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POLISH AND CHINESE APPROACH TO ENVIRONMENTAL LAW

Abstract. Environmental problems have caused countries around the world to develop their own unique approaches to ecological policies and this requires legal development. Environmental law is mostly based in public law, however some of the provisions are implemented within the private law. This article describes general environmental legal systems of Republic of Poland and People's Republic of China and focuses on the main private law instruments of environmental protection in the both states. Poland uses, traditional for European countries, civil liability of environmental protection. On the other hand, People's Republic of China began the process of greening of civil law, what is visible by establishment of new basic principle of civil law focusing on ecology (Green Principle).

Keywords: environmental protection, comparative study, private law, civil liability, Green Principle, greening of civil law.

Аннотация. Экологические проблемы заставили страны всего мира разработать свои собственные уникальные подходы к экологической политике, и это требует разработки правовой системы. Экологическое право главным образом основывается на публичном праве, однако некоторые положения осуществляются в рамках частного права. В данной статье описываются общие экологические правовые системы Республики Польша и Китайской Народной Республики, и особое внимание уделяется основному частноправовому регулированию охраны окружающей среды в обоих государствах. Польша использует традиционную для европейских стран гражданско-правовую ответственность за охрану окружающей среды. В свою очередь, Китайская Народная Республика начала процесс экологизации гражданского права, о чем свидетельствует установление нового базового принципа гражданского права, ориентированного на экологию («Зеленый» принцип).

Ключевые слова: охрана окружающей среды, сравнительное исследование, частное право, гражданско-правовая ответственность, «Зеленый» Принцип, экологизация гражданского права.

Андатпа. Экологиялық мәселелер дүниежүзі елдерін экологиялық саясатқа өзіндік ерекше тәсілдерін жасауға мәжбүр етті және бұл үшін құқықтық жүйені дамыту қажет. Экологиялық құқық негізінен жария заңға негізделген, бірақ кейбір ережелер жеке заң шеңберінде жүзеге асырылады. Бұл мақалада Польша Республикасы мен Қытай Халық Республикасының жалпы экологиялық құқықтық жүйелері сипатталған және екі мемлекетте қоршаған ортаны қорғаудың негізгі жеке құқықтық реттелуіне назар аударылған. Польша Еуропа елдері үшін дәстүрлі қоршаған ортаны қорғауда азаматтық-құқықтық жауапкершілікті қолданады. Қытай Халық Республикасы өз кезегінде азаматтық құқықты экологияландыру процесін бастады, бұған дәлел ретінде экологияға бағытталған («Жасыл» қағидат) азаматтық құқықтың жаңа негізгі қағидатын құру болды.

Түйін сөздер: қоршаған ортаны қорғау, салыстырмалы зерттеулер, жеке құқық, азаматтық-құқықтық жауапкершілік, жасыл қағидат, жасылдандыру азаматтық құқығы.

Introduction

From climate changes to water shortage and over-exploitation of natural resources. Not all of these phenomena occur in every state, but all of the states face the same general problem, although wearing different masks. Environmental problems are current challenge for countries around the world, they are increasingly complex and there are needed new approaches and tools to achieve sustainable solutions to protect the environment. Multiple institutions in the field of environmental protection exist and one of them are national policies which focus on creating efficient legal system. European states answers to deterioration of environment in the field of law are mostly based in public law, but it is seen in more and more countries' legal systems to adapt „ecolaw” within private (civil) law [1].

This article implies that in order to improve environmental protection, states, besides focusing on typical institutions based in public law, will implement and specify rules which should regulate environmental protection to the private law extent. To do so, aim of the study is to present this process by describing basic institutions of environmental protection in Republic of Poland (in the further parts of article named as: Poland) private law, and introducing general environmental legal policies of People's Republic of China (for ease: PRC or China) with their impact on Chinese civil law.

Polish environmental law and private law

Field of environmental law is complex system, containing norms ranging from e.g. constitutional, administrative and criminal to civil acts. Despite penetration of environmental system with various branches of law, it is generally

recognised as public law and most instruments of environmental protection are based in it. Polish legal regulations in the field of environmental protection create separate system which is wide and well established. Not including European Unions (EU) regulations and ratified international treaties, domestic legislations of environmental protection in Polish legislation is wide matter [2].

