

A COMPARATIVE LEGAL ANALYSIS: SELECTED PECULIARITIES OF ENVIRONMENTAL IMPACT ASSESSMENT IN THE RUSSIAN FEDERATION AND SWITZERLAND

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Abstract. *The article describes the characteristics of environmental impact assessments and clarifies the function and significance of the fundamental legislation governing such assessments in the Swiss Confederation and the Russian Federation. By examining the environmental impact assessments in both countries, the study emphasizes the value and usefulness of comparative legal methods. The topic of comparativistics' impact on the evolution of contemporary environmental law, a sector of Russian law that is currently experiencing rapid development as well as the laws of Switzerland and the Russian Federation that govern several aspects of environmental impact assessment are also examined. In the process of the state's ecological infiltration, the environmental impact assessment is crucial. The objectives, participants, legal ramifications, and significance of environmental impact assessment are emphasized. The negative effects of legal regulation in the Russian Federation are listed.*

Keywords: *Environmental law of the Russian Federation, Swiss environmental law, comparative law, comparative legal analysis, environmental impact assessment, Swiss Federal Act on Environmental Protection, Russian Federal Act on Environmental Protection.*

INTRODUCTION

The difficulty of preserving the environment is relevant to all countries of the world. It is estimated that about 50% of all pollution is the result of industrial activity. One of the largest environmental problems is air pollution caused by smoke and emissions from fuel combustion. For example, the U.S. Environmental Protection Agency (EPA) of U.S. tracks more than 80 different toxins that can be found from industrial pollution, from asbestos and dioxin to lead and chromium. In many countries of the world there are sanctions for environmental offenses and crimes. However, the sanctions are not always effective and proportional to the offense. In addition, most legal means are aimed at detecting already committed offenses and the elimination of negative consequences rather than prevention of offenses and determination of environmental risk of the subject's impending actions. The harm influenced nature is often difficult to measure in money, and it can take decades to restore the original condition. Environmental risk is now recognized as one of the tools for assessing the condition of the environment, including within the framework of environmental regulation. Therefore, a unique legal tool has been created to prevent or reduce environmental damage - environmental impact assessment. In this paper, I will try to acquaint with some features of environmental assessment in the Russian federation and Switzerland.

METHODS

In this research, we are based on a method of comparative analysis. The articles from reputable publications around the world and key provisions from the Constitutions of both

countries were chosen as the basis for this research. The two impact factors of the journal, IF, which apply to international journals, are currently one of the two significant indicators that scientists find interesting and utilize as the determining elements for evaluating and ranking scientific publications globally. They provide information about each scientific journal's reputation and growth over a period of time that fluctuates from year to year. Therefore, depending on the IF of the journals, the prominent journals were chosen. Journals were chosen for analysis using the Journal Rankings at <https://www.scimagojr.com>. Only Open Access Journals were chosen to simplify the search for results. We decided to include all of the journals in order of journal impact factor (IF), high to low.

Data analysis: By submitting, downloading, and analyzing the structure of journal articles from the journal's most recent three issues for structural analysis, we did data analysis of the article structure on the journal's website to corroborate the rate of use of IMRaD structure for publications in journals. The article's author is a member of the research team that took part in the document analysis.

The document analysis steps are as follows:

Step 1. The analytical framework of the articles is determined by the study team's analysis of the scientific literature using the IMRaD structure research.

Step 2. Consider conducting a sample analysis. The team as a whole selects a number of articles, makes type suggestions, and then makes comments.

Step 3. Every analysis group picks a different method to count, examine journal articles, compile statistics, and conduct analysis.

Step 4. The entire group meets, reviews each journal, and reassesses each individual's performance.

Step 5. Statistics, synthesis, analysis, and evaluation.

RESULTS AND DISCUSSION

Leading scholar of comparative law Hein Kötz in the preface to the book "Introduction to Comparative Law in Private Law" notes the practical relevance of comparative law methodology. The application of this method in particular makes it possible to identify how a certain problem is solved in foreign legal systems and to determine to what extent its solution may be useful and applicable in the interests of the national legal system. A.H. Saidov, a domestic comparative law scholar, points out that the use of, on the one hand, it helps to take everything useful that has proved itself abroad on the one hand, it helps to take all the usefulness of foreign experience in solving similar problems and avoids the necessity to invent something that already exists. On the other hand, it makes it possible to take into account the negative aspects of foreign legal experience. Indeed, nowadays there is a trend of globalization, expressed in the creation of interstate and intergovernmental unions, the conclusion of a large number of international acts of cooperation of countries and other legal facts that contribute to the convergence, especially the legal families of today, as well as the joint search for ways to address the most important and controversial legal issues. All of the above provisions noting the relevance of conducting comparative legal studies are undoubtedly applicable to the study of domestic environmental law. In my opinion, these studies are the most interesting and promising due to the fact that the subject of environmental law is characterized by active development, in particular, the number of environmental legal relations is increasing. In addition, a comparative analysis provides an opportunity for a comprehensive study of various aspects of domestic environmental law and the

study of positive and negative foreign experience in the field of environmental legal regulation which will allow to implement the best legislative or law-enforcement examples.

