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State policy in the sphere of environmental protection: the regulatory aspect

Державна політика в сфері захисту довкілля: нормативно-правовий аспект

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Abstract

The purpose of the article is to analyze the normative and legal aspect of public policy in the field of environmental protection and generalize the relevant legislative basis. Research results. The understanding of the concept of "sphere of the environment" and the content of its legal regulation are generalized. It is substantiated that under the European integration, adaptation of international experience to domestic legal realities, as well as harmonization of national and international legislation the development of the latest forms and methods of environmental protection is an urgent issue. Practical meaning. It is noted that there is a critical need to develop new and improve existing legal acts, taking into account modern trends, since the war unleashed by Russia on the territory of Ukraine causes critical damage to the environment and ecology of Ukraine, and accordingly, such actions must be properly qualified. Value/originality. The perspective of further research is the need to analyze the methods of protection in the field of environmental protection, which are defined as effective tools for the protection of nature from

Анотація

Метою статті є аналіз нормативно-правового аспекту державної політики в сфері захисту довкілля та узагальнення відповідного законодавчого підґрунтя. Результати дослідження. Узагальнено розуміння поняття «сфери довкілля» й зміст його нормативно-правового регулювання. Обґрунтовано, що в умовах Європейської інтеграції, адаптації міжнародного досвіду до вітчизняних правових реалій, а також гармонізації національного та міжнародного законодавства, актуальним питанням є розроблення новітніх форм і методів природоохорони. Практичне значення. Зауважується на критичній необхідності розроблення нових й удосконалення вже чинних нормативно-правових актів, із урахуванням сучасних тенденцій, оскільки розпочата росією війна на території України завдає критичної шкоди довкіллю та екології України, а відповідно, такі діяння мають бути належно кваліфіковані. Цінність/оригінальність. Перспектива подальшого дослідження полягає в необхідності аналізу способів захисту в

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harmful effects. Informative and complementary to research is the question of using international experience in improving the relevant national mechanism.

Keywords: environment, European integration, legal aspect, legal status, law enforcement.

Introduction

The issue of environmental protection is the most acute problem of the 21st century – both for the entire international community and for each country in particular. The global ecological crisis as a result of many centuries of diverse processes on a planetary scale has loomed over humanity. Nowadays, there is not a single sphere important for the life of mankind that has not been affected by the destructive influence of the spontaneous development of civilization – from climate change and the reduction of the number of animal and plant species, to the destruction of the ozone layer and irreversible mutations of the genome – as a result of environmental pollution.

Modern States are making significant efforts to solve the global environmental crisis, which in turn necessitates the development and improvement of the efficiency of environmental protection activities, enhancement of its institutional and regulatory support. The issue of environmental protection activities for modern Ukraine, on the one hand, in terms of its importance, is on the same level as the problems of ensuring peace and security, unity, territorial integrity of the country, recovery from political and economic crises, and on the other hand, it is covered by the spheres of cooperation with the European Union within performance of the concluded Association Agreement.

The State strategy for the protection of the natural environment, in the general legal sense, is a set of rules of the legislation of Ukraine, which, in a systemic interrelation, forms a mechanism for counteraction and prevention of offenses related to encroachment on the environment. At the same time, issues related to the definition of the content and essence of the term «environment», still remain are still debatable.

The ongoing armed aggression of Russia against Ukrainian independence and sovereignty, which is accompanied by causing critical environmental

природоохоронній сфері, що визначені законодавством України як дієві інструменти захисту й охорони природи від шкідливих впливів. Інформативним і комплементарним для дослідження, може бути також питання використання міжнародного досвіду в удосконаленні відповідного національного механізму.

Ключові слова: довкілля, євроінтеграція, правовий аспект, правовий статус, правоохорона.

harm to the environment and the surrounding natural environment on the territory of Ukraine, actualizes the need for research into state policy in the field of environmental protection. In addition, the harmonization of national legislation in the context of becoming a candidate for membership of the European Union by Ukraine has a positive impact on strengthening the institutional capacity of State authorities to protect the environment in any legal way.

In our opinion, taking into account the previously stated positions, as well as destructive factors and the latest trends, the issue of legal regulation of the sphere of environmental protection in Ukraine requires additional coordination and analysis, since this branch of legal relations remains unprotected.

The purpose of the article is theoretical and legal characteristics of the legal and regulatory aspect of public policy in the field of environmental protection.

