

CODIFICATION OF ENVIRONMENTAL LEGISLATION: EXPERIENCE OF FOREIGN COUNTRIES

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The article compares legal experience of foreign countries in the sphere of codification of environmental legislation. Specific features of Ecological Codes of foreign countries are determined. The provisions of Ecological Codes of such countries as France, Sweden, Kazakhstan, etc. are analyzed. It is proposed to codify the environmental legislation of the Republic of Uzbekistan taking into account the positive experience of foreign countries. The conclusion is made that it is possible to apply positive legislative experience of the studied states in the legislation of Uzbekistan.

Key words: systematization, codification, code, environmental legislation, comparative analysis, Ecological code.

КОДИФИКАЦИЯ ЭКОЛОГИЧЕСКОГО
ЗАКОНОДАТЕЛЬСТВА: ОПЫТ ЗАРУБЕЖНЫХ
СТРАН

В статье проводится сравнительный анализ правового опыта зарубежных стран в сфере кодификации экологического законодательства. Определены специфические особенности экологических кодексов зарубежных стран. Проанализированы положения экологических кодексов таких стран, как Франция, Швеция, Казахстан и др. Разработаны предложения по кодификации экологического законодательства Республики Узбекистан с учетом положительного опыта зарубежных стран. Сделано заключения о том, что положительный законодательный опыт зарубежных стран может быть имплементирован в законодательстве Республики Узбекистан.

Ключевые слова: систематизация, кодификация, кодекс, экологическое законодательства, сравнительный анализ, Экологический кодекс.

ЭКОЛОГИК ҚОНУНЧИЛИКНИ КОДИФИКАЦИЯЛАШ: ХОРИЖИЙ МАМЛАКАТЛАР ТАЖРИБАСИ

Мақолада хорижий давлатларнинг экология соҳасидаги қонун ҳужжатларини кодификациялаш бўйича ҳуқуқий тажрибаси қиёсий таҳлил қилинган. Хорижий давлатлар экология кодексларининг ўзига хос хусусиятлари аниқланган. Франция, Швеция, Қозоғистон каби давлатлар экология кодекслари қоидалари таҳлил қилинган. Хорижий мамлакатлар ижобий тажрибасини ҳисобга олган ҳолда Ўзбекистон Республикаси экология соҳасидаги қонун ҳужжатларини кодификациялаш бўйича таклифлар ишлаб чиқилган. Ижобий хорижий тажриба Ўзбекистон Республикаси қонунчилигига

имплементация қилиниши мумкинлиги тўғрисида хулоса қилинган.

Калит сўзлар: тизимлаштириш, кодификация, кодекс, экологик қонунчилик, қиёсий таҳлил, Экология кодекси

At this stage of development of the legislation of the Republic of Uzbekistan, codification of environmental legislation is an urgent and rather sensitive issue. At present, several scientific researches are devoted to various aspects of the codification of environmental legislation in the legal literature [7, 10]. As professor Sh.H.Fayziev “The current state of the legislative basis of the environmental policy of the Republic of Uzbekistan requires the adoption of a new consolidating master codified act of a complex nature. The codification of environmental legislation is a complex legislative process that is based on the political, legal, socio-economic prerequisites for interaction between society and nature and the scientific and practical justification for the development of a normative act of new content” [2, 100-p.].

In recent years, scientists have justified the need for the adoption of the Ecological Code, which requires the study of positive experience of foreign countries that have already adopted such codes, and take advantage of the accumulated experience in the drafting of the Ecological Code of the Republic of Uzbekistan. Since the experience of legal regulation and systematization of legislation in the sphere of protection and use of natural resources of other states is one of the factors determining the conditions and limits of the codification of environmental legislation of Uzbekistan.

Interest in the experience of systematization, especially the codification of the legislation of other countries, which at first glance is not directly related to the

study of patterns of systematization of legislation in Uzbekistan, nevertheless seems to be fully justified, based on general ideas about trends in the development of legislation. First, analyzing the successful experience of other countries in regulating relations, which in our doctrine is most often called environmental, allows us to use the most suitable legal frameworks for our conditions, to master progressive legal ways of influencing various actors in their interaction with the environment, to adopt mechanisms for implementing the relevant legal norms. The study of the legislation of other countries, even with a negative assessment of the possibilities of its use in the legislative activities of the Republic of Uzbekistan, and avoids mistaken steps, inappropriate legal regulations, etc. [6, 27-28-p.]

