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THE LEGAL MECHANISM FOR ENVIRONMENTAL PROTECTION IN UKRAINE

Purpose. To study the aspects of implementing the legal mechanism of environmental protection (LMEP) and the requirements for it. To propose a definition of the "LMEP" concept. To develop recommendations for improving the legal mechanism, propose measures for its implementation and determine its main components.

Methodology. The study uses general and special methods of cognition: comparative analysis – to establish LMEP indicators; critical analysis – for formation of requirements for LMEP and its definition; abstract-logical analysis – to determine the need for strategic dynamic approach to the implementation of LMEP; induction and deduction – to offer tool of "feedback" between the implementation of legal norms, and the effectiveness of their practical implementation; logical abstraction - for development of recommendations improving LMEP, measures for its implementation, its components, and the codification of environmental legal provisions.

Findings. The requirements for the LMEP implementation are specified. Indicators for evaluating the LMEP effectiveness are proposed. "Feedback" tool between the implementation of environmental and legal norms and the effectiveness of their practical implementation and mechanism for the gradual adaptation of these norms are proposed. The definition of the concept "legal mechanism of environmental protection" is proposed. The absence of systematic approach and the insufficiency of analytical work at the stage of preparation of normative legal acts and after their adoption are pointed out. Specific ways of solving this problem are proposed. In order to prevent offenses, the need to increase the role of administrative justice in environmental protection cases and to expand the application of administrative law for this purpose is indicated.

Originality. The necessity of forming a strategic dynamic approach to the implementation of LMEP and adjusting the adoption of its stages in view of the effectiveness of tools for the development of legal and environmental awareness of citizens is indicated.

Practical value. The proposed regulatory clarification of the concept of "significant damage" will strengthen compliance with the principle of matching the violation with the punishment.

Keywords: *legal mechanism, environmental protection, dynamic approach, implementation of right principles*

Introduction. Further development of Ukraine is possible only if national priorities, economic interests of the state, industries, communities, and private companies are coordinated with the ecological interests of humanity, neighboring countries, society, and every citizen. Transition from predatory use of the country's natural capital to sustainable economic development, achievement of social stability, health and well-being of citizens should be ensured by an effective environmental and legal policy of the state, introduction of mechanisms for effective implementation of legal norms.

The document that has the greatest legal force in this area is the Constitution of Ukraine. According to Art. 16 of the first chapter of the Constitution of Ukraine, the duty of the state is to "ensure ecological security and maintain ecological balance on the territory of Ukraine... preservation of the gene pool of the Ukrainian people". Article 50 states that "everyone has the right to an environment safe for life and health and to compensation for damage caused by the violation of this right". But appropriate legal mechanisms must be developed and implemented for the application of these provisions in legal practice. For this, in particular, changes have been made to the Criminal Code of Ukraine. Thus, criminal encroachments on the natural environment and its components are considered in the eighth chapter of the Special Part of the Criminal Code "Criminal offenses against the environment". Legal norms of environmental protection are also in land, water legislation, civil, administrative law. More than 300 normative-legal documents of different legal force and in different branches of law have been introduced to regulate legal relations in the environmental sphere.

Implementation of regulatory and legal documents, changes to them sometimes take place without an appropriate level of consistency between the provisions of these documents. This leads both to the duplication of provisions and the emergence of gaps, which, in turn, results in the formation of a complex regulatory and legal field and makes it difficult to qualify an offense, even in the case of establishing an unambiguous connection between the actions of persons or organizations that caused damage to the environment, and the "socially dangerous consequence" of their actions.

This makes analytical studies on various aspects of the legal mechanism of natural environment protection and the development of recommendations for its implementation relevant.

Literature review. Legal aspects of environmental protection are studied by many scientists. This direction has many difficulties, and the regulatory and legal framework on these issues has many unresolved contradictions. This, in particular, is indicated in the analytical article by Trotsiuk and Hrabovsky [1], where the current legal status of environmental protection is analyzed and some forecasts of its changes are provided. In the mentioned article [1], it is proposed to consider the set of legal norms regarding environmental protection as a complex system of national legal acts, international and intergovernmental agreements, the purpose of which is to "ensure the preservation and restoration of natural and natural-social conditions and processes, natural resources". The system approach proposed in the article by Trotsiuk and Hrabovsky [1] was also applied by the authors of this article.

In the study by Pysarenko, et al. [2], the level of uncertainty regarding legal mechanisms in this area was considered so great that, on the basis of the analysis of theoretical provisions and current judicial practice, the concept of an adminis-

trative legal mechanism for environmental protection was proposed. Based on the results of the analysis of Pysarenko, et al. [2], they consider it promising to use administrative contracts to record the parties' legal obligations regarding environmental protection. The study on the peculiarities of the mechanism of administrative contracts was continued by the authors of the given article.

Mulska, et al. [3] believes that the legal mechanism for the protection of the natural environment must first of all be formed on the basis of environmental safety, which is considered so broadly that it even covers the protection of an individual's health. That is, formally, Mulska, et al. [3] combines environmental and constitutional law in this mechanism. Unfortunately, the author took into consideration the blanket nature of the norms on which it is proposed to implement the legal mechanism of environmental protection.

