
THE PROBLEMS OF LEGAL ADJUSTING OF QUESTIONS OF WASTE MANAGEMENT IN UKRAINE

A.M. RADCHENKO, PhD (Law),

*assistant of Department of the Agricultural, Land and Environmental Law
to the name of academician V.Z. Yanchuk,
National University of Life and Environmental Sciences of Ukraine
E-mail: simpoti@meta.ua*

Summary. *The article considers the problem of legal regulation of waste management issues. The current national legislation on waste management is analyzed. In particular, the analysis of the provisions of the Law of Ukraine «On Waste» of March 5, 1998 and the bill «On reducing the number of plastic bags in civil circulation» of February 28, 2019, identified the main shortcomings and identified ways to eliminate them. It is also established that the Law of Ukraine «On Waste» of March 5, 1998 takes into account the requirements of Framework Directive 75/442/EC on waste and the Hazardous Waste Directive 91/689/EC, which meets the requirements of the Association Agreement between the European Union and the European Atomic Energy Community and their member states, of the one part, and Ukraine, of the other part of 21 March 2014. The main norms of international legislative acts, which became the basis for further legal regulation of waste management in the world, are considered. Such legislative acts are London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters (1972), The United Nations Environment Programme (1972), International Convention for the Prevention of Pollution from Ships (1973), The United Nations Convention on the Law of the Sea (1982).*

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Introduction.

According to a report of the World Economic Forum, there will be more plastic in the world's oceans by 2050 than fish. The plastics industry has grown from 15 million tons in the 1960s to 311 million tons in 2014 and it is expected to triple by 2050. Today, plastic amounts to 80 % of all ocean debris. While the prevention of waste pollution

of the marine environment is ensured by several legal documents on international, regional and national levels, the effectiveness of such initiatives is still not clear. For the present, there is no convention directly dedicated to solving the problem of marine plastic pollution, and no unified mechanisms to regulate and control its spread. Taking into account that marine pollution stems both from land-based and sea-based sources

es, this article will provide an overview of measures directly regulating marine pollution and more general measures aiming to reduce the production, sale and consumption of plastic, which can play a role in reducing marine pollution. Therefore, the study of national and European legislation on plastic waste management is relevant.

Analysis of recent researches and publications.

Research and study of issues related to plastic waste management was once carried out by O. Borisovska, N. Buryak, A. Gorobets, A. Zapolsky, K. Knyzhnyk, V. Lapytsky, S. Lukash, K. Lyubeshkina, A. Salyuk, E. Tulina and others.

The purpose is a study of the existing problems in Ukraine in the legislative provision of plastic waste management and an attempt to find effective ways to overcome this problem.

Results.

The problem of waste management, especially plastic, has become a particularly painful topic for the whole world today.

Global legal solutions for marine litter management are reflected in The United Nations Convention on the Law of the Sea (hereinafter – UNCLOS). There is one of the most important sources of international law regulating human impacts on the marine environment. It defines marine pollution as «the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other

legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities» (part 4 of Art. 1). Although not primarily an environmental treaty, the Convention introduces a fundamental obligation (Birnie & Boyle, 2002: 38) that States «shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source» (part 1 of Art. 194). It also adds that «States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights» (part 2 of Art. 194). Unfortunately, UNCLOS does not go much beyond these general remarks or regulate in detail the problem of marine plastic debris (Ciechanowicz-McLean & Nyka, 2016: 98).

General obligations stemming from UNCLOS, however, are clarified by other conventions. The 1972 London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters (hereinafter – London Convention) eliminates one of the potential ways in which plastic debris could enter the marine environment – namely dumping. It also established the first comprehensive regime against the dumping of wastes at the international level (Beyerlin & Marauhn, 2011: 207). With 87 member states it is also the most universally recognised regulation of dumping at sea. According to the convention, dumping means any deliberate disposal at sea of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea (part

«a», «i» of Art. 1). This definition was later repeated in 1982 in UNCLOS, Article I, gaining even more universal application. Article IV of the Convention prohibits dumping of wastes listed in Annex I to the convention. Annex I includes plastics and other persistent synthetic materials, for example, netting and ropes, which may float or remain in suspension in the sea in such a manner as to interfere materially with fishing, navigation, or other legitimate uses of the sea.

