

THE PURPOSE OF ADMINISTRATIVE ENSURING THE BALANCE OF INTERESTS IN THE FIELD OF ENVIRONMENTAL REGULATION

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Annotation. *The article examines the purpose of administrative maintenance of the balance of interests in the field of environmental regulation. Systemic, structural-functional methods and the method of comparison were used for the research. The topicality of the topic is due to the need to increase the effectiveness of the legal regulation of environmental protection, environmental safety, and nature management. In the context of current environmental legislation, the purpose and tasks of legal regulation are considered. It is noted that the subject-objective basis of administrative-legal regulation, which is expressed with the help of the concept of the idea of law. The latter acts as a legal idea of administrative and legal regulation in the field of ecology and forms the subject-objective basis of content and research. It is noted that the specification of the concept is manifested in the understanding of the balance of interests as a planned result of the coordination of the public interest of protecting the natural environment with basic public interests (economic well-being of citizens, security, and others), even with private interests. Protection of the public interest should have the ultimate goal of protecting the rights and freedoms of a specific person and citizen of the state. The purpose and planned result of the reconciliation of interests is to ensure basic public interests, ensure the subjective environmental rights and legitimate interests of citizens, and protect them from the misconduct of powerful subjects of administrative law in the field of legal regulation of environmental protection. The administrative-legal maintenance of the balance of interests in the field of environmental regulation is defined as a system of organizational, material and procedural administrative-legal means, with the help of which, in the process of realizing the public interest of environmental protection, basic public interests are ensured, the rights and legitimate interests of individuals and legal entities are ensured and protected.*

Key words: *natural environment, environmental protection, subjective environmental rights, administrative law.*

1. Introduction.

The basis of environmental regulation is the public interest of environmental protection, environmental safety, and effective nature management. The collision of the public interest of protection and the private interest in the use of natural resources in the specified area with other public interests gives rise to a complex of theoretical and practical problems related to the need for coordination and balance in the legal space, without achieving which the problematic provision of the constitutional rights of citizens to a favorable environment and sustainable development of the state. Awareness of interests involves an objective assessment, but the extent of subjectivity of perception in awareness and protection, which is inevitable, but at the same time distorts the essence and meaning of the interest, makes it difficult to find a compromise between different social groups, the state regarding mutual recognition and legal protection of interests. This situation leads to the dissatisfaction of the objective needs of society in economic and state development in connection with the system of environmental regulation. This causes the need to develop and build a theoretical concept as a necessary fundamental condition for building on a systemic basis effective administrative and legal protection of the balance of interests in the field of environmental regulation.

2. Analysis of scientific publications.

Problems arising in the field of ecology became the impetus for scientific understanding from different positions by many scientists. Administrative aspects of ensuring the balance of interests in the field of environmental regulation were studied by scientists: V. Andreytsev, P. Andrushko, G. Anisimova, H. Balyuk, M. Vasylieva, A. Hetman, V. Zuev, I. Karakash, N. Kobetska, T. Kovalenko, V. Kostytskyi, S. Kravchenko, M. Krasnova, Yu. Krasnova, A. Kulynych, N. Malysheva, V. Muntyan, V. Popov, N. Tytova, Yu. Shemshuchenko and others. The implementation of the Association Agreement between Ukraine and the European Union requires the adaptation and improvement of national legislation in the field of nature management and environmental protection, which requires theoretical and legal research in the field of balance of interests in ecology and economy.

3. The aim of the work.

The purpose of the article is to study the purpose of administrative maintenance of the balance of interests in the field of environmental regulation.

4. Review and discussion.

The basis of legal protection of the balance of interests in a certain area of legal regulation is an adequate definition of the subject of legal regulation and its purpose. Without this improvement, individual legal institutions will be doomed to be unsystematic, incoherent, and contradictory. The field of environmental regulation is no exception. The balance of interests in the field of environmental regulation includes the balance of various public interests, the balance of aggregate public interest with private, and the latter is related to the protection of the right of a private person in relations with the state.

The subject of environmental regulation and its purpose should reflect the task of ensuring the balance, include the task of protecting the rights of a private person, protecting public interests that are beyond the limits of one's own environmental interest, but are affected by a positive or negative impact as a result of its implementation.

A necessary prerequisite for the process of balancing or harmonizing public and private interests should be their popularity, definition in the social and information space, legislation. Only after the identification, awareness, correction, recognition by the state and society of certain public and private interests in the field of economy and ecology is possible to move to the next stage of harmonization or balancing of interests.

