine [8].

Thus, the State Committee of fisheries and fishing industry of Ukraine helps ministries and the government in general in the implementation of public policy by performing the functions of government mostly of intersectoral or functional character. State Committees have legislative functions. Within their competence they can issue generally binding normative legal acts.

The transformation of the State Committee of fisheries and fishing industry of Ukraine into the Ministry of Fisheries of Ukraine in accordance with the Decree of the President of Ukraine of January 20, 1995 was the next step in the reformation of the central executive body in the sphere of fish protection. Organizational and legal powers of the newly created central executive body as a result of the transformation were not changed.

The Decree of the President of Ukraine of July 25, 1997 on the basis of the Ministry of Fisheries of Ukraine the State Committee for Fisheries of Ukraine was established, which became the successor of the rights and obligations of the liquidated Ministry of Fisheries of Ukraine. The Department of Fisheries and the fishing industry became a part of it – state executive body in the sphere of fish protection [7, 9].

On March 15, 2000 by the Decree of the Cabinet of Ministers the State Department of Fisheries as a body of state overnance as part of the Ministry of Agrarian Policy of Ukraine was established on the basis of the State Committee of Fisheries which was liquidated [7]. In this case the transition of executive bodies in the sphere of fishery protection under regulation of the another branch of law - Ministry of Agrarian Policy of Ukraine can be traced.

All other transformations, liquidations, reorganizations of the executive bodies in the sphere of fisheries leaved the same organizational and legal powers, tasks and management functions to the present day. But all this led to the loss of property of state enterprises and collective form of ownership in the form of liquidation of individual structural subdivisions or creation on the basis of one enterprise several ones, i.e. transmission or acceptance of property, assets, rights and obligations of the successor.

This was caused by the lack of state policy in the sphere of fisheries and support of bodies of state governance in the sphere of fish protection.

Nowadays the State Agency of Fisheries (hereinafter – Derzhrybahenstvo) is the central executive body, which activity is directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Agrarian Policy and Food of Ukraine [10]. Organizational relationships in the system of the fish protection authorities are forming and they are characterized by the presence of appropriate management systems and subsystems where it is possible to observe a variety of subjects of governance: bodies, territorial administrations, departments and separate officials.

Thus, according to the order of the Ministry of Agrarian Policy and Food of Ukraine «On the fish protection authorities of the State Agency of Fisheries of Ukraine» Kyiv Main department on protection of aquatic bioresources (hereinafter – Holovrybvod) and departments of the use and reproduction of aquatic biological resources and regulation of fisheries in the region, basin departments, basin division (hereinafter – Derzhrybochorona) were created. They are territorial bodies of the State Agency of Fisheries of Ukraine which operate as part of Derzhrybahentstvo of Ukraine and is subordinated to it [11].

Territorial authorities in the sphere of fish protection form corresponding system, the effectiveness of which depends on the degree of order, organization and coordination at all levels. The content of their executive and administrative activities and a common basis of establishment – state property bring them together into a single system. They act as subjects of state property with legal entity status and simultaneously resolve various issues of operative management and protection of the fisheries industry [12, p. 76].

It should be noted that in the sphere of fish protection also numerous other state bodies and public organizations act. Except main departments of Derzhrybochorona, there are subdivisions of the Ministry of Ecology and

Natural Resources and the State Environmental Inspectorate, Veterinary police departments, regional departments of the State Veterinary and Phytosanitary Service of Ukraine and the State Border Service of Ukraine. We should add to them public organizations and considerable number of freelance public fish protection inspectors.

Thus, in the process of historical and legal study of the formation of state administration bodies in the sphere of fish protection, it is necessary to distinguish two stages of development. The organizational features of protection of nature in general belong to the first stage, and the creation of a single, centralized system of the bodies of executive power, which tasks and functions consisted of protection of use of water bioresources to the second one.

It was found that during the Cossack-Hetman period sources of Ukrainian legislation on nature conservation, including fish protection authorities, were: customary law and everyday traditions; traditional legislation of princely and Lithuanian-Ruthenian period.

A critical stage in the formation of the fish protection authorities was Ukraine's incorporation into the Russian Empire. In the reign of Peter I the first legislative fixed rules on the use of living aquatic resources began to develop.

Henceforth corresponding branch only developed. Creation of relevant draft laws led to the formation of fish protection authorities and state enterprises which were engaged in enrichment of food base of the state.

The decline and devastation in the sphere of fisheries and fish protection took place in the beginning of the formation of Ukrainian independent state. Constant changes in legislation and foremost the lack of effective state control led to the decline of the fishing industry, its structural changes and the destruction of a single fishery complex.

At the present time fish protection authorities are gradually restored, relevant draft laws are passed, state support is carried out, in particular appropriate conditions for exercising of fish protection functions of management are created.

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