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*angelinaa.tsmok@gmail.com***ORCID:** orcid.org/0000-0001-5817-7026Riabtsova, Anhelina (2022). Sustainable development as a vector of economic and legal use of natural resources. *Entrepreneurship, Economy and Law*, 1, 17–22, doi: <https://doi.org/10.32849/2663-5313/2022.1.03>

SUSTAINABLE DEVELOPMENT AS A VECTOR OF ECONOMIC AND LEGAL USE OF NATURAL RESOURCES

Abstract. The aim of the article is to identify and analyze the system of principles of nature management in the historical aspect and to clarify the role of the principle of sustainable development in this system. General scientific (dialectical, formal-logical, system-structural) and special *methods* of scientific cognition (comparative, historical, etc.) were used in the research. Thus, with the help of the dialectical method, an attempt was made to overcome disagreement through rational discussion, and, finally, to find the truth. Using the formal-logical method, the system of principles of nature management is formulated. The system-structural method is applied to determine the place of sustainable development among other principles. The comparative legal method of research facilitated the analysis of the norms of Ukrainian and international law. The historical method of research provided an opportunity to determine the genesis of legal regulation of nature management. **Results.** The basic general and special principles of the use of natural resources in economic activity are analyzed. **Conclusions.** There are general principles of nature management typical to all subjects of law and special principles that are specific only to the use of natural resources in the field of economic law. The general principles include the principle of rational use of nature, the origin of the right to use natural resources from the right of ownership; targeted use of natural resources; stability of the right to nature use, ecosystem, complex nature use, gratuitousness of general nature use.

The special principles of nature management, which are characteristic of economic entities, should include payment for special nature usage, limitation of nature use, licensing of nature use, ecologization of manufacture, striking a balance between economic and social and environmental interests.

The principle of sustainable development is a complex concept that comprises many other related concepts, including complexity, care, rationality, economy and efficiency of nature management; stability of the right to use nature; stimulating efficient nature management.

Key words: principles of nature management, sustainable development, sustainable nature management, economic activity, legal regulation.

1. Introduction

The principles of the use of natural resources in economic activity and the principles of legal regulation of economic relations have long been the subject of research by legal scholars. I.I. Karakash attributes the following to the general principles of natural resource management: the origin of the right to use natural resources from the right of ownership of natural objects; intended use of natural resources; rational and effective natural resource management; complexity of natural resource management; stability of the right to use natural wealth; gratuitousness of general and fee-based special use of natural resources; the ecosystem approach to the regulation of natural resource manage-

ment, and some other principles (Karakash, 2005, p. 96). K.A. Riabets considers such principles of the right to use natural resources: the origin of the right to use natural resources from the right to own them; intended and rational use of natural resources; charging for special use of natural resources; reproduction of natural resources; limitation of natural resource use; licensing of natural resource use (Riabets, 2009, p. 127). Agreeing with the above positions of representatives of environmental law science, it should be added that the mentioned principles do not cover all the peculiarities of natural resource use by economic entities and, therefore, there is a need to develop an approach from the economic-legal point of view.

The authors of the commentary to the Commercial Code of Ukraine distinguish principles of the right to use natural resources: 1) environmental safety of natural resource management; 2) fee-based special and gratuitous general natural resource management; 3) multifaceted nature of intended natural resource management; 4) normative and limiting nature of natural resource management; 5) differentiation and plurality of legal forms of natural resource management; 6) complexity, care, rationality, economy, and efficiency of natural resource management; 7) payment for deterioration of the quality of natural resources; 8) stability of the right to use natural resources and its inalienability without personal will; 9) stimulation of effective natural resource management; 10) standardization of specific natural resource management (Mamutov, 2004, p. 178).

To conduct a critical scientific analysis of the above positions, it is essential to consider the content of each principle of natural resource management, assess it properly, and develop its system of principles. *The purpose* of the article is to identify and analyze the system of environmental management principles in the historical aspect and clarify the role of the principle of sustainable development in it. When performing the study, the author has applied traditional for jurisprudence scientific *methods of cognition*, which are grounded on the method of materialistic dialectics that allows ensuring the comprehensiveness of the analysis of the processes concerned in their historical conditionality and correlation.

