



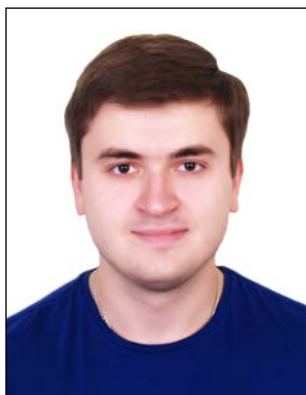
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PROBLEMS OF THE ENVIRONMENTAL LAW OF THE EUROPEAN UNION

The problem of ecology is one of the most common problems of the twenty-first century. No country is immune: no country has better military equipment, no country with low inflation, no country with “perfect” legislation.

The purpose of the article was to clarify legislative issues: European Union legislation was outdated, general and lacking in specificity. To address these problems, this article uses different approaches to the definition of environmental security, which makes it necessary to change the concept and the actions within which the definition is adopted.

The article goes on to discuss the position of realists who argue that environmental security cannot be set because of lack of accountability “the importance” of the issue of “high” issues. Thus, the paper refers to the emergence of environmental security and its long path. This article contains the following changes and provisions: Brundtland Committee (1987), Convention on the Conservation of Nature and Natural Habitats in Europe (1979), International Tropical Timber Agreement (1983) as well as the Convention on Long-range Transboundary Air Pollution (1979), the Maastricht Treaty (1992), the Hazardous Substances Directives, the impact of EU measures on the environment and the Animal Protection Directive.

In addition, the article exposes Programs designed to ensure and regulate environmental safety. The report of the European Environment Agency was also reviewed and a comparative analysis of the data contained in the report and the British Broadcasting Corporation estimates was made.

The authors draw attention to several directives, calling them “triumvirate”, which provide the basis for countries to regulate some environmental legislation.

Almost in the end of the paper the authors pay attention to the phenomenon of environmental ethics, which is a consequence of imperfect legislation.

In its conclusion, the article states that the problems that arise from the lack of accountability of legal acts of a real environmental situation occur in the member states, taking into account the special case of the European Union.

Keywords: Environmental security; Environmental policy; European Union; Environmental law.

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Проблеми екологічного права Європейського Союзу

Проблема екології — одна з найпоширеніших проблем XXI ст. Жодна країна не є винятком: ні країни з кращою військовою технікою, ні країни з низькою інфляцією, ні країни з «ідеальним» законодавством.

Мета статті — з’ясування законодавчих аспектів екологічних проблем Європейського Союзу: законодавство Європейського Союзу було застарілим, загальним, йому бракувало конкретики. Автори статті використовують різні підходи до визначення екологічної безпеки, що змушує змінювати поняття і дії, в межах яких прийнято її визначення.

Ця стаття — продовження обговорення позицій реалістів, які стверджують, що екологічна безпека не може бути другорядним питанням порівняно з іншими проблемами міжнародного чи глобального характеру. Таким чином, стаття присвячена виникненню екологічної безпеки та її

тривалому шляху розвитку. Проаналізовано норми, що містяться в різних актах: Brundtland Committee (1987), Convention on the Conservation of Nature and Natural Abitions in Europe (1979), International Tropical Timber Agreement (1983) а також Convention on Long-Rrange Transbrange Air Pollution (1979), Maastricht Treaty (1992), The Hazardous SubDirectives, European Council Directive concerning the protection of animals kept for farming purposes та вплив заходів ЄС на навколишнє середовище.

Крім того, висвітлено програми щодо забезпечення та регулювання екологічної безпеки. Також було вивчено звіт Європейського агентства з навколишнього середовища та зроблено порівняльний аналіз даних, що містяться в звіті та оцінках British Broadcasting Corporation.

Автори звертають увагу на низку директив, називаючи їх «тріумвіратом», які слугують основою для країн з метою регулювання окремих аспектів екологічного законодавства.

Указано на існування феномену екологічної етики як наслідкові недосконалого законодавства. Підсумовано, що проблеми, що виникають через невідповідність правових актів реальній екологічній ситуації, виникають у всіх державах-членах, з урахуванням специфіки правового регулювання на рівні Європейського Союзу.

