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ENVIRONMENTAL CONFLICT AS A SOCIO-LEGAL PHENOMENON

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Abstract. The article studies environmental conflict and identifies it as a specific socio-legal phenomenon – legal environmental conflict – on the basis of the suggested unified approach to understanding its nature. It is confirmed that legal conflict has to be studied in terms of the inseparable unity of its social basis and legal nature. It is concluded that the generic features of social conflict in the process of juridization turn into features of legal nature and acquire legal character in legal conflict. The distinction is made between the notions of “legal conflict” and “legal collision”.

Keywords: conflict, contradiction, social conflict, juridization, legal conflict, legal collision, environmental conflict, legal environmental conflict.

1. INTRODUCTION

The functioning of modern society is determined by many factors, social interest being of particular importance among them. A variety of social interests is the underlying cause of the conflict-based nature of interpersonal relationships in socio-political, economic, and other spheres. The relationship between society and nature has always been a very sensitive issue: by fostering the development of society, we damage the environment. Therefore, any form of natural resource management is inherently controversial: “...economic growth inevitably comes with an increase in the amount of natural resources taken from the environment which adversely affects its condition” [20, p. 308]. In this respect, the problem of the optimum relationship between economic and ecological forms of natural resource management, the satisfaction of social interests, and environmental protection has considerable theoretical and practical importance.

The strategy of global sustainable development, the underlying principle of which is “the principle of responsibility to future generations”: sustainable development is defined as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs” and ensures “high environmental quality and healthy economy for all nations in the world” [27, p. 58], comprises three aspects – economic, social, and environmental – that collectively are aimed at reconciling contradictions and regulating the current conflicts. It is evident that the international community brings to the fore the problems of reconciling environmental and economic needs of society. The practical realization of this principle causes the necessity to ensure the optimum

reconciliation and functioning of disparate interests (primarily, economic and environmental) that lie at the basis of the emergence, development, and existence of environmental conflicts.

The constantly increasing sensitivity of legal environmental matters, the necessity to reform environmental legislation and bring it into compliance with international environmental standards determines the topicality of a study of legal environmental conflicts in Ukraine. A comprehensive analysis of the nature of environmental conflict as a category of law will give the opportunity in the future to define the most efficient ways of its regulation and minimization of its repercussions and is currently of practical and theoretical importance for the sphere of environmental law.

In the preceding publications [34, p. 78–83] we already outlined the problem of studying environmental conflict consisting in the necessity to draw a distinction between its legal, social, economic, and environmental aspects. This article is aimed at conducting a detailed analysis of the specific features of environmental conflict by defining its legal and social nature and then studying it as a type of socio-legal conflict.

2. ANALYSIS AND DISCUSSION

Currently, the issue of environmental conflicts requires attention to finding the ways of their regulation and a major focus of all the branches of science on the environmental issue. As N. R. Kobetska rightly said, in order to legislate on the optimum reconciliation of economic, consumer interests in meeting resource needs of economy and environmental interests aimed at ensuring the vital need to live in a safe, ecologically balanced environment, it is necessary to use interdisciplinary knowledge in regulating legal environmental matters [18, p. 40].

Environmental conflicts are studied by many social sciences, every one of which defines and characterizes them from its own perspective. Among all social conflicts at global as well as at regional and local levels, environmental conflicts are perhaps the least studied ones. Therefore, the issue of the conflict-based relationship between society and nature is studied by many scholars. In Ukraine such legal scholars as S. V. Bobrovnyk, O. H. Danylian, V. M. Krivtsova, Ya. I. Lenher, V. M. Kudriavtsev, M. M. Oleksiuk, S. F. Orlov, and others, should be mentioned.