2. General and special principles of natural resource management in economic activity

The classical principle of the use of natural resources is the “principle of rational nature management”, which was studied in the legal literature of Ukraine in the 70s. The understanding of rational nature management changed during the development of the science of environmental law: at the initial stage, it was based on the prevention of consumer attitude to nature and was reduced, first of all, to economic and saving, scientifically proper use of natural forces in compliance with scientific and technical rules and norms. According to the modern understanding, rational nature management is the most effective use of natural resources during production and economic and other activities, keeping in mind the regularities of functioning of interdependent natural systems, maintenance of constant restoration, improvement, and protection of the environment.

The principle of rational nature management is implemented by means of environmental and legal requirements: setting limits on the use of natural resources; use of low-waste, energy,

and resource-saving technologies; taking measures for the reproduction of renewable natural resources; planning the location of production and other economic facilities, given the ecological capacity of the relevant territory, the conservation of biological and landscape diversity; prevention of environmental pollution; use of biological, chemical, and other methods of improving the quality of natural resources, economic incentives for measures ensuring the sustainable use of natural resources, and the introduction of other measures that guarantee environmentally sound nature management (Shemshuchenko, 2003, p. 327). Rational nature management is an indispensable element of sustainable development, which the author interprets as balanced development opportunities for different groups, individuals, humanity, and future generations. Legal regulation provides the concept of sustainable development in four dimensions: environmental, economic, social, and cultural. The term “sustainable development” has become popular in the Ukrainian legal terrain (in Russian “устойчивое развитие”, in Ukrainian “сталий розвиток”). The term “balanced development” would be more relevant. The adjective “sustainable” means permanence, stability, while “development” implies inevitable changes.

The next principle of natural resource management is the origin of the right to use natural resources from the right of ownership, which refers to the dependence of natural resource use on the owner’s will. The most absolute real right under the Civil Code of Ukraine is the right of ownership, and the right of possession and the right of use belong to the real rights to property of another. The competence of natural resource users relies on the owner’s right of use.

The principle of the intended use of natural resources is common to land, mining, water, and forestry laws. The purpose of the use of a natural object is recorded in such documents as the state title act, a user contract, special permits (licenses) for the right of the special use of natural resources, forestry orders, or forest tickets. The list of objectives of the economic use of a natural resource is clearly defined at the level of the relevant regulations and can be specified in the contract. For example, water bodies can be leased for fishery, cultural, therapeutic, and recreational purposes; forest lands are provided for hunting, recreational, sports, tourism, and educational purposes; hunting lands are contracted only for hunting; production sharing agreements stipulate the provision of subsoil plots for prospecting, exploration, and mining. The use of natural resources by an economic entity with deviations from

the intended purpose is an offense and may be the basis for deciding to suspend or terminate the right to use natural resources. For example, in accordance with para. 6.7 of the Rules for the Use of Forest Values (Order of the Ministry of Agrarian Policy and Food of Ukraine dated August 14, 2012 No. 502), the termination of the right to use forest values under the conditions of short-term temporary use of forests is carried out by a permanent forest user (forest owner) by canceling the forest ticket under the procedure established by law.

The principle of stability of the right to use natural resources implies the provision of natural resources on the right of ownership in long-term or permanent use. For example, it concerns long-term subsoil use up to 20 years (Art. 15 of the Subsoil Code), the lease term of the land plot is up to 50 years (Part 4 of Art. 93 of the Land Code of Ukraine). The above does not exclude short-term uses of natural resources mentioned in natural resources laws, in particular, legislation on flora and fauna. The principle of stability of the right to use natural resources can be regarded as a separate principle or a structural element of the more general concept of sustainable development, sustainable use of natural resources.

