

“PRINCIPLES OF ENVIRONMENTAL LAW OF RUSSIA, SERBIA AND SLOVAKIA: COMPARATIVE ANALYSIS”

“ПРИНЦИПЫ ЭКОЛОГИЧЕСКОГО ПРАВА РОССИИ, СЕРБИИ И СЛОВАКИИ: СРАВНИТЕЛЬНО-ПРАВОВОЕ ИССЛЕДОВАНИЕ”

“PRINCIPIOS DEL DERECHO AMBIENTAL DE RUSIA, SERBIA Y ESLOVAQUIA: ESTUDIO JURÍDICO COMPARATIVO”

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Abstract:

The article contains a comparative analysis of the principles of environmental legislation of Russia, Serbia and Slovakia. The authors argue that there is a certain conditionality of these principles, which is the result of the influence of international bodies and organisations, as well as of country-specific experience in environmental protection. Along with a number of general approaches to the interpretation of the principles of environmental protection, each of the three countries has its own set of principles of environmental law. It is noteworthy that the environmental legislation of the countries analysed does not have any provisions for countering the global threats of today - climate change, ecoterrorism among others.

Резюме:

В результате проведенного сравнительно-правового анализа принципов (основных идей) экологического законодательства России, Сербии и Словакии сделаны выводы об обусловленности формулировок таких принципов влиянием международных интеграционных объединений, а также национальным опытом охраны окружающей среды. Наряду с рядом общих подходов к пониманию принципов охраны природы, в каждой из трех стран присутствует свой собственный (отличный) набор принципов, причем особенностью указанных стран является отсутствие в перечне принципов идей противодействия глобальным угрозам современности (климат, экотерроризм и т.д.)

Resumen:

El artículo realiza un análisis comparativo de los principios de la legislación medioambiental de Rusia, Serbia y Eslovaquia. Los autores sostienen que estos principios están condicionados por la influencia de los organ-ismos y organizaciones internacionales, así como por la experiencia específica de cada país en materia de protección del medio ambiente. Además de una serie de enfoques generales para la interpretación de los principios de protección del medio ambiente, cada uno de los tres países tiene su propio conjunto de principios de derecho ambiental. Cabe destacar que la legislación medioambiental de los países analizados no contiene ninguna disposición para contrarrestar las amenazas globales de hoy en día: el cambio climático y el ecoterrorismo, entre otras.

Keywords: Principle. Environmental law. Court. Climate. Pollution. Damage.

Ключевые слова: принцип. экологическое право. Суд. Климат. Загрязнение. Ущерб.

Palabras clave: Principio. Derecho ambiental. Corte. Clima. Contaminación. Daño.

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1. INTRODUCTION

The history of the principles of law is more than 2000 years. It goes back to Roman law. The term principles of law means, in essence, rules of a higher degree of abstraction. These principles constitute the basis of any law, any branch of law or the rule of law as a whole. They can be interpreted as certain prompts, which express in a concentrated form the mechanism of the functioning of law as one of the forms of the organization of public life. Legal systems having the same legal culture have similar or even common principles of law. Naturally, this contributes to a deeper understanding of the legislation of other countries as well as to the mutual understanding of lawyers and lawmakers. These principles facilitate the harmonization of legislation, which is particularly important in the era of globalization, affecting in different degrees all countries of the world.¹

This approach is fully shared by Russian lawyers, who note that principles of law make it possible to fully implement the conceptions of the legislator, urging law enforcement bodies to act not only in accordance with the rule of law but also in accordance with its spirit. Principles of law can be defined as ideas expressed in fundamental legal concepts, reflecting the existing ideas and conceptions about law. They determine the nature and character of legal and regulatory action and relations. Hence, a system of principles of law is a totality of structurally organised ideas regarding law, characterised by systemic connections, relative independence, stability, and autonomy of functioning; they are used for the regulation of social relations.²

Principles of law are the main ideas underlying the legislation of a country. Consequently, an analysis of the principles makes it possible to explore the development of the national environmental legislation, as well as to identify legal institutes, which are not covered by the conceptual principles of law. In addition to the informative function, principles of law fulfil an important normative function; they are guidelines provided by the legislator for the development of a certain branch of law. They also perform the law enforcement function (provided there are gaps in the law, courts can use the principles of law to apply the law by analogy and, thereby, fill the gaps in law).

