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Olha Zyhrii,

candidate of economic sciences, associate professor, associate professor of the department of civil law and procedure of West Ukrainian National University

ORCID: <https://orcid.org/0000-0001-7092-5306>

Yuliia Kovalchuk,

lecturer of the department of fundamental and special disciplines of Chortkiv Educational and Scientific Institute of Entrepreneurship and Business of West Ukrainian National University

ORCID: <https://orcid.org/0000-0003-1735-9901>

FEATURES OF THE LEGAL SECURITY OF THE STATE ENVIRONMENTAL POLICY OF UKRAINE IN ACCORDANCE WITH THE REQUIREMENTS OF THE EU

The article is devoted to the formation and implementation of the state environmental policy in the war and pre-war periods in Ukrainian society. Against the background of positive and objective facts about the ecological danger caused by military actions in Ukraine, different approaches to state environmental policy are revealed. Discrepancies and inconsistencies in the results obtained within the framework of this study testify to the multifaceted nature of the issue of environmental protection, in particular, its legal regulation.

Keywords: legal regulation, environmental policy, environmental safety, European Union, ECHR, European Green Course, Convention.

Зигрій О., Ковальчук Ю.

Особливості правового забезпечення державної екологічної політики України до вимог ЄС

Досліджено ключові аспекти формування та імплементації системи екологічної політики європейського співробітництва в українському суспільстві з урахуванням воєнних дій. З'ясовано актуальність теми з огляду на обраний українським урядом напрям розвитку національної політики для України в довоєнний період з урахуванням екологічних та кліматичних викликів, передбачених програмою Європейського зеленого курсу (ЄЗК) до 2050 року. Посилаючись на міжнародне право та беручи до уваги поточну ситуацію в Україні, оглядно надано світові реальну картину екологічного лиха. Сьогодні стан забруднення навколишнього середовища є вкрай серйозним, що значно погіршується і досягає рівня техногенної екологічної катастрофи через постійні загрози ядерних аварій на українських атомних електростанціях, радіаційне задимлення, хімічне забруднення від ракетних вибухів, випалювання лісів, непридатних для сільського господарства територій – все це наслідки війни росії проти України. Проаналізовано етапи розвитку європейської екологічної політики, в т. ч. у сфері охорони довкілля. Визначено пріоритетні напрями подальшого розвитку екологічної політики України та намічено основні завдання державної екологічної політики у сфері забезпечення майбутньої екологічної безпеки, визначено баланс між соціально-економічними вимогами та охороною довкілля, а також правовий захист екологічних прав громадян. Аргументовано, що європейські екологічні стандарти та стереотипи є основою для налагодження екологічно ефективної співпраці між країнами ЄС, економічними суб'єктами та громадянським суспільством. Зазначено широке коло повноважень ЄС у сфері екологічних питань та розкрита актуальність екологічної інтеграції як обов'язкової для всіх країн-членів ЄС та країн-кандидатів. Розбіжності і невідповідність результатам, здобутих у межах цього дослідження свідчать про багатоаспектність питання природоохоронної діяльності, зокрема її правового регулювання.

Ключові слова: правове регулювання, екологічна політика, екологічна безпека, Європейський Союз, ЄСПЛ, Європейський зелений курс, Конвенція.

Formulation of the problem. In the basis of global environmental problems there are processes and phenomena that are directly related to the survival of human civilization and require the joint efforts of all countries

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to solve them. Being in the only interdependent natural system of Europe, Ukraine, as a part of the interdependent natural system of Europe, cannot stand aside from the problems of pollution and degradation of the biosphere on the European continent. With the ratification of the Association Agreement between Ukraine and the EU, our country has chosen the direction and priorities of further development. The Government of Ukraine announced its intention to join the European Green Deal (EGD) program until 2050, where the need to form a state policy in Ukraine that would take into account the environmental and climate challenges of today is important. Given the urgent issues related to the protection of social values and legitimate interests of citizens, guaranteeing them environmental safety through the definition of a legal mechanism, the environmental policy itself expresses a set of measures aimed at environmental protection, preservation and restoration of natural resources, introduction of ecologically clean technologies, legal protection of ecosystems in order to ensure optimal conditions for nature use.

Analysis of the study of the problem. Ukrainian scientists made a significant contribution to the study of issues of state environmental policy and environmental safety (A. P. Hetman, O. S. Zarzhytskyi, V. V. Kostytskyi, M. V. Krasnova, T. Kniazeva, N. R. Malysheva, G. Serova, A. K. Sokolova, Y. S. Shemshuchenko, M. V. Shulha, etc.). However, we can state that the legal regulation of the researched issue currently needs to be systematic.

The purpose of the study is to conduct research on the legal support of the state environmental policy and environmental security.