Basic environmental protection principle is established in Polish Constitution [3]. It provides obligation to take care of the state of the environment and who does not fulfil it, is legally responsible. Polish environmental legal system contains around 50 general legal acts, most important, among others are Water Law [4], Waste Management Law [5] and Environmental Protection Law (EPL) [6]. Due to the fact that this article focuses on private law institutions of environmental protection I will discuss basic provisions which are established in civil legal system. Traditionally, civil law within the field of environmental protection is complementary to the administrative regulations, but in order to create appropriate environmental protection system, there is need to use every legal instrument, ranging from public to private law. However due to the character of civil law it creates very different approach to environmental protection. Protection granted from civil law gives entities the possibility to protect their infringed or threatened goods whenever they have premises and want to make a claim [7]. Because of the interdisciplinary character of environmental protection, Polish EPL uses solutions within different branches of legal system. One of them is expressed in EPL's Article 322 which specifies the rule that provisions of Polish Civil Code (CC) [8] shall apply to liability for damages caused on environment. There are multiple liabilities of environmental protection; criminal, administrative and civil. Civil liability in Polish legal system has three functions: prevention (prevention of environmental violations and deterioration of environment), restitution (restoration to proper state by repairing the damage) and compensation (if restitution to the proper condition is not possible). To introduce specific civil law regulations, first there needs to be stated that norms determining liability for environmental damages can be realised in two ways - first as a protection of rights *in rem* and second as a tort claim [2].

Generally, legal basis for protection of rights *in rem* are CC Article 144 and Article 222 §2. Article 144 states that real estate owner while exercising his right should refrain from actions which could disrupt the use of neighbouring real estate beyond normal scope, arising from the social and economic purpose of the real estate and local relations. Article 222§2 which constitutes that against person who violates property otherwise than by depriving of actual control of the thing, owner is entitled to claim restitution of the lawful status and for violations of the law to be ceased [9].

On the other hand, tort law concerning environmental protection can be realised on the basis of Article 435§1 stating that a subject who on his own

account runs an enterprise or an establishment set in motion by natural forces (steam, gas, electricity, liquid fuels, etc) is liable for any personal or property damage caused by the operation of the enterprise or establishment. Unless however, the damage is due to vis maioris or solely to a fault on the part of the aggrieved party or third party, owner is not responsible [9].

All in all, Polish system of environmental protection, generally compliant to the EU framework, is relatively wide and with majority of its legislation being based on public law serves its basic functions. Nonetheless it does not change the fact that Poland is; one of the bottom five countries for resource productivity in the EU, third highest greenhouse gases producer, the only EU country expected to not reduce PM2.5 concentration by 2030 and top three persistent organic pollutant in the EU[10]. The 2019 European Commission report [11] shows that Poland needs to strengthen environmental governance. It states that „citizens can more effectively protect the environment if they can rely on the three ‘pillars’ of the Aarhus Convention”, which one of them is access to justice in environmental matters. Traditional environmental protection institutions within Polish private law, provide only specific provisions on environmental civil liability. Deepening the implementation process of the ecological policies in private law could potentially strengthen overall environmental governance simply by citizen engagement in environmental protection process.

Chinese environmental law and private law (Green Principle)

Comparing PRC environmental legislation to environmental legislation of other countries, enacting process was begun relatively late - in the 1980's. Besides revision of the PRC's Environmental Protection Law, in 1982 Constitution of the PRC [12] was revised. As in the Polish Constitution, PRC Constitution contains basic environmental protection principles setting value dogmas for the whole legal system. Constitution stipulates two norms referring to environmental protection. Article 9 states that, all mineral resources, waters, forests, mountains, grasslands, unclaimed environment, mudflats and other natural resources are owned by the state, that is, by the whole people, except for the forests, mountains, grasslands, unclaimed land and mudflats that are owned by collectives as prescribed by law. Moreover, the second sentence of Article 9 covers that, the state shall ensure the rational use of natural resources and protect rare animals and plants. It is prohibited for any organisation or individual to seize or damage natural resources by any means. Second norm environmental protection norm within the PRC's Constitution is Article 26 which regulates that, the state shall protect and improve living environments and the ecological environment, and prevent and control pollution and other public hazards. Additionally, second sentence stipulates that, state shall organise and encourage afforestation and protect forests.

