PROSPECTS OF LANDSCAPE PLANNING IN LEGISLATION OF UKRAINE

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Abstract: Prospects of Landscape Planning in Legislation of Ukraine

This paper analyzes the shortcomings in the Act of Ukraine "On Landscape", which was adopted in 2012 by the Verkhovna Rada and vetoed by the Ukrainian president. On the basis of parallels with the international environmental law a conclusion has been made on the prospects of landscape planning in the forthcoming new version of the Act.

It is proved that through landscape planning international legal documents and Ukrainian environmental policies and programs can also be harmonized, including plans for a pan-European network of protected areas "Natura 2000". Landscape planning will be particularly necessary for “greening” of the land privatization, taking into account long-term interests of the society development.

Keywords: landscape planning, international environmental law, regional policy, Ukraine, sustainable development

INTRODUCTION

Many governments are incorporating a sustainable development concept in regional planning now. At the international level the following legal instruments in the field of protection and management of natural and cultural heritage, regional and spatial planning, local self-government and cross-border cooperation are in force: the Convention on protection of wild flora and fauna and natural habitats existence in Europe (Bern, 19 September, 1979), the Convention on Protection of the Architectural Heritage of Europe (Granada, 3 October, 1985), the European Convention on Protection of the Archaeological Heritage (revised) (Valletta, 16 January, 1992), the European Charter of Local Self-Government (994 036) (Strasbourg, 15 October, 1985), the Convention on Biological diversity (Rio de Janeiro, June 5, 1992), the Convention on Protection of the World Cultural and Natural Heritage (Paris, 16 November, 1972), the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice with respect to the Environment (Aarhus, June 25, 1998),
etc. In 2000, in Florence the European Landscape Convention was adopted which entered into force on 1 March, 2004 (MAKSYMENKO & KARAZIN 2012; COLLECTION OF LEGAL ACTS OF THE EUROPEAN UNION IN THE FIELD OF ENVIRONMENTAL PROTECTION 2004).

To implement the provisions of those documents in European countries international cooperation on these issues is directed and coordinated by the Council of Europe, in particular, its Directorate of Environment and Local Administration (THE EUROPEAN CHARTER FOR REGIONAL SPATIAL PLANNING, TORREMOLINSK CHARTER; GUIDING PRINCIPLES FOR SUSTAINABLE SPATIAL DEVELOPMENT OF THE EUROPEAN CONTINENT). In a number of countries – members of the Council of Europe the Ministries and institutes on regional planning have been established which regularly hold conferences on sustainable spatial development of the European regions under the auspices of the Council.

In Ukraine, environmentally oriented regional policy (in its modern sense) has not yet been formed as an expressed state policy. However, certain preconditions for the development of regional environmental policy have been established. It is essential to note the beginning of a process of gradual "greening" of Ukrainian legal acts since the time of registration of Ukraine as an independent state. The Constitution of Ukraine proclaims that "the wealth of natural landscapes is the property of the Ukrainian nation, its natural heritage and should serve the present and future generations."

A number of important Acts structuring economic relations from their green position – the Act "On Environmental Protection" (1991), the Land Code of Ukraine (1990), the Code of Ukraine on Mineral Resources (1994), the Water Code of Ukraine (1995), the Forest Code of Ukraine (1994) and others have been adopted (KAMLIK & ATİKA 2001). Ideas have formed and, consequently, normative documents on ecological disaster zones (the Act of Ukraine "On the Zone of Ecological Emergency", 2000), on protected areas (the Act of Ukraine "On the National Program of Forming a National Ecological Network of Ukraine for 2000-2015", 2000) (PAN EUROPEAN ECOLOGICAL NETWORK 2013) have been adopted as well as special documents such as environmental certificates, not only for enterprises, but also for territories, in particular areas.

In accordance with the stated scientific problem, the purpose of the article is to analyze foreign experience in the environmental law mechanisms for the implementation of strategies for the landscape conservation and their diversity in Ukraine and to assess challenges in adoption of the Act on the landscape in Ukraine.

Thus, we can assert that the regional environmental policy in Ukraine began to form rather early from the "top", initiated by the state authorities. At the same time, the issues of landscape planning have not been legally considered yet.