The study of this important legal category makes it possible to improve legal writing (formulation of norms and principles in environmental laws) and to reveal best legal practices of different countries. This comparative approach helps to improve the national principles of environmental law and make them

¹ Večeřa M. Povaha a zdroje právních principů. Princípy v práve. In: Zborník príspevkov z medzinárodnej vedeckej konferencie 14 mája 2015, Paneurópska vysoká škola, Fakulta práva, Bratislava (Bratislava, 2015) 45-54.

² Zakharova K.S. *Systemic connections between legal principles: theoretical problems* (Candidate thesis, Saratov State Academy of Law, 2009). 23 p.

more effective. The principles of environmental law of Russia, Serbia and Slovakia were chosen as the object of this study and comparison for the following reasons: one country (Slovakia) is an EU member state, Serbia has applied for the EU membership, and Russia is a member of other international associations, for instance, the Eurasian Economic Union. Consequently, different factors influence the formation of national environmental legislation.

2. PRINCIPLES OF ENVIRONMENTAL LAW OF THE EU AND SLOVAKIA

The legal science of Slovakia stresses that not every postulate proclaimed as a principle of environmental protection can be considered a principle of law because some of them are of only economic, political or moral significance. Since Slovakia is a member of the European Union, the principles of the EU environmental law are applied across its territory. The EU environmental law is based on several core principles: prevention, precaution, rectification at source, the 'polluter pays' principles as well as the principles of subsidiarity, integration and sustainable development. Let us consider some of them.

The precautionary principle³ is a general principle, which is particularly important for environmental protection because the consequences of environmental damage are often irreparable and must be prevented even if an environmental risk has not been established with full certainty. This principle has found expression in a large number of precautionary measures set out in law. The 'polluter pays' principle is the first principle that was laid down in the environmental law of the European Union.⁴ It provided a foundation for environmental protection in the 1970s, and most importantly, stipulates that all polluters irrespective of where they are should bear financial costs. The principle of a high level of environmental protection is the requirement to effective environmental protection by using the most advanced technologies and scientific achievements.⁵ For example, when drafting legislation in the EU, it is required to take into account the most stringent criteria for environmental protection. The principle of subsidiarity⁶ means that environmental problems should be addressed at the lowest appropriate level, i.e. at the level of authorities, directly affected by the problem and thus having the opportunity to

³ This principle is mentioned, for example, in Directive 94/62/EC of the European Parliament and of the Council of 20 December 1994 on packaging and packaging waste

⁴ This principle was first formulated in the Declaration on Environment and Development (adopted at the UN Conference in Rio de Janeiro in 1992)

⁵ This principle was first mentioned in Article 174 § 2 and Article 95 § 3 of the Treaty, establishing the European Community (Rome, 25 March 1957, amended on 16 April 2003).

⁶ This principle derives from Article 5 § 3 of the Treaty on European Union (signed on 7 February 1992 in Maastricht, the Netherlands)

be promptly informed and act accordingly. This principle is widely applied by the EU as a body in relation to its member states. The principle of integration⁷ reflects the tendency to integrate environmental policy into other EU sectors of activity (transport, tourism, regional development, etc.). For example, global warming, the depletion of the ozone layer or the greenhouse effect can hardly be regarded as purely ecological problems without research their technical, economic or other roots. Finally, the principle of sustainable development⁸ presupposes taking into account all aspects of the interaction between man and nature, which will make it possible to meet the basic needs of the development of society, while not reducing the level of biological diversity, and not posing threats to natural ecological systems.⁹