Literature Review

As Harari (2015) correctly pointed out, “the industrial revolution revealed new ways of converting energy and producing goods largely liberating mankind from its dependence on the surrounding ecosystem. People massively cut down forests, drained swamps, blocked rivers with dams, flooded plains, laid tens of thousands of kilometers of railway tracks and built skyscrapers of business centers. The whole world was rebuilt to meet the needs of homo sapiens, while the usual habitats of plants and animals were destroyed, causing the extinction of many species. Our once green and blue planet gradually began to turn into one huge trading center made of concrete and plastic”.

That is why nature protection activity as a complex, multifaceted social phenomenon has

been the subject of reflection by scientists, State and political actors from ancient times to the present. At the same time, the views on the essence, principles and forms of environmental protection activities changed, evolved and differentiated under the influence of a number of objective and subjective, rational and irrational factors. At the current stage of development of humanitarian (social) sciences, environmental protection activities are in view of the representatives of philosophy, history, economics, pedagogy, psychology, management, political science, military science and, of course, jurisprudence.

The formation and development of a sovereign Ukrainian state is also impossible without the development and implementation of a multi-faceted and purposeful system for the protection of its national security and the component of the latter – environmental security (Tatsii, Petryshyn, & Barabash, 2011, p. 115). After all, according to the Basic Law of Ukraine, ensuring environmental safety and maintaining ecological balance on the territory of Ukraine, overcoming the consequences of the Chernobyl disaster – a catastrophe of a planetary scale, and preserving the gene pool of the Ukrainian people is the duty of the State.

According to Bilozorov and Vyshkovska (2015, p. 22), the set of sources related to the subject of scientific research can be conditionally differentiated into two groups: 1) scientific research and doctrinal views in the field of theoretical and legal foundations of environmental protection activities; 2) forms (sources) of law regulating relations in the sphere of protection of the environment, including international law.

The feature of modern studies of the nature protection (ecological) function of the state is that it is currently becoming the subject of attention both the representatives of the legal community (first of all, those working in the field of environmental law) (Karpovich, 2012), and those scientists who study the problems of the State administration system development (Volynets, 2013). The nature protection function is attributed to the “newest” functions of the modern State. Therefore, nowadays, along with the so-called “classical functions of the state”, “the latest functions” are increasingly highlighted, the role and importance of which have significantly grown in recent decades and which have acquired special importance among other socially significant areas of public activity.

In turn, specialists from the block of management sciences consider the main theoretical provisions of nature protection management, legal foundations and the system of public management of nature protection activities in Ukraine and in the world (Shmatko & Nikitin, 2005). In the field of public administration, Tishkova (2018) carried out theoretical and methodological substantiation and developed practical recommendations for reforming the State management of environmental protection in the context of the European integration of Ukraine.

The work by Kovalska (2013), devoted to the study of theoretical and methodological issues of the formation and improvement of the system of principles of environmental legislation in the context of the development of the legislative system of Ukraine, is also a valuable achievement in the studied area.

Methodology

The methodological toolkit of scientific work includes a set of philosophical and other foundations, methodological principles, research approaches, general methods of thinking, philosophical, general scientific and specific scientific (legal) methods, the application of which ensured the reliability and validity of the results of the study of the theoretical and legal foundations of environmental protection activities.

Taking into account the peculiarities of the subject, the purpose and tasks of the research, the following main research approaches were applied:

Activity-based approach was used during the theoretical and legal characterization of environmental protection activity as a type of human activity.

Systemic approach helped in the course of determining the place of environmental protection activity in the legal system, signs and elements of the mechanism of environmental protection activity.

Anthropological approach was helpful in establishing the role of man in the development and functioning of nature protection activities, the relationship between person and environment.

In turn, the dialectical method made it possible to understand the essence of environmental

protection activities in the dynamics of its development and interaction with other social and state-legal phenomena.

Synergistic method made it possible to present environmental protection activity as a self-organizing phenomenon, the emergence and change of which is based on certain processes and legal reality.

Formal and legal method contributed to the research of the theoretical and legal foundations of environmental protection activities with the help of legal constructions and legal terminology.

Results and Discussion

Already Aristotle (n.d.) noted that public policy, like any social process, needs constant explanation of the genesis of its content and comprehensive research as an object of scientific knowledge. Its categorical apparatus requires special attention, since it has a wide range of scientific interpretation of its content and fragmentary justification in the scientific literature by foreign and domestic scientists. Besides, repeatedly in the positions of researchers there is a statement by Friedrich (1968), who characterized policy as a course of action proposed by a person, group or government within the environment, including obstacles and opportunities that a specific policy should use or overcome in pursuit of a goal or objectives or intentions. These views allow to substantiate that any State policy, being an expression of the sovereign will of the people and implemented by the tools of representative democracy, must be properly established and formulated. That is, to be one that has specific limits (i.e. defines the influencing segment), a clearly formulated goal and task, as well as the subject matter and the object, which in the future will allow to pass to the essential characteristic more detailed, step-by-step implementation elements.

