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Financial and legal protection of land from being contaminated with hazardous substances as a component of regional environmental policy

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Abstract

The purpose of the research is financial and legal protection of land from being contaminated with hazardous substances (wastes) as a component of regional environmental policy. Main content. It is known that land contamination by industrial enterprises, through irrational use of agrochemicals and chemical plant protection agents lead to the accumulation of toxins, including heavy metals, pesticides, oil products, radionuclides. Therefore, one of the important factors of improving the legal protection of land, including protection from being contaminated with hazardous substances in Ukraine, consists in taking into account positive experience of those post-Soviet states that have a practical orientation in terms of legislation and achievements in law enforcement activities related to land protection. Methodology: The methodological basis of the research is presented as comparative-legal and systematic analysis, formal-legal method, interpretation method, hermeneutic method as well as methods of analysis and synthesis. Conclusions. The institution of legal land ownership in the post-Soviet Baltic states (Estonia, Lithuania, Latvia) and Georgia has been disclosed in detail. Justifiably, contamination is dangerous not only for life and health, but also for land resources in general.

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Keywords: soil contamination; legal protection of soil; hazardous substances; environmental law; regional policy.

Protección financiera y jurídica de la tierra contra la contaminación con sustancias peligrosas (desechos) como componente de la política ambiental regional

Resumen

El propósito de la investigación es la protección financiera y legal de la tierra contra la contaminación con sustancias peligrosas (desechos) como un componente de la política ambiental regional. Se sabe que la contaminación de la tierra por empresas industriales, a través del uso irracional de agroquímicos y agentes fitosanitarios químicos conduce a la acumulación de toxinas, incluidos metales pesados, pesticidas, productos derivados del petróleo y radionúclidos, entre otros. Por lo tanto, uno de los factores importantes para mejorar la protección legal de la tierra, incluida la protección contra la contaminación con sustancias peligrosas en Ucrania, consiste en tener en cuenta la experiencia positiva de los estados postsoviéticos que tienen una orientación práctica en términos de legislación y logros en las actividades de aplicación de la ley relacionadas con la protección de la tierra. La base metodológica de la investigación se presenta como análisis comparativo-legal y sistemático, método formal-legal, método de interpretación, método hermenéutico, así como métodos de análisis y síntesis. Se concluye que la contaminación es peligrosa no solo para la vida y la salud, sino también para los recursos de la tierra en general.

Palabras clave: contaminación del suelo; protección jurídica del suelo; sustancias peligrosas; derecho ambiental; política regional.

Introduction

As defined by the outstanding Ukrainian scientist and academician Shemshuchenko, by the very nature the problem of protecting the natural environment from being contaminated and organization of rational nature management constitutes a global problem, as far as this problem affects interests of all countries of the world (Shemshuchenko, 1985). Thus, in the era of scientific and technological progress, contradictions in the sphere of new prospects for the use and exploitation of the environment are becoming increasingly large-scale, thereby creating a threat of contamination, human

poisoning of the environment, including land resources within the existing structure of the state (Lisitsyn, 1978).

In this regard, environmental protection is an area where interests of a large majority of countries coincide. The idea of environmental protection is realized when the legislator does not act on behalf of material, historical and other values, but acts thanks to the preservation and restoration of natural resources with the aim of creating ideal conditions in the surrounding natural environment.

1. Literature review

Modern ecological problems of Ukraine are largely caused by the fact that during the Soviet period of its development the territory was one of the most technogenically loaded. While occupying only 3% of the territory of the former Soviet Union Ukraine formed about 23% of the total gross domestic product, which in general led to significant regional changes in landscapes, surface runoff and significant deterioration in the quality of basic resources necessary for human life. The negative environmental situation in the country was also promoted by such factors as irrational use of natural resources, development of environmentally dangerous industries, weak financing of environmental protection measures (Zabelshensky, 1979).

