

LAND LAW; AGRARIAN LAW; ENVIRONMENTAL LAW; NATURAL RESOURCES LAW

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DIFFERENTIATION OF NORMATIVE LEGAL ACTS OF UKRAINE IN THE FIELD OF PROVIDING FOR ENVIRONMENTAL SAFETY IN THE SPHERE OF RAIL TRANSPORT

Rail transport is an integral part of the economic system of any country in the world, a necessary factor for economic growth. However, the environmental estimate of the transport system shows that it causes significant (even irreversible) damage to the environment. According to the National Strategy of Ukraine in the field of environment, natural resources and environmental safety, transport sector, in particular the moving vehicles (cars, locomotives, marine and river vessels) as well as stationary objects of logistics (warehouses of lubricants, gas stations, service stations, workshops, etc.) are in the list of significant environmental pollutants [1]. Therefore, at the present stage of social relations in Ukraine it is important to the issue legal regulation of relations on environmental security in the operation of rail transport. It should be noted that the issue of environmental security has repeatedly been the subject of scientific debate in the works of leading Ukrainian scientists in the field of environmental law, including, V.I. Andreytsev, G.I. Baluk, V.D. Basay, A.G. Bobkova, U.O. Vovk, S.P. Gavrish, A.P. Hetman, V.I. Gordeev, I.I. Karakash, V.V. Kostytsky, M.V. Krasnova, S.M. Kravchenko, N. P . Malysheva, Y.S. Shemshuchenko, M.V. Shulga and others. However, issues concerning ensuring the compliance with environmental safety requirements in the rail sector remain insufficiently studied, that determines the relevance of this study, which aims at analyzing the types of legal regulations of Ukraine in this area of relations.

Scientific classification of legal regulations regarding environmental safety in the rail sector will enable to make deeper analysis of their legal

nature, to determine their place and significance in the solution of issues in question, to develop the most accurate and detailed procedure of their implementation, to create effective measures for monitoring of their implementation and summarize the main trends.

Therefore, based on the following criteria, we can distinguish the following types of acts regulating relations in the sphere of environmental safety in railway transport:

1. According to legal force acts in the area of study should be divided into: laws, regulations.

Moreover, the laws and regulations are also characterized by certain hierarchical structure with its internal consistency. Therefore, in the system of legal regulation of relation in the sphere of environmental protection on rail transport laws should be classified according to the following criteria.

A) According to their importance the following types of laws in the field of relations studied can be singled out:

- Fundamental (constitutional laws);
- The laws of eco-complex (integrated) nature;
- Codified laws;
- Resource laws.

The most important fundamental law in Ukraine is the Constitution [2] Therefore, based on the principle of the priority of law, it has the highest legal force, and all laws and regulations should be made on the basis of the Constitution of Ukraine and correspond it. This fundamental law does not directly mention the environmental safety on the railway transport. But since it defines the fundamental principles of correlations "people – the state – nature", it also governs conceptual issues in the field of securing environmental safety. It is stated in Art. 16 of the Constitution of Ukraine, which emphasizes the importance and necessity of protection of relationships as to ensuring of environmental safety at the highest legislative level. But, as noted by V.V. Kostytsky, one should not overestimate mere constitutional recognition of the ecological functions of the state and environmental rights of citizens, as its absence in the constitutions of states of the world is partially offset by the interaction of various authorities and environmental public interests of people also [3, p. 55]. That is probably why the constitutional provision of Art. 16 finds its the further consolidation and implementation in the powers of state and governmental bodies. Actually, constitutional rules are basic provisions for appropriate legislation on the regulation of relations "rail transport – environmental security."

Thus, the Constitution of Ukraine provides fundamental, basic issues to ensure environmental safety in general. It does not regulate the issue of compliance with environmental safety on the railways of Ukraine, but only enforces the importance and priority of environmental safety in general, leaving eventually these issues for consideration in the branch legislation. This approach seems appropriate, since it is impossible within a single act to cover or resolve the full range of existing relationships, and especially in the Fundamental Law, which in our opinion, should only define guidelines for the settlement of diverse in object relations.

The laws of ecological and integrated nature should primarily include the Law of Ukraine "On Environmental Protection" [4]. It should be noted that under this law the most structurally regulated are the relations concerning the guarantee of the ecological safety in various areas, particularly on transport. General provisions concerning the legal regulation of environmental safety are contained in Section XI of the Law of Ukraine "On Environmental Protection" [4]. Article. 56 of this Law defines the basic requirements for ensuring environmental safety in the process of design, manufacture, operation and maintenance of mobile vehicles, such as switching to less toxic forms of energy and fuel, following operating mode of vehicles, etc.