The problems of implementation of landscape planning concept in law

Despite the considerable scientific interest to the defined issues, implementation of the main provisions of the international instruments in the field of environmental protection ratified by Ukraine, in particular, the theoretical basis for the principles of the European Landscape Convention mechanisms is considered only in isolated cases, and has not yet been reflected properly in
scientific works. In our opinion, this is due to the fact that the landscape and landscape diversity has become the subject of research in the field of state environmental management only in recent years.

As far back as in September 2005, Ukraine ratified the European Landscape Convention, and therefore the state took a number of obligations, including those regarding the implementation of the landscape policies aimed at the protection, management and planning of the landscape, establishing public participation procedures, local and regional authorities and other stakeholders in the definition and implementation of the landscape policies, the inclusion of landscape in its own regional and urban plan policy and its connection to cultural, environmental, agricultural, social and economic policies, as well as any other policies that may directly or indirectly affect the landscape. Article 6 of the Convention provides for specific measures to be taken by the parties at the national level in the implementation of the landscape policies.

On February 23, 2012 the Verkhovna Rada of Ukraine adopted the Act "On the landscape." The Act, according to the preamble, aims to ensure the protection, management and planning of landscapes in order to save them and use non-diminishingly to meet the environmental, cultural, recreational, economical and other requirements of society.

The Act defines the purpose, principles and objectives of the state landscape management, the authorities responsible for such regulation and the individual (unlimited) powers of the relevant authorities, discloses a system of measures in the field of landscape management.

In accordance with Article 3 of the Act, the main purpose of government landscape regulation is to:

- ensure a balanced and integrated use of landscapes;
- preserve the diversity of landscapes, natural, cultural, historical and archaeological heritage, considering economic and social needs of the society and the principles of sustainable (balanced) development;
- create the conditions for permanent (balanced) functioning of landscapes and their components, preserving the relationships between them, ensuring the integrity of ecosystem functions;
- integrate environmental policy in the sphere of protection and landscape management into agriculture, forestry, water resources, industry, power engineering, transport, urban planning, etc., to ensure environmental safety;
- identify landscapes and set their boundaries, determine legal, scientific, practical and other measures aimed at ensuring the integrity, diversity, and ecosystem's functioning;
- sustain the ability of landscapes to renewal.

Assessing the provisions of the adopted Act, we have to indicate a number of deficiencies that, in our opinion, could not contribute to the effective implementation of the provisions of the Act and could not contribute to the objective of the Act – to ensure the protection, management and planning of landscapes in order to save them and use them non-diminishingly.

Article 21 of the Ukrainian Act On the landscape states that "state control over the observance of the legislation on the protection and landscape
management is carried out in the manner prescribed by Act." The adopted Act does not provide for any procedure for such control, nor any changes or amendments to other legislation which may be provided in the "Final Regulations".

Another problem of the Act, which is a negative trend in the Act practice, is the settlement of the liability for non-standards set by the state. However, the adopted Act does not contain any rules on liability for non-compliance in the field of landscapes.

An important issue is the virtual performance of the provisions of the Act since its entry into force. In accordance with Part 1 of Section VI «Final Provisions" the Act comes into force on the day following the day of its publication. Consequently, the provisions of the Act, for example, on landscape planning or consideration of the requirements for the protection of the landscape planning documentation in planning, building and other uses of the territories at the national, regional and local levels and the like, will be binding. But, the mechanisms of such regulations, the development of which is assigned, in particular, to the Cabinet of Ministers of Ukraine (Article 6), should be designed for only one year after the entry into force of this Act. Consequently, the effective implementation of the Act depends on subordinate legislation to be adopted in the future.

Concerning the rights of the public, we should note that under the provisions of Part 1 of Article 11 of the Act, citizens and their associations in the prescribed manner will have the right to:

- initiate the development and participate in the performance of landscape plans;
- exercise public control over the protection and the use of landscapes;
- conduct public environmental review, to publish the results and send them to the authorized bodies to make decisions on the location, design and construction of new and modernization of the existing plants, buildings and other facilities within a specific landscape;
- obtain in the prescribed manner the information on the status of landscapes, the source of their contamination and depletion, plans and actions for the protection, use and recreation of landscapes;
- file lawsuits in court for damages caused to the state and the citizens as a result of pollution and depletion of landscapes;
- have other rights under the Act.

The declaration of the rights of the public should be assessed positively. However, Article 5 of the European Landscape Convention provides for the establishment of the order of participation of the general public interested in the definition and implementation of landscape policies. This, obviously, requires that the states should make efforts to develop the order for public participation in the formation, development and implementation of landscape plans.