So, land contamination by industrial enterprises, through irrational use of agrochemicals and chemical plant protection agents lead to the accumulation of toxins, including heavy metals, pesticides, oil products, radionuclides. Soils around large industrial enterprises and transport arteries (where technogenic gaps are often formed) are the most heavily polluted (Kazanchuk, 2015). Such contamination is the most acute and urgent ecological problem, since most enterprises are located in densely populated cities and settlements; about sixty percent of the total population lives permanently in such areas.

In this regard, one of the most important factors which would contribute to the procedure of improving the legal protection of land (including protection from being contaminated with hazardous substances in Ukraine) consists in taking into account positive experience of those post-Soviet states that have a practical orientation in terms of legislation and achievements in law enforcement activities related to land protection.

That is why it is necessary to study and generalize the wide experience of establishing and developing legal norms in the sphere of land protection, including contamination with dangerous substances, because this problem is not subjected to administrative-territorial borders and goes beyond the borders of one country.

For example, when taking into account geographical and cultural factors Ukraine and the post-Soviet states of the Baltic region belong to two different groups: Eastern European States and Baltic States. At the same time, for many centuries, there has been a close relationship between them based on the commonality of historical, cultural, economic and geographical factors. The specifics of regulation of land and soil protection in the modern legislation of the former USSR states is conditioned by the necessity to solve the problem of land protection from contamination or related problems arising in the following cases:

1. Soil depletion, which is gaining alarming proportions;
2. the consequences of the nuclear accident at the Chernobyl nuclear power plant. Therefore, the depletion of soils and land contamination, as well as the necessity of their rehabilitation as a basis for development of legislation on protection of this natural resource, influenced the formation of environmental law in Estonia, Lithuania, Latvia, as well as in other countries that emerged after the collapse of the USSR.

2. Materials and methods

The research is based on works of foreign and Ukrainian researchers on methodological approaches of understanding financial and legal protection of lands from being contaminated with hazardous substances (wastes) as a component of regional environmental policy.

The gnoseological method helped to determine the essence of methodological approaches of understanding financial and legal protection of lands from being contaminated with hazardous substances (wastes) as a component of regional ecological policy. Due to logical-semantic method the concept of financial and legal protection of lands from being contaminated with dangerous ecological substances (wastes) as a component of regional policy was developed.

The system-structural method was used to study components of methodological approaches of understanding financial and legal protection of lands from being contaminated with hazardous substances (wastes) as a component of regional environmental policy. The structural-logical method is applied to determine the main directions of optimization of methodological approaches to understanding financial and legal protection of land from being contaminated with hazardous substances (wastes) as a component of regional environmental policy.

3. Results and discussion

So, the Constitution of the Republic of Estonia in Article 28 enshrines the right to health care, and an environment safe for life and health is the main basis for guaranteeing this fundamental right (Law of Estonia, 1992). Part 3 Article 40 of the above-mentioned normative legal act has stipulated that enterprises, organizations and institutions that develop mineral deposits in an open or underground manner shall carry out geological exploration, constructions and other works on agricultural lands or forest lands allocated to them for temporary use.

They are obliged to bring such land plots into a state suitable for use in agriculture, forestry or fishing at their own expense, and during the performance of the specified works on other lands they shall bring them into a state suitable for their intended use (Law of Estonia, 1992). Bringing land plots to a suitable condition is carried out during development of mineral deposits by open method or underground method, geological exploration, construction and other works, and if it is impossible this procedure should be performed not later than within a year after completion of such operations and works.

Another important rule regarding prevention of land contamination is established in part 4 of Article 40 of the Land Code of Estonia. It states that enterprises, organizations and institutions carrying out industrial or other construction works, developing deposits of minerals in an open way, as well as carrying out other works related to violation of the soil cover shall be obliged to remove and store the fertile soil layer for its use for land recultivation as well as for increasing fertility of low-productive areas (Law of Estonia, 1992).

