

17. Про заходи щодо розвитку туризму і курортів в Україні: указ Президента України від 21 лютого 2007 року № 136/2007. // Урядовий кур'єр від 27 лютого 2007 року № 37.

KARAKASH I.I. LEGAL REGULATION OF THE USE AND PROTECTION OF RECREATIONAL AND TOURIST AREAS AND OBJECTS

The recreational potential of Ukraine is extremely widespread and encompasses diverse territories and objects. It includes a set of available natural and natural-social properties of a certain territory for the organization of recreational and tourist and other approximate content of activities. In the natural sense, the recreational area is a plot of land within defined limits, which is used for recreation and improvement of people, organization of excursions and tourism.

The main features of the allocation of recreational lands are their suitability for use for the purpose of organizing and providing recreation for the population, confirmation of such suitability in the established order of the law, making appropriate decisions by the authorized bodies about the announcement of such territories by recreational, determination of their limits and modes of use and protection, and some other features. Associated with the natural properties of the respective lands and objects located on them. However, recreational values and properties are inherent not only for the respective lands, but also for many other natural objects.

Tourism is close in its nature to recreation, but recreation is a more general concept than tourism. Legally, tourism is defined as a temporary departure of a person from the place of residence for health, cognitive, professional, business or other purposes without having to carry out paid activities in the place where the person leaves. Such types of tourism as ecological (green), rural, underwater, mountain, hunting and others are clearly carried out using natural areas, natural objects and natural resources.

Natural areas and objects constitute a material and material base for the organization and provision of recreation, which may belong to the right of ownership or used on the right of general or special nature use. The basis of the functioning of the territorial recreational system is the interconnection and interaction of its objects and their components.

УДК 349.6:340.1

THE LEGAL NATURE OF THE ENVIRONMENTAL LAW SOURCES OF UKRAINE AND THEIR FEATURES

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Abstract. *The paper entitled "The legal nature of the environmental law sources of Ukraine and their features" deals with study of the sources of ecological law in terms of natural law theory. The author is B. Kovalenko. The article describes several definitions of sources of law and sources of ecological law. Special attention is paid to consideration sources of ecological law features. Such features of sources of ecological law as international legal orientation, binding implementation, adoption only by authorized government agencies, normativity have been researched. The conclusion is made to propose author's definition of the environmental law sources.*

Keywords: *understanding the law, sources of law, environmental law sources, regulatory and technical document, standard, environmental standard features of environmental law sources.*

Анотація. *У роботі зроблено спробу розкрити зміст понять джерел права та джерел екологічного права з точки зору природно-правового розуміння. Здійснено порівняння вказаних дефініцій щодо їх визначення різними науковцями. Досліджено юридичні ознаки джерел екологічного права та запропоновано авторське визначення їх поняття. Охарактеризовано види норм, що підпадають під ознаки поняття джерел екологічного права, особливо нормативно-технічні документи (стандарти).*

Ключові слова: *праворозуміння, джерела права, джерела екологічного права, нормативно-технічний документ, стандарт, екологічний стандарт, ознаки джерел екологічного права.*

Аннотация. *В работе сделана попытка раскрыть содержание понятий источников права и источников экологического права с точки зрения естественно-правового понимания. Проведено сравнение указанных дефиниций касательно их определения различными учеными. Исследованы юридические признаки источников экологического права и предложено авторское определение их понятия. Охарактеризованы виды норм, подпадающих под признаки понятия источников экологического права, особенно нормативно-технические документы (стандарты).*

Ключевые слова: *правопонимания, источники права, источники экологического права, нормативно-технический документ, стандарт, экологический стандарт, признаки источников экологического права.*

Every day, such issues as health, preserve and ensuring the quality of the environment for future generations are becoming increasingly important in modern society. Along with the population growth on the planet, the demand for goods is increasing, that leads to a constant supply growth, increasing amounts of natural resources use and environmental pollution. Today, an important aspect is the issue of identifying the legal and other social norms, influencing the field of environmental law since this field is not formed only by the legislative act. The sphere of standards covered by the signs of the environmental law sources is much wider, but currently it is not studied enough. This article tries to provide an objective interpretation for the term "environmental law sources " based on author's research and opinions with the definition of legal and other social norms, it covered and features that distinguish this concept from other sources of law.