In order for individual legal means, principles, institutions, material regulation, and administrative procedure to be effective from the point of view of achieving a balance of private and public interests, it is necessary to have legal mechanisms, identification, selection and legal consolidation of interests, and then their transformation, reflection, realization in a balanced form in legal means. It is appropriate to pay attention to the shortcomings of the legislation, in particular the main ecological law "On environmental protection" [1].

First, the goal is primarily economic, not legal. Secondly, they do not contain instructions for protecting the rights and legitimate interests of participants in ecological and economic relations.

The purpose of the law should be oriented towards further law-making and application of the law. When formulating and normatively enshrining the purpose of the law, it is necessary to proceed from its legal meaning, its role for the development of law-making and the application of law. The situation is not justified when the goal of the law does not include, for example, provision of effective mechanisms to protect citizens from the misconduct of environmental control bodies or to protect citizens from abuses by business entities and powerful entities.

The Law "On Protection of the Natural Environment" and the normative acts adopted for its implementation are difficult to verify with such an approach from the point of view of the abstract goal for a specific normative act, such as freedom of economic activity. In a legal dispute, it is easier to evaluate the act from the point of view of the legal guarantees it provides to the participants of the relevant environmental relations. However, the law does not define this very purpose, it does not set such requirements for acts.

The process of harmonizing public and private interests in environmental legal regulation is complicated by the failure to enshrine the goal in the law "On Environmental Impact Assessment" [2].

Further legislative work is needed to adjust the goal of environmental legislation in several directions: giving the goal a legal character; accounting of the interests of a person, including an entrepreneur in the field of environmental regulation and control; the formation of the legal basis for the transformation of strategic goals and tasks contained in strategic planning acts into environmental regulation and the application of law with the aim of harmonizing the spectrum of various public interests subject to organizational, material and procedural harmonization, legal protection and protection in the field of environmental regulation and control, providing environmental regulation with the implementation vector established by macroeconomic planning acts, and ensuring environmental regulation is inextricably linked with the tasks and goals laid down in such acts, including through a system of control tools and responsibility for the non-compliance of sectoral environmental regulation with the tasks set in macroeconomic acts of strategic planning.

Solving these tasks will contribute to legal certainty, which will allow laying the legislative foundations, form guidelines for the development of principles, institutions, material norms and administrative procedures in the legislation adopted for the implementation of other normative legal acts.

This will create a meaningful criterion for checking and controlling the content of legal norms in the judicial, administrative and social order. Legal criteria will appear at the disposal of the authority authoring the act and the Ministry of Justice of Ukraine, which conducts examination and registration of normative acts affecting the rights of citizens, and a private entity that wishes to protect itself from unreasonable pressure from the administration, the court, which will receive certain assessment criteria legality of the act.

Yu. Korneev and V. Melnyk note that there is not enough scientific research on the improvement of legal norms, although the issue of legal regulation of the implementation of environmental rights of citizens has repeatedly become the subject of research and scientific development [3, c. 81].

The subject-objective basis for ensuring the balance of public and private interests, taking into account the pronounced human rights nature of such a balance, is the right of a private person in the field of environmental regulation. The right of a person who enters into relations with powerful subjects in the field of environmental regulation can be designated as a subjective public environmental right.

Speaking about this concept, it should be noted that the position of courts of various levels is an established practice, according to which in order to meet the requirements of a person in the judicial protection of harassment, it is necessary to establish a violation of the subjective right of the person in question.

This position is justified by the logic of the rule of law and the formal legal logic of law. In the legal literature, it is generally accepted that the main ways of regulating social relations are the establishment of subjective rights and obligations.

The category of subjective rights remains poorly developed theoretically in legal science and in branch legal sciences [4]. In the legislation, the concept of subjective right has not acquired legal consolidation. Subjective rights must be deduced from the text of legislation using general scientific and special legal scientific methods, which often leads to subjectivism and does not contribute to the uniformity of judicial practice.

Due to the format and specificity of official judicial explanations, they can help solve the problem in a fragmented way. The formation of conceptual proposals regarding the content, classification, types of subjective public rights is possible in the course of scientific activity. The field of environmental protection, despite the variety of works on environmental law, is poorly studied from an analyzed point of view.