Specific environmental legal principles of the Republic of Slovakia are formulated in the "Act on the Environment" of December 5, 1991, No. 17/1992 Zb. A special chapter of the law is devoted to the principles of environmental protection. There are several core principles: 1) the territory must not be loaded by human activity over the rate of carrying capacity; 2) the admissible rate of contamination of environment are determined by limit values set by special regulations; these values are determined in accordance with achieved state of knowledge so as the health of people would be not threatened and no other live organisms would be endangered as well as other components of environment. The limit values have to be determined with respect to possible cumulative effects or joint effects of contaminating materials and activities; 3) if, in light of all the circumstances, it can be assumed that there is a risk of irreversible or serious damage to the environment, there should be no doubt that such damage will in fact occur, and therefore there is no reason to postpone measures to prevent the damage; 4) everyone can demand by a stipulated way at the competent authority of his or her rights that follow from the Act and other regulations dealing with the issues of environment; 5) upbringing, cultural activities and education are performed in such a way that they should lead to a thinking and dealings that are in conformity with the principle of permanently sustainable development, to the awareness of responsibility for the conservation of the quality of environment and its individual components and to the respect to life in all its forms. These principles are implemented in a wide variety of norms throughout the text of the law.

From this short overview, we can draw several conclusions. Firstly, the principles of the environmental law of the EU and the Republic of Slovakia do not duplicate each other and the scope of the principles within each of these

⁷ This principle was reflected in the 7th European Union Environment Action Programme (EAP) (adopted in 2013)

⁸ The principle was proclaimed at the United Nations Conference on Environment and Development held (Rio de Janeiro, 1992).

⁹ Cepek B. *Environmentálne Právo. Všeobecná a osobitná časť* (Plzen, 2015).

groups does not overlap. Secondly, the principles of the EU environmental law are formulated in an extremely short form, while the national principles of Slovakia are more detailed and precise. Thirdly, there is no linear dependence between the EU and Slovakia's environmental principles, that is, the latter are not necessarily aimed at concretizing the EU principles.

The correspondence of the environmental legislation of the EU and Slovakia can be identified through doctrinal interpretation. For example, the principle of a high level of environmental protection of the EU is concretized by the second principle of environmental legislation of the Republic of Slovakia. However, the 'polluter pays' principle of the EU is not specified in the system of principles of environmental law of Slovakia.

3. PRINCIPLES OF ENVIRONMENTAL LAW OF SERBIA

The principles of environmental protection are set out in Article 9 of the Law of the Republic of Serbia "On Environmental Protection" ("Official Gazette of the RS" Nos 135/04, 36/09, 43/11 and 14/16). This article contains 11 principles, which can be classified into the following two groups. Firstly, these are the principles coinciding in their content with the principles of environmental law of the EU and the Republic of Slovakia (the principle of sustainable development, prevention (precaution), the principle of responsibility of the polluter and its assignee, the 'polluter pays' principle, the principle of subsidiary responsibility (state authorities within their financial capabilities should mitigate and eliminate consequences of environmental pollution and reduce damage in cases when the polluter is unknown and when the damage occurs due to pollution sources outside the Republic of Serbia), the principle of public participation and formation in environmental protection, the principle of protection of the right to a healthy environment and access to justice. Secondly, a number of principles of environmental legislation are formulated in line with the EU directives, but taking into account the national specifics of environmental protection. An example of this approach is the principle of good faith, conservation of natural resources (including both renewable and non-renewable natural resources), the 'user pays' principle (everyone who uses natural resources must pay a real price for their use and reclamation of space), and the principle of application of incentives. Thus, the principles of environmental legislation of the Republic of Serbia and the Republic of Slovakia are different textually; the main principles of the Serbian environmental legislation are more detailed, reflecting both the EU recommendations and the national specifics when also focusing on honesty, incentives and financial costs.

4. THE PRINCIPLES OF RUSSIAN ENVIRONMENTAL LAW

An analysis of the system of principles underlying the environmental law of the Russian Federation shows that most of them can be found in Article 3 of federal law No. 7-FZ "On Environmental Protection" of 10 January 2002. The article lists 24 principles of environmental law, which are usually considered by industry in the Russian literature. The industry specificity criterion is used to distinguish between several groups of principles.

The first one comprises cross-industry principles: favourable conditions for life; engagement of citizens, civic associations, and non-profits in solving environmental problems; the 'user pays' principle, environmental compensation, etc. These principles cannot be put into practice within environmental law only. They are implemented through the rules of constitutional, planning, financial, criminal, and other laws. These principles can be divided into regulatory ('user pays', biodiversity preservation) and protective (environmental compensation).