A characteristic feature of environmental legislation of Ukraine is a high level of codification. It reveals itself in the fact that the sources of environmental law comprise a number of codes. In particular, the Water Code of Ukraine [5], the Land Code of Ukraine [6], the Forest Code of Ukraine [7], etc. These regulations are related to the problem of environmental safety of the railways to that extent to which it affects the protection of water, land or forest resources.

Resource laws include the Law of Ukraine "On Air Protection" in the new edition of June 21, 2001 [8], since the atmosphere is suffering from the most negative impact in the use and operation of vehicles. The significance of this regulation is that it more or less regulates a question concerning the rationing the content of pollutants in the exhaust gases and the influence of physical factors of mobile sources.

B) According to the subject of regulation following types of laws in the field of relations studied should be singled out:

- specialized laws or purely environmental legal acts;
- acts of the general legal ("non-environmental") character.

Specialized laws are legal acts regulating purely ecological relations, i.e. relations with the ownership, use, ensuring environmental safety, reproduction of natural objects and environmental protection in order to meet environmental concerns. This type should include the Law of

Ukraine "On Environmental Protection" [4] "On Air Protection" [8] and so on.

Acts of general legal character are legal acts, in which along with other relations the environmental requirements of environmental safety in the rail sector are governed. This is the Law of Ukraine "On Transport" [9] "On Railway Transport" [10] "On the Complex Program of Assertion of Ukraine as Transit State in 2002-2010" [11].

Art. 3 of the Law of Ukraine "On Transport" provides that the purpose and objectives of state administration in the field of transport is also the protection of the environment from the harmful effects of transport. This legal position is reflected and continued in Art. art. 11, 12, 13, 14 of the Law of Ukraine "On Transport" [9]. According to these articles, transport organizations and vehicle owners are obliged to protect the environment. Inadequate performance or breach of duty and damage to the environment entail responsibility under the law. This Law does not specify the types of offenses and forms of legal liability in this area of relations.

Legal, economic and organizational principles of operation of the railway transport are defined by the Law of Ukraine "On Railway Transport" [10]. But within this regulation there is no separate article, which would clearly regulate issues of the protection of environment. However, in some articles, along with compliance with road safety, fire safety there is a regulation on compliance with environmental safety. It can be proved with Art. 4 of the Law, which provides that in order to ensure public and state interests, freedom of enterprise and development of the market of transport services, traffic safety, environmental protection Cabinet of Ministers of Ukraine defines the conditions the way of organization of operation of railway public transport of general use, contributes to its priority development, provides support to meet the needs of railways rolling stock, logistical and energy resources. Similar instructions are contained in Art. art. 11, 12 of the Law of Ukraine "On Railway Transport" [10].

Consequently, in these articles the need for environmental protection is merely mentioned, the mechanism of its actual implementation is not specified. Therefore, in our opinion, there should be more thorough regulation of the issue of environmental protection measures and more severe monitoring of the compliance with demands of environmental safety. The starting points as to the main and primary directions of operation of rail transport in general, and environmental policy in this area, in particular, are contained in the Law of Ukraine " On the Complex Program of Assertion of Ukraine as Transit State in 2002-2010" [11].

Thus, a crucial step in the establishment of Ukraine as a transit country in accordance with paragraph 3 of this Law shall be to ensure the transition to technological and environmental standards that meet the European requirements for railway rolling stock, as well as a necessary principle of state policy of Ukraine is expected to reduce the negative impact of transport on the environment.

Second line of regulations on environmental safety in the railway transport according to legal force is constituted by regulations, which are acts made by the competent law-making bodies on the basis and in pursuance of the laws and should not contradict them. Regulations in the area of study also form a structured system, which include the following components, taking as a basis for grouping subjective features:

1) resolutions of the Verkhovna Rada of Ukraine (Resolution of the Verkhovna Rada of Ukraine "On the Main Directions of the State Policy of Ukraine on Environmental Protection, Use of Natural Resources and Environmental Safety" of March 5, 1998 [1]);

2) decrees of the President of Ukraine (Decree of the President of Ukraine "On the Decision of the National Security and Defense Council of Ukraine of 11 November 2002" On the Level of Man-made and Natural Safety in Ukraine "" of February 4, 2003 № 76/2003 [12]);

3) resolutions and orders of the Cabinet of Ministers of Ukraine (Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Statute of the Railways of Ukraine" dated April 6, 1998 № 457 [13] Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Concept of the State Program of Technological Safety in key sectors" of June 11, 2003 № 351-p [14]);

4) orders of ministries and other central executive authorities (Order of the Ministry of Transport of Ukraine "On Approval of Rules of Technical Operating of Railways in Ukraine" dated 20 December 1996 № 411 [15] Order of the Ministry of Ukraine of Emergencies and Affairs of Population Protection from the Consequences of Chernobyl Disaster, Ministry of Agrarian Policy of Ukraine, Ministry of Economy of Ukraine, Ministry of Ecology and Natural Resources of Ukraine "On Approval of the Methodology of Prediction of the Consequences of the Leak of Hazardous Chemicals during Accidents at Industrial Enterprises and on Transport" of March 27, 2001 № 73/82 / 64/122 [16]);

5) The regulations of local bodies of self-power and local government (Decision of Ivano-Frankivsk Regional Council "On the Regional Programme for Environmental Protection until 2010" dated September 8, 2006 № 73-5/2006 [17]).

