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Natural resource and resource-based relations: the hierarchy of industries and the relationship between subjects

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Abstract

This article studies the place of natural resource law and the resource-based branches of law in the system of law; it was proposed a hierarchy of these branches and outlined the relationship between the subjects of natural resource and resource-based relations. The qualitatively homogeneous natural resource relations are defined as the subject of legal regulation of natural resource law, which develop regarding the use and restoration of natural resources – a legally defined part of the natural environment that has signs of natural origin and is in ecological relationship with the environment and with each other, which are used or can be used as a source satisfaction of human needs. All natural resources, as well as relations on their use and restoration are closely interconnected. This bond will always be inseparable and mutual. It has been established that in the

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system of natural resource law, the public relations regarding the use and restoration of individual natural resources are actually its sub-sectors and provide a differentiated approach to the environmentally sound use of each of the relevant natural resources. Natural resource law is not a conglomeration of land, water, forest, subsoil law, but it is their qualitative unity based on a single nature, development factors and the internal structure of social relations. It has been concluded that neither the long history of legislation development, nor a significant amount of normative legal acts (that are sources of resource-based industries) are grounds for denying the inseparable and mutual connection of resource-based branches of law with each other and with the natural resource law, and the objective need to single out an independent area of natural resource law

Keywords: natural resource law, land law, water law, forest law, subsoil law, faunistic law, floristic law, natural resource relations, resource-based relations, system of law, branch of law

Introduction

Public relations on the use and restoration of separate natural resources are now the subject of legal regulation of recognized resource-based branches of law (land, water, forest, subsoil, floristic, faunistic law, etc.). These industries have their own specifics, internal structure, subject, method of legal regulation, sources of law, and they develop in accordance with their own characteristics, and at the same time, it has not broken their relationship with each other, it has not separated them from the natural-resource branch of law, which current stage of development is characterized by the absence of a generally accepted approach to determining its place in the system of law.

The following scientists were engaged in the study of problems of the formation and development of natural resource law: V.I. Andreytsev, Yu.A. Vovk, A.P. Getman [1], V.M. Ermolenko [2], M.D. Kazantsev [3], I.B. Kalinin [4], I.I. Karakash [5], V.V. Kostitskiy [6], M.V. Krasnova [7], P.F. Kulinich, N.R. Malysheva [8], M.V. Shulga [9] and others. However, the preliminary creative searches of scientists were directed mainly to clarifying the place of natural resource legal relations in the system of environmental law, a general characteristic of natural resource legal relations and the study of certain aspects of a particular research topic.

*The purpose of the articl*e is to study the place of natural resource law and resource-based branches of law in the system of law, to determine the hierarchy of these branches and to determine the relationship between the subjects of natural resource and resource-based relations.

Results and Discussion

Natural resource law initially developed within the differentiated (resource-based) approach to the problems of nature management. At the beginning of the XX century, the relations (that developed regarding the use of individual natural resources, and above all, the land, forest and subsoil relations) were subjected to legal regulation [10]. This period is characterized by the beginning of the formation of natural resource legislation. However, only in the middle of the XX century, the government realized the need for a comprehensive integrated approach to this problem; an ecosystem approach to the use and protection of natural resources began to from, and the legal regulation of land relations began to expand simultaneously.

In the 60-s of XX century, M.D. Kazantsev [3] has stated that differentiation of the branches of law that regulate relations in the use and protection of natural resources raises the issue of integrating these branches and the formation of natural resource law. At the same time, the resource-based branches of law and environmental law (while maintaining their independence as branches of law in the generally accepted sense of this term) formed a special part of the natural resource law as an integrated branch of law.

In contrast to the scientific position of M.D. Kazantsev [3], in 1976 A.S. Kolbasov put forward the idea of forming the integrated branch of law – environmental law, which combines the natural resource law (including land) and environmental law. The emergence of the theory of environmental law is associated with the scientific ideas of V.V. Petrov [11]. Already in 1987, the scientist came up with the concept of environmental law as a new branch of law, which is formed on the basis of consolidation of the natural resource and environmental law.

