Realization of Sustainable Development Principle in Environmental Legal Relations: Legislation and Law Enforcement Practice in Ukraine

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Vasyl Stefanyk Precarpathian National University
Educational and Scientific Law Institute
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The sustainable development principle is considered as one of the special in the environmental law and is widely defined internationally as development that aims to “meet the needs of the present while not compromising the ability of future generations to meet their own needs”. The Sustainable Development Summit of the UN, which was held in September, 2015, approved new development targets. 17 Sustainable Development Goals (SDGs) were identified and published in the Summit final document, namely “Transforming our World: The 2030 Agenda for Sustainable Development”. Ukraine, like the UN Member State, joined the global process of sustainable development and adapted the SDGs to the Ukrainian context where every global target was reviewed including the consideration the national context peculiarities. Thus, this research aims at analyzing how the sustainable development principle is displayed in legislation and law enforcement practice in Ukraine and how it is implemented in regulation of environmental legal relations.

Results of this research can be used by students, lecturers, scientists and practitioners in the process of studying, discovering and overcoming the environmental issues connected with implementation of sustainable development principle.

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INTRODUCTION

The continuous growth of anthropogenic and technogenic impact on the environment against the background of the slow pace of natural evolution and recovery leads to the aggravation of environmental problems that are gaining a global scale. Humanity is on the brink of environmental and resource catastrophes.

Each of us is faced with the question of our future and that of our descendants. Pope Francis, reflecting on today's environmental problems, says: "When we ask ourselves what kind of world we want to leave behind us, we first think about common purpose, meaning and values. If this fundamental question is not constantly dominant, then I do not think that our ecological efforts will bear generous fruits. But if we ask this question frankly, it will directly lead us to further considerations: What is the purpose of our life in the world? Why are we here? What is the purpose of our work and all our efforts? What is our purpose on this earth? Now it is not enough to simply say that we must take care of future generations, we must realize that our dignity is at stake. Our first duty is to leave a habitable planet for future generations"[1].

Globalization of environmental problems and its actualization in the second half of the 20th century stimulates the search for a consensual solution to the contradictions between economic development and the integrity of the natural environment at the international level, so that the

[1] *Entsyklika "Laudato Si" Sviatishoho ottsia Frantsyska pro turbotu za nash spilnyi dim* (2019) [Encyclical letter "Laudato Si" of the Holy Father Francis on care for our common home]. Kyiv – Ivano-Frankivsk – Drohobych: "Kolo", 118–119.

main postulates are subsequently implemented in the life of each state. Thus, already at the First UN World Conference on the Human Environment, which took place in Stockholm in June 1972, Secretary General Maurice Strong first formulated the concept of ecodevelopment, understanding it as ecologically oriented socio-economic development, in which the increase in people's well-being is not accompanied by a deterioration in their condition environment and degradation of natural systems.

At the end of the 80s, the concept of sustainable development was finally formed, the essence of which is to meet the needs of the present in such a way that it does not jeopardize the ability of future generations to meet their own needs. At the international level, the international consensus on the conceptual provisions of sustainable development took place in 1992 at the UN Conference on Environment and Development held in Rio de Janeiro. The international community recognized and agreed that in order to create conditions for sustainable human development on the basis of national and cultural interests, balanced development is needed not only for the state as a whole, but also for any region, which requires the solution of three main tasks: 1 – economic – ensuring a balanced with environmental and social requirements of effective production development; 2 – ecological – restoring the primary state of the natural environment to a level that does not harm human health and natural ecosystems, maintaining it at this level, achieving its maximum possible improvement; 3 – social – improvement of living conditions of the population, improvement of its gene pool, improvement of its material support and quality of life. This concept was further developed in the United Nations General Assembly Resolution "Transforming our world: The 2030 Agenda for Sustainable Development", which was adopted in September 2015.

The adaptation of the Sustainable Development Goals taking into account the Ukrainian context is reflected in the National Report "Sustainable Development Goals: Ukraine", which was supported by the decree of the President of Ukraine dated September 30, 2019 "On the Sustainable Development Goals of Ukraine for the period until 2030". Based on this, a national system of sustainable development goals was developed in Ukraine, which aims to provide a basis for further planning

of Ukraine's development, overcoming imbalances that exist in the economic, social and environmental spheres; to ensure such a state of the environment that will contribute to the quality of life and well-being of current and future generations; create the necessary conditions for a social contract between the government, business and civil society to improve the quality of life of citizens and guarantee socio-economic and environmental stability; achieve a high level of education and public health protection; implementation of regional policy, which will be based on a harmonious combination of national and regional interests, etc.

Ecological and legal science cannot stand aside from the realization of the declared goals of sustainable development in modern conditions. The presented monograph is devoted to the analysis of theoretical, legislative and applied aspects of the implementation of the principle of sustainable development in environmental legal relations. Without pretending to an exhaustive analysis of all problems related to the construction of an effective legal mechanism for the introduction of the concept of sustainable development into Ukrainian law-making and law-enforcement practice, the team of authors highlighted the main key aspects of this issue.

The first part of the monograph presents two chapters in which the doctrinal theoretical provisions regarding ways to optimize ecological and economic interests in the problematic aspects of modern environmental policy, the main forms of interaction of the subjects of ecological and legal relations in the process of implementing the tools of the organizational and legal mechanism of environmental protection are revealed. The institution of environmental information provision is analysed as one that significantly affects the achievement of the Sustainable Development Goals, the study of ecological and informational legal relations in the concept of sustainable development is presented by analysing the place and role of the right to environmental information in the paradigm of sustainable development.

An important component of sustainable development is sustainable nature management as the use of natural resources taking into account social, economic and ecological factors in their distribution and use, which is the subject of the second part of the monograph. It analyses key aspects

and directions for improving the main legal means (forms) of regulating natural resource relations. This section presents a systematic study of theoretical approaches to the understanding of nature management, its legal regime, the expansion of its essential characteristics not only as an economically, but also ecologically significant activity, a generalized analysis of international, European and national program documents that fix the tasks and directions of activities of institutions of various levels for ensuring balanced use of natural resources.

Special attention is given to the issue of environmentalization of agriculture through the prism of environmentalization of agricultural legislation as a conceptual direction of its modern development, which involves the implementation of ecological principles and requirements in the content of legal acts regulating agricultural production activities, and the formation of an interdisciplinary legal institute for environmental protection in agriculture.

The authors also paid attention to the question of sustainable land use, examining it from the point of view of social (territorial and spatial planning), economic (as a means of production) and ecological (as a natural resource) aspects.

In the final part of the monographic study, sustainable development is presented as a concept of the coordination of ecological, economic and social interests in the sphere of interaction between subjects of environmental relations of a conflict nature, and the need to develop consensus forms of environmental conflict resolution in national law enforcement practice, which should become a full-fledged alternative to judicial, administrative and other jurisdictional forms of dispute resolution.

As a result, it made it possible to comprehensively investigate the issue of the implementation of the goals of sustainable development in Ukraine on the basis of a theoretical and applied study of the modern national environmental policy, the main elements of the mechanism for ensuring sustainable use of nature and the settlement of environmental conflicts.

The team of authors would like to express their gratitude to the management and staff of *Vasyl Stefanyk Precarpathian National Univer-*

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Part I

CHAPTER 1

GALYNA MOROZ

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Harmonization of interests in environmental relations as a prerequisite for sustainable development

In the period of globalization of the world economy and, therefore, the rapid deterioration of the quality of natural resource potential, great importance gains the issue of redefining the importance of the environmental function of the state, the implementation of which should ideally provide optimal conditions for sustainable social, ecological and economic development and livelihoods of the population. If we consider the essence of this function in the global dimension, it is necessary to emphasize that only a balanced and regulated process of ecological and economic development in the context of globalization will contribute to the growth of prosperity and equality of all countries of the world, as well as to the establishment of a world order based on the rule of law, dialogue of cultures and tolerance. The current level of development of the economic component indicates the limited capacity of the biosphere for self-regulation and inadequacy to the increasing needs of society. It is impossible to optimize (balance) the coexistence of these two systems without regulatory impact from the human side. Analytics and the data obtained on its basis convince of the objectively determined need of changes in the character of nature conservation, reconsideration, and reassessment of the definition of

acceptable (permissible) impact on the ecosystem, accordingly, it concerns updating the methods of managing these processes towards the sustainable development. There have been developed a lot of doctrinal definitions, concepts, scientific approaches to understanding the concept of "sustainable development". All of these have in common the fact that the main institutions of the state and civil society are called upon to ensure the relevant condition and an integral part of these processes is to ensure the implementation of various interests of all social subjects, including long-term strategic interests of mankind. At its core, the concept of sustainable development is a global platform in the symbiosis of "public-private interest". The main aspects of sustainable development (rational use of natural resources; preservation and restoration of the environment; increase of efficiency of business practices; overcome of social problems; consideration of the interests of future generations) continue evolving in accordance with new global challenges. At present, it is not enough to talk about the interaction of natural and economic complexes in the process of nature management, the idea of sustainable development is more complex. It is necessary to systematically combine economic, social, institutional, and environmental subsystems that interact through exchange processes between human activity and the environment. Thus, sustainable development of society is possible only through balanced development of all spheres of its life. One of the components of such development is properly implemented environmental aspect at the level of the legal regulation mechanism, as well as the interest of the state and society in environmentally oriented further development, which is an objective requirement of time.

This section presents studies on ways of optimization of environmental and economic aspects in key problem areas of modern environmental policy (energy sphere, climate change problems and waste management sphere), analyzes the main principles of interaction between the subjects of environmental and legal relations in the process of implementation of the instruments of the organizational and legal mechanism of environmental protection, justifies the objectively determined need for unconditional compliance with the legally established environmental requirements, prohibitions and restrictions, the probability of their scientifically based strengthening with the aim of achieving environmentally significant goals focused on sustainable development priorities.

1. The concept of sustainable development in the main directions of Ukraine's environmental policy

1.1. Ways to optimize environmental and economic interests in the energy sector

Environmental factors have a "time-delayed" impact, acting slowly, not always noticeably, in a combined manner with other factors, which leads to a "lethargic" awareness of their importance on the part of society. Environmental aspects of any activity become visible, coming to the fore, in the face of extreme scenarios of the relationships between nature and society (major man-made disasters, catastrophes, natural disasters etc.). Only a deep perception of the statement "what is not environmentally correct cannot be economically profitable", as well as its consistent implementation in legislation (and not only limited by environmental legislation) and in the practice of law enforcement will ensure the successful implementation of sustainable development principles[1]. Environmental issues have therefore long played a secondary role in the political discourse. Nevertheless, the issue of ecologization of social development should be conceptually resolved to ensure rationalization of nature management and environmental protection, sustainability of ecological systems and elimination of environmental threats at all levels.

At the national level, environmental policy priorities are currently defined in the Law of Ukraine "On the Key Principles (Strategy) of the State Environmental Policy of Ukraine for the Period till 2030"[2]. Meanwhile, the real situation in the environmental sphere shows that the previous strategic documents in the field of environmental protection have not

[1] Malysheva, N. (2011). Ekolohichne pravo: vektory rozvytku v XXI storichchi [Environmental law: development vectors in the XXI century]. *Pravo Ukrainy* [*Law of Ukraine*], 2, 116 [in Ukrainian].

[2] *Zakon pro Osnovni zasady (stratehiiu) derzhavnoi ekolohichnoi polityky Ukrainy na period do 2030 roku 2019* (Verkhovna rada Ukrainy) [Law on the Key Principles (Strategy) of the State Environmental Policy of Ukraine for the period till 2030 2019 (Verkhovna Rada of Ukraine)]. *Ofitsiinyi sait Verkhovnoi Rady Ukrainy* [*Official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/2697–19#Text> [in Ukrainian]. (October 30, 2022).

ensured highly efficient and, at the same time, balanced use of natural resources, harmonious and optimal relations in the "society-nature" system remain unattainable. The subordination of environmental priorities to economic expediency has been identified as the main cause of environmental problems in Ukraine. According to assessments of experts, the policy of environmental reforms is recognized as unstable. The arguments are convincing: the unstable political situation in general, the liquidation of the Ministry of Environment, establishment of the Ministry of Energy and Environmental Protection, return of the independent Ministry of Environment, distribution of levers of influence, establishing organizational and work processes of new units – all this had been slowing down the implementation of reforms and fulfillment of international environmental obligations for a certain period of time. The authorities managed to make decisions on specific sectoral problems in the field of environment. At the same time, the issues of priority implementation of horizontal reforms remain to be addressed, while these issues are a prerequisite for solving sectoral problems and establishing a quality environmental management system. The first and foremost, this means changing the old inefficient system of environmental control to a transparent, effective and efficient one; reformation of the legal liability for environmental violations in terms of extending administrative and economic sanctions and criminal law measures to legal entities, revision of violations and penalties; building a quality monitoring system to obtain baseline data and display a complete picture of the environment; raising environmental awareness of the population; implementation of an integrated permit, etc. All these measures, upon initial observation, are filled with solely organizational and managerial public content, which ultimately should ensure the interests of society in a safe environment. Given the long-overdue need for changing accents and priorities, including at the world outlook and human attitude to nature, shifting the dominant anthropocentric approach, which has prevailed since the beginning of the industrial revolution, to an ecocentric one, it is time to raise the question of the equally important importance of not only public interests, but also the interests of the individual, the state and the interests of other community members. In addition, the under-

standing of the exclusively ecological-economic dichotomy of interests is changing based on the fact that non-environmental interest is not always economic, it can be of any social nature, which is equally important. Thus, reference is made to political, cultural, aesthetic, recreational or other types of interests. Correspondingly, the bearers of these interests can be all participants of public life – an individual, a community or a group of people, an organization, a folk, a nation, a state, the international community, humanity overall. Therefore, such a variety of interests and their carriers reflects the actual state and correlation of interests, along with their significance. Optimality and balance of the manifestation of all types of interests, effectiveness of means of their maintenance are directly dependent on the content of state policy (internal and external). Without changing the basic approaches and principles in the management sphere, preserving the quality of life on the planet becomes problematic, and the inevitability of changing direction of civilization has become an axiom.

Let us focus on the key problematic aspects of modern environmental policy in terms of correlation, proportionality, or possible imbalance of interests, which can be balanced and optimally coordinated in the case of comprehensive implementation of the ecosystem approach in sectoral policy as the only right way to sustainable development and prospects for further existence of mankind.

The energy sector is a strategic and one of the main sectors of the economy of any state. The Cabinet of Ministers of Ukraine approved the Energy Strategy of Ukraine for the period up to 2035 "Security, Energy Efficiency, Competitiveness" by the Order of the Cabinet of Ministers of Ukraine No. 605-r dated August 18, 2017, the purpose of which is to meet the needs of society and the economy in fuel and energy resources in a technically reliable, safe, economically efficient and environmentally acceptable way to guarantee the improvement of living conditions of society[3]. At the same time, the crisis in the Ukrainian electricity sector is

[3] *Rozporiadzhennia pro skhvalennia Enerhetychnoi stratehii Ukrainy na period do 2035 roku "Bezpeka, enerhoefektyvnist, konkurentospromozhnist"* 2017 (Kabinet Ministriv Ukrainy) [Order on approval of the Energy Strategy of Ukraine until 2035 "Security, Energy Efficiency, Competitiveness" 2017 (Cabinet of Ministers of

associated with obvious circumstances that have caused a completely unacceptable, at least for the consumer, situation regarding the pricing policy in the field of "green" electricity. It should be agreed that it is important to develop not only environmentally and climate friendly, but also economically affordable energy, which would avoid price shock for consumers, socio-economic and political resistance, and ensure social acceptability of the "green" energy transition. The Green tariff is assessed and is the key economic mechanism to stimulate the production of "green" energy in Ukraine, which makes it possible to sell the energy produced at a state-guaranteed tariff and serves as a factor in guaranteeing investment protection.

The efficiency of the national energy infrastructure is directly related to its modernization through the introduction of appropriate innovations, efficient and energy-saving technologies. The sphere of renewable energy (solar energy, wind energy, bioenergy, geothermal energy, hydroelectric energy, ocean energy, including tidal energy, wave energy and ocean thermal energy) is the most accessible, cheapest and, most importantly, environmentally sound in the world. The development of renewable energy is a priority for the world community, as it is a prerequisite for solving the most acute problems facing humanity today (environmental degradation, climate change with all the consequences detrimental to people and the planet as a whole). The same priorities should be central for Ukraine, considering the disappointing realities of today – high morbidity and mortality rates due to air pollution because of NPP and CHPP operation and malfunctions. The pronounced public interest – both environmental and economic – at first glance does not appear to be in doubt. However, the situation is complicated by the fact that the idea of "green energy" is implemented by large private companies, whose interests as investors are secured by the obligation of the state to buy out all the capacities of "green" energy at tariffs that are recognized as the highest in the world. Thus, economic interests emerge as determinative

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Ukraine)]. *Ofitsiinyi sait Verkhovnoi Rady Ukrainy* [Official website of the Verkhovna Rada of Ukraine]. <https://zakon.rada.gov.ua/laws/show/605–2017-%D1%80#Text> [in Ukrainian]. (October 30, 2022).

and under the name of environmental motives acquire the character of not quite justified and fair interests.

Meanwhile, given the best option, the question is about supporting the development of renewable energy generation, and it is believed that with a competent approach to planning and construction, wind and solar electricity can indeed be produced with minimal damage to the environment. However, some types of "green" generation, according to experts, are not green at all, and their impact on the environment is no less harmful than "traditional" power plants. In particular, these include small hydropower plants on rivers and biomass thermal power plants which run on wood. Leading Ukrainian environmental organizations have repeatedly demanded to cancel the green tariff for small hydropower plants, which de facto destroy rivers. This concerns the complexity and interdependence of environmental and economic aspects of the introduction of new renewable energy capacities, which ensure, on the one hand, sustainable economic development, and competitiveness of our country, and on the other – carbon-neutral economy.

In order to demonopolize the energy sector at the national level, the main issues to be addressed are the development of competition, implementation of European norms and market principles in the energy sector. A transparent and fair energy market with clear rules of the game is the key to the progressive development of the Ukrainian energy sector. It should be noted that on July 21, 2020, the Law of Ukraine "On Amendments to Certain Laws of Ukraine on Improving the Conditions of Support for Electricity Production from Alternative Energy Sources" was adopted[4], which consolidates the key provisions of the "Memorandum of Understanding on the settlement of problematic issues in the field of renewable

[4] *Zakon pro vnesennia zmin do deiakykh zakoniv Ukrainy shchodo udoskonalennia umov pidtrymky vyrobnytstva elektrychnoi enerhii z alternatyvnykh dzherel enerhii* 2020 (Verkhovna Rada Ukrainy) [The Law of Ukraine "On Amendments to Certain Laws of Ukraine on Improving the Conditions of Support for Electricity Production from Alternative Energy Sources" 2020 (Verkhovna Rada of Ukraine)]. *Ofitsiinyi sait Verkhovnoi Rady Ukrainy* [*Official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/810–20#Text> [in Ukrainian]. (October 30, 2022).

energy”[5]. These documents are aimed at reducing the tariff for solar and wind power plants. With the aim of solving the most significant economic and technical challenges in the field of renewable energy, the establishment of an auction model for supporting renewable energy in Ukraine should also be an effective tool, which will allow ensuring the interests of consumers and investors. The ultimate goal is to stabilize the renewable energy market, which should be transparent, accessible and competitive, and therefore, should contribute to harmonizing the interests of all stakeholders (including the state) and consolidating their efforts to ensure effective sustainable low-carbon development. Transparency and competition, open and fair procedures while building a modern energy market will allow the participants of the process to optimize costs and prices, and consumers to move to rational energy consumption. Thus, the interests of the state, society, energy producers and consumers will be most effectively secured.

1.2. Adoption of rational policy to combat climate change

The energy problem is directly related to climate problems. Greenhouse gas emissions are by far the main causes of current and future climate changes. The impact of climate change is apparent in the effect of “heat stress”, global melting of glaciers, rising sea levels, changes in precipitation, which leads to droughts in some regions and loss of land resources as a result of sea level rise, reduction of crop yields and, accordingly, deterioration of nutrition opportunities for the population, loss of biodiversity, deterioration of water supply to the population, the spread of deadly diseases caused by global warming[6]. Manifestations of global

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[5] *Postanova Natsionalnoi komisii, shcho zdiisniuie derzhavne rehuliuvannia u sferakh enerhetyky ta komunalnykh posluh pro skhvalennia Memorandumu pro vzaiemorozuminnia shchodo vrehuliuvannia problemnykh pytan u sferi vidnovliuvanoi enerhetyky v Ukraini* 2020 (Verkhovna Rada Ukrainy) [Resolution of the National Commission for State Regulation of Energy and Public Utilities on Approval of the Memorandum of Understanding on Settlement of Problematic Issues in the Field of Renewable Energy in Ukraine (Verkhovna Rada of Ukraine)]. (2020). *Ofitsiinyi sait Verkhovnoi Rady Ukrainy* [*Official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/v1141874–20#Text> [in Ukrainian]. (October 30, 2022).

[6] Romanko, S.M. (2016). Klimatychni stratehii mist yak polityko-pravovyi instrument adaptatsii do zminy klimatu [Climate strategies of cities as a political and legal

climate change require appropriate decisions at the national level and a coherent mechanism of coordination and cooperation between countries.

In the context of the needs of adaptation of the socio-economic system of our country to climate change, it is necessary to raise the issue of intensifying and strengthening the role of Ukraine in global efforts to formulate a rational policy to combat climate change.

The basic international documents that establish the defining principles for addressing climate change at the global level are the UN Framework Convention on Climate Change, the Kyoto Protocol, and the Paris Agreement. The primary aim for today is to prevent the global average temperature from rising by more than 2°C (if possible – no more than 1.5°C) compared to the indicators before the industrial revolution, when humanity began to burn huge amounts of fossil fuels, which entailed climate change. Keeping global warming at 1.5–2°C requires rapid reduction of greenhouse gas emissions to zero during the second half of the XXI century.

The current state of the national regulatory framework for the regulation of issues related to the achievement of climate neutrality does not meet the requirements of the time and the defining goals and principles of the international community's policy. Among the current problems that should be addressed as a matter of priority is the need to introduce an optimized, transparent, and progressive mechanism to control and reduce industrial pollution. This refers to the implementation of the provisions of Directive 2010/75/EU of 24 November 2010 on industrial emissions (integrated approach to pollution prevention and control)[7], envisages the introduction of an integrated permit for large enterprises (based on the

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tool for adaptation to climate change]. *Ekolohichne pravo Ukrainy* [*Environmental law of Ukraine*], 1–2, 119 [in Ukrainian].

[7] *Dyrektyva Yevropeiskoho parlamentu i Rady 2010/75/YeS pro promyslovi vykydy (intehrovanyi pidkhid do zapobihannia zabrudnenniu ta yoho kontroliu)* 2010 (Yevropeiskyi parlament i Yevropeiska rada) [The Directive of the European Parliament and Council 2010/75/EU on industrial emissions (an integrated approach to pollution prevention and control 2010 (European Parliament and Council)]. *Ofitsiinyi sait Verkhovnoi Rady Ukrainy* [*Official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/984_004–10#Text> [in Ukrainian]. (October 30, 2022).

impact of the enterprise on the environment as a whole), which are the largest polluters of the environment (enterprises in the field of energy, production and processing of metals, processing of mineral raw materials, chemical industry). In the meantime, this issue is being resolved at the level of legislative work. A related and equally important problem is the introduction of a system of monitoring, reporting and verification of greenhouse gas emissions in Ukraine. The corresponding Law of Ukraine "On the Principles of Monitoring, Reporting and Verification of Greenhouse Gas Emissions" was adopted only on December 12, 2019, while the system of greenhouse gas emissions trading is an important element and prerequisite for the introduction of market and/or non-market mechanisms to promote the reduction of anthropogenic greenhouse gas emissions, which is extremely important for the climate change policy[8]. It should be noted that lobbying for the creation of an emissions trading scheme was often driven by the interests of various business groups, which, consequently, led many lawmakers to doubt the ability of the state to ensure the transparent functioning of this market instrument, to achieve the goals of the most cost-effective reduction of greenhouse gas emissions and to avoid abuse. Nevertheless, for the time being, we can note a slightly different perception of the situation by the representatives of business entities. Thus, given the overall goal of reducing emissions, the appropriate mechanism should be chosen – the emissions trading system or an emissions tax (or the introduction of both options as complementary). In order to take into account economic interests and, at the same time, to ensure the general environmental interest, it is important that the tax rate is determined at the level of stimulating the reduction of emissions at enterprises, and it would be cheaper to reduce emissions than to pay the tax. In general, the delay in launching the national scheme of trade with quotas for greenhouse gas emissions damages the reputation of Ukraine as a reliable participant in

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[8] *Zakon pro zasady monitorynhu, zvitnosti ta veryfikatsii vykydiv parnykovykh haziv* 2019 (Verkhovna Rada Ukrainy) [Law on the principles of monitoring, reporting and verification of greenhouse gas emissions 2019 (Verkhovna Rada of Ukraine)]. *Ofitsiinyi sait Verkhovnoi Rady Ukrainy* [*Official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/377–20#Text> [in Ukrainian]. (October 30, 2022).

global processes aimed at combating climate change, and in addition increases the risks of possible application to products originating from Ukraine, special tax on carbon emissions (so-called carbon border tax), which is planned to be applied to products imported to the EU from countries that do not place sufficient focus on reducing greenhouse gas emissions.