Some European countries, such as France and Sweden, have already codified environmental legislation (environmental legislation), while in other countries, for example, Germany is implementing a project to bring together all federal environmental laws under the common name of "Ecological Code". For this purpose, several years ago, a commission was set up to draft this code [3, 90-p.].

It is important that study of foreign experience is important condition, legally necessary for the improvement of legal bases. It is a question of the legislation of those states in relation to which the Republic of Uzbekistan, based on international treaties, supports the policy of special rapprochement and joint development in various spheres of political, economic and social life. So, at present, our country is implementing in its legislation the principle of convergence of its legislation with the legislation of other states members of the Commonwealth of Independent States (CIS). In this regard, in this article we will also study the experience of codification of environmental legislation in the CIS member states. As one

of the common interests of the Commonwealth countries is the quality of the environment: the Agreement on the Establishment of the Commonwealth of Independent States, signed on December 8, 1991 in Minsk, refers to cooperation in the field of environmental protection, participation in the creation of a comprehensive international system of environmental security to the sphere joint activities of the parties to the Agreement, implemented on an equal basis through the common coordinating institutions of the Commonwealth. In science, the principle of coordinated development (convergence) of the environmental legislation of the CIS countries was proposed [4]. This principle is realized and specified in the norms of a number of international treaties of the CIS. Thus, Bowels Charter of the CIS member states, signed on March 27, 1997 in Moscow, proclaims the intention of these countries to make efforts for a phased approximation and harmonization of legislation in the field of exploration, use and conservation of mineral resources. The Agreement on Cooperation in the Field of Conservation and Utilization of the Genetic Resources of Cultural Plants of the CIS Member States (Minsk, June 4, 1999) proclaims, as the main goals and objectives of the cooperation of these countries, the approximation of the legislation of the parties in order to facilitate the exchange of plant genetic resources between the parties [6, 29-30-p.].

The study of the environmental legislation of the CIS member states, as well as the processes of its improvement, is significant not only for the aforementioned legal reasons, but also for the objectively important essential circumstances of its formation and development due to the fact that a) historically all the CIS member states were included in the a single legal system, b) by the time of the creation of the CIS, the legal regulation of environmental relations in these states was at the same level, since before

the collapse of the USSR, the republican legislation of the basis (C) the CIS member states have territories adjacent to each other, and thus, in many respects similar and even common environmental problems (such as the problem of the Aral Sea). Obviously, in such conditions, the success of the legal solution to environmental problems depends, among other things, on the factor of harmonization of the legislation of Uzbekistan and neighboring countries, which, in turn, predetermines in many ways the content of this legislation.

In general, we should fully agree that “external factors that influence the formation of legislation” are “related to objective processes of globalization and the internationalization of environmental problems and the harmonization of legislation and national interests to take into account progressive approaches to the legislative regulation of environmental relations applied in foreign countries” [1, 80-p.]. It is equally important to examine the directions of the systematization of foreign legislation, and in particular its codification. Based on the recognition of the impact on the environmental legislation of these processes and interests, it is possible to ascertain the corresponding dependency vectors and when systematizing this legislation. The success, the quality of the systematization of national environmental legislation in one aspect of its implementation are due to the use of foreign experience in the systematization of environmental legislation.

Of course, the study of the experience of other states in which the systematization of the relevant legislation is either completed or is being worked on has vital importance for the process of systematization of environmental legislation, ensuring its greatest fruitfulness in terms of improving the quality of this legislation. In a number of state-participants in the CIS, these works are

being developed. The Ecological Code came into force in the Republic of Kazakhstan. In some countries, codification work is in the planning stage (Russia, Ukraine, and Kyrgyz Republic). The Concept of the Draft Ecological Code was officially approved in the Republic of Belarus and adopted by the developers of the said act.

It should be noted that the current codification of environmental legislation in the CIS countries is characterized by similar conceptual solutions: a) practically without alternative, the result of the codification in these states is the Ecological Code [9, 101-p.]; b) as a rule, in the justification for the creation of the Ecological Code, it is pointed out that there is a need for modernizing legislation in the sphere in question, improving the mechanisms for its implementation, bringing it into line with international acts; c) the codification concerns mainly the legislation on environmental protection.

Thus, for example, the Decision of the Council of Ministers of the Republic of Belarus of December 16, 2005, No. 1460 approved the Concept of the Draft Ecological Code of the Republic of Belarus, in accordance with which the Ecological Code is subject to development in 2006-2007. The quality of the Concept of the Draft Ecological Code of Belarus is substantially improved by the fact that it provides an overview of scientific research, publications, legislation of foreign states that are related to the subject of legal regulation of the draft code.