The theory proposed by V.V. Petrov [11] caused a number of positive reviews from the scientists-lawyers. Currently, the concept of environmental law in the field of scientific research of legal problems of interaction between society and nature occupies a dominant position. Therefore, in order to determine the correlation between the subjects of legal regulation of natural resource and resource-based branches of law (directly land sector), it will be conducted a study of scientific approaches of domestic and foreign scientists regarding the correlation of land and environmental law.

In the 90s. of XX century, during the period of transition to the market relations, when the land (like other natural resources) moved into the sphere of a special combination of interests, mainly the private property and public environmental ones, the heated debate started regarding the attribution of land-legal norms to civil or environmental law or the recognition of this industry as independent.

Thus, the most common point of view is that the land law is recognized as an independent branch of law, which is on a par with civil, environmental, administrative, constitutional and other branches of law. M.V. Shulga [9] has noted that a set of legal norms occupies an extremely important place in the system of domestic law, united by land law as an independent branch in this system. Its place in the legal system of Ukraine is determined by the role and importance of the legal regulation of land relations. According to the scientist, land law is one of the main branches of law in the legal system. The land law has all the specific features in order to be determined as an independent legal branch. Later, the scientist (after recognizing the independence of land law) has noted that the subject of land law includes the land-environmental relations, the characteristic feature of which indicate that the sole or predominant function of land within these relations is to ensure environmental protection, environmental safety, human health, etc. At the same time, M.V. Shulga [12] points out that there is no limit between the subjects of land and environmental law, which would isolate one subject from another.

V.I Semchyk [13] has defined the land law as an independent branch of law, which is a set of land-legal norms aimed at regulating land relations in Ukraine regarding the land ownership, the use of land plots for their intended purpose, the establishment of legal regime of land plots, considering the land category to which they belong, creating conditions for the rational use and protection of lands, the preservation of their natural properties, the protection of land rights of citizens, legal entities, the state and the Ukrainian people. According to the scientist, land law is coordinated, interacts, but it is not identified with environmental law.

A.M. Miroshnichenko [14] studies the land law as an independent branch of law, by characterizing it as a system of legal norms that regulate relations related to the use, protection and restoration of land as part of the earth's surface with the space above and below it, which is necessary for its intended use (including construction), including the soil cover located within this space. V.K. Gurevsky [15] recognizes land law as an independent branch of law, which is a system of legal norms that regulate land relations in order to ensure the rational use of land, to protect it from negative influence, to protect the rights of citizens and legal entities to land and comply with the established legal order in the field of land relations. The named scientists define the land law as an integral part of the national legal system, which is in close relationship with other branches of law, in particular, with natural resources and environmental ones.

I.I. Karakash and T.E. Kharitonova [10] draw attention to the fact that land law is a fundamental principle for

certain branches of law. This significance of land law takes place in the regulation of the whole complex of natural resource relations [16]. S.V. Sharapova [17] recognizes land law as a branch of law, an independent element of the legal system of Ukraine. However, according to the scientist, it should be considered that all natural resources (including land, as well as relations for their use and protection) are closely interconnected.

Many other scientists, namely the representatives of the Ukrainian land-legal doctrine, also point to the independence of land law. Among foreign scientists, a number of scientists adhere to the same opinion: A.P. Anisimov, S.O. Bogolyubov [18], I.A. Ikonitskaya, O.I. Krassov, V.V. Petrov [19] and others.

According V.V. Petrov [16], the land law is a separate branch of the national legal system. The scientist argues that the land law cannot be fully included in the environmental law, since there are many norms and institutions in the land law that are not directly related to ecology [20]. At the same time, he noted earlier that the forest law, water and subsoil law emerged precisely from the land law [19].

The scientific position of I.B. Kalinin [4] is interesting. The scientist draws attention to the fact that experts in the field of natural resource law often include the land law in it. Meanwhile, the land law has originated much earlier than the natural resource law, so it seems illogical to include an "older" branch of law into a "younger" one. The pre-existing branch of law should not constitute a subsystem (sub-branch) of a newer branch [4].