Scientific studies of individual theoretical issues for law sources, particularly in the science of environmental law were covered in the works of such Ukrainian and Russian scholars as V.I. Andreytsev, N.V. Barbashova, N.K. Blinova, L.A. Bodnar, O.V. Brayon, M.M. Brynchuk, A.P. Voytsytsky, A.P. Hetman, I Holinka, I.I. Karakash, N.A. Klimenko, T.V. Kozulya, M.V. Krasnova, A.I. Krassov, V.M. Ladyzhenskiy, N.R. Malyshev, A.M. Miroshnichenko, N. Omelchenko, S.P. Palamarchuk, M. Petrovska, I.A. Prokopets, N. Ridey, N.H. Saluhina, K.M. Sytnik, P.M. Skrypchuk, V. Tarasov, M. Shapoval, V.J. Shevchuk, A.M. Yazvinska, etc.

Pavlo Gvozdyk seriously studied most sources of Ukrainian environmental law, however, normative and technical documents (standards) were beyond his study. Professor V.I. Andreytsev refers to the regulatory and technical documents in the system of environmental law sources in some of his works. Scientists V.I. Kurzova, A.I. Berlach, V.I. Kurylo consider regulatory and technical documents as "soft law", or as the norms, which are not binding.

A scientific literature review in this area leads to the conclusion that research on environmental law sources in Ukraine do not get enough attention today. In particular, standards in the field of ecology are not considered as sources; in a time when EU standards are even rank higher than the laws of individual countries, though the official European standards are not binding.

The term "environmental law source" can be divided into three components: the "law", "source of law", and "environmental law". Each of these terms has many different definitions. Therefore, objective understanding for the term requires defining the description and views for each these components.

As for the understanding for the concept of "law", as the history of jurisprudence shows, that the most productive is the direction of knowledge in the legal science, which was formulated as the idea of "natural law". This is indicated, in particular, by the fact that Roman law, being based on the idea of natural law is still striking with its relevance and excellence. It should be noted that eminent jurist Hugo Grotius found a decisive role in the idea of natural law doctrine of Roman law. Moreover, Hugo Grotius, considering the history of jurisprudence, concludes that the law can be a science only when it is guided by the principle whereby the right "arises from the nature". "Many people still tried to give scientific form to this area (jurisprudence), but no one could do it, and in fact, it is impossible to implement except ... separating the resulting from the establishment, arising from the nature". The idea of Hugo Grotius is particularly relevant not only for modern domestic jurisprudence, but also to the environmental studies in particular.

Every year, the term "ecology" is becoming more popular. Due to significant pollution, soil depletion, depletion of natural resources, dense building settlements and the rapid decline in biodiversity growth worldwide, environmental standards become not just documented rules of conduct, but a means for the harmonious development of humanity in a clean environment and hope for life of future generations.

That is why natural and legal (axiological) meaning, where the right is not just the text of the law and the system of ideas (concepts) and compulsory rules, rights, obligations, prohibitions, natural conditions for their occurrence and implementation procedure, as well as

forms of protection existing in the public mind and focused on moral values is the most suitable in this context. This approach delineated legislation and the law, the primacy is given to law as assigned justice and the legislation is considered as its shape, designed to meet the law as its content. The basis of the thinking is the idea, according to which all law must be based on some objective basis, independent from the will of man and society.

Our next step in this research is the definition for the "source". Thus, we distinguish the following basic meaning for the word in the Academic Dictionary. The source can be a "stream", "beginning", "root cause" "culprit", etc. However, the term is used in this case in a sustainable interaction with the term "right", and the words of the German philosopher Immanuel Kant: "lawyers are still looking for the definition of law". Thus the problem of the sources of law, as well as sources and environmental law, cannot be solved separately from the general understanding for the essential features and characteristics of law.