At the same time, Article 22 of the Act provides for the possibility of social control in the sphere of "public environmental inspectors according to the provisions adopted in accordance with the Act." However, we would like to note that, firstly, the Act itself does not provide for the approval procedure of such provisions. Secondly, the rule of Article 22 of the Act with regard to the subject
composition of those entitled to social control contradicts Article 11 of the same Act, which establishes the right of public control over any citizen and public association.

Due to the found inconsistencies in the current Act, the presence of conflict with international norms, the Ukrainian president vetoed it. Thus, again we have no legislative mechanism to regulate and plan landscapes.

At the same time, the country has created favorable conditions for the realization of the international developments in the field of legislative experience of landscapes. The key provision in this process, in our opinion, should be the implementation of the principles of landscape planning (MAKSYMENKO 2012). Spatial planning can certainly contribute to this field of regional policy, offering ecological orientation of territorial development plans.

Landscape planning is regarded as an interdisciplinary tool uniting different departments and decision-makers at various levels by coordinating them. Environmental problems and scarcities are identified as well as new ways of development are suggested with its support. It is a useful tool to search for solutions in the available competing options and if the former centralized system of land use in its spatial and managerial aspects has to be restructured. It also helps investors, seeking to meet environmental requirements, to gain confidence in their intentions.

Spatial planning is a communicative process, involving local people into planning and contributing to the democratization of the society and its social and economic stabilization. Through spatial planning we can also harmonize international and Ukrainian environmental policies and programs, including plans for a pan-European network of protected areas “Nature 2000.” Landscape planning is particularly necessary for the greening processes in privatization of land with long-term interests of society.

CONCLUSIONS

In the legal field of the EU the right to a healthy environment is not fixed as the basic one, unlike the Constitution of Ukraine, but the environment protection today has clear, primary and secondary legal bases in this field (MAKSYMENKO & KARAZIN 2012). In general, environmental law, both in Europe and in Ukraine, at present lacks internal consistency. This is seen, for example, in the following contradiction. On the one hand, it is excessively "over-regulated", and on the other hand –poorly developed internal mechanisms for implementation purposes. For example, in the European environmental law advanced progressive standards are often offered, but in some countries there are no legal instruments for their implementation. It is worth recalling here that environmental problems are generated, in the first place, by "the fragmentation of free landscape" in the processes of suburbanization, growing urbanization of coastal and other areas, eutrophication and acidification of ecosystems, spreading over large spaces, as well as poor management of water resources.

These problems, for example, have to be addressed in the process of expanding the resorts area by the Black Sea in Ukraine, Bulgaria, Georgia, where chaotic construction continues, not taking into account the principles of landscape planning. As a result, we have an excessive load acting both on the
landscapes of the coastal zone and the coastal waters. Also in Ukraine, in the enhancing process of suburbanization we often see seizures of land plots in water protection zones of the rivers (Dnieper, Seversky Donets, Southern Bug, etc.) and reservoirs (Kiev, Kremenchug, Pechenezhskoe, and others) in anticipation of the adoption of the law on the introduction of private ownership of land. This leads to disruption of the ecological balance in the sub-aquatic landscapes. Many negative examples are associated with suburban development on the State Forest lands in the Carpathians, the Crimea, Woodlands' that contradicts not only the environmental legislation in general, but also violates the integrity of the natural landscapes.

With that said, it is clear that institutional integration of actions for the protection of the environment and the development of comprehensive, integrated approaches to environmental policy at present are very relevant. Landscape planning meets these requirements in many respects.

SÚHRN

Perspektívy krajinného plánovania v legislatíve Ukrajiny

Práca analyzuje slabé miesta v zákone Ukrajiny "O krajine", ktorý bol prijatý v roku 2012 Najvyššou radou a ktorý vetoval ukrajinský prezident. Na základe paralel s medzinárodným právom životného prostredia je v závere článku predložený pohľad na perspektívu krajinného plánovania v pripravovanej novej verzii zákona. Práca potvrdila, že pomocou krajinného plánovania sa môže podarit dosiahnuť súlad medzi medzinárodnými a ukrajinskými environmentálnymi politikami a programami vrátane plánov na celoeurópskej sústave chránených území "Natura 2000". Krajinné plánovanie bude nevyhnutné uplatniť najmä na "ozelenenia" postupov privatizácie pôdy a zohľadnenie dlhodobých záujmov rozvoja spoločnosti.

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