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LAWFUL ACTIVITY IN AN EXCLUSIVE (MARINE) ECONOMIC ZONE OF UKRAINE: THE WAYS OF IMPROVEMENT OF LEGAL REGULATION

The article analyzes current state of the legislative support for regime of legitimate activity in the exclusive (marine) economic zone of Ukraine, states on its flaws and suggests ways to overcome them. The author analyzes the Law of Ukraine "On Exclusive (Marine) Economic Zone of Ukraine", identifies the problems of regulatory enforcement of its norms; it is noted that they significantly complicate implementation of the certain types of legitimate activities in this space (the exercise of freedoms of the high seas, construction, operation and the use of artificial islands, installations and structures, scientific marine researches). The need of elaboration and adoption of some sub-legal acts for development of the Law of Ukraine "On Exclusive (Marine) Economic Zone of Ukraine".

Key words: sea spaces, an exclusive economic zone, jurisdiction, jurisdiction of a state in marine areas, Ukraine, freedoms of the high seas, flaws in the legislation, law-making, scientific marine researches, artificial structures in the economic zone.

The concept of a 200-mile exclusive economic zone (further – EEZ), originating in the seventies XX century, turned into the institute of the international maritime law in operating time of the III Conference of the UNO on a maritime law (1973 - 1982). Today norms on a legal regime of the use of the EEZ took strong positions in the legislations of many coastal states using these sea spaces for the purpose of receiving additional sources of energy and fishery. Introduction of the concept of the EEZ in a marine law became the compromise solution of a question of borders and the essence of jurisdiction of the coastal states.

According to the article 55 of the UNCLOS'82¹, EEZ is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention. However it is impossible to find out the valid status of an economic zone as it is defined in UNCLOS'82, being based only on the article 55 as the legal status of EEZ is defined by all set of articles containing not only in part V, belonging specially to a zone, but also in part VII of the UNCLOS'82, concerning the high sea².

EEZ is a sea area in which the sovereign rights of the coastal state are carried out for the definite purposes. For all other purposes it is an area in which the fundamental principles of freedom of the high seas operate. The provisions of the UNCLOS'82 on the EEZ became a reasonable compromise between interests both coastal, and other states. In special literature it is noted that this area really will be under control of the coastal state for the use of resources on condition of, of course, implementation of certain obligations. On the other hand, it will be freedom of navigation and flight³. According to B. Oksman, in the EEZ it is usually excluded a freedom of fishing and in a certain degree some other freedoms and the

¹ *United Nations Convention on the Law of the Sea* (adopted 10 December 1982, entered into force 16 November 1994). Overview and full text on UN official site.

<http://www.un.org/Depts/los/convention_agreements/convention_overview_convention> (2015, October, 10).

² Жудро, А.К., Мовчан, А.П. (1980). Третья Конференция ООН по морскому праву: достигнутые результаты и возможные перспективы для судоходства. *Актуальные проблемы морского права и международного судоходства*, 24.

³ Henkin, L.A. (1975). Closer Look at Some Issues for Geneva – Oceans Policy, Marine Environment, and Fisheries. *Columbia Journal of Transnational Law*, 14, 1, 57.

measure of the corresponding rights of jurisdiction of the coastal state is established. However, in EEZ the traditional role of the flag State isn't excluded¹.

It is important to emphasize that features of a legal status of EEZ are completely fixed in UNCLOS'82 and the coastal state has no right "in a special way", to regulate without the provisions of the UNCLOS'82, acting in a zone of freedom of the high seas only on the ground that the zone is subordinated to "a particular legal regime"².

It should be noted that the UNCLOS'82 doesn't formally consider an economic zone as the zone which is in the high sea (as it is known, EEZ is devoted the part V of the UNCLOS'82 named as "an exclusive economic zone"). At the same time, taking into account the aforesaid about the legal regime of the EEZ it would be more reasonable to consider it as a zone of special jurisdiction of the coastal states in the high sea³.

The EEZ legal institute, having gone a long way of formation and development is present practically at all modern legal systems of the coastal states. Ukraine didn't become an exception – the Law "On Exclusive (Maritime) Economic Zone of Ukraine"⁴ (further – the Law) was adopted in 1995 – in four years prior to the ratification of the UNCLOS'82⁵. Thus, it is necessary to recognize a full compliance of provisions of the law to the relevant provisions of the UNCLOS'82, but also the realization of the provisions of the law remains rather difficult owing to the absence of the legislation that will develop them.

The single questions connected with a legal regime of the activity and the legal status of the EEZ was considered by A. L. Kolodkin, S. P. Golovaty, S. V. Molodtsov, A. L. Makovsky and many others. However their development concerned, generally, the general aspects of the use of this sea space, the history of formation of the legal category "EEZ", its legal status and legal regime according to the UNCLOS'82. Thus, the analysis of the domestic legislation on EEZ, particularly the Ukrainian, regarding its compliance with the norms of the UNCLOS'82, and also a current state of the legal support of the regime of the EEZ of Ukraine wasn't carried out, that caused a choice of a topic of the present article, the basis were provisions of the law of Ukraine about EEZ and the analysis of the massif of regulatory base providing their action.

