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ENSURING ECOLOGICAL SAFETY OR ENSURING A FAVORABLE ENVIRONMENT: THEORETICAL AND LEGAL JUSTIFICATION OF THE FUNCTION OF A MODERN ECOLOGICAL STATE

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Abstract. The author examines the problems of contemporary society and their impact on the environment, as well as on the development of environmental law, analyzes such legal definitions as the environment, the right of environmental safety, their sociological and legal content, the right to a favorable environment as a subjective right of man in the modern world. In this article, it is not the first time when author raises the question of a new role of the state in modern conditions, the ability of the state to respond to global challenges using theoretical and legal science and sociology of law within the framework of the theological and sociological understanding of law which was proposed by the author. According to the author, the post-industrial state, which still remains the mechanism of servicing the liberal values of society, must be replaced with ecological state that can preserve democratic values, on the one hand, and to find answers to the challenges of the present, on the other hand, to strengthen the power influence on the course of events in society, between civil society and the state within the framework of the constitutional and legal requirements as a social agreement, to respond to global and regional environmental challenges within the framework of the modified ecological function of the state.

Keywords: ecological law, ecological function of the state, ecological safety, the right to environmental safety, the right of environmental safety, the right to a favorable environment, the codification of environmental legislation, the ability of the state to respond to the environmental challenges of the present.

Problems of interaction between society and nature, environmental protection ceased to be mere companions of social progress. They have shifted to the forefront of the general spectrum of global socio-economic, political, but above all humanitarian, problems, regardless of how scientists, politicians and astrologers would evaluate the prospects of human survival and the possible onset of a qualitatively new age in the development of civilization.

Today it is quite clear that the further growth of crisis phenomena, if it is not stopped by coordinated efforts of all countries of the world, will have only one result – a global ecological catastrophe. Although some politicians and economists yet are not ready to agree with this statement, the very response of the world community to the environmental challenges of the present – the creation of numerous national and international environmental organizations, a large number of environmental

NGOs, the adoption of many national and international environmental programs – is by-passing recognition of this crisis.

The interaction of society and nature is a general condition of people's livelihoods. Associated with labor, nature, thus, serves as a source, condition and factor in the implementation of productive activities, becomes social, as well as the process of its "humanization", that is – production. Therefore, social production as a process of development of nature, carried out through labor, should be regarded as the unity of social phenomena, as defined sociosystem of the hierarchical subordination of forms matter's movement. The central place in it belongs to a person who plays an active role in this interaction with his transformative activity. However, today it's hard to talk about the protection of nature and the rational use of natural resources, since the modern man has not been surrounded by inviolable nature for a long time. Today, in interaction with a person enters the natural environment, which, in addition to the untouched nature, includes the so-called man-made nature, that is, natural objects created by man (reservoirs, ponds, artificially created lakes, forest park plantations, etc.). In addition, this system includes anthropogenic and man-made objects - buildings, bridges, nuclear power plants and entire urbanized territories, which, together with objects of untouched and man-made nature, constitute an environment that surrounds a person.

Environment is the space that is necessary and accessible to humanity, which is exposed to the influence of the society which lives in it. Society is connected with nature by its origin, existence and future.

Consequently, the natural environment is a dynamically open system. The inclusion of new natural conditions in the sphere of material production means that the components of the environment become socialized elements of social life, either as a means of production, or as diverse objects of social or personal consumption. In this regard, the problem of environmental protection as a human living space still encompasses the protection of nature and the rational use of natural resources, but gradually the provision of environmental safety of human health and life has been becoming the basis of such activity.

Since society is a social system, the laws of its existence, being social in nature, that is, characterizing the development of the higher form of matter, cover with its regulatory action all the previous forms of motion of matter, which are present in it in the "taking form", which is based on the principle of compliance due to the effect of their integral unity. That is why solving the contradictions in the interaction of society and nature and avoiding the ecological crisis can only be done by taking into account globalization processes, using the benefits of globalization and V.I. Vernadsky's doctrine on the unity of the living space of modern humans – the noosphere, which should be the basis for ensuring environmental safety and a favorable for living environment.

Taking into account the modern features of the interaction of society and nature requires the consideration of environmental policy not only in Aristotle's interpretation as doctrine of the state and power, but also as a practical management of the life of society (functional Plato's approach) and a system of program settings, principles and norms of regulation of society's life and public relations, that is, the provision of a favorable environment for human life and society and environmental safety for present and future generations is the main area of implementation of the environmental functions of the state.