In this Conception, unfortunately, there is a lack of discipline and ambiguity in the decision of the main principle issue - which legislation should be systematized in the Ecological Code. The subject of legal regulation of the draft code in the Concept is the public relations arising in connection with the protection of the environment, individual natural complexes and objects or components of their natural environment; the main goal is the codification

of legislative acts in the field of environmental protection in the form of codification.

The authors of the Concept objectively cite critical remarks on the selected conceptual direction of codification: “The National Academy of Sciences of Belarus believed that the Code should regulate not only relations in the field of environmental protection, but also legal relations in the field of rational use of natural resources. Without laying ecological limits in the process of nature management, it is impossible to ensure sustainable use and conservation of resources. The division of the protection of natural resources and their use deprives the nature protection activity of the instruments that ensure its implementation”. It is a pity that the justification for rejecting this approach in the Concept is too unconvincing. In particular, it is argued that “in the case of adopting the position of” broad codification, “there will be difficulties in harmonizing and unifying environmental norms and norms that regulate the use of certain types of natural resources (lands, bowels, waters, forests, fauna and flora, etc.)”. However, the fact is that the legislator himself set the task of such unification by the formation of the legislation on environmental protection, since the requirements established with regard to the environment as a whole inevitably affect the definition of the order of use and protection of its individual components. In other words, the necessary agreement is either already present in the legislation of the Republic of Belarus, or the above statement denies the systemic nature of all Belarusian legislation, the interrelations and the mutual influence of its various branches.

In other words, when holding codification, four legislative acts will be merged into one act, forming this legislation. These are the Laws of the Republic of Belarus “On Environmental Protection”, “On Waste”, “On State

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Ecological Expertise”, “On Specially Protected Natural Territories”. On their basis, as well as based on environmental regulations, 8 legislative acts of the natural resource sectors of legislation, it is proposed to create an Ecological Code, consisting of 124 articles grouped into 21 chapters.

It is planned to give in the Code the definition of necessary legal concepts, to determine the scope of application of legislation on environmental protection, the place of the Ecological Code in the system of legislation of the Republic of Belarus, and outline the basic principles of environmental protection. In general, the provisions of the Ecological Code will be set out in accordance with the structure adopted at the current time in the existing environmental laws.

Improvement of legislation on environmental protection is related at the same time with the planning of a number of chapters: chapters, the norms of which will concern the provision of information and dissemination of environmental information; the chapter “Nature management”, where “general requirements for nature management (general and special) will be established”, “legal bases for nature management” are determined. A chapter on regulation of relations in the sphere of waste management will be created.

Similar approaches are indicated in the scientific literature for Ukrainian codification. The task of developing the draft Ecological Code of Ukraine was set for a long time: it is envisaged by the main directions of the state policy of Ukraine in the field of environmental protection, use of natural resources and ensuring environmental safety, approved by the Rada (parliament) of Ukraine resolution of 5 March 1998 [9, 101-p.].

Proceeding from the alleged content of the Ecological Code, set forth by Yu.S.Shamshuchenko, his project will be

repeated by the Law “On Environmental Protection”, but, of course, with the elimination of the bill of law regulation, the general update of the legislation on environmental protection [9, 104-p.]. Currently, practical work on the creation of this act is related to the generalization of legislation on environmental protection. The prospects for taking it at the moment are very vague [8, 93-94-p.].

From this perspective, the process is of particular importance to develop the project of the Ecological Code of the Russian Federation. Since the prospect of applying the deepest form of ordering and development of legislation - codification in the form of the Ecological Code of the Russian Federation - is now proposed in some programmatic documents and in journalism without serious consideration of the matter [5, 4-p.]. At the present time, the Russian Federation has developed the concept of a draft federal law “The Ecological Code of the Russian Federation”. And it says that the main idea of the bill is to improve the legal basis for state regulation of environmental protection and ensure environmental safety in modern socio-economic conditions and legal support for the implementation in the norms of the Ecological Code of the Russian Federation of the constitutional right of citizens to a favorable environment. The main objective of the development of the Ecological Code is to move from object-based to complex legal regulation of environmental relations, eliminate internal contradictions, fill gaps, harmonize environmental legislation with civil, administrative, environmental and other legislation, harmonize with international environmental law, establish new ones legal institutions that meet the modern requirements of economic development of society as much as possible the norms of direct action.