Ключові слова: екологічна безпека; екологічна політика; Європейський Союз; екологічне право.

Problem setting. The problem of ecology has always been relevant, but over the past decade (record snowfall in France and Spain in 2017–2018, floods in Germany and Belgium in 2021 and hundreds of other environmental disasters) it has become even more actual. By analyzing all the scientific works listed above, one can see that the problem is acute one is now governed primarily by the laws of the last century.

When it comes to regulating environmental safety, any state faces a host of problems with no regulation, outdated regulation or the precedent-setting nature of the incident.

The environment is one of the most dynamic areas. Scientific discoveries, ecological catastrophes, the need for the conscious consumption, are all the engines of an environmental situation in the world that needs to be protected and regulated.

What could governments do to meet the new challenges? Above all, they should recognize that many forms of environmental impoverishment constitute a special category of international relations.

The challenges are unlike any of the past that humanity has faced. They go beyond established diplomacy and international relations. By attacking the strategic interests of individual countries, they prove that they are generally immune to a standard response to serious threats, such as military force. Launching a fighter plane will not solve the problem of global warming, as well as sending tanks – to counter the advance of the desert, or launching the smartest rocket – to solve the problem of icebergs melting, leading to a rise in sea level.

Analysis of recent research and publications. In considering the issue of environmental safety, several scientific papers have been considered, focusing on the revelation of the European Union's policy on environmental safety [1; 2; 3; 4; 5; 8; 9; 12]. In addition, the Convention on the Conservation of Nature and Natural Habitats in Europe (1979), the International Tropical Timber Agreement (1983), as well as the Convention on Long-range Transboundary Air Pollution (1979), the Maastricht Treaty (1992), the Hazardous Substances Directives, the impact of

EU measures on the environment and the Animal Protection Directive, Treaty on European Union. (1992) regulate relations in the mentioned sphere.

Among other things, the article used the reports of the Brundtland Commission and European Environment [6; 14]. Among other things, the authors address to the statistics that are contained in the BBC article [15]. Scientific papers are then used on directives [17; 18; 20] as well as on environmental ethics [21]. In conclusion, the authors argue their position with the management [16] and the project [19].

Statement of the article objective. The article is intended to consider scientific and legislative approaches to regulating the issue of European Union environmental safety legislation.

Presentation of the main body of the article. Analysis of the legislation of the European Community in the field of environmental protection is important for the further improvement and enhancement of the effectiveness of the environmental legislation of Ukraine. Currently, there is a transfer from the era of confrontation and confrontation between the two socio-economic systems, to the era of ecological limits and restrictions of an ecological nature [1].

First of all, we are interested in environmental security policies and their legislative implementation. From the historical point of view of the emergence of the concept of environmental safety, consideration is irrelevant, since for us the legal side of the issue is more important. So we go directly to the definition of environmental safety.

The environmental security is the relative public safety from environmental dangers caused by natural or human processes due to ignorance, accident, mismanagement or design and originating within or across national borders, according to the AC/UNU Millennium Project [2].

This is not the only one definition, and the term “environmental safety” is defined differently in every other law, project, treaty, and so on. For example, “scientific problems related to environmental security including the reclamation of contaminated military sites, regional environmental problems and natural and man-made disasters; affordable cleanup technologies are of particular interest” – such a definition is to be contained in NATO Science Programme 1997.

These two definitions are not contradictory, but complementary, reinforcing and envisioning environmental safety. Many other definitions could be found in the same AC/UNU Millennium Project, US Department of Defense (1996) and dozens of other acts. In the end, we only detail the range of regulated issues that are subject to environmental protection.

In any case, the definitions lead us to two approaches of considering environmental safety as “all roads lead to Rome”.

Depending on the central subject for which a definition is to be established, two approaches could be distinguished:

– Environmental security: the main challenge is related to global environmental change, with an emphasis on the interaction between ecosystems and humanity, the impact of global environmental change on environmental degradation, the impact

of increased social demands on resources, ecosystem services and environmental benefits;

– Human security: this approach addresses various aspects of security, such as social or political security. In this context, the values at risk are people’s survival and quality of life [3, p. 1351].

Both are extremely important, but the article focused on the first pillar, which is directly related to the second.