A.P. Getman and V.A. Zuev rightly note that "adherents" of independence of the land law, when substantiating the concept of separating land law from environmental one, refer to the historical experience of regulating land relations, as well as a significant number of land legislative and regulatory legal acts. Indeed, more than 20 regulatory legal acts of the level of law or code that directly regulate the legal relations in the protection and use of land give grounds to assert that land law occupies an extremely important place in the system of environmental and legal relations. However, does this give grounds to assert its independence? The reference to historical experience is a certain legal fiction, since the consideration of legal phenomena through the prism of a system-historical connection helps to better understand their essence, predict the directions of further development, but it is not decisive for securing the sustainable nature of the legal system [1]. V.M. Ermolenko [2] notes that the long history of the existence of land legislation is by no means a reason to ignore the objective need to single out an independent branch of natural resource law, although this circumstance imposes appropriate features on this process.

According to another point of view, the land law is not an independent branch, but it is included in the system of environmental law. Thus, Yu.S. Shemshuchenko [21] emphasizes that a characteristic

feature of environmental law as a complex branch is considered the inclusion to it of other branches of law recognized for today – land, subsoil, water, forest, faunistic, atmospheric-protection. These industries have their own internal structure, subject and method of legal regulation [21]. In the system of environmental law, they are actually its sub-branches and provide a differentiated approach to the environmentally sound use of each of the relevant natural resources. V.V. Kostitskiy [6] adheres to the he same scientific opinion. He draws attention to the fact that the peculiarity of environmental law as a complex branch consists in the following: the environmental law includes land, water, forest, water, faunistic, floristic, air, conservation, which are already formed into separate branches of law (land, water, forest, subsoil) and together constitute natural resource law, or they exist as areas of legislation, the process of formation of which in the field of law continues, as well as the law of environmental safety [6].

Most russian scientists also express the point of view that land law is included in the system of environmental law. Thus, speaking about the system of environmental law as a complex industry, M.M. Brynchuk [22] points to the presence recognized branches of law in his system – land, subsoil, water, forest, faunistic and air-protection. Land law (although it is an industry) forms environmental law along with others (subsoil, water, etc.) [23]. The development of these branches and environmental law as a whole is associated with the implementation of a differentiated approach to the legal regulation of public relations in environmental management and environmental protection for individual natural resources. These branches are largely independent in relation to the field of environmental law. In the system of environmental law, they can be considered as its sub-sectors. They have their own internal structure [24].

B.V. Erofeev [25] is an adherent of the fact that land, water and forest law should be sub-branches of environmental law. Any system is a multiplicity of its constituent elements, which are united and integrated by the system-forming factors. For this reason, environmental law is implemented through the land, water, forest, subsoil and other sectors that make up a single legal family, and therefore should be sub-sectors of environmental law [25].

According to I.A. Krasnova [7], the idea of complete independence of land law has already lost support in science. The scientist refers to the heterogeneity of the object of land relations. Earth is a part of the natural environment, which acts in unity and interconnection with all other elements of nature. At the same time, the land is declared a real estate next to the buildings and structures, other objects of the material world. Such legal heterogeneity of land makes it possible to divide the land relations into at least two parts – environmental and civil. Hence, there is reason to assert that land relations as an independent group of relations do not exist [7]. Nevertheless, according to

I.A. Krasnova [7], the land affairs are part of environmental law, and the land law is a part of environmental law. Other components (sub-branches of environmental law that stand on a par with land law) are forest, water, subsoil, atmospheric, faunistic law. Forests, water, subsoil, atmospheric air, fauna and other components of nature are the objects of corresponding public relations, which have an equal social significance and form a single world of nature in the interaction with the earth [7].

The position of G.A. Volkov is interesting [26], who argues that land law is not included in the environmental law, but it is included in the community of industries called "natural resource law", that is, it does not have full independence. Indeed, today the land law is a sub-branch of natural resource law, consisting of normative legal regulations that regulate the use of land and land plots through the private and public law interests.