The majority of industrialised countries (51 parties) also signed the Protocol from 1996 to the dumping convention (entered into force in 2006). This introduced several modern principles into the London Convention, including, among others, the polluter pays principle and the precautionary principle (Sands et al., 2012: 27). The Protocol also reduced the number of exceptions which allowed, in certain circumstances, the dumping of Annex I wastes. Similar to the original Convention, the Protocol adopts a reversed listing approach. State parties are required to prohibit the dumping of «any wastes or other matters with the exception of those listed in Annex 1» Further, even wastes listed in Annex 1 require a special permit issued by governmental bodies. The Annex 1 list does not include plastic, which can be interpreted as a general ban on the dumping of plastic wastes.

The Protocol also confirms the approach taken by the London Convention and UNCLOS, which excludes debris which are derived from the normal operations of vessels, aircraft, platforms or other man-made structures at sea and their equipment from the definition of dumping, which would include residual waste from these platforms. This regulatory loophole was filled by the 1973 International Convention for the Prevention of Pollution from Ships (hereinafter

– MARPOL). Annex V to the MARPOL Convention, which entered into force in 2013 and was recently revised in 2018, is particularly important with regard to anthropogenic debris at sea. Ships are required to dispose of their waste at special land-based wastefacilities, and states are obliged to provide ships with this infrastructure (Vince & Hardesty, 2018: 74). Preventive measures, as well as waste management measures, were also introduced, as Annex V obliges shipowners and operators to minimize taking material onboard that could become garbage. Ship-specific garbage minimization procedures should be included in the Garbage Management Plan (Art. 2.1 Annex V MARPOL).

However, compliance is an important issue which requires further work. Additionally, poor implementation of adequate national rules which would create obligations to individuals can limit overall effectiveness of international agreements (Ryan, 2015: 8). Tightened regulation of plastic manufacturers and converters has reduced the loss of industrial pellets and legislation has reduced the disposal of plastic wastes at sea. However, it has also become apparent that most litter entering the sea did so from diffuse, land-based sources that are more difficult to control (Ryan, 2015: 9). Three quarters or more of waste that ends up in the ocean comes from land-based sources. It is obvious that plastics are an important element of the international legal agenda, but as far as regulatory measures have come in this area, efforts to address plastic marine debris has been dominated by soft law instruments, which lack obligatory character.

The United Nations Environment Programme (hereinafter – UNEP) prepared a number of guidelines, which address the problem of marine environmental pollution. In 2012, the Honolulu Strategy was

adopted. Goal A of this strategy is reducing the amount and impact of land-based sources of marine debris. Seven strategies were outlined to meet this goal including, educational programs, employment of market-based instruments, introduction of best practices and proper infrastructure for stormwater management, and capacity building, among others. Another example of UNEP's initiative in the field of marine littering is the Global Partnership of Marine Litter. The Partnership is an element of the UNEP Global Programme of Action for the Protection of the Marine Environment from Land-based Activity. In 2017, UNEP passed a non-binding resolution on marine litter and microplastics, encouraging states to develop integrated and source-to-sea approaches to combat marine litter and microplastic from all sources. Important initiatives have also been undertaken by the Conference of Parties to the Convention on Biological Diversity. Decision XI/18, adopted by the Advisory Panel on Global Environment Facility in 2012, addresses the impact of marine debris on marine and coastal biodiversity. Also, international organisations have introduced economic cooperation as a consequence of the rising awareness of the problem of marine debris. The G7 Group released an Action Plan to Combat Marine Litter in June 2015 and the G7 and G20 Groups also created Action Plans in 2017 (Vince & Hardesty, 2018).

In Ukraine, waste management issues are regulated by the Law of Ukraine «On Waste» of March 5, 1998, and the Laws of Ukraine: «On Environmental Protection» of June 25, 1991, «On Ensuring Sanitary and Epidemic Welfare of the Population» of October 4, 2018, «On radioactive waste management» of 30 June, 1995, «On scrap metal» of May 05, 1999, the Code of Ukraine «On subsoil» of July 27, 1994 and other normative legal acts.

