

Environmental Standards in the Constitutions of the Countries of the World: The Comparativ Legal Aspect

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Abstract: The author makes a comparative legal analysis of environmental provisions of the Constitutions of different countries of the world. The article focuses on various approaches of national legislators to the determination of the content of citizens' environmental rights and the attitude toward the issues of foreigners' land property. The author lays emphasis on a series of useful constitutional wordings that could be thoroughly studied and put into national legislation including the one of the Russian Federation. In the author's opinion, a variety of approaches to the problems of environmental protection in the Constitutions of the countries of the world is determined by the extent of consciousness of environmental problems by the population and government of the corresponding countries, their religious and cultural traditions, the year when the Constitution was adopted (in the later Constitutions the content of environmental human rights is wider) and other factors.

Key words: Natural resources • Environmental human rights • Plot of land • Specially protected natural areas • Environmentally vulnerable territories

INTRODUCTION

Increasing impact of human beings on the natural environment leads to new threats that need to be fought at both international and domestic levels. To improve the efficiency of counteraction against these threats, the generalization of international experience of legal regulation of environmental relations is required. The core of each country's legislation is its Constitution. At the present time, there is a selection of texts of the Constitutions of the countries of the world with regard to environmental requirements [1]. It is of the utmost scientific interest and will be used in this article.

Influence of Scientific Doctrine on the Constitution: Scientific discussions about the environmental law subject matter have been held in Russian legal science for many years. The point of these discussions is that environmental law as a branch of law can be considered in the wide sense as well as in the narrow sense. In the

wide sense it includes natural resources and nature protection law. In the narrow sense it relates only to nature protection law. In the first case, environmental law standards regulate not only relations concerning nature protection but also its practical use including the issues of property in regard to natural resources, their circulation, etc. In the second case, they relate only to the issues of nature protection from any negative impact [2].

Depending on the wider or narrower doctrinal understanding of environmental law, in legislations of different countries all over the world either a wide model or a narrow one is implemented. For instance, Law of the Russian Federation passed on January 10, 2002 "On the environmental protection" is based on the "narrow" model and includes only standards regulating protection of the environment from various types of negative impact. It determines a mechanism of creating specially protected natural areas and contains standards related to the peculiarities of protection of certain types of natural objects.

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In the same way, the Constitutions of some countries of the world may to a different extent contain standards regulating the environmental protection and the use of natural resources and have differences in the level of legal technique.

It is noteworthy that the analysis of environmental provisions of the world's Constitutions allows refuting the existing view that environmental standards appeared in the Constitutions of the countries only in the 1970s. [3].

Therefore, these standards cannot be found in the older Constitutions. In some measure this is the case. For example, while analyzing the Constitution of the Argentine Nation of 1853 we actually didn't find any environmental standards. Along with this, regardless of the conventional views, we can find a series of environmental requirements in the 1920 Constitution of the Republic of Austria. At the same time, in the Constitution of the Commonwealth of Australia of 1990 only the right to use water resources is mentioned.

Comparative Analysis of the Content of the Constitutions of the World: The analysis of environmental provisions of the Constitutions of the countries of the world also draws attention to the following aspects:

- Texts of some Constitutions of foreign states focus on the interconnection between the issues of protecting the environment and providing the favorable living environment as well as the connection between the nature protection and health protection;
- There can be found the interconnection between protecting the environment and providing quality of life for future generations as well as the right to development.
- The implementation of the idea of public ownership (property of nations) including various natural resources in different Constitutions is of particular interest. There is a variety of wordings: social property (Algeria), social ownership (Angola, China), national property (Brazil, Mongolia, Nicaragua), public property (Haiti, Iran, Mozambique), property of people (Iraq), common property, national inheritance (the Dominican Republic), public ownership (Montenegro), public possession (Portugal), national wealth (Uzbekistan).
- The state's obligation in the sphere of environmental protection is directly enshrined in some Constitutions (Azerbaijan, Armenia, Bahrain, Brazil, Cambodia, Sri Lanka, the Dominican Republic,

Turkmenistan, Ethiopia, etc.). The most off-beat wording of this idea is contained in the Constitution of Panama: the fundamental obligation of the state is to provide people with living in the pollution-free environment where the air, water and food meet the needs of the human life's proper development (Article 118).

- The analysis of the Constitutions of foreign countries provides fodder for serious terminological disputes, for instance, about the correlation of healthy and favorable environment; environment and natural environment; the content of such notions as clean, harmless, safe, satisfactory, well-balanced, sustained environment; environmental equilibrium; environmental values; environmental reconstruction; environmental balance; environmental degradation; natural harmony and so on.
- The religious tradition of the corresponding countries exerts a significant influence on the content of constitutional standards. For example, in the Constitution of India citizens are obliged not only to protect and improve the natural environment but also "to feel sympathy for living creatures".
- It is commonly known that the state of natural objects and complexes can be (very relatively) divided into three types: usual; very good (when specially protected natural areas are created); and very bad (when environmental ill-being and distress zones are formed). The specially protected natural areas are frequently mentioned in the Constitutions of different countries (Russia, Turkey), while the other "extremes" can be quite rarely found. However, there are some positive examples. Thus, according to Article 60 of the 2010 Constitution of Kenya, among the principles of land policy in this country there is the principle of "proper preservation and protection of environmentally vulnerable territories". According to Article 16 of the Ukrainian Constitution of 1996, the state is obliged to overcome the consequences of the Chernobyl disaster.