The intensive growth of the powers of the Ministry of Environmental Protection and Natural Resources of Ukraine, the planned strengthening of intervention in economic life, is ambiguously evaluated in public opinion and specialized literature [4]. Scientists make the theoretical understanding of the system of environmental regulation from the standpoint of the institution of subjective law, subjective public law in connection with the protection of the good of a specific person who suffers damage from violators of the requirements of environmental legislation, urgent and practically required by scientists [5].

In a state governed by the rule of law, the state's relationship with private individuals is governed by legal norms. Such relations have a legal character. This means that relations between the state and private individuals must be implemented in the legal space.

Enshrining the model of the rule of law in the Constitution of Ukraine puts forward an imperative requirement for the formation of a consistent, logical legal field of state administration, the legal order of relations between the state, individuals, public associations and society.

One of the elements of the theoretical model of the legal state is the institution of subjective law or law in the subjective sense (the rights of the subject), the law that belongs to a specific person. The concept of subjective law is based on human rights. The concept of subjective law, in accordance with the concept of human rights, appears to be broader, since a legal subject – a legal person (personality) can be an individual, but also a public association. The basis of the subjective right is the good, the opportunity, the conditions, the promotion of achievement, which are legally established and protected, and in some cases directly provided by the state.

According to Article 3 of the Constitution of Ukraine and the model of the rule of law, a person, his rights and freedoms are the highest value. According to this article of the Basic Law, recognition, observance and protection of human and citizen rights and freedoms is the duty of the state [6]. The activity of the state, its functions, powers, form of implementation must comply with the specified norm, aimed at the implementation of the constitutional position. Constitutional stability is an important condition for establishing and effectively ensuring the constitutional legal order [7, p. 53].

Protection of the public interest should have the ultimate goal of protecting the rights and freedoms of a specific person and citizen of the state, their specific good. Protection by the state of the subjective rights of individuals and the subjective rights of public associations acting as a single legal entity is a means of implementation provided for in Art. 3 of the Basic Law on the constitutional duty of the state to protect a person, his legally enshrined rights and freedoms.

One of the directions of state management and protection of public interest is the protection of the natural environment. One of the main institutions for ensuring public interest in environmental protection is state environmental control. According to the constitutional model of the legal state, environmental control is carried out in Ukraine only in the legal field.

The state carries out environmental regulation in the form of legal means, in particular through the definition of interdependent rights and obligations, measures, legal responsibility and means of ensuring implementation. In the theoretical model of the legal state outside the legal field, there is no environmental control, no obligations of private individuals to the state, no right to coercion.

The basis of governmental and social activity is the protection of a certain social good. In the system of social protection of ecology, such a good is a socio-ecological good. This benefit is characterized by material benefit, the benefit of business entities and consumers from a fair, efficient, ecological and economic system based on the optimal market balance.

In this context, subjective environmental law represents a set of socio-economic and ecological benefits of an individual protected by the legal system of the state, resulting from such an economic-political order of economic activity, which meets the requirements for the behavior of economic entities and public authorities established by the state, based on from economically justified criteria that express the ideal of the economic system from the point of view of the balance of ecology and economy in economic activity.

Subjective environmental law can have an abstract and concrete nature, belong to an indefinite circle of persons, those persons who are potentially economically dependent on its effective implementation and

may suffer from violations by specific subjects, direct participants in environmental legal relations. In the literature, the study of environmental law from the standpoint of subjective rights has not yet become a widespread phenomenon, but some attempts have been made.

Violators of the subjective environmental rights of citizens and business entities can be authorities authorized in the field of environmental protection. For example, not acting on violators of the law, making illegal and inappropriate decisions, condoning violations of nature use, on the contrary, applying unreasonable coercive measures to innocent participants in economic activity.

The subjective environmental right of citizens and business entities is the flip side of the duty of public authorities to act within the limits of the law regulating environmental protection. Exceeding the limits of the permitted by the specified entities is not only a violation of the legal obligation, but also the subjective right of the relevant persons and business entities.

Subjective environmental law has a constitutional and legal character. Along with Art. 3, its constitutional and legal basis is a number of other provisions of the Constitution of Ukraine directly devoted to issues of environmental protection and freedom of economic activity.