The emergence of the ecological function of the state is connected with the deepening of contradictions between society and nature and the necessity of expansion of state-legal interference in the sphere of environmental relations. The peculiarity of the ecological function of the state is that, in its content, it belongs to the sphere of ecological relations, and in its form – to the system of legal regulation of social relations.

The means of regulatory influence of the state in this area are environmental taxation, licensing, certification and standardization, regulation of prices and tariffs, application of norms and limits, granting of investment, tax and other privileges, granting of subsidies, compensations, targeted innovations and subsidies, etc.

Among the European states, Ukraine really has the highest integrated index of negative anthropogenic pressures on the natural environment, practically, throughout its territory. Moreover, in two thirds of the regions, the ecological situation and the quality of the environment are characterized as acutely critical and unfavorable to human health. Officially recognized international status of our state as a "ecological disaster" zone, which covers more than 10% of the total territory, status received by Ukraine after the Chernobyl accident. On the background of this, the use of nature is characterized as extremely irrational and unbalanced in terms of taking into account environmental requirements. The efficiency of the use of natural resources remains extremely low, therefore, the nature capacity, primarily land and water, gross domestic product, on the contrary, is too high.

Thus, the necessity of purposeful and effective solution of ecological problems and ecological security in Ukraine is determined by internal factors (inefficient nature use, excessive pollution of the environment, environmental degradation in general, which has reached high rates and sizes) and external factors and requirements. The latter is solved through the realization of the strategic goal of developing a comprehensive European and Euro-Atlantic cooperation with Western and Central European states with the prospect of gaining full membership in the European Union, the need to enter the European standards of environmental safety.

In order to implement the priorities of environmental safety in the socio-economic practice it is necessary to strengthen the actions of economic instruments of stimulating rational use of nature in the economic mechanism on the basis of the development of common for all structural levels of environmental and economic assessments, which precede the adoption of strategic decisions. The further development of social production should be accompanied by the ecologization of all its units. As a moral and ethical component covers all activities of a modern person, and property relations permeate the entire economic system of society, and environmental relations, in essence, are relations of the appropriation of natural factors in the process of production and in ensuring the external conditions of human life, socially determine the whole system of links of the social system of production. In other words, the content of environmental safety should be that the ecologised system of social relations - moral and ethical, economic, political, legal - was able to respond to the ecological state (level of development) of productive forces.

The need for purposeful and effective resolution of environmental problems and the provision of environmental safety in Ukraine is thus conditioned both by internal factors and international requirements. Since the strategic goal of Ukraine is to develop comprehensive cooperation with Western and Central European states with the prospect of gaining full membership in the European Union, it is necessary to reach the European standards of environmental safety in the political, legal, socio-economic, and ecological terms. At the present stage, the environmental factor is becoming more and more important and one of the priority in international relations, economic and scientific and technical cooperation of virtually all countries of the world.

Hence the conclusion - Ukraine must move through harmonization of national environmental legislation, requirements and standards of environmental safety of economic activity and their comprehensive adaptation to the West European ecological space. Along with this, the ecological state of the environment, the level and nature of nature use and environmental measures, environmental safety of technology should also be in line with Western European standards and norms.

Today, the solution of major environmental problems can not be imagined without international cooperation. This is primarily due to the global nature of environmental problems and the transboundary nature of the spread of pollution, in particular through air and water. That is why Ukraine's implementation of international obligations on environmental safety, the exchange of experience, technologies and information, and the attraction of international financial sources to the solution of national and transnational environmental problems is an essential part of the implementation of the ecological function of the state.

It can be noted that during the last decade of the second and first years of the third millennium, Ukraine, as an independent state, has been seeking self-assertion in the international and European community and within the framework of Ukrainian civil society, attempts to develop an optimal model

for regulating social, economic and environmental spheres of public life. And many successes have been made on this path, but the price of the latter has often been very high.

In view of this, it should be remembered that the ecological future of our people should be based on four strong pillars of ensuring the state of ecological safety: the first is a developed system of environmental law, the second is an effective system of administrative control and regulation, the third is the developed effective economic mechanism of nature use, aimed at maintaining environmental activities, and the fourth is the development of a legal and, in particular, political and legal culture.

