

# Cooperation of Ukraine and the European Union in the Ecological Sector: Directions and Prospects

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## **ABSTRACT.**

The purpose of this research is – to study the main problems that impede the effective integration processes of Ukraine to the European Union in the environmental sphere and to identify the main benchmarks for such cooperation in the context of strengthening the globalization trends in the world. Subject of research – directions and prospects of cooperation between Ukraine and the European Union in the environmental sphere. At the heart of the research methodology – is the dialectical method of scientific knowledge, as well as special methods of research based on the modern scientific principles of legal, economic, managerial and related sciences: methods of analysis and synthesis - to determine trends in the development of integration processes in the environmental sphere of Ukraine to the norms and standards of the European Union; comparative analysis - for comparing information on environmental norms and standards of Ukraine and the European Union; statistical - to assess the current state of cooperation between Ukraine and the European Union in the environmental field; systematic approach - for a comprehensive study of the issues of organizational and legal provision of European integration processes in the environmental sphere. The research highlights the main directions and prospects of cooperation between Ukraine and the European Union in the environmental sphere, outlines the problems that impede the integration processes of Ukraine and the European Union in the field. The interdependence of problems hindering the integration processes of Ukraine in the ecological sphere to the European right space and the necessity of an integrated approach to their solution are substantiated. The analysis of existing problems related to the real state of cooperation between Ukraine and the European Union in the environmental sphere provides an opportunity to identify the priority areas of Ukraine's environmental policy and to take into account the recommendations for its improvement in the context of Ukraine's integration into environmental norms and standards of the European Union.

*Keywords: cooperation of Ukraine, European Union, environmental sphere, ecological policy, integration.*

## **1.Introduction**

Among the global problems of the present, relating to the vital interests of all peoples of the world, are characterized by dynamism and require the collective community of the world community to solve their problems, the problems of environmental protection are large and urgent. The results of the solution to these problems determine the further progress of mankind and the preservation of civilization,

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therefore, they should be resolved in a clear interconnectedness of the actions of the countries of the world. The Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, enters into force and provides for a number of Ukraine's commitments, including in the environmental sphere.

The above defines the nature of the actions in the direction of organizational and legal support for solving environmental problems in Ukraine, which must be coordinated with the European institutional base, adapted to European norms and standards, strategically reoriented to the realization of the common goals for development of European countries and ensuring the welfare and life of future generations of Europeans (including Ukrainians) in environmentally comfortable conditions. After all, as stated in the Law of Ukraine "On the Basic Principles (strategy) of the State Environmental Policy of Ukraine for the period up to 2020", occupying less than 6% of the area of Europe, Ukraine has about 35% of its biodiversity (45,000 species of flora).

The scientific and theoretical foundations of the research were the scientific works of domestic and foreign specialists: V.B. Averyanova, V.I. Andritseva, G.I. Balyuk, V.M. Garashchuk, A.P. Hetman, I.V. Girenko, L.O. Golovko, V.V. Kostytsky, V.I. Kurilo, M.V. Krasnova, Yu.A. Krasnova, V.V. Ladichenko, D.V. Lazarenko, O.Ya. Lazor, E.S. Loginova, V.I. Loza, N.M. Obiyukha, O.P. Svetlychny, A.K. Sokolova, E.S. Teimurova, E.O. Shevkunova and others. At the same time, today there are no complex developments related to the study of the peculiarities of organizational and legal regulation of social relations in the context of Ukraine's European integration aspirations in the environmental sphere. In the majority of existing scientific works, the outline topic is only covered in a fragmentary way, although it has important scientific and practical significance.

The purpose of the study is to identify and generalize the legal and organizational framework for ensuring European integration processes in Ukraine's environmental sphere and to formulate their own proposals. The methodological basis of the study is a set of general scientific and special methods and techniques of scientific knowledge: dialectical, logical, system analysis and comparative legal.

