

COMPARATIVE ANALYSIS OF THE ECOLOGICAL AND NATURE PROTECTION LEGISLATION OF RUSSIA AND GERMANY

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Abstract

Scientific research conducted by the author, is devoted to the problem of improving Russia's ecological and environmental legislation. In the context of the continuing transformation of the ecological system of Russia this sphere needs particularly careful approach by the judiciary because of its great social significance. Comparative analysis of the current ecological and environmental legislation, allows not only to detect shortcomings and gaps in the Russian legal basis, but also to identify the direction of their corrections. Thus, the presented work certainly has great practical significance. During the writing of research the author has demonstrated a deep level of knowledge, ability to obtain and use information. Analyzed a large reservoir of domestic and foreign sources and literature. Work is independent, creative. Consistency and clarity is not in doubt. Merit of the work is to use an interdisciplinary approach in addressing the topic. Conclusions and suggestions website appear justified and proven. The results were tested at a scientific conference and praised

Key words: *the ecological, nature protection legislation, the civil ecological rights, the German, Russian civil legislation, the address with waste, ecological culture.*

INTRODUCTION

Germany – recognized authority on area of the ecological legislation also is considered the state with the developed system legislative and bylaws in the field of environmental protection. Germany before other states faced need of essential expansion of scales of nature protection activity. Its political aspects include: legal regulation of anthropogenous influences, informing of the population on a state of environment, protectionism in relation to resource-saving and ecologically safe technologies, support of basic and applied researches in the field of ecology and environment protection, ecological education and formation of all segments of the population.

The presented work contains numerous examples of economic and political incentives of careful use of all forms of natural resources, the directions of improvement of a legal mechanism of realization of the ecological rights; legal regulation of the address with waste; legal bases of formation of ecological culture.

Work is based on foreign and domestic sources. Their comparison shows that in the Federal Republic of Germany more make thrifty use not only of environment, but also of that scientific basis on which there is a nature protection activity.

Besides, in this work the ecological legislation of the Tomsk region is analyzed. Methods on settlement of the ecological relations in the sphere of use of secondary resources in areas, and also methods on increase of level of ecological education of citizens and education greening in the Tomsk region are cited as an example.

At the end of work are brought the appendix in the form of the photos comparing Germany and Russia in the sphere of environmental protection, including photos from personal archive of the author of work.

The purpose of work is development of the basic principles of improvement of domestic system of the ecological and nature protection legislation on the basis of the comparative analysis of the ecological and nature protection legislation of Germany and Russia. For achievement of a goal in work the following problems are solved: 1) studying of the existing ecological and nature protection legislation of Germany and Russia, and also theoretical works in the field of environmental protection; 2) research of the mechanism of realization of the ecological rights of citizens; 3) consideration of economic measures in the environmental protection sphere; 4) analysis of legal bases of formation of ecological culture; 5) assessment of a legal procedure in the ecological right of Russia and Germany.

Object of research are the public relations settled by the ecological and nature protection legislation in the sphere of the ecological and nature protection right.

The main general scientific method used in this work, the comparative analysis is. This method allowed to reveal similarities and distinctions in the ecological and nature protection legislation of the Russian Federation and the Federal Republic of Germany, and also in ways of regulation of legal protection of environment in both countries. Relying on experience of Germany in the environmental protection sphere, by means of the comparative analysis shortcomings of ecological policy of the Russian Federation, and, taking into account it were revealed, the basic principles of improvement of domestic system of the ecological and nature protection legislation are developed. Besides, when writing work such methods of research as summarizing, making an abstract, annotation, the theoretical analysis, inductive and deductive methods, synthesis, etc. were used.

The ratio of the Federal Republic of Germany and the Russian Federation in the field of the legal ecological and nature protection legislation, in our opinion, is caused, first, by a high level of development of system of the nature protection legislation in them and a variety of practice of its application; secondly, a certain similarity in approach to the solution of key problems of legal protection of environment and, thirdly, an originality of functioning of system of legal protection of environment in each of these countries, connected with features of the national right, traditions, etc.

