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ENVIRONMENTAL REQUIREMENTS IN THE FIELD OF URBAN DEVELOPMENT: LEGAL LAND ASPECTS

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Abstract. The article analyzes the procedure for conducting an environmental impact assessment in the context of urban development activities in accordance with the Law of Ukraine “On Environmental Impact Assessment”. The environmental impact assessment and the environmental expertise, which was carried out before the entry into force of the new legislation, were compared. Particular attention is devoted to public participation in the implementation of environmental impact assessment and to the introduction of a new information resource – the Unified Register of Environmental Impact Assessment.

Keywords: environmental impact assessment, ecological expertise, state ecological expertise, public ecological expertise, the Unified Register of Environmental Impact Assessment.

1. INTRODUCTION

The favorable ecological state of the environment is an increasingly vital component of society. The ecological situation in the world, particular in Ukraine, is becoming increasingly threatening. The probability of adverse environmental impact of anthropogenic interference increases with each passing day. The main task in this area should be to reduce the number of environmental risks in order to improve the state of the environment and achieve sustainable development.

Environmental risks carry within them inter alia urban development objects, including airports and airfields, motorways, public roads, main railway lines, hydraulic structures of sea and river ports, as well as industrial parks, residential areas, reloading terminals and equipment for overloading of various types of transport, dams, tram tracks, funiculars, subway lines (underground and aboveground) and power lines etc. The abovementioned objects are located on lands of industry, transport, communications, energy and residential and public buildings [7], which are often the environment of compact population.

The risks of the negative impact of urban development objects are not only on the objects of the environment, but also on the subjects living in it. That is why, in order to avoid negative impact on people's livelihoods, according to State Construction Standard DBN 360-92** “Urban Development. Planning and Development of Urban and Rural Settlements” as of April 17, 1992, the territory of the city is divided into the residential, industrial, including external transport and recreational according to the functional purpose and the nature of use [5, p. 6].

The residential area includes sections of residential buildings, public institutions, buildings and structures, including educational, design, scientific research and other institutes without research productions, internally residential road and transport network, as well as areas, parks, gardens, squares, boulevards, other objects of green building and public places. In its turn, the industrial area is intended for the placement of industrial enterprises and associated production facilities, including complexes of scientific institutions with research enterprises, utility and warehouse facilities, enterprises for the production and processing of agricultural products; sanitary protection zones of industrial enterprises; objects of special purpose (for defense purposes); structures of external transport and ways of out-of-town and suburban communications of the inner-city road and transport network; sections of public institutions and places of common use for the population working at the city enterprises [5].

It is important that industrial enterprises are allowed to be placed in the residential zone, following sanitary and fire safety requirements, if they do not emit harmful, toxic, dusty and fire hazardous substances into the environment, do not create higher levels of noise, vibration, electromagnetic radiation and do not require access to railroads. Mostly, such sanitary requirements and restrictions are established for the comfortable and eco-friendly residence of people, rather than for the preservation and renovation of the environment [5].

Recently, the legal regulation of the relations in this area has changed significantly. By May 23th, 2017, the Law of Ukraine "On Environmental Expertise" regulated this issue. Nevertheless, for the purpose of implementation of the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) ratified by the Law of Ukraine as of March 19th, 1999 [3] as well as the Association Agreement between Ukraine on the one hand and the European Union, the European Community on nuclear energy and their member states, on the other hand, as of September 16th, 2014 [1] a new Law of Ukraine "On Environmental Impact Assessment" was adopted on May 23th, 2017, which was enacted on November 23, 2017.

Therefore, the problem requires an additional analysis, since previous scientific researches of such scientists as Y. V. Kondratenko, I. V. Starodubov, Z. V. Korzh, A. P. Voitsitsky, E. Posnyank etc., were based on the Law of Ukraine "On Environmental Expertise", which has become void.

2. ANALYSIS AND DISCUSSION

Using the comparative legal method, we are going to find out the main differences between the environmental impact assessment in the Law of Ukraine "On Environmental Impact Assessment" and the ecological expertise in the Law of Ukraine "On Ecological Expertise", which has become void, in the context of urban development activities.