The term "source of law" has Latin origin, and was first introduced in the science by ancient Roman philosopher Titus Livius, who described the laws of XII tables as *fon somnis public i privatique iuris* - a source of public and private law.

According to historical (empirical) theory of law (the concept of natural law), the source of law is the people's minds, people's beliefs determining the content and binding of law. Law in this doctrine is formed with the proper set of rules, rules of conduct (scale, degree), corps of rules legitimized by society based on historically achieved social ethics level. In addition to the concept of natural law, there are many perspectives for understanding the sources of law, thus, the objective of our study will consider some of the most interesting views.

Proponents of rational directions in the doctrine of law insisted that the law is shaped by the struggle of interests. This trend, not based on historical experience and on the laws of logic and mathematics, is fundamentally different from the empirical theory. Moreover, exploring environmental law sources, we are guided by these two directions, combined because we cannot be objectively investigated the matter, relying only on experience or understanding.

Supporters of integrated, communicative approach, try to combine, synthesize items produced by other scientific theories and argue that significant moments allowing to understand the nature of law, are mainly the legal concept (theory of natural law), law (normative or positivist, theory of law) and legal (sociological theory of law). This approach is prevalent in other theoretical ground of understanding the law in its definition.

The formation of law is affected by many different factors. These include objective conditions of certain environment (geographical, climatic, biological, etc.); moral, religious, political, ideological and other principles, which are based on positive rules and which serve as the ideological foundation of these rules; a place, where is the rule of law, where practitioners take knowledge of the positive law rules, mode of expression (law form) and the consolidation of the rule of law as ideas about acceptable in objective reality, etc.

Noting the diversity and convention for the term "sources of law", the researchers often point to the mismatch for concepts of "source of law" and "form of law". In particular, the source of law is considered as a broad category, where the form of law is only one component. Thus, according to I. Lukashuk, the term "source of law" covers not only the form of existence for standards, but also a way of creation.

From another perspective, if we talk about specific legal rule, the latter is only the form for certain rules of conduct. Only a set or rather, a system of rules can be viewed as meaning all law (reflecting the Rules of Conduct). A media of law is the regulations, from which the information about these standards is taken, and are a form of law, as legal sources function. These sources of law are generally defined as formal, and this emphasizes the identity (match) of forms and sources of law.

And most substantiated seems the approach, where the sources of law are defined as the origins of the formation of law system factors determining its content and form of expression, at a time when the "form of law" reflects merely the internal organization of the law content and its external manifestations. N. Chizhov expressed this approach regarding determination the

relationship between the source and form of law in 1878. According to him, "the concept of the law form is closely related to the concept of source content that fills the legal form. The source of law is understood as the root, from which the law is branched; the reason that embodies a right to some form".

Under this approach, the factor (cause) to create a legal norm may be, for example, the provision of regulatory and technical documents (standards), which may contain "idea" of the law, which legislator can fix subsequently in the provisions of the legal act.

Regarding the definition of "environmental law", it should be started with the fact that the term "ecology" was introduced into scientific terminology by German biologist Haeckel in 1866 in the book "Total body morphology", which defined ecology as the study of the conditions for living organisms existence together with the environment, where they exist (within biology). Although the author suited to understanding of ecology too narrowly, its merit is that he first identified the ecology as a self-concept, and it stimulated the deep research in science and further practical application in various spheres of society, legislative and enforcement activity.

Today many positions on the definition of "environmental law" can be found in the scientific literature, and, environmental law sources can be differently identified depending on its interpretation. In our opinion, the most universal is the definition of environmental law from the perspective of natural law thinking, where environmental law as the law in general is not only legislation, but also a system of ideas about compulsory standards.

Scholar M.M. Brynchuk considers environmental law in this way. According to him, the environmental law is considered as a set of rules based on environmental and legal ideas and regulating specific social relations for the ownership of natural resources to ensure sustainable use of natural resources and protection of the environment from harmful chemical, physical and biological impacts in the economic and other activities, and protection of environmental rights and interests of individuals and entities.