The environmental legislation of Switzerland, regulating the legal aspects of environmental impact assessment, we have chosen for several reasons.

Firstly, the legal systems of the states in question (Russia and Switzerland) traditionally belong to the Romano-Germanic legal family with some historical, political, cultural and other features. This circumstance will make it possible to avoid significant distortions in the study of legal sources and understanding of legal technique in Switzerland as well as to ensure. A comprehensive comparative analysis, which may result in recommendations for improvement and actualization of the law in Switzerland, will be presented to the audience recommendations for improving and updating the existing Russian legislation.

Secondly, Switzerland is one of the countries where the implementation of regulatory environmental requirements is at a high level. This position is confirmed by the fact that Switzerland tops the list of countries where the state of the environment is close to ideal. For example, Switzerland ranks second in the rating of the most prosperous countries of the world, 10th in the rating of the most environmentally friendly countries and so on. In turn, the situation of the Russian Federation in these areas has a different characteristic. Let's refer to the official data: the Russian Federation ranks 58th among 142 countries in the rating of prosperity countries and 32nd place in the ranking of most environmentally friendly countries.

Thirdly, environmental law in Russia, like environmental legislation, emerged only in the second half of the last century and has gone through long stages of development, so at present this branch of law is subject to dynamic changes and reforms. Environmental legislation of Switzerland was emerged already in 1875-1877 and, in contrast to the Russian environmental law, is now a fully formed branch of law regulation, which contains a large number of imperative regulations, implementation of which in practice has a real result.

We should also pay attention to the fact that domestic environmental legislation still contains legal gaps and conflicts, the elimination of which is possible, in particular, when studying the environmental legislation and policies of foreign countries, their both positive and negative legal experience.

The circumstances above confirm the relevance and practical significance of the study of environmental law in Switzerland, in particular the EIA. To conduct a complete and qualitative study of the legal regulation of environmental impact assessment in the Russian Federation and Switzerland, we consider it necessary to study the basic theoretical and legislative provisions: the legal essence of EIA, objectives, objects, subjects, The legal essence of EIA, goals, objects, subjects, stages, public participation, the legal result of the EIA.

Legal peculiarities of the environmental impact assessment procedure in the Russian Federation

So, let's review the basic legal requirements established by Federal Law № 7 and other environmental legislation of the Russian Federation, as well as some theoretical provisions. According to article 1 of Federal Law № 7, environmental impact assessment is a type of activity to identify, analyze and take into account direct, indirect and other effects of the planned economic and other activities on the environment, in order to make a decision on the possibility or impossibility of its implementation. Concretization of the above-mentioned provision of the Federal Law № 7 is established by article 32, according to which EIA is carried out in relation to

the planned economic and other activities which may have direct or indirect impact on the environment, regardless of the organizational and legal forms of ownership of legal entities and individual entrepreneurs. Thus, the presented norms of Federal Law №7 indicate that, in general, EIA is a process during which an environmentally oriented decision is made on the possibility or impossibility of carrying out planned economic activities carried out by various entities. However, regulation of the EIA procedure at the level of the federal law is limited by the above mentioned provisions and by the reference (see Clause 3) to the act of the executive authority, namely to the Order of the RF State Committee for Environmental Protection dated 16.05.2000 № 37214 "Adoption of the Regulations on Assessment of Impact of the Planned Economic and Other Activities on the Environment in the Russian Federation". The specified legal act additionally defines EIA as a process of contributing to making environmentally sound management decision on implementation of planned economical and other activities by means of identification of possible adverse effects, environmental impact assessment, consideration of public opinion, development of measures on impact mitigation and prevention.

The presented legislative positions on the content of the EIA concept, whether they are important stages, subjects, results, etc. Therefore, we consider it necessary to take all of the above norms-definitions for a more complete and in-depth study and understanding of the legal essence of EIA in Russia into account. The Regulation defines the main purpose of the EIA which is to prevent or mitigate the impact of this activity on the environment and its associated social, economic and other consequences. Thus, based on this goal, the EIA procedure can be considered as one of the practical measures to implement the basic environmental principle - the presumption of potential environmental hazard of any planned economic or other activities.