Koveino and Dresvyannikova [4] together with researching the mechanism of legal regulation of environmental safety strengthen the combination of environmental law with constitutional law by referring to the Declaration on State Sovereignty of Ukraine, which has a section "Environmental Safety". Koveino and Dresvyannikova [4] also believe that "the Economic Code and natural resource codes are correlated as acts of general and special regulation". This confirms the thesis about the legal irregularity of legal relations on environmental protection issues and the possibility of their interpretation according to different branches of law. Shparyk [5] points out the fact that since the Convention on Access to Information, public participation in the decision-making process and access to justice on environmental matters (Aarhus Convention) and Article 8 of the Convention on the Protection of Human Rights and Fundamental Freedoms asserts the supremacy of human and community interests in relation to environmental violations, so these interests should be the core of the legal mechanism for environmental protection despite all the contradictions and inconsistencies of regulatory and legal acts. This thesis is used in the presented study.

Holovko [6] points out that "legal form ("mechanism")" should be understood as one of the types of legal means for the optimal solution of social tasks" and considers environmental protection activity to be a narrower concept of "social activity". That is, it is proposed to take the interests of society as the basis of the legal mechanism of environmental protection. Holovko [6] also claims that "the current legislation of Ukraine does not contain a specific list of legal forms of implementation of environmental protection activities" and this is one of the inconsistencies of the legal field. This is considered in the presented study.

Dvigun, et al. [7] researching the legal support of a separate area of environmental protection activity points to problems that are inherent in a wider range of areas of environmental protection. The article points out the weakness of the legal mechanism for regulating relations; "imperfection of the system of responsibility of consumers, producers and competent authorities"; "lack of proper state control over compliance with legislation". This is used in the presented article.

Ladychenko, et al. [8] conducted a comparative analysis of the liability of legal entities for environmental damage in Ukraine and the countries of the European Union. The authors of the mentioned article [8] claim the need to introduce a legal mechanism for the implementation of criminal liability for more effective protection of the environment and argue their position in detail. The introduction of criminal liability will ensure that punishment is not evasive, unlike liability under administrative or environmental law. This thesis is used in the presented study.

Bredikhina and Zadykhaylo [9] paid attention to the "convergence of legal means of regulating nature use". Bredikhina and Zadykhaylo [9] insist on the need to harmonize environmental legislation and regulatory methods to satisfy commercial interests to stimulate a "green economy". Bredikhina and Zadykhaylo [9] believe that such an economy "needs multipurpose legal regulation, including (environmental and commercial) principles of regulation". But "commercial principles of regulation" can deform the legal mechanism in our opinion. That is, the lack of flexibility of the mentioned mechanism is implicitly indicated. In a detailed analytical article by Getman and Anisimova [10], it is indicated that nowadays Ukraine lacks "a balanced concept of systematization of both environmental legislation and environmental legal policy". Getman and Anisimova [10] believe that in order to activate law-making in this direction, it is necessary to improve the ecological legal doctrine, which will allow changing "the understanding of law, and therefore the application of law". This coincides with our understanding of the problem, but it is also appropriate to specify this doctrine with an ecological and legal mechanism for its implementation.

Piddubna and Karakash [11] consider it necessary to implement "detailing, simplifying and unifying the legal framework (environmental protection direction) using the example of the European Union". The goals of adjusting the legal framework according to Piddubna and Karakash [11] are: strengthening the responsibility of officials and management and owners of enterprises; system control of the state of natural capital; prohibition of those types of economic activity that harm the environment. That is, the principles of the legal mechanism are implicitly proposed.

Kozmuliak [12] indicates a significant unresolved problem of the operation of legal mechanisms for environmental protection in times of war and post-war reconstruction. According to the analysis by Kozmuliak [12], under conditions of war, "international treaties and obligations taken by some states in relation to others are called into question". This confirms the thesis that there is no strict correlation between crime and punishment even in the international law and, even more so, in its environmental aspects. The need to take into account compensation for environmental damage in strategic planning documents is also indicated. This indirectly combines the spheres of international, environmental and administrative law in the formation of legal mechanisms for environmental protection.

In a detailed scientific review of environmental and legal problems, Krasnova M.V., and others [13] pointed out the complications of the implementation of normative legal acts in judicial practice, in particular the Law of Ukraine "On Environmental Impact Assessment", given that this Law assesses only significant technogenic impact on the environment The need to apply administrative, civil, and criminal law for the legal assessment of environmental offenses is indicated as well. The procedural complications associated with this are indicated in the presented article.

Purpose. To study the aspects of implementation of the legal mechanism of environmental protection and its requirements. To propose a definition of the concept of "legal mechanism of environmental protection". To develop recommendations for improving the legal mechanism, propose measures for its implementation and identify its main components.