And also in the bill the subject of legal regulation of the Code is allocated. Such are public relations: on the

protection of the environment, its individual components (natural objects) from the negative impact of economic and other activities; on the use of materials, products, production and other objects representing environmental hazards; on the management of production and consumption wastes; related to the establishment and definition of the regime of territories with a special environmental status associated with the implementation of the rights of citizens and public associations to access environmental information, participate in the adoption of government decisions, access to justice in environmental matters. As can be seen from this position in the draft laws was an attempt to encompass both the relationship on nature protection and nature management, which we will not be able to see in the concepts and laws of other states.

From the point of view of systematization of environmental legislation, the Republic of Kazakhstan takes a special place, since it is the first among the CIS states to adopt the Ecological Code. In the Republic of Kazakhstan, work on the creation of the Ecological Code of the Republic of Kazakhstan from January 9, 2007, Law No. 212-111 began in 2004, when a special interdepartmental working group was established. Working group prepared the concept of reforming environmental legislation and the basic draft code. At the same time, about 20 recommendatory and guiding documents of various international organizations, 14 international conventions, about 30 directives and laws of other states were mobilized.

The Ecological Code of the Republic of Kazakhstan consists of 9 sections, 47 chapters, 326 articles. He incorporated the Laws "On Environmental Protection", "On Environmental Expertise", "On the Protection of Atmospheric Air". A special sequence in the selection of acts for codification is not observed. In particular, the Law

“On Specially Protected Natural Territories” continues to operate, the norms of which have not been codified in the Ecological Code of the Republic of Kazakhstan (EC RK).

In art.1 EC RK a list of 69 legal concepts and their definitions is given (without their arrangement in alphabetical order, which, undoubtedly, will practically complicate the use of such a long list). The concept of environmental legislation, used directly in the text of the EC RK, is disclosed in art.2: it is based on its broad understanding of the range of acts included in it - as a set of normative legal acts. The principle of priority use of the EC RK in relation to other laws regulating relations in the field of environmental protection is reinforced. EC RK, as stated in art.3, regulates “relations in the field of protection, restoration and preservation of the environment, use and reproduction of natural resources in the conduct of economic and other activities related to the use of natural resources and environmental impact within the territory of the Republic of Kazakhstan”. In reality, the relations regulated by it can not be characterized by such a wide scope. As follows from art.2.8 EC RK, a significant part of the laws of the environmental legislation system has not been absorbed by this act: “relations in the field of protection and use of environmental objects and specially protected natural areas are regulated by special laws of the Republic of Kazakhstan in the part not regulated by this Code”.

As I.A.Ignatieva argues, “it is interesting to state a lengthy list of measures that constitute, in one case, state regulation (in relation to the protection of the environment), and in another, state control (as applied to the use of natural resources). The bases for the use of various concepts (regulation, management) are not applicable to certain environmental relations - environmental protection and nature management,

especially since a number of functions are identical (control, monitoring)” [6, 30-p.].

And also, “in the Ecological Code adopted erroneous, is the permit for the import of hazardous waste into the territory of Kazakhstan for the purpose of their use, utilization, processing, recycling, since in Ch. 42, art. 295, item 3 prohibits the export of hazardous wastes to the States Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal and to developing countries that, under their legislation, have banned the import of hazardous wastes, or have reason to believe that the use of these wastes is not will be carried out in an environmentally sound manner”.

Despite some minor shortcomings of the Ecological Code of the Republic of Kazakhstan, it is the first code of its kind in Central Asia and this, in our opinion, is a fairly successful move in the development of environmental legislation.

Among the novellas of the legislation on the protection of the environment it is necessary to name some norms of the most general content relating to environmental management activities. Article 10 defines the use of natural resources as “the use of natural resources and (or) environmental impact in the daily life of a person, in the economic and other activities of individuals and legal entities”, generalizes the types of nature use, dividing it into general and special (grounds and the conditions for the emergence of the latter are discussed in Article 12 of the EC RK) and by the types of natural resources used (land use, water use, etc.). In art.11 summarizes the provisions on nature users. In part 1 of art.18 lists all state bodies in the field of the use of natural resources, designated in general terms in dependence on their competence. In Ch. 12 introduced a single concept of state control in the field of environmental protection, protection

of reproduction and use of natural resources. Types of control are distinguished along with environmental control, depending on the types of natural resources. In Ch. 16 general rules of monitoring natural resources are being carried out. Chapter 18 defines uniform requirements for the management of natural resource cadastres. According to Art.149 in the Republic of Kazakhstan, a unified system of state cadastres of natural resources is being created and maintained. The Republic of Kazakhstan is an inter-sectoral information system that unites all types of state cadastres of natural resources of the Republic of Kazakhstan in order to provide a single state-wide integrated inventory and assessment of natural and economic of the Republic of Kazakhstan.

