

PUBLIC AUTHORITIES CONTROL IN THE SPHERE OF WASTE MANAGEMENT

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This article deals with the problem questions of public authorities' control activity in the sphere of waste management.

Public authorities control, waste management, conusance, administrative legislation, improvement.

A question of public authorities control in the sphere of waste management violation is not sustainable. First of all, this is due to a constant dynamic changes in the structure of public administration. Since independence, public authorities' control structure in the sphere of environmental protection and waste management undergo constant changes. Confirming this thesis we might say about the last updates that took place in the executive branch, that have a direct impact on the subjects of administrative and legal regulation in the sphere of waste management. By Decree of the President of Ukraine «On the optimization of central bodies of executive power» December 9, 2010 [1], reorganizing the Ministry of Environmental Protection of Ukraine, the Ministry of Environment and Natural Resources of Ukraine and the State Environmental Inspection of Ukraine were established, and by Presidential Decree «Some questions of the State Service of Ukraine of Emergencies» January 16, 2013 [2] State Administration of Ukraine of Emergencies has become the successor of the Ministry of Emergencies of Ukraine and the State Inspection technogenic security of Ukraine, that are reorganizeing now.

The subjects of public authorities control traditionally studied by scientists of administrative law. Recent scientific sources publications give us possibility to say that it is applied by such researchers as P. Dihtiyevskyy, N. Berlach, R. Kalyuzhniy, T. Kolomoets, V. Kolpakov, A.

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Kuz'menko, V. Kurylo, A. Svitlychnyi and others. However, it is necessary to say, that actuality of the subject matter is determined by actuality of scientific and practical interest.

The purpose of the article is to analyse public authorities control in the sphere of waste management in modern conditions.

All public bodies that are endowed with managerial competence in the sphere of waste management, are divided into bodies of general and special competence. Bodies of general competence are referred to a special group because, firstly, issues of safety in the treatment of waste are not a special function of these bodies, and secondly, decisions of those bodies have certain territorial limits and apply to all citizens and various enterprises, institutions and organizations that are within the area of jurisdiction of general competence.

By the Law of Ukraine «On Waste», Cabinet of Ministers of Ukraine, Autonomous Republic of Crimea, local state administrations and organs of local self-government are referred to bodies of general competence [3].

Among these bodies we will study the activities of local public authorities, that are considered to be closer to problem questions in this area.

The authority of local administrations in the sphere of waste management are regulated by the Laws of Ukraine «On Waste» and «On Local State Administrations» April 9, 1999 [4], that exercise executive power in the respective administrative-territorial unit within their power, and exercise powers to perform functional responsibilities in the sphere of waste management, delegated to them by the appropriate council.

Local governments and their executive committees play an important role in the sphere of waste management. According to Art. 21 of the Law of Ukraine «On Waste» local governments and their executive committees decide whether to give agreement for the placing locations or facilities for storage and disposal of waste on the village, town, city, the scope of the environmental impact of functioning includes relevant administrative-territorial unit in accordance with current regulations; monitoring the observance of legal entities and individuals requirements in the sphere of industrial and household wastes in accordance with the law and cases on administrative offenses or transferring of material to the other authorities in case of violation of the legislation on waste; the decision of giving of land for waste disposal and for construction of waste treatment facilities.

Special competence of village, town and city councils in the sphere of waste management is foreseen by Art. 26 of the Law of Ukraine «On Local

Self-Government in Ukraine» May 21, 1997 [5]. As part of the delegated powers, they exercise examination and approval of plans of enterprises, institutions and organizations that are not belonging to communal property of the respective territorial communities, the implementation of which may cause negative social, demographic, environmental and other consequences. Also, they prepare conclusions to them and make proposals to the relevant authorities

At the same time bodies of special competence, that are central executive bodies and government bodies of state administration with subordinate to them regional bodies occupy a leading position among the subjects of administrative and legal regulation in the sphere of waste management, for which providing of environmental safety realization in the sphere of waste management at national and local levels is the main purpose.