The scientific novelty of the results is to develop and implement an author's approach to study the peculiarities of organizational and legal provision of European integration processes in the environmental sphere. In particular, it has been proved that the regulation of relations in the sphere of providing European integration processes in the domestic ecological sphere is based on the optimal balance of both public and private interests in the middle of the country and interests of Ukraine and neighboring countries (European countries) regarding the quality of life of the population of these countries, security the environment and conservation of biodiversity.

## **2. Priority directions of cooperation between Ukraine and the EU in the field of ecology**

Integration of Ukraine into the European-wide space implies cooperation in the field of ecology in a number of areas. The list of areas of cooperation is determined, on the one hand, by a systematic analysis of the very ecology as a phenomenon of objective

reality, and on the other hand - by a systematic analysis of legal relationships, which includes, in addition to the rules of law, such objective legal phenomena as subject and object of legal regulation, legal technique, legal consciousness and legal culture<sup>1</sup>. In this regard, the process of integration will not only be a systemic phenomenon, but a multi-dimensional, hierarchical phenomenon. The latter determines the fact that it is necessary to approach it already on the basis of revealing of the leading tendencies, directions and objects of integration, and not simply as a process that is being deployed successively.

The development of legal regulation of the environmental sphere, both in Ukraine and in the European Union, takes place in three most important and urgent areas:

- formation of institutes, creation and maintenance of the functioning of the organizational mechanism of environmental protection, restoration and preservation of ecological balance, elimination of confrontation of environmental and economic interests of not only individuals but also states and supranational entities (environmental regulation at the Community level, introduction of common rules for assessing the impact on the environment, the collection and processing of environmental information, and environmental monitoring through the European Agency for the environment, Community environmental certification, environmental management and environmental audit)<sup>2</sup>;
- creation and development of the economic mechanism of ecological safety, ecologization of the economy, formation of a "green economy" (system of financing of environmental measures "LIFE", "green" taxes of the Community in the energy sector, support of the "deposit-return system" in the member states);
- establishment of a mechanism for the protection of environmental rights<sup>3</sup>.

Implementation of the EU-Ukraine Association Agreement means, among other things, the need for introduction of European standards and norms in the field of environmental protection. Implementation of European environmental policy in Ukraine demands obligatory coordination of organizational, economic and legal aspects of governance that is crucial for its effective functioning<sup>4</sup>.

Object analysis of perspective directions of cooperation between Ukraine and the EU in the field of ecology makes it possible to identify the most promising areas of this cooperation, as well as the most relevant for the harmonization of Ukrainian legislation. These include the use of water resources, in the first place, of transboundary rivers; protection of atmospheric air purity and problems of prevention, assessment and elimination of harmful effects on the environment. The relevance of these areas is due to

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<sup>2</sup> Shevkunova E.O. (2014) *Dzherela mizhnarodnogo ekologichnogo prava: stanovlennja ta rozvytok* [Sources of international ecological law: formation and development] (PhD Thesis), Kiev.

<sup>3</sup> Ukrainian Right (2016) *Zahyst ekologichnyh prav ljudyny u pravi Jevropejs'kogo Sojuzu* [Protection of environmental human rights in the law of the European Union]. Retrieved from: ([http://ukrainepravo.com/international\\_law/european\\_union\\_law/zakhyst-logichnykh-prav-lyudyny-u-pravi-evropejskogo-soyuzu](http://ukrainepravo.com/international_law/european_union_law/zakhyst-logichnykh-prav-lyudyny-u-pravi-evropejskogo-soyuzu)) (accessed (16.03.2016)).

<sup>4</sup> Ladychenko, V., Golovko, L. (2017). *Vprovadzhennia yevropeiskoi ekolohichnoi polityky v Ukraini: problemy ta perspektyvy* [Implementation of European Environmental Policy in Ukraine: Problems and Prospects]. *Yevropeiskyi zhurnal staloho rozvytku –European Journal of Sustainable Development* (Volume 6), 3, p. 333.

the climatic and geographical features of Ukraine and the EU member states bordering on it, as well as the peculiarities of the international division of labor and economic history of these countries and Ukraine.