The next difficulty arising both in the sphere of legal regulation and in the field of theoretical study of environmental impact assessment is the definition of participants of the considered procedure. This fact is connected with, first of all, the fact that the Regulations do not contain requirements for the subjects participating in the EIA procedure. Based on the legislative norms, the following subjects can be identified: the customer, the performer of the EIA work, public authorities, whose competence includes various aspects of the EIA, and the public. In the text of the Regulation, the customer and the performer are indicated as entities exercising similar powers. However, in practice, the EIA subjects are: the initiator of activities, public authorities, the public and the executor. In this case, it is necessary to pay attention to the executor which can be represented by the customer and the developer of decisions on the project. Thus, according to the Regulations, the customer is a legal entity or an individual responsible for the preparation of documentation on the planned activity in accordance with the regulatory requirements for this type of activity and submits the documentation on the planned activity for environmental impact assessment. In this case, the customer's actions are only related to the order issued by the initiator. In general, the customer exercises such powers as the preparation and transfer of necessary documentation, organization of various activities within the framework of the EIA (public hearings, consideration of public opinion, etc.). According to the RF Government Regulation № 87 dd. 16.02.2008, "On the Composition of the Sections of the Project Documentation and the Requirements to their Content 17", one of the requirements to the composition of the project documentation, one of the requirements of the project documentation is the availability of the list of measures to prevent and/or mitigate the possible negative environmental impact of the planned economic activity and to ensure the rational use of the natural resources during the construction

and operation of the facility for the period of construction and operation of the capital construction facility. Only an organization licensed by the Federal Service for State Registration, Cadastre and Cartography can develop such project documentation in accordance with the Resolution of the RF Government of 07.12.2011 № 101618. Therefore, determining the subject composition of the measure under study is one of the most complicated aspects of conducting an environmental impact assessment.

Further, the following activities are performed, such as environmental impact assessment studies and preparation of a draft environmental impact assessment materials which include determination of characteristics of the planned economic or other activities and possible alternatives; analysis of the territory affected by the planned economic or other activities; identification of possible impacts of the planned economic or other activities on the environment with regard to the activities; determination of measures to reduce, mitigate or prevent adverse environmental impacts; assessment of their efficiency and feasibility.

The project is based on the following principles: identification of measures reducing, mitigating or preventing negative impacts, assessment of their effectiveness and feasibility of implementation, etc. *The final stage* of the EIA is the procedure for preparing the final version of the materials, which includes information on the consideration of comments and suggestions received, as well as minutes of public hearings.

The results of the environmental impact assessment are various environmentally significant information about the activities under study, such as the nature and scale of the environmental impact of the planned activity, alternatives for its implementation, the possibility of minimizing the impact. Moreover, the EIA also contributes to determination of alternatives for implementation of the planned activity or refusal from it taking into account the results of the environmental impact assessment. In addition, EIA contributes to decision making with regard to alternatives for implementation of a planned activity or refusal to implement it. Moreover, the results of the environmental impact assessment are documented in the impact assessment materials, which are the part of the documentation submitted for environmental review as well as used in the process of making other management decisions related to these activities.

In conclusion, I would like to say that there are legal gaps in the Russian environmental legislation regulating the specifics of the EIA procedure: the exclusion of a large number of objects that can have a negative impact on the environment, the lack of a clear enshrinement of legal requirements for the subjects or participants in this procedure, the lack of legally established legal responsibility for providing information for the EIA procedure, the establishment of legal ways to exclude the position of the public in the EIA process. The above circumstances may cause the violation of the basic principles of environmental law, in particular, the presumption of environmental danger, and allow for the possibility of harm to human health and the environment.

Legal peculiarities of the environmental impact assessment procedure in Switzerland

The main purpose of the EIA, according to Swiss law, is the compliance of the proposed activity with the environmental regulations established by state authorities, as well as cantonal regulations. In Switzerland, the scope of legal regulation of environmental relations in the field of EIA procedures is being expanded, resulting in a two-tiered legislation that establishes requirements for any activity carried out both in the territory of the whole of Switzerland, and within the boundaries of a particular administrative-territorial unit - a canton.

The next legal act regulating the issue in question is the Resolution «The Federal Ordinance on Environmental Impact Assessment» the Environmental Protection Act of October 19, 1988, which substantially supplements and specifies the regulatory provisions of Chapter 3 of the Basic Environmental Law. Furthermore, the requirements for the subjects of the EIA in Swiss law are not established, but we can distinguish such subjects as the applicant, the competent state body and interested party.