The principle of gratuitousness general and fee-based special use of natural resources is enshrined in the framework Law of Ukraine "On Environmental Protection" (Art. 38) and specific codes and laws. The use of natural resources by economic entities usually takes the form of special natural resource management. For example, the fee for the subsoil use for geological study of subsurface resources is a form of implementation of economic relations regarding tax and non-tax revenues between the owner of subsoil resources represented by the state and the subsoil user represented by the business entity (Filatova, 2008, p. 6). The fee-based usage of natural objects implies imposing the obligation to pay for the use of the relevant types of natural resources on the subjects of special nature management. The rent for using subsoil for mining is widely applied in economic practice (Art. 252 of the Tax Code of Ukraine, Art. 28 of the Subsoil Code of Ukraine), taxation of land plots (Arts. 273, 274, 277 of the Tax Code of Ukraine), water bodies (Art. 255 of the Tax Code of Ukraine, Art. 30 of the Water Code of Ukraine), forest resources (Art. 256 of the Tax Code of Ukraine, Art. 77 of the Forest Code of Ukraine), NRF objects – Art. 47 of the Law of Ukraine "On the Natural Reserve Fund of Ukraine", wildlife resources (Arts. 9, 28, 31 of the Law of Ukraine "On the Animal World"), flora resources (Art. 12 of the Law of Ukraine "On the Plant World"), taxes and fees (manda-

tory payments) during the execution of the production sharing agreement (Art. 25 of the Law of Ukraine "On Production Sharing Agreements"). Payments and fees for the special use of natural resources flow to the national and local budgets and are means of increasing the interest of economic entities – users of natural resources – in the effective and rational use of natural resources, the preservation and restoration of the natural environment, which, in turn, is an element of the principle of sustainable development.

The principle of an ecosystem-based, integrated approach to the regulation of natural resource management by economic entities is determined by the interrelations of natural processes and the interdependence of phenomena that arise in the natural environment. When using natural objects, such as lands, there may be harmful effects on water bodies, flora and fauna, and other natural objects. The use of natural resources should be conducted given the objective laws of the unity of nature, the universal interrelations of processes and phenomena occurring in nature. It is necessary to shift away from a differentiated approach of clarifying a particular type of nature management and proceed to an integrated definition of the concept. Comprehensive contracts are used in economic practice when there is a need to use several natural resources at the same time. Most often, such a complex character of nature management is based on objective natural connection of individual resources with the land plot where they are located. The most common legal basis for such integrated use of natural resources is the economic agreement, the subject of which should cover the activity of using not a separate land plot, subsoil, or water object but an integral natural complex. That sort of contracts may be concluded in the case of recreational, therapeutic use of natural resources, the use of natural resources in the NRF territories and objects (Adam, 2019, pp. 170–171).

The principle of reproduction of natural resources covers a continuous restoration of natural resources, and its ignoring can lead to depletion or degradation of natural resources. The mentioned problem is the most urgent in special nature use by economic entities. It is not enough to protect and rationally use natural resources – it is necessary to carry out active measures for their restoration. Natural resource use for economic purposes has, first of all, economic essence but a consumer, predatory approach to nature, neglect of its social value, ignoring environmental norms causes negative consequences for all subjects. It is essential to focus on the ecological (environmental) component of economic activity on

the use of natural resources, which is manifested in the general principle of sustainable development. H. D. Dzhumaheldiieva attributes the environmentalization of legislation on the economic use of natural resources to the mainstream in the revision of the existing paradigm of further development of legal regulation (Dzhumaheldiieva, 2014, p. 178). Neglect of the environmental vector in all human activities (including economic activities) pose risk to the very future existence of mankind.

The principle of limiting environmental management is a manifestation of environmental protection and defense due to the fact that natural resources are limited and need to be used rationally. Natural resource limits are set by specially authorized bodies of the state environmental department under law. Nature use limits are established for a certain period for each type of used (withdrawn) natural resources and can be revised given the development of technology, improvement of technological processes, changes in the need for the relevant type of resource and its state, as well as other factors.