Slowing down climate change is a strategic task for humanity. That is why we are witnessing the unification of efforts of states for fighting global problems, world crises and comprehensive challenges caused primarily by environmental aspects. The unifying codification of human activity is important, foremost, in the context of the interests and needs of protection of humanity and future generations. The countries that have signed the Paris Agreement (including Ukraine) are obliged to develop clear and uncompromising measures to improve energy efficiency and energy conservation, gradual transition to the use and consumption of renewable energy sources, and reduction of greenhouse gas emissions. These factors necessitate the development of science, innovation, energy markets and competitiveness, which will ultimately contribute to strengthening the energy security of the country and the overall energy security of Europe and the world.

The introduction of environmentally friendly low-carbon technologies, reduction of the use of fossil energy sources (coal, oil, and gas) will undoubtedly have a positive environmental effect and minimize harmful emissions and environmental pollution. Public environmental interest in this context has a pronounced character and society in such conditions should be striving to find compromises through the optimal combination of all the other interests – political, economic, social, food, environmental and security ones. At the same time, such a combination should consider economic and environmental realities, existing trends and threats to development, so that ultimately the environmental interest is given priority, Therefore, humanity should be ready, relatively speaking, to be proactive, by reducing the rate of anthropogenic pressure on the ecosystem, although, according to experts, the processes associated with further climate change and their consequences are irreversible. It is important to realize the need to adapt to new conditions and realities associated with the manifestations and consequences of climate challenges. Climate change will definitely

lead to a food crisis and mass migration, including the so-called environmental migration. In the meantime, a constructive approach to solving this problem will even result in certain economic benefits for certain economic sectors and spheres of life – the matter is about commercial private interest for manufacturers of energy efficient equipment, new energy-intensive technologies, energy-saving windows, insulation materials, etc. At the same time, the most vulnerable areas are energy, agriculture, and water supply systems. A coordinated long-term policy for minimization of the consequences of climate change and coordination of interests of the main subjects of the energy market of both Ukraine and the various subjects of international law in the field of energy is a global undisputed priority.

1.3. Waste management in the context of sustainable development

One of the most important tasks for countries moving towards sustainable development and building a "green" economy, which allows minimizing the negative effects of economic growth, such as resource depletion and social consequences of anthropogenic pressure on the environment, is to achieve the decoupling effect. The Organization for Economic Co-operation and Development (an international organization and an associate member in close cooperation with Ukraine) – is the first international organization to propose the concept of environmental decoupling[9]. Decoupling (delimitation, separation) is the isolation of the parameters of economic growth from the use of natural resources and environmental impact. This distinction can be explored by comparing the dynamics of economic growth and the use of natural resources. The distinction will be confirmed when the growth rate of resource use (or environmental impact) is lower than economic growth. As a real objective, however, full decoupling should be achieved when resource use (or environmental impact) is stable or declining and the economy is growing[10].

[9] *OECD Environmental Strategy for the first decade of the 21st century.* <https://www.oecd.org/environment/indicators-modelling-outlooks/1863539.pdf> (October 30, 2022).

[10] Kokovskyi, L.O. (2013). Kontseptsiia "dekaplinhu": rozmezhuvannia ekonomichnoho zrostannia, resursospozhyvannia ta vplyvu na navkolyshnie seredovyshche v Ukraini [The concept of "decoupling": decoupling economic growth, resource con-

The results of scientific and analytical studies of economic growth and environmental impact indicate that the phenomenon of decoupling is not yet typical for Ukraine. Achieving a permanent (ongoing) effect of decoupling will be facilitated, inter alia, by systematic and consistent changes in such an important area as waste management.

Waste management reform in Ukraine to approximate EU waste management directives was launched in 2017. Thus, on November 8, 2017, the Cabinet of Ministers of Ukraine approved the National Waste Management Strategy for Ukraine for the period up to 2030, which envisages the implementation of a systematic approach to waste management at the state and regional levels, reduction of waste generation and increase of waste recycling and re-use.[11]. Critically assessing the ideas enshrined in the strategy, M. Kravchenko emphasizes that this document does not properly consider public and private interests, in particular, it is a failure to take into account the interests of individuals in the process of shaping the content of the Strategy. The document proposes the establishment of a mechanism for financing the waste management system, considering the principles of "polluter pays", "extended producer responsibility" and "pay for what you throw away". In a stable economic situation, such principles are quite balanced and fair, but for Ukraine, currently being in a deep economic crisis, the implementation of the said ideas will lead to increase in the cost of each unit of production, and the burden of fulfilling these obligations will fall on the shoulders of the population. State and business interests, not the interests of the Ukrainian people, have the obvious predominance in this case. Generally, it is reasonable to agree with the scientist's position on the need for consideration by the public

sumption and environmental impact in Ukraine]. *Efektyvna ekonomika* [*Efficient economics*], 11, 48 [in Ukrainian].

[11] *Rozporiadzhennia pro skhvalennia Natsionalnoi stratehii upravlinnia vidkhodamy v Ukraini do 2030 roku* 2017 (Kabinet Ministriv Ukrainy) [Order on approval of the National Waste Management Strategy for Ukraine for the period up to 2030 2017. (Cabinet of Ministers of Ukraine)]. *Ofitsiinyi sait Verkhovnoi Rady Ukrainy* [*Official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/820–2017-%D1%80#Text> [in Ukrainian]. (October 30, 2022).

administration of Ukraine of both public and private interests[12]. Indeed, the implementation of relevant public functions should be carried out regarding all interests, including private ones. Therefore, the proposal to establish the obligation of waste management authorities to systematically identify and ensure the interests of individuals in the process of waste management is reasonable. Certainly, there are situations or strategic areas (spheres) in which it is advisable to determine the priority of public interest, due to its special significance and function – to ensure the fundamentals of society and the state as prerequisites for their existence. Meanwhile, "hypertrophied" attention to public interests inevitably limits private ones, not allowing them to develop dynamically and be fully implemented[13]. Along with that, the realities are the following: at first glance, not quite "popular" decisions are required to be made for the subjects – holders of private interests, but such decisions and laws adopted on their basis are an objective requirement of the time.

It should be recalled that on June 20, 2022, the Verkhovna Rada of Ukraine adopted in the second reading and in general the long-awaited draft law "On Waste Management"[14]. The law will allow implementing the European hierarchy of waste management, to organize planning of the waste management system at the national, regional and local levels, to close old landfills, and to bring the remaining ones to European standards, to create conditions for the construction of modern waste processing infrastructure in Ukraine according to European rules and open borders for investors, to establish the "polluter pays" principle, to introduce extended producer responsibility, when the manufacturer of the product will be

[12] Kravchenko, M.H. (2018). Natsionalna stratehiia upravlinnia vidkhodamy v Ukraini do 2030 roku yak dzherelo ekoresursnoho prava [National Waste Management Strategy for Ukraine for the period up to 2030 as a source of environmental resource law]. *Pravo i suspilstvo* [*Law and societ*y], 4, 176–177 [in Ukrainian].

[13] Savchenko, S.V. (2013). Spivvidnoshennia pryvatnykh i publichnykh interesiv: dosvid Ukrainy [Correlation of private and public interests: experience of Ukraine]. *Forum prava* [*Forum prava*], 3, 552 [in Ukrainian].

[14] *Zakon pro Pro upravlinnia vidkhodamy* 2022 (Verkhovna rada Ukrainy). [The law on waste management 2022 (Verkhovna Rada of Ukraine)]. *Ofitsiinyi sait Verkhovnoi Rady Ukrainy* [*Official website of the Verkhovna Rada of Ukraine*]. < https:// zakon. rada.gov.ua/laws/show/2320–20#Text> [in Ukrainian]. (October 30, 2022).

obliged to ensure that the packaging that has been released to the market together with the goods is fully recycled. The law defines the basis of new rules for the functioning of the waste management system in Ukraine. Long-term systematic work on the development of several other necessary sectoral laws is expected ahead.

The literature justifies the need to ensure public-private partnership in the field of waste management[15]. In the global practice, public-private partnership relations in the field of waste processing and disposal may be based on concession, contracting and other agreements. Thus, in 2016, the South Korean company Posco Engineering and Construction (Posco E & C), as the main contractor, completed the construction of a new thermal power plant in Poland worth 250 million US dollars, which will be operating on waste. The electrical capacity of this facility is 11 MW, thermal capacity is 35 MW, and the annual volume of household waste incineration is 220 thousand tons[16]. Cooperation in the field of waste management on the terms of concession resolves various socio-economic and environmental issues, guided by the goals of sustainable development. For instance, the implementation of a concession project for the creation of a waste processing complex makes it possible to ensure the observance of several socio-economic human rights at once, namely: the right to entrepreneurship, the right to work (by creation of "green" jobs), the right to an adequate living standard (by increasing the population's income), the right to a safe environment (as a result of improved environmental situation). Consequently, a concession in the field of waste management is a way to ensure both public environmental and other interests[17].

[15] Zuiev, V.A. (2014). Problemy ta perspektyvy rozvytku hospodarsko-pravovoho rehuliuvannia povodzhennia z vidkhodamy v Ukraini [Problems and prospects of development of economic and legal regulation of waste management in Ukraine]. *Pravo ta innovatsiine suspilstvo* [*Law and Innovation Society*], 1, 49 [in Ukrainian].

[16] Trehub, O.A. (2017). Haluzeva pryroda pravovidnosyn u sferi povodzhennia z vidkhodamy [Branch Nature of Legal Relationships in the Sphere of Waste Management]. *Visnyk LDUVS im. E.O. Didorenka* [*Bulletin of E. Didorenko Luhansk State University of Internal Affairs*], 3 (79), 178 [in Ukrainian].

[17] Trehub, O.A. (2020). Rozvytok pravovoho rehuliuvannia kontsesii u sferi povodzhennia z vidkhodamy [Development of legal regulation of concessions in the field of waste management]. *Ekonomika ta pravo* [*Economics and Law*], 4, 35–36 [in Ukrainian].

2. The interaction between subjects of environmental relations in the process of implementing the organizational mechanism for environmental protection

One of the tasks of the organizational and legal machinery for environmental protection is the need for the fullest achievable coordination of its interests with the interests of ecological development, meeting the needs of production, population, and the world economy[18].

Comprehensive solution of urgent environmental problems cannot be the prerogative of states, their governing bodies, or scientists alone. The situation requires coordinated actions of various governmental and non-governmental institutions, each one. Feeling the negative effects of anthropogenic impact, every inhabitant of the planet cannot remain aloof from the processes that are known to be destructive to ecosystems.

Considering the managerial area in terms of ensuring public environmental interests, it is worth recalling the possibility of participation of a private individual in the implementation of the environmental (ecological) function of the state[19], and therefore public environmental interest. Nowadays, in the scientific literature, the construction of public environmental interest is being increasingly considered in the context of subjective public environmental rights. By establishing subjective public rights, the state gives an authorized person an additional legal opportunity to demand active actions in a certain order[20]. The essence of this right is to satisfy the social interest in preventing environmental emergencies, to ensure the rational use of natural resources of national and local importance, which results in an increase in the quality of life and human health. Subjective public environmental rights include the right to free access to information on the

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[18] Hetman, A.P. (2014). Orhanizatsiino-pravovyi mekhanizm okhorony navkolyshnoho pryrodnoho seredovyshcha [Organizational and legal machinery for environmental protection]. *Problemy zakonnosti* [*Problems of legality*], 125, 120 [in Ukrainian].

[19] Barlit, A.Yu. (2020). Systema orhaniv zabezpechennia realizatsii subiektyvnykh publichnykh ekolohichnykh prav [The system of bodies ensuring the implementation of subjective public environmental rights]. *Yurydychnyi visnyk* [*Law Herald*], 6, 371 [in Ukrainian].

[20] Matselyk, T.O. (2011). Subiektyvne publichne pravo yak yurydychnyi fenomen [Subjective public law as a legal phenomenon]. *Yurydychnyi visnyk* [*Law Bulletin*], 3 (20), 69 [in Ukrainian].

state of the environment, the right to associate in public environmental groups, the right to receive environmental education, etc.[21].

The category of "environmental democracy" is becoming increasingly more relevant, which is defined as an environmentally rational form of collective decision-making that determines their priority based on long-term public interests. The principles of environmental democracy should be used not only to criticize the existing institutional mechanisms of interaction between the public and the state, but also to find constructive ways of their interaction[22].

While estimating the current state of ecological democracy, O.V. Pavlova rightly notes that ecological democracy differs from legal democracy by eliminating traditional political boundaries between public and private interests, by national and international legal doctrines, highlighting one's own value and values of civil society institutions according to the present-day requirements. The main area of influence of environmental democracy is the assertion that potential environmental risks should be able to be consciously represented in the definition of policies or significant decisions that may also pose risks[23]. The state's efforts should be aimed at forming the basis for sustainable (environmentally friendly) development, at real implementation of democratic traditions, and at ensuring effective and efficient public participation in the discussion and adoption of important environmental decisions for society.

Public influence on the current state and development directions of the country's environmental policy is one of the process management types which is related to the preservation of the environment. And such impact is

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[21] Barlit, A.Yu. (2020). Poniattia ta zmist subiektyvnykh publichnykh ekolohichnykh prav [The concept and content of subjective public environmental rights]. *Yurydychnyi biuleten* [*Law Bulletin*], 13, 98–99 [in Ukrainian].

[22] Iholkin, S.M., Nesterenko, H.P. (2020). Uchast hromadskosti u pryiniatti derzhavnykh rishen, zakhyst navkolyshnoho pryrodnoho seredovyshcha ta demokratiia [Public participation in policy making, environmental protection and democracy]. *Efektyvnist derzhavnoho upravlinnia* [*Efficiency of public administration*], 2 (63), 149 [in Ukrainian].

[23] Pavlova, O.V. (2016). *Pravovi zasady formuvannia ekolohichnoi derzhavy za uchastiu hromadskosti* [*Legal basis for the formation of an ecological state with public participation*] (dys. … kand. yuryd. nauk). Kharkiv, 70, 75 [in Ukrainian].

related not only to three sets of issues – environmental decision-making, the right of access to environmental information and the right of access to justice for the protection of environmental interests. In this case, a more comprehensive approach is needed to implement the ideology of sustainable development goals and reconcile the interests of the economy and the environment. First and foremost, there should be transformational changes at the level of environmental policy, current system of air quality management reform, water and forest management, waste management, etc. Convincing is the conclusion of E.I. Sheludko about the necessity of creating effective measures to improve the institutional instruments of environmental development management, industrial enterprises with the purpose of supporting the implementation of the Agreement with the EU in the field of green economy in Ukraine and assessment of the implementation of EU Directives, implementation of other international documents into Ukrainian legislation, including those on the management of hazardous enterprises. This will facilitate minimization of risks in environmental aspects during production activities, assist in the effective prevention and control of industrial pollution, and contribute to increasing environmental safety level[24].

There is a principle of cooperation among the principles that underlie the policy of safe environmental management and maintaining of environmental safety level in the leading countries of the world. This principle means that environmental problems can be successfully solved jointly by the state, private and public sectors[25]. This is not an easy task to develop an appropriate algorithm for effective interaction. An important role is also given to scientific concepts, environmental and legal doctrines. The task of science is to develop a system of scientifically based measures aimed at

[24] Sheludko, E.I. (2019). Modernizatsiini instrumenty instytutsionalnoho zabezpechennia ekolohizatsii promyslovosti prav [Modernization tools for institutional support of industrial ecologization]. *Ekonomichnyi visnyk universytetu* [*University economic bulletin*], 42, 136 [in Ukrainian].

[25] Artemenko, O.V. (2018). *Derzhavna polityka shchodo pryrodokorystuvannia u konteksti zabezpechennia natsionalnoi bezpeky Ukrainy* [*State policy on environmental management in the context of national security of Ukraine*] (dys. … kand. nauk z derzh. upravlinnia). Kyiv, 54 [in Ukrainian].

the interaction of state structures, corporate associations and public organizations committed to creating an environmentally friendly economy, formation of new ecological mindset of the entire population of the country and preservation of biodiversity based on sustainable development[26].

Environmental civil society is an effective and constructive force that helps the government to implement environmental governance reform. As a result, there have been introduced European instruments of environmental impact assessment and strategic environmental assessment, developed packages of laws on waste management and on reforming the system of environmental control of waste management, as well as implemented several other important steps towards the Europeanization of environmental protection.

To ensure national, including environmental security, Ukraine focuses its efforts and resources on the priority of sustainable development, the components of which include environmental safety and rational use of natural resources. The legal mechanism for ensuring the principle of prevention in the process of economic activity is the institution of environmental impact assessment (EIA). Until June 2011, Ukraine had a post-Soviet EIA model, which was characterized as ineffective. With the adoption of the Law of Ukraine "On Environmental Impact Assessment" in May 2017, a clear legislative framework for this procedure was laid down, which, from a political point of view, can be considered as progress in promoting pro-European reforms. At present, the EIA provides for broad public hearings under a transparent and clearly regulated procedure. It is worth recalling that the Law was adopted under increased pressure from the concerned environmental community, the procedure that is outlined, regulates in detail the content, scope, and the EIA process itself, and, most importantly, with the mandatory involvement of the public. It also provides an open online registry of all documents on environmental impact assessment (Unified Register of Environmental Impact Assessment) to ensure the principle of transparency and openness that minimizes or

[26] Getman, A.P. (2014). Orhanizatsiino-pravovyi mekhanizm okhorony navkolyshnoho pryrodnoho seredovyshcha [Organizational and legal mechanism of environmental protection]. *Problemy zakonnosti* [*Problems of legality*], 125, 123 [in Ukrainian].

eliminates the contact of the business entity with the official. According to the Law, an environmental impact assessment is required when deciding on a "planned activity", namely construction, reconstruction, technical re-equipment, expansion, conversion, disposal (removal) of objects, other interference with the environment (the list of objects that require obtaining the Conclusion is defined in parts 2 and 3 of Article 3 of the Law). Such planned activity undergoes an environmental impact assessment before the decision to carry out the planned activity is made[27]. The environmental impact assessment procedure provides for: 1) preparation of an environmental impact assessment report by the business entity; 2) holding a public discussion; 3) analysis by the authorized territorial or central body information provided in the environmental impact assessment report, any additional information provided by the entity, as well as information received from the public during public discussion, during the transboundary impact assessment procedure, other information; 4) provision by the authorized body of a reasoned conclusion on environmental impact assessment; 5) taking into account the conclusion of the environmental impact assessment in the decision on the implementation of the planned activity.

Thus, the EIA procedure is inherently designed to reconcile public and private interests in relations associated with environmental impact (ecological, natural resource ones, proprietary, commercial, etc.).

Another universal tool for reconciling various interests in the process of implementing plans, projects and programs that are potentially hazardous to the environment or may have indirect consequences associated with changes in the state of the environment, is a strategic environmental assessment (SEA). For this reason, the SEA is an integral element of modern strategic planning, as well as an environmental policy tool aimed at balancing and harmonizing the interests of stakeholders in the

[27] *Zakon pro otsinku vplyvu na dovkillia 2017 (Verkhovna rada Ukrainy). [Law on Environmental Impact Assessment* 2017 (Verkhovna Rada of Ukraine)]. *Ofitsiinyi sait Verkhovnoi Rady Ukrainy* [*Official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/2059–19#Text> [in Ukrainian]. (October 30, 2022).

development and implementation of strategies, plans and programs[28], that is, state planning documents. According to Article 2 of the Law of Ukraine "On Strategic Environmental Assessment", state planning documents are documents related to agriculture, forestry, fishing industry, energy, industry, transport, waste management, water resource use, environmental protection, telecommunications, tourism, urban planning, or land management (schemes). The execution of these will involve the implementation of activities (or which contain activities and objects), for which the legislation provides for the implementation of the environmental impact assessment procedure, or which require assessment, given the likely impact on the territories and objects of the nature reserve fund and ecological network. An exception to these relates to the creation or expansion of territories and objects of the nature reserve fund[29].

SEA as a process includes public participation in decision-making (documents) of state planning. Constructive and effective public participation is an important component for the success of the SEA. The draft strategic document and environmental report should be made available to the public in a timely manner. It is essential that interested members of the public are given the opportunity to express their views on the draft strategy, plan, or programme, as well as on the environmental report. The public should be consulted as early as possible in the SEA process, and ideally at the time when the SEA working group is formed. Public participation at this early stage will indicate public interest in the SEA, increase the transparency of the process, provide an opportunity to identify potential conflicts of interest of different social groups, and will also guarantee consideration of public priority issues.

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[28] Kozachenko, T.P. (2018). Stratehichna ekolohichna otsinka v Ukraini: problemy ta perspektyvy [Strategic environmental assessment in Ukraine: problems and prospects]. *Investytsii: praktyka ta dosvid* [*Investments: practice and experience*], 16, 99 [in Ukrainian].

[29] *Zakon pro stratehichnu ekolohichnu otsinku* 2018 (Verkhovna rada Ukrainy) [The Law on Strategic Environmental Assessment] 2018 (Verkhovna Rada of Ukraine)]. *Ofitsiinyi sait Verkhovnoi Rady Ukrainy* [*Official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/2354–19#Text> [in Ukrainian]. (October 30, 2022).

EIA and SEA are similar procedures, but they regulate different types of activities. SEA is used in the process of planning future systemic activities (development of strategies, programs, and plans of other state planning documents) by public authorities of any administrative level. EIA is carried out for project documentation of clearly defined planned activities that may have an impact on the environment (construction of a pig farm, construction of a battery production plant, construction of a road or ski slope). Therefore, SEA precedes the EIA of specific projects and influences the choice of future activities that will be subject to EIA[30].

3. Environmental restrictions as a branch method of regulating public environmental interests

To eliminate negative manifestations in the field of nature management, there is an urgent need to review the existing system of natural resources use, transforming it into one based on a compromise between economic, environmental and social needs of society and based on the sustainability principles[31]. It should be emphasized that an important principle of environmental protection is, among other things, the priority of environmental safety requirements, mandatory compliance with environmental standards, norms and limits of natural resources uses in the implementation of economic, management and other activities. Back in 1987, the UN General Assembly approved the report of the International Commission on Environment and Development "Our Common Future", which proclaimed the fundamental right of all people to an environment adequate to their health and well-being[32]. The main conclusion of the

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[30] Shutiak, C. (2017). *Stratehichna ekolohichna otsinka: mozhlyvosti dlia hromadskosti* [*Strategic environmental assessment: opportunities for the public*]. Lviv: Vydavnytstvo "Kompaniia "Manuskrypt", 12 [in Ukrainian].

[31] Deineha, M. (2018). Pryrodokorystuvannia yak pravova katehoriia: problemy vyznachennia i spivvidnoshennia iz sumizhnymy poniattiamy [Nature management as a legal category: problems of definition and correlation with related concepts]. *Pidpryiemnytstvo, hospodarstvo i pravo* [*Entrepreneurship, Economy and Law*], 7, 103 [in Ukrainian].

[32] Kravchenko, S., Andrusevych, A. (2001). Rozvytok ekolohichnykh prav liudyny u mizhnarodnomu pravi [The Development of Environmental Human Rights in International Law]. *Pravo Ukrainy* [*Law of Ukraine*], 2, 134 [in Ukrainian].

Commission was that to achieve sustainable (balanced, resilient) socio-economic development, it was necessary that decisions at all levels were taken with consideration of environmental factors. Thus, meeting the environmental needs of modern society will not jeopardize the ability of future generations to meet their needs[33]. This is the general essence of the principle of sustainable development. The fundamentals of this concept are "needs" and "constraints" (the goal is to ensure a balance between the use of the environment, its protection and preservation of safe conditions for human existence).