Subjective environmental law is part of other branches of legal regulation, in particular, civil and administrative, depending on the type of subjects who have an obligation that corresponds to the subjective right of another person. This is how a set of civil subjective rights and obligations arises, which binds private individuals in a civil legal relationship, operating in economic turnover, and a set of administrative subjective rights and duties, which binds in an administrative legal relationship private individuals or economic entities and public entities, in particular those responsible for the implementation of environmental control, other public entities obliged to comply with the prohibitions and requirements established by the legislation on environmental protection, which is characteristic of EU environmental law [8, with. 12].

In the system of objective environmental law, subjective administrative rights fall into two large groups. This is the right of business entities to observe and promote a fair economic order from the point of view of the optimal balance of ecology and economy in relation to an unlimited range of public authorities. This subjective right of business entities corresponds to the obligation of public entities to comply with the requirements of legislation in the field of environmental protection, environmental safety and nature management. Legal recognition of the existence of negative socio-legal phenomena generates preventive norms [9, p. 42].

This is the subjective administrative right of a person or business entities to protection against illegal actions, acts, inaction of violators of environmental legislation, protection of the violated subjective right, including in administrative or judicial-administrative proceedings. Articles of the Constitution of Ukraine, which enshrine the rights, freedoms and duties of a person and a citizen, provide for protection against violations by means of rights protection, guarantees of rights (legal, material) and other types of state coercion [10, p. 119].

Depending on the ownership, subjective administrative rights differ in terms of the spectrum of incoming specific legally guaranteed powers, in terms of implementation procedures.

Appropriate definition of other classifications and types of subjective administrative environmental rights in order to further develop the issues and improve the legal protection of the rights of individuals and legal entities in the field of environmental relations. One of the possible directions of the research of subjective administrative environmental rights may be to turn to the experience of research in the field of subjective public rights, which act as a generic category in relation to the first.

Subjective public environmental law and its protection should become one of the elements of the subject and purpose of environmental regulation from the standpoint of ensuring the balance of interests as one of the key foundations and basic categories. Enshrining subjective law in the subject and purpose of environmental law is an important material and legal means of ensuring the balance of private and public interests in the field of environmental regulation.

Balancing should be inclined to the public interest of environmental protection, environmental safety and efficient nature management. This should be reflected in the subject and purpose of environmental

regulation. To solve this task, special legal means, special legal regulation, and legislation are being formed.

In the National Economic Strategy for the period up to 2030, the public interest of environmental protection, environmental safety and efficient nature management occupy a subordinate place [11].

From the point of view of economics and management, this means that the specific content of state environmental regulation should be carried out taking into account and with the aim of achieving the goals of the Strategy of Economic Security of Ukraine for the period until 2025, but without taking into account the Basic principles (strategy) of the state environmental policy of Ukraine for the period until 2030 [12; 13]. This is due to the imperfection of the system of legal support for the transformation of strategic goals and tasks into sectoral measures.

5. Conclusions.

The subject and purpose of environmental legislation should reflect the task of ensuring organizational, material and procedural protection of the rights and legitimate interests of non-powerful subjects of legal relations, when developing and changing environmental legislation, individual norms and institutions, and the duty of law enforcement agencies to ensure such protection. This will allow the authorized subjects of power in the application of environmental legislation, in the administration of justice in public disputes, to apply separate norms and institutions of environmental legislation within the unity of the subject-objective concept.

It is necessary to supplement environmental legislation in terms of establishing a model of coordinated legal regulation of the transformation of public interests, expressed in the form of goals and tasks in strategic planning acts, into the subject, purpose and tasks of environmental legislation. Inconsistency of acts of environmental legislation with the tasks of acts of strategic planning should be grounds for cancellation of relevant acts. This approach should receive further development in the principles of environmental law, organizational, material and procedural aspects of environmental regulation.

One of the areas of ensuring the balance of public interests should be control, including through the special powers of the prosecutor's office to appeal in the public interest normative and non-normative acts in the field of environmental regulation that contradict strategic planning acts.

It is appropriate to consider the issue of legal support for the implementation of political and legal responsibility of authorized officials in case of systematic detection of non-compliance. This implies certain organizational changes in the system of powers of the authorities.

The formation of an agreed subject-objective concept of environmental and economic legislation in the field of environmental regulation in order to ensure a balance of interests is the basis of further administrative and legal support, which includes legal foundations, a system of powerful subjects and their powers, material and procedural means of regulation.

Among the legal means of systemic importance and basic importance for the further construction of material and procedural institutions are the principles of environmental regulation, their importance for establishing a balance of public interests in the field of environmental protection, ensuring environmental safety, effective nature management and economy is the subject of further of research.

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