Experience of Germany represents undoubted interest for our country. The analysis of various approaches to the solution of problems of environment of dwelling is useful also to that for Russia considerable lag in introduction of already existing nature protection technologies is characteristic.

We will begin with that in one regulatory legal act of the Russian Federation there is no concept of ecologically significant information, there are no procedure and the principles of its granting. At implementation by the state of ecological and nature protection policy the priority of economic interests over ecological, as a rule, is brightly traced there is a failure to provide the public of ecologically significant information or its distortion that has an adverse effect on realization of public and state control for security environment.

1. MODERNIZATION OF THE LEGAL MECHANISM OF IMPLEMENTATION OF THE CIVIL ECOLOGICAL RIGHTS OF RUSSIA TAKING INTO ACCOUNT THE GERMAN EXPERIENCE

1.1. Economic measures in the field of environmental protection

In the Russian Federation there is no economic basis for implementation of the ecological rights of citizens. It is shown in absence of incentives for development of ecological business, a lack of introduction of new technologies, and also in the form of the insufficient volume of allocation of finance on the solution of nature protection and ecological tasks.

It should be noted that in the environmental protection sphere the preference is given in Germany to economic measures, than administrative, owing to their dynamic character. In the Russian Federation, on the contrary, administrative tools prevail¹.

There is various approach between Russia and Germany, concerning ecological and nature protection stimulation. In the legislation of the Russian Federation practically there are no nature protection and ecological incentives. In Germany, on the contrary, ecological subsidies of direct character, i.e. the state payments in favor of individuals for the solution of certain tasks and achievement of the specific public goal on a gratuitous basis (not demanding return) are paid.

In addition, there are also indirect subsidies. They are expressed that at environmental pollution the subject of economic activity pays all put payments, in the return case – is exempted from payment. Nature protection stimulation, according to one authors, increases interest at their addressees that is positive aspect. According to other authors, the lack of subsidizing consists in gratuitous use of federal funds, distortion of the principles of the competition. In our opinion, subsidizing in nature protection activity has to take place, but the circle of her addressees has to be thus accurately defined, and also be exercised rigid control of an expenditure of these funds from the party of government bodies.

One more positive moment in the sphere of support of environmental protection of Germany are acts of the federal government of Germany on support to the nature protection organizations by means of granting grants on projects in the sphere of environmental protection and the protection of the nature directed on growth of degree of knowledge and activization of activity in this sphere. In particular, they contain projects on pressing problems, projects for children and youth; the projects as which purpose encouragement of behavior, joint with interests of the nature and environmental protection serves; projects in the sphere of ecological consultation and training.

¹ Nutzinger H.G. Ökologisch orientierte Steuern als umweltpolitische Instrumente // Reformperspektiven im Umweltrecht. Baden-Baden: Nomos-Verl.-Ges. 1996. S. 43.

Also German legislation in the field of environmental protection is distinguished by openness and transparency of procedure of accumulation and an expenditure of money which are marked out for environmental protection. In Germany there is a classification of the nature protection payments which part has a fiscal form, and arrive in the budget, other payments arrive on implementation of certain nature protection and ecological programs².

In our opinion, for creation of an economic basis of realization of the ecological rights of citizens support of ecological business, introduction of new technologies, dating and subsidizing of natural and legal entities is necessary for the solution of ecological tasks, increase of level of openness and transparency of procedure of formation and an expenditure of financial means in the ecological purposes.

1.2 Imperative method of realization of the ecological rights of citizens

The ecological right of Germany has more imperative character, than in the Russian Federation. Requirements and the ban containing in the German ecological legislation, are strictly observed by everyone that is provided with high level of ecological sense of justice of present generation, an effective embodiment of the program principle of the constitutional state and, certainly, inevitability of punishment for ecological offenses.

Considering all above-mentioned, there is a question: for what reason implementation of the ecological rights of citizens in the Russian Federation is at quite low level, contrary to their fixation in the legislation, and in Germany, despite the absence of the published ecological rights, the person feels more protected at interaction with environment?