### 3. Cooperation between Ukraine and the EU on the use of water resources

According to the United Nations in the world there are about 263 water objects crossing the borders between two or more countries, and 270 transboundary aquifers, in which about 40 percent of the world's population lives. There are 38 such objects on the territory of Ukraine, which is a significant amount. At the same time, interstate cooperation is carried out only in 1/3 of these objects, despite the fact that the non-legal field of such cooperation is traditional and despite the adoption in the late XX century of two universal agreements on the use and conservation of transboundary resources of fresh water.

Generally accepted in the international legal doctrine and practice of international treaties, is consideration of the use and protection of transboundary water resources is exclusively in the context of mainly bilateral cooperation of states in international watercourses. At the same time, relations over the use of fresh water as a resource representing independent value remain out of sight.

Existing agreements on the protection and use of freshwater resources of Ukraine concluded mainly in Soviet times, and do not take into account the specifics of transboundary aquifers as the object of international legal relations of the states. At the same time, the traditional, uncoordinated regulation of relations on the use of various transboundary sources of fresh water prevents the implementation of the concept of sustainable development, which requires integrated water resources management. This is especially true of the economic and environmental situation in the border regions of the country.

For Ukraine and its European neighbors, albeit in a smaller, compared to other countries of the world, even in the presence of mechanisms for cooperation on the use of water resources, and between states that share a transboundary water body, there continue to be disputes over the content of international law rights and duties, as evidenced by the practice of the United Nations International Court. Moreover, fresh water is valuable, first of all, to meet the drinking needs of man, which has led to the need for certain changes in the field of international law, human rights. European law, following the international, recognizes the existence of the human right to water, within the framework of the European Court, some jurisprudence has developed on this issue. However, despite regulatory innovations, the legal content of the right to water, the possibility of introducing norms and mechanisms in the field of human rights into the system of legal regulation of interstate relations regarding the use and protection of freshwater resources remains unexplored<sup>5</sup>. The theoretical and practical necessity in the aspect of Ukraine's integration into the European community is the study of the relationship of European norms on human rights and norms of environmental law in regulating the rational use

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<sup>5</sup> Obiyuk N. M. (2015) *Pravove zabezpechennja vykorystannja dzherel pytnogo vodopostachannja v Ukraïni* [Legal support of the use of sources of drinking water supply in Ukraine] (PhD Thesis), Kiev.

and protection of freshwater resources.

The initial premise of such a study is the assertion that fresh water is a natural resource, management relations, the use and protection of which are regulated by environmental law. In most cases, fresh water, as an integral part of transboundary water sources, acts as the object of relations for their management, use and protection, regulated by the norms of international environmental law. At the same time, it can act as an independent object of international environmental legal relations, as well as the object of national resource and administrative law. Actually, in the conditions of Ukraine, environmental and legal mechanisms for the use of freshwater resources at the national level are complemented by instruments of international human rights law and international environmental law. As a result of the fact that both in international law and in European law, fresh water acts in two closely interrelated aspects: as an object of international environmental legal relations and as a resource, without which it is impossible to ensure and fulfill human life, the European legal regime of water using becomes explicitly complex nature, combining legal instruments and means of different nature and purpose.

An analysis of the norms of European law, the judicial practice of the European Court, as well as international treaties and doctrinal provisions, suggests that the normative content of human rights to water is reduced to the following set of subjective rights of different subjects of law from the state to an individual, expressed in obtaining the ability of this entity to demand from the state and other persons:

- providing daily to meet their daily needs not less than 20 liters of drinking water (for an individual);
- providing a harmless, acceptable for color, smell and taste of fresh water;
- ensuring the availability of fresh water economically and physically, ie no more than one kilometer from home and from safe sources of supply. At the same time, states have duties to create the most favorable conditions for water for personal purposes, as well as from non-interference and prevention of such actions by third parties in the process of exercising this right by individuals through the adoption of legislative, administrative, technical, economic and other measures, including the establishment of effective mechanisms for its protection in case of violations<sup>6</sup>.