Methods. The conducted research required the use of general and special methods of cognition. The method of comparative analysis made it possible to establish the indicators to which the legal mechanism of environmental protection must correspond. Such indicators, according to the methodology of the World Bank, are proposed: "Regulatory quality", "Rule of law", "Public opinion and accountability". The method of critical analysis made it possible to formulate requirements for the legal mechanism of environmental protection and propose its definition.

The method of abstract-logical analysis made it possible to indicate the need for the formation of a strategic dynamic approach to the implementation of the legal mechanism for the protection of the natural environment and to evaluate the stages of its adoption in view of the impact on the development of legal and environmental awareness of citizens.

The method of induction and deduction made it possible to propose a tool of "feedback" between the implementation of legal norms and the effectiveness of their practical implementation. This method also made it possible to indicate the need for a proper separation of criminal and administrative law in the field of natural environment protection and to offer proposals in this regard.

The method of logical abstraction made it possible to determine recommendations for improving the legal mechanism of environmental protection, propose measures for its implementation and specify its main components. This method also made it possible to propose the codification of the main environmental legal provisions and norms and to implement the Code of Laws of Ukraine on the Protection of the Natural Environment for this purpose.

Results. The difficulty of implementing an effective legal mechanism for environmental protection lies in the fact that it must balance the public interests of preserving natural capital and the socio-economic interests of dynamic development of the country and meeting the needs of citizens. The contradiction of these interests lies in the fact that the implementation of socio-economic development requires the expansion of production capacities, which, accordingly, leads to an increase in the use of natural capital. This contradiction should be regulated by the environmental and legal policy of the state, the instrument of which should be the legal mechanism.

The specified legal mechanism must meet certain indicators. According to the methodology of the World Bank [14], the following can serve as these indicators: "Regulatory quality", "Rule of law", "Public opinion and accountability".

According to the results of a comparison of the data of the World Bank [13], Ukraine is significantly inferior to the neighboring countries, members of the European Union, according to the specified indicators (Figure). For comparison, those neighboring countries with which Ukraine had the same starting conditions at the beginning of the 90s were specially selected. The difference is much greater with other EU countries.

Thus, according to the indicator "Regulatory quality", Latvia is more than twice ahead of Ukraine, according to the indicator "Rule of law" – more than three times, according to the indicator "Public opinion and accountability" – more than one and a half times. According to some indicators, stagnation has been observed in Ukraine in recent years, according to the indicator "Public opinion and accountability", as it can be seen from the comparison of data for 2020 and 2021 – even a drop of 4.8 % [14].

The conducted comparison gives a general qualitative picture, in particular considering the fact that although the World Bank does not separate the indicators of individual branches of law from the legal field, the provided data indicate general troubles in the legal field. Therefore, in addition to specific tasks, the environmental-legal mechanism should contribute to the improvement of the specified indicators, which, accordingly, can serve as an indicative determination of the effectiveness of the introduction of the environmental-legal mechanism.

Particular attention should be paid to the need to direct the legal mechanism in such a way that it not only implements the punishment of offenses, but, first of all, contributes to the prevention of crimes against the environment. The importance of this is emphasized in the Criminal Code of Ukraine, where in Article 1, among the main tasks of the Criminal Code, the importance of environmental protection and the need to prevent offenses are indicated.

Also, the prerequisite for the implementation of the legal mechanism of environmental protection is that according to Article 16 of the Constitution of Ukraine and Article 5 of the Law of Ukraine No. 1264-XII "On the Protection of the Natural Environment", a person acts "directly as an object of ecological and legal protection". Therefore, as it is rightly stated in the article by Shvets [15], this feature should be taken into account when defining the environmental legal mechanism.

In view of the above, the environmental-legal mechanism can be defined as a legal instrument for the implementation of the state's environmental protection policy, which aims to protect, first of all, the person and the community, and is aimed at preventing short- and long-term damage to the environment, preserving and multiplying it natural capital, promote the rule of law, government accountability, ensure the regulatory quality of normative legal acts.

The implementation of the mentioned provisions is hampered, in particular, due to the fact that the implementation of regulatory and legal acts on environmental protection has so far been carried out without proper systematic coordination of the legal field according to Leheza [16]. This, firstly, leads to negative consequences and causes ambiguity in the interpretation of legal norms. Secondly, since the issue of causing damage to the natural environment is considered in different branches of law, this leads to the complexity of interpretation, which branch of law has priority over which, in relation to the qualification of an environmental offense – Radchenko, et al. [17].

The fact that a certain part of the provisions in many normative legal acts has a blanket character is also a complication. A typical example of a blanket character is Article 15 of the Law of Ukraine No. 2059-VIII "On Environmental Impact Assessment", which is devoted to determining responsibility for violations of this Law. It declares: "Persons guilty of violating the legislation on environmental impact assessment shall be subject to disciplinary, administrative, civil or criminal liability", that is, it refers to other branches of law for the implementation of responsibility.