On this occasion, S.A. Bogolyubov [18] notes that natural resource law is an integral part of environmental law, designed to ensure the protection and rational use of individual natural resources – land, its subsoil, water, forests, fauna and atmospheric air. The main factor that determines the difference between one industry and another – is the subject of legal regulation, that is, a qualitatively homogeneous type of public relations that require legal regulation. Environmental law as a branch of law is a full-fledged independent set of interrelated legal norms that regulate a peculiar sphere of life that requires a special and legally autonomous regulation. The distribution of ecological super-sector of law into environmental and natural resource, and the natural resource sector – into land, subsoil, water, forest and other sub-sectors suggests a further multi-level structure, which includes the general and special parts, legal institutions, norms of law [18].

Land law is often considered as a part (sub-branch) of natural resource law. Land relations are the basis (foundation) of all resource relations (floristic, faunistic, water, subsoil, etc.), as stated in the Article 3 of the Land Code of Ukraine.

Most scientists argue that the land law in many cases is consistent with environmental law, since the land is one of the main objects of nature. In the Article 13 of the Constitution of Ukraine dated June 28, 1996, it is stated that land, subsoil, water, atmospheric air are the objects of the right of ownership of the Ukrainian people. The peculiarity of land as an object of nature is the fact that it is used to ensure the life of a person, all living beings. The main foundations of environmental law are the protection of land, as well as other environmental objects, the creation of favorable conditions for conservation and rational use by the legal means.

The Constitution of Ukraine classifies the land as one of the most important objects of natural resources. It is a natural asset of humanity, the main national wealth and it is subject to special state protection (the Article 14 of the Constitution of Ukraine).

Since the land is one of the most important objects of nature, it is clear that the relations arising in the process of land use are regulated by the norms of both environmental and land law. Based on this, individual institutions of land and environmental law are complex in nature. Without duplicating, they complement each other in their totality, provide legal protection of land as an object of nature, as well as rational economic use of land in accordance with its intended purpose as an object of land and natural resource relations.

The relationship of land law with environmental law is determined by the state of land as an object of natural environment, which functions as part of ecosystem and is in ecological relationship and interaction with the entire environment. Regulating the predominantly economic land relations arising due to the provision and withdrawal of land and the procedure for their use, the land law at the same time contains the rules, which provide for special requirements that ensure the preservation of environment. In turn, the environmental legislation contains the numerous norms of general and special nature, and its implementation implies ensuring the protection of land from adverse anthropogenic influence [5].

Land law constitutes fundamental principles for certain branches of law. This significance of land law plays role in regulation of the whole complex of natural resource relations [5]. The direct connection between the norms of land law and the norms of subsoil, water and forest law, regulatory legal acts of natural-vegetative (floristic) and natural-reserve legislation lies in the impossibility of using these natural resources without simultaneous use of the spatial basis, namely the land [5]. The legislation on natural resources provides for special rules that consider the interconnection of natural resources and regulate the issues of preventing adverse environmental consequences of the impact of using some natural resources on others.

At the same time, the use of each of the natural resources has its own characteristics. The connection between the land and other resource-based branches of law will always be inseparable and mutual.

Indeed, land is primarily a natural resource, a part of the natural environment. This phenomenon is objective and does not depend on the desires or decisions of a person. The land exists and develops according to the laws of nature, which are not subject to humanity. People did not create the earth, they created only buildings, structures and other objects of material world. People got it in the process of evolutionary development. Whatever the land is called, whatever what legal definitions are given to land, it does not cease to be a natural resource.

According to the above scientific positions regarding the place of land law in the system of law, it would be more correct to call the land law a sub-branch of natural resource law as an independent branch of law. At the same time, as I.A. Krasno-

va [7] states that it is quite acceptable to use the term "branch of land law" in scientific and educational legal literature in the interests of convenience, conciseness, considering the habit, but without forgetting that this term is ambiguous and can reflect any scientific position.

Most domestic and foreign scientists involved in the study of environmental and legal problems consider the following: a characteristic feature of environmental law as a complex industry lies in the inclusion of currently recognized other branches of law in it – land, water, forest, subsoil, floristic, faunistic, atmospheric protection. These industries have their own internal structure, their subject and method of legal regulation. In the system of environmental law, they are actually its sub-branches and provide a differentiated approach to the environmentally sound use of each of the relevant natural resources. In this regard, the relationship between the subjects of legal regulation of natural resource and resource-based branches of law is obvious.