This definition combines the positive aspects of normative legal theory, which take the rule of law as a basis, sociological, which prefers the practice of establishing norms and ideological (axiological) theory. It is mainly a combination of thinking, creation of law and application of law. This definition enables to expand slightly the range of environmental law sources, including here regulatory and technical documents as containing environmental and legal ideas. It is primarily about European environmental standards, the provisions of which, without mandatory execution, set the pace and direction of environmental development EU member states and countries seeking EU.

However, the scientific literature primarily considers environmental law sources in a narrow way. Thus, by definition of scientists A.P. Getman and M.V. Shulga, environmental law sources are regulations accepted by the authorized state or local government and ratified by international legal agreements, which regulations define social environmental relations concerning origin, use, reproduce natural objects, environmental protection and ensuring environmental safety to meet the environmental, economic and other interests of society. In this definition, environmental law sources are limited to regulations.

S. Shemshuchenko examines this definition slightly wider. In his opinion, environmental law takes its appearance in such sources as legal custom, judicial precedent, and the legal act.

Professor V.I. Andreytsev gives quite a universal definition. He defines the environmental law sources as a form of environmental and legal norms, regulations that include environmental and legal rules designed to regulate ecological relations.

According to the latest definition, sources of environmental law of Ukraine should be attributed not only to regulations, but also such written expressions for the sources as administrative contracts, legal precedents, the decisions of Constitutional Court of Ukraine, the legal doctrine, legal and technical documents (national standards of Ukraine), local regulations tools (acts of state bodies regarding specific natural complex), linguistic norms. However, the form of expression for environmental law sources should also provide unwritten sources, which include the following legal principles as moral principles in the society, logical rules, legal

traditions and customs.

In other words, the environmental law sources are considered as a form of external expression for ecological and legal standards. It allows to take into account much more social rules and regulations that may affect the formation of the field of environmental law.

However, to separate clearly environmental law sources among the vast number of social rules and regulations, their signs should be provided.

Thus, their international legal focus on environmental protection and rational use of natural resources and environmental safety should first be identified among the main features of environmental law sources. Professor S. Kravchenko noted that "nature does not recognize national borders. Some unique natural systems, territory and objects requiring special protection are located on the territory of several states that needs coordination for their efforts. Natural conditions for international legal regulation in environmental protection have limited resources and space limits of the biosphere".

Focus of international law for environmental regulations and normative-technical (standards) documents recently acquired special urgency. In particular, the Medium Term Plan of priority actions for the Government by 2020 have been approved by Cabinet of Ministers of Ukraine 3rd of April 2017, № 275-p. In this legislative act one of the priorities is to ensure approximation of Ukraine to the EU legislation in imposing standards of air quality content for most hazardous air pollutants and air quality management in the medium term (over one year).

The priorities of these actions are to reduce air pollution and more sustainable management for environmental quality. Due to certain activities, the following things will be ensured: reducing the pollutants concentration and higher protection of human health, vegetation and ecosystems; strengthening institutional capacity for formulation and implementation of national policy on climate change and protecting the ozone layer; preventing the ozone layer destruction by reducing ozone-depleting substances emissions; adaptation to climate change resilience and reduction risks associated with climate change.

Therefore, these tasks cannot be achieved without the continuous updating of national environmental standards and the gradual approximation to EU standards. Moreover, environmental legislation should be accordingly changed. Thus, despite environmental standards will not make changes to certain laws of Ukraine, but the constant improvement of standards sets the direction for the formation of general Ukrainian environmental legislation.

Another sign of environmental law sources is binding type of implementation for their provisions. Regarding this sign, there is a question to this type of environmental law sources as a regulatory and technical documents (national standards), as they are mostly treated in the scientific literature as "soft law sources". If the standards are not discussed in general, and especially environmental standards, according to Article 3 of the Law of Ukraine "On Environmental Protection", basic principles of environmental protection are, in particular, the priority of environmental safety requirements, binding adherence to environmental standards, norms and limits for the use of natural resources in the implementation of economic, administrative and other activities. Regarding this principle, environmental standards can be considered as binding, although they do not have the status of regulations. This principle is also confirmed by Article 32 of the Law, which stipulates that national standards in the field of environmental protection are binding.