Presentation of the main research material. The development of legal opinion is connected with the awareness of the Ukrainian and international community of the need not only to preserve and rationally use the natural environment, but also to create ecologically safe living conditions, the opportunity to breathe clean air, drink clean water, consume ecologically safe food products and satisfy other biological and spiritual need. The practical implementation of the conceptual principles of environmental policy can occur due to the following factors:

- the real level of environmental problems on the territory of concrete country;
- the nature of social and ecological problems caused by the deterioration of ecological life;
- technical uncertainty and solving a number of fundamentally important issues of ecosystem functioning;
- resource limitations, and financial figures;
- the main level of development of safety and environmental protection technologies, as well as numerous technologies for the utilization and destruction of waste;
- the economic efficiency of production and the ability to sustain ecologically clean production;
- social reactions of the population;
- international obligations [5].

One of the necessary tasks of the national environmental policy in the field of ensuring future environmental security is the balancing of socio-economic needs with environmental protection and popularization of environmental knowledge.

Environmental safety is a legal category and has various interpretations in scientific literature. It is considered as the protection of people and the natural environment from harmful effects; balance of ecosystem development; a condition for preserving people's health and ensuring sustainable social and economic development; activities to protect vital ecological interests; a component of international environmental security, etc.

Art. 3 of the Law «On the Basics of National Security of Ukraine» states that the objects of environmental security are person and citizen (their constitutional rights and freedoms, the list of which is not exhaustive (Article 22 of the Constitution of Ukraine); society (its spiritual, moral, cultural, historical and intellectual values, informational and natural environment); the state (its constitutional system, sovereignty, territorial integrity). Therefore, «the objects of environmental security are the vital interests of security subjects: their rights, material and spiritual needs of the individual, natural resources and the surrounding natural environment as the material basis of state and social development. A person acts not only as a subject of relations to ensure environmental security, but also as an object that feels the negative impact of the deterioration of the environment and needs legal protection» [6].

For two years now, man-made environmental disasters have been taking place across the territory of Ukraine, threatening the lives and health of thousands of people, due to mass shelling of civilian and industrial infrastructure by the occupying forces. The occupation of a significant territory of Ukraine by Russian troops, pollution of water, air, soil and many other things negatively affect people's health and life, violate the rights of every citizen of Ukraine. In order for environmental legislation to become an effective and efficient instrument of state environmental policy, adaptation of legislation should mean bringing national legislation into compliance

with the requirements of European Union legislation not only formally, but also in terms of practical application. The reform of the system of regulatory and legal acts aimed at the implementation of the state environmental policy should take place systematically, in all priority areas [7].

European environmental standards and stereotypes are the basis for establishing ecologically effective cooperation between states, business participants and civil society. The EU has wide opportunities to solve environmental problems, and environmental integration is mandatory for all EU member states and candidate countries. In the EU, the right to a healthy and high-quality environment and environmental safety, the right to information about the state of the environment are two main international principles on the basis of which international and national strategies, programs and action plans are formulated. Approaches to ensuring environmental policy in the EU are implemented both through general, international provisions and individual acts of national legislation.

This makes it possible to increase the efficiency of the environmental protection process, due to the concentration of attention on the problems of the specified area, as well as the provision of the necessary measures at the global level [12].

The European Green Course (EGC), presented in 2019 in the European Parliament, which approves the movement towards a climate-neutral European continent in 2050 [10] deserves consideration. Since its announcement, Ukraine has taken certain steps towards participation:

1. In January 2020, the draft Concept of Green Energy Transition of Ukraine until 2050 was published, which continues to be at the project stage. The main goal is to increase the share of electricity produced from renewable energy sources to 70% within 30 years. However, Ukraine has declared its intention to achieve climate neutrality in 2060, which is 10 years later than the European goal; In July 2021, the Ukrainian government approved a new goal by 2030 – to reduce greenhouse gas emissions by 35% below the 1990 level. However, this is considered an insufficiently ambitious goal and calls into question the possibility of achieving climate neutrality by 2060.

2. On August 13, 2020, Ukraine submitted a position paper to the European Commission regarding its participation in the Green Course. The document proposes a regular dialogue with the EU and the involvement of Ukraine in the development and implementation of the EUC policies, the preparation of a joint Roadmap with Ukraine's participation in the European Green Course.

3. At the Ukraine-EU Summit on October 6, 2020, the agreement «Climate Action Package for a Stable Economy in Ukraine» (CASE) was signed in the amount of EUR 10 million to finance projects for the transition to a clean and climate-neutral economy.

4. In 2021, the NSDC of Ukraine provided for the development and approval of the National Plan on Energy and Climate Change until 2030 for the purpose of countermeasures and adaptation. However, the plan was not adopted.

At that time, Ukraine was at the stage of approximation of national legislation in this area to EU law in accordance with its obligations under the Association Agreement. However, this process took place rather slowly and progress was not achieved in all areas.