Within each of the above regulations provisions are summarized to ensure environmental safety in general and in the field of rail transport in particular.

2. Depending on the object orientation regulations on environmental safety in the sphere of rail transport can be divided into:

- acts with integrated object;
- acts with a special (differentiated) object.

Acts with an integrated object are acts related to ensuring environmental safety in the process of operation of railway transport in general, that is independent from natural object. Thus, the Law of Ukraine "On Environmental Protection" [4] provides protection of all natural objects in the process of operation of railways in Ukraine: the air, and land resources, and water, and plants. However, in the acts of the second group, which are acts with a special object, issues of compliance with environmental safety on the railways concerning separate objects are fixed. For example, the Law of Ukraine "On Protection of Atmospheric Air" [8] contains provisions as to protection of air during operation of railway transport, similar provisions are contained in the Water Code of Ukraine [5], but the object of protection is not air but water resources. This group of acts includes also the Land Code of Ukraine. [6]

3. Depending on the nature of governed relations regulations on environmental safety in the rail sector should be subdivided into:

- acts that reinforce the general provisions for environmental safety in the rail sector;
- acts that reinforce the special ecological-safety requirements in railway transport: a) at the construction of railways, and b) when placing the material and technical facilities of railway transport, c) during commissioning and operation of railway transport, d) acts setting forth the legal basis for environmental regulation associated with the activity of railway transport.

The first type of regulations that reinforce the general provisions for environmental safety in the rail sector include the Law of Ukraine "On Environmental Protection" [4] "On Air Protection" [8] "On Railway Transport" [10], the Statute of Railways of Ukraine [13], Implementation Plan on Transport of the National Strategy of Ukraine in the Field of Environment Protection, Use of the Natural Resources and Ensuring Environmental Safety for 2002-2006 [18] and so on.

The second group of regulations of this classification is represented by branch acts of transport legislation, in particular the Order of the Ministry of Transport of Ukraine "On Approval of the Instruction on Design and Operation of Railway Crossings" on July 12, 2002 № 469 [19],

the Order of the Ministry of Transport of Ukraine "On Approval of Rules Use of Carriages and Containers "on February 25, 1999 № 113 [20], the Order of the Ministry of Transport of Ukraine "On Approval of the Rules of Public Safety on Railway Transport of Ukraine"dated February 19, 1998 № 54 [21] and others.

4. Depending on the purpose the regulations on ensuring environmental safety in the sphere of the rail transport can be divided into:

- resource and regulatory acts;
- resource and protective acts.

Resource and regulatory acts include laws and regulations aimed at settlement of environmental legal relations on the use of natural resources in terms of compliance with demands of environmental safety on railway transport. This is the Law of Ukraine "On Environmental Protection" [4], the Water Code of Ukraine [97], the Land Code of Ukraine [6], the Forest Code of Ukraine [5].

Resource and security acts are regulations aimed at securing environmental protection and environmental safety of the railways. These primarily include the Criminal Code of Ukraine [22], the Civil Code of Ukraine [23], the Code of Ukraine on Administrative Offences [24], The Labor Code of Ukraine. [25]. These acts ensure legal responsibility for violation of, or failure to comply with the demands of environmental safety and contain a list of offences.

Thus, the analysis of the legal regulation of relations on ensuring of environmental safety in the rail sector lets us state the following:

a) the regulation of these relations is done by a number of legal acts (beginning from the Constitution of Ukraine and finishing with the instructions that operate on a local level), which have both general regulative and special environmental protective character;

b) there isn't any separate complex legal act (law or regulation) or subdivision within such an act, which would regulate in detail the relations of environmental protection in the rail sector;

c) laws are present in the current legislation of Ukraine, which to some extent affect the problem of study and have mostly general, declarative character.

Apparently, the legal regulation of social relations to ensure environmental safety in the rail sector in Ukraine is still in the process of establishing. Moreover, the conceptual framework and comprehensive, integrated mechanism for the implementation and effectiveness of measures concerning compliance with the requirements of ecologically safe demands in the operation of railway transport and so on has not been scientifically defined. This causes an acute need for further elaboration and

improvement of legal regulation of such relations in a separate specialized legal act, in particular, the law of Ukraine "On environmental safety."

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