Due to the multi-functionality of the category of conflict as the underlying notion for environmental conflict, there is difficulty in defining it and ambiguity in understanding its nature. Thus, the most common approach is to define the nature of conflict in the context of contradiction as a more general notion. In terms of philosophy, contradiction is understood as the interaction of social processes, conflict being one of the forms of its development. According to the well-known philosopher O. Spirkin, “the process of the emergence of differences and opposites has several stages. In the initial stage, contradiction, existing only as a possibility, is identity with an inconsequential difference. The next stage presents an important difference in identity: phenomena coming from one source have different essential characteristics and tendencies. These essential differences turn into opposites (the biggest difference, polarity, antagonism) that, by mutually denying one another, turn into contradictions” [30, p. 523–524]. In modern philosophy and sociology, the stages of the functioning of social contradictions are studied mainly by means of a systemic analysis of conflicts and the stages of their development. Thus, according to the representatives of the Chicago School of Sociology R. Parks and his followers, at the basis of all social processes lies interaction which is a functioning contradiction, and competition, conflict, adaptation, and assimilation are the forms of this interaction [6, p. 138]. The well-known sociologists E. Durkheim and K. Boulding in their works point out the existence and correlation between such states of social contradictions as harmony and conflict. For instance, K. Boulding wrote that “conflict is discord, and its opposite is harmony” [7, p. 308].

Therefore, contradiction is a philosophical category is considered to be a certain process which goes through several stages in its development – from conflict to harmony. The Ukrainian scholar O. H. Danylian suggests analyzing contradictions of social systems in such major forms as: 1) harmony; 2) disharmony; 3) conflict [9, p. 139]. In the meantime, contradictions are regarded not as negative, but positive phenomena, associated with the development of society.

Conflict resolution, a special branch of science which studies society in the so-called unstable state – “society in conflict” [17, p. 5], practically leaves out the analysis of the notion of “contradiction” considering it to be the main reason for conflict development: conflict is a clash between interests and needs resulting in a fight between parties [15, p. 26–27] which basically are specific social interactions, mainly characterized by contrast rather than cooperation and represented by an unspecified number of people fighting for their individual interests [12, p. 121].

In the research papers of S. V. Bobrovnyk, who is considered one of the leading experts in Ukrainian legal conflict resolution, conflict is defined on the basis of the anthropological and communicative approach to conflict matters as “the state of the bilateral connection between persons, developed from a certain legal contradiction which is characterized by the prevention of or an obstacle to the realization of these persons’ interests and is a reason for the development or the crisis of social relations” [3, p. 6]. Russian scholars emphasize the fact that conflict and contradiction can be regarded neither as synonyms, nor as the opposite notions. Contradictions are necessary but insufficient prerequisites for conflict. Contradictions turn into conflict only when the forces that are their carriers start to interact [11, p. 12]. As the Ukrainian scholar Ya. I. Lenher points out, contradictions in society do not always lead to the emergence of conflict: the opposition of interests and the corresponding behavioural motivation are needed for such a transformation. In this regard, the author states that conflict is, first and foremost, a conscious contradiction presupposing the opposition of parties ready to take certain measures and actions [21, p. 59].

Narrowing the focus of research into environmental conflict as a specific type of social conflict, scholars also explain its meaning in terms of contradictions in social interaction: legal conflict is defined as confrontation between two or more persons, caused by the opposition or incompatibility of their interests, needs or values [32]; as confrontation between parties with different interests that has legal nature or pertains to law at least to some extent, but is certain (or has the possibility) to end in a legal way [24, p. 432–433]; legal conflict is the most civilized form of social confrontation within a certain legal procedure [19, p. 8]. Accepting such definitions of legal conflict, Yu. M. Zhornokuy emphasizes the active roles of interacting persons: contradictions and opposites turn into conflict only when the persons who have them begin to act: infringe or threaten to infringe on the rights and/or interests of the other parties having a legal connection with them. In this respect, their actions can often be explained by insufficiently thought-out legal mechanisms enshrined in statutes of law, gaps in law, or are misapplications of law [14, p. 56].