On July 11, 2017, the process of ratification of the Association Agreement between Ukraine and the European Union, concluded in 2014, was completed. In accordance with the rules on entry into force contained in the Agreement, its full operation began on September 1, 2017. However, some provisions of the Agreement have been in force for 3 years, which in turn means that during this time important legislative changes and reforms should have taken place, as Ukraine has passed the procedure that allows the implementation of the Agreement unilaterally. Therefore, one of the priority areas in the European Union was to undergo transformations - the field of environmental policy or, in other words, the field of environmental protection.

Annex XXX of the Agreement stipulates that Ukraine must implement a number of Directives of the European Union, thus bringing national legislation closer to the legislation of the European Union. In particular, in the field of waste management, Ukraine is obliged to implement three documents: Directive № 2008/98/EC on waste and repeal of certain Directives, Directive № 2006/21/EC on waste management of extractive industries and amendments to Directive № 2004/35/EC and Directive № 1999/31/EC on the disposal of waste, as amended by Regulation (EC) № 1882/2003. In addition, the issue of waste management is also related to the implementation of Directive 2010/75/EC on industrial emissions (integrated pollution prevention and control).

However, the Law of Ukraine «On Waste» of March 5, 1998 generally takes into account the requirements of the Framework Directive 75/442/EC on waste and the Hazardous Waste Directive 91/689/EC. However, to a large extent, Ukrainian legislation is fragmentary, in-

complete or different from the relevant EU legislation, primarily with regard to landfilling, as well as the uncertainty of the national waste management strategy.

Thus, the Law of Ukraine «On Waste» of March 5, 1998 is inconsistent with today's life, for example, does not contain a list and sequence of garbage transactions, and some issues that should fall on local government are often simply ignored by local councils for various reasons. The implementation of this Law is hindered in practice by a number of factors, in particular, the lack of funds in local budgets, experience in this area, sufficient explanatory work with the population on the need to sort household waste (Knyzhnyk, 2018: 609).

On November 8, 2017, the Government approved the National Waste Management Strategy for Ukraine until 2030, which introduces in Ukraine European principles for the management of all types of waste: solid household, industrial, construction, hazardous, agricultural waste, etc.

The new Strategy envisages the introduction of the principles of cyclical economy and expanded producer responsibility, which should encourage businesses to minimize waste generation and interest in recycling. The document also provides for the introduction of a five-level hierarchy of waste management, which operates in the European Union.

On March 25, 2018, the Cabinet of Ministers of Ukraine established a Coordination Council for the implementation of the National Waste Management Strategy in Ukraine until 2030.

This newly created agency is empowered to coordinate the actions of central and local authorities on the new management system in the field of waste disposal. Also, the Coordinating Council in accordance with the Regulation «On

the Coordinating Council for the implementation of the National Waste Management Strategy in Ukraine until 2030» of April 25, 2018 has the right to monitor the activities of ministries and agencies to develop and adopt new legislation.

If we talk about the legislative regulation of plastic waste management, it should be noted that on October 24, 2018, the European Parliament finally banned the civil circulation of certain types of polyethylene products. This decision is due to the widespread use and circulation of plastic products, as well as the toxicity of substances released during the burning of plastic and cause cancer and adversely affect reproductive function and the immune system.

Therefore, to reduce the amount of polyethylene waste on February 28, 2019, to the Verkhovna Rada of Ukraine submitted a bill «On reducing the number of plastic bags in civil circulation» (hereinafter - the Bill). According to the subjects of the right of legislative initiative, the adoption of the project will help bring national legislation closer to the standards of the European Union, as well as significantly reduce the amount of polyethylene waste, which will improve the environment.

The Bill prohibits the sale in retail outlets of ultralight and light plastic bags that do not meet the requirements set out in it, with the exception of biodegradable plastic bags and ultralight, «intended for packaging and transportation of fresh meat, fish and their products, and also bulk products, ice; requirements for biodegradable plastic bags and their labeling, state supervision and principles of legal liability for violations of this Law are determined», etc. However, the Bill does not take into account the most fundamental aspects in the field of polyethylene turnover.