It should be noted that state authorities and their officials are obliged to act exclusively within the limits and in the manner determined by the legislation of Ukraine, and accordingly, the issue of normative and legal regulation of the sphere of environmental protection in Ukraine is critically important in the context of the analysis of the specified legislative provision.

First, let's consider, what environment is. The latter is the totality of all external conditions that affect organisms, populations or more complex biological groups, causing a corresponding

reaction. The environment is always a complex set of different elements, and they, in turn, interact with organisms, called environmental factors. They are divided into two main groups – abiotic and biotic ones. The first refers to all elements of non-wildlife affecting the organism; the most important are light, temperature, humidity and other climate components, as well as the composition of water, air and soil environments (Yesyrkenov, 2008). Thus, it is necessary to justify the position that all factors that can be included in the category of the environment are in one or another way related to the ecology and level of “ecology” of a particular activity, which acquire great importance in close connection with the processes of ensuring rights and freedoms of a person and a citizen in Ukraine.

The right of citizens to an environment that is safe for life and health is enshrined in the Basic Law of Ukraine (Law of Ukraine No. 254k/96-VR, 1996) and the ability of the subject, ensured by the State, to live in an environment that is not harmful to health, use safe natural resources to meet their vital needs, to demand from the state, as well as other individuals and legal entities compliance with environmental safety rules, and apply for the protection of the violated right to the competent authorities in case of their breach. Accordingly, it should be noted that the strategic state guarantee, first of all, should take into account such two integral elements as protection and security, because being interconnected, they nevertheless act and function differently.

Thus, being a component of public policy, the environment protection is embodied in many forms, since some provisions (formally established norms of a certain vector and direction of development) determine the principles of nature protection and ecological safety, while the other side of this process (protection of the right to a safe environment) determines the list of acts for which there may be some legal responsibility. Environmental liability lies in the obligation of a business entity to compensate the environmental damage. It differs from administrative or moral one and is usually identified as a type of civil liability. It is aimed to provide the following: rescue the environment by compensating harm; guarantees of reimbursement to those affected for economic damage; encouraging the use of preventive measures (risk analysis, environmental management system, auditing, etc.) (Kapto et al., 2019, p. 89).

Slipchenko (2013) justifies that the interdependence of the categories "security" and "protection" creates a number of discussions in the legal circle, but one cannot speak of the identity of these definitions. In her opinion, legal protection includes a variety of legal measures aimed at protecting the right from possible infringement. Thus, the possibility of protection of subjective law and concrete exercise of protection is one of the means of legal protection. The essence of legal protection is that it is the application of the state coercion measure chosen by a law enforcement body. By concrete incorporation, coercive measures end the violation of subjective right, provide the necessary conditions for its implementation, restore it or eliminate the consequences of its breach in one or another way. The stated view fully confirms our previous comment on the protective content of any public policy, as well as the need for procedural formalization of relevant efforts, since all State authorities and their officials must act exclusively within the limits and in the manner determined by the legislation of Ukraine.

The ecological, or nature protection, function of the State is a vital activity of any modern country, the world community as a whole. In progressive States, significant environmental protection legislation, which clearly regulates the activities of people and various organizations in the field of using the natural environment, has been adopted. In many countries, national environmental protection programs, which provide for the application of active measures of impact on violators of its integrity, up to the complete elimination of sources or pollution of harmful production waste, have been developed and operated. Nature protection is one of the most acute social problems and is one of the most important national tasks. All links of the State mechanism carry out nature protection activities within their competence. The implementation of these principles ensures the focus of environmental protection functions on solving the tasks facing the State in the field of protection and rational use of natural resources.

Environmental protection in Ukraine and the European Union is based on a whole system of legal instruments. In Ukraine, environmental protection measures are carried out on the basis of a number of resource codes, laws, by-laws, while the main source of environmental law of Ukraine is the Constitution. Ukrainian legislation in the field of environmental protection activities can be conditionally divided into two groups. The first one includes regulatory acts

determining the principles of environmental protection activities, and the second one - legal instruments establishing the system of environmental protection agencies and organizations and determining their legal status.