In the meantime, the analysis of legal conflict in terms of social conflict is subject to criticism, since a study of legal conflict and its definition are based on the existing theories of social conflict whereas its specific legal characteristics are given less attention. As stated in the studies on this matter, there is a lot of similarity and homogeneity in the nature and meaning of social conflict and legal conflict, although the specific sphere of the existence and manifestation of legal conflict – the legal sphere – should not be disregarded [1, p. 143]. There is no doubt that studying and analyzing the notion of legal conflict by analogy with social conflict has its advantages since the social aspect characteristic of the inner stage of the development of legal dispute (contradiction) allows to study legal conflict from a psychological and social perspectives; although, as stated by V. M. Kudriavtsev, “every legal conflict is social, but not all social conflicts are legal” [33, p. 5]. Therefore, it is suggested to study the nature of legal conflict exclusively within the theory of law instead of taking the established approach to defining it by analogy with social conflict.

Nevertheless, the social aspect of legal conflict should not be completely rejected since, as S. V. Bobrovnyk rightly said, the definition of the basic category, able to form the basis for the definition of legal conflict, has to encompass its fundamental characteristics: i.e. the specific state of social relations, characterized by the existence of social contradictions between the parties involved in a conflict [4, p. 180]; i.e. the focus is on the social character of legal conflict. In this regard, the author outlines, along with the legal characteristics, the features determining the social nature of legal conflict:

- (1) conflict violates or prevents the realization of the interests of the persons involved;

- (2) conflict is always bilateral and, as a rule, asymmetrical, involving the dominant and the submissive parties;
- (3) social contradictions (violation of prohibitions, breach of duties, abuse of rights, absence of mutual respect, unfair competition) are a prerequisite for the development of conflict;
- (4) depending on its origin (the evolutionary and radical theories of conflict) and the specific features of its nature and functions, conflict can foster the stabilization of society, the development of new social relations, or lead to destabilization and destruction, etc.;
- (5) conflict is a process of subjective and objective character; its subjective character is determined by the behaviour of the persons involved, and its objective character – by social contradictions [4, p. 180–181].

Besides, studying conflict as a category of law without analyzing its social aspect, in our opinion, entails the possibility for it to be substituted for other notions, similar in meaning and functions. In this regard, the scholarly dispute over the notions “legal collision” and “legal conflict” as types of contradictions, characterized by certain specific patterns of emergence and development, can be provided as an example. There are different points of view on this issue in academic literature – from the equation of these notions to their opposition. For instance, according to N. P. Svyrydiuk, legal conflict is understood as legal collision [28, p. 88]. Analyzing the notions “conflict” and “collision” in the context of the theories of legal consciousness, Ya. I. Lenher defines their common features (they are of social and legal nature; develop as a type of contradiction in society; are manifested in the legal sphere; affect individual interests) and concludes that “collision is a type of conflict” [22, p. 52].

Other scholars of legal conflict resolution consider legal collisions to be the reason for developing legal conflicts highlighting their considerable potential for carrying out legal reforms and “implementing the regulatory influence of law, ensuring the consistency of legislation, and increasing its efficiency” [5, p. 33–34]. In view of this, legal collision is defined as “a type of legal contradiction within the state legal system; more specifically – as a contradiction between the current statutes of law, only one of which has to be chosen for further use” [5, p. 33]. In support of this view, Ukrainian scholars analyze the nature and meaning of legal collision as “a contradiction between the current legal order and intentions and actions aimed at changing it” in the course of the development and functioning of legal conflicts in modern society, emphasizing its action-oriented aspect and the specific features of the functioning of its subjective and objective aspects. The objective aspect of legal conflict is determined by a number of factors related to the peculiarities of social and political as well as economic and legal processes in society. Its subjective aspect is represented by parties whose interests or claims do not concur and enter into conflict [25, p. 445–446].

Summarizing this scholarly dispute, it has to be said that despite the fact that both conflict and collision are types of contradiction, they should not be equated because they operate on different levels: legal collision functions in the system of positive law whereas legal conflict – always in the legal sphere in the course of social interaction between persons. The problem is that the social aspect of legal conflict is not taken into consideration when these notions are equated – a contradiction develops between persons, therefore a collision between statutes of law may only be a prerequisite for the conflict of interests between certain persons. Thus, it is the social aspect of legal conflict that helps to distinguish it from the related notion of “legal collision”.