Despite the existence of a numerous definitions of environmental safety, there is a position as to why such a notion is questionable. The two main arguments against treating the environment as a security issue come from Realists and from those who warn against the problematic consequences that the notion of security entails. Realists tend to view the environmental issue as a matter of “low politics”, at a time when security is a matter of “high” politics [4, p. 587].

We do not support this position, as the absence of environmental security could lead to deaths as much as war. Even in environmentally safe countries, environmental mortality can be as high as 12 per cent.

The most important part of this work is to find the range of issues that should be regulated. We have thus moved on to the issue of regulations designed to protect the environment from human influence and to minimize through legal instruments the harm that the environment “causes” to people.

The meta-issue of environmental security began to be understood in the mid-1980s, when the Brundtland Commission included a chapter on this issue in its final report: “The environmental problems of the poor will affect the rich as well in the not too distant future, transmitted through political instability and turmoil” [5, p. 4, 5].

The first step in environmental protection was taken by the European Community in 1972 with the adoption of the first of four successive action programmes based on vertical and sectoral approaches to environmental problems [6].

These programmes were in operation from 1972 to 1992. During the period of implementation of these programmes, some two hundreds acts were adopted within the Community aimed at limiting pollution and introducing minimum standards for waste collection and disposal, water and air pollution [7].

Unfortunately, the problems highlighted in these programmes and acts have only not been solved, but have also become more global and wide-ranging.

Returning to the issue of the European Union’s adoption of the environmental issue, the new area of integration was largely regulated by directives. The European Union has acceded to a number of major international environmental conventions, such as the Convention for the Protection of European Wildlife and Natural Habitats (1979), the International Tropical Timber Agreement (1983) as well as the Convention on Long-range Transboundary Air Pollution (1979) [8].

The adoption of the Maastricht Treaty, which gave environmental protection the status of a policy, could be considered as the next significant step in this area, mainly

in TITLE XVI [9]. Three environmental declarations have been adopted as annexes to the Maastricht Treaty: the Directives on Harmful Substances; the Impact of EU Measures on the Environment; and the Directive on the Protection of Animals.

The European Union's Sixth European Action Plan, also adopted in 2001, had identified four areas of European environmental policy: climate change, nature and health, quality of life, natural resources and waste. The action plan identifies seven key areas of greatest vulnerability: air pollution, resource management, land protection, waste management, urban environment, sustainable use of pesticides, marine environment (Sixth Environmental Action Programme, 2001) [10]. On the basis of the sixth Action Plan, the Strategy for Sustainable Development for the European Union was adopted, setting common goals and concrete actions for seven areas that were recalled earlier by the priorities for the period 2001-2010 (European Strategy for Sustainable Development, 2001) which provides a comprehensive framework for European Union policies and strategies [11, p. 18; 12, p. 13].

In cases when it is not clear why we have only looked at the first and sixth programs, it is worth noting that the first one is painful to understand the beginning of the path of environmental policy-making, while the sixth is the Union's response to more contemporary problems.

Today it is 2021, and legislative acts and programs remain relevant. Moreover, the problems identified in these documents are expanding and are hardly solved.

Referring to the European Environment Agency's report "Europe's Environment: State and Prospects 2020", some problems are not solved even before 2050.

There are many factors. First, despite the successes (as the Agency puts it) in addressing environmental problems, they remain significant. In addition, some important problems have been slowed down, for example, in the reduction of greenhouse gas and pollutant emissions in industry, in the reduction of waste generation, improving energy efficiency and increasing the share of renewable energy sources. This means that incremental improvements are not enough, environmental policies need to be more actively implemented in order to achieve full results.

If one looks at the problems that are solved, he/she probably does not agree that the problem is solved. It's about the law and the facts. For example, this could be seen in the category of effects of air pollution on human health and well-being.

At the same time, "about 12% of deaths are related to pollution" [13]. This includes air pollution. These figures even date back to one year. It is not a matter of manipulation or distortion; the authors simply wish to draw attention to what Agency considers a solution to the problem.