According to V.M. Ermolenko [2], there is a need to clarify the range of social relations that make up the subject of natural resource law, and its relationship with the resource-based branches of law that have already existed for a long time – land, subsoil, forest, water, air, as well as those that are in a state of formation – floristic, faunistic, etc. At the same time, the scientist (based on the traditional sectoral structure of each independent branch of law) notes that it will be advisable to include the law such as land, water, subsoil, forest, air law, etc. in the natural resource law as relevant sub-sectors [2].

The following domestic and international scientists were engaged in the process of determining the place of water law in the system of law and its correlation with environmental and natural resource law, in particular: A.V. Agafonov [27], M.M. Brinchuk [24], V.A. Protsevskiy, D.A. Sivakov, E.M. Shumilo and others.

Water law is the result of natural development of the legal system, which satisfies the primary economic needs for water resources and responds to the environmental challenges of modernity. In the process of development of water legislation and law as an independent branch (starting from the 70s., when the fundamentals of water legislation of the USSR and the union republics of 1970 and the Water Code of the Ukrainian SSR dated 1972 were adopted), the issue of the place of water relations in the system of law was resolved in different ways. Currently, according to scientists, the water law has all the necessary features of a sub-branch of environmental law, in case of recognizing the latter one as a branch (and not a super-branch) of law. In the case of not considering the environmental law as a branch of law, the water law can also act as a completely independent branch in the system of law [27]. Consequently, it is precisely those social relations that are fixed and regulated by the norms of water law and function in the sphere of ownership, use and protection of waters or water

objects, act as the subject of this law. In this regard, water law can be characterized as a sub-branch of natural resource law, which is a system of legal norms that regulate social relations in the field of use, protection and restoration of water objects.

Other scientists have also studied certain legal aspects of social relations in the field of use and protection of water resources, which are the subject of legal regulation of water law.

According to S.V. Korostelev [28], the forest law is an independent and recently formed complex branch of law from the land law, which has its own subject of regulation, method, its own sources of law, which has not stopped its connection with land law and other branches of law, as well as has not singled out from the totality of natural resource branch of law. Thus, forest law is a branch of law included in the natural resource law as a sub-branch.

Other scientists also share his scientific position: B.V. Kindyuk, V.V. Kostitskiy [6], A.Yu. Puryaeva. V.P. Pechulyak [29] states that the forest law of Ukraine is a sub-branch of environmental law, which is implemented through the plurality of elements, through land, water, forest, subsoil and other branches of law, which constitute a unified legal family. Forest law is a sub-branch of environmental law, which consists of legal norms that regulate relations related to the forest management, use, restoration and protection of forests in their inseparable connection with the environment [29].

The formation and development of subsoil law in Ukraine is the subject of research, primarily by R.S. Kirin [30]. According to the scientist, mining (subsoil law) is an integral branch of natural resource law – a complex branch of environmental law [30].

Foreign scientists also explore the problems of formation of subsoil law. These are G.E. Bystrov, D.V. Vasilevskaya, M.V. Dudikov [31], B.D. Klyukin, S.V. Koldaev, O.V. Lagutkin, M.E. Pevzner [32]. M.E. Pevznera [32] defines subsoil law as a set of legal norms established by the state that regulate social relations in the field of study, use and protection of subsoil. M.V. Dudikov [31] believes that subsoil law is a complex, integrated, independent sub-sector of the natural resource law, the norms of which regulate relations arising in the process of rational, integrated, efficient and safe use and protection of subsoil, as well as waste from mining and related processing industries.

It should also be noted the statement of M.I. Matuzova and O.V. Malko [33], who consider the forest, subsoil, water law as sub-sectors of the land law. However, this opinion is rather controversial.

A.K. Sokolova [34] considers the floristic law as a sub-branch of environmental law. Like land, water, faunistic and other sub-sectors that regulate the use of natural resources, the floristic law is a sub-sector of environmental law. The recognition of all of them as sub-sectors of the environmental law is correct by nature, although they all have their own

specifics and develop in accordance with their own characteristics. At the same time, the scientist notes that in the process of substantiating the allocation of new sub-branches of environmental law, the provision on their systemic connection should be the starting point [34].