The principle of environmental licensing is a type of state control over rational, effective, feasible nature management, which meets the general principle of sustainable development. Environmental licensing is an administrative relationship between the state represented by its designated bodies and economic entities, which authorizes the entities to carry out specific activities in the field of environmental management by relying on their compliance with a set of requirements imposed by the state. A natural resource license (permit) is a legal form of transfer by state authorities and local self-government bodies of the right to use a specific part of a natural object to business entities, i.e., it is a form fixing the right to use natural resources. Obtaining a license is required when the economic entity has the right to the special use of a subsoil plot; forest fund plot; fauna objects; the right of integrated nature management. The license for the right to natural resource management is a roadmap for the use of the relevant natural resource. In particular, it contains data on the object and subject of the right, the purpose and methods of use of the natural object, terms and conditions of use, requirements for the rational use of the natural resource and ensuring its restoration, etc.

3. Sustainable development as a basis for the economic-legal use of natural resources

The general and special principles of environmental management considered above are, on the one hand, individual manifestations of sustainable development and, at the same time, structural elements of the principle of sustainable development. Ukraine's strategic aspiration is to shape its future based on the principles

of sustainable development to turn European standards into reality and achieve leading positions in the world (Lelechenko, 2020).

The foundation for socio-economic sustainable development comprises the decisions of the United Nations Conference on Environment and Development (Rio de Janeiro, 1992), the World Summit on Sustainable Development (Johannesburg, 2002), and other international forums on environment and sustainable development. The Rio Conference resulted in five documents: the Rio Declaration on Environment and Development; Agenda 21; the United Nations Framework Convention on Climate Change; the Convention on the Conservation of Biological Diversity; and the Declaration on Forests. The outcomes of the World Summit on Sustainable Development, Johannesburg, included two documents: the Johannesburg Declaration on Balanced Development; the Plan of Implementation (PoI). In addition, Ukraine has been a Party to the United Nations Framework Convention on Climate Change since August 11, 1997 and the Kyoto Protocol since February 16, 2005, the ultimate goal of which is to stabilize greenhouse gas concentrations "at a level that would prevent dangerous anthropogenic (human induced) interference with the climate system. In September 2015, the UN Summit on Sustainable Development was held in New York. It resulted in the document "Transforming Our World: the 2030 Agenda for Sustainable Development", which laid 17 sustainable development goals: end poverty, end hunger, ensure healthy lives, ensure inclusive and equitable quality education, achieve gender equality, ensure sustainable management of water and sanitation for all, renewable energy, decent work and economic growth, innovation and infrastructure, reduce inequality, make cities and human settlements sustainable, ensure sustainable consumption, combat climate change, conserve marine ecosystems, preserving terrestrial ecosystems, promote peace and justice, strengthen partnership for sustainable development. The above list shows that all objectives are directly or indirectly related to the rational use of natural resources. The 17 goals are represented in the Decree of the President of Ukraine dated September 30, 2019 "On the 2030 Sustainable Development Goals of Ukraine", which confirms that our country is following world trends. Sustainable development is of global importance and is regarded as a human right (Ivankiv, 2020, p. 158). Although the legal regulation of sustainable development has its own peculiarities in the European, African, Asian, and American system, what remains common is that sustainable development as a new philosophy of global, regional and local

development is opposed to economic growth which is interpreted in a narrow sense.

The science of economic law contains inventions on the need to consider the impact of sustainable development on economic legislation. In particular, O.V. Shapovalova substantiated the concept of a functional-target subsystem for promoting sustainable development by economic-legal means and directions of modernization of economic legislation for its implementation and formulated a methodology for adapting economic legislation to the requirements of sustainable development (Shapovalova, 2007). The concept should be applied in using natural resources in economic activities.

The term “sustainable development” is not yet widely used in legal acts and at the doctrinal level of economic law, although its essence is conveyed in other related or complex concepts. For example, the general legal principle of justice, which is also studied at the level of its influence on the formation of state economic policy (Dzhabrailov, 2019), is directly associated with the principle of sustainable development. The category of “justice” is multifaceted and can be discussed as a philosophical, political, or legal phenomenon. The Constitutional Court of Ukraine interpreted justice as the very legal phenomenon in the case of imposing a milder sentence by the court dated 02.11.2004 No. 15-rp/2004: “Justice is one of the basic principles of law, is decisive in determining it as a regulator of social relations, one of the universal dimensions of law”. Extrapolating the concept of “justice” to the subject of economic-legal use of natural resources, the term “environmental justice”, which aims to combat environmental discrimination, has appeared. Environmental justice consists of several components: the equality of all legal subjects in the distribution of environmental benefits; the correspondence of an environmental offense and punishment; the proportionality of the legislator's goals and the means chosen to achieve them.