Returning to the topic of the article, the remaining regulatory framework that governs the issue of environmental safety is the domestic legislation of the European Union member States. The essence of domestic legislation is that the principles contained in the 1996 Treaty of Amsterdam form the basis of the legislative acts. These principles are as follows:

– the principle of proactive action, according to which community action is aimed at preventing, preventing pollution or other damage to the environment, the threat of which must be taken into account in advance of a decision;

– the precautionary principle according to which the absence of scientific research on a particular issue cannot be a reason for revoking or delaying EU measures to prevent pollution; it is not always possible to predict negative impacts on the environment with great precision; but even in such cases where there is a hypothetical possibility of an environmental infringement, appropriate environmental protection measures should be applied;

– the principle of environmental remediation and compensation, which obliges, in cases where it is impossible to avoid harm, to minimize it, to limit its spread and then to eliminate it as soon as possible;

– the principle that the guilty party pays compensation, that is, the costs of preventive measures, cleaning and compensation for pollution are borne by the guilty parties; this principle reflects a tendency to favour market-based financial incentives over administrative injunctions [9].

In view of the above, it may be concluded that the Principles themselves contain provisions that are common to all member countries of the Union. Thus, the question of permanent fires in Portugal, for example, is exclusively regulated by acts adopted by the Portuguese Government.

Among other things, we think we need to look at another component of EU legislation - the directives. They tend to be narrow-minded and address specific issues. Because of this, there are many directives.

It makes sense to start with a Directive 2003/4/ECon. Before we look at this directive, we need to remember the history of it. The 2003 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) was adopted at the Fourth Ministerial Conference as a key to the development of the directive “Environment for Europe” in Aarhus, Denmark, on 25 June 1998 [16].

The Aarhus Convention is a new type of environmental agreement. This Convention links environmental rights to human rights, recognizing that we have obligations to future generations.

The Aarhus Convention’s obligations on access to information have been transposed to the EU through Directive 2003/4/ECon on public access to environmental information and the repeal of Directive 90/313/EEC, which establishes a legal regime for access to information on environmental matters in the EU [17].

Although the 2003 Directive lays down the obligations of Member States with regard to access to information relating to environmental information received by EU institutions and/or bodies, which seems to constitute, to some extent, a dual legal regime, on the one hand: Regulation 1367/2006 on the application of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community Institutions

and Authorities, and regulation 1049/2001 on public access to documents of the European Parliament, the Council and the Commission.

Given the time that directive was adopted, it was an incredibly big step towards improving environmental legislation.

We think it's appropriate to look at some more directives. But some spoilers: the directives for today's date are old.

More generally, EU environmental legislation may affect national procedures and procedural instruments aimed at ensuring the effectiveness of the relevant protection. An in-depth understanding of the relevant criteria of legality and interest in measures to guarantee broad access to justice in this area. For example, it may be recalled as in article 16 of Directive 2008/1/EC of 15 January 2008 on integrated pollution prevention, according to which EU Member States should provide appropriate procedures (including the application of the precautionary principle) [18 p. 188].

The Directive is intended to improve environmental permitting systems, eliminate existing problems and shortcomings, and define the framework for the control of pollution by large industrial enterprises in the main sectors of the European Union economy; as well as simplifying the regulatory system for industries that contribute little to environmental pollution, thereby reducing the administrative burden and related costs of preparing, harmonizing and reviewing the relevant documentation [19 p. 8].

And perhaps another "young" directive adopted in 2010 - Industrial Pollution Directive 2010/75/EC (on integrated pollution prevention and control) or Directive IED, which is intended to replace existing Directive 2008/1/EC.

This "triumvirate" provides more information about pollution, how to solve the problem and how to inform the population about the problems.

But, as mentioned earlier, there are many more documents more narrowly directed. For example, Directive 91/157 on batteries and accumulators containing dangerous substances, Directive 2002/96 on old electrical and electronic devices, Directive 2003/96 on the restructuring of the pan-European framework for the taxation of energy products and electric current, Directive 91/692 on the harmonization and advisability of reporting on the implementation of certain environmental directives and many alike (and not entirely) [20].

Thus, it could safely be said that in the environmental sphere of EU legislation, directives are of marginal importance, but not of the former, as the programmes influence more on solving problems. Unfortunately, the guidelines were created as a response to the problems of the past decade, and are no longer relevant. Rather, the provisions contained therein can serve as a basis for EU Member States.