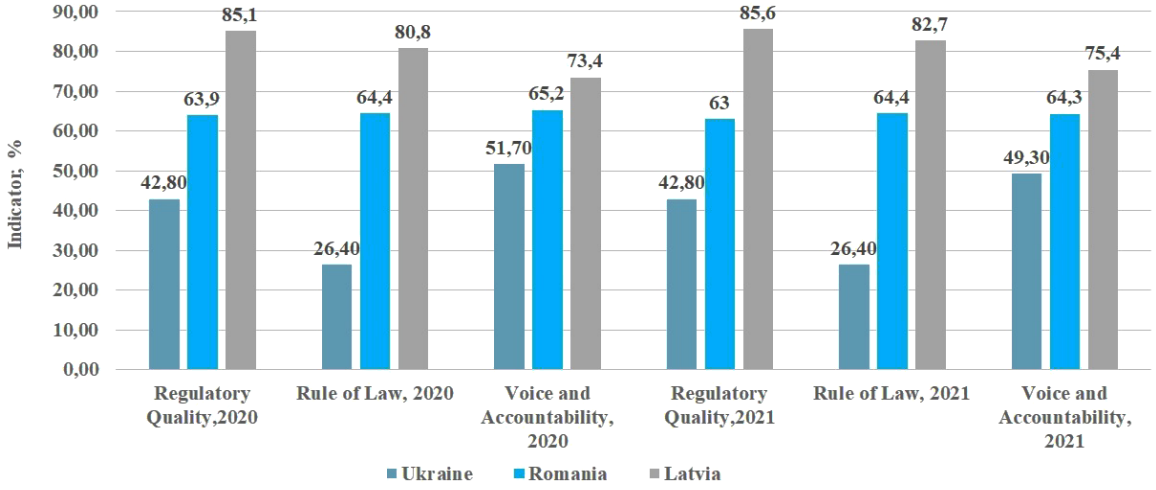

Fig. Performance indicators: "Regulatory quality", "Rule of law", "Public opinion and accountability", %

But the most significant drawback of the lack of a systematic approach is the insufficiency of analytical work, both at the stage of preparation of normative legal acts, in particular, regarding the determination of the proportionality of the violation – punishment, the validity of the application of the rule of law for the proper qualification of the offense, and the corresponding work after their adoption, in particular, the planned comprehensive implementation of information and communication measures in order for the public to accept the methods of legal protection of the environment, and every punishment for causing damage to the environment after its publication played an educational role, to reduce cases of similar offenses in the future.

It should also be noted that significant changes in the legal field should not be of a one-time nature. The specified changes must correspond to the level of legal and environmental awareness of citizens and must pass a certain approval in practice. Radical changes may not be accepted by society, which will create social and even political tension.

This leads to the conclusion of the need to form a strategic dynamic approach to the implementation of the legal mechanism for the protection of the natural environment and to evaluate the stages of its adoption in view of the impact on the development of legal and environmental awareness of citizens.

Accordingly, this requires not only the implementation of a system of analytical processing of legal documents using the methods of comparative analysis of the legal provisions of regulatory documents, forecasting the consequences of their implementation, but also the use of a centralized support system for the adoption of regulatory legal acts and management of their implementation. Since environmental and economic indicators are subject to forecasting, it is expedient to form a nationwide database regarding the environmental consequences of the introduction of legal acts. An example can be the measures of the People's Republic of China in this direction mentioned in the article by Zhai, et al. [18].

In view of the above, the requirements for information systems for environmental and legal purposes, the implementation of which is regulated in the legislation of Ukraine, need to be expanded. Thus, according to the Law of Ukraine 2973-IX dated 20.03.2023 "On Amendments to Certain Legislative Acts of Ukraine Regarding the State System of Environmental Monitoring, Information on the State of the Environment (Environmental Information) and Information Support for Management in the Field of the Environment", it is proposed to "establish and ensure the functioning of a state-wide environmental automated information and analytical system for ensuring management decision-making and access to environmental information and its network".

This system can become one of the effective tools for ensuring the legal mechanism of environmental protection, therefore, the requirements for its design require regulatory changes, in particular:

1. The specified system must be integrated with the proposed centralized system for supporting the adoption of regulatory acts and managing their implementation.

2. In the legal field, sectoral and industry strategies for environmental protection, legal regulation of their provision of resources and responsibility for their implementation need coordination.

3. The proper provision of environmental standards by the subjects of economic activity and the application of legal norms to them require current legal control.

4. For the effective implementation of legal responsibility on environmental issues, it is necessary to create a database with the history of changes to these data and the results of environmental control, which can help in legal proceedings when qualifying an environmental offense.

5. In order to acquire equal procedural rights in court cases and prevent environmental offenses, all parties to court cases, individuals, organizations, and the public need equal access to environmental information and its network.

In support of the above thesis about the formation of a strategic dynamic approach to the implementation of the legal mechanism for the protection of the natural environment, there is a reference in the scientific literature to the need for the "step-by-step" adaptation of Ukrainian legislation to European norms as it is stated by Andronov, et al. [19]. The thesis of adaptation (harmonization) has several legal interpretations. As it is known, adaptation (harmonization) of the legal field can be carried out in two ways, which differ in the applied methods – the so-called "convergence" and "approximation". The path of "convergence" is based on the reproduction of other legislation in one's national legal field or the integration of one's own legislation into another legal field. The path of "approximation" means the introduction of norms of other legislation in order to fully embody not only the letter but also the spirit of this legal system. That is why it is necessary to define in the normative legal acts that the way of approximation for Ukraine is through adaptation to the EU legislation.