In our opinion, the answer consists in low level of a legal mechanism of implementation of the ecological rights of citizens of Russia, low level of ecological legal consciousness, bad security of these rights from the state, failure by subjects of legal relationship of their ecological duties, non-execution of the principle of inevitability of punishment for violation of the ecological right, etc.

1.3. Procedural ecological and nature protection legislation

As for procedures in the ecological right of Germany and Russia, today in both countries drafts of the ecological codes containing both material norms, and norms procedural are prepared.

The draft of the Ecological code developed in Germany contains the norms regulating all set of the relations, connected with the nature. In future ecological code will be included both material norms, and procedural.

Today in the Russian Federation environmental legal and material standards contain in one act, but highly specialized. Happens that a legal procedure material and providing them, settle down not adjacently and at all in one act. For example, article 37 Federal Law "About a Subsoil of the Russian Federation" defines area of under control activity, specifies the federal bodies realizing this activity, and also their duties (material norms), and the order of conducting control is regulated by the provision on the state geological control. Art. 36 of Federal Law "About Fauna" regulates the rights of natural and legal entities for using fauna on the basis of the long-term and nominal one-time license (material norm). Art. 37 of this act defines an order of issue of these licenses (procedural rule). Thus, we will draw a conclusion that the environmental procedural rules providing realization of norms material, exist though they aren't systematized.

We consider that the solution of this problem will be creation of the Ecological code regulating not only environmental protection and separate natural resources, and the consolidating and complex branch of the right including all set of the relations, connected with the nature (the land, mountain, water, airsecurity, faunistic, forest law).

2. LEGAL REGULATION OF THE ADDRESS WITH WASTE

2.1. Use of secondary resources in Germany

As for legal regulation of the address with waste, now in Germany regulation of the address with waste is fixed in the Law of Germany "About waste" ("Kreislaufwirtschaftsgesetz") which has come into force on October 6, 1996. The last changes happened on May 22, 2013. The law purpose – providing the mechanism of the address with the waste, meeting ecological requirements (paragraph 1).

Today, the mechanism of use of secondary resources moved to a new level. Thanks to a recycling (processing) of zinc, black scrap metal, aluminum 2006 brought more than 4 billion euro for Germany. It is caused by that Germany, unlike Russia, is less dependent on import of primary resources. Moreover, Germany is the leading

2 Stehling F. Umweltökonomik. Ulm: Distribbooks Int'l+inc, 2007. S. 167.

exporter of technologies and the equipment for processing of waste. Besides, with construction of new plants on processing of waste, the number of workplaces, approximately increased by 300 thousand.

Today, in Germany the mechanism of sorting of garbage is rather effectively adjusted. Each citizen of the Federal Republic of Germany, owing to the ecological sense of justice, before utilization sorts waste, depending on marking on packing (for example, products from paper, plastic, metal have different color marking on packing). In Germany all is exposed to a recycling literally: from paper and glass to accumulators and old cars.

In addition, in the Federal Republic of Germany mechanisms of automatic sorting of waste which, without special work, are capable to sort by categories the mixed garbage effectively develop. For certain, in the future, Germany will get rid of street garbage tanks with five openings for distribution of garbage of different structure.

Mechanisms of manual and mechanical sorting of garbage in Germany are settled by the Law on the closed cycles of production and waste.

We were convinced that in Germany the mechanism of recycling of resources is effectively developed. In this region of Russia it is necessary to borrow a lot of things at Germany. The recycling not only will cut down expenses on import of primary raw materials, but also will increase the income from import secondary.

2.2. Use of secondary resources in Russia

In Russia about 7 billion t of waste are formed every year, and only 2 billion from them are processed that makes 28,6%. According to these data considerable lag of our country from Germany is traced. Moreover, today's indicators of Russia concede in this sphere to indicators of the Federal Republic of Germany of the end of the 80th. It is worth reflecting.

On June 24, 1998 the Federal law "About production wastes and consumption" took effect. This law defined legal bases of the address with production wastes and consumption for prevention of harmful effects of production wastes and consumption on health of the person and environment, and also involvement of such waste in economic circulation as additional sources of raw materials³.