Comparison of constitutional laws of the former republics of the Soviet Union is also interesting. Thus, let us compare the current Constitution of the Republic of Lithuania with the Land Code of the Soviet Socialist Republic of Lithuania. So, in part 1 of Article 54 of the Constitution of the Republic of Lithuania it is stipulated that the state shall take care of protection of the environment, animal and plant world, certain natural objects and territories of special value, and shall supervise purposes of their respectful use, as well as restoration and application of natural resources (Law of Lithuania, 1992).

It is noteworthy that the Constitution of Lithuania contains a separate norm dedicated to the problems of land protection from contamination. Part 2 of Article 54 the Constitution of the Republic of Lithuania stipulates that it is prohibited by law to deplete and pollute land and its subsoil, water resources and air, as well as to cause a negative impact on the surrounding natural environment resulting in impoverishing of the animal and plant world (Law of Lithuania, 1992).

The Government of the Republic of Lithuania adopted a resolution “Rehabilitation of damaged land and conservation of fertile layer of soil” dated August 14, 1995 (Law of Lithuania, 1995) and aimed at strengthening legal positions on protection of land from hazardous waste contamination. On the basis of this resolution land owners and land users, as well as other natural and legal persons carrying out works related to land contamination shall be obliged to keep the removed fertile layer of soil and use it for the purpose of improving unproductive agricultural lands.

At the same time, natural and legal persons, using useful minerals, as well as those performing other works shall be obliged to recultivate disturbed areas into agricultural lands, and if it is impossible - into water bodies.

It is necessary to pay attention to the fact that according to the mentioned resolution of the Government of Lithuania this requirement does not always apply, due to the following reasons: 1) an area with a disturbed land on it (soil cover) is allowed to be used for another purpose without recultivation of this land in accordance with the established procedure; 2) areas of disturbed land are subject to development according to the respective plans or must be used for the construction of roads, equipment of sites, placement of other constructions (Law of Lithuania, 1995).

As we can see from the above, in the legislation of Ukraine and Lithuania there is quite a lot in common concerning implementation of legal protection of land from being contaminated with hazardous substances, and land as a natural resource is the subject of regulation in various branches of legislation.

The majority of legal norms fall directly on land legislation and legislation on nature protection. Thus, Lithuania, never separating the general regulation of land and soil protection (as Georgia did) approached in more detail the development of the procedure for recultivation of contaminated land as one of the main points of soil restoration and protection (Leheza *et al.*, 2020).

In order to improve the current legislation of Ukraine, it is advisable to take into account the positive experience of neighboring countries on the example of Georgia. Georgia’s economy suffered greatly as a result of the collapse of the Soviet Union, and armed conflicts that took place after gaining independence in 1991 caused further deterioration of the social and economic situation in the country.

Thus, the Constitution of Georgia (adopted on 15 October, 2010 and put into effect on 01 January, 2011) establishes in part 3 of Article 37 that everyone has the right to live in a healthy environment, and the state, taking into account interests of the present generation and all future generations shall provide protection of the environment and rational use of natural

resources, sustainable development of the country in order to ensure an environment that is safe for human health in accordance with the ecological and economic interests of the society (part. 4 of the Constitution of Georgia) (Law of Georgia, 1995).

Despite the fact that the Georgian Constitution has settled the issue of environmental protection in the most modern way, the problem causing a negative impact on the state of land resources consists in the absence of a framework law, which would clearly define categories of land, their legal status, procedures for transfer of ownership to land, principles of land use and legal status of documentation in the sphere of rational use and protection of lands. In the long term, the absence of a Land Code may lead to increased problems in creating conditions for rational land use (Leheza *et al.*, 2022).

The greatest concern is caused by problems associated with collection and treatment of household wastes and industrial wastewater. The energy crisis that has occurred after the collapse of the Soviet Union, alongside with a significant increase in electricity tariffs due to insufficient financing of the industry, has negatively affected the state of almost all wastewater treatment facilities in the country: In Tbilisi and Rustavi (two of the three major cities of Georgia) only 74% of total amount of wastewater is cleaned, and in Kutaisi (the third largest of these cities) treatment of wastewater is not carried out, because all installations for cleaning of wastewater are in unsatisfactory condition.