In the most general aspect, the problem of legal restrictions is the problem of the limits of human freedoms in society. Indeed, the freedom of each person extends only to the extent where the freedom of other people begins[34]. By performing and ensuring the protective (preventive and restrictive) function, the state guarantees the establishment of preventive and precautionary measures, the procedure for their implementation. The purpose of this is to eliminate (displace) harmful, undesirable for society relations, their restriction, and protection of positive ones. By providing such functions, however, the state must simultaneously adhere to reasonable limits of such interference, considering the interests of all subjects of the relevant relations.

It is not without a reason that the state is recognized as the main subject of environmental policy, since it is the state that should ensure the implementation of environmental, as well as any other policy, which is, in fact, impossible without subordinating the will of individuals to common interests.

The methods of environmental policy implementation include the following: economic (taxes, sanctions, benefits), administrative and legal (laws, presidential orders, government resolutions, orders of ministries, etc.) educational and informational (press, radio, television). The means

[33] Kravchenko, S.M. (2002). *Aktualni problemy mizhnarodnoho prava navkolyshnoho seredovyshcha* [*Current Issues Of International Environmental Law*]. Lviv: Vyd. tsentr LNU, 11 [in Ukrainian].

[34] Moroz, H. (2018). Legal Environmental Constraints: General Theoretical Aspect. *Journal of Vasyl Stefanyk Precarpathian National University*, 5 (2), 122–129 [in Ukrainian].

used to implement environmental policy are the following: environmental protection measures, economic regulation and stimulation of environmental activities, coercive and incentive measures[35].

Environmental law is largely a public sector. According to M.V. Krasnova, environmental law is a public law branch, which is based on legal support of public interests related to non-property benefits. Particularly, these include the interests of the Ukrainian people in the realization of the right for ownership of natural resources as a national wealth, the right to a safe and quality environment, the right to environmental wellbeing. Such a branch can be correlated with natural resource and environmental law as common and special, which defines general requirements, rules, and regulations that are applied through the effectiveness of imperative methods of legal regulation of public environmental relations. This includes restrictions on the use of natural resources[36]. Within the framework of forming the concept of environmental law, the generally recognized principles should be clearly defined, in particular: moderation (restriction) in nature use; consistency (continuity) of inclusion of an individual in a collective community to address environmental problems; justice regarding the res-ponsibility of this generation of people for the state of the environment to future generations; vitality (existence) of all elements of nature, including the harmonious existence of humans in nature, without causing harm to it, hence the unity of nature and man; harmony (general agreement) and restoration of the value of the spirit of nature; humanism and sensuality, intuition in the development of new directions of interaction with nature, especially those aimed at protecting nature as a "holy temple" of the human spirit[37].

[35] Lazor, O.Ia. (2004). *Administratyvno-pravovi zasady derzhavnoho upravlinnia u sferi realizatsii ekolohichnoi polityky v Ukraini* [*Administrative and legal principles of public administration in the field of environmental policy implementation in Ukraine*] (avtoref. dys. … d-ra z derzhavnoho upravlinnia). Kyiv, 9 [in Ukrainian].

[36] Krasnova, M.V. (2012). Metodolohichni zasady suchasnoho ekolohichnoho prava [Methodological principles of modern environmental law]. *Visnyk Kyivskoho natsionalnoho universytetu imeni Tarasa Shevchenka. Yurydychni nauky* [*Bulletin of Taras Shevchenko National University of Kyiv. Law sciences*], 92, 6–8 [in Ukrainian].

[37] *Supra,* note 8.

At the same time, it is important to remember that the regulation of environmental, in particular natural resource relations, uses a combination of different ways and methods of legal regulation[38], in other words, the issue concerns a mixture of methods of legal regulation, which is a feature of environmental law of Ukraine, related to its content, subject and diversity. In this regard, the environmental law of Ukraine clearly cannot be classified as either private or public law, although in its certain sections private or public law elements may prevail[39].

The implementation of a mixed method of legal regulation and the peculiarity of the complex nature of the institute of natural resources management provides optimal combination of general legal methods, instruments of legal regulation – permits, prohibitions, and positive obligations in the mechanism of legal regulation of natural resources use[40].

Regulation precisely negative impacts on the environment should be based on imperative, restrictive principles.

A specific sectoral legal method of regulating relations in the field of environmental protection and the use of natural resources is public law environmental restrictions, which include: environmental prohibitions and requirements for economic activity, restriction of the subject composition of the right of ownership and turnover of natural objects; functional and territorial restrictions on the use of natural resources, based on the principles of prevention (non-initiation) of environmental damage, rational, integrated and targeted use of natural resources; encumbrance of natural objects related to the implementation of public (general) nature use and the establishment of public easements. Environmental legal restrictions can be conside-

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[38] Kobetska, N.R. (2016). *Dozvilne ta dohovirne rehuliuvannia vykorystannia pryrodnykh resursiv v Ukraini* [*Permissive and contractual regulation of natural resources use in Ukraine*] (dys. … d-ra yuryd. nauk). Kyiv, 39 [in Ukrainian].

[39] Baliuk, H.I. (2009). Ekolohichne pravo Ukrainy: peredumovy i osoblyvosti yoho podalshoho rozvytku [Environmental law of Ukraine: prerequisites and features of its further development]. *Visnyk Kyivskoho natsionlnoho universytetu imeni Tarasa Shevchenka. Yurydychni nauky* [*Bulletin of Taras Shevchenko National University of Kyiv. Law sciences*], 81, 182 [in Ukrainian].

[40] Kobetska, N.R. (2016). *Dozvilne ta dohovirne rehuliuvannia vykorystannia pryrodnykh resursiv v Ukraini* [*Permissive and contractual regulation of natural resources use in Ukraine*] (dys. … d-ra yuryd. nauk). Kyiv, 40 [in Ukrainian].

red in a narrow and broad sense: accordingly, as a synthetic, mainly prohibitions and obligations-based method of legal regulation, and as a generic notion that includes the restriction itself, as well as burdens and various requirements that are imposed on the subjects of environmental legal relations and ultimately mean restrictions of economic freedom for them[41].

First and foremost, it should be noted that the main limiting environmental factor is the absolute limitation of natural resources, which is due to their natural exhaustibility and non-renewability. That is certainly the reason for the rise in price of natural resources and limited access to their use. The second factor that can be attributed to environmental restrictions is the environmental quality standardization, which should be understood as the degree of compliance of natural and human-caused conditions to human and other living organisms' needs. Over the years, a special system of environmental standards, rules and restrictions has been developed to guarantee an eco-friendly environment and regulate the use of natural resources. Restrictive rules in order to protect public interests in the field of nature management at the same time contribute to the protection of private interests in the use of valuable properties of nature. One of the main environmental restrictions is a system of scientifically based legislative environmental requirements for permissible negative impact on the environment, and limits on the use of natural resources. The content of harmful substances in the environment began to be controlled in 1925, when the first values of maximum permissible concentrations for the air at the working area were established. Since 1949, the first maximum permissible concentrations for air have been established, and since 1950 – those for water. The purpose of the system of environmental regulations is to ensure an optimal combination of environmental and economic interests. Therefore, to achieve this goal, it is important to have a balanced and scientifically sound approach to establishing appropriate restrictions, indicators, limits, etc. With the scientific approaches to the predominance of

[41] Vasyleva, M.Y. (2009). O metodakh, sredstvakh i sposobakh pravovogo regulirovaniya ekologicheskikh otnosheniy [On methods, means and ways of legal regulation of environmental relations]. *Ekologicheskoje pravo* [*Environmental Law*], 2/3, 61–62 [in Russian].

the public environmental interest, it is important to be aware that overstatement of at least a minimal share of certain indicators can result in significant material losses for the state, while their understatement can lead to negative environmental consequences. With the scientific approaches to the predominance of the public environmental interest, it is important to be aware that overstatement of at least a minimal share of certain indicators can result in significant material losses for the state, while their understatement can lead to negative environmental consequences[42].

Factors that influence the establishment of environmental restrictions are of objective and subjective nature. Objectively, the reserves of natural resources are constantly decreasing, their quality is deteriorating, extraction is becoming more complicated, i.e., the main limiting environmental factor is the absolute limitation of natural resources due to their natural properties[43]. Subjectively, restrictions are caused by the ecological function of the state and its regulatory influence. A.P. Hetman, in his study regarding the essence in the environmental function of the state in the context of modern globalization processes, emphasizes its main purpose – to ensure a scientifically based correlation between economic and environmental interests of society. The reasoning of this is to create a mechanism for the implementation of environmental security, rational nature management, reproduction of natural resources and environmental protection, ensuring and protection of constitutional environmental rights of citizens (the right to a safe environment for life and health, obtaining ecological information, compensation for environmental damage, etc.)[44].

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[42] Moroz, H.V. (2022). *Vzaiemodiia publichnykh i pryvatnykh interesiv v ekolohichnomu pravi Ukrainy:* monohrafiia [*Interaction of public and private interests in environmental law of Ukraine:* monograph]. Ivano-Frankivsk: Prykarpatskyi natsionalnyi universytet imeni Vasylia Stefanyka, 123 [in Ukrainian].

[43] Kozhevnykova, V. (2018). Spivvidnoshennia pravovoi katehorii "obmezhennia" z inshymy pravovymy katehoriiamy u pravi [Correlation of the legal category "restriction" with other legal categories in law]. *Pidpryiemnytstvo, hospodarstvo i pravo* [*Entrepreneurship, economy and law*], 1, 20 [in Ukrainian].

[44] Getman, A.P. (2015). Ekolohichna funktsiia derzhavy v suchasnykh hlobalizatsiinykh protsesakh [The Ecological Function of the State in the Current Globalization Processes]. *Problemy zakonnosti: zb. nauk. prats* [*Legality Issues: A Collected*], 128, 149 [in Ukrainian].

The current environmental legislation allows and even directly includes certain types of negative impact on nature in the process of economic activity and nature use. However, such activities should be based on imperative and restrictive principles. The concept of "environmental imperative" means the limit of permissible human activity, which a person has no right to cross under any circumstances (introduced into scientific circulation in the late 80s). The environmental imperative is also defined as mandatory, objectively determined principles of environmental behavior, directions, forms and methods of management, mechanisms, tools and means of their implementation that are mandatory, used within the framework of the created legal framework and reflect the public interest[45].

Environmental and legal restrictions and requirements, including those for economic activities, are enshrined in regulatory legal acts of various industries. Thus, Article 6 of the Economic Code of Ukraine among the general principles of economic activity in Ukraine proclaims the principle of environmental protection of the population. Article 153 of the Code provides an obligation of business entities with the duty of taking measures for timely reproduction and prevention of spoilage, pollution, contamination, and depletion of natural resources, as well as to prevent deterioration of their quality in the process of economic activity[46]. These provisions are of a general declarative nature and do not contain mechanisms for the implementation of specific environmental requirements. These provisions are of a general declarative nature and do not contain mechanisms for the implementation of specific environmental requirements. Specifically, it is within the framework of environmental legislation that environmental prohibitions and requirements for economic activity are detailed. Nevertheless, today environmental norms and standards cannot be considered as modern criteria of environmental safety, which would cover all possible

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[45] Stoliarchuk, Ya.M. (2009). *Hlobalni asymetrii ekonomichnoho rozvytku*: monohrafiia [*Global asymmetries of economic development:* monograph]. Kyiv: КНЕУ, 273 [in Ukrainian].

[46] *Hospodarskyi kodeks Ukrainy* 2003 (Verkhovna rada Ukrainy). [Commercial Code of Ukraine 2003 (Verkhovna Rada of Ukraine)]. *Ofitsiinyi sait Verkhovnoi Rady Ukrainy* [*Official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/436–15#Text> [in Ukrainian]. (October 30, 2022).

environmental risks and contain modern quantitative and qualitative requirements. Provided that these norms are adhered to, it could be alleged that environmental safety is ensured. Consequently, environmental norms require revision and updating[47].

Negative impacts on the environment are traditionally associated with the concept of environmentally hazardous activities.

Legal aspects of environmentally hazardous activities in Ukraine are investigated in the dissertation research of L.O. Bodnar. Adhering to the concept of O.O. Pogribnyi about the division of restrictions of environmentally hazardous activities into administrative and economic ones, the author made an attempt to analyze the current legislation on environmentally hazardous activities, conditionally systematizing it by administrative and economic measures to restrict environmentally hazardous activities. The following system of existing administrative restrictions on environmentally hazardous activities is proposed: 1) direct prohibitions on the implementation of environmentally hazardous activities; 2) regulatory restrictions: environmental regulation, limitation, standardization and certification; 3) precautionary restrictions: permitting system and environmental licensing, approvals, coordination, EIA; 4) restrictions of accounting and informational nature: registration of entities engaged in environmentally hazardous activities and sources of environmental hazard, environmental statistics, environmental certification, environmental declaration and environmental labeling; 5) control and supervision restrictions: environmental monitoring, control and audit. Economic measures of environmental hazardous activities restriction include environmental tax incentives (environmental benefits in general tax laws), environmental taxation (collection of environmental taxes) and environmental insurance[48].

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[47] Yevstihnieiev, A.S. (2019). *Problemy pravovoho zabezpechennia ekolohichnoi bezpeky u sferi spetsialnoho pryrodokorystuvannia v Ukraini* [*Problems of legal support of environmental safety in the field of special nature use in Ukraine*] (dys. … d-ra yuryd. nauk). Kyiv, 92 [in Ukrainian].

[48] Bodnar, L.O. (2002). *Pravovi zasady zdiisnennia ekolohichno nebezpechnoi diialnosti v Ukraini* [*Legal basis of environmentally hazardous activities in Ukraine*] (avtoref. dys. … kand. yuryd. nauk). Kyiv, 8–9 [in Ukrainian].

The system of environmental requirements, according to A. Sokolova, is as follows: (1) environmental requirements (they should be considered as general); (2) resource – land, water, floral, etc. (they are fundamental for a certain natural object); among each type of basic requirements there are specific (special) ones, which can be considered when using, protecting and restoring a certain category of natural object[49].

General and direct environmental requirements are declared in Section XI of the Law of Ukraine "On Environmental Protection", which is devoted to measures of environmental safety. The main principle that is incorporated in the content of the norms of this section is the principle of prevention of the deterioration of the ecological situation and the hazard to human health. The second group of general environmental requirements, which define the requirements for natural resource users, is enshrined in the sections of natural resource codes and laws entitled "Water Protection", "Forest Protection", "Subsoil Protection". As a rule, they are addressed to business entities that are not direct users of natural resources and are engaged in production and economic activities that may adversely affect the state of natural objects and their resources[50]. Environmental regulations aimed at ensuring environmental safety can be applied to all types of economic activities related to the consumption of energy and material resources. In the presence of general requirements in the field of environmental protection, there are also detailed requirements for the location, design, construction, reconstruction, commissioning and operation of enterprises, structures, and other facilities (Articles 51–59 of the Law of Ukraine "On Environmental Protection"). These requirements, therefore, are specified in the relevant normative legal acts, sections and articles regulating certain types of environmentally hazardous activities. A system of requirements for energy, oil and gas industry, agricultural, military, defense facilities has been established, as well as environmental

[49] Sokolova, A.K. (2008). Osoblyvist prav na obiekty roslynnoho svitu [Peculiarity of rights to flora objects]. *Problemy zakonnosti* [*Problems of legality*], 99, 129–130 [in Ukrainian].

[50] Kobetska, N.R. (2016). *Dozvilne ta dohovirne rehuliuvannia vykorystannia pryrodnykh resursiv v Ukraini* [*Permissive and contractual regulation of natural resources use in Ukraine*] (dys. … d-ra yuryd. nauk). Kyiv, 80–81 [in Ukrainian].

requirements that must be maintained in the production and operation of transport and other mobile vehicles and installations, handling of chemicals and waste, etc. Legal regulation of environmental activities in industry should be aimed at resolving two objectives: prevention of new sources of pollution during economic construction, gradual limitation and, finally, the greatest possible elimination of existing sources of pollution. At the same time, it should be understood that absolute elimination of any negative impact on the environment is impossible to be achieved. The impact of such a factor as environmental constraints is manifested in additional costs, losses, or lost profits. This leads to deterioration of economic indicators. Therefore, it is advisable to raise the question of applying special organizational schemes and mechanisms of economic management to achieve a reasonable compromise between environmental and economic interests.

Our legal system has a huge number of regulations that govern the implementation of environmentally hazardous activities. In the meantime, these acts are not combined into a coherent system, they often contradict each other, are mutually inconsistent, contain significant gaps, they are developed in accordance with different concepts of regulating environmentally hazardous activities[51]. Environmental and legal restrictions are fixed and detailed in acts of different legal force, different sectoral affiliation, special legislation on public environmental restrictions is quite extensive, although to some extent outdated. In other words, currently there is a situation in which environmental restrictive mechanisms are largely known, but they are "scattered" in individual scientific trends, in different branches of legislation.

Restrictions in environmental law is a specific sectoral imperative mechanism for regulating relations in the field of environmental safety, which consists in the systematic consolidation of imperative provisions of environmental law, as well as in the establishment of special legal regimes and mechanisms for their application and implementation. The first

[51] Bodnar, L.O. (2002). Pravovi zasady zdiisnennia ekolohichno nebezpechnoi diialnosti v Ukraini [Legal basis of environmentally hazardous activities in Ukraine] (avtoref. dys. … kand. yuryd. nauk). Kyiv, 8 [in Ukrainian].

objective is to systematize and unify existing environmental requirements and prohibitions, and to generalize the experience of their practical implementation to achieve environmentally significant goals[52].

The established prohibitions, restrictions, limits, and obligations must be reasonable, fair, and justified. Justice in relation to restrictions is largely achieved *through their proportionality* in relation to all persons who are equal before the law and in respect of their rights regardless of any factors. That is, such restrictions should be based on the principles of optimal combination of public and private interests, legality, priority of environmental safety requirements, proportionality[53]. The issue is the adequacy of legal remedies. The greatest possible positive results can be achieved by applying justified, reasonable, and appropriate restrictions that would correspond to the actual state of the environment (level of environmental safety, quantitative and qualitative state of natural objects, etc.), as well as real conditions of social life and interests of everyone in particular.

[52] Moroz, H.V. (2022). *Vzaiemodiia publichnykh i pryvatnykh interesiv v ekolohichnomu pravi Ukrainy:* monohrafiia [*Interaction of public and private interests in environmental law of Ukraine:* monograph]. Ivano-Frankivsk: Prykarpatskyi natsionalnyi universytet imeni Vasylia Stefanyka, 342–343 [in Ukrainian].

[53] Kolomiiets, Ya.L. (2014). Pro pryntsypy pravovoho rehuliuvannia obmezhen u zdiisnenni vyrobnycho-hospodarskoi diialnosti silskohospodarskykh tovarovyrobnykiv [On the principles of legal regulation of restrictions in the implementation of production and economic activities of agricultural producers]. *Teoriia i praktyka pravoznavstva* [*Theory and practice of jurisprudence*], 2 (6), 7 [in Ukrainian].

CHAPTER 2

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Legal relations in the field of environmental information provision in the concept of sustainable development

Issues of environmental protection, due to their specific features, scale and significance require a comprehensive approach to their study since only in this way can the sustainable development of countries be ensured and the Sustainable Development Goals be achieved.

The right to environmental information has a fundamental nature and belongs to one of the priority environmental rights in the system. Nevertheless, the very concept of environmental information provision is complex, and its understanding is not reduced only to the right to environmental information, which is particularly stressed during the study of legal relations in the field of environmental information provision and their structure.

In the conditions of today's information society, proper legislative and organizational support of any information relations is gaining more and more importance. As regards legal relations in the field of environmental information provision, the possibility of exercising not only the right to environmental information but also other environmental rights depends on the level of their legal regulation and the quality of functio-

ning. Furthermore, legislation on the provision of environmental information is closely connected with legislation on sustainable natural resource management and significantly affects the achievement of the Sustainable Development Goals.

This chapter presents a study of legal relations in the field of environmental information provision within the framework of sustainable development. The place and role of the right to environmental information in the context of sustainable development are analyzed; the legal basis for the regulation of this type of legal relations is defined; the meaning of the concept of "environmental information provision" is discussed by looking at various methods of its interpretation; the subjects and objects of these legal relations are defined, possibilities for obtaining access to environmental information in Ukraine are considered.

1. Access to environmental information and the concept of sustainable development

The concept of sustainable development is based on social, economic and environmental components. The principle of sustainable development represents the idea of the development of society that meets the needs of the present without jeopardizing the ability of future generations to meet their own needs. It is the idea of the development of society with an optimal balance between the economic and environmental interests of present and future generations.

Analysis of the formation and development of the concepts "sustainable development" and "environmental information" in scientific usage and the prerequisites for introducing legislation on them demonstrates that they are developing simultaneously.

The emergence of the concept of "environmental information" in scientific studies conducted by legal scholars and ecologists can be associated with the aggravation of the ecological crisis and the formation of the paradigm of sustainable development in natural resource management[1].

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[1] Demchuk, T.I. (2021). *Pravove zabezpechennia realizatsii prava na dostup do ekolohichnoi informatsii* [*The legal regulation for the implementation of the right to access to environmental information*] (dys. … k-ta yuryd. nauk). Odesa, 54 [in Ukrainian].

Indeed, one of the modern trends in the development of legislation on natural resource management is the implementation of the international principle of sustainable development, an element of which is sustainable natural resource management as the use of natural resources with regard to social, economic and environmental factors[2].

In September 2015, the UN Summit on Sustainable Development was held in New York as a part of the 70th session of the UN General Assembly. The final document of the Summit titled "Transforming our world: the 2030 Agenda for Sustainable Development" contains 17 Sustainable Development Goals and 169 targets[3].

The use of information and communications technology, effective information provision and timely access to information are repeatedly mentioned in the Resolution adopted by the General Assembly on the definition of Sustainable Development Goals and Targets. For instance: 1) Goal 2. End hunger, achieve food security and improved nutrition and promote sustainable agriculture – 2.c Adopt measures to ensure the proper functioning of food commodity markets and their derivatives and facilitate timely access to market information, including on food reserves, in order to help limit extreme food price volatility; 2) Goal 9. Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation – 9.c Significantly increase access to information and communications technology and strive to provide universal and affordable access to the Internet in least developed countries by 2020; 3) Goal 12. Ensure sustainable consumption and production patterns – 12.6 Encourage companies, especially large and transnational companies, to adopt sustainable practices and to integrate sustainability information into their reporting cycle; 12.8 By 2030, ensure that people everywhere have the relevant information and awareness for sustainable development and lifestyles in

[2] Kobetska, N.R. (2016). *Dozvilne ta dohovirne rehuliuvannia vykorystannia pryrodnykh resursiv v Ukraini* [*Permits and contracts in the legal regulation of natural resources use in Ukraine*] (avtoref. dys. … d-ra yuryd. nauk). Kyiv, 12–13 [in Ukrainian].

[3] Sustainable Development Goals and Ukraine. *Official website of the Cabinet of Ministers of Ukraine.* <https://www.kmu.gov.ua/en/cili-stalogo-rozvitku-ta-ukrayina-eu> [in Ukrainian]. (2022, October, 26).

harmony with nature; 4) Goal 14. Conserve and sustainably use the oceans, seas and marine resources for sustainable development – 14.5 By 2020, conserve at least 10 % of coastal and marine areas, consistent with national and international law and based on the best available scientific information[4], etc. The points listed above demonstrate the interdependence of sustainable development and access to information and indicate the relationship between sustainable natural resource management and the provision of environmental information.

In addition, within Goal 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels, Target 16.10 Ensure public access to information and protect fundamental freedoms in accordance with national legislation and international agreements[5] is singled out. It emphasizes the comprehensive nature, complex meaning and practical value of proper legal regulation of information relations, including environmental information. It becomes an obvious fact that the achievement of the Sustainable Development Goals is impossible without a mechanism for the coordinated functioning of legal relations in the field of environmental information provision.

In 2019, the President of Ukraine by his decree supported the achievement of the Sustainable Development Goals and the results of their adaptation with regard to the specifics of Ukraine's development that has been set out in the National Report "Sustainable Development Goals: Ukraine". In December 2020, the Government of Ukraine brought the corresponding changes into the Regulations, which henceforth established the need to achieve the Sustainable Development Goals by taking them into account during the process of forming and implementing the state policy of Ukraine. Therefore, at the state level, the Sustainable Deve-

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[4] *Resolution Transforming our world: the 2030 Agenda for Sustainable Development* (General Assembly of the United Nations). (2015). *Official website of the United Nations Environment Programme.* <https://wedocs.unep.org/bitstream/handle/20.500.11822/9824/-Transforming_our_world_the_2030_Agenda_for_Sustainable_Development–2015TransformingOurWorld_2015.pdf.pdf?sequence=3&%3BisAllowed=>, 15–16, 20–24 [in Ukrainian]. (2022, October, 26).