At the level of territorial subjects of the Russian Federation programs for use of secondary resources in regions are accepted. For example, on December 23, 2011 in the Tomsk region the regional program for development of system of the address with production wastes and consumption was accepted. Main goal of this program is "development of system of the address with production wastes and consumption, except for radioactive and biological waste, medical waste of treatment-and-prophylactic establishments, and use of secondary material resources in the region territory"⁴. According to developers of the program, implementation of the program promotes improvement of an ecological situation in the Tomsk region, to formation of system of use of secondary resources, development of production infrastructure for the purpose of performance of work and services in the sphere of the address with waste, including on processing of waste with receiving socially significant and competitive production, economy of primary resources due to involvement of solid waste in an economic cycle. Besides, it is supposed to fill the market with the goods made with application of production wastes and consumption.

Despite it, definition of waste, their types, the maintenance of stages of the address with waste, requirements to ecological safety, etc. questions are defined in different acts differently. Besides, the insignificant attention to development of the uniform legal concept of the address with waste is paid by science of the ecological right that, besides, has an adverse effect on the contents the normative legal acts regulating the sphere of the address with waste.

3. LEGAL BASES OF FORMATION OF ECOLOGICAL CULTURE OF GERMANY AND RUSSIA

3.1. Ecological education in Germany

For increase of level of consciousness of society in the field of ecology the government of Germany propagandizes various materials for the purpose of increase of level of awareness on environment problems. It is carried out both through printing editions, and through websites. For example, the Service of education of the Federal ministry of environment, conservation and safety of reactors of Germany coordinates the educational

³ About production wastes and consumption: feeder. the law Grew. Federations of 24.06.1998 No. 89-FZ//SZ Russian Federation, 29.06.1998, No. 26, Art. 3009.

⁴ About the approval of the regional program "Development of System of the Address with Production Wastes and Consumption in the Territory of the Tomsk Region for 2012 - 2014 and for the Period till 2020": Order of Administration of the Tomsk region "///Collection of the legislation of the Tomsk region", 30.12.2011, N 12/2(77) part 2.

events held in educational institutions of secondary education and beyond their limits, and gives about them relevant information.

As we see, executive authorities of Germany pay much attention to ecological education, and it, in our opinion, is positively reflected in the ecological legislation as in the legislation receive external expression (объективируются) the real-life public relations developing irrespective of will of the legislator.

3.2. Ecological education in Russia

In the Russian Federation in Art. 71 of Federal Law "About Environmental Protection" the vseobshchnost and complexity of ecological education, and in Art. 74 of the same Law – ecological education are provided. Thereby, in the right "representations and views of people, societies, the legislator for the ways and the directions of formation of bases of ecological culture as major factor and component of human maintaining in the field of environmental protection are given⁵.

The board of the Ministry of Natural Resources and Environmental Protection of the Russian Federation in 1992 approved Strategy of development of ecological education in the Russian Federation where the ecological culture is defined as set of experience of interaction of citizens with the nature, shown in the form of theoretical knowledge, moral standards, values and the cultural traditions, providing development of ecological sense of justice, methods of practical interaction with environment. In the late nineties for it was developed and accepted by the State Duma of Federal Assembly of Russia, the bill "About Ecological Education" is approved by the Federation Council of Federal Assembly of Russia, however because of its excessive pretentiousness, absence of accurate specific requirements to ecological education and a razmytost of a subject of regulation it wasn't approved by the Russian President. Many provisions were considered at completion of the Law of the Russian Federation of 10.07.1992 No. 3266-1 "About education", being basic for all directions of education, including ecological, legal, language, economic, historical, etc.

In 2000 deputies developed and introduced in the State Russian Federation the bill "About Ecological Culture" in which some concepts, differing by features in comparison with terms of the Act of the Russian Federation "About education" were formulated. The deviation the Russian President on the basis of the conclusion of state legal department of the Russian President Administration of drafts of federal laws on ecological education and about ecological culture located, including, and that there are no independent subjects and regulation spheres which are provided in other laws and other regulations. Very useful remark which should consider legislative bodies and the deputies seeking on each problem to build the zakonodatel'ny act instead of investigating and understanding why the previous act doesn't affect the same subject.