With the adoption of the EC RK, the structure of environmental standards is changing, which are now divided into environmental quality standards, emission standards and standards for the use and protection of natural resources. Emissions regulations are new concept in the environmental legislation of the Republic of Kazakhstan. EC RK referred to them technical specific emission standards, standards for maximum permissible emissions and discharges of polluting substances, standards for the location of production and consumption wastes, standards for permissible physical impacts (heat quantity, noise level, vibration, ionizing radiation and other physical effects). Of these, technical specific emission standards are established in technical regulations for specific processes and industries based on the introduction of the best available technologies. These standards are the basis of integrated environmental permits. The latter, along with solutions for emissions into the environment, form a system of environmental permits, established in Ch. 8 EC RK.

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EC RK stimulates nature users to implement international standards for environmental management system by quite accessible measures: dissemination of information on international standards, reduction of the frequency of inspections by environmental inspectors for nature users who have implemented international standards for the system of management of environmental protection and having a document confirming such implementation, use of mechanisms of economic regulation about environment.

In EC RK, the requirements for the conduct of environmental expertise, which is divided into state and public, are considered. EC RK preserves a long list of objects of state eco-environmental expertise, which include drafts of regulatory legal acts. With reference to the general ecological expertise, the EC RK has removed a lot of questions of procedural and technical character.

Chapter 9 provides for the procedure for conducting an environmental audit, which is divided into mandatory and proactive. Obligatory ecological audit should be carried out in the following cases: significant damage to the surrounding environment caused by economic and other activities of individuals and legal entities, documented in documentary evidence; reorganization of a legal entity - a nature user, carrying out ecologically dangerous types of economic and other activities, in the form of merger, division and separation; banks of legal entities - nature users, carrying out ecologically dangerous types of economic and other activities. In the EC RK, these are the ways of conducting an environmental audit, specific actions and their components are described.

The economic regulation of environmental protection (Section 3) contains a special element that has no analogues in the Uzbek legislation: market mechanisms and emissions quotas trading in the environment. The payment

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for emissions into the environment, as another independent element of economic regulation, is established, as defined in Art. 101 EC RK, the tax legislation. We believe that in this way a lot of questions are removed regarding the legality of collecting payments for negative impact on the environment. At the same time, there is no uniqueness in the solution of payment issues: thus, according to Art. 103 EC RK for the purpose of economic stimulation of effective implementation of environmental protection measures by nature users. The Government of the Republic of Kazakhstan may approve the marginal rates for emission charges to the environment.

Thus, EC RK, in spite of the general incompleteness of codification, still largely updated environmental legislation. EC RK laid the foundation for a legal understanding of environmental legislation in a broad sense in the aspect of regulated public relations; he demonstrates an attempt to generalize all the most general provisions relating to environmental management activities. In addition, the EC RK has brought the Kazakh legislation into greater conformity with the European and international approach to regulating relevant attitudes: changed terminology, introduced a number of new legal concepts and modern legal institutions [6, 33-p.].

We believe that the study of the experience of foreign countries, in particular CIS member states, with the supreme organization of lawmaking work, with due regard to systematization, can positively affect the quality of the updated environmental legislation of Uzbekistan. In a certain aspect, such studies are necessary, since they contribute to the improvement of mutual understanding of states at the contacts of Uzbekistan at the international level, including on environmental issues.

Study of the legislation of other countries also shows some inadequacy of the justifications for the decisions

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made and the approaches to the development of environmental legislation in other CIS countries. And these circumstances objectively limit the use of foreign experience, do not allow in some cases to make direct borrowings of legal institutions and individual norms. However, in this case, the experience of the CIS member states is of special value for the development of a scientific concept of the creation of the Ecological Code in the Republic of Uzbekistan, and the choice of a practical direction for the systematization of national environmental legislation.

In conclusion, we note that the practice of codification ecological legislation in other countries, of course, is essential to the development of Uzbek ecological legislation and systematizing it, including, but the use of its results for the purposes of the codification of national legislation must be weighted and conditioned as a general rule, the search for new mechanisms for the implementation of environmental legislation or similarity of legal approaches to the solution of certain problems in the legal regulation of environmental relations.

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