The international community has not yet paid due attention to military pollution. However, military actions in Ukraine are changing this situation [11].

The Constitution of Ukraine in Art. 50 guarantees everyone's right to an environment safe for life and health, which is one of the most important social values [10].

Art. 10 of the Law of Ukraine «On Environmental Protection» enshrines the environmental rights of citizens, including the participation of state authorities in the implementation of environmental protection activities and inevitable responsibility for violations of environmental protection legislation. According to the current legislation, the rights of citizens violated in the field of environmental protection are subject to restoration, and their protection is carried out in court in accordance with the legislation of Ukraine (Article 11 of the Law of Ukraine «On Environmental Protection») [2].

Chapter 7 of the Criminal Procedure Code contains a number of administrative offenses related to the environment. The legislator defines prohibited actions and, thus, indicates the obligation to refrain from certain actions. That is, the environmental policy of Ukraine is aimed at constitutionally guaranteeing the right of every citizen to an environment safe for life and health and the right to compensation for damage caused by violation of this right.

In recent years, the Ukrainian government has been constantly recording crimes against the environment. This creates new environmental risks and entails the possibility of increasing human suffering from war in the future [6, c. 33-37].

Crimes against the environment are also part of the war crimes defined by the Criminal Code of Ukraine. According to Protocol I to the Geneva Convention for the Protection of Victims of International Armed Conflicts of August 12, 1949, adopted in 1977, belligerents are obliged to protect the natural environment from «widespread and lasting serious damage» and must not. The Convention obliges belligerents to prohibit methods and means of warfare that are «intended to cause or may cause» such damage.

Recognizing the practice of the European Court of Human Rights (ECHR) as a mandatory source of law in Ukraine, the Ukrainian legislator actually changed the legal system to include European standards for the protection of human rights. In order to develop the principle of the rule of law, the Verkhovna Rada of Ukraine established that all decisions of the ECHR issued against any of the member states of the Council of Europe are binding on Ukrainian courts, that is, they can serve as legal precedents. The study and application of ECHR practice in environmental cases is extremely important for judicial practice in Ukraine [4]. As this not only contributes to the expansion of opportunities for the protection of environmental rights through the Convention, but also eliminates the gaps that may exist in the law of nature use.

The Convention on the Protection of Human Rights and Fundamental Freedoms does not directly enshrine the right to a safe environment, but the issue of environmental protection and the impact of environmental factors on humans are increasingly becoming the subject of consideration by the ECHR. It should be noted that the decisions of the ECHR form judicial practice, which recognizes that environmental pollution is the cause of violation of the fundamental rights of citizens. In particular, they include the right to life, to respect for private and family life.

In view of the above, it is very important to ensure the rule of law in the field of environmental rights protection is to create prerequisites for removing barriers to access to justice in the field of environmental protection and environmental human rights.

In the practice of the ECHR, the issue of protection of environmental rights and the environment was reflected in cases in which it was established that the right to life (Article 2 of the Convention), the right to respect for private and family life (Article 8 of the Convention), the right to peaceful possession of property (Article 1 of Protocol 1), the right to a fair trial (Article 6 of the Convention), the right to a fair remedy (Article 13 of the Convention) and the right to freedom of expression (Article 10 of the Convention) [9]. The right to life is the first substantive right enshrined in the Convention on the Protection of Human Rights and Fundamental Freedoms [9].

In this decision, the ECHR drew special attention to the observance of the principle of subsidiarity, according to which it is assumed that the establishment of the procedure for ensuring environmental rights rests with the state, because it was the state in this case that did not provide the local population with information about the risks, and also did not provide for procedures for obtaining information and procedure for compensation for damages in the event of a disaster [3].

Approaching the EU environmental standards is one of the main challenges for the Community and the countries with which it cooperates. Given the significant differences in requirements and regulations, it may be necessary to attract significant investments to bring the state of the environment up to EU standards.

Conclusion. As a result of the research, it was possible to establish that the field of environmental protection is an important vector in the state policy of EU countries, as well as Ukraine. Undoubtedly, human life and health remain paramount, therefore polluted water, air and environment have a negative impact on health and in the future there will be both ecological and humanitarian problems.

Ukraine is currently fighting a war for survival, and the protection of the Motherland, the safety of its people and the preservation of values are of paramount importance. A large part of the territory of Ukraine is still occupied. Ukrainians fight for survival every day. With support from international partners, including the EU, unoccupied and affected areas are being restored and rebuilt. We very much hope that Ukraine will support the European Green Deal, which will become a signpost for its recovery. This is an opportunity for Ukraine to carry out post-war reconstruction in a sustainable and environmentally safe way, which is important for the development of a competitive economy and a comfortable life for its citizens. The JEC should serve as a signpost for the recovery of Ukraine.

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