The Law of Ukraine "On Environmental Impact Assessment" de-facto abolishes the institute ecological expertise prescribed by the Law of Ukraine "On Ecological Expertise" (the conclusion of the ecological expertise is a permit document). The new law introduces an environmental impact assessment procedure instead of ecological expertise.

According to Art. 1 of the Law of Ukraine "On Ecological Expertise", ecological expertise is a type of scientific and practical activity of authorized state bodies, ecological expert formations and associations of citizens based on inter-sectoral environmental research, analysis and evaluation of pre-design, project and other materials, the realization and action of which may negatively affect or affects the state of the environment. Ecological expertise is aimed at preparing conclusions on the compliance of the planned or ongoing activities with environmental protection legislation norms, sustainable use and restoration of natural resources, environmental security [10].

The main objective of such ecological expertise was to prevent the negative impact of human activities on the state of the environment and human health, as well as assess the degree of environmental safety of economic activity and the environmental situation in certain areas and objects.

According to Art. 7 of the Law of Ukraine "On Ecological Expertise", objects of ecological expertise are draft laws and other legislative acts, documentation on the introduction of new technologies,

materials, substances, products, genetically modified organisms, the implementation of which may lead to violation of environmental standards and negative impact on the state of the environment [10]. It is important that according to Art. 14 of the Law of Ukraine "On Ecological Expertise" as amended on April 9th, 2009, investment projects, feasibility studies and calculations, projects and working projects for the construction of new and expansion, reconstruction, and technical re-equipment of existing enterprises were also objects of the state environmental expertise. Today, examination of the design documentation for construction is carried out in accordance with Art. 31 of the Law of Ukraine "On Regulation of Urban Development". Expert examination of the design documentation for construction is complex, and experts on sanitary and epidemiological well-being of the population, ecology, labor protection, energy conservation, fire, technological, nuclear and radiation safety are involved (on the basis of civil contracts too) [8].

Hence, with the adoption on February 17th, 2011 of the Law of Ukraine "On the Regulation of Urban Development" [8], as well as the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Improvement of Urban Development Activities", ecological expertise as an environmental supervisory instrument was de-facto eliminated. There was no hope of analyzing and evaluating pre-project, project and other materials or objects, realization and actions of which could negatively affect or affected the state of the environment.

At the same time, the new Law of Ukraine "On Regulation of Urban Development" reduced the access of public to decision-making process on environmental issues, as far as the institution of public ecological expertise of the project documentation for construction was offset. This extremely contradicts Art. 6 (public participation in decision-making on specific activities) of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), ratified by the Law of Ukraine of July 6th, 1999 year [4]. This was one of the reasons why the meeting of the Parties to the Aarhus Convention on July 1, 2011 convened a decision on non-compliance with the Convention by Ukraine.

The adoption of the Law of Ukraine "On Environmental Impact Assessment" was a solution to many problems. This, in particular, has become a fulfilment of one of the articles of the Association Agreement between Ukraine on the one hand and the European Union, the European Atomic Energy Community and their Member States, on the other hand, as of September 16th, 2014, and will certainly promote prevention of damage to environment and provide of environmental safety in the future.

The Law of Ukraine "On Environmental Impact Assessment", introduces a mechanism of environmental impact assessment instead of ecological expertise [9]. The result of such an assessment is the decision on environmental impact assessment made by the competent bodies.

The law provides a clear and understandable list of activities, their criteria and limit values, for which an environmental impact assessment is required. The lists of types of activities and objects that are subject to environmental impact assessment, which are assessed at the level of the Ministry of Ecology and Natural Resources of Ukraine, or at the level of Ecological Departments of regional state administrations are determined. Hence, there are two categories of objects in the process of making decisions on the implementation of planned activity, which require the environmental impact assessment.

The first category of types of planned activities and objects includes those that can have a significant impact on the environment. As for urban development, they are as follows: the construction of airports and airfields with a main runway of 2100 meters length or more; highways; public motor roads of state and local importance with four or more lanes, or reconstruction and / or expansion of existing lanes up to four or more, provided they are continuously extending 10 kilometres or more; first-class highways; main railway lines of general use; hydraulic structures of sea and river ports, which can accept the vessels with a tonnage of more than 1,350 tons; deep sea shipping, including natural river beds, special canals on land and in shallow marine areas suitable for passage of vessels with a tonnage of over 1350 tons [9].