This conclusion is based on the fact that the implementation of the path of convergence of legislation for Ukraine is complicated, in particular, due to the fact that the protection of the natural environment in the EU is carried out in accordance with the so-called "norms of secondary law", as well as to the norms of the "primary law", directly enshrined in the founding documents of the European Union, as it is indicated, in particular, by Bespalova [20] and Dvigun [21]. Thus, in Chapter XIX "Environment" of the Treaty establishing the European Community, not only the goals and principles, but also the methods of implementation of the EU's environmental policy are specified. Article 95 of this Agreement specifies the methods and forms of approximation of the legislation of the EU countries regarding environmental protection, which is indicated, in particular, in the article by Krasnova, et al. [13]. As it is known, the norms of primary law prevail in practical implementation. That is, in some sense, these norms are analogous to constitutional norms in the domestic legal field. That is why the convergence of Ukrainian environmental legislation with European legislation is complicated.

The direct implementation of environmental legal norms of the European Union for some time was not a simple issue even for the EU countries, since in order to gain the effectiveness of the specified norms, it is necessary not only to include them in the legal framework, but also to achieve their implementation in practice [22].

For this, the European Union introduced "feedback" between the implementation of the mentioned legal norms and the effectiveness of their practical implementation by introducing a term for analyzing the level of their adaptation and making conclusions and, if necessary, adjusting national legislative acts. The need for an implementation tool, in particular, is indicated by the 2016 Communiqué "Benefits from the EU's environmental policy through the regular review of implementation in the environmental sphere" [23, 24].

A two-year period of implementation of these legal norms, a study on the level of achievement of the set goals, discussion by the public, formation of conclusions by specialists about successes and problems acts as a "feedback" tool. At the final stage, the Report of the European Commission is prepared [25]. Thus, the mechanism of step-by-step adaptation of environmental legislation is implemented, i.e. step-by-step approach to the most effective implementation of environmental-legal norms.

Therefore, in view of the above, the implementation of the legal mechanism for the protection of the natural environment in Ukraine will require the following measures:

1. Implementation of the path of "approximation" of Ukrainian environmental legislation to EU legislation, i.e. such introduction of European legal norms to fully embody

not only the letter but also the spirit of the legislation of the European Union.

2. Creation of a system of analysis of the impact of regulatory and legal acts on the social, environmental, economic, and political spheres.

3. Introduction of a mechanism for comprehensive assessment of the impact of regulatory acts, including their environmental and social consequences.

4. Analytical study on normative legal acts to determine the order of revision of legislation.

5. Taking into account the international obligations of Ukraine regarding the protection of the natural environment and planning the corresponding work on the coordination and regulation of the terms of their implementation.

6. Taking into account the results of the strategic environmental assessment and approved documents of state policy planning in the field of environmental protection.

7. Forecasting changes in the strategic environmental assessment as a result of the use of regulatory acts.

8. Forming feedback on the results of the implementation of the legal mechanism for the protection of the natural environment to change the pace and stages of its implementation.

9. Introduction of regular review of the implementation of legal norms in the environmental sphere, a two-year application period of implementation of these norms for this.

Following the thesis about promoting the rule of law leads to the need to implement the principle of inevitability of punishment for violation of human and community rights, damage to the environment, and devaluation of natural capital. Therefore, the implementation of the environmental legal mechanism should be aimed at promoting compliance with current legislation and preventing offenses in this area; ensure the implementation of the "polluter pays" principle and the principle of proportionality of punishment and crime. As it is known, it is possible to distinguish criminal, administrative, civil-law, disciplinary liability in the legal liability for environmental offenses.

The conformity of the legal mechanism of the principles of the inevitability of punishment and the appropriateness of punishment to the harm caused is complicated by the fact that, firstly, there is an existing overlap of legal fields of different branches of law, and secondly, the legislative norms do not cover the entire range of environmental offenses, given the significant pace of changes in political, social, environmental conditions, there is a need to take into account new kinds and circumstances of environmental damage in the legislation. Offenses against the environment committed during hostilities make an example [12]. This is a large-scale factor of negative impact on the environment because, together with crimes against humanity, war crimes, crimes against the natural environment occur. The use of international law against such crimes is a long-time matter and will require changes in international legal norms.

Legislators used criminal law to increase the level of responsibility for environmental crimes and introduced penalties for "criminal offenses against the environment". For this, in particular, the composition of some crimes was changed by defining them as "material", i. e., those that are legally terminated by causing "serious criminal consequences" or by committing an action that leads to them. This has led to some legal collisions, since the qualification of the significance of the offense leads to a change in the application of administrative law in judicial proceedings to criminal law and, since the level of responsibility for administrative environmental violations is much lower than for criminal ones, this leads to significant differences in judicial proceedings due to improper qualification of offenses and in the levels of punishment.