T.S. Gudima paid attention to the principle of environmental justice as a fundamental basis for sustainable development, in particular, the unequal distribution of environmental risks and the exercise of the human right to a sustainable and healthy environment (Gudima, 2018). The principle of sustainable development and sustainable use of natural resources, which is primary in the legal regulation of the economic use of natural resources, includes the search for and balance between economic, social, and environmental factors during the economic use of natural resources. The economic needs for the withdrawal of the values of land, subsoil, water, etc. are in contrast with the need to ensure sustainable development and environmental protection – there is competition of public and private interest.

4. By relying on the above, the author draws the following conclusions:

1. There are general principles of natural resource management inherent in all legal subjects and special principles that are characteristic only for the economic use of natural resources. The general principles cover the principle of rational use of natural resources, the derivation of the right to use natural resources from the right to own them; the intended use of natural resources; the stability of the right to use natural resources, an ecosystem, integrated use of natural resources, the gratuitousness of general use of natural resources.

The special principles of nature resource management, which are typical for economic entities, should include a fee-based nature of special nature management, limitation of nature management, licensing of nature management, environmentalization of material production, striking a balance between economic, social, and environmental interests.

2. The principle of sustainable development is a complex concept that comprises other related concepts, including complexity, care, rationality, economy and efficiency of environmental management; stability of the right to use natural resources; stimulation of effective environmental management.

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СТАЛИЙ РОЗВИТОК ЯК ВЕКТОР ГОСПОДАРСЬКО-ПРАВОВОГО ВИКОРИСТАННЯ ПРИРОДНИХ РЕСУРСІВ

Анотація. Метою статті є виявлення та аналіз системи принципів природокористування в історичному аспекті та з'ясування ролі принципу сталого розвитку в цій системі. При виконанні дослідження було використано загальнонаукові (діалектичний, формально-логічний, системно-структурний тощо) і спеціальні методи наукового пізнання (порівняльний, історичний та ін.) Так, за допомогою діалектичного методу була зроблена спроба подолання незгоди через раціональну дискусію і, зрештою, відшукати істину. За допомогою формально-логічного методу сформульовано систему принципів природокористування. Системно-структурний метод застосовано для з'ясування місця сталого розвитку серед інших принципів. Порівняльно-правовий метод дослідження використано для аналізу норм українського та міжнародного законодавства. Історичний метод дослідження надав можливість визначити генезис правового регулювання природокористування. **Результати.** Проаналізовано основні загальні та спеціальні принципи використання природних ресурсів у господарській діяльності. **Висновки.** Існують загальні принципи природокористування, притаманні всім суб'єктам права, і спеціальні принципи, що характерні тільки для використання природних ресурсів у сфері господарювання. До загальних принципів належать принцип раціонального природокористування, похідність права користування природними ресурсами від права власності на них; цільового використання природних ресурсів; стабільності права природокористування, екосистемного, комплексного природокористування, безоплатності загального природокористування.

До спеціальних принципів природокористування, які характерні для суб'єктів господарювання, слід відносити платність спеціального природокористування, лімітування природокористування, ліцензування природокористування, екологізацію матеріального виробництва, дотримання балансу між економічним, соціальним та екологічним інтересом.

Принцип сталого розвитку є комплексним поняттям, що включає в себе низку інших споріднених понять, зокрема комплексність, дбайливість, раціональність, ощадливість та ефективність здійснення природокористування; стабільність права природокористування; стимулювання ефективного природокористування.

Ключові слова: принципи природокористування, сталий розвиток, стає природокористування, господарська діяльність, правове регулювання.

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