The irreversibility of Ukraine's European and Euro-Atlantic course necessitates the development of European requirements for environmental protection activities, first of all, the EU – the integration formation of developed European states. At present, the EU plays a leading role in the coordination of policies for solving global environmental problems. The example of the environmental policy of the EU, which in recent decades has achieved significant success in regulating the environmental protection activities of Member States, developing the legal framework of ecopolitics, and establishing new approaches to environmental protection, is a model of transparency for the countries that have achieved significantly lower results in this area, including Ukraine (Holovko, 2021, p. 157).

It is worth emphasizing that by the end of the 60s of the 20th century none of the European countries had clear legal requirements for the organization and implementation of environmental protection activities. Currently, the EU has adopted more than 300 regulatory acts aimed at solving environmental problems at the level of the entire Community. Ecology is the business of the Union and Member States, economic operators and citizens. The European approach to the formation of the legal foundations of environmental policy has a preventive nature and is oriented not only to the solution of already existing environmental problems, but, first of all, to the prevention of new ones. Environmental priorities are embedded in almost all components and areas of the EU activity; in addition to the legal measures of environmental policy, legislative prescriptions for the preservation of the environment are implemented in the regional, scientific and technical, agrarian, transport and trade policies of the EU. In the 1990s, orientation towards the joint solution of complex and promising tasks of the interaction of an individual and the environment began to be traced in the environmental programs of the Community. Therefore, the legal foundations of the EU's environmental strategy can serve as a tool for solving global problems for other countries (Lozo, 2010, p. 1).

Presented above directly indicate that all instruments that can be included in any public

policy must have a source – a specific regulatory basis that has already been implemented according to the needs of society. It is these complex chains of conception of public strategic planning in a certain area that allow correctly and accurately to form the need, based on the norms of the acting legislation and planning the production of additional provisions.

For example, international legal obligations of the States to protect the environment during an armed conflict are enshrined in both ordinary environmental treaties and special agreements, subject to the existence of an armed conflict. To understand the specifics of the effect of treaties of the first group, one should dwell on the general principles of the influence of war on international treaties. Termination of an international treaty with the outbreak of war is not the rule, but the exception. From the interpretations of the provisions of the Vienna Convention on the Law of Treaties (United Nations, 1969) on impossibility of performance and fundamental change of circumstances follows that war is not a ground for the automatic termination of treaties, to which the participants of the armed conflict became parties in peacetime (International Law Commission, 2011). The relevant provisions, with reference to the norms and principles of international law and relevant legislation, are quite timely in the context of Russia's armed aggression against Ukraine, since the natural environment is suffering very actively right now, as a result of active hostilities, as well as systematic massive missile attacks by the enemy of the territory of Ukraine – the environment, which in turn necessitates both the prosecution of guilty persons and the development, at the state strategic level, of plans and concepts for the further restoration of the environmental protection regime and environmental safety in general.

That is why it is necessary to pay significant scientific and legislative attention to the issue and importance of regulatory and legal support of the State policy in the area of environmental protection, which in the future can be converted into the strengthening of the institution of human and citizen rights and freedoms not only in Ukraine and the European space, but also in planetary scale in general.

Conclusion

The article analyzes the regulatory and legal aspect of the public policy in the field of environmental protection and summarizes the relevant legislative basis that ensures the

functioning of this circle of legal relations. It has been established that the legal instruments governing State policy in the field of environmental protection is quite wide and their source is not only the Constitution of Ukraine, but also international legislation defining the standards in nature and environmental protection.

The authors summarize the approaches to the concept of the sphere of the environment and the content of its legal regulation, which lies in the establishment of the series of systematized legal acts governing the relevant sphere and ensuring compliance with a certain range of human and citizen rights and freedoms in the field of environmental protection, since all State resources are the property of the Ukrainian people, and the state, as their main administrator, is obliged to regulate the issue of their protection from the harm that could be done.

Besides, it is substantiated that in the conditions of European integration, adaptation of international experience to domestic legal realities, as well as harmonization of national and international legislation, the development of the latest forms and methods of environmental protection, among which strategic planning in the field of environmental protection takes the leading place, is an urgent issue.

It is noted that there is a critical need to develop new and improve existing legal acts, taking into account modern trends, since the war unleashed by Russia on the territory of Ukraine causes critical damage to the environment and ecology of Ukraine, and accordingly, such actions should be properly qualified and all those guilty brought to legal responsibility, which can be implemented only after approving a strategic document in the field of environmental protection.

The perspective of further research is the need to analyze the methods of protection in the area of nature protection, which are defined by the legislation of Ukraine as effective tools for the defense of the environment from harmful effects. The question of using international experience in improving the relevant national mechanism may also be informative and complementary to the study.

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