In general, the environmental impact assessment procedure in Switzerland consists of several stages. *At the first stage*, it is necessary to determine the following provisions: *firstly*, whether the proposed activity falls under the scope of environmental legislation establishing the requirements for the EIA procedure, *secondly*, whether the proposed project may adversely affect the environment, and, *finally*, within the competence of which authority review of this project. As part of the **second stage**, it is possible to apply to specialized state authorities, as well as cantonal authorities for comments and clarifications on the preparation of the report, and the applicant has the right to apply to other competent authorities or organizations. The *third stage* is the preparation and submission of the report. According to the Federal Law "On Environmental Protection", the EIA procedure begins with the preparation and submission to the competent authority of the applicant's report, which contains the necessary information: the current state of the environment, the design of the facility, including a set of necessary measures to reduce environmental impact or alternative methods of the implementation of such an activity. At this stage, all the information obtained at the previous stage is taken into account. The applicant conducts a preliminary research, the results of which, together with the report, are submitted to the competent authority, the applicant is also responsible for the accuracy of the information provided. Any interested subject can get acquainted with the report, except for cases when the content of the report contains a secret protected by law. *The final stage* is the adoption by the competent authority of a decision to approve the report and permit the implementation of the planned activity or prohibit its implementation. At the same time, officials of the bodies have the right to request additional information or documents related to the object of the EIA. As a result of passing the above procedures, the competent authority determines the compliance of the submitted project with the requirements of environmental legislation. In case of non-compliance, a decision may be made to ban the activity.

In addition to the above legislative rules, the regulation of the EIA procedure in Switzerland is carried out by other regulations, in particular, the Federal Decree "Regulation on the study of environmental impacts" of October 29, 2014 (Règlement d'application de l'ordonnance fédérale relative à l'étude de l'impact sur l'environnement); Ordinance sur les études d'impact sur l'environnement et les procédures décisives (OEIEP) of March 15, 2010 on environmental impact studies and special procedures; Decree on environmental impact assessment on the environment 05.10. 2011 (Introductory Ordinance on environmental impact assessment (Environmental Assessment Ordinance), etc.

Hence, a comparative study of the environmental legislation of the Russian Federation and Switzerland in the field of the environmental impact assessment procedure makes it possible to identify both general and specific features of legal regulation and the mechanism for implementing regulations.

Firstly, in Switzerland and the Russian Federation there is a certain list of legislative acts, different in form and content, regulating the main provisions of the EIA. The normative legal acts

considered in the article contain legal requirements regarding the procedure for conducting an environmental impact assessment. At the same time, the basic legislation of Switzerland does not contain the legal definition of "environmental impact assessment", however, this does not detract from the role of this procedure in the field of regulation of environmental relations due to the fact that in the Federal Law (Swiss Federal Act on the Protection of the Environment) of

7.10.1983, the legal features of the concept under consideration are quite clearly defined.

Secondly, both in the Russian Federation and in Switzerland, the EIA procedure is a documentary one, pursuing goals that are similar in content. However, in Switzerland, activities must be carried out in accordance with environmental legislation at various levels, while in Russia the main goal is related to the prevention or minimization of environmental impacts, in the absence of any connection with legal requirements. In addition, according to the legislative provisions of the Russian Federation and Switzerland, the EIA procedure is an independent procedure necessary for the implementation of certain activities that can have a negative impact on the state of the environment.

Thirdly, in the legislative acts of the Russian Federation and Switzerland there is no clear fixing of the requirements for EIA subjects, which may cause difficulties in interpreting legal norms and implementing them in practice. In addition, in the normative provisions of Swiss legislation, such an entity as the public has a broader interpretation than in Russian legal acts, since it is presented as "any interested person". Moreover, the regulations of Swiss law quite clearly fix the aspects of public participation in the EIA procedure.

Generally, the legal documents of both the Russian Federation and Switzerland regulate the procedure for preliminary preparation for the EIA procedure. It all starts with the preparation of the applicant's report, which indicates information about the nature of the planned activity, the state of the environment, possible adverse effects, methods and measures taken to eliminate it and other information. However, in Switzerland, the responsibility for the accuracy of the information provided is legally established. In my opinion, this provision is an excellent legislative experience, which can become an example of legal regulation in this area.

Finally, it should be noted that Swiss legislation regulates aspects related to transboundary impact in more detail as well as defines the procedural provisions for facilities funded by the state or other grants.

CONCLUSION

Thus, it can be concluded that at present the environmental legislation of the Russian Federation and Switzerland which regulates the specifics of conducting an environmental impact assessment, has a fairly large number of similar regulations, however, the domestic legislator should pay attention to some policies established in Swiss environmental law, for example, an individual approach to each object of EIA, the responsibility of the customer for the information provided, etc. The conducted comparative legal analysis allows us to note that the legislative experience of Switzerland in regulating the specifics of EIA is positive, in this regard, some legal provisions could be considered and implemented in Russian environmental legislation.

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