[5] *Supra,* note 4, 25–26.

lopment Goals are fixed as guidelines for the development of the policy and forecast documents[6].

The principles of greening and sustainable development are thus fundamental for the formation and improvement of the legal regime for the use of natural resources[7].

Now and for the period until 2030, the goal of Ukraine's state environmental policy is to achieve a good state of the environment by introducing an ecosystem approach to all areas of Ukraine's social and economic development in order to ensure the constitutional right of every citizen of Ukraine to a clean and safe environment, balanced natural resource management and the preservation and restoration of natural ecosystems. Among the main principles of Ukraine's state environmental policy, the following are highlighted: Ukraine's achievement of the Sustainable Development Goals, approved at the UN Summit on Sustainable Development in 2015; promoting sustainable development by achieving a balance between its economic, environmental and social components; focusing on the priorities of sustainable development; the responsibility of state and local executive authorities for the availability, timeliness and reliability of environmental information; the introduction of the latest means and forms of communications and effective information policy in the field of environmental protection, etc[8].

2. The legal regulation of relations in the field of environmental information

The system of legal norms aimed at the coordination of enironmental information provision in Ukraine consists of the norms contained

[6] *Supra,* note 3.
[7] *Supra,* note 2, 14.
[8] *Zakon pro Osnovni zasady (stratehiiu) derzhavnoi ekolohichnoi polityky Ukrainy na period do 2030 roku* 2019 (Verkhovna rada Ukrainy) [The law on the basic principles (strategy) of the state environmental policy of Ukraine for the period until 2030 2019 (Verkhovna Rada of Ukraine)]. *Ofitsiinyi sait Verkhovnoi Rady Ukrainy* [Official website of the Verkhovna Rada of Ukraine]. <https://zakon.rada.gov.ua/laws/show/2697–19#Text> [in Ukrainian]. (2022, October, 26).

in: acts of international legislation, the Constitution, laws and subordinate regulatory acts of Ukraine.

The main international document in this context is the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)[9]. Furthermore, even the very definition of the term "environmental information" was introduced into the Law of Ukraine "On Environmental Protection"[10] only after its adoption.

The Constitution of Ukraine[11] in Part 2 of Art. 50 guarantees everyone the right to free access to information about the state of the environment, the quality of food products and household items as well as the right to its distribution. It establishes that such information cannot be kept classified by anyone.

The laws of Ukraine governing legal relations in the field of environmental information provision include the following: "On Environmental Protection", "On Information"[12], "On Access to Public Information"[13].

[9] *Konventsiia pro dostup do informatsii, uchast hromadskosti v protsesi pryiniattia rishen ta dostup do pravosuddia z pytan, shcho stosuiutsia dovkillia (Orkhuska konventsiia)* 1998 (Orhanizatsiia Ob'iednanykh Natsii) [Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) 1998 (United Nations)]. *Ofitsiinyi sait Verkhovnoi Rady Ukrainy* [*Official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/994_015#Text> [in Ukrainian]. (2022, October, 26).

[10] *Zakon pro okhoronu navkolyshnoho pryrodnoho seredovyshcha* 1991 (Verkhovna Rada Ukrainy) [The law on environmental protection 1991 (Verkhovna Rada of Ukraine)]. *Ofitsiinyi sait Verkhovnoi Rady Ukrainy* [*Official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/1264–12#Text> [in Ukrainian]. (2022, October, 26).

[11] *Konstytutsiia* 1996 (Verkhovna Rada Ukrainy) [Constitution 1996 (Verkhovna Rada of Ukraine)]. *Ofitsiinyi sait Verkhovnoi Rady Ukrainy* [*Official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> [in Ukrainian]. (2022, October, 26).

[12] *Zakon pro informatsiiu* 1992 (Verkhovna Rada Ukrainy) [The law on information 1992 (Verkhovna Rada of Ukraine)]. *Ofitsiinyi sait Verkhovnoi Rady Ukrainy* [Official website of the Verkhovna Rada of Ukraine]. <https://zakon.rada.gov.ua/laws/show/2657–12#Text> [in Ukrainian]. (2022, October, 26).

[13] *Zakon pro dostup do publichnoi informatsii* 2011 (Verkhovna Rada Ukrainy). [The law on access to public information 2011 (Verkhovna Rada of Ukraine. *Ofitsiinyi sait*

Among the subsidiary legal acts of Ukraine on the outlined issues, the following can be singled out: the Order of the Cabinet of Ministers of Ukraine "On the prompt provision of interested state and public bodies, enterprises, organizations and citizens with information about the state of the environment in terms of nuclear and radiation safety", The Resolution of the Cabinet of Ministers "On approving the Regulation on the state environmental monitoring system", the Resolution of the Verkhovna Rada of Ukraine "On informing the public on issues related to the environment", the Order of the Ministry of Environmental Protection of Ukraine "On the approval of the Regulation on informing the population quarterly through the mass media about the biggest polluters of the environment", the Resolution of the Cabinet of Ministers of Ukraine "On the approval of the Procedure for involving the public in the discussion of issues related to decision-making that may affect the environment", the Order of the Ministry of Ecology and Natural Resources of Ukraine "On the approval of the Procedure for the functioning of the hotline of the Ministry of Ecology and Natural Resources of Ukraine" and others[14].

In addition, according to scientific literature, relations in the field of environmental information are regulated with legal norms not only of environmental law but also of information technology law as well as other branches of law (constitutional, administrative, civil, etc.) to the extent of their relation to environmental information. The legal regulation of relations in the field of environmental information has a comprehensive nature, although the norms of environmental law remain a priority.

In light of European integration processes, the active phase of which began with the signing and entry into force of the Association Agreement between the European Union and its Member States, of the one part, and

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Verkhovnoi Rady Ukrainy [*Official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/2939–17#Text> [in Ukrainian]. (2022, October, 26).

[14] Krasnova, M.V. (2018). Ekolohichne informatsiine zabezpechennia [The provision of environmental information]. *Velyka ukrainska yurydychna entsyklopediia: u 20 tomakh. T. 14: Ekolohichne pravo* [*The Great Ukrainian Legal Encyclopedia: in 20 volumes. Vol. 14: Environmental law*]. Kharkiv: Pravo, 283–284 [in Ukrainian].

Ukraine, of the other part[15], the documents and approaches of the European community in terms of regulating relations in the field of environmental information also need to be discussed.

One of the important areas of cooperation between the Parties are environmental issues, stated in Art. 360–366 of the Association Agreement. Pursuant to Art. 361 of the Association Agreement, Cooperation shall aim at preserving, protecting, improving, and rehabilitating the quality of the environment, protecting human health, prudent and rational utilisation of natural resources and promoting measures at international level to deal with regional or global environmental problems, inter alia in the areas of: "… (b) environmental governance and horizontal issues, including education and training, and access to environmental information and decision-making processes; ...".

As stated in Art. 363 of the Association Agreement, gradual approximation of Ukrainian legislation to EU law and policy on environment shall proceed in accordance with Annex XXX to this Agreement.

As a rule, the implementation of EU directives and regulations by Ukraine requires that significant amendments are made to the current legislation, and new legal acts for proper regulation of certain social relations are adopted. Nevertheless, according to scholars, Ukraine's legislation on access to environmental information is an exception in this case, because its level of compliance with the provisions of European laws and regulations is quite high[16].

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[15] *Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part* 2014 (Cabinet of Ministers of Ukraine, Council of the European Union, European Commission). *Official website of the European Union.* <http://publications.europa.eu/resource/cellar/4589a50c-e6e3-11e3-8cd4-01aa75ed71a1.0006.03/DOC_1> (2022, October, 26).

[16] Upravlinnia dovkilliam ta intehratsiia ekolohichnoi polityky do inshykh haluzevykh polityk: korotkyi opys Dyrektyv YeS ta hrafiku yikh vprovadzhennia 2015 [Environmental management and the integration of environmental policy into other branches of law: a brief description of EU Directives and their implementation schedule]. *Ofitsiinyi sait proektu tekhnichnoi dopomohy YeS "Dodatkova pidtrymka Ministerstva ekolohii ta pryrodnykh resursiv Ukrainy u vprovadzhenni Sektoralnoi biudzhetnoi pidtrymky"* [*Official website of the Project "Complementary support to the Ministry of ecology and natural resources of Ukraine for the Sector budget*

Directive 2003/4/EC of the European Parliament and the European Council of 28 January, 2003 on public access to environmental information and repealing Council Directive 90/313/EEC provides for the following objectives: ensuring the right of access to environmental information held by state authorities and defining the basic conditions and practical mechanisms of its implementation; ensuring that environmental information becomes increasingly accessible and disseminated to the public with the aim of achieving the widest possible systematic availability and dissemination of environmental information. The proposed amendments to national legislation are necessary for: improving the quality of providing environmental information; improving access to this information for the public; increased liability for not providing environmental information or providing it improperly; increasing Ukrainian citizens' environmental consciousness and awareness in the context of European integration[17].

3. Scientific approaches to understanding the concept of environmental information provision

In the Great Ukrainian Legal Encyclopedia, environmental information provision is understood as: a) the direction of state environmental policy; b) one of the most important functions of environmental management; c) one of the main guarantees of citizens' right to free access to information about the state of the environment, the quality of food products and household items, and the right to its distribution; d) the activities, as determined by the law, of authorized state and local authorities, enterprises, institutions and organizations that affect or may affect the state of the environment, human health and are aimed at providing environmental information to the interested public, bodies and persons

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support implementation"]. <https://sbs-envir.org/images/documents/ Upravlinnya_dovkillyam_cor.pdf>, 4 [in Ukrainian]. (2022, October, 26).

[17] Shparyk, N.Ya. (2015). Adaptatsiia ekolohichnoho zakonodavstva Ukrainy do standartiv Yevropeiskoho Soiuzu [Adaptation of the environmental legislation of Ukraine to the standards of the European Union]. *Naukovyi visnyk Uzhhorodskoho natsionalnoho universytetu. Seriia Pravo* [*Scientific Bulletin of Uzhhorod National University. Law series*], 33 (1), 215 [in Ukrainian].

who make managerial and other decisions as well as providing environmental information upon information request[18].

According to T.V. Hrushkevych, environmental information provision is comprehensive in nature, as it provides society with various kinds of environmental information. Its multifunctionality is also manifested in different approaches to the understanding of this concept, of which three main ones can be singled out: as a means of ensuring environmental security, as a means of implementing the state's national environmental policy, and as a means of ensuring citizens' right to environmental information[19]. These definitions are also supported by other scientists[20]. They have a constitutional basis in the form of the corresponding legal norms. Nevertheless, their practical implementation depends on the effectiveness of the branch legislation that details the constitutional norms and provides for the process of their implementation[21].

Studying environmental information in the context of state environmental policy, scientists say that under modern globalization challenges, the mechanism for implementing effective state policy in the field of state environmental security is becoming more and more important. In the conditions of rapid, continuous and unpredictable changes in the environment, the state policy in the field of environmental protection and environmental security cannot be effective without adequate information provision[22].

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[18] *Supra*, note 14, 283.
[19] Hrushkevych, T.V. (2011). Konstytutsiini zasady ekolohichnoho informatsiinoho zabezpechennia [The constitutional principles of environmental information provision]. *Visnyk Donetskoho natsionalnoho universytetu. Seriia V: Ekonomika i pravo* [*Bulletin of Donetsk National University. Series B: Economics and law*], 1, 607 [in Ukrainian].
[20] Krasnova, M.V. (2005). Ekolohichne informatsiine zabezpechennia [The provision of environmental information]. *Ekolohichne pravo Ukrainy. Akademichnyi kurs* [*The environmental law of Ukraine. Academic course*]. Kyiv: Yurydychna dumka, 261 [in Ukrainian].
[21] *Supra*, note 19.
[22] Omarov, A.E. (2019). *Mekhanizmy formuvannia ta realizatsiia derzhavnoi polityky ekolohichnoi bezpeky Ukrainy* [*Mechanisms of the formation and implementation of the state policy of Ukraine's environmental security*] (dys. … d-ra yuryd. nauk). Kharkiv, 76–77 [in Ukrainian].

The mechanism for ensuring environmental security most often refers to a number of state means that are interrelated and aimed at achieving environmental security by regulating the activities of the subjects of environmental relations and controlling it with the help of appropriate mechanisms for making decisions in the field of environmental security. According to A.E. Omarov, the main mechanisms for ensuring environmental security include the following: 1) financial and economic; 2) organizational – the state system of environmental security; 3) technological mechanisms; 4) legal; 5) informational[23]. Among them, the informational one is becoming more and more significant[24].

According to Part 1 of Art. 50 of the Law of Ukraine "On Environmental Protection", environmental security is a state of the environment that ensures the prevention of environmental degradation and the occurrence of danger to human health. According to part 2 of this article, environmental security is guaranteed to the citizens of Ukraine by implementing a wide range of interrelated political, economic, technical, organizational measures, state law measures and others.

State law measures are not uniform in their content. They can be divided into several types depending on their objectives: organizational and preventive, regulatory and stimulating, administrative and executive, protective and restorative, provisioning measures. They form a specific legal mechanism that should be understood as a system of state law means aimed at regulating activities capable of increasing the level of environmental security, preventing environmental deterioration and the occurrence of danger to the population and natural systems, discovering manifestations of environmental danger[25, 26].

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[23] *Supra*, note 22, 90–91.

[24] *Supra,* note 22, 99.

[25] Anisimova, H.V. (2009). Pravovi zakhody shchodo zabezpechennia vymoh ekolohichnoi bezpeky [Legal measures to ensure environmental security requirements]. *Ekolohichne pravo Ukrainy* [*The Environmental Law of Ukraine*]. Kharkiv: Pravo, 126 [in Ukrainian].

[26] Andreitsev, V.I. (1996). *Ekolohichne pravo: kurs lektsii v skhemakh. Zahalna chastyna* [*Environmental law: a course of lectures in schemes. General part*]. Kyiv: Venturi, 94 [in Ukrainian].

Organizational and preventive measures are aimed at identifying territories, zones, objects and types of activities that are ecologically dangerous for the environment and human health as well as implementing certain measures to prevent the occurrence of environmental hazards. They cover: 1) record keeping; 2) registration; 3) expert evaluation; 4) information and prognosis. Forecasting, planning, monitoring, informing and other measures, which are considered management functions in the field of ecology, belong to the last group – informational and prognostic measures[27].

M.V. Krasnova also believes that within the mechanism of the legal regulation of environmental security, the provision of environmental information belongs to organizational and preventive measures that ensure that systematic information is provided to state authorities about the ecological state in Ukraine or in a separate region, about the state of the morbidity of the population, natural and man-made disasters and accidents, etc.[28].

The Law of Ukraine "On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the Period Until 2030"[29] establishes information and communication as the main tools for the implementation of the state environmental policy.

Environmental information provision is thus an element of the legal mechanism for the implementation of state policy to ensure environmental security. In particular, it belongs to informational and prognostic, organizational and preventive measures in the system of state law means aimed at guaranteeing such a state of the environment that ensures the prevention of environmental deterioration and the occurrence of danger to human health.

Conceptual and methodological foundations of effective environmental security management at global, national and local levels are defined by A.E. Omarov through the formation of an environmental information system that should provide solutions to a number of objectives, namely: preparing complete and reliable information about the state of the

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[27] *Supra*, note 25, 126, 128.
[28] *Supra*, note 20.
[29] *Supra*, note 8.

environment, predicting probable consequences of social activity; modeling the processes taking place in the environment and potential results of adopted decisions at state level; providing the foundations for raising greater public awareness of environmental risks; preparing electronic maps reflecting the state of the environment in different areas[30].

In addition, the provision of environmental information in the field of natural resource management is of particular importance. With its help, state and local authorities receive data on natural resources, their quantitative and qualitative characteristics to decide on the possibility of providing natural resources for private use or limiting such use based on environmental factors; permissible volumes of the use of natural resources on certain territories; distribution of natural resources between individual nature users; designation of those natural objects where public natural resource management is allowed, etc.[31].

It should be noted that in this context, the concept of environmental information provision somewhat expands the common approach to understanding environmental information. In most cases, environmental information or information about the state of the environment is understood as data about factors that affect or may affect the state of the environment and human health, the threat of emergency environmental situations, etc.

In the system of natural resource management at state level, the provision of environmental information has two purposes: firstly, to promote sustainable natural resource management that does not lead to the degradation of the environment and its individual components, provides an opportunity for economic development without reducing its resource base; secondly, to create conditions for effective state and public control over the preservation of natural resources, their reproduction and rational use.

[30] *Supra*, note 22, 25.

[31] Komarnytskyi, V.M. (2010). Pravovi pytannia ekolohichnoho informatsiinoho zabezpechennia u sferi pryrodokorystuvannia [Legal issues of environmental information provision in the field of natural resource management]. *Naukovyi visnyk Lvivskoho derzhavnoho universytetu vnutrishnikh sprav. Seriia yurydychna* [*Scientific Bulletin of the Lviv State University of Internal Affairs. Legal series*], 1, 159 [in Ukrainian].

In the first case, based on the record keeping of quantitative, qualitative and other characteristics of natural resources with the help of natural resource cadastres, other record keeping systems in this field and environmental monitoring data, plans and programs on environmental protection and the protection of natural resources are developed, natural resources are distributed between nature users. In the second case, the state of the environment and natural resources is assessed, weaknesses in the organization of natural resource management are identified, and measures are taken to eliminate them. In addition, the information received from nature users is the basis for assessing to what extent the activities related to natural resource management conform to the requirements of the protection and rational use of natural resources and making decisions regarding the elimination of detected violations, applying appropriate sanctions to offenders[32].

Pursuant to Art. 16 of the Law of Ukraine "On Environmental Protection", the management of environmental protection consists in the implementation of the functions of observation, research, environmental impact assessment, control, forecasting, programming, informing and other executive and administrative activities in this field. Accordingly, environmental information provision is definitely one of the managerial functions in the field of environmental protection.

Environmental information provision as a managerial function in the field of environmental protection aims to ensure free access to complete, objective, reliable data included in the content of environmental information[33].

The provision of environmental information performs a stabilizing function in the field of natural resource management and environmental protection and is an activity of authorized state and local executive authorities, enterprises, institutions and organizations aimed at ensuring free access to open, timely, complete and reliable information about events, objects, facts, processes in the field of the use, reproduction of

[32] *Supra*, note 31, 160.

[33] Kobetska, N.R. (2008). *Ekolohichne pravo Ukrainy* [*The Environmental Law of Ukraine*]. Kyiv: Yurinkom Inter, 102 [in Ukrainian].

natural resources and natural complexes, environmental protection, ensuring environmental security[34].

M.V. Krasnova defines the function of environmental information provision as the activity, regulated by environmental legislation, of state and local executive authorities, enterprises, institutions, organizations whose activities affect or may affect the state of the environment, people's life and health in relation to the submission, collection, processing, generalization and publication of information about the environmental situation, including radiation, and the state of morbidity of the population[35].

According to V.M. Komarnytskyi, the provision of environmental information as a function in the field of private natural resource management is performed by state authorities that are responsible for organizing and collecting information about the state of natural resources, their distribution among nature users, the accumulation of such information in the manner prescribed by law and its publication, ensuring free access to it[36].

As regards the approaches to the interpretation of environmental information provision as a managerial function, it can be argued that it is implemented through the fulfillment by authorized state and local authorities of their duties regarding the collection, processing, provision and use of information related to the protection and reproduction of the environment, the use of natural resources, ensuring environmental security.

As a means of ensuring the right of citizens to environmental information, the provision of environmental information is aimed at guaranteeing access to open, complete and reliable information about events, phenomena, objects, facts, processes in the field of the use, reproduction of natural resources, natural complexes and landscapes, natural and social conditions and processes, ecological systems, anthropogenic complexes, environmental protection, ensuring environmental security. Such a tool

[34] Lisova, T.V. (2009). Stabilizatsiini funktsii upravlinnia u sferi pryrodokorystuvannia ta okhorony dovkillia [Stabilizing functions of management in the field of natural resource management and environmental protection]. *Ekolohichne pravo Ukrainy* [*The Environmental Law of Ukraine*]. Kharkiv: Pravo, 54–55 [in Ukrainian].
[35] *Supra*, note 20.
[36] *Supra*, note 31.

enables citizens to exercise their constitutional right to freely collect, receive, generalize, and distribute any information in any way[37].

T.V. Hrushkevych thus comes to the conclusion that the provision of environmental information is one of the main guarantees of exercising the constitutional right of citizens to free access to information about the state of the environment the quality of food products and household items as well as the right to its dissemination[38].

It is doubtless to say that the right to environmental information is interconnected with other environmental rights (e.g. the right to a safe environment, to compensation for damage caused by the violation of this right, etc.), and sometimes it is a guarantee of their proper implementation. Nevertheless, scholars believe that this should not exclude the independent nature of the right to reliable information about the state of the environment[39].

Analyzing the right to environmental information as a guarantee of ensuring the right to environmental security during natural resource management, A.S. Yevstihnieiev concludes that the current legislation does not ensure the proper implementation of the right of an individual to receive information about the impact on environmental security of activities related to the use of natural resources. It is often a source of environmental risk that requires the introduction of amendments and additions to it, aimed at establishing an effective legal mechanism for exercising this right, which will become a normative guarantee of ensuring the environmental security of natural resource management[40].

Another approach to understanding the provision of environmental information is a study of it as an activity of authorized bodies. Neverthe-

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[37] *Supra*, note 20.
[38] *Supra*, note 19, 606.
[39] Onyshchenko, O.I. (2013). Poniattia informatsiinoho zabezpechennia okhorony navkolyshnoho pryrodnoho seredovyshcha v zakonodavstvi ta nautsi [The concept of environmental information provision in legislation and science]. *Prykarpatskyi yurydychnyi visnyk* [*Precarpathian Legal Bulletin*], 1 (3), 198 [in Ukrainian].
[40] Yevstihnieiev, A.S. (2011). Pravo na ekolohichnu informatsiiu yak harantiia zabezpechennia prava na ekolohichnu bezpeku pry zdiisnenni pryrodokorystuvannia [The right to environmental security in natural resource management]. *Yurydychna Ukraina* [*Legal Ukraine*], 6, 98 [in Ukrainian].

less, such a study of environmental information provision leads to its interpretation as a managerial function in the field of natural resource management and environmental protection. The exceptions are the activities of enterprises, institutions and organizations, the functioning of which affect or may affect the state of the environment and people's health by disclosing environmental information to the interested public, bodies and persons who make managerial and other decisions as well as providing environmental information upon request (i.e., activities of other managers of information), which is not covered by the definition of environmental information provision as a managerial function.

Environmental information provision as a managerial function is an activity of state and local authorities regulated by environmental legislation regarding the collection, processing, provision and use of information related to the protection and reproduction of the environment, the use of natural resources, and ensuring environmental security.

The provision of environmental information includes a set of means aimed at: a) collection of necessary information as an object of guarantee; b) compliance with the information processing procedure; c) the distribution or provision of information to potential users; d) the use of information with regard to the assessment of its quality and completeness or the adoption of ecologically significant decisions based on official and other information[41].

Therefore, environmental information provision as a managerial function manifests itself not only in the right of citizens to request information and the obligation of bodies authorized by law to provide it. In fact, this concept includes a whole series of activities, namely: the collection, processing, provision, use of information about the state of the environment.

The proper implementation of this function is the obligation of authorized state and local authorities. In the meantime, its implementation is a guarantee of citizens' environmental rights, in particular, to an environment safe for life and health and free access to information about its condition.

[41] *Supra*, note 20, 262.

According to O.I. Onyshchenko, the provision of information about environmental protection is a procedure for providing the necessary environmental information, based on the use of special means and methods of its collection, processing, storage and distribution that includes a mechanism for exercising the right of citizens to environmental information and the activities of state authorities in this field. Environmental information provision is a function of public administration regulated by Ukrainian legislation that consists in the obligation of authorities to collect, store and disseminate information on the state of the environment in order to meet the informational needs of the public and, in the meantime, acts as a guarantee of citizens' right to environmental information[42].