Therefore, the determination of the level of seriousness of damage caused to the natural environment in order to distinguish between the application of criminal and administrative law requires legal clarification, since the legal meaning of "pollution" already qualifies the damage.

This also indicates the improper separation of criminal and administrative laws in the field of environmental protection and is complicated by the fact that most of the legal norms of the Special Part of the Criminal Code "Criminal offenses against the environment" border on the corresponding norms of administrative law. Therefore, the procedural separation of criminal and administrative legislation on environmental protection by, in particular, a more precise definition of the concept of "significant harm" for the use of specific values of pollution in multiples of maximum permissible concentrations of harmful substances will allow one to more fully implement the principles of inevitability of punishment and proportionality of punishment – crime, and the principles of crime prevention and the formation of social unity in relation to environmental damage.

The proper separation of criminal and administrative laws regarding the protection of the natural environment is also necessary to increase the role of the administrative court in environmental legal proceedings, since most offenses can be qualified as a careless form of guilt not associated with significant consequences.

The need to increase the role of the administrative court in observing the rights and obligations of individuals and legal entities in relation to environmental offenses is also due to the fact that, for example, in contrast to criminal proceedings, the administrative court has the opportunity not only to use instruments of responsibility (such as a fine, confiscation of property, etc.), but also tools of administrative influence (such as revocation of licenses related to the use of natural capital, etc.). It is also important to have appropriate structures of administrative jurisdiction, which, for example, specialize in monitoring the implementation of environmental norms and rules, and are held legally liable.

Strengthening the importance of the administrative court and administrative law as a way to prevent offenses can also be achieved by introducing such a legal instrument as administrative contracts for the protection of the natural environment. Consideration of this aspect of the legal mechanism indicates that the legal form of contracts on environmental issues is still not legally defined in the current legislation, in particular, the legal difference between contracts for the use of natural capital and the qualification of contracts in administrative law. This legal form is still interpreted according to different branches of law: civil, administrative, environmental law. Therefore, it requires the codification of provisions and norms in this area.

The significance of this legal form is also strengthened by the fact that dynamic changes in social and economic conditions necessitate the introduction of dynamic changes to environmental protection of legal acts. The procedure for introducing these changes is extended in time. This requires the reconstruction of approaches to the formation of the legal field because the legal mechanism must become more flexible and adaptable to changing conditions. One of the ways to implement this requirement is the application, if necessary, not of regulatory or administrative acts, but of public legal agreements. This is stipulated by the Code of Administrative Procedure of Ukraine, which, among the types of administrative contracts, specifies the type of contract concluded instead of adopting a regulatory act.

The experience of concluding such agreements has been acquired by the EU countries. For example, in Germany, they are concluded in accordance with the laws "On administrative procedures" and "Public law contract". This contract can be concluded between institutional or industrial structures and citizens or communities of citizens. If necessary, by agreement of the parties, it can be adjusted or replaced by another contract. This approach will allow the institutional structure (administrative body) or the person representing it to voluntarily choose the form of performance of environmental protection functions. The contract may provide for the liability of the parties and specified legal forms of claiming damages. This will

largely eliminate the problem of inconsistency of legal branches and will simplify consideration of violations in administrative courts. In the social sphere, the public-law contract opens new ways of cooperation, mutual interest in environmental protection, and forms a new level of trust between the parties to the contract. But this will require the introduction of appropriate changes, in particular, to the Laws of Ukraine "On Administrative Procedure" and the "Code of Administrative Procedure of Ukraine" regarding procedural, normative, and other aspects of concluding and terminating such an administrative agreement for the protection of the natural environment, proper determination of the jurisdiction of administrative courts in relation to the specified contracts. In the judiciary and the legal awareness of citizens, this will also require the separation of contracts that are intended for the realization of rights, from the so-called "delictual" contracts of administrative law for environmental protection. The difference between administrative contracts that do not take into account the need for the rights and obligations of the parties to the contract and "delictual" administrative law contracts for environmental protection will require legal clarification.

Also, a gap in the Administrative Code of Ukraine, which needs regulatory and legal clarification, is that it does not pay enough attention to determining the responsibility of legal entities. To some extent, this has led to a discrepancy between the responsibilities of legal entities and individuals in administrative proceedings.

In this way, it is possible to identify the following recommendations for improving the legal mechanism for the protection of the natural environment:

1. To harmonize the terminology used in the normative legal acts of Ukraine with the terminology of the normative legal acts of the European Union and international law in the field of environmental protection.

2. To agree on the regulatory legal framework in the fields of law and adapt it to European legal norms.

3. Legislatively determine priorities for the use of legal norms for the introduction of a legal mechanism for the protection of the natural environment in administrative and judicial practice.

4. To implement a "road map" for the harmonization of the regulatory and legal framework.

5. To determine the ways of development of the environmental policy of Ukraine and the necessary adaptation of the environmental and legal instruments of environmental protection to them.

6. To form the methodological and legal basis for collecting and processing information in the field of natural environment protection, which can be used as a legal evidence base in court cases.