Denying the connection between legal conflict and social conflict or separating one from the other is a priori impossible, since legal conflict has social character whereas social relations, after being brought under regulation, acquire the form of legal conflict. In legal science the term “juridization” is used to denote this phenomenon; it is the process of attributing legal character to social phenomena [6]. According to Belorussian scholars, the procedure of juridization can be reduced to the process of law-making when certain social relations come under legal regulation, are formalized, and their subject, object, subjective rights, and legal obligations are clearly identified. As a result of juridization, the actual meaning of these social relations remains practically unchanged, although their form is considerably altered. The process of law enforcement activity also involves juridization. In this case, it is possible to talk about the juridization of social conflicts that go beyond interpersonal communication

and acquire specific features, elements, and ways of solution [2, p. 286]. This view is supported by the Ukrainian scholar V. M. Krivtsova, "Non-legal conflict can become legal only in the process of juridization – specific institutionalization of conflict-based relations" [19, p. 7].

Thus, it can be concluded that legal conflict has to be studied in terms of the inseparable unity of its social basis and legal nature. The generic features of social conflict turn into features of legal nature and acquire legal character in legal conflict.

This article is further aimed at studying environmental conflict and identifying it as a specific socio-legal phenomenon – legal environmental conflict.

There are a few publications on environmental conflict, and they present different definitions of this notion. For instance, V. V. Sabadash defines it as "contradiction at state or interstate levels, caused by the incompatible or opposite interests of one or more parties and their struggle for the right of ownership, use (distribution) of natural resources, or control over them that can be accompanied by violent methods of achieving goals" [26, p. 19]. A. L. Demchuk states that environmental conflicts are conflicts caused by the current (or planned) policy of natural resource management that results (or can result) in disturbing the natural cycle of ecosystem (environmental) restoration [10, p. 65]. Environmental conflict develops when such intervention, according to one or several groups of people, is considered disruption to the complex interaction between physical, biological, and social processes in the environment and in so doing causes damage [31].

N. M. Mylina emphasizes the social aspect of environmental conflict, "it is a type of social conflict, development of which is related to natural resources management..." resulting in the person's feeling the deterioration (or the imminent deterioration) of the environment and attempting to prevent it by means of social confrontation [23, p. 258–259].

The modern environmental conflict theories of the western school of thought interpret the meaning of environmental conflicts in broader terms analyzing them as political, social, economic, ethnic, religious, territorial or other conflicts. These conflicts are caused by environmental degradation and are characterized by the following features: 1) excessive use of renewable natural resources; 2) excessive pressure on the absorbing capacity of ecosystem (environmental pollution); 3) environmental depletion. Thomas Homer-Dixon uses the following definition: environmental conflicts are severe conflicts caused by an environmental deficit developed in the process of the interaction of numerous contextual factors. To denote environmental conflict, the author uses the notion of an environmental deficit that exists in three forms: a deficit caused by an increase in demand, for instance, by population growth; a deficit caused by a decrease in the possibility to use certain resources due to degradation and depletion; a deficit caused by uneven distribution or access to resources [29].

As can be seen from the above, scholars take different approaches to analyzing the meaning of this category by placing emphasis either on the peculiarities of the origin of environmental conflict (the environment) and human attitude to nature or stressing its social character by identifying social relations with regard to nature. Studying the problems of environmental conflict, the paper explains the necessity to analyze it on the basis of deductive analysis by means of studying the general notion of conflict, specifying the definition of socio-legal conflict, and elaborating it in the sphere of legal regulation in the form of legal environmental conflict. If one discusses the conflict of human-nature interaction, the connection with the general notion of conflict is lost. Therefore, in our opinion, environmental conflict has to be studied exclusively as social contradiction developing under specific circumstances – in the natural environment.

In order to further identify the category of environmental conflict, it is necessary to focus on the specific features of this type of contradiction allowing to make a distinction between environmental conflict and other related categories. In this regard, analyzing environmental conflict from a sociological perspective, O. V. Kelasiev outlines the following features:

- 1) the subject matter of socio-environmental conflict differentiates it from other social conflicts since it covers a certain problem in human-nature interaction presupposing actions that can cause changes in the socio-natural system;

- 2) the scope of socio-environmental conflict may include: a) objects of nature; b) anthropogenic systems and objects affecting the environment; 3) means of control over natural and anthropogenic objects, etc.;
- 3) these conflicts have existential character concerning the fundamental problems of life and human existence;
- 4) the consequences of environmental conflicts are often irreversible in comparison with other types of conflicts;
- 5) the geographical boundaries and a number of persons involved in a conflict are often uncertain [16, p. 27–28].