4. The subjects and objects of legal relations in the field of environmental information provision

Pursuant to Art. 12 of the Law of Ukraine "On Access to Public Information", the subjects of legal relations in the field of access to public information are: 1) information requesters – natural persons, legal entities, associations of citizens without the status of a legal entity, except for institutions in power; 2) managers of information – defined in Article 13 of this Law; 3) a structural unit or a person responsible for access to public information of information managers.

For the purposes of this Law, the following are recognized as managers of information: 1) institutions in power – state authorities, local self-government bodies, authorities of the Autonomous Republic of Crimea, other institutions performing managerial functions in accordance with the legislation and decisions of which are mandatory; 2) legal entities financed from the state, local budgets, the budget of the Autonomous Republic of Crimea – with regard to information on the use of budget funds; 3) persons, if they have the delegated powers in accordance with the law or contract, including the provision of educational, health, social or other state services – regarding information on the performance of their duties; 4) business entities that occupy a dominant position in the market or are endowed with special or exclusive rights or are natural monopolies –

[42] *Supra*, note 39, 200–201.

regarding information on the supply of goods, services and their prices; 5) legal entities under public law, state/municipal enterprises or state/municipal profit-making organizations, business associations, in the authorized capital of which more than 50 % of shares belong directly or indirectly to the state and/or territorial community – regarding information on the amount of remuneration, additional benefits of their director, deputy director or a person who permanently or temporarily holds the position of a member of the executive body or is a member of the supervisory board (Part 1, Article 13 of the Law).

According to Part 2 of Art. 13 of the Law, managers of public information are not only those specified in Part 1 of Art. 13 but also business entities that have: 1) information on the state of the environment; 2) information about the quality of food products and household items; 3) information about accidents, disasters, dangerous natural phenomena and other extraordinary events that have occurred or may occur and threaten the health and safety of citizens; 4) other information of public interest.

With regard to the above-mentioned points, subjects that participate in legal relations in the field of environmental information provision are: 1) requesters of environmental information; 2) managers of environmental information and their structural subdivisions or persons responsible for access to relevant information; 3) the population as a whole.

The population as one of the subjects of legal relations in the field of environmental information provision is singled out due to the specifics of these relations and the existing ways of ensuring access to environmental information.

In particular, such access can be provided: 1) by systematic and prompt publication of information (in official printed publications, on official websites, on the state web portal of open data, on information stands, etc.) – the so-called active method of providing access to information; 2) by providing information upon information request – a passive method[43].

[43] Pravo osib na dostup do ekolohichnoi informatsii, rozporiadnykom yakoi ye pidpryiemstvo [The right of individuals to access to environmental information, held by

The population itself can act as a subject of legal relations in the field of environmental information provision with an active way of ensuring access to information. It occurs when environmental information is provided by state and local authorities by publishing environmental information within their powers.

The provisions of the Law of Ukraine "On Access to Public Information" apply to all other managers of environmental information only in the part of publicizing and providing relevant information upon request (Part 3, Article 13 of the Law). It regards a passive way of providing access to information.

Nevertheless, the last provision of the legislation is somewhat unfounded, namely, regarding enterprises, institutions and organizations, the functioning of which affect or may affect the state of the environment, people's health (i.e., regarding the activities of other managers of information). A debatable question arises as to whether, in the absence of an information request, they will properly provide environmental information to the interested public, bodies and persons who make managerial and other decisions.

The object of the legal relations under discussion is environmental information. In clause 3 of Art. 2 of the Aarhus Convention, it is interpreted as any information in written, audiovisual, electronic or any other material form about: a) the state of such components of the environment as air and atmosphere, water, soil, land, landscape and natural objects, biological diversity and its components, including genetically modified organisms, and interactions between these components; b) factors such as substances, energy, noise and radiation as well as activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programs which affect or may affect the components of the environment mentioned above in subparagraph a), cost-benefit analysis and other economic analysis and assumptions used in environ-

enterprises]. (2018). *Ofitsiinyi sait Mizhnarodnoi blahodiinoi orhanizatsii "Ekolohiia-Pravo-Liudyna"* [*Official website of the International Charitable Organization "Environmental-People-Law"*]. <http://epl.org.ua/human-posts/pravo-osib-na-dostup-do-ekologichnoyi-informatsiyi-rozporyadnykom-yakoyi-ye-pidpryyemstvo/> [in Ukrainian]. (2022, October, 26).

mental decision-making; c) the state of people's health and safety, the living conditions of people, the state of cultural objects to the extent that they are affected or may be affected by the state of the environment, factors, activities or measures specified in the subparagraph b).

As already mentioned, the concept of environmental information was enshrined in Ukrainian legislation as a result of the signing of the Aarhus Convention; therefore, its definition, contained in the Law of Ukraine "On Environmental Protection", corresponds to the above, although it has a slightly different, wider wording.

Therefore, pursuant to Part 1 of Art. 25 of this Law, information about the state of the environment (environmental information) is any information in written, audiovisual, electronic or other material form about: the state of the natural environment or its components – land, water, subsoil, atmospheric air, flora and fauna and their pollution levels; biological diversity and its components, including genetically modified organisms and their interaction with objects of the natural environment; sources, factors, materials, substances, products, energy, physical factors (noise, vibration, electromagnetic radiation) that affect or may affect the state of the environment and human health; the threat of emergency environmental situations and their causes, the results of the elimination of these phenomena, recommendations regarding measures aimed at reducing their negative impact on natural objects and human health; environmental forecasts, plans and programs, measures (including administrative), state environmental policy, legislation on environmental protection; expenses related to the implementation of environmental protection measures from environmental protection funds, other sources of financing, economic analysis conducted in the process of decision-making on issues related to the environment.

The concept of information about the state of the environment (environmental information) is contained in Part 1 of Art. 13 of the Law of Ukraine "On Information", according to which this information concerns: the state of the environment and its components, including genetically modified organisms, and the interaction between these components; factors that affect or may affect the components of the environment

(substances, energy, noise and radiation as well as activities or measures, including administrative, environmental agreements, policies, legislation, plans and programs); the state of people's health and safety, their living conditions, the state of cultural objects and buildings to the extent that they are affected or may be affected by the state of the environment; other information and/or data.

5. Ways to access environmental information in Ukraine

Ways of the provision of environmental information are outlined in Part 2 of Art. 251[1] of the Law of Ukraine "On Environmental Protection" and include: a) preparation and submission to the Verkhovna Rada of Ukraine of the annual National Report on the state of the environment in Ukraine by the central executive body that implements state policy in the field of environmental protection; after its consideration by the Verkhovna Rada of Ukraine – its paper and online publication; b) annual informing by the Council of Ministers of the Autonomous Republic of Crimea, regional state administrations, Kyiv and Sevastopol city state administrations of the corresponding councils and the population about the state of the environment of the respective territories; c) systematic informing of the population through the mass media about the state of the environment, the dynamics of its changes, sources of pollution, disposal of waste or other changes in the environment and the nature of the impact of environmental factors on people's health; d) immediate notification o emergency environmental situations; e) transmission of information obtained as a result of environmental monitoring through information communication channels to bodies authorized to make decisions regarding the received information; f) ensuring free access to environmental information that is not a state secret and is contained in lists, registers, archives and other sources.

According to part 1 of the same article of the Law, the central body of executive power that implements state policy in the field of environmental protection, regional, Kyiv and Sevastopol city state administrations, the body of executive power of the Autonomous Republic of Crimea on the issues of environmental protection, local authorities, enterprises, institutions and organizations, whose activities affect or may affect the

state of the natural environment, people's life and health, are obliged to ensure free access of the population to information about the state of the natural environment.

As it has already been discussed above, such access to information can be provided in active (systematic and prompt disclosure of information) and passive (provision of information upon request) methods.

The main principles of environmental information provision are: timeliness of information provision; objectivity of the data provided; completeness of information and its availability[44].

Resolution No. 2169-IV[45] of the Verkhovna Rada of Ukraine of 4 November, 2004 "On Informing the Public on Environmental Issues" recommends:

1. The Cabinet of Ministers of Ukraine to provide: annual information to the population through the mass media about 100 enterprises that are the biggest polluters of the environment; quarterly information – about ten enterprises that have been the biggest polluters of the environment at national level for the past three months; the development and approval of regulations on quarterly informing the population through the mass media about enterprises that are the biggest polluters of the environment; the development and approval of regulations on the network of the nationwide automated information and analytical system for providing access to environmental information and local automated information

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[44] *Nakaz pro zatverdzhennia Polozhennia pro shchokvartalne informuvannia naselennia cherez ZMI pro ob'iekty, yaki ye naibilshymy zabrudniuvachamy navkolyshnoho pryrodnoho seredovyshcha* 2005 (Ministerstvo okhorony navkolyshnoho pryrodnoho seredovyshcha Ukrainy) [Order on the approval of the Regulation on quarterly informing the population through the mass media about enterprises that are the biggest polluters of the natural environment 2005 (Ministry of Environmental Protection and Natural Resources of Ukraine)]. *Ofitsiinyi sait Verkhovnoi Rady Ukrainy* [*Official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/z1510-05#Text> [in Ukrainian]. (2022, October, 26).

[45] *Postanova pro informuvannia hromadskosti z pytan, shcho stosuiutsia dovkillia* 2004 (Verkhovna Rada Ukrainy) [Resolution on informing the public on environmental issues 2004 (Verkhovna Rada of Ukraine)]. *Ofitsiinyi sait Verkhovnoi Rady Ukrainy* [*Official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/2169–15#Text> [in Ukrainian]. (2022, October, 26).

and analytical systems; the functioning of the nationwide automated information and analytical system for providing access to environmental information.

2. The Council of Ministers of the Autonomous Republic of Crimea, regional state administrations, local authorities, Kyiv and Sevastopol city state administrations to provide quarterly information to the population through the mass media about: enterprises that are the biggest polluters of the environment; ecologically dangerous man-made and natural emergencies; actions that can be taken by citizens to reduce their impact on human health and the environment; measures taken to overcome and eliminate the consequences of such accidents and emergencies.

It is important to note that in paragraph 1 of the above-mentioned Resolution, the Cabinet of Ministers of Ukraine was recommended to develop and approve provisions on the network of the national automated information and analytical system for providing access to environmental information and local automated information and analytical systems by January 1, 2005 and to ensure its functioning. Nevertheless, only on November 7, 2018, the Cabinet of Ministers of Ukraine by Order No. 825-p approved the Framework for creating a nationwide automated system "Open Environment"[46], which is to be implemented during 2018-2020.

The aim of creating a nationwide automated system "Open Environment" is to manage environmental information in the field of environmental protection, in particular, the rational use, reproduction and protection of natural resources in accordance with European standards and requirements to ensure compliance with the environmental rights of citizens and the provision of free access to environmental information about the state of the environment, environmental risks/threats for life with the use of telecommunication technologies and global information networks. This aim is achieved by: implementing the electronic governance

[46] *Rozporiadzhennia pro skhvalennia Kontseptsii stvorennia zahalnoderzhavnoi avtomatyzovanoi systemy "Vidkryte dovkillia"* 2018 (Kabinet Ministriv Ukrainy). [Decree on the approval of the Framework for creating a nationwide automated system "Open Environment" 2018 (Cabinet of Ministers of Ukraine)]. *Ofitsiinyi sait Verkhovnoi Rady Ukrainy* [*Official website of the Verkhovna Rada of Ukraine*]. <https://zakon. rada.gov.ua/laws/show/825–2018-%D1%80#Text> [in Ukrainian]. (2022, October, 26).

system, informatization of state authorities and local self-government bodies in the field of environmental protection, including the sustainable use, reproduction and protection of natural resources; modernization and digitization of public administration and government services, in particular the process of providing administrative services; publication and visualization of open data and other geospatial environmental information in accessible and user-friendly formats.

As of October 2020, three modules of the "Open Environment" system[47] – "Water", "Air" and "EcoFinance" – were launched on the project website that displayed data from the state system of ecomonitoring in Ukraine and public finances in the field of the environment. More precisely, it included information on the pollution of surface waters and atmospheric air as well as financing of environmental protection measures on water bodies, costs for reducing emissions into atmospheric air, amounts of environmental tax, etc.

As the project team claimed, the idea of creating a geoinformation system for water and air was preceded by analytical work. They sought to understand how the current system of environmental data collection works, and what obstacles might stand in their way. Among them, several problems were singled out:

1. The current system of state environmental monitoring is unbalanced and uncoordinated among a significant number of monitoring institutions – 11 central executive authorities. The same types of monitoring are performed by different bodies on the basis of different networks and observation targets, with different possibilities of using information and computer technologies. Only four of them are subordinate to the Ministry of Environmental Protection and Natural Resources.

2. Unstable and uneven financing of the entire state monitoring system from the state budget of Ukraine.

3. Absence of electronic data exchange mechanisms in the state monitoring system.

[47] Open Access Environment. *Ofitsiinyi sait proektu "Vidkryte dovkillia"* [*Official website of the Project "Open Environment"*]. <https://openaccess.org.ua/> [in Ukrainian]. (2020, October, 9).

4. Disproportion in the levels of the equipment of observation posts and uneven distribution of investments in technical and software support provided for monitoring institutions. Some types of monitoring have a better infrastructure of observation posts than others.

5. Lack of intersectoral cooperation and interaction, when the best capabilities of the non-state monitoring network in business and civil society are not used in the system of state environmental monitoring[48].

Nevertheless, as of October 2022, no new project modules have been published on the project website, and access to the previously launched modules is unavailable[49].

As regards the provision of information about enterprises that are the biggest polluters of the environment, it can be concluded from the provisions of the above-mentioned Resolution that it is manifested in: 1) informing the population by the central body of executive power, which implements state policy in the field of environmental protection, through the mass media about: 100 enterprises that are the biggest polluters of the natural environment – annually; ten enterprises that have been the biggest polluters of the environment at national level for the past three months – quarterly; 2) informing the population by local executive authorities through the mass media about enterprises that are the biggest polluters of the natural environment – quarterly.

As regards the provision of quarterly information to the population through the mass media about enterprises that are the biggest polluters of the environment, based on the norms of the Regulation of the same name, approved by the Order of the Ministry of Environmental Protection and Natural Resources of Ukraine of 1 November, 2005 No. 397[50], such information provision is organized as follows:

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[48] Start roboty novoi onlain bazy ekolohichnykh danykh “Vidkryte dovkillia” [The launch of a new online database of environmental data “Open Environment”]. (2019). *Ofitsiinyi sait proektu “Vidkryte dovkillia”* [*Official website of the Project “Open Environment”*]. <https://openaccess.org.ua/news/view/1008> [in Ukrainian]. (2022, October, 26).

[49] *Supra*, note 47. (2022, October, 26).

[50] *Supra*, note 44.

1) regional bodies of the Ministry of Environmental Protection and Natural Resources collect and summarize information; 2) The Ministry of Environmental Protection and Natural Resources analyzes the provided information and clarifies the list of enterprises that are the biggest polluters of the environment; 3) The State Committee for Television and Radio Broadcasting, regional, Kyiv and Sevastopol city state administrations contribute to the wide coverage of materials about enterprises that are the biggest polluters of the environment by the state audiovisual and print media (clause 3 of the Regulation).

According to clause 4 of the same Regulation, relevant environmental information is provided by: 1) quarterly informing the population through the mass media about enterprises that are the largest polluters of the environment at national level and about the state of the environment in specific areas; 2) enterprises that are included in the list of enterprises that are the biggest polluters of the environment every quarter by the 20th of the month following the reporting period prepare and provide the following information to the regional body of the Ministry of Environmental Protection and Natural Resources: volumes of emissions into atmospheric air of polluting substances, volumes of the discharge of return water and pollutants into water bodies, volumes of waste generation and their placement (in comparison with the same period of the previous year), measures, plans, programs and projects to reduce the negative impact on the environment, the status of the implementation of preventive measures and the readiness of facilities to eliminate man-made emergencies; 3) regional bodies of the Ministry of Environmental Protection and Natural Resources assess the provided information, make (if necessary) additions and clarifications to it (on the basis of data from scheduled inspections of enterprises that are the biggest polluters of the environment); redacted data are provided for publication to the regional mass media; generalized information is sent to the Ministry of Environmental Protection and Natural Resources by the 25th of the month following the reporting period; 4) The Ministry of Environmental Protection and Natural Resources compiles a list of enterprises that are the biggest polluters of the environment; ensures that generalized information is posted on the web portal of the

Ministry; provides information for its coverage through state-funded audiovisual and print media (on a free basis); 5) The State Committee for Television and Radio Broadcasting, regional, Kyiv and Sevastopol city state administrations contribute to the publication of environmental information.

In the meantime, the analysis of the website of the Ministry of Environmental Protection and Natural Resources of Ukraine shows that informing the population about enterprises that are the biggest polluters of the environment is mostly performed annually and is characterized by a certain lag in time compared to the reporting period. Therefore, in November 2018, the Ministry of Environmental Protection and Natural Resources presented the rating of the "Top 100 largest polluting enterprises" for 2017[51]; in December 2019, the Ministry prepared such a rating for 2018[52], and only in March 2021 did the Ministry provided information for 2019[53].

In addition, one of the forms of environmental information provision that should be paid attention to is the preparation and submission to the Verkhovna Rada of Ukraine of the annual National Report on the state of the environment in Ukraine by the central executive body that implements state policy in the field of environmental protection; and after its

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[51] Minpryrody pidhotuvalo reitynh "TOP–100 naibilshykh pidpryiemstv-zabrudniuvachiv" za 2017 rik [The Ministry of Environmental Protection and Natural Resources prepared the rating of the "TOP 100 largest polluting enterprises" for 2017]. (2018). *Ofitsiinyi sait Ministerstva zakhystu dovkillia ta pryrodnykh resursiv Ukrainy* [*Official website of the Ministry of Environmental Protection and Natural Resources of Ukraine*]. <https://mepr.gov.ua/news/32941.html> [in Ukrainian]. (2022, October, 26).

[52] TOP–100 naibilshykh pidpryiemstv-zabrudniuvachiv [TOP 100 largest polluting enterprises]. (2019). *Ofitsiinyi sait Ministerstva zakhystu dovkillia ta pryrodnykh resursiv Ukrainy* [*Official website of the Ministry of Environmental Protection and Natural Resources of Ukraine*]. <https://mepr.gov.ua/news/ 34251.html> [in Ukrainian]. (2022, October, 26).

[53] Mindovkillia pidhotuvalo reitynh "TOP–100 naibilshykh pidpryiemstv-zabrudniuvachiv" za 2019 rik [The Ministry of Environmental Protection and Natural Resources prepared the rating of the "TOP 100 largest polluting enterprises" for 2019]. (2021). *Ofitsiinyi sait Ministerstva zakhystu dovkillia ta pryrodnykh resursiv Ukrainy.* [*Official website of the Ministry of Environmental Protection and Natural Resources of Ukraine*]. <https://mepr.gov.ua/news/37063.html> [in Ukrainian]. (2022, October, 26).

consideration by the Verkhovna Rada of Ukraine – its paper and online publication. It should be noted that the last national report was published on the website of the Ministry of Environmental Protection and Natural Resources of Ukraine in January 2022, although it concerns the state of the environment in Ukraine for 2020[54]. There is no report on the state of the environment in 2016.

In this regard, V.M. Komarnytskyi notes that the issue of the National Report on the State of the Environment in Ukraine deserves special attention. The general requirements regarding the preparation of this report contained in the Law of Ukraine "On Environmental Protection" are quite general, it is not possible to understand how the work on the preparation of the report is financed, how representatives of scientific and other interested institutions and organizations are involved, what main provisions should be included in the report, in what order (at plenary meetings or meetings of the specialized committee) it should be considered in the Verkhovna Rada of Ukraine, whether there is liability for non-compliance with the requirements for the preparation of the report, etc. The law provides a wide freedom of action regarding the preparation and execution of the report to the authorized central body of executive power. It has a negative effect on the processing of a rather important document, which should provide the complete information about the state of natural resources in Ukraine and problems arising in the process of their use. In practice, there is a significant delay in its preparation (one or two years) that affects the relevance and reliability of the information included in the report[55].

A similar situation occurs with Environmental passports of regions and Regional reports on the state of the environment. For instance, regional passports for 2020 were published on the website of the Ministry of Environmental Protection and Natural Resources of Ukraine in December

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[54] Natsionalna dopovid pro stan navkolyshnoho pryrodnoho seredovyshcha v Ukrainy u 2020 rotsi [National report on the state of the natural environment in Ukraine in 2020.]. (2022). *Ofitsiinyi sait Ministerstva zakhystu dovkillia ta pryrodnykh resursiv Ukrainy.* [Official website of the Ministry of Environmental Protection and Natural Resources of Ukraine]. <https://mepr.gov.ua/news/38840.html> [in Ukrainian]. (2022, October, 26).

[55] *Supra*, note 31, 164.

2021; for 2021 – in August 2022[56, 57]. Similarly, regional reports for 2019 were posted on the website of the Ministry in October 2020[58], for 2021 – in January 2022[59]; for 2020, they are not available. The given information also causes doubts about the relevance of the information presented in the documents and its value for the population.

As regards the passive method of providing access to environmental information, it is done by providing the manager of environmental information with answers to requests received by him.

The mechanisms of access to environmental information, its collection and dissemination are clearly defined in Art. 4, Art. 5 of the Aarhus Convention and regulated by Ukraine's normative acts. If a comparative analysis of them is conducted, it can be stated that national legislation in this part generally meets the international standards established by the Convention. Although certain minor differences in the regulation of such relations according to the Convention and domestic norms are still present, they do not in any way worsen the legal position of environmental information requesters.

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[56] Ekolohichni pasporty rehioniv za 2020 rik [Environmental passports of regions for 2020]. (2021). *Ofitsiinyi sait Ministerstva zakhystu dovkillia ta pryrodnykh resursiv Ukrainy* [*Official website of the Ministry of Environmental Protection and Natural Resources of Ukraine*]. <https://mepr.gov.ua/news/37742.html> [in Ukrainian]. (2022, October, 26).

[57] Ekolohichni pasporty rehioniv za 2021 rik [Environmental passports of regions for 2021]. (2022). *Ofitsiinyi sait Ministerstva zakhystu dovkillia ta pryrodnykh resursiv Ukrainy* [*Official website of the Ministry of Environmental Protection and Natural Resources of Ukraine*]. <https://mepr.gov.ua/news/39661.html> [in Ukrainian]. (2022, October, 26).

[58] Rehionalni dopovidi pro stan navkolyshnoho pryrodnoho seredovyshcha u 2019 rotsi [Regional reports on the state of the natural environment in 2019]. (2020). *Ofitsiinyi sait Ministerstva zakhystu dovkillia ta pryrodnykh resursiv Ukrainy* [Official website of the Ministry of Environmental Protection and Natural Resources of Ukraine]. <https://mepr.gov.ua/news/35990.html> [in Ukrainian]. (2022, October, 26).

[59] Rehionalni dopovidi pro stan navkolyshnoho pryrodnoho seredovyshcha u 2021 rotsi [Regional reports on the state of the natural environment in 2021]. (2022). *Ofitsiinyi sait Ministerstva zakhystu dovkillia ta pryrodnykh resursiv Ukrainy* [*Official website of the Ministry of Environmental Protection and Natural Resources of Ukraine*]. <https://mepr.gov.ua/news/39936.html> [in Ukrainian]. (2022, October, 26).

Exercising the right to access information upon information request is regulated by the section of the Law of Ukraine "On Access to Public Information". Articles 19-22 clearly establish the requirements for processing requests for information, terms for their review, terms of payment for providing information, grounds for refusal and delay in satisfying a request for information.

In terms of formulating requests for information, the Law not only complies with the Convention but also details the requirements for them. Unlike the Convention, it defines the possible forms, content and methods of submitting and processing requests.

There are certain differences in the requirements for the terms of providing information, which are defined by the Convention and the Law. The Convention in paragraph 2 of Art. 4 states that environmental information is provided as soon as possible, but no later than one month after the submission of an application, unless the volume and complexity of information justify the extension of this period up to two months. The Law in Art. 20 establishes completely different terms for considering information requests: five working days according to the general rule; 48 hours if there is a need for urgent processing of the request; 20 working days if there is a justified need to continue processing it.

According to Art. 21 of the Law, information is provided free of charge upon request. Nevertheless, pursuant to clause 8 of Art. 4 of the Convention, if the satisfaction of an information request involves the production of copies of documents with a volume of more than ten pages, the requester is obliged to reimburse the actual costs of copying and printing. The size of the actual costs is determined within the limits set by the Cabinet of Ministers of Ukraine. If the manager of information has not set a fee for copying or printing, it is provided free of charge. When providing information of public interest or information about a person themselves, the fee for copying and printing is not charged.