Another example of mandatory environmental standards is technical regulations. The latter is a form of environmental standards and is, by definition in legislation, a legal act, which defines the characteristics of products or related processes and production methods, including relevant procedural provisions, which observance of is mandatory.

Therefore, discussing standards in general, they can be both mandatory and recommendatory, while environmental standards are unconditionally binding. In other words, the criterion of mandatory requirements for environmental standards are comparable to the standards or even laws.

However, environmental standards are not binding in EU environmental law, and that

occurred historically. European international standards are advisory in nature for the most part ever since their foundation the International Organization for Standardization (ISO) in 1946 in London and to date. The priority of the provisions for these standards is an economic interest. If the products have quality certificate, this makes it more attractive to potential buyers.

Moreover, given the fact that the provisions of European standards are constantly improved, no official data standards are more important for performance than even the laws of a single European country. Large and medium-sized enterprises, focusing on the international recognition of their products tend to get a certificate of compliance with European standards, including in the field of ecology. States, in turn, take also European standards as a model, appropriately changing national standards and legislation. Taking into account that there are no obligation to implement European standards, the International Organization for Standardization (ISO) has proved that officially not binding regulations may significantly affect the environmental legislation. Thus, the sign of binding for environmental law sources is now somewhat relegated to the background.

Next feature is adopting environmental law sources only by the bodies authorized by the state. These bodies are the Parliament of Ukraine, President of Ukraine, the Cabinet of Ministers of Ukraine, central executive bodies and government state agencies, local administrations, local authorities, etc.

This list of subjects also shows that the environmental law sources are formal, and formal type, in turn, makes the following characteristics:

1) their publication, authorization is only within the competence of the body (for example, only the Ministry of Ecology and Natural Resources of Ukraine provides legal regulation in the field of regulation for negative human impact on climate change and adapt to its changes and the requirements of the Framework Convention of the United Nations Convention on climate change and the Kyoto Protocol on particular national standards and procedures for monitoring, reporting and verification of emissions data and absorption GHGs).

2) their adoption is made within the certain documentary made in the form prescribed for certain acts of authority. For example, the Ministry of Economic Development and Trade of Ukraine endorses and adopts legislation under national standards, rules for established practice and classifications;

3) publicity for environmental law sources. It is associated with the openness for the official information contained in the environmental law sources, with the requirement of mandatory disclosure for the sources of law, as enshrined at the Constitution and laws of Ukraine and other regulations. Thus, speaking about regulatory and technical documents, national standards bodies (State Enterprise "Ukrainian Research and Training Center of Standardization, Certification and Quality") provides placing texts of national standards on the official website (<http://uas.org.ua>).

In addition to these, the normativity of the environmental law sources belongs the main features. It points to the main content, the nature of regulations, which are carriers, location, and actual source of legal rules that are designed for repeated use in the regulation of social relations. These rules establish compulsory legal rules, which define: the rights and responsibilities for the subjects of environmental relations; requirements for the arranging environmental activities, implementation of specific management functions in this area; order and conditions for functioning the economic mechanism in the field of environmental management, environmental protection; other binding environmental and legal provisions. Such signs as their scope differ environmental law sources from other sources of law. It is about ecological relationships. They arise from environmental protection, protection and use of certain natural resources, guaranteeing environmental safety during production and other economic activities.

Given the above, the following definition is proposed. Environmental law sources is formulation and expression of the law made official within the competence of the subject of environmental external relations, aimed at regulating relations in the field of natural resource

management, environmental protection and environmental safety. For all the listed features of environmental standards as regulatory and technical documents establishing compulsory rules, regulations, standards in the field of natural resource management, environmental protection and environmental safety are environmental law sources.