The basic regulatory framework for the regulation of plastic waste management in the EU is the Directive «On Packaging and Packaging Waste» so it would be logical to use its provisions to supplement existing legislation, rather than adopting new laws to prevent multiple laws from one and the same issues (Tulina and others, 2019: 173). Paragraph 1-11 of the Directive stipulate that, in order to ensure a permanent reduction in the use of lightweight plastic bags, EU Member States must take appropriate measures alongside the use of the EU's general waste management objectives. These measures should take into account the current level of use of plastic bags, include the use of effective economic instruments, which include tariff setting, taxation, marketing restrictions, etc. It is important to note that this Directive is binding on Ukraine, as its provisions must be implemented within three years of the entry into force of the Association Agreement concluded between Ukraine and the EU. Therefore, it is inexpedient to adopt a separate bill to regulate the reduction of the number of plastic bags in civil circulation. Instead, the legislator should improve the current legislation, taking into account the aspect that the legal regulation of the use of plastic bags defined in the bill has no fundamental differences from the legal regulation of the use of other single or reusable plastic products.

In addition, the bill contains a number of contradictory provisions, in particular the preamble states that «this law defines legal and organizational measures aimed at reducing plastic bags», but the organizational and legal mechanism to ensure its use and the possibility of legal liability for violation of the provisions bill are missing.

It is also worth noting that from January 1, 2018, the disposal of unprocessed waste is prohibited in Ukraine, as stated

in Article 32 of the Law of Ukraine «On Waste». Although paragraph «i» of part 1 of Article 32 is in line with the Directives governing waste management in European countries, in fact the above-mentioned law, apart from the prohibition of burying of waste, does not provide for any mechanism for proper collection, primary and secondary sorting, recycling and safe disposal recycled waste. Therefore, this article of the law is only declarative.

Conclusions and prospects.

Summarizing all of the above, it can be concluded that the national legislation governing waste management does not provide real mechanisms that could ensure efficient recycling of plastic and limit its production and use. Despite the existence of legal norms, which by their purpose should regulate the issues of waste management, they are ineffective in practice. Therefore, it is advisable to improve the current legislation by establishing a mechanism for proper collection, primary and secondary sorting, recycling and safe disposal of plastic waste.

In addition to the legislation, it is necessary at the level of Government programs to encourage enterprises of various forms of ownership to modernize the facilities that will dispose of waste and revise the principles of waste recycling at existing enterprises. Economically feasible waste disposal can be a component of the country's economic development.

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А.М. Радченко (2020). ПРОБЛЕМИ ПРАВОВОГО РЕГУЛЮВАННЯ ПИТАНЬ ПОВОДЖЕННЯ З ВІДХОДАМИ В УКРАЇНІ. *Право. Людина. Довкілля*, 11(3): 58-64.
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Анотація. У статті розглядається проблема правового регулювання питань поводження з відходами. Проаналізовано чинне національне законодавство щодо поводження з відходами. Зокрема, здійснено аналіз положень Закону України «Про відходи» від 05 березня 1998 р. та законопроекту «Про зменшення кількості пластикових пакетів у цивільному обігу» від 28 лютого 2019 р., встановлено основні недоліки та визначені шляхи їх усунення. Також встановлено, що Закон України «Про відходи» від 5 березня 1998 р. враховує вимоги Рамкової директиви 75/442/ЄС про відходи та Директиви про небезпечні відходи 91/689/ЄС, що відповідає вимогам «Угоди про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським Співтовариством з атомної енергії і їхніми державами-членами, з іншої сторони» від 21 березня 2014 р. Розглянуто основні норми міжнародних законодавчих актів, які стали основою для подальшого правового регулювання питань поводження з відходами у світі. Такими законодавчими актами стали: Конвенція про запобігання забрудненню моря скидами відходів та інших матеріалів (1972 р.), Програма ООН з довкілля (1972 р.), Міжнародна конвенція по запобіганню забрудненню з суден (1973 р.), Конвенція ООН з морського права (1982 р.).

Ключові слова: відходи, пластик, утилізація, законодавство про переробку відходів, екологія