It is noteworthy that in the Constitutions of foreign countries economic and environmental peculiarities of the corresponding states are reflected (rights of nomadic peoples in Afghanistan, protection of farmers and fishermen in South Korea, legal regime of mines in Algeria, management of large lakes and sea lagoons, fighting their drying up in Greece, afforestation and protection of forests in Guatemala, management of vast deserted spaces in India, regulation of turtle business in Malaysia).

A series of issues, which have been a subject matter of fierce debates between the Russian ruling party and the opposition for many years, were rather peacefully and unambiguously settled in some Constitutions of foreign countries. Among them it is important to mention the issue concerning the land property right of foreigners. Thus, according to Article 28 of the Constitution of the Republic of Armenia, as a general rule, foreigners and individuals without citizenship are not allowed to be landowners. In the 1996 Constitution of the Republic of Belarus agricultural lands are state-owned (Article 13).

According to Article 122 of the Constitution of the Republic of Guatemala, lands are reserved within the 3-kilometer zone from the ocean. Property items (with some exceptions) cannot be transferred to foreigners without special permission from the bodies of executive power. In the Constitution of Mexico the state promises to take necessary measures in order to split latifundia and develop small land property (Article 27). The last one is particularly interesting in view of the Russian Federal Law "On the circulation of agricultural lands", on the contrary, creating conditions for such latifundia on agricultural lands. This list can be continued. However, there is the main conclusion drawn from quite a great number of constitutional standards: many economic issues should be settled not at the protest meetings but by means of a referendum devoted to the adoption of the supreme law of the country.

The solution of purely sectoral problems being in the center of scientific discussions in Russia also plays a significant role at the constitutional level. In this regard it is important to lay emphasis on the problem of acquiring the private property right to plots of land in virtue of acquisitive prescription that has (due to the existing gap in the Russian land law) various interpretations in court practice and scientific doctrine. This problem has been simply solved at the constitutional level in Brazil. According to the Constitution of Brazil, to acquire ownership of a plot of land in virtue of acquisitive prescription (though this term in itself is not used in the Constitution), you must personally possess a plot of land of not more than 50 ha for not less than 5 years, draw income from this possession by means of your or your family's labor and live in its territory. Not until then it is possible to become the owner of this land. However, this must not be a public plot of land (Article 191).

Russian lawyers can frequently encounter some legal structures in foreign Constitutions that grate on their ears for want of habit. To give a vivid example, there is such a

standard in the Constitution of Bhutan, according to which each Bhutanese is a trust owner of natural resources and the environment in the Kingdom of Bhutan. It is equally interesting that Article 5 of the 2008 Constitution of Bhutan assures that forest planting will cover 60 per cent of the Kingdom's territory. In the 2010 Constitution of Kenya the same problem is written in a much more humble way, "maintenance of forest cover at the level of not less than 10 per cent of the total area of Kenya."

The Constitution of Greece mentions "private forests", that is traditionally considered unacceptable for Russia, though, to the best of my belief, the efficiency of exploitation of natural resources and environmental protection depends not on the forms of land property but on the effectiveness of public administration, the scope of corruption and other similar factors. In this respect, a lot of standards in foreign Constitutions can cause an ambiguous evaluation. Though, beyond any doubt, they require profound study and understanding.

To sum up the natural resources issue, I should mention the Constitution of the Republic of Guatemala which declares that the airspace and stratosphere are state-owned (Article 121). And, moreover, it is established not by an international treaty but by the law of this country.

It should be noted that some countries have a positive experience of enshrining a legal status of a specially authorized body of executive power in the sphere of environmental protection in their Constitutions. Thus, in accordance with Article 84 of the 1992 Constitution of the Republic of Uzbekistan, these functions are performed by the State Committee of the Republic of Uzbekistan for Nature Protection. Such an approach shows that environmental problems are among the state's priorities.

It is quite interesting to consider environmental and natural resources issues in the context of the theory of federalism. In some Constitutions (for example, in the 1988 Constitution of Brazil) there is the delimitation of matters of authority between the federation and its constituent entities. This issue can be of some scientific interest in terms of constitutional law. It implies that there is an interesting inter-sectoral aspect of the problem that will be of particular interest to representatives of the science of constitutional law which specialize in the problems of federalism.

Along with this, it is noteworthy that a series of Constitutions (for example, the Constitution of Uzbekistan) expressly provides an environmental function

of the local self-government. In Russia it is established at the level of the federal law. In terms of constitutional law there is one more quite vivid and substantial problem concerning the rights of small-numbered indigenous peoples. In the Constitution of Russia this issue is quite fragmentarily regulated. However, we can learn much about the enshrining of the Indians' rights to land and other natural resources from the Constitutions of some foreign countries.

Also, there is a very interesting group of constitutional standards related to various aspects of land reform and law that should not go unnoticed. Thus, in the 1985 Constitution of Guatemala special Article 79 is devoted to the issues of agricultural education including a legal status of the national Central School of Agriculture. The Constitution of the Republic of Haiti stipulates a special agency, the National Institute of Land Reform that is obliged to revise the real structure of property and carry out a land reform "to the benefit of those who really work on the land" (Article 248). The 1947 Constitution of the Republic of Korea declares the same idea, "Land is for those who cultivate it". That is why the land lease is prohibited there. In the Constitution of Nepal the obligation of the state to provide "food sovereignty" is enshrined (Article 33).

CONCLUSIONS

The analysis made in the article allows the conclusion that a variety of approaches to the problems of environmental protection in the Constitutions of the countries of the world is determined by the extent of consciousness of environmental problems by the population and government of the corresponding countries, their religious and cultural traditions, the year when the Constitution was adopted (in the later Constitutions the content of environmental human rights is wider) and other factors.

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