V. M. Vasylenko stresses the importance of a socio-psychological environment and atmosphere in society for environmental conflicts, and that their regulation is possible on the basis and by means of the environmental self-identification of social institutions, economic and other structures of society, and the socialization of environmental sciences [8, p. 75]. N. M. Mylina defines the peculiarities of the structure of environmental conflict which, in her opinion, is a complex system of interrelated elements, both social and environmental; therefore, environmental conflicts are defined as complex ones [23, p. 260].

Studying environmental conflict, the Russian scholar in the sphere of environmental law O. L. Dubovik identifies its specific features, in the meantime emphasizing its social aspect: (a) social immanence (the state of being inherently present in society; environmental conflicts are caused by the interaction between society and nature and reflect human life in the natural environment; the interaction between society and nature is essentially restricted due to the use of objectively limited, hardly renewable, or non-renewable resources); (b) the social nature and significance of environmental conflicts (ecological loss of one party is loss of all the other parties; i.e. it is impossible to damage the environment without affecting the interests of the third party); (c) epistemic difficulties in their solution (human knowledge in the environmental sphere is insufficient, therefore it is necessary to deal sensibly and carefully with human mental capacities, science, and the state regulation (through the use of legal means) of environmental conflicts) [13, p. 7–8].

A sociological study of environmental conflict creates prerequisites for legal analysis of this category. Furthermore, according to O. L. Dubovik, such research presupposes analysis of factors and types of conflicts based on empirical sociological and ecological information that “most clearly defines the need of legal environmental regulation, its aims, direction, employed legal techniques, etc.” [12, p. 121]. In the meantime, it is necessary to take into account the features characterizing legal environmental conflict in terms of social relations. Thus, the subject matter, scope, structure, consequences, and forms of regulations of legal environmental conflict as the basic characteristic features of socio-environmental conflict will become the focus of our next research paper and will be studied and analyzed from a legal perspective by attributing to them legal character and meaning.

3. CONCLUSIONS

The absence of a unified approach to understanding the nature of environmental conflict, the vague subject matter of research, a wide scope of the suggested theories present difficulty in unifying the characteristic features of environmental conflicts and studying them.

A study of the issue of environmental conflict has to be carried out on the basis of systemic analysis with the use of a deductive analytical method by outlining the general characteristics of social conflict, their specification in socio-legal conflict, and elaboration in the sphere of legal regulation.

Thus, environmental conflicts are characterized by the essential features and developmental mechanisms of social conflict; on the other hand, they have specific characteristics – they reflect the nature of human life in the natural environment and characterize a certain state of social relations in the system “society – nature”, i.e. have environmental character. In the meantime, when these relations are brought under legal regulation, they acquire the form of legal conflict. Therefore, in our opinion, it is

reasonable to use the term “legal environmental conflict” which, in this case, will denote with absolute precision the legal meaning of the category of environmental conflict.

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У статті на підставі запропонованого уніфікованого підходу до розуміння сутнісних характеристик конфлікту проведено дослідження екологічного конфлікту та його ідентифікацію як специфічного соціально-правового явища – еколого-правовий конфлікт. Доведено, що екологічний конфлікт необхідно досліджувати на основі нерозривної єдності її соціальної основи із правовим змістом. Зроблено висновок, що родові ознаки соціального конфлікту у процесі юридизації трансформуються у ознаки правового характеру та набувають юридичного значення в екологічному конфлікті. Проведено розмежування понять “юридичний конфлікт” та “правова колізія”.

Ключові слова: конфлікт, протиріччя, соціальний конфлікт, юридизація, юридичний конфлікт, правова колізія, екологічний конфлікт, еколого-правовий конфлікт.