The contradiction between these interests exists as satisfaction of human material needs which inevitably causes a limitation of biological means of satisfaction of human interests. Aggravation of these contradictions leads to the ecological crisis. The solution of such situation can be only in the revolutionary transformations of means and instruments of ecological safety.

The measure of correspondence between environmental and economic interests, which determines the quality of the environment and establishes the limits allowed in the plan of economic activity of man, are standards for the maximum permissible economic impact of society on the environment. We can conclude that the essence of environmental protection is to provide a scientifically justified measure of the balance of economic and environmental interests. The meaning of this measure is objectified in the norms of environmental quality, enshrined in the Law of Ukraine "On Environmental Protection". Their scientific validity is determined by the priority of protecting human life and health, protecting its environmental rights.

Environment is a space that is necessary and accessible to humanity, which is exposed to the influence of the society in which it lives. This environment is partially given by nature and partly by the person himself. Society is connected with nature by its origin, existence and future. The interdependence of social existence and nature lies in the fact that society in the process of its development can not but influence the nature, which, in turn, affects it itself. Understanding the nature and basic forms of relationships between them is the key to solving the contradictions in their interaction, that is, understanding the nature of environmental protection and the rational nature of use. People, using natural bodies and natural forces in their work activities, organize the production of certain material goods, and therefore enter into relationships that, in the process of influence on nature, manifest themselves as industrial relations. Social production, in essence, is the process of transforming the elements of nature into consumer goods, which (process) can be characterized as "stable functioning" [1].

From the conservative safety of nature through the creation of nature reserves from the XVII century and the special regime of the use of individual objects of nature and the system of rational nature use, formed in the middle of the twentieth century, mankind entered the third millennium with the awareness of the need for integrated provision of ecological safety, today there was a problem of environmental protection as a human living space.

In this case, the right question arises: can it be possible to apply the laws of the development of the natural environment of various living organisms and the conditions of their existence in relation to human society, or, in other words, is human society a necessary element in the natural environment? The methodology of ecosystem analysis, developed by M. A. Holubets, leads to the conclusion that in each ecosystem in the process of its development, animal and plant organisms perform certain functions, interacting with a biotype or biocenosis, which determines the integrity of the ecosystem, defining the laws of functioning and development [3]. All other ecosystems act in relation to any considered system as external forces of influence¹.

Another important concept, the meaning of which is comparable to the previous one, is the "favorable environment". This concept is often used in legislative acts and in practice. The very concept of a favorable environment serves as a benchmark for the legal regulation of nature use and

¹ The most important scientific and technical and socio-economic forecasts: Comprehensive forecast of the main trends in the global environmental situation for 1991-2010 / Scientific Council on the problems of scientific, technical and socio-economic forecasting. - M., 1987. - 55 p.

environmental protection, a criterion for assessing the legal nature of environmental requirements established in the legislation, and the corresponding activities of authorized bodies of state power.

Legislation does not define the concept, but it contains the relevant legal criteria expressed by the system of environmental protection norms and the limits of the use of nature. The system of such norms and limits, as well as general requirements for their development, are defined by the Law of Ukraine "On Environmental Protection". Standards express qualitative characteristics of the environment and are aimed primarily at ensuring its purity, which is only one, but an important characteristic of the favorable environment.

Another important characteristic of the environment concerns the resource-intensive (non-extinction) of natural resources. Taking into account the environmental safety requirements when regulating the use of natural resources in order to meet economic interests and human needs is ensured in accordance with the specified Law of Ukraine on environmental protection by limiting the use of natural resources. Environmental use limits are a system of environmental restrictions within the territory and represent the limits of the use (extraction) of natural resources that are set by the users for a certain period of time.

The environmental benefit also means the ability to satisfy aesthetic and other human needs, to maintain species diversity. Maintaining a favorable environment to meet these needs and preserving the potential of nature is ensured by regulation of the regime of natural territories and objects under special protection, recreation zones, etc.

The environment is favorable if its state meets the criteria, standards and norms, which are set in the environmental legislation on cleanliness (non-contamination), resource intensity (non-extinction), environmental sustainability, species diversity and aesthetic richness. The right to a favorable environment (the right to a favorable environment) is one of the fundamental and comprehensive subjective human rights.

The existence of a system of environmental law and social necessity in environmental protection necessitate the allocation of such a state function as ecological.