The first articles of the Law (1 - 5) are devoted to the definition of the legislation, concept and delimitation of EEZ, the sovereign rights and the volume of jurisdiction of the state Ukraine in this sea space, and also to cooperation with other states for the purpose of control coordination of the EEZ live resources of Ukraine, their preservation, investigation and optimum use, carrying out scientific researches, protection and preservation of the maritime environment. The norms enshrined in the specified articles have general character, are identical to norms of UNCLOS'82 on EEZ and don't need additional legislative providing.

However the next article (6) of the Law deserves additional attention, as in part 2 it contains norm that in the exclusive (marine) economic zone of Ukraine, all States, whether coastal or land-locked, shall enjoy, subject to the provisions of this Statute and other relevant legislative instruments of Ukraine, as well as the generally recognized norms of international law, freedoms of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to those freedoms.

Thus any concrete procedure of the listed kinds of activity (freedoms) – navigation and flights, laying of underwater cables and pipelines, other types of use of sea space, lawful from the point of view of the international law, – in Ukraine it isn't developed today that, in our opinion, considerably complicates implementation of the specified kinds of activity.

Article 7 of the Law "Conservation and utilization of fish and other living resources", having mentioned in p.1 about taking measures to preservation of live resources, generally concerns their use and

¹ Oxman, B.H. (1977). The Third United Nations Conference on the Law of the Sea: The 1976 New York sessions. *American Journal of International Law*, 71, 2, 263.

² Ковалев, Ф. (1979). Экономическая зона и ее правовой статус. *Международная жизнь*, 1, 66.

³ Калинин, Г.Ф. (1981). *Режим морских пространств*. Москва: Юридическая литература, 130.

⁴ Закон про виключну (морську) економічну зону України 1995 (Верховна Рада України). *Відомості Верховної Ради України*, 21, 152.

⁵ Закон про ратифікацію Конвенції Організації Об'єднаних Націй з морського права 1982 року та Угоди про імплементацію Частини XI Конвенції Організації Об'єднаних Націй з морського права 1982 року 1999 (Верховна Рада України). *Відомості Верховної Ради України*, 31, 254.

in this part it is provided with the relevant legislation, namely the Order and conditions of the use of fish and other water live resources of the exclusive (marine) economic zone of Ukraine approved by the resolution of the Cabinet of Ministers of Ukraine of 13.08.1999 No. 1490¹. Concerning the preservation of these resources in the considered space provisions of the law of Ukraine of 08.07.2011 norms act of the Law of Ukraine "About fishery, an industrial fishing and protection of water bioresources"², in which are provided along with measures for preservation of live resources in internal waters, the territorial sea, on a continental shelf, separate actions in EEZ (a stop and survey of the vessel which are carrying out trade of water bioresources, suspending and the termination of the trade, imposing fines).

The same Law "About Fishery, an Industrial Fishing and Protection of Water Bioresources", and also mentioned Orders and conditions ... provide also the following article (8) of the Law, named "Anadromous fish stocks" concerning their preservation and restoration.

It is also necessary to recognize the article 9 of the Law "Enforcement of the legislation of Ukraine on the exclusive (marine) economic zone" is provided. In this direction in Ukraine operates the Provision on an order of protection of the sovereign rights of Ukraine in its exclusive (marine) economic zone approved by the resolution of the Cabinet of Ministers of 12.06.1996 No. 642³ and Orders and conditions mentioned above. In particular, the Provision on an order of protection of the sovereign rights ... provides that protection of the sovereign rights of Ukraine in its EEZ and control of realization of the rights and discharge of the obligations of other states in it, the Ukrainian and foreign legal entities and individuals, the international organizations are carried out by the State frontier service, the bodies of fish conservation of the State Committee of Fish Industry and the bodies of the Ministry of Ecological Security.

Officials of these bodies have the right to stop and examine vessels, other watercrafts conducting trade of fish and other water live resources, search, research and operations connected with such trade and other works in EEZ, to check documents for implementation of fishery and other works; to stop or suspend fishery and other works in case of violation of the law about EEZ or lack of permission (coordination) to their carrying out; to visit, examine and be on the artificial islands, installations and constructions which are in EEZ and also to check the documents certifying the right for work and a construction of artificial islands, installations, constructions and establishment of safety zones round them; temporarily to forbid (to stop) the sea scientific researches which are carried out with violation of requirements of the legislation on EEZ or to stop them in the cases provided by the legislation; to detain the vessels allowing violations of the law of Ukraine or norms of international law and to bring them in one of foreign not warships, ports of Ukraine, open for calling; to apply penalties; to use transport services and means of communication of industrial vessels of the foreign states which are carrying out fishery or other works in EEZ of Ukraine according to agreements in force or permissions.