S.V. Ivanova [35] put forward the concept of the formation of faunistic law. The scientist believes that faunistic law at the present stage should be considered as a sub-branch of environmental law, which has signs of an independent structural unit in the system of environmental law. The main criterion for sub-sectoral differentiation is the presence of the own subject of legal regulation – faunistic relations as relations for the use and protection of animal world, which is an integral element of the natural environment and biological diversity of the Earth [35].

It is also important to be aware of the effect of a differentiated and integrated approach in the natural resource law. On the one hand, the integration of resource-based industries into the field of natural resource law does not imply the loss of their specificity. At the same time, it should contribute to the enrichment of resource-based industries due to their interaction with each other and with an array of general norms. Thus, a certain level of differentiation is provided. However, the priority role in the system of natural resource law should be given to an integrated approach, within which the tasks of regulating natural resource relations are solved.

The complex genetic and structural relationships between the land, forest, water, and subsoil law ensure their consistency and complementarity. However, at the same time, it is clear that such coherence and complementarity cannot arise automatically. This requires a certain "common denominator", a system within which the mentioned legal communities can successfully interact. The role of such a denominator is performed by the natural resource law.

Conclusions

The qualitatively homogeneous natural resource relations are the subject of legal regulation of natural resource law, which develop regarding the use and restoration of natural resources – a legally defined part of the natural environment that has signs of natural origin and is in the ecological relationship with the environment and with each other, and which are used or can be used as a source of satisfaction of human needs. All natural resources, as well as relations regarding their use and restoration are closely interconnected. This bond will always be inseparable and mutual.

In the system of natural resource law, public relations on the use and restoration of individual natural resources are in fact its sub-sectors and provide a differentiated approach to the environmentally sound use of each of the relevant natural resources. Natural resource law is not a conglomeration of land, water, forest, subsoil law, but it is their qualitative unity based on a

single nature, development factors and the internal structure of social relations.

Neither long history of the development of legislation, nor the significant amount of regulatory legal acts (which are the sources of resource-based industries) are grounds for denying the inextricable and mutual connection of the resource-based branches of law with each other and with the natural resource law and the objective need to single out an independent branch of the natural resource law.

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Природоресурсні та поресурсні відносини: ієрархія галузей і співвідношення предметів

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Анотація

У статті досліджено місце природоресурсного права і поресурсних галузей права у системі права, запропоновано ієрархію цих галузей та окреслено співвідношення предметів природоресурсних і поресурсних відносин. Предметом правового регулювання природоресурсного права визначено якісно однорідні природоресурсні відносини, що складаються з приводу використання та відтворення природних ресурсів – юридично визначеної частини навколишнього природного середовища, що мають ознаки природного походження і знаходяться в екологічному взаємозв'язку з навколишнім природним середовищем та між собою, використовуються або можуть бути використані як джерело задоволення потреб людини. Усі природні ресурси, а також відносини щодо їх використання і відтворення тісно пов'язані між собою. Цей зв'язок завжди буде мати нерозривний і взаємний характер. Встановлено, що у системі природоресурсного права суспільні відносини щодо використання і відтворення окремих природних ресурсів є фактично його підгалузями й забезпечують диференційований підхід до екологічно обґрунтованого використання кожного з відповідних природних ресурсів. Природоресурсне право – не конгломерат земельного, водного, лісового, надрового права, а їх якісна єдність, заснована на єдиній природі, факторах розвитку і внутрішньої структури суспільних відносин. Зроблено висновок, що ні тривала історія розвитку законодавства, ні значний обсяг нормативно-правових актів, що є джерелами поресурсних галузей, не є підставами для заперечення нерозривного та взаємного зв'язку поресурсних галузей права між собою і з природоресурсним правом та об'єктивної необхідності виокремлення самостійної галузі природоресурсного права

Ключові слова: природоресурсне право, земельне право, водне право, лісове право, надрове право, фауністичне право, флористичне право, природоресурсні відносини, поресурсні відносини, система права, галузь права