At the heart of European practice, the implementation of legal relationships related to the provision of drinking water, is an integrated approach to water resources management. It is characterized by the following:

- change of the approach to the management of groundwater and the account of natural features in the regulation of relations with regard to their use and protection, taking into account the natural relationship of water resources with other components of the environment;
- active involvement of private individuals in the management of relations in the use and protection of fresh water;
- taking into account the interests of particularly vulnerable groups - indigenous people, women, children and the elderly, people with disabilities, prisoners and those in custody<sup>7</sup>.

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<sup>6</sup> Teymurov E.S. (2016) *Mezhdunarodno-pravovoe regulirovanie racional'nogo ispol'zovaniya presnoj vody* [International legal regulation of the rational use of fresh water] (PhD Thesis), Moscow.

<sup>7</sup> Serdyuk O. V. (2014) *Pravovi zasady vykorystannya pidzemnyh vod* [Legal basis using groundwater] (PhD Thesis), Kharkiv.

The study of European practices in the creation and use of mechanisms to protect human rights in ensuring the rational use of fresh water indicates the ecologization of the content of the fundamental rights and freedoms of the individual. Despite the fact that none of the regional international treaties on the protection of human rights and freedoms, as well as the constitutional acts of European states do not directly establish the right to water, the established regional and national mechanisms of protection carry out its protection by expanding the interpretation, removing it from the content of the following human rights and freedoms: the right to life; the right to health; freedom from torture; the right to human dignity; the right to a satisfactory environment; the right to private and family life; the right to housing; the right to a fair trial<sup>8</sup>.

#### **4. Cooperation between Ukraine and the EU in the field of atmospheric air protection**

The issue of ensuring the legality of jurisdictional activities in the field of atmospheric air protection, to date, of a comprehensive study in domestic legal science, has not received. It remains unresolved nature of some fundamental issues of rights and obligations included in the scope of this regulation, the characteristics of the legal mechanism for implementing these rules, have not been studied features ensure legality in the exercise of the complaints procedure in cases of administrative offenses of officials authorized to conduct state functions in the field of air protection. The problems of prevention of violations of legality in the activity of these bodies were not investigated<sup>9</sup>.

Solving the issue of air pollution is perhaps the most urgent not only in the territory of our state, but also the entire world community. Even within the territory of the most developed countries, the level of atmospheric air pollution sometimes, and even quite often, reaches critical points. Accordingly, the formation and effective use of legal instruments on compliance with norms on atmospheric air protection and related legal responsibility are very important and require the study of relevant international experience.

On the basis of the study of practical activities of state bodies of ecological management and public environmental organizations, the optimal forms of supervision in the field of atmospheric air protection are observed - observation of subordinate subjects by means of outgoing and documentary inspections, as well as by raider reviews. It was established that despite the definition in the administrative regulations of the possibility of conducting supervision in other forms in the form of systematic monitoring of the activities of subordinate subjects, predicting the possibility of implementing legal norms, normative legal acts do not establish any legal means and methods nor criteria for supervision in the specified forms. The consequence is the impossibility of their use and the achievement of the purpose of their establishment, as well as the use with violations

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<sup>8</sup> Teymurov E.S. (2016) *Mezhdunarodno-pravovoe regulirovanie racional'nogo ispol'zovaniya presnoj vody* [International legal regulation of the rational use of fresh water] (PhD Thesis), Moscow.

<sup>9</sup> Loginova E.S. (2016) *Obespechenie zakonnosti v administrativno-jurisdikcionnoj dejatel'nosti, osushhestvlyajemoj v sfere ohrany atmosfernogo vozduha* [Ensuring legality in administrative-jurisdictional activities in the sphere of protection of atmospheric air] (PhD Thesis), Moscow.

of rights subordinate subjects.