In Ukrainian judicial practice, there are known cases of filing an appeal against the established unreasonable fee for copying and printing public information (for example, the lawsuit of the International Charity Organization "Environmental-People-Law" (EPL) to the Secretariat of the

Cabinet of Ministers of Ukraine (CMU) and the Ministry of Environmental Protection and Natural Resources of Ukraine against recognizing as illegal and canceling the Order of the First Deputy Head of the Secretariat of the Cabinet of Ministers of Ukraine No. 91 of 4 August 2011 on the amount of actual costs for copying or printing documents provided upon information request, approved by the Order of the Ministry of Environmental Protection and Natural Resources No. 504 of 2 December 2011; item 4 of the Procedure for the reimbursement of actual costs for copying or printing of documents provided upon information request, approved by the Order of the Ministry of Environmental Protection and Natural Resources No. 504 of 2 December 2011[60].

On December 1, 2011, the EPL submitted a request to the CMU in accordance with the Law of Ukraine "On Access to Public Information". In its response, the CMU informed that a copy of the requested document would be sent after the payment of the fee for copying in accordance with Art. 21 of the Law "On Access to Public Information". Documents approved by the Secretariat of the CMU and issued by the Ministry of Environmental Protection and Natural Resources provided for the collection of such a fee, starting from the first page. There is no charge for ten pages; for 11 pages, the cost of copying all of them is reimbursed. Believing that setting the fee for copying and printing violates the EPL's right to free access to information of no more than 10 pages and the guarantee of limiting the amount of compensation for copying or printing to actual costs only, in February 2012, the EPL filed an appeal against the acts of the Secretariat of the CMU and the Ministry of Environmental Protection and Natural Resources on compensation rates for information to the District Administrative Court of Kyiv. On September 12, 2012, the District Administrative Court of Kyiv dismissed the EPL's appeal by its Resolution. On March 5, 2014, the Kyiv Administrative Court of Appeal dismissed the EPL's appeal and left the Resolution of the Court of First Instance

[60] Plata za informatsiiu [Payment for information]. *Ofitsiinyi sait Mizhnarodnoi blahodiinoi orhanizatsii "Ekolohiia-Pravo-Liudyna"* [*Official website of the International Charitable Organization "Environmental-People-Law"*]. <http://epl.org.ua/law-posts/plata-za-informatsiiu> [in Ukrainian]. (2022, October, 26).

unchanged. The Court of Cassation refused to review the Resolution. In addition to the appeal to the administrative court, the EPL submitted a request to the Constitutional Court of Ukraine (CCU) for an official interpretation of the provisions of the Law of Ukraine "On Access to Public Information" regarding the payment for information, in particular, the question was raised about the interpretation of the provisions on the obligation to pay for information starting from the first or eleventh page. The CCU refused to begin constitutional proceedings and noted that the norms of Part 2 of Art. 21 of the Law of Ukraine "On Access to Public Information" were clear, understandable and provided for reimbursement by the requester of the actual costs of copying and printing documents exceeding the number of pages established by the Law, and therefore did not require official interpretation[61].

In contrast to clauses 3 and 4 of Art. 4 of the Convention, the Law in Part 1 of Art. 22 contains fewer grounds for refusing to satisfy a request for information. In particular, the manager of information has the right to refuse to satisfy the request in the following cases: 1) the manager of information does not possess and is not obliged, in accordance with their competence, provided by law, to possess the information regarding which the request was made; 2) the requested information belongs to the category of information with limited access in accordance with Part 2 of Art. 6 of the Law; 3) the person who submitted a request for information has not paid the stipulated actual costs related to copying or printing; 4) requirements for requesting information have not been met.

In this aspect, it should be emphasized that the Law of Ukraine "On Access to Public Information" recognizes environmental information as socially necessary and obliges both institutions in power and economic entities of all forms of ownership to provide access to it. Such provisions of the Law are extremely important when exercising the right to environmental information upon information request. Practice shows that sometimes business entities, especially private ones, deny such an obligation.

In May 2011, the EPL submitted to a private enterprise that emits pollutants into the atmosphere a request for the opportunity to get

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[61] *Supra*, note 60.

acquainted with the enterprise's documents on emissions (documents justifying the volume of emissions and the report on the inventory of emissions). In response to such a request, the polluter stated that they did not consider the requested information to be public, and as the manager of such information, refused to satisfy the request. In November 2011, the EPL filed an appeal against the polluter's actions to the commercial court. The court of first instance issued a decision that refused to satisfy the EPL's claim. The court of appeal made the same decision. The most important thing is that neither the local court nor the court of appeal gave any legal assessment regarding the application of the provisions of the Law of Ukraine "On Access to Public Information" to the disputed legal relation (public – polluter), which the ELP referred to in its request and in all subsequent procedural documents. This law is not mentioned in the decisions at all, despite the fact that the proceedings were initiated precisely to solve this legal issue. Believing that the Law of Ukraine "On Access to Public Information" was applicable in this situation and the conclusions of the lower courts were erroneous, the EPL filed a cassation appeal to the Higher Economic Court of Ukraine. On May 8, 2012, the State Supreme Court of Ukraine issued a resolution, canceling the decisions of two lower courts as erroneous and sent the case to the court of first instance for a new trial. On August 30, 2012, the Lviv Commercial Court, having considered the case by a panel of three judges, fully satisfied the claims of the EPL. The court recognized the obligation of business entities to provide environmental information upon request and, accordingly, obliged the defendant to provide the EPL with copies of the documents that were the focus of the dispute – materials justifying the volume of emissions and the emissions inventory report. Such a decision of the court is significant, because the public finally obtained real access to all kinds of documents from enterprises, and not from the authorities that supervise the provision of sanitary and epidemiological well-being and environmental protection[62].

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[62] Pravo na dostup do ekolohichnoi informatsii vid sub'iekta hospodariuvannia. Zakhyst prava hromadian na ekolohichnu informatsiiu [The right to access environmental information from a business entity. The protection of citizens' right to

In addition, part 6 of Art. 22 of the Law provides for the possibility of delay in satisfying an information request, which is not provided for in the Convention. Delay in satisfying a request for information is allowed when the requested information cannot be provided for review within the time limits provided by the Law in the event of force majeure.

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environmental information]. *Ofitsiinyi sait Mizhnarodnoi blahodiinoi orhanizatsii "Ekolohiia-Pravo-Liudyna"* [*Official website of the International Charitable Organization "Environmental-People-Law"*]. <http://epl.org.ua/law-posts/pravo-na-dostup-do-ekolohichnoi-informatsii-vid-sub-iekta-hospodariuvannia-zakhyst-prava-hromadian-na-ekolohichnu-informatsiiu/> [in Ukrainian]. (2022, October, 26).

Part II

CHAPTER 1

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The legal mechanism for ensuring sustainable natural resource management in Ukraine

An important component of sustainable development is sustainable natural resource management as the use of natural resources with regard to social, economic and environmental factors.

This chapter presents a systematic analysis of theoretical approaches to the understanding of natural resource management, its legal regime, the expansion of its essential characteristics in economic and environmental terms. Studies by Ukrainian legal scholars on manifestations of the environmental component of the legal regime of natural resource management are analyzed. The chapter contains a general analysis of international, European and national legislation that stipulate the objectives and policies of institutions at various levels to ensure a balanced use of natural resources. Special attention is paid to the doctrinal interpretation of the categories "rational natural resource management" and "sustainable natural resource management".

The next section of the chapter contains a description of some important principles and constituent elements of the mechanism for ensuring sustainable natural resource management. The nature and directions of

the implementation of environmental requirements in economic activity, legislation (in particular, natural resource legislation) and the legal system are discussed. The doctrinal conception of ensuring environmental security primarily by legal means in the field of private natural resource management is substantiated. Various manifestations of the principle of comprehensiveness in the mechanism for the legal regulation of the use of natural resources are analyzed. The chapter defines the economic and legal instruments of the mechanism for ensuring sustainable natural resource management, primarily taxes, and the reasons for their low effectiveness. The specific features, advantages and directions of the improvement of the main legal means (forms) of regulating natural resource relations – permits and contracts – are also discussed.

1. The development of and changes in approaches to the understanding of the concept of natural resource management in the legal doctrine of the Soviet and modern periods

The main condition for the coexistence of humans and society is the use of the natural environment and its components. Natural resource management as the use by a person of certain natural resources and useful properties of the natural environment has always existed, regardless of the forms of the organization of human society and the stages of its development. Nevertheless, the basic characteristics and conceptual principles of the legal regulation of natural resource management changed, acquiring new features at each subsequent stage of its development.

In the field of natural sciences, the term “natural resource management” was first scientifically substantiated in the works of the Soviet biogeographer Yu.N. Kurazhkovskiy. In his work “Essays on natural resource management”, published in 1969, he defined this concept as a branch of science that deals with the development of general principles for the implementation of any activity related to a direct use of nature, its resources or factors that influence it[1]. In the academic reference dictionary “Natural resource management” N.F. Reymers presents six approaches to

[1] Kurazhkovskiy, Yu.N. (1969). *Ocherki prirodopolzovaniya* [*Essays on natural resource management*]. Moskva: Mysl, 6 [in Russian].

understanding this concept: all forms of the use of natural resources and measures for their preservation and reproduction; a set of productive forces, industrial relations, institutions, organizational and economic means associated with the primary appropriation, use and reproduction by humans of natural resources for the satisfaction of their needs; the use of natural resources in the process of social production in order to meet the material and cultural needs of society; the human impact on the environment; a complex scientific discipline that investigates the general principles of a rational use of natural resources by society; as a branch of natural sciences in the understanding of Yu.N. Kurazhkovskiy[2].

This category has traditionally been the focus of analysis in the field of legal research. The initial research by environmental law scholars was devoted to the problems of the legal regulation of natural resource management. In the 1950s and 1970s this problem was discussed with regard to the use of certain natural resources (land use, water use, etc.). The sectoral division was determined by the codification of the existing legislation according to individual sectors – land, mining, water, forestry, etc. Such a differentiated approach made it possible to distinguish the scope of industrial activities and to define the specific features of the legal regulation of social relations regarding the use and protection of land, its subsoil, forests, waters, animal life and atmospheric air, determined by the natural characteristics of these resources and the functions they perform both in nature and social production[3].

The initial understanding of natural resource management was different because it was primarily analyzed in economic terms. In environmental law literature, natural resources were considered as a social value and a means for satisfying human needs and interests. For instance, A.M. Turubiner considered the right to land use as a system of norms regulating the procedure for a direct use of land in accordance with the

[2] Reymers, N.F. (1990). *Prirodopolzovaniye: Slovar-spravochnik* [*Natural Resource Management: Dictionary Reference Book*]. Moskva: Mysl, 404–405 [in Russian].
[3] Ikonitskaya, I.A. (Ed.). (1990). *Pravo prirodopolzovaniya v SSSR* [*The right to Natural Resource Management in the USSR*]. Moskva: Nauka, 6 [in Russian].

purpose for which it was provided[4]. B.G. Rozovskiy in his monograph "Legal Stimulation of Rational Natural Resources Management" (1981) writes that the concept of rationality in natural resource management is determined by the following factors: existing ideas about the immediate and potential utility of a natural resource, the period of its prospective utility, the hierarchical status of the entity conducting the assessment, the social, economic, technical and other capabilities of society to optimally use this natural resource[5]. Such statements reflected an exclusively consumerist approach to nature.

In the meantime, scientific theories substantiating the need for introducing legislation on environmental protection activities were based on the fact that natural resource management should be considered not only economically but also environmentally significant human behavior. Over time, the attention of scientists shifted to the solution of a vitally important problem for all humanity, namely to the reorientation of the management system in the field of environmental relations from performing a purely economic function, aimed at the consumption of natural resources, to environmental and economic functions, where environmental interests constitute an integral part of economic activity. Adding an environmental component to the issue of natural resource management, which was traditionally considered economic, consisted primarily in the environmentalization of those branches of legislation that dealt with the management of natural resources (land, water, forest), the further improvement of the existing norms regarding the protection of natural resources and the development of norms for the protection of adjacent objects, affected by the use of a certain natural resource[6].

The environmentalization of natural resource management required a change in approaches to understanding its essential characteristics. As

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[4] Turubiner, A.M. (1958). *Pravo gosudarstvennoy sobstvennosti na zemlyu v Sovetskom Soyuze* [*The right to state ownership of land in the Soviet Union*]. Moskva: Izd-vo. Mosk. un-ta, 210.

[5] Rozovskiy, B.G. (1981). *Pravovoye stimulirovaniye ratsionalnogo prirodopolzovaniya* [*Legal incentives for rational nature management*]. Kiyev: Naukova dumka, 232–233 [in Russian].

[6] *Supra,* note 3, 128.

V.L. Muntian said, "in our society, mechanistic views on the relationship between humans and nature – to use or protect – have been replaced by scientific ones: to protect in the process of use"[7]. In his doctoral dissertation, he proposed a legal definition of the concept of rational natural resource management, explained through the following components: comprehensive natural resource management, effective natural resource management, the factor of the environment[8]. In the scientific literature of that period, it was rightly emphasized that the preservation of nature (within the given limits) is one of the criteria for the rationality of natural resource management. In this sense, natural resource management is a single social relation that is both economic and environmental. Natural resource management and nature conservation are not two independent (albeit interconnected) forms of interaction between society and nature but a single, complex, mutually determined objective in the process of production[9].

The current state of environmental law research on natural resource management issues is related to a scientific search for defining the essential characteristics and core components of the right to natural resource management. It is worth noting that the basic concept of the right to natural resource management, despite the long history of theoretical legal analysis, has practically not changed in content. In modern environmental law literature, natural resource management is understood as the use of properties (as a rule, the emphasis is on "useful properties") of the natural environment and natural resources to satisfy economic, ecological, recreational, medical, cultural, aesthetic and other human needs.

In the meantime, certain aspects of the essence and characteristics of natural resource management acquire new meanings over time. As noted

[7] Muntian, V.L. (1973). *Pravovi problemy ratsionalnoho pryrodokorystuvannia* [*Legal problems of rational natural resource management*]. Kyiv: Vyd-vo Kyivskoho universytetu, 26 [in Ukrainian].

[8] Muntian, V.L. (1975). *Pravovyye problemy ratsionalnogo prirodopolzovaniya* [*Legal problems of rational natural resource management*] (avtoref. dis. … d-ra yurid. nauk). Kharkov. 7 [in Russian].

[9] Shemshuchenko, Yu.C., Muntyan, V.L., Rozovskiy, B.G. (1978). *Yuridicheskaya otvetstvennost v oblasti okhrany okruzhayushchey sredy* [*Liability in the field of environmental protection*]. Kiyev: Nauk. Dumka, 10 [in Russian].

by I.I. Karakash, while in the 1980s the legislation on natural resource management and the development of natural resource law that encompassed environmental relations were predominant, in the 1990s, on the contrary, priority was given to environmental relations and environmental law that integrated natural resource relations and natural resource law[10]. V.M. Komarnytskyi, studying environmental factors in the mechanism of private natural resource management, explained the concept of "environmental law regime of private natural resource management" as the procedure, established by laws and other legal acts, for the use of natural resources with regard to their environmental value, their role in natural processes, the ability to reproduce, and is aimed to prevent the depletion of natural resources and promote their conservation and prudent use. The environmental component of private natural resource management determines the structure of its legal regime that includes: a) the regime of the protection and rational use of natural resources (protection regime); b) reproduction regime[11].

In recent years, comprehensive scientific research has focused specifically on the environmental component of natural resource management. M.A. Deineha defines natural resource management as "the main form of human interaction (or other social formations derived from it) and the natural environment implemented through a system of measures aimed at the use and reproduction of natural resources, the creation of conditions for their reproduction, the protection of natural objects and the natural

[10] Karakash, I.I. (2011). Suchasni tendentsii rozvytku pryrodnoresursovoho zakonodavstva i prava Ukrainy [Current trends in the development of natural resource management and Ukraine's legislation]. *Suchasni tendentsii rozvytku natsionalnoho zakonodavstva Ukrainy: zbirnyk tez mizhnarodnoi naukovo-praktychnoi konferentsii, prysviachenoi 10-richchiu stvorennia yurydychnoho fakultetu NUBiP* (19–20 travnia 2011 r., m. Kyiv, Ukraina) [*Current trends in the development of Ukraine's legislation: abstracts of International Scientific and Practical Conference devoted to the 10th anniversary of creating the Faculty of Law at The National University of Life and Environmental Sciences of Ukraine* (May 19–20, 2011, Kyiv, Ukraine)]. Kyiv: Vydavnychyi tsentr NUBiU Ukrainy, 320 [in Ukrainian].

[11] Komarnytskyi, V.M. (2012). *Pravo spetsialnoho pryrodokorystuvannia* [*The right to private natural resource management*] (avtoref. dys. … d-ra yuryd. nauk). Kyiv, 14 [in Ukrainian].

environment as a whole in order to meet various needs. In the meantime, the main directions and types of activities in the field of natural resource management are: the use of natural resources; the reproduction of natural resources; the protection of natural objects and the natural environment”[12].

2. The regulation of natural resource management in light of the concept of sustainable development in international, European and national legislation

The orientation of the entire international community and, accordingly, individual states to the implementation of the Sustainable Development Goals, adopted in 1992 in Rio de Janeiro at the UN Conference on Environment and Development, was a particularly important factor that led to the change in state policy and legal mechanisms for regulating natural resource management. The concept of sustainable development is based on the “principle of responsibility toward future generations” – the advancement of society by means of sustainable development, where the needs of the present are met without threatening future generations to meet their needs.

The concept includes three components: economic, social and environmental. The economic component provides for the optimal use of limited resources, the use of environmental (nature-saving, energy-saving and material-saving) technologies as well as both man-made and natural capital. The social component of sustainable development is human-oriented and aimed at preserving the stability of social and cultural systems, including reducing destructive conflicts between people. The environmental component of the concept is aimed at preserving the integrity of biological and physical natural systems. The viability of ecosystems is of particular importance because it influences the global stability of the entire biosphere. The main focus of the concept is on preserving the ability to

[12] Deineha, M.A. (2018). Pryrodokorystuvannia yak pravova katehoriia: problemy vyznachennia i spivvidnoshennia iz sumizhnymy poniattiamy [Natural resource management as a legal category: issues of definition and correlation with related concepts]. *Pidpryiemnytstvo, hospodarstvo i pravo* [*Enterpreneurship, economy and law*], 7, 106 [in Ukrainian].

self-reproduce and dynamically adapt such systems to changes. Natural resource degradation, environmental pollution and loss of biological diversity reduce the ability of ecological systems to self-renew[13]. An important component of such development is sustainable natural resource management as the use of natural resources with regard to social, economic and environmental factors.

According to scientists, the policy of sustainable development has also received an impetus in the territory of the European Union. Concerns about natural resources are taken into account in all the adopted strategies, concrete measures are implemented, including the establishment of a data centre, a European forum and an international group of experts. The European Union defines the priorities and goals of the European environmental policy for a certain period and proposes measures necessary to help implement its sustainable development strategy[14].

On December 21, 2005 the European Commission proposed the Thematic Strategy on the Sustainable Use of Natural Resources[15]. As noted in the official explanation, the "Thematic Strategy on the Sustainable Use of Natural Resources" develops a policy framework to reduce the environmental impacts of the use of natural resources in a growing economy. It is aimed at "more value – less impact – better alternatives":

- More value – creating more value while using less resources (increasing resource productivity);
- Less impact – reducing the overall environmental impact of resources used (increasing eco-efficiency);

[13] Sadovenko, A.P., Maslovska, L.Ts., Sereda, V.I., Tymochko, T.V. (2011). *Stalyi rozvytok suspilstva* [*Sustainable development of society*]. Kyiv, 58 [in Ukrainian].

[14] Shumilo, O.M. (2021). Realizatsiia kontseptsii staloho rozvytku v zakonodavstvi Yevropeiskoho Soiuzu [The implementation of the framework for sustainable development in the EU legislation]. *Pivdennoukrainskyi pravnychyi chasopys* [*South Ukrainian Legal Journal*], 1, 140 [in Ukrainian].

[15] *Thematic Strategy on the sustainable use of natural resources 2005 (Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions).* Document 52005DC0670. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52005DC0670> (2022, September, 5).

- Better alternatives – if cleaner use cannot be achieved, substituting currently used resources with better alternatives"[16].

The European Commission proposes in the Thematic Strategy on the sustainable use of natural resources three strategic components:

1. Knowledge gathering.
2. Policy assessment.
3. Policy integration.

According to scholars, the Thematic Strategy on the sustainable use of natural resources "marks the beginning of a process of knowledge gathering, which could ultimately lead to policy assessment and policy integration. The European Commission's Communication itself cannot be considered to be a full-fledged strategy with targets, timetables and specific measures that enable the European Union to achieve sustainable management of natural resources. It is rather the starting point of a communication process, which could set the agenda and prepare the definitions of problems as well as objectives of an effective strategy"[17].

The program document that defined the goals of sustainable development in Ukraine for the period until 2030 was approved by the decree of the President of Ukraine of 30 September, 2019 No. 722/2019[18]. Among the 17 priority goals for Ukraine, there are a number of those directly related to ensuring sustainable natural resource management. It includes, for instance, ensuring the availability and sustainable management of water resources; ensuring the transition to rational models of consumption and production; the preservation and rational use of oceans, seas and marine resources in the interests of sustainable development; the protection and

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[16] *Commission proposes European strategy for the sustainable use of natural resources* (2005). <https://ec.europa.eu/commission/presscorner/detail/en/IP_05_1674 (2022, September, 5)

[17] Schepelmann, P. (2006). *The EU Thematic Strategy on the sustainable use of natural resources against the background of system theory.* <http://userpage.fu-berlin.de/ffu/akumwelt/bc2006/papers/Schepelmann_Thematic%20Strategy.pdf> (2022, September, 5)

[18] *Pro tsili staloho rozvytku Ukrainy na period do 2030 r.* 2019 (Prezydent Ukrainy) [On the goals of sustainable development in Ukraine for the period until 2030. 2019 (The President of Ukraine)]. *Ofitsiinyi visnyk Ukrainy* [*Official Bulletin of Ukraine*], 79, 2712 [in Ukrainian].

restoration of terrestrial ecosystems and promotion of their rational use; rational forest use; combating desertification; stopping and reversing the process of land degradation and stopping the process of biodiversity loss.

Ukraine's national environmental legislation contains provisions on the concept of sustainable development. As noted in scientific studies, sustainable development is de facto referred to in the preamble to the Law of Ukraine "On Environmental Protection" that states that the protection of the environment, a rational use of natural resources, ensuring the environmental security of human activities constitute an indispensable prerequisite for the sustainable economic and social development of Ukraine. Precisely for this purpose, Ukraine implements an environmental policy on its territory aimed at preserving the environment safe for the existence of living and non-living nature, protecting the life and health of the population from the negative impact of environmental pollution, achieving a harmonious interaction of society and nature, the protection, rational use and reproduction of natural resources.

It is directly assumed that the law determines the legal, economic and social foundations of the organization of environmental protection in the interests of current and future generations. Despite the contentiousness of the normative nature of the above-mentioned preamble (in fact, the "introduction" to the main provisions of the regulatory act), its content, consisting entirely of the main components of sustainable development, unequivocally confirms that the systemic legislative act in the environmental sphere should be aimed primarily at ensuring sustainable development[19].

The Main directions of Ukraine's state policy in the field of environmental protection, the use of natural resources and ensuring environmental security, approved by the Resolution of the Verkhovna Rada of Ukraine

[19] Yevstyhnieiev, A. (2012). Pravove rehuliuvannia realizatsii staloho rozvytku v Ukraini yak harantii zabezpechennia ekolohichnoi bezpeky u sferi spetsialnoho pryrodokorystuvannia [Legal regulation of implementing sustainable development in Ukraine to ensure environmental security in the field of private natural resource management]. *Visnyk Kyivskoho natsionalnoho universytetu imeni Tarasa Shevchenka. Yurydychni nauky* [*Bulletin of KNU named after Taras Shevchenko. legal sciences*], 92, 46 [in Ukrainian].

No. 188 of 5 March, 1998[20], cointain long-term plans to create a system of the state management of the use of natural resources and the regulation of a technogenic impact on the environment as a basis for the sustainable development of society. One of the objectives of the implementation of the set goals was to ensure proper coordination of the use of natural resources and socio-economic potential with regard to environmental factors on the basis of sustainable development. Unfortunately, the set goals were not fully implemented.