On August 31, 2002 the Order of the Government No. 1225-P approved the Ecological doctrine of the Russian Federation. In it it is said that a strategic objective of a state policy in the field of ecology is preservation of natural systems, maintenance of their integrity and life-supporting functions for a sustainable development of society, improvement of quality of life, improvement of health of the population and a demographic situation, ensuring ecological safety of the country. Pleases the fact that in our country the state policy in the field of ecological education is carried out. We hope that further the state and society will manage to lower ecological nihilism of the Russian citizen to a minimum⁶.

In territories of subjects of the Russian Federation the programs devoted to ecological education of citizens are kept. In the Tomsk region the interdepartmental regional project "Development of Continuous Ecological Education in the Tomsk Region" which main objective is definition of the strategic directions of development of ecological education, formations of regional policy in system of continuous ecological education is created. On August 24, 2012 within the VIII-th Regional festival of pedagogical ideas and innovative development the design laboratory "Development of Continuous Ecological Education in the Tomsk Region" took place. The main effects, according to participants of design laboratory, became: drawing attention of experts and the public to ecological education and education; expansion of a circle of social partners; creation and organization of activity of the Centers of ecological education. 28 – On March 29, 2013 according to the Resolution of Administration of the Tomsk region of 08.10.2012 No. 388a "About the announcement of 2013 Year of environmental protection in the Tomsk region"⁷ and within realization "Strategy of development of continuous

⁵ Bogolyubov S. A. Actual problems of the ecological right: the textbook for masters. M.: Юрайт, 2011. Page 324-325.

⁶ Ecological doctrine of the Russian Federation: The order of the Government of the Russian Federation of 31.08.2002 No. 1225-P//Grew. gas. No. 176, 18.09.2002.

⁷ About the announcement of 2013 Year of environmental protection in the Tomsk region: The resolution of Administration of the Tomsk region of October 8, 2012 of N 388a/" collection of the legislation of the Tomsk region" of October 31, 2012 N 10/2.

ecological education and education of the population of the Tomsk region for 2011-2020" in the territory of the Tomsk region the IV Interregional scientific and practical conference "Continuous ecological education was held: problems, experience, prospects". And on April 26 - 27, 2013 in the Tomsk region the I Interregional Festival of ecological education and youth education "I was held I live on a beautiful planet". Despite considerable progress in the field of ecological education, today by the Russian Federation are carried out while insignificant shifts on realization of the specified norms, in comparison with Germany where education in the field of ecology begins already at a school stage where special subjects of nature protection orientation are entered and the system of ecological facultative education is developed. We consider that won't prevent, to reflect on the new national Ecology project or the project under other name, but the level of ecological culture of citizens of our country directed on increase.

CONCLUSION

In the conclusion we will note that in present conditions the ecological and nature protection legislation is an important component of Russian law. Today environmental pollution is a global problem fight with which proceeds any more one eyelids. It is necessary to realize that world ecological crisis sat down so deeply that practically not to avoid its disastrous consequences. In this case, it is a question only of mitigation of these consequences. Mitigation still can be reached, and here the important role will be played by legislation development.

Comparative and legal research of the ecological and nature protection legislation of Russia and Germany allows to draw a conclusion that the German experience of ecological and nature protection legal regulation has to promote improvement of Russian law in this sphere. In Russia unlike Germany there is no economic basis for implementation of the ecological rights of the citizens, being expressed in insufficient quantity of the federal funds allocated for the nature protection purposes; lack of stimulation of development of ecological business and use of new technologies, low level of openness of formation and expenditure of federal money on the nature protection purposes.

Failures of Russia consist also in imperfection of a legal mechanism of implementation of the ecological rights of citizens of the Russian Federation, low level of the ecological legal consciousness, insufficient security of the ecological rights of citizens from government bodies, non-execution by legal subjects of the ecological duties, non-compliance with the principle of inevitability of responsibility for ecological offenses and, certainly, in separation of a procedural ecological and legal material. It and many other things can be borrowed at the developed countries and, first of all, at Germany.

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