In legal literature, the functions of the state are the main directions of its activity, aimed at solving common issues of the subjects of society. It is noted that the necessity of solving these joint cases confronts the state with certain tasks, the set and content of which differ in preindustrial, industrial and postindustrial societies.

The ecological function of the state arose recently, along with the escalation of the problem of environmental protection. By this time, the use and protection of nature contained within the economic activity of the state and were seen as a manifestation of its economic function [8]. Aggravation of the environmental situation, the growth of the role and importance of the interaction of society and nature led to the need to appear in the number of internal functions of the state of independent ecological function.

At the same time, in the special scientific literature, there are other justifications for distinguishing the ecological function among the functions of the modern state. Sometimes such an attachment is conditioned not only by the requirements of proper environmental protection, but also by qualitatively new social and economic conditions – the transition of the world's vanguard to the stage of post-industrial or informational development, in which the demand for the relevant scientific and information resources is increasing, but also there is an emphasis displacement on the use of natural resources, the transition to a resource-saving economy, all social life is translated into rails of so-called sustainable development.

Analyzing in this context the peculiarities of the implementation of the ecological function of the state in modern conditions, it should be said that this process takes place, as a rule, in the context of the establishment and development of democratic states. This imposes an appropriate imprint on the specifics of the implementation of the ecological function of the state. Therefore, we can talk about the possibility of implementing the ecological function only in the conditions of a modern democratic legal social state, which assumes a certain complex of duties to society and man, protects environmental

rights and freedoms, cares for the protection and protection of the environment, possessing for this proper mechanisms [10].

The starting point for the content and direction of the state environmental policy of Ukraine is contained in the basic legislative act devoted to the issues of environmental protection – in the Law of Ukraine “On Environmental Protection” of June 25, 1991.

This Law establishes that Ukraine carries out on its territory an environmental policy aimed at preserving the life-threatening and inhospitable nature of the environment safe for existence, and protecting the life and health of the population from the negative impact caused by pollution of the environment.

The basis of environmental law is the natural human right to a healthy and environmentally safe environment. This right claims to the corresponding obligation of the state, which is now enshrined in Art. 16 of the Constitution of Ukraine: ensuring the ecological safety and maintaining the ecological balance on the territory of Ukraine, overcoming the consequences of the Chernobyl catastrophe – a disaster of a planetary scale, preservation of the gene pool of the Ukrainian people is the responsibility of the state. This norm of public law has developed in the “Basic Law of Private La” – the Civil Code of Ukraine, which came into force on January 1, 2004. In Article 293 of the Civil Code of Ukraine, “the right to a safe environment for life and health” states, in particular: “A natural person has the right to a safe environment for life and health, the right to reliable information about the state of the environment, the quality of food products and household items, as well as the right to collect and distribute them”.

The activity of a physical and legal person, which leads to destruction, damage, pollution, is illegal. Everyone has the right to demand termination of such activity. The activities of a natural or legal person who causes harm to the environment may be terminated by a court order. A natural person has the right to safe food products for her (food products and household items). A natural person is entitled to proper, safe, healthy working conditions, residence, training, etc. Article 293 of the Civil Code of Ukraine is interconnected not only with Article 16, but also with Article 50 of the Constitution of Ukraine, which also establishes the right of a person to environmental safety, but is slightly more restrictive in its content.

Today, we are forced to talk about the new socio-ecological role of the state associated with the spread of liberal democracy as one of the main trends in the process of globalization of public life. The modern state is compelled to become an element of civil society, loses the opportunity to dominate it or to take the position of an outsider observer, which is conditioned by globalization processes in the economy, as well as the peculiarities of the development of society. Consequently, the modern state has no choice: the threats of an ecological catastrophe of a planetary scale or regional ecological disasters and other challenges in the sphere of interaction between society and the environment determine not only the change in the content of state activity in this area of social relations, the reorientation of its ecological function to ensure a favorable environment for life, but also the development of state-public partnership in order to preserve the living space of man and society.

It is not the first time when the author raises the question of a new role of the state in modern conditions, the state's ability to respond to global challenges, using the achievements of theoretical and legal science, sociology of law and science of environmental law, taking into account the proposed theological and sociological understanding of law [4,5,6]. Today, to replace the post-industrial state, which remains the mechanism of servicing the liberal values of society, there must come an ecological state that can preserve democratic values, on the one hand, and to find answers to the challenges of the present, on the other hand, to ensure compliance with norms and standards of environmental safety, strengthening of the power influence on the course of events in the society between the civil society and the state and between society and the environment within the framework of constitutional and legal requirements as a social contract [5].