At the same time, normative legal acts do not establish any requirement for the collection and fixation of evidence in the administrative-procedural process, including supervisory activities, or the consequences of non-compliance. Given the fact that the result of this activity may be the inclusion of public liability, the need to establish such requirements is proved by unifying the procedures for collecting evidence and establishing them. This, in our opinion, will enable, firstly, to ensure the possibility of the same gathering of evidence, and, therefore, a uniform assessment of the actions for their collection. Secondly, it will help to ensure the reliability of the evidence gathered in the course of the supervisory measures of observance or non-observance of the norms of the current legislation by subordinate subjects. Thirdly, it will create the preconditions for adhering to the principle of procedural economy and efficiency, as it excludes the possibility of duplication by the administrative body of measures for gathering evidence in the course of administrative and procedural activity and conducting proceedings in an administrative offense case<sup>10</sup>.

## **5. Cooperation between Ukraine and the EU in the field of assessing the harmful effects on the environment**

One of the most important directions of the integration of Ukrainian and European legislation in the environmental sphere, as well as the direction of joint activity of European and Ukrainian institutions in this area, is the assessment of the harmful effects on the environment, organization of works on conducting the state ecological expertise.

After the signing by Ukraine of the Protocol on the system of environmental assessment in 2003, a number of legal acts were developed in this area. The Law of Ukraine "On Environmental Expertise" has expired. On the other hand, on May 23, 2017, the Law of Ukraine "On Environmental Impact Assessment" was adopted and only March 20, 2018 - the Law of Ukraine "On Strategic Environmental Assessment".

Following the signing of the Association Agreement between Ukraine and the EU on June 27, 2014, Ukraine, in connection with the necessity to accelerate work on the harmonization of its legal system with the Directive on Strategic Environmental Assessment (hereinafter SEA) and the development of relevant national legislation, decided to form new the legal framework for conducting SEA is fully consistent with the requirements of the SEA Protocol and the SEA Directive (with the exception of the provisions relating to the Natura 2000 network). The Law of Ukraine "On Strategic Environmental Assessment" also envisages amendments to a number of existing legal instruments related to the development of strategic documents that are subject to the SEA.

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<sup>10</sup> Loginova E.S. (2016) *Obespechenie zakonnosti v administrativno-jurisdikcionnoj dejatel'nosti, osushhestvlyajemoj v sfere ohrany atmosfernogo vozduha* [Ensuring legality in administrative-jurisdictional activities in the sphere of protection of atmospheric air] (PhD Thesis), Moscow.

## Conclusions

Object analysis of perspective directions of cooperation between Ukraine and the EU in the field of ecology makes it possible to identify the most promising ones. These include the use of water resources, in the first place, of transboundary rivers; protection of atmospheric air purity and problems of prevention, assessment and elimination of harmful effects on the environment.

It should be noted that Ukraine is far from fully completing the process of harmonizing its environmental legislation with European standards in this area. In this regard, talking about any significant results of this process is premature.

Speaking about the integration of Ukrainian legislation into pan-European, it should be noted that these procedures are sufficiently well developed and applied in practice by various state bodies of European countries. This circumstance confirms the view that integration with the EU legal system should be carried out not only at the level of legal norms, but also at the level of mechanisms for their implementation, law enforcement activities and its tools, as well as at the level of legal technic.

Significantly complicates the process of harmonization the fact that the environmental legislation of Ukraine has a rather general, framework character, regulating only issues that are considered the most important, while most of the issues of a technical nature are regulated by by-laws of executive authorities with different legal status. In this plan, the European partners are proposing a position according to which the practice of most continental EU member states is based on the fact that issues of substantial legal significance are regulated at the legislative level, while issues of a technical character and details of implementation may be regulated by by-laws acts of executive authorities.

Significantly, the process of harmonization is complicated by the fact that the legislation of Ukraine, for historical reasons, has a clear material and legal character, and in European legislation, relatively much attention is paid to procedural and organizational issues. In the case of harmonization of environmental legislation, this leads to the fact that the introduction of new European norms into the legislation of Ukraine on the basis of the traditional structure, the formation of a clear and holistic view of the legal system of European environmental law, will be complicated. Moreover, the practical implementation of the system may also be difficult in the absence of clear provisions governing essential organizational and procedural issues of environmental activity of the state and its bodies.

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