The second category of types of planned activities and objects regarding urban development activities includes infrastructure projects, in particular, the construction of residential quarters

(complexes of multi-apartment residential buildings) and shopping or entertainment complexes outside settlements on the area of 1.5 hectares or more, or within the boundaries of settlements, unless their connection to centralized water supply and / or drainage are provided; the construction of cinemas with more than 6 screens; construction (arrangement) of parking lots on an area of at least 1 hectare and more than 100 parking spaces; construction of airports and airfields with a main runway length of up to 2100 meters; construction of railway stations, railways and structures; construction of transshipment terminals and equipment for overloading various types of transport, as well as terminals for different types of transport; construction of dams and installation of other equipment for holding or accumulation of water at long intervals; carrying out works on clearing and dredging of the channel and bottom of the rivers, coastal consolidation, change and stabilization of the state of river channels; construction of tram tracks, pendant ropeways and funiculars or similar lines used for passenger transportation; construction of underground, aboveground lines of subway as single complexes, including depot with a complex of technical constructions; construction of aqueducts and pipelines for long-distance water transportation; construction of main product pipelines (pipelines for the transportation of gas, ammonia, petroleum or chemicals); construction of electric power lines (air and cable) with voltage of 110 kilovolts or more and substations with voltage of 330 kilovolts or more; construction of hydrotechnical structures of sea and river ports; construction of deep-sea vessels, including in the natural riverbeds, special channels on land and in shallow marine areas suitable for passage of vessels, as well as channels for anti-flooding purposes and hydraulic structures [9].

It should be noted that the environmental impact assessment is subject only to the planned activity, but not to what is already under way. According to the Law of Ukraine "On Ecological Expertise", which has become void, the state ecological expertise was allowed after the developer received the relevant permits for the construction of the object [10]. Today, the investor must conduct an environmental impact assessment prior to the the project documentation development. Such system has long been operating in the countries of the European Union and guarantees people living in the areas where they plan to implement the project to assess properly how much it will affect the environment and avoid construction that is contrary to the interests of the territorial communities.

According to the previous legislation, two types of environmental expertise were distinguished in Ukraine: state and public. The conclusions of the state environmental expertise were mandatory. When making a decision on the further implementation of the objects of environmental expertise, the conclusions of the state environmental expertise were taken into account on a par with other types of state expertizes. In return, the conclusions of the public and other environmental expertizes were recommendatory and might be taken into account when conducting the state ecological expertise, as well as when deciding on the further implementation of the object of environmental expertise [10]. This kind of ecological expertise was carried out by independent groups of specialists on the initiative of public organizations, as well as local executive bodies at their own expense or on a voluntary basis [12, p. 294]. This greatly diminished the role of the public in making decisions concerning the environmental impact.

The new legislation also provides for public participation in the process of environmental impact assessment at all stages. Hence, according to Art. 2 of the Law of Ukraine "On Environmental Impact Assessment", an environmental impact assessment is a procedure that includes the following stages:

- 1) preparing an environmental impact assessment report by an economic entity;
- 2) conducting public discussion;
- 3) an analysis of the environmental impact assessment report, any additional information provided by the economic entity, as well as information received from the public at the time of public discussion, during the implementation of the cross-border impact assessment procedure, other information by competent authority;
- 4) providing a reasoned opinion on the environmental impact assessment by competent authority taking into account the results of the abovementioned analysis;
- 5) taking into account the conclusion on the environmental impact assessment in the decision on the implementation of the planned activity, respectively [9].