The article 10 of the Law on «Artificial islands, installations and structures» says: "In its exclusive (marine) economic zone, Ukraine shall have the exclusive right to construct and to authorize and regulate the construction, operation and use of artificial islands, installations and structures for the purpose of conducting scientific research, exploration and exploitation of the natural resources and for other economic purposes in accordance with the legislation of Ukraine" represents an example of almost "dead" norm as the order of carrying out similar acts as the current legislation of Ukraine isn't provided. There is a considerable gap in the legislation as creation and operation of such constructions needs detailed study and adoption of the relevant special legislation.

The articles 11 "Ukrainian jurisdiction over artificial islands, installations and structures" and 12 "Maintenance and operation of artificial islands, installations and structures" of the Law specify, that Ukraine shall have the exclusive jurisdiction in its exclusive (marine) economic zone over artificial islands, installations and structures, including jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations. Ukraine may establish safety zones around such artificial islands,

¹ *Постанова про затвердження порядку і умов використання рибних та інших водних живих ресурсів виключної (морської) економічної зони України іноземними юридичними і фізичними особами 1999* (Кабінет Міністрів України). *Офіційний вісник України*, 33, 145.

² *Закон про рибне господарство, промислове рибальство та охорону водних біоресурсів 2011* (Верховна Рада України). *Відомості Верховної Ради України*, 17, 155.

³ *Постанова про затвердження Положення про порядок охорони суверенних прав України у її виключній (морській) економічній зоні 1996* (Кабінет Міністрів України). *Офіційний сайт Верховної Ради України*. <<http://zakon4.rada.gov.ua/laws/show/642-96-п>> (2015, October, 10).

installations and structures and determine in these zones appropriate measures to ensure the safety both of navigation and of the artificial islands, installations and structures. The breadth of such safety zones shall not exceed a distance of 500 metres around them, measured from each point of their outer edge, except as authorized by generally recognized international standards or recommendations of the competent international organization. Also it is pointed out that any installations, structures and equipment which are abandoned or disused shall be removed as soon as possible and to such an extent as to create no obstacle to navigation and fishing and no danger of polluting the marine environment. The construction of artificial islands, erection of installations and structures, establishment of safety zones around them, as well as the complete or partial removal of these installations and structures, shall be announced as decided by the Cabinet of Ministers of Ukraine.

Thus, an order of establishment of the specified constructions, announcements of safety zones and a form of the notice aren't settled by normative legal acts that as it is represented, in the conditions of active search of the underground oil fields and gas in Ukraine, including on a sea-bottom within EEZ, aggravates negative effect of a similar gap in the legislation.

Articles 13, 14 and 15 of the Law devoted to sea scientific researches in EEZ of Ukraine have also no "continuation" in the current legislation, thus are in a great need in it as establish norms that marine scientific research in the exclusive (marine) economic zone of Ukraine may be conducted only with the consent of the specially designated Ukrainian authorities in accordance with the legislation of Ukraine and with international treaties concluded by Ukraine; marine scientific research in the exclusive (marine) economic zone of Ukraine may be carried out by all States, regardless of their geographical location, by their juridical and natural persons and by international organizations, subject to compliance with the legislation of Ukraine. In exercise of its jurisdiction, Ukraine shall have the right to regulate and authorize marine scientific research in its exclusive (marine) economic zone. The specially designated Ukrainian authorities shall grant their consent for marine scientific research in the exclusive (marine) economic zone of Ukraine on condition that this research is carried out exclusively for peaceful purposes and in order to increase scientific knowledge of the marine environment for the benefit of mankind and that it does not endanger the natural environment. Ukraine may withhold its consent for marine scientific research to be carried out in its exclusive (marine) economic zone by other States, their juridical or natural persons, or international organizations if that research: 1) is of direct significance for the exploration and exploitation of natural resources, whether living or nonliving; 2) involves drilling into the seabed, the use of explosives or the introduction of harmful substances into the marine environment; 3) involves the construction, operation or use of artificial islands, installations and structures.

All specified organizational aspects are only declared in the Law, and the concrete order of their implementation is lack for today, is lack as well a form of information provided by the foreign states, their legal entities and individuals, and also the international organizations for obtaining permission to carrying out researches.

Thus, the carried-out analysis of the current legislation of Ukraine about EEZ showed that today there is unresolved number of the problems connected with an embodiment in law-enforcement practice of provisions of the law about EEZ and, as a result, of the UNCLOS'82 in Ukraine remain unsettled. It is obviously necessary to develop and to adopt the following subordinate normative legal acts: The Procedure of freedoms of navigation and flights, laying of underwater cables and pipelines, other types of use of EEZ of Ukraine, lawful from the point of view of international law; The Order of a construction, operation and the use of artificial islands, installations and constructions for sea scientific researches, investigation and development of natural resources, and also other economic targets in EEZ of Ukraine, and also safety zones round them; The Order of carrying out sea scientific researches in EEZ of Ukraine.

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