The organs of special competence include government agencies that are assigned special functions in the sphere of waste management.

Representatives of administrative and environmental science divide the organs of the special competence into organs, that carry out departmental and sectoral tasks and organs that carry out separate functions only by the form of the executable functions and tasks.

The Ministry of Ecology and Natural Resources of Ukraine and the State Environmental Inspection of Ukraine are bodies of special competence in the sphere of waste management. The State Sanitary and Epidemiological Service of Ukraine, the State Agency of forest resources of Ukraine, State of Emergency of Ukraine Special have special powers in the sphere of waste management.

These bodies of special competence have various administrative influence in the sphere of waste management, that we are dividing into several groups.

The first group includes the Ministry of Ecology and Natural Resources of Ukraine and the State Environmental Inspection of Ukraine. Competence of the Ministry of Ecology and Natural Resources of Ukraine is defined by art. art. 23, 23-1, 23-2 of the Law of Ukraine «On Waste» and the Regulations of the Ministry of Ecology and Natural Resources of Ukraine [6]. By the nature of its powers Ministry of Ecology and Natural Resources of Ukraine has the largest range of functions. Mainly, these authorities have departmental functions of management in the sphere of waste management. However, the competence of the Ministry of Ecology and Natural Resources of Ukraine in the sphere of waste management

include: issuance of permits for operations in hazardous waste management according to the law; providing written consent (message) on transboundary movement of hazardous wastes; approval placements dangerous objects waste management, issuance of permits for the storage and disposal of waste in the order prescribed by the Cabinet of Ministers of Ukraine; development and implementation of systems of waste management.

Ministry of Ecology and Natural Resources of Ukraine exercises its powers directly through the government bodies of state administration, territorial authorities, inspection agencies and organizations that are under its control. In particular, by the State Ecological Inspectorate of Ukraine, that is the central executive body whose activities are directing and coordinating by the Cabinet of Ministers of Ukraine through the Minister of Ecology and Natural Resources of Ukraine, that manages and controls in the sphere of waste management (except radioactive waste) and hazardous chemicals, pesticides and agrochemicals[7].

The State Sanitary and Epidemiological Service of Ukraine, the State Service of Ukraine of Emergencies and the State Agency of forest resources of Ukraine are the second group of special competence.

The State Agency of Ukraine for exclusion zone is the third group of special competence, it exercises its powers only in the area of exclusion zone in accordance with the tasks assigned to it [8].

The peculiarity of the State Agency of Ukraine for exclusion zone administrative activity in the sphere of waste management lies in the fact that to its jurisdiction come a significant number of state-owned enterprises the activities of which are related to the sphere of radioactive waste. In particular: State Enterprise «Management of the functioning of the Chernobyl NPP; Complex protection of the exclusion zone and physical protection. State Corporation «Ukrainian State Association» Radon». It comprises: State Specialized Enterprise «Centralized enterprise for radioactive waste»; State Specialized Enterprise «Dnipropetrovsk State Interregional Special Works»; State Specialized Enterprise «Donetsk State Special Works»; State Specialized Enterprise «Lviv State Interregional Special Works»; State Specialized Enterprise «Odessa State Interregional Special Works»; State Specialized Enterprise «Kharkov State Interregional Special Works».

The main objective of all the special plants are receiving, storage and disposal of radioactive waste from non-cycle businesses and individuals

with jurisdiction over the are preventing radiation accidents and their elimination (if any).

Thus, the administrative activities of management structures, firstly, is revealed in acceptance of mandatory requirements (they are fixed in the decrees, statutes, regulations, instructions, protocols, etc.), secondly, in implementation of these regulations and, thirdly, in controlling of this process. During realization of this activity, management organs operate as state-imperious formations, so they apply the events of persuasion and state compulsion [9, p. 17].

The analysis of work of public authorities control in the sphere of waste management indicates that the activity of the above mentioned executive bodies is not perfect. This is due to many reasons.