7. To form a contractual basis for the involvement of international institutions to form expertise on environmental damage caused by military actions, which will have legal evidential force in national and international court proceedings.

8. To determine criminal responsibility for causing damage to the environment, organizing man-made disasters as a means of conducting military operations.

9. To introduce changes in normative legal acts, in particular, in the Laws of Ukraine "On Administrative Procedure" and "Code of Administrative Procedure of Ukraine" regarding procedural, normative, and other aspects of concluding and terminating delictual administrative contracts for the protection of the natural environment, proper determination of the jurisdiction of administrative courts regarding the specified contracts.

10. To harmonize existing legal acts on compensation for damage to the natural environment caused by military actions with international legislation.

11. To increase the role of the administrative court in observing the rights and obligations of individuals and legal entities in relation to environmental offenses, both in view of the function of the judiciary – proceeding of court cases, and for the performance of the functions of administrative justice – appeal of decisions and actions of institutional structures.

12. To codify the main environmental legal provisions and norms.

The proposed codification means not only the streamlining of legal norms, but also the achievement of a certain legal result – the creation of the Code of Laws of Ukraine regarding the protection of the natural environment. The creation of a single harmonized Code is the result of the implementation of a systemic approach to the environmental sphere. This Code should facilitate the settlement of social and economic contradictions, ensuring the protection of the environment, the preservation and increase in natural capital, and the economic development of the country.

This allows determining the necessary components of the environmental-legal mechanism: a centralized system of support for decision-making in the legal sphere and management of its implementation; a legal instrument for regular review of the implementation of legal norms in the environmental sphere, approval of a two-year period of implementation of these norms in legislation; the formation of a strategic dynamic approach to the implementation of the legal mechanism for the protection of the natural environment and the assessment of the stages of its adoption in view of the impact on the development of legal and environmental awareness of citizens; determination of the level of seriousness of damage caused to the natural environment to distinguish between criminal and administrative law in the field of natural environment protection; regulatory and legal coordination of sectoral and industry strategies for environmental protection; regulatory and legal strengthening of the administrative court and administrative law as a way to prevent offenses; introduction of a unified mutually agreed Code of Laws of Ukraine on the protection of the natural environment.

Conclusions. With the implementation of the indicative approach, the state of Ukraine was assessed according to the following indicators: "Regulatory quality", "Rule of law", "Public opinion and accountability". The study on changes in these indicators over time and comparison with EU countries proved the unsatisfactory state of Ukraine according to the indicated indicators. The definition of the ecological legal mechanism is given. In view of the proposed definition, the main reasons for inhibiting the implementation of the tasks to be performed by the ecological legal mechanism have been identified.

The need to shift the emphasis in environmental administrative and environmental criminal justice from punishing violators to preventing crimes is pointed out. To this end, in particular, the following measures are proposed: comprehensive implementation of information and communication measures for broad coverage of the practice of environmental justice and a well-founded explanation of the legal norms involved in legal proceedings; the formation of a strategic dynamic approach to the implementation of the legal mechanism for the protection of the natural environment and the evaluation of the stages of its adoption in view of the impact on the development of legal and environmental awareness of citizens. This requires the implementation of a specialized information system for the analytical processing of legal documents using methods for comparing the legal provisions of regulatory documents and forecasting the consequences of their implementation, and, in general, an information system to support the adoption of regulatory legal acts and their implementation in judicial practice. In order for the information system to meet the specified tasks, proposals were developed regarding the normative expansion of the requirements for environmental and legal information systems in the legislation of Ukraine and these requirements were specified.

Possible ways of adapting the environmental legal field of Ukraine to European standards are analyzed and the intro-

duction of the approximation approach is substantiated, in particular, given the fact that the implementation of environmental European norms is based on the norms of primary law, which, in particular, include constitutional norms in domestic legislation.

It is indicated that the implementation of environmental legal norms in the Ukrainian legal field requires the use of "feedback" between the introduction of the mentioned legal norms and the effectiveness of their practical implementation by introducing a term for analyzing the level of their adaptation in judicial practice, forming conclusions and correcting national legislative acts. Therefore, it is proposed to introduce a two-year period for the implementation of these legal norms, research on the level of achievement of the set goals, public discussion, formation of conclusions by experts and elimination of problems.

For this purpose, a number of measures have been proposed, in particular: introduction of a mechanism for comprehensive assessment of the impact of regulatory acts, including their environmental and social consequences; analytical study on normative legal acts to determine the priority of revising legislation; formation of feedback tools on the results of the implementation of the legal mechanism for the protection of the natural environment and changes in the pace and stages of its implementation; review and regulation of the terms of fulfillment of Ukraine's obligations regarding the protection of the natural environment and coordination of their changes, which are caused by external influences, at the international level; forecasting changes in the strategic environmental assessment as a result of the use of normative legal acts and the introduction of an adaptation mechanism for improving legislation.