And looking at all of these things, we can't ignore a relatively new phenomenon, which is environmental ethics. It is linked very mediocre to EU law, but ignoring it makes no sense. By focusing on environmental protection, environmental ethics are not limited to concepts of moral philosophy and environmental considerations. It addresses a range of interacting factors related to nature conservation, including

economic, political, social and cultural issues. For this reason, she actively uses the conclusions and methods of various disciplines – economic theory, political science, sociology, psychology, etc. works on a wide interdisciplinary field [21, p. 101].

To our regret, the list of issues of environmental ethics is also tending to increase: while researchers were interested in wildlife conservation issues only recently, in recent years they have become more concerned with social issues, generated by an artificial, not natural environment. This shift from plant and animal problems to society is due to the fact that wildlife areas continue to shrink and settlements continue to grow. More and more people on the planet live in urban agglomerations and have little opportunity to see the pristine nature of civilization.

We believe that this is already a negative trend: to find a way to solve problems, while the scale of problems is only growing. Perhaps the problem is a delayed response, perhaps a wrong approach, perhaps a lack of visibility of the problem, perhaps a lack of control by governing bodies, perhaps in legislation. On the basis of the realities of the twenty-first century, there is an aggregation of all the above.

Conclusions. Thus, legislation of the European Union still does not regulate all issues, with a normative definition of environmental safety for about 40 years. Every environmental safety issue is regulated either by the acts of the last century or by the internal laws of member – countries.

Therefore, the main problem is the discrepancy between the problems and the legal way of solving the problem. A report by the European Environment Agency is also available to confirm this.

The next challenge is the principles on which the environmental acts of the European Union are based. On the one hand, they are of a general nature, which does not create colesia, but on the other hand “compel” countries to regulate similar environmental problems in different ways, in cases of lack of regulation.

And “cherry on the cake” are directives that have long been adopted, like other EU regulations, which create a similar problem of outdated legislation. We believe that we should either update the guidelines by adapting them to modern times or adopt new ones to replace the old ones.

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Проблемы экологического права Европейского Союза

Проблема экологии является одной из наиболее распространенных проблем XXI века. Ни одна страна не застрахована от этого: ни одна страна с лучшей военной техникой, ни одна страна с низкой инфляцией, ни одна страна с «идеальным» законодательством.

Цель этой статьи заключается в уточнении законодательных вопросов: законодательство Европейского союза является устаревшим, общим и недостаточно конкретным. Для решения этих проблем в статье используются различные подходы к определению экологической безопасности, что обуславливает необходимость изменения концепции и действий, в рамках которых принимается определение.

Обсуждается позиция реалистов, которые утверждают, что экологическая безопасность не может быть второстепенным вопросом в сравнении с другими проблемами международного или глобального характера. Рассматривается возникновение экологической безопасности и ее долгий путь развития. Исследуются нормы, которые содержатся в разных актах: Brundtland Committee (1987), Convention on the Conservation of Nature and Natural Abiitions in Europe (1979), International Tropical Timber Agreement (1983) а также Convention on Long-Rrange Transbrange Air Pollution (1979), Maastricht Treaty (1992), The Hazardous SubDirectives, European Council Directive concerning the protection of animals kept for farming purposes и влияние действий ЕС на окружающую среду.

Кроме того, статья раскрывает программы, направленные на обеспечение и регулирование экологической безопасности. Рассматривается доклад Европейского агентства по окружающей среде, проведен сравнительный анализ данных, содержащихся в докладе, и оценок British Broadcasting Corporation.

Авторы обращают внимание на ряд директив, называя их «триумvirатом», которые служат для стран основой для регулирования некоторых аспектов природоохранного законодательства.

Указано на такое явление, как экологическая этика, являющаяся следствием несовершенного законодательства.

В заключении статьи говорится, что проблемы вследствие несоответствия правовых актов реальной экологической ситуации, возникают в странах-участницах с учетом специфики правового регулирования на уровне Европейского Союза.

Ключевые слова: экологическая безопасность; экологическая политика; Европейский Союз; экологическое право.

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