Hence, public discussion is a form of public participation in environmental impact assessment conducted under Art. 7 of the Law of Ukraine "On the Environmental Impact Assessment" and the Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Procedure of Conducting Public Hearings in the Process of Impact Evaluation on the Environment" dated December 13th, 2017. Thus, the purpose of public discussion in the process of environmental impact assessment is to reveal, collect and take into account the remarks and suggestions of the public considering the planned activities [11]. This is an opportunity to get to know the opinion of the community, evaluate the possible risks before construction and obtaining the permits, unlike the process foreseen by the Law of Ukraine "On Ecological Expertise", which has become void, and under which public hearings were supposed to be conducted after issuance of all permits. Of course, to consider public opinion does not mean to literally consider the opinion of everybody, but the Law of Ukraine "On Environmental Impact Assessment" prescribes the possibility of a justified refusal, since opinions may be contradictory in many cases [13, p. 2].

There is also a new form of public discussion – the submission of written remarks and suggestions (electronic form including). In course of public discussions, the public has the right to submit any remarks or suggestions related to the planned activities in their opinion, without the need to justify such. Remarks and suggestions can be submitted in verbal or written form (including electronic form) during public hearings and shall be included in the minutes of public hearings [9].

In accordance with part 6 of Art. 7 of the Law of Ukraine "On Environmental Impact Assessment", after submission of the report on environmental impact assessment public discussion commences from the day of the official announcement of the launch of public discussion of the report on environmental impact assessment and provision of public access to the environmental impact assessment report for review; it lasts no less than 25 and no more than 35 business days. All remarks and suggestions by the public within the established deadline are subject to mandatory review. Suggestions submitted after the deadline shall not be considered. In case remarks and suggestions were not submitted within the specified time period, it is assumed that there are no comments or suggestions [9].

Conducting public hearings with clearly defined timeframes, as well as a clear and transparent procedure of considering and fixing their results, will also help to minimize the impact of the decision-making authorities. A transparent procedure of public participation in the process of environmental impact assessment at all stages is extremely important. This is a kind of guarantee that negative impact on the environment and human health will be minimized, as often it is the community that has an information about the ecological characteristics of the region.

Together with the enactment of the Law of Ukraine "On Environmental Impact Assessment", a qualitatively new information resource – the Unified Register of Environmental Impact Assessment – became operational. Therefore, the submission of documents to obtain a report on the environmental impact assessment is carried out directly by placing it in an open Unified Register of Environmental Impact Assessment. This register limits the contact between state authorities and economic entity, which is especially relevant in view of anticorruption efforts and investment climate facilitation in Ukraine. Moreover, it creates appropriate conditions for the preservation of the environment. Unified register allows all interested parties to get acquainted with open procedures for environmental impact assessment and to quickly find data with regard to which objects and types of activities the environmental impact assessment is carried out in different regions of Ukraine.

3. CONCLUSIONS

Taking into consideration the abovementioned, it can be concluded that the adoption of the Law of Ukraine "On Environmental Impact Assessment" introduces to Ukraine a European model of environmental impact assessment of potentially dangerous planned activities. Contrary to the previous legislation, a system is created to prevent environmental damage, and not to deal with possible consequences of it.

Environmental Impact Assessment is a transparent and complex stage-by-stage procedure with precise timelines which establishes contemporary principles of public participation in the planning of certain activities. According to the Law, the violation of the procedure of carrying out an environmental impact assessment is the basis to cancel the report on the environmental impact assessment.

Providing free public access to all information concerning planned activities, procedures of public hearings and conducting public Unified Register of environmental impact assessments on the Internet is a remarkably forward-looking step for the country declaring the need for openness and transparency in decision-making.

Adoption of the Law of Ukraine “On Environmental Impact Assessment” is a significant step towards the fulfilment of Ukraine's international obligations to the European Union, as well as an important step towards the introduction of reasonable and effective environmental policy.

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У статті проаналізовано процедуру проведення оцінки впливу на довкілля в контексті містобудівної діяльності відповідно до Закону України “Про оцінку впливу на довкілля”. Здійснено порівняння оцінки впливу на довкілля та екологічної експертизи, яка здійснювалась до набрання чинності новим законодавством. Особливу увагу присвячено участі громадськості у здійсненні оцінки впливу на довкілля та запровадженню нового інформаційного ресурсу – Єдиного реєстру оцінки впливу на довкілля.

Ключові слова: оцінка впливу на довкілля, екологічна експертиза, державна екологічна експертиза, громадська екологічна експертиза, Єдиний реєстр оцінки впливу на довкілля.