It is clear that all these interpretations and concepts can not be reduced to a single generalized image of a modern state. Along with purely functionalist, institutional and normative approaches to the interpretation of the essence of the modern state, gradual weight gaining also axiological and

anthropologically oriented concepts. Here we draw attention to the emergence of the term “ecological state”, which appeared in Ukrainian legal science not only in author’s scientific works but also in publications of the younger generation of environmental lawyers – Father Oleksa Petriv [12] and Olga Pavlova [11].

Therefore, the role and functions of the modern state and the nature of its interaction with society and the market environment are manifested not only in the spheres of social communication and environmental safety (social security, environmental protection, health care, education and science), but also in the field of technology (e-government, the role of statistics), innovation (advanced management technologies) and the application of relevant nanotechnologies. Productive, in this regard, in particular, is the understanding of the modern state as a state which is able and directed to its self-preservation and strengthening, stability and advocacy of its rights to actual and potentially dangerous for self-preservation of civilization challenges, such as religious fundamentalism, terrorism, financial crises, shortage of natural resources, climate change, etc. [2].

State can be called ecological if it meets certain criteria, when certain conditions are laid for its functioning: guarantee of environmental rights and freedoms; the presence in the constitution of the state enshrined its ecological function and ecological duties to society and man; availability of a developed system of ecological law; creation of an institutional basis for ensuring the implementation of the ecological function of the state; formed a balanced economic and legal mechanism of environmental protection; independent public control of society for the implementation of environmental legislation; approval of the principle of joint responsibility of the state and society for the future environment; availability of general social ecological dialogue; the basis of the state environmental policy – the human right to a favorable living environment; developed ecological and legal culture that underlies decision-making; formed ecological and legal motivations of behavior and life of the elite.

In today's global development, environmental problems of the social life are objectively relegated to the background under the pressure of the threat of the deployment of world war and regional military conflicts that have seized our country, terrorism, ethnic resettlement, economic wars which the modern state and international organizations are often not able to cope with. At the same time, our civilization does not have a more effective institute to solve today's environmental problems than the state and international organizations. Hence, the state for a long time will remain the most effective among existing models of regulation of social processes, including, above all, relations in the sphere of protection and use of natural resources.

Consequently, the science of environmental law, the theory of law, sociology of law is forced to seek new opportunities for law and state in order to solve environmental problems of our time. The ecological state is one of the options to overcome the crisis of the possibilities of a modern state in preserving the environment for present and future generations of people, it has to find its consolidation in the new legislation, in particular, in the draft of Environmental Code of Ukraine proposed by the author.

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Костицький Василь. Забезпечення екологічної безпеки чи забезпечення сприятливого довкілля: теоретико-правове обґрунтування призначення сучасної екологічної держави. *Журнал Прикарпатського університету імені Василя Стефаника*, **5** (2) (2018), 25–32.

Автор розглядає проблеми сучасного суспільства та їх вплив на довкілля, а також на розвиток екологічного права, аналізує такі юридичні дефініції, як навколишнє природне середовище, довкілля, право екологічної безпеки, їх соціолого-правовий зміст, право на сприятливе довкілля як суб'єктивне право людини у сучасному світі. У цій статті автор уже не вперше ставить питання про нову роль держави у сучасних умовах, здатність держави відповісти на глобальні виклики з використанням теоретико-правової науки та соціології права в рамках запропонованого ним теолого-соціологічного розуміння права. На думку автора, на зміну постіндустріальній державі, яка залишається механізмом обслуговування ліберальних цінностей суспільства, має прийти екологічна держава, яка зможе зберегти демократичні цінності, з одного боку, та знайти відповіді на виклики сьогодення, з другого боку, забезпечити посилення владного впливу на перебіг подій у соціумі, між громадянським суспільством і державою у рамках конституційно-правових вимог як Суспільного договору, відповісти на глобальні і регіональні екологічні виклики у рамках модифікованої екологічної функції держави.

Ключові слова: екологічне право, екологічна функція держави, екологічна безпека, право на екологічну безпеку, право екологічної безпеки, право на сприятливе довкілля, кодифікація екологічного законодавства, можливості відповіді сучасної держави на екологічні виклики сьогодення.