Principles in the second group are industry-specific. They are exercised through the rules governing industry practices. Among these principles are the priority of preserving natural ecosystems, natural landscapes, and natural habitats and the principles underpinning the organisation and development of the environmental education system.

The third group brings together institutional principles — those of environmental law as a free-standing institution. One of them is the principle of impartiality of the environmental expert when performing their professional role. Finally, alongside the principles-rules, which have been enshrined in law, Russian scholars distinguish principles-ideas, which can be reconstructed through interpretation but are not stated explicitly.¹⁰

5. A COMPARATIVE ANALYSIS OF SYSTEMS OF ENVIRONMENTAL PRINCIPLES

A juxtaposition of the principles of Russian environmental law and their EU, Slovakian, and Serbian counterparts leads one to the following conclusions.

- 1) Some environmental principles are the same in the EU, Slovakia, Russia, and Serbia ('user pays', environmental compensation, etc.)

¹⁰ Ryzhenkov A.J. The principles of environmental law: theory and practice (2014) 4 *Yurist-pravoved*, 44-49.

- 2) Unlike the principles adopted in Serbia or Slovakia, which do not replicate each other or those of the EU, a full or partial duplication of titles and scopes of application is typical of the principles of environmental law in Russia. For example, Article 3 of the federal law On Environmental Protection mentions the principles of environmental compensation and liability for violating environmental laws. However, compensation for damages falls within the category of civil liability, i.e. liability in general. Principles stated in different environmental laws also often mirror each other. Article 3 of federal law On Environmental Protection contains the principle of 'presumption of environmental hazard of planned economic and other activities', whilst Article 3 of federal law No, 174-FZ of 23 November 1995 On Expert Environmental Impact Assessment quotes the same principle of 'presumption of environmental hazard of any intended economic or other activity. There is no apparent need for such duplication. In terms of legal writing, the Russian system of environmental law principles can benefit from drawing on the experience of Serbia and Slovakia.
- 3) All the principles of Serbian and Slovakian environmental law focus on problems covered by the general part of civil law, whereas in Russia some principles cover the 'main ideas' of institutions relating to the special part of environmental law. One of them is the principle of biodiversity preservation. Although going into such detail may seem unnecessary, it may clarify the definitions of abstract principles included in the general part. The executor of law often finds it difficult to use these principles in a concrete legal situation. Thus, the importance of protecting flora,¹¹ fauna and land,¹² and valuable urban and rural landscapes¹³ must be enshrined in individual principles.
- 4) Russian law distinguishes 'general legal' principles, which apply to all its areas. These include the principles of legal validity, liability, justice, good faith, and some others. Some of these general principles are particularised in Russian law (liability) and Serbian law (good faith, liability), whilst Slovakian environmental law never does that. Still, it is not clear why the Russian and Serbian legislator decided to particularise these principles.

¹¹ Ivančević B.N., Matavulj M.N., Karaman M.A. Lichens in Serbian Legislation (2012) 124 Journal Nat. Sci, Matica Srpska Novi Sad, 355-365.

¹² Bjelajac Ž, Mijatović M.D., Vojinović Ž. Protection of Land in the Republic of Serbia and Ecological Security with Regard to Strategic and Legal Frameworks (2017) 4 Economics of Agriculture, 1703-1721.

¹³ Đurđić S., Stojković S., Šabić D. Nature conservation in urban conditions: A case study from Belgrade, Serbia (2011) 5 Maejo International Journal of Science and Technology, 129-145.