First of all, the activity of the above mentioned executive bodies in the sphere of waste management is not always consistent. The basis of uncoordinated actions are: constant changes in the system of executive bodies; lack of a clear interaction, fragmentation and duplication of powers of the executive authorities and local self-government. In addition, lack of organized system of public monitoring of places of formation, storage and disposal, improper legislative adjustment of order of realization of state, self-governing and public control and weak legal realization of norms of legal responsibility - are the weak points in the sphere of waste management and don't assist legal principles in sphere of waste management.

Social control plays an important role in the sphere of environmental safety and protection. According to Art. 37 of the Law of Ukraine "On Waste", the system of management organs in the sphere of waste management based on organizational combination of executive bodies, local authorities and also public organizations. As I.B Machuska says, public administration in the sphere of environmental protection is realized by public associations and organizations, if such activities are provided by their regulations, incorporated under the laws of Ukraine [10, p. 52].

According to the Law of Ukraine «On Waste» social control in the sphere of waste management is carried out by public environmental inspectors. However, provisions of the Act do not regulate such activities. In accordance with the Provisions, approved by the central executive body, that assures organization of the state policy in the sphere of environmental protection and governed by Art. 36 of Law of Ukraine «On Environmental Protection» [11] and Ministry of Ecology and Natural Resources of Ukraine

on February 27, 2002 № 88 «On approval of the public health inspectors environment», direct public control in the sphere of waste management is realized by public inspectors for environment[12].

In accordance with Section 2.1 of this Provisions, public inspectors activities organize and coordinate the agencies belonging to the Ministry of Ecology and Natural Resources of Ukraine, namely: State Environmental Inspection of Ukraine, National Committee of Autonomous Republic Crimea of Environmental Protection, state administrations of environment and natural resources in the cities of Kyiv and Sevastopol, State Environmental Inspectorate of Environmental Protection of Northwest region of the Black Sea, the State Environmental Inspectorate of the Azov Sea, Azov-Black Sea State Environmental Inspectorate.

According to Art. 5 of Provisions, public inspectors have the right to prepare protocols on administrative violations in the detection of violations of environmental laws for which the Administrative Law provides for administrative liability and send them to appropriate authority of the State Environmental Inspection of Ukraine to bring the perpetrators to justice; bring perpetrators of violations of environmental laws to bodies of local government, police headquarters and community groups to protect public order and the border if the offending person can not be installed in place of the violation.

It should be noted that among administrative violations in the sphere of waste management, public environmental inspectors have the right to draw up reports on administrative offenses only for violation of waste management during their collection, transportation, storage, processing, recycling, disposal, removal or disposal (Article 82 CAO).

In our opinion, these regulations do not fully solve the existing legal gaps in the sphere of waste management. In particular, with household wastes. Thus, according to the Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine, due to improper system of household waste in populated areas, each year about 35 thousand unauthorized landfills are found, that occupy an area of 1 ha, usually it happens in the private sector [13].

According to the Art. 30 of the Law of Ukraine «On Local Self-Government in Ukraine», the main function of local governments – is solution of the problem of gathering, transportation, recycling and disposal of waste. Hence, taking into the consideration that a significant number of violations in the sphere of waste management is made in the territories of village, town and city of communities, we think that the lack of right to draw

up report by administrative committees of municipal councils and executive committees of village, town and city councils (articles. 218-219 CAO) on administrative violation in the sphere of waste, is the lack of effective administrative code.

In order to improve the current legislation we propose to amend to art. 218 of the CAO, whereby the administrative committee in the executive branch of city councils and to art. 219 of the CAO, whereby the executive committees of village, town and city councils hear cases on administrative offenses, under Article 82 of the CAO.

Thus, the main target of administrative law in the sphere of waste management is the activity of the public authorities control. Such management activities can be carried out within the framework of management of public administration, and outside of this activity, but this activity needs to be improved due to modern requirements.

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