In order to prevent environmental crimes, the need of increasing the role of administrative justice in environmental protection cases, expanding the application of administrative law and properly distinguishing between criminal and administrative law in this area is emphasized. It is indicated that the distinction between criminal and administrative law in the field of environmental protection requires regulatory clarification of the level of severity of damage, since the standardized legal content of the definition of "pollution" already qualifies the task of damage. Therefore, it is proposed to clarify the concept of "significant harm" for the use, in particular, in normative legal acts of specific values of pollution in multiples of maximum permissible concentrations of harmful substances.

It is indicated that increasing the importance of the administrative court and administrative law as a way to prevent offenses can also be achieved by implementing such a legal instrument as administrative contracts for the protection of the natural environment. It is indicated that the legal form of contracts on environmental issues is still not defined legally in the current legislation, in particular, the legal difference between contracts for the use of natural capital and the qualification of contracts in administrative law. The legal form of contracts in this area in judicial practice is still interpreted according to different branches of law: civil, administrative, environmental ones.

It is indicated that the need to introduce the instrument of administrative contracts for the protection of the environment is also due to the strengthening of the dynamic nature of changes in social and economic conditions. Under such circumstances, the legal mechanism should become more flexible and adaptable to changes in social, environmental, and economic conditions. It is indicated that the application of not regulatory or administrative normative acts, but public legal contracts will require the introduction of appropriate changes to the Laws of Ukraine "On Administrative Procedure" and "Code of Administrative Justice of Ukraine" regarding procedural, regulatory and other aspects of concluding and terminating such an administrative contract for protection natural environment, proper determination of the jurisdiction of administrative courts in relation to the specified contracts.

Recommendations for improving the legal mechanism for the protection of the natural environment and proposed measures for its implementation have been developed, in particular: harmonization of the legal framework in the fields of law and its adaptation to European legal norms; regulatory determination of priorities for the use of legal norms for the introduction of a legal mechanism for the protection of the natural environment in administrative and judicial practice; implementation of the "road map" of the harmonization of the regulatory and legal framework; formation of the methodological and legal basis for collecting and processing information that can be used as a legal evidence base in proceeding of court cases in the field of environmental protection; the formation of a contractual basis for the involvement of international institutions for expert assessment of environmental damage caused by military actions, which will have legal evidential force in national and international court proceedings; determination of criminal responsibility for causing damage to the environment as a means of conducting military operations; harmonization with international legislation of the existing legal acts regarding compensation for damage to the natural environment caused by military actions; introduction of changes in normative legal acts, in particular, regarding the normalization of administrative contracts for the protection of the environment; proper determination of the jurisdiction of administrative courts in relation to the specified contracts; increasing the role of the administrative court in observing the rights and obligations of individuals and legal entities in relation to environmental offenses, both with regard to the function of the judiciary – proceeding of court cases, and for the performance of the functions of administrative justice – appeal of the decisions and actions of institutional structures.

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Правовий механізм забезпечення охорони навколишнього природного середовища в Україні

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Мета. Дослідити аспекти впровадження правового механізму охорони довкілля (ПМОД) і вимоги до нього. Запропонувати визначення поняття «правовий механізму охорони довкілля». Розробити рекомендації щодо вдосконалення правового механізму, запропонувати заходи для його впровадження й визначити його основні компоненти.

Методика. Використані загальні та спеціальні методи пізнання: порівняльного аналізу – для встановлення індикаторів ПМОД; критичного аналізу – для формування вимог до ПМОД і його визначення; абстрактно-логічного аналізу – для визначення необхідності стратегічного динамічного підходу впровадження ПМОД; індукції й дедукції – для пропонування інструменту «зворотного зв'язку» між імплементацією правових норм і ефективністю їх практичної реалізації, доведення необхідності розмежування кримінального та адміністративного права щодо захисту довкілля та розроблення пропозицій для цього; логічного абстрагування – для розроблення рекомендацій удосконалення ПМОД, заходів його впровадження, його компонент, кодифікації еколого-правових положень.

Результати. Указані вимоги впровадження ПМОД. Запропоновані індикатори для оцінювання ефективності ПМОД. Запропоновано інструмент «зворотного зв'язку» між імплементацією еколого-правових норм і ефективністю їх практичної реалізації й механізм поетапної адаптації цих норм. Запропоноване визначення поняття «правовий механізму охорони довкілля». Указано на відсутність системного підходу й недостатність аналітичної роботи на етапі підготовки нормативно-правових актів і після їх прийняття. Запропоновані конкретні шляхи вирішення цієї проблеми. Для запобігання правопорушенням указано на необхідність збільшення ролі адміністративного судочинства у справах про захист довкілля й розширення для цього застосування адміністративного права. Розроблені пропозиції для цього.

Наукова новизна. Указано на необхідність формування стратегічного динамічного підходу впровадження ПМОД і корегування прийняття його етапів з огляду на результативність інструментів розвитку правової та екологічної свідомості громадян.

Практична значимість. Запропоноване нормативне уточнення поняття «значна шкода» посилить дотримання принципу відповідності порушення–покаранню.

Ключові слова: *правовий механізм, охорона довкілля, динамічній підхід, реалізація правих принципів*

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