Even though Chinese, legal response for environmental protection problems has been accurate - enacting around 30 national level laws related to environment, more than 600 administrative rules and standards [13] - legal instruments are still mostly based on the enforcement of public legal system. Examples of PRC legislation in the field of environmental protection are; Law on the Prevention and Control of Water Pollution [14], Law on the Prevention and Control of Air Pollution [15], Law on the Prevention and Control of Environmental Pollution by Solid Wastes [16]. The cardinal law for environmental protection in China is Environmental Protection Law [17]. It has established the basic principle for coordinated development between economic construction, social progress and environmental protection, and defined the rights and duties of governments at all levels, all units and individuals as regards environmental protection [18]. Current challenge for PRC is proper implementation of environmental policies for local agencies, because they are said to not be matching the demands for the rapid development of economy and deterioration of environment, which can be seen e.g. the in low material productivity in the PRC (economic output generated - in terms of GDP - per unit of materials consumed) [13][19]. Moreover, whether the environmental policies can be effectively implemented depends on the level of environmental education and awareness of PRC citizens.

In order to grow ecological awareness and to change tendency of covering environmental protection with only public law, Chinese legislators decided to cover environmental problems with institutions based on private law. Currently, there is seen phenomenon in Chinese legal system called „greening of civil law” which is very unique from a comparative perspective. PRC scholar's intention is to introduce new norms in civil law in order to mandate environmental and natural resources protection [20]. However, to start with, it needs to be stated that unlike most of the civil law countries, which derive its legal systems' principles from continental Europe, PRC legal system, at present does not have Civil Code (however its compliance is in advanced state). There are five major legal acts, which build the framework for the basics of Chinese civil law system [21].

In 2017 General Provisions of Civil Law (GPCL) [22] have been adopted as single statute scheduled to be General Part of future Civil Code. It is significant step for Chinese civil law system, since rules of GPCL create overall framework and elemental values for private law system in PRC. Remarkable achievement of GPCL is Article 9 which introduced Green Principle (绿色原则) as one of the basic principles of the PRC civil law. Article 9 states that civil law subjects conducting any civil activities shall contribute to resources conservation and environmental protection. Green Principle implies that for contemporary society, sustainable management of materials requires to be improved by reducing waste and over-exploitation of resources. Moreover, Article 9 norm

states general principle of environmental protection. There are two aspects of described norm, first is to save resources and second to protect ecological environment. Currently, it only has gap-filling role, Green Principle's future is up to the further legislative implementation with specific provisions in parallel with judicial practice [20]. Green evolution of the private legislation is already seen in the draft of PRC Civil Code [23]. As for example, in the Part "Property rights", Chapter "Land use rights for construction", Article 346 establishes that the right to use land for construction must be consistent with the conservation of resources. Additionally, Part "Contracts", Chapter "Performance of contracts" Article 509 states in the performance of the contract, the parties should avoid wasting resources, polluting the environment and ecological damage. Moreover, Civil Code's draft in the Part "Tort liability" established separate Chapter on "Liability for environmental pollution and ecological damage" providing Articles 1229-1235 [23].

Overall Chinese scholars claim that greening of private law should take step-by-step method [24]. Establishing Green Principle is a first measure guiding the compilation process of the specific provisions of the Civil Code, but without its further implementation it might not have major impact on the private law. Right now, it cannot be directly used as a legal norm as the basis for judging cases and is only seen as a private law environmental policy road map.

Conclusion

Poland and PRC both have established wide environmental protection regimes which most of the instruments are based in the field of public law. Countries still struggle with problems such as; air pollution, waste management or resources exploitation, even though ecological legal policies are global priorities and environmental protection legal systems are in advanced level. Ecological problems and progress for sustainable development is still not completely answered with today's legal policies. Countries are in search for new law instruments which aim is to raise quality of environmental protection. We can observe this trend in private law, nonetheless these are still sporadic provisions. European, Polish legal culture perceives civil law mainly as a product of private autonomy, which is far away from the political process and collective purpose, but it can be changed. Maybe today we should begin expansion of ecological values to private law. Ultimately, it is private law that signals to people what is right and wrong in the day to day basis. Interpretation of its principles determines general societal behaviour [25]. PRC provisions such as Green Principle and ways of its implementation in the property rights, contract and tort law can be a reference point for Polish and European more ecological approach to private law. As American lawyer Oliver Wendell Holmes said „the life of the law has not been logic, it has been experience”, establishing ecologically oriented legal principles within the civil law with simultaneous broadening and strengthening current civil liability protection of environment

can begin the formation process for more green civil law in theory and practice for Polish and European legislation.

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