In 2010, the updated Strategy of the State Environmental Policy of Ukraine for the period until 2020 was approved[21]. Goal 6 of the Strategy established the objectives aimed at ensuring sustainable natural resource management, including: the introduction by 2015 of a system of economic and administrative mechanisms aimed at stimulating producers to a sustainable and renewable use of natural resources; the technical re-equipment of production based on the implementation of innovative projects, energy-efficient and resource-saving technologies, low-waste, waste-free and environmentally safe technological processes by 2020; increasing the energy efficiency of production by 25 % by 2015 and by 50 % by 2020 compared to the base year by implementing resource conservation in the energy industry and industries that consume energy and energy carriers; increasing the use of renewable and alternative energy sources by 25 % by 2015 and by 55 % by 2020 compared to the base period, etc.

Ascertaining the partial realization of the set goals, the Verkhovna Rada of Ukraine in 2019 adopted the following program document – The Fundamental principles (strategy) of the state environmental policy of

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[20] *Pro Osnovni napriamky derzhavnoi polityky Ukrainy v haluzi okhorony dovkillia, vykorystannia pryrodnykh resursiv ta zabezpechennia ekolohichnoi bezpeky* 1998 (Verkhovna Rada Ukrainy) [On the main trends in Ukraine's state policy in the field of environmental protection, the use of natural resources and ensuring environmental security 1998 (The Verkhovna Rada of Ukraine)]. *Vidomosti Verkhovnoi Rady Ukrainy* [*The Official Bulletin of the Verkhovna Rada of Ukraine*], 38–39, 248 [in Ukrainian].

[21] *Pro Osnovni zasady (stratehiiu) derzhavnoi ekolohichnoi polityky Ukrainy na period do 2020 roku* 2010 (Verkhovna Rada Ukrainy) [On the Fundamental Principles (Strategy) of Ukraine's state environmental policy for the period until 2020. 2010 (The Verkhovna Rada of Ukraine)]. *Vidomosti Verkhovnoi Rady Ukrainy* [*The Official Bulletin of the Verkhovna Rada of Ukraine*], 26, 218 [in Ukrainian].

Ukraine for the period until 2030[22]. It specifies objectives for ensuring the sustainable development of Ukraineєs natural resource potential (Goal 2): the creation of an environmentally and economically justified system of payments for the private use of natural resources, including natural resources with assimilation potential; ensuring the preservation, reproduction and balanced use of Ukraine's flora; ensuring the sustainable management of water resources according to the river basin principle; ensuring the sustainable use and protection of land; improving the condition of affected ecosystems and helping to achieve a neutral level of land degradation; raising the awareness of the population, landowners and land users regarding the problems of land degradation; transforming the field of subsoil use into the most transparent and investment-attractive industry that meets the best international standards, etc. Analyzing the current Strategy, scholars claim that "the root causes of environmental problems in Ukraine have not been eliminated in recent years, and the subordination of environmental priorities to economic expediency and the predominance of resource- and energy-intensive industries in economy, with a mostly negative impact on the environment, has significantly increased due to insufficient regulation of legislation during the transition to market economy"[23].

[22] *Pro Osnovni zasady (stratehiiu) derzhavnoi ekolohichnoi polityky Ukrainy na period do 2030 roku* 2019 (Verkhovna Rada Ukrainy) [On the Fundamental Principles (Strategy) of Ukraine's state environmental policy for the period until 2030 року. 2019 (The Verkhovna Rada of Ukraine)]. *Vidomosti Verkhovnoi Rady Ukrainy* [The Official Bulletin of the Verkhovna Rada of Ukraine], 16, 70 [in Ukrainian].

[23] Bredikhina, V.L. (2021). Rozvytok ekonomiko-pravovoho mekhanizmu pryrodokorystuvannia ta okhorony dovkillia v derzhavnii ekolohichnii politytsi Ukrainy [The development of economic law mechanism for natural resource management and environmental protection in Ukraine's environmental policy]. *Aktualni pytannia stratehii derzhavnoi ekolohichnoi polityky Ukrainy na period do 2030 roku:* materialy "kruhloho stolu" (m. Kharkiv, 21 travnia 2021 r.) [*The current issues of Ukraine's state environmental policy for the period until 2030*: materials of the roundtable conference (Kharkov, May 21, 2021)]. Kharkiv: Pravo, 163 [in Ukrainian].

3. The understanding of and the relationship between the concepts of "rational natural resource management" and "sustainable natural resource management"

Regarding the latest research trends and the legal regulation of natural resource management, the new understanding of the concept "rational natural resource management" has to be discussed. It is determined by the globalization of the problem of environmental protection, the attention of the world community to the negative ecological consequences of anthropogenic activity (environmental pollution, environmental degration and significant deterioration of the ecological conditions of human activity).

According to scientific literature, ensuring rational natural resource management is possible as a result of the implementation of natural resource management law (the derivative nature of the right to use nature from the right of ownership; the targeted nature of the use of natural resources; compliance with economic, sanitary and hygienic requirements when using natural resources; a balance of economic, social and environmental factors in the process of natural resource management; a comprehensive use of natural resources; not violating the rights and interests of other owners and users of natural resources; free of charge public natural resource management and paid private natural resource management) and the principles of rational natural resource management (a record of natural resources; planning the use of natural resources and their reproduction; a science-based involvement of natural resources in economic turnover; compliance with environmental requirements during the use of natural resources; increasing citizens' level of awareness and environmental law culture), which constitute the basic requirements of the current environmental legislation of Ukraine[24].

Even before the formal announcement of the course on sustainable development, N.F. Reymers defined the concept of "rational natural

[24] Dzhuhan, V.O. (2010). Okremi pytannia pravovoho rehuliuvannia ratsionalnoho pryrodokorystuvannia v Ukraini [Certain issues of the legal regulation of rational natural resource management in Ukraine]. *Derzhava i pravo. Yurydychni ta politychni nauky* [*State and Law. Legal and Political Sciences*], 49, 448–453 [in Ukrainian].

resource management" in the reference dictionary in modern terms: "Rational natural resource management is a system of activities designed to ensure economical use of natural resources and conditions and the most effective method of their reproduction with regard to the prospective interests of the developing economy and the preservation of people's health. Therefore, rational natural resource management is highly efficient and does not lead to drastic changes in the natural resource potential for which society is not socially and economically ready or profound changes in the environment that cause harm to people's health or a threat to their lives"[25].

N.R. Malysheva in the modern legal encyclopedia introduces the following definition of rational natural resource management: "Rational natural resource management is the relationship between humans and nature based on the effective, sustainable, comprehensive use of natural resources, natural properties or natural conditions while simultaneously protecting and reproducing them. ... the concept of rational natural resource management is multifaceted, not clearly defined by law. In the meantime, the constants in this category are the orientation of natural resource management to ensure sustainable, economically, ecologically and socially balanced development, its compliance with the ecosystem approach and, if possible, its comprehensive implementation in accordance with its intended purpose"[26].

According to the latest scientific research devoted to the analysis of natural resource management, the modern "system of natural resource management should be based on reaching a compromise between the economic, environmental and social needs of society and be based on the principles of sustainability"[27]. Sustainability, with ecological balance as its integral feature, is the main principle of the use of natural resources, which

[25] *Supra,* note 2, 405–406.
[26] Malysheva, N.R. (2016). Ratsionalne pryrodokorystuvannia [Rational natural resource management]. *Velyka ukrainska yurydychna entsyklopediia: T. 14: Ekolohichne pravo* [*The Great Ukrainian Legal Encyclopedia*: *Vol. 14: Environmental Law*]. Kharkiv: Pravo, 659, 662 [in Ukrainian].
[27] Deineha, M.A. (2019). *Pryrodoresursne pravo: problemy formuvannia i rozvytku* [*Natural resource law: problems of formation and development*]. Kyiv: NUBiP Ukrainy, 278 [in Ukrainian].

imposes a number of rights and obligations on all subjects of natural resource management relations regarding environmental protection and conservation, ensuring environmental security, the rational use and reproduction of natural resources, increasing the productivity of specific natural objects and the natural environment as a whole with the aim of ensuring their further use for their intended purpose[28].

As regards the definitions of the concept of "sustainable natural resource management", they are presented in both nature science studies and legal studies and essentially correspond. According to environmental scholars, an ecologically balanced use of natural resources is a process of a controlled continuous use of natural resources, during which the maximum economic effect is achieved while preserving ecological balance and ecological potential in ecosystems; the probability of the occurrence and development of environmental risks decreases; safe conditions for the functioning of ecosystems and people's life activities are ensured[29]. A.K. Sokolova and M.K. Cherkashyna, as environmental law scholars, believe that "it is possible to understand the sustainable use of natural resources based on the provisions of the Convention on Biological Diversity regarding biological resources, namely, how to use natural resources by such means and with such intensity that does not lead to their depletion in the long term, thereby preserving their ability to meet the needs of present and future generations and meet their expectations". They conclude that "the main idea of balanced natural resource management is the consumption of natural resources, which takes into account the ability of nature to restore not only the quality of the environment but also the renewable components of resources. In the meantime, non-renewable natural resources must gradually be replaced by others due to the ad-

[28] Kyrieieva, I.V. (2010). Hromadiany yak subiekty staloho, ekolohichno zbalansovanoho vykorystannia pryrodnykh resursiv [Citizens as subjects of sustainable, ecologically balanced use of natural resources]. *Problemy zakonnosti* [*Problems of Legality*], 106, 96 [in Ukrainian].

[29] Prykhodko, M.M., Prykhodko, M.M. (starshyi), Prykhodko, N.F., Kosylo, L.S. (2012). Zbalansovane resursokorystuvannia (teoretychnyi aspekt) [Balanced resource use (theoretical aspect)]. *Ekolohichna bezpeka ta zbalansovane resursokorystuvannia* [*Environmental security and balanced resource use*], 2 (6), 94 [in Ukrainian].

vancements in the latest technologies and the transition to new sources of energy, including non-traditional ones. Achieving a balance between human activity and the need to preserve natural systems is possible only under the condition of striving to minimize interference in the natural environment, the rational use of all natural resources and compensation for damage caused to natural resources"[30].

In conclusion, the generalized understanding of this concept in the context of sustainable development is presented in the work of M.A. Deineha: the environmentally balanced use of natural resources should be based on conducting economic activities according to the cycle "extraction of natural resources – resource-saving production with low resource intensity – economical use – extended reproduction – waste disposal"[31].

4. The mechanism for ensuring sustainable natural resource management

Currently, the nature, orientation, and structure of private natural resource management are changing and thus affecting the choice of the system of legal means for its regulation that necessitates adjustments to the system of the legal regulation of natural resource management. Fundamental changes in the economic, political, social and legal system of Ukraine, associated with the liquidation of the state monopoly of natural resources, the transition to different forms of ownership of natural resources, the emergence of new forms of natural resource management, in particular leased, along with new subjects of natural resource management relations,

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[30] Sokolova, A.K., Cherkashyna, M.K. (2021). Stale pryrodokorystuvannia v Ukraini: pravove zabezpechennia [Sustainable natural resource management in Ukraine: legal regulation]. *Aktualni pytannia stratehii derzhavnoi ekolohichnoi polityky Ukrainy na period do 2030 roku: materialy "kruhloho stolu" (m. Kharkiv, 21 travnia 2021 r.)* [*Current issues of Ukraine's state environmental policy for the period until 2030:* materials of the round-table conference (Kharkov, May 21, 2021)]. Kharkiv: Pravo, 129–130 [in Ukrainian].

[31] *Supra,* note 27, 39. Deineha, M.A. (2019). *Pryrodoresursne pravo: problemy formuvannia i rozvytku* [*Natural Resource Law: problems of formation and development*]. Kyiv: NUBiP Ukrainy, 39 [in Ukrainian].

the introduction of natural resource management fees, etc. have significantly influenced the legal regulation of natural resource management.

In scientific research, approaches to the understanding of natural resources are reconsidered, their material and immaterial components are distinguished, which affects the understanding of the varieties of their use; the expansion of their system and the inclusion of natural resources of the continental shelf, exclusive (marine) economic zone, recreational, medicinal natural resources, landscape natural resources, biodiversity resources, biological, genetic natural resources, etc., is substantiated. V.I. Andreitsev emphasizes the prospects for the development of the legal regulation of natural resource relations with regard to the possibility of using not only natural resources but also their properties that contribute to a full-fledged life, and, accordingly, focusing on satisfying not only economic and material, but also spiritual and intellectual needs, in particular, health, recreational, educational, cultural and educational, research needs, etc.[32]. Modern manifestations of the exploitation, development, extraction of natural resources are diversified in connection with the expansion and diversification of the interests of humans and society in the use of natural resources.

With regard to the complex understanding of natural resource management, the economic theory presents a multi-level structure of the institutional mechanism of natural resource management. It includes:

1) basic institutions: forms of ownership (private, state, communal); business entities; a system of natural resource management bodies;

2) market institutions:

- market infrastructure in the field of natural resource management (credit institutions, audit offices, consulting firms, insurance funds, environmental funds);

- natural resource market (owners, sellers and buyers of natural resources, intermediaries, natural resource exchanges, tenders and auctions);

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[32] Andreitsev, V.I. (2011). *Ekolohichne pravo i zakonodavstvo suverennoi Ukrainy: problemy realizatsii derzhavnoi ekolohichnoi polityky* [*Environmental Law and Ukraine's legislation: issues in the implementation of Ukraine's state policy*]. Donetsk: Nats. hirnych. un-t, 214 [in Ukrainian].

- emission discharge permit markets;
- the market of ecological goods and services (ecological certification, ecological examination, ecological audit, ecological marketing, ecological regulation);

3) instruments of financial and economic regulation:
- tax regulation system (taxes, fees, tariffs, fines, tax exemptions);
- credit management system (interest rates, credit reliefs);
- system of state funding (subsidies, targeted funding, state procurement, export promotion);
- system of budgetary regulation;

4) normative regulation: legislative acts (the Constitution of Ukraine, Codes of Ukraine, Laws of Ukraine); decrees of the President of Ukraine; normative acts (resolutions, instructions, orders); contract law (international contracts, contractual relations)[33].

4.1. The environmental imperative as the basis of sustainable natural resource management

An important objective of Ukraine's environmental policy is the formation of a legal mechanism for implementing environmental requirements in the process of industrial and economic activity, for regulating the economic use of natural resources – the so-called "greening".

At present, the conceptual basis of greening, including in the field of natural resource management, is the implementation of the international strategy of sustainable development. Achieving a balance between human activity and environmental protection requires the implementation of environmental requirements in the decisions of state bodies at all levels, in the entire process of managerial activity, in the management of production processes, and in the behavior of individuals and entities. According to A.P. Hetman, a system of science-based measures aimed at the interaction of state institutions, companies and public organizations to create an ecologically safe economy should be established in order to adopt new

[33] Danylyshyn, B.M., Khvesyk, M.A., Holian, V.A. (2009). *Ekonomika pryrodokorystuvannia* [*The economy of natural resource management*]. Kyiv: Kondor, 229 [in Ukrainian].

ecological thinking and preserve biological diversity on the basis of sustainable development[34]. Greening, in fact, acts as one of the means of ensuring sustainable development.

At the level of the state's legal system, it is also possible to single out the "greening of law" category that entails adding an environmental component to all legal norms related to the sphere of interaction between society and nature. In the meantime, the concepts of "the greening of law" and "the greening of legislation" are related as general and specific. The greening of law aims at the formation of a qualitatively new legal system of the state as a whole, increasing the effectiveness of not only the content of legislation, but also the practice of its application. The result of this process should be the penetration of ecological principles and ideas into all elements of the legal system. According to Yu.S. Shemshuchenko and V.I. Oleshchenko, increased attention to ensuring the real "greening" of all areas of law and legislation, primarily tax, budget, economic legislation and other, should be defined as one of the most urgent objectives of the state policy of Ukraine[35].

The greening of legislation should not be reduced only to a formal increase in the number of references or blanket prescriptions in the normative acts of other branches of law. These acts should reflect the principle of ensuring environmental security, preservation of biodiversity, balanced natural resource management.

It is certain that natural resource legislation cannot but be attributed to the system of environmental legislation in the broadest sense. In the

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[34] Hetman, A.P. (Ed.). (2014). *Pravova okhorona dovkillia: suchasnyi stan ta perspektyvy rozvytku* [*Legal protection of the environment: current state and development prospects*]. Kharkiv: Pravo, 61 [in Ukrainian].

[35] Shemshuchenko, Yu.S., Oleshchenko, V.I. (2009). Problemy rozvytku ekolohichnoho prava ta zakonodavstva na suchasnomu etapi [Current issues in the development of environmental law and legislation]. *Aktualni problemy pravovoho zabezpechennia ekolohichnoi bezpeky, vykorystannia ta okhorony pryrodnykh resursiv: materialy mizhnarodnoi naukovo-praktychnoi konferentsii* (Kharkiv, 9–10 zhovtnia 2009 r.) [*Current issues in the legal provision of environmental security, use and protection of natural resources: materials of the International scientific and practical conference* (Kharkiv, October 9–10, 2009)]. Kharkiv: Natsionalna yurydychna akademiia Ukrainy im. Yaroslava Mudroho, 10 [in Ukrainian].

meantime, the current amendments to natural resource legislation are associated with innovative changes that relate to the strengthening of the role of its economic and commercial components. Ukrainian scholars express opinions about the economic (commercial) exploitation of natural resources as part of economic rather than environmental law. These trends lead to the fact that the environmental component of natural resource management is inferior to the economic component. As N.R. Malysheva said, "In Ukraine, as in most post-Soviet countires, along with the introduction of a wide range of ecologically oriented regulatory acts, the autonomy and separation of the regulation of environmental relations from the regulation of economic and social processes is still preserved. The positive impact of environmental legislation is often neutralized by the legislation of other industries, primarily economic"[36].

Therefore, it is the ecological public interest that should currently be the basis of the legal regulation of natural resource management. The problem and necessity of making the legislation governing the use of natural resources become "green" is thus sufficiently justified and necessary. According to M.V. Krasnova, it is in natural resource law that the ecological attributes of nature, due to restrictions on the use of natural resources, should be reflected to the greatest extent[37]. The greening of legislation in this field is manifested through the proper formulation and inclusion of environmental restrictions. They ensure effective consideration of environmental protection requirements in the process of natural resources use.

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[36] Malysheva, N.R. (2011). Rozroblennia Ekolohichnoho kodeksu Ukrainy – zakonomirnyi etap zakonotvorchykh robit v haluzi okhorony navkolyshnoho pryrodnoho seredovyshcha [The development of the Environmental Code of Ukraine as a natural stage of law-making in the field of environmental protection]. *Suchasni problemy systematyzatsii ekolohichnoho, zemelnoho ta ahrarnoho zakonodavstva Ukrainy: zbirnyk naukovykh prats Kruhloho stolu* (Kyiv,18 bereznia 2011 r.) [*Current issues in the systematization of environmental, land and agrarian legislation of Ukraine: abstracts of the round-table conference* (Kyiv, March 18, 2011)]. Kyiv: Obrii, 34 [in Ukrainian].

[37] Krasnova, M. (2012). Metodolohichni zasady suchasnoho ekolohichnoho prava [Methodological principles of modern environmental law]. *Visnyk Kyivskoho natsionalnoho universytetu imeni Tarasa Shevchenka: Yurydychni* nauky [Bulletin of Taras Shevchenko Kyiv National University: Legal Sciences], 92, 7 [in Ukrainian].

From the perspective of the legal position of the economic entity as the user of natural resources, environmental restrictions mean the impossibility or a lesser possibility of using natural resources and conducting economic activities.

A.S. Yevstihnieiev in his doctoral research substantiates the conclusion that the form of ensuring sustainable development and the balance of its environmental, economic and social components in the field of private natural resource management is to ensure, primarily by legal means, environmental security in this field[38]. In his opinion, effective legal regulation and provision of environmental security in exercising the right to private natural resource management is impossible without proper integration of the norms of environmental security into the system of natural resource legislation. From a formal point of view, it should consist primarily in including in the current normative acts on natural resources (primarily – legislative) of specific provisions regarding the above-mentioned regulation and provision of environmental security.

The environmental security of private natural resource management is the state of the environment, achieved by the implementation (in the manner prescribed by the current environmental legislation) by authorized persons of the legally established means of ensuring environmental security, affected by the activities of private natural resource management that meets the normative quantitative and qualitative criteria of safety for people's life and health and prevents possible violations of environmental security[39].

Interesting in the context of ensuring environmental requirements in natural resource management is the concept of resource-environmental security proposed by V.L. Bredikhina, which, according to the scholar, is a multifaceted phenomenon and constitutes: a) the protection of the interests of people, society and the state from resource-environmental threats (in

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[38] Yevstihnieiev, A.S. (2018). *Ekolohichna bezpeka spetsialnoho pryrodokorystuvannia v Ukraini u konteksti staloho rozvytku: teoretyko-pravovi* aspekty [Environmental security of private natural resource management in Ukraine in the context of sustainable development: theoretical and legal aspects]. Kyiv: Hordon, 435 [in Ukrainian].

[39] *Ibid*, 67, 436.

particular, from the lack and danger of natural resources); b) the state of social relations and a set of corresponding legal norms that ensure the implementation and protection of the right of citizens to use safe natural resources; c) an object of international environmental law within the framework of the sustainable development strategy, a component of global environmental security[40].

4.2. Legislation on a comprehensive approach to the regulation of natural resource management

The specific features of the modern conditions for the functioning of social relations determine the need for a systematic and comprehensive approach to their legal regulation. The basis of the need for a comprehensive approach to the regulation of natural resource relations is the objectively existing connection between natural objects. Environmental law scholars, when the system of legislation on natural resources was just beginning to be established, emphasized the inseparable physical and ecological connection between natural objects that determines the interrelationship and comprehensiveness of normative prescriptions governing the legal regime for the use of natural resources[41]. A comprehensive use of natural resources plays a regulatory role in the functioning of the socio-ecological and economic system and is one of the elements of achieving sustainable development.

As regards a general analysis of the legal regulation of natural resource management, the principle of comprehensiveness is expressed in various aspects.

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[40] Bredikhina, V.L. (2018). Zmist ta yurydychna pryroda poniattia resursno-ekolohichnoi bezpeky [The content and legal nature of the concept of environmental security]. *Pravo i suspilstvo* [*Law and Society*], 2/2, 108 [in Ukrainian].

[41] Vovk, Yu.A. (1987). Sovetskoye prirodoresursovoye pravo i pravovaya okhrana okruzhayushchey sredy [Soviet natural resource law and the legal protection of the environment]. In Hetman, A.P., Shulha, M.V. (2013). *Vovk Yu.O. Vybrani pratsi* [Vovk Y.O. Selected works]. Kharkiv, Yurait, 464 [in Ukrainian]; Shemshuchenko, Yu.S. (1978) *Organizatsionno-pravovyye voprosy okhrany okruzhayushchey sredy v SSSR* [*Organizational and legal issues of environmental protection in the USSR*]. Kiyev, Naukova dumka, 200 [in Russian].

Comprehensiveness is clearly manifested in the subject matter of legal norms that regulate the relations of natural resource management. Without going into a detailed analysis of the debate widely presented in scientific literature regarding the branch affiliation of the norms that regulate the use of natural resources, it is necessary to state the objective need for the civil, economic, and financial forms of regulating this group of relations, contained in legislative provisions. In the meantime, norms of an environmental character should not "disappear" in a "horizontal" list of sectoral elements, because in this case legislation on the use of natural resources will be of no avail, and the specific characteristics of natural resources as unique objects of legal regulation will not be taken into account. The legal norms of other branches of law should be organically introduced into the environmental regime of natural resources, with the priority of environmental norms.

In the regulation of environmental and, in particular, natural resource relations, a combination of different methods of legal regulation is used. In legal literature, it is emphasized that "a combination of methods of legal regulation is a feature of the environmental law of Ukraine, related to its content, subject matter and diversity. In connection with the above, Ukraine's environmental law cannot be attributed to either private or public law, although private law or public law elements may prevail in certain sections of it"[42].