List of references

1. Alekseev S. (1981): General theory of law. Course of lectures. – Law books, Moscow
2. Andreytsev V. (1996): Ecological Law. – Venturi, Kiev
3. Brinchuk, M. (2002) Ecological Law (Environmental Law): Lawyers, Moscow
4. Chizhov N. (1878): Source and forms of law: Monography. – Publishing house of Ivan Noskovskiy, Warsaw. [Electronic resource] – Access: <http://bo0k.net/index.php?p=chapter&bid=708&chapter=1>
5. Garcia Garrido M. H. (2005): Roman private law: Casualties, lawsuits, institutions [Translation from Spanish]. – Statute, Moscow
6. Grotius H. (1956): About law of war and peace [Translation from Latin]. – Ladomir, Moscow
7. Gurova T. (1998): Sources of Russian law. – Dissertation of Department of State and law theory of Saratov State-owned Legal academy, Saratov
8. Gvozdk P. (2012): Sources of environmental law of Ukraine: monography. – Alerta, Kiev
9. Hetman A., Shulga M. (2009): Environmental Law of Ukraine. – Law, Kharkiv
10. Kostenko O. (1998): Culture and Law. – Rule of law, Volume 9: 130 -136
11. Kostenko O. (2001): The principle of social naturalism in jurisprudence. – Journal of Kiev University of Law, № 1: 19-21
12. Kravchenko S. (2002): Actual problems of international environmental law. – Publishing Center of Lviv National Ivan Franko University, Lviv
13. Kurylo V., Kurzova V., Berlach A. (2015): Environmental Law of Ukraine. – Alerta, Kiev
14. Law of Ukraine "On Environmental Protection" (25.06.1991 № 1264-XII). – News of Supreme Council of Ukraine (1991), № 41: article 546.
15. Law of Ukraine "On Technical Regulations and Conformity Assessment" (15.01.2015 № 124-VIII). – News of Supreme Council of Ukraine (2015), № 14: article 96.
16. Lukashuk I. (2001): International law. General part. – Publishing house BEK, Moscow
17. Maltsev G. (1999) Understanding of law. Approaches and problems. – Prometheus, Moscow
18. Marchenko M. (2008): Sources of Law. – Publishing house Prospect, Moscow
19. Matuzova N., Malko A. (1997): Theory of State and Law: Yurist, Moscow
20. Medium priority action plan of the Government by 2020 and a plan of priority actions of the Government in 2017, approved by the Cabinet of Ministers of Ukraine dated April 03, 2017 № 275-p. – Governmental Courier 11.05.2017 number 85
21. Mishchenko S., Ponomarev S., Ponomareva A, Evlahyn R., Mozgova G. (2004): History of metrology, standardization, certification and Quality Control. – Publishing house of Tambov State Technical University, Tambov
22. Montesquieu S. (1999): About spirit of the laws. – Publishing house “Think”, Belgorod
23. Regulation of the Ministry of Ecology and Natural Resources of Ukraine, approved by the Cabinet of Ministers of Ukraine on 21 January 2015 number 32. – Official Bulletin of Ukraine from 02.13.2015 - 2015 r., Number 10, p. 14, Article 266, Code Act 75624/2015
24. Regulation on the Ministry of Economic Development and Trade of Ukraine, approved by the Cabinet of Ministers of Ukraine dated August 20, 2014 № 459. – Official Bulletin of Ukraine from 03.10.2014 - 2014 r., Number 77, p. 116, section 2183, the code 74037/2014 act.
25. Shemshuchenko S. (2008): Environmental Law of Ukraine. - Legal opinion, Kiev
26. Skakun O. (2006): Theory of law and government. – Espada, Kharkov.
27. Ukrainian dictionary. Academic Collegiate Dictionary (2010). – Publishing of Academy of Sciences of Ukraine, [Electronic resource] – Access: <http://sum.in.ua/s/dzherelo>
28. Understanding of law // [Electronic resource] - Access: <https://en.wikipedia.org/wiki/Law>
29. Zaichuk A., Onishchenko N. (2006): Theory of law. – Yurinkom Inter, Kiev 2006.
30. Zayets A. (1998): The principles of the rule of law (theoretical and methodological study). – Journal of Academy of Sciences of Ukraine, № 1: 3-12.