- 5) Serbian and Slovakian environmental principles are not a mere declaration - they offer a detailed delivery mechanism. Unfortunately, Russian environmental law includes some principles that are very hard to put into practice. A typical example is the principle of 'responsibility of the public authorities of the Russian Federation, judicial authorities of regions of the Russian Federation, and municipalities for safeguarding a favourable environment and ensuring environmental security in corresponding territories'. Unlike individual officials, authorities cannot be held liable because there is no corresponding procedure. For example, a regional representative body that failed to adopt an environmental law cannot be dissolved. The principle of subsidiary liability of the Serbian authorities (when it is impossible to establish the offender, the damage is repaired by the state) seems to be more formulated more accurately than its Russian counterpart.
- 6) Most of the principles adopted in the three countries are non-specific, i.e. they are closely linked to the rules and principles of constitutional, financial, and administrative law. The civil arm of the law is represented insufficiently (it is invoked only as far as environmental compensation is concerned). If the principles and ensuing rules stressed the need for a developed system of environmental contracts (insurance, auditing, etc.), environmental law would benefit enormously, and contract law would become a more powerful environmental protection tool.
- 7) In Russia, Serbia, and Slovakia, all environmental principles date back to the 20th century. All of them mention classical environmental threats and responses. Nevertheless, the new century has ushered in new threats (climate change, nano-and biotechnology threats, ecoterrorism, etc.) which have to be countered at the level of both legal rules and fundamental ideas, i.e. that of the principles of law. The legislators of all countries must consider the modernisation of the system of legal principles and their supplementation with solutions to global environmental problems. One such solution is digitalising nature conservation. Enshrining the latter principle will encourage the legislator to make broader use of digital technology. This principle may be formulated as 'the principle of environmental protection digitalisation, which presupposes the development of digital technology for environmental monitoring, emission and discharge control, online public awareness campaigns, and keeping account of polluters.

A separate question is to what extent the principles of environmental law are in demand from courts. When hearing cases, Russian courts often perform acts of interpretation, which result in establishing the certainty or uncertainty of a legal rule. Even if the meaning of a legal rule seems clear to the executor of law, this does not mean that the interpretation of the rule is complete at this point – clarity may be deceptive. A valuable tool to dispel false clarity is the principles of law that aid in establishing the true meaning of a legal rule.¹⁴ Let us consider a typical example of a court applying the principles of environmental law. A district state prosecutor brings a court action against a municipal administration to safeguard the rights and interests of the general public. The prosecutor demands that the administration be obligated to hold a public hearing and complete an environmental impact assessment before constructing a solid waste landfill site. The court stresses that, according to Article 3 of the federal law On Environmental Impact Assessment of 23.11.1995, one of the principles of environmental impact assessment is that of presumption of environmental hazard of any intended economic or other activity, as well as of the indispensability of a state environmental impact assessment. Although the construction of a landfill site is an environmentally harmful activity, environmental impact assessment has not been carried out. According to Paragraph 6 of Part 1 of Article 30 of the federal law On Environmental Impact Assessment, erecting an object requiring an environmental impact assessment without performing one constitutes an offence. The court decides to satisfy the prosecutor's motion. It obligates the municipal administration to conduct a state environmental impact assessment of landfill site construction documents and suspend all work until a positive conclusion is obtained (ruling of appeal of 14 February 2012 in case No. 33-432 of Kirov Regional Court).

Thus, Russian courts tend to invoke the principles of environmental law not when a gap in the law has been detected (no such cases have come to our attention so far), but rather when the court decision requires a 'greater convincing power'. This circumstance, however, should not be interpreted as if the principles of law had lost their conceptual nature. The principles of environmental law are used in a very similar manner by courts in EU states. In a dispute as to the discriminatory nature of obstacles to waste imports, the court stressed that according to the principle of rectifying harm at its source, it was for each region, commune, or other local entity to take appropriate measures to receive, process, and dispose of its waste. Waste had to be disposed of as close as possible to the place where it was produced to keep the transport of waste to the minimum practicable. The court held that obstacles to importing waste from certain regions were not discriminatory.¹⁵

¹⁴ Kuznetsova O.A. Problems of applying principles of civil law (2008) 3 Vestnik of the Omsk University. Law, 23-32.

¹⁵ Stepanenko V.S. [The principles of environmental law of the European Union](#) (accessed on 06.04.2021)

6. CONCLUSION

This study has shown that a system of environmental law principles, which reflect the main ideas of environmental protection in line with the national experience, is enshrined in the laws of Russia, Serbia, and Slovakia. Serbian and Slovakian environmental law may be of interest to Russia as regards legal writing. The two countries have successfully avoided duplicating legal principles. Nonetheless, in neither of the three countries do the central ideas of environmental law embrace global threats faced by humanity in the 21st century. Nor do they leave room for new digital solutions. The principles underpinning environmental law must be utilised more extensively in practice to guide the development of environmental law in Russia, Slovakia, and Serbia.

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