And, as a result, most of the wastewater treatment plants have been decommissioned, and wastewater is discharged untreated into open water bodies. The only settlement in Georgia where wastewater treatment is carried out is the city of Khashuri (Law of Georgia, 1994). As you can see, the protection of land from contamination for the Republic of Georgia is a state problem, since the correct and rational use of all types of soil available in the republic, including saline, swampy, saline, acidic and waterlogged ones, is the main reserve for dynamic development of agriculture and economy in general.

The Law of Georgia “On Protection of soils” adopted on 12 May 1994 (Law of Georgia, 1994) defines the following in its Article 2: 1) provision of a complete soil layer, preservation and improvement of land fertility; 2) definition of both duties and responsibilities of land users and the state in the sphere of land protection from contamination and creation of environmentally friendly products; 3) prevention of negative consequences of the use of means aimed at increasing soil fertility but endangering lands and soils themselves; 4) establishment of maximum permissible norms and standards concerning concentrations of dangerous substances in soils.

In contrast to Georgian land legislation, the current land legislation of Abkhazia provides for existence of a single, codified land law - the Land Code of the Republic of Abkhazia. Article 91 of the current Land Code of the Republic of Abkhazia (Leheza *et al.*, 2022) has established that landowners and land users (including tenants) shall be obliged to protect lands from water and wind erosion, mudslides, flooding, waterlogging, contamination with production wastes, chemical and radioactive substances.

And in Article 92 of the Land Code, it is determined that land protection from being contaminated with hazardous substances shall be carried out by landowners, including tenants, in accordance with the norms and requirements established by the aforementioned Code and the legislation on nature protection.

In connection with the above, we would like to remind that in part 2 of Article 2 of Art. 93 of this Code it is stipulated that commissioning of objects and the use of technologies not provided with measures aimed at protection of lands from degradation or violation shall be prohibited. Provisions of the Land Code of Abkhazia should be taken into account in the development of the land legislation of Ukraine as an important novel.

The same applies to part 3 of Article 3 of Art. 93 of the above-mentioned legal act; according to this part placement of objects that negatively affect the state of land is allowed to be carried out only in agreement with landowners, land users, land management service, nature protection authorities and other interested authorities (Leheza *et al.*, 2022).

Conclusions

It is substantiated that in Ukraine implementation of measures aimed at protection of lands from being contaminated with hazardous wastes, as well as the level of preservation of land from being contaminated with hazardous substances requires improvement of the management system of these lands, taking into account the experience of foreign countries in matters of land use and land protection. Of course, land contaminated with hazardous substances can be used in the economy of Ukraine, which will undoubtedly affect the investment climate in the region and the country as a whole.

It is notable that regardless of the economic development in the post-Soviet Baltic countries, in Georgia sufficient attention is paid to land-and-legal protection of the environment. The land codes of these states contain sections devoted to land protection, in other cases social relations in this sphere are regulated only through separate land legal norms. At the same time, practice of land protection in each country reflects the national

experience of law-making as well as principles of international documents that regulate environmental protection.

When carrying out a comparative analysis of the legislation of the post-Soviet Baltic countries on protection of land from being contaminated with hazardous substances with similar land legal norms of the Land Code of Ukraine (LC of Ukraine), we should note that during the Soviet Union period the Baltic countries already had significant advantages over other Soviet republics in the sphere of financial economic provision of environmental protection, primarily in the form of investments in their highly developed economy, as one of the most effective in the state; and the fact that these countries are already members of the European community is important for our dissertation research.

In our opinion, adoption of a single codified act in the sphere of land legislation is necessary at the legislative level, because its absence has a negative impact on the use and protection of lands, including their protection from being contaminated with hazardous substances.

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