Legislation on the use of natural resources also uses a mixed comprehensive method of regulation that involves a combination of imperative and disposition principles and ways of establishing the behavior of entities. In the meantime, it is important to ensure such a method of regulation where subjects will be given the opportunity to independently determine and choose their behavior within the established limits. The implementation of a mixed method of legal regulation and the comprehensive nature

[42] Baliuk, H.I., Kokhanovska, O.V. (2009). Ekolohichne pravo Ukrainy: peredumovy i osoblyvosti yoho podalshoho rozvytku [Ukraine's environmental law: prerequisites and specifics of its further development]. *Visnyk Kyivskoho natsionalnoho universytetu imeni Tarasa Shevchenka: Yurydychni nauky* [*Bulletin of Taras Shevchenko Kyiv National University: Legal Sciences*], 81, 182 [in Ukrainian].

of the legislation on natural resource use involve an optimal combination of general legal methods and instruments of legal regulation – permits, prohibitions and positive obligations in the mechanism of the legal regulation of the use of natural resources.

At present, a comprehensive approach is necessary when establishing legal forms of ownership and titles of legal ownership of natural resources, since, in addition to traditional public law and administrative forms, classical civil and economic forms are also involved in such regulation. These are, in particular, property rights, represented today in land and forestry law: property rights, rights of use, easement rights. In the meantime, when extending the legislation on property rights, which are aimed at ensuring the interests of the authorized person, to natural resources, it is necessary to take into account the specific legal regime of natural resources. As emphasized in the environmental law literature, natural resources are not property in the classical sense; therefore, the extension of the general civil-law regime of property rights to them is unacceptable and may entail significant negative environmental and social consequences.

Specific manifestations of comprehensive regulation are directly related to the above-mentioned inextricable connection of natural objects and are represented today in legal norms. Traditionally, it is reflected in the establishment of the rights and obligations of users of natural resources, in particular, environmental requirements for their behavior that apply not only to the type of natural object they use but also to environmental obligations regarding the impact on other natural objects and resources.

For instance, the obligations of water users include the obligation to maintain sanitary protection zones of drinking and household water supply, coastal strips, water treatment and other water management facilities and technical devices in proper condition (clause 6 of Art. 44 of the Water Code of Ukraine[43]); the Law of Ukraine "On the Animal World"[44]

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[43] *Vodnyi kodeks* 1995 (Verkhovna Rada Ukrainy) [Water Code 1995 (The Verkhovna Rada of Ukraine)]. *Vidomosti Verkhovnoi Rady Ukrainy* [*The Official Bulletin of the Verkhovna Rada of Ukraine*], 24, 189 [in Ukrainian].

[44] Zakon pro tvarynnyi svit 2001 (Verkhovna Rada Ukrainy) [Law on Animal World 2001 (The Verkhovna Rada of Ukraine)]. *Vidomosti Verkhovnoi Rady Ukrainy* [*The Official Bulletin of the Verkhovna Rada of Ukraine*], 14, 97 [in Ukrainian].

contains requirements for the protection not only of animals, but also of their habitat and migration routes (Article 3 (Part 2), 34, 39); The Forest Code of Ukraine[45] includes the obligation of temporary forest users to conduct work in ways that ensure the protection of typical and unique natural complexes and objects, rare and endangered species of animal and plant life (Article 21 (clause 2 part 2)).

It is a comprehensive approach, based on systematic and scientifically substantiated conclusions and studies reflected in legal norms, that can ensure the consideration and reflection of all aspects and manifestations of natural resource relations and, ultimately, the maximum achievement of the objectives of legal regulation and a high efficiency of law enforcement practice.

4.3. Economic law instruments for ensuring sustainable natural resource management

No less important elements in the mechanism for ensuring sustainable natural resource management are economic and economic-law instruments: the capitalization of natural resources, their inclusion in the activities of private companies, the establishment of reasonable fees for the use of resources, investment in the field of natural resource use, etc. In the meantime, economists emphasize that "natural resources should be considered in two aspects – as a means of production and a factor in the formation of the natural environment, which, in addition, provides ecological services. In each case, they should play a role as a separate natural resource asset, which carries the value of use (production value) and non-use (environmental value) in economic circulation[46].

One of the economic law instruments for the regulation of natural resource management is a fee for private natural resource management that

[45] *Lisovyi kodeks* 2006 (Verkhovna Rada Ukrainy) [Forest Code 2006 (The Verkhovna Rada of Ukraine)]. *Vidomosti Verkhovnoi Rady Ukrainy* [The Official Bulletin of the Verkhovna Rada of Ukraine], 21, 170 [in Ukrainian].

[46] Khvesyk, M.A. (Ed.). (2021). *Pryrodno-resursnyi potentsial Ukrainy: zabezpechennia dobrobutu ta ekolohichnoi bezpeky naselennia* [*Natural resource potential of Ukraine: ensuring the well-being and environmental security of the population*]. Kyiv: DU IEPSR NAN Ukrainy, 19 [in Ukrainian].

influences the nature user due to their material interest in the rational use of natural resources in the process of conducting economic or other activities. “Payment for a private use of natural resources is considered one of the main economic law instruments and conditions of natural resource management. It is a source of replenishment for state and local budgets, funds from which can be directed, in particular, to the implementation of nature protection and resource conservation measures. In addition, paid natural resource management acts as a motivating factor for nature users to use natural resources in a rational and economical manner. In this case, the stimulating function of such a fee consists in a person’s interest in using fewer resources in the process of their production activity in order to reduce payments for such consumption”[47].

The Tax Code of Ukraine[48] includes rent for the use of subsoil for the extraction of minerals as part of the rent payment as a national tax; rent for the use of subsoil for purposes not related to the extraction of minerals; rent for the use of the radio frequency resource of Ukraine; rent for private water use; rent for the private use of forest resources (Article 251). The Code regulates the system of objects and subjects (payers) of these types of rent payments, tax rates, payment terms and procedures, tax incentives and grounds for exemption from taxation. In the meantime, experts in the field of taxation, studying this legislation, emphasize its low efficiency and many problematic issues of its implementation: “In practice, it is more economically profitable for manufacturers to pay taxes than to lose their positions in competitiveness due to the production of goods and services at a higher price; i.e., such an active instrument of environmental policy as the inclusion of environmental indicators in the price of products and services does not find widespread support both in many countries of the

[47] Bredikhina, V.L. (2022). Platnist spetsialnoho pryrodokorystuvannia yak instrument zabezpechennia zbalansovanoho vykorystannia pryrodnykh resursiv [Payment for private natural resource management as a tool for ensuring a balanced use of natural resources]. *Problemy zakonnosti* [*Problems of legality*], 157, 150 [in Ukrainian].

[48] *Podatkovyi kodeks Ukrainy* 2010 (Verkhovna Rada Ukrainy) [Tax Code of Ukraine 2010 (The Verkhovna Rada of Ukraine)]. *Vidomosti Verkhovnoi Rady Ukrainy* [*The Official Bulletin of the Verkhovna Rada of Ukraine*], 13–17, 112 [in Ukrainian].

world and in Ukraine, because if prices begin to reflect environmental costs, products and companies that cause damage to the environment will lose the competitive advantages they enjoy today"[49].

Biloskurskyi R.R. believes that the system of environmental taxation remains ineffective: a) in determining the list of taxes, their rates and collection procedures; b) in terms of the redistribution of mobilized financial resources in the course of determining priority financing aims; c) in terms of a targeted use of mobilized financial resources[50].

A specific economic law form of the inclusion of natural resources in economic and market turnover and the attraction of private financial investments is the mechanism of a public-private partnership. Of special interest in the context of a contractual form of a public-private partnership is a concession contract as an alternative to privatization. Although it is a faster way to replenish the state budget, a concession contract that involves offering state or communal property as a concession appears to be more effective for constant, regular inflows of funds to the budget[51].

The main way to improve the economic law conditions of a public-private partnership in the use of natural resources in Ukraine is to expand the rights of communities in the use of natural assets; the spread of concession contracts or the creation of a joint public-private enterprise with mandatory state participation.

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[49] Demchenko, N.V., Kasatonova, I.A. (2012). Ekoloho-ekonomichna polityka i natsionalnyi mekhanizm pryrodokorystuvannia: napriamky vdoskonalennia [Environmental and economic policy and the national mechanism of natural resource management: directions for improvement]. *Problemy i perspektyvy rozvytku pidpryiemnytstva* [*Problems and prospects of entrepreneurship development*], 1, 31 [in Ukrainian].

[50] Biloskurskyi, R.R. (2017). Mekhanizmy derzhavnoho rehuliuvannia v systemi ekoloho-ekonomichnoho rozvytku Ukrainy [The mechanisms of state regulation in the system of Ukraine's environmental and economic development]. *Ukrainskyi zhurnal prykladnoi ekonomiky* [*Ukrainian Journal of Applied Economy*], 1/2, 21 [in Ukrainian].

[51] Honcharuk, L. (2011). Poniattia kontsesii i kontsesiinoho dohovoru v Ukraini [The concept of concession and a concession contract in Ukraine]. *Visnyk Kyivskoho natsionalnoho universytetu imeni Tarasa Shevchenka: Yurydychni nauky* [*Bulletin of Taras Shevchenko Kyiv National University: Legal Sciences*], 87, 83 [in Ukrainian].

4.4. The combination of permits and contracts as forms of the legal regulation of the use of natural resources

At present, in the environmental law of Ukraine, there is a complex system of regulating natural resource management that combines different, essentially opposite, methods of regulation: administrative and civil law methods. Permits and various contracts are the main legal means and forms of such regulation at the stage of acquiring the right to use natural resources and in the process of its implementation. Permits and contracts in the legal regulation of natural resources use, on the one hand, play the role of legal facts with which the emergence of private natural resource management relations is connected, and on the other hand, they act as forms of the regulation of these relations; they define and specify the rights and obligations of nature users, establish the conditions and the procedure for natural resource management.

Permits are a means of direct administrative influence on the subject of said relations, which obliges them to act accordingly. The unconditional value of permit regulation is determined by its purpose and objectives, aimed at ensuring the environmental security of the economic development of natural resources, preventing the negative impact on natural objects, uncontrolled unfounded use of elements of nature, establishing a record of subjects and types of the use of natural resources and limitations on them[52].

The current stage of the reform of permit mechanisms is aimed at ensuring a fair, objective and timely review of applications from individuals and legal entities for obtaining permit documents; facilitating the performance of the functions and powers of authorities and officials by streamlining their activities; countering the abuse of power by executive bodies and other subjects of power by means of a detailed regulation of the relations between state and local authorities of executive power with other individuals or entities.

[52] Kobetska, N.R. (2016). *Dozvilne i dohovirne rehuliuvannia vykorystannia pryrodnykh resursiv v Ukraini: pytannia teorii ta praktyky* [*Permits and contracts in the use of natural resources in Ukraine: theory and practice*]. Ivano-Frankivsk: Prykarpat. nats. un-t im. Vasylia Stefanyka, 251 [in Ukrainian].

Unlike unilateral volitional legal acts, the contract is traditionally considered as a bilateral or multilateral act, where there is coordination, integration, and interaction of the wills of the parties to the contract. Characterizing the current state of the legal regulation of natural resource management, V.M. Yermolenko says that the relations of natural resource management require mainly dispositive regulatory principles based on positive obligations and incentives as well as a limited application of permitting methods when granting permits for private natural resource management[53].

Contracts on natural resource management unite a group of contracts that directly regulate the conditions of the use of natural resources. They act as a form of the regulation of natural resource management where private and public elements are combined and conditioned by the need to protect public environmental interests as well as norms of different branches of law based on the specific nature of natural resources, determined by the norms of environmental law and natural resource law in particular. Such contracts, presented in the legislation of Ukraine, include land lease contracts, water facility lease contracts, long-term temporary forest use contracts, hunting management contracts, production distribution contracts, subsoil use contracts, and others.

Contracts on the use of natural resources provide for a detailed regulation of the process of using natural resources, aimed at satisfying the production, economic, and consumer interests of nature users. They are endowed with a significant regulatory capacity, specify the conditions for the use of natural objects in relation to individual cases, establish a detailed procedure for the exploitation and development of natural components of the environment.

In the contractual mechanism for regulating the use of natural resources, the main priorities for improvement are the introduction of new types of contracts and the expanded use of currently active ones.

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[53] Yermolenko, V. (2010). Teoretychni problemy rozmezhuvannia haluzei ekolohichnoho i pryrodoresursnoho prava [Theoretical problems of distinguishing the branches of environmental and natural resource law]. *Pravo Ukrainy* [*The Law of Ukraine*], 6, 150 [in Ukrainian].

At the current stage of the functioning of Ukraine's legal system, natural resource management as a socially useful activity aimed at meeting various public needs is based on the constitutional structure of the property rights of the Ukrainian people and is implemented through the mechanisms of state, communal, private property, specific natural resource titles of real law and the law of obligations with a combination of public-law and private-law mechanisms of legal regulation. It should meet the characteristics of comprehensiveness, rationality, ecological balance. Therefore, all legally established requirements (environmental, economic, organizational, legal) which regulate the process of natural resource management, collectively determine the rational, environmentally balanced, sustainable nature of natural resource management.

CHAPTER 2

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Legal problems of environmentalization of agrarian legislation

The chapter formulates the concept of greening of agrarian legislation, which is viewed as a conceptual direction of its modern development that provides for the implementation of environmental principles and requirements in the content of regulations governing agricultural production. The essence of such greening lies in forming qualitatively new legal regulations that will provide specialized legal regulation of agrarian relations on the basis of general principles and ideas of environmental protection and rational use of nature.

Standard-legal acts that regulate relations on environmental protection in agriculture are proposed to be divided into three groups: 1) environmental legal acts that establish the general principles of environmental protection and contain defining provisions on the directions of environmental protection in various spheres of social interaction and nature, including in agriculture; 2) standard legal acts of environmental legislation, which determine the requirements for the protection of separate natural resources; 3) acts of agrarian legislation containing legislative provisions on environmental protection.

It is argued that the legislative institution of environmental protection in agriculture includes a system of legislative directions contained in standard legal acts of environmental and agrarian legislation, and by its

nature is a complex inter-branch legislative institution. It is substantiated that one of the means of environmentalization of agricultural production activity is the development of the production of organic agricultural products.

Areas for improvement of the legislation on land usage and protection in the agricultural sector include: regulation of all land relations by a single codification act of land legislation; elimination of contradictions between the legal acts of land, agrarian, civil and other branches of legislation; ensuring stability in the legislative regulation of land relations in agriculture.

1. Concept and directions of the greening of agrarian legislation of Ukraine

One of the important directions of the development of national legislation is the further environmentalization (greening) of agrarian legislation. The requirements for the rational usage and protection of natural resources as well as for the permissible impact on the environment laid down in environmental legal acts should be reflected in the content of the regulations on the implementation of agricultural production activity.

The problems of greening of the branches of legislation were studied mainly by the representatives of the ecological-legal science: V.I. Andreitsev, H.I. Baliuk, A.H. Bobkova, A.P. Hetman, N.R. Kobetska, V.V. Kostytskyi, S.M. Kravchenko, N.R. Malysheva, V.L. Muntyan, V.K. Popov, Yu.S. Shemshuchenko and other authors. Some issues of greening of legal acts of agrarian legislation were touched upon in the works of agrarian lawyers: V.V. Nosik, I.I. Karakash, P.F. Kulynych, O.O. Pohribnyi, V.I. Semchyk, N.I. Tytova, M.V. Shulha, V.Z. Yanchuk and other scientists. At the same time, it should be stated that there is no independent comprehensive research on the problems of greening of the agrarian legislation of Ukraine in the domestic legal science.

The Decree of the President of Ukraine dated September 30, 2019 No. 722/2019 “On the Goals of Sustainable Development of Ukraine for the Period until 2030” determined that the goals of the sustainable development of Ukraine for the period until 2030 are guidelines for the

development of projects of forecasting and program documents, projects of legal acts in order to ensure the balance of economic, social and ecological dimensions of sustainable development of Ukraine[1].

In the modern period, scientists are justifying the concept of greening of social development, which involves "the greening of economic and social policy and the improvement of the spiritual sphere with the help of a system of effective tools in order to ensure the sustainability of ecological systems and eliminate global, national, and regional environmental threats"[2]. A component of the greening of social development is the greening of legislation.

The environmentalization of legislation in legal science is understood as the introduction of the norms of environmental law into the acts of those branches of legislation that regulate administrative, economic, recreational and other activities that to a certain extent affect the natural environment[3].

Greening is an important legal phenomenon that affects almost all branches of legislation. It is objectively determined by global environmental issues as well as by the strengthening of inter-branch connections in the system of law and legislation, the interpenetration of different branches of law and the need for the integration of legal regulation of social relations.

Since in agriculture, land and other natural resources are used as the main means of production, the process of production of agricultural products in legal science is proposed to be called by the special term "land

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[1] *Ukaz pro Tsili staloho rozvytku Ukrainy na period do 2030 roku* 2019 (Prezydent Ukrainy). [Decree on the Goals of Sustainable Development of Ukraine for the Period until 2030, 2019 (the President of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/722/2019#Text> [in Ukrainian]. (2022, November, 01).

[2] Syniakevych, I. M. (2005). Ekolohizatsiia rozvytku: sut, obiektyvna neobkhidnist, pryntsypy, instrumenty, perspektyvy dlia Ukrainy [Greening of development: essence, objective necessity, principles, tools, prospects for Ukraine]. *Naukovyi visnyk UkrDLTU* [*Scientific Bulletin of UkrDLTU*], no. 15.6, 99 [in Ukrainian].

[3] Holychenkov, A.K. (2008). *Ekologicheskoe pravo Rossii: slovar yuridicheskih terminov: Uchebnoe posobie dlya vuzov* [*Ecological Law of Russia: glossary of legal terms; academic manual*]. Moskva: Izdatelskij dom "Gorodec", 366 [in Russian].

usage”[4]. Therefore, the needs of greening of the legislation on agricultural production activity are of particular importance.

The agrarian legislation of Ukraine should ensure an optimal relationship between ecological and economic interests in the process of agricultural production. As scientists note, the effectiveness of nature management and environmental protection in agriculture is possible under the conditions of comprehensive greening of agrarian legislation[5].

Environmentalization of the agrarian legislation of Ukraine lies in the implementation of ecological principles and requirements in the content of legal acts regulating agricultural production activity[6]. The main task of such greening is the regulatory establishment of the optimal degree of impact of agricultural production on the surrounding natural environment while taking into account the specifics of such impact[7].

O.V. Hafurova considers the process of greening of agrarian legislation as “the implementation of ecological principles into the content of legal acts regulating agrarian relations”[8].

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[4] Titova, N.I. (1989). *Prodovolstvennaya problema: zemlya, trud (pravovye aspekty)* [*Food problem: land, labor (legal aspects)*]. Lvov: Izdatelstvo pri Lvovskom Gosudarstvennom universitete izdatelskogo obedineniya “Vysha shkola”, 4–5, 24 [in Russian].

[5] Usmanova, L.F. (2000). *Pravovoe regulirovanie prirodopolzovaniya i ohrany okruzhayushej sredy v agrarnom sektore ekonomiki:* avtoref. dis. … doktora yurid. nauk. [*Legal regulation of nature management and environmental protection in the agricultural sector of the economy:* thesis abstract of the Doctor of Juridical Sciences]. Ufa, 22–23 [in Russian].

[6] Bahai, N.O. (2011). Ekolohizatsiia ahrarnoho zakonodavstva: sutnist i napriamy [Greening of agricultural legislation: essence and directions]. *Aktualni problemy vdoskonalennia chynnoho zakonodavstva Ukrainy* [*Actual problems of improving the current legislation of Ukraine*], no. 25, 159 [in Ukrainian].

[7] Usmanova, L.F. (2000). *Pravovoe regulirovanie prirodopolzovaniya i ohrany okruzhayushej sredy v agrarnom sektore ekonomiki:* avtoref. diss. … doktora yurid. nauk. [*Legal regulation of nature management and environmental protection in the agricultural sector of the economy:* thesis abstract of the Doctor of Juridical Sciences]. Ufa, 27 [in Russian].

[8] Hafurova, O.V. (2016). Suchasni tendentsii rozvytku ahrarnoho zakonodavstva [Modern tendencies of development agrarian legislation]. *Naukovyi visnyk Natsionalnoho universytetu bioresursiv i pryrodokorystuvannia Ukrainy. Seriia: Pravo*

The basis for the greening of the agrarian legislation is, first of all, the norms of the Constitution of Ukraine (Articles 13, 16, 50)[9], the Law of Ukraine "On Environmental Protection"[10], codification acts of natural resource legislation, etc. The requirements for the rational usage and protection of natural resources as well as for the permissible impact on the environment laid down in these acts should be reflected in the content of the regulations on the implementation of agricultural production activity.

The agrarian legislation of Ukraine is designed to regulate social relations in the agrarian sector of the economy with consideration of the relationship between agricultural production and the surrounding natural environment. However, modern legal acts of agrarian legislation, which determine the peculiarities of the legal status of agricultural enterprises, and acts on the issues of production and economic activity in the agrarian sector of the economy contain only separate legal prescriptions regarding rational nature usage and environmental protection. In this regard, E.S. Berdnikov rightly notes that the current acts of agrarian legislation "are generally devoted to the regulation of economic relations in the agro-industrial complex and are not sufficiently environmentally friendly"[11]. Therefore, one of the conceptual directions of the development of agrarian legislation of Ukraine is filling it with ecological content.

[*Scientific Bulletin of the National University of Bioresources and Nature Management of Ukraine. Series: Law*], no. 243, 50 [in Ukrainian].

[9] *Konstytutsiia Ukrainy* 1996 (Verkhovna Rada Ukrainy) [Constitution of Ukraine 1996 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> [in Ukrainian]. (2022, November, 01).

[10] *Zakon pro okhoronu navkolyshnoho pryrodnoho seredovyshcha* 1991 (Verkhovna Rada Ukrainy) [Law on Environmental Protection 1991 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/1264–12#Text> [in Ukrainian]. (2022, November, 01).

[11] Berdnikov, E.S., Gavrish, N.S., Glotova, E.D., Gurevskij, V.K., Karakash, I.I. et all. (2001). *Agrarnoe, zemelnoe i ekologicheskoe pravo Ukrainy:* Osobennye chasti uchebnyh kursov. Uchebnoe posobie [*Agrarian, land and ecological law of Ukraine:* Special parts of the training courses. Tutorial]. Harkov: OOO "Odissej", 480 [in Russian].

This, first of all, is not about the mechanical inclusion of legally defined environmental requirements into the legal acts of agrarian legislation, but about the formation of qualitatively new legal prescriptions on the basis of general principles and ideas of environmental protection and rational usage of nature, which will ensure specialized legal regulation of agrarian relations.

One should agree with the scientists that today, it is important to enshrine not only the relevant duties of agricultural enterprises for the use of natural objects and the protection of the natural environment, but also the definition of legal guarantees for the provision of these ecological and legal requirements in the legal acts of agrarian legislation[12].

An important direction of the greening of the legislation is the establishment of ecological requirements for the protection and rational usage of agricultural lands. In this regard, M.V. Shulha consistently substantiated an important idea regarding the need to green the land legal descriptions and unify them in an independent chapter of the Land Code[13].

In his scientific works, P.F. Kulynych consistently substantiates the legal concept of the controlled quality of the agricultural land fund, the task of which "comes to the establishment by the state through the adoption of appropriate legislation of a new, socially effective legal model for the protection and usage of land as a means of agricultural production, an element of the agrosphere and a natural resource as a whole"[14].

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[12] Usmanova, L.F. (2000). *Pravovoe regulirovanie prirodopolzovaniya i ohrany okruzhayushej sredy v agrarnom sektore ekonomiki:* avtoref. dis. … doktora yurid. nauk. [*Legal regulation of nature management and environmental protection in the agricultural sector of the economy: thesis abstract of the Doctor of Juridical Sciences*]. Ufa, 22 [in Russian].

[13] Shulha, M.V. (1998). *Aktualnye pravovye problemy zemelnyh otnoshenij v sovremennyh usloviyah:* monografiya [*Actual legal problems of land relations in modern conditions:* monograph]. Harkov: Konsum, 139 [in Russian].

[14] Kulynych, P.F. (2011). *Pravovi problemy okhorony i vykorystannia zemel silskohospodarskoho pryznachennia v Ukraini:* monohrafiia [*Legal problems of protection and usage lands of agricultural purpose in Ukraine*: monograph]. Kyiv: Lohos, 605–606 [in Ukrainian].

The introduction of environmental requirements and measures concerning environmental protection in the process of chemical treatment and land reclamation, in the implementation of various types of production and economic activity by agricultural enterprises that affect the environment also has special significance.

The greening of the agrarian legislation of Ukraine is a necessary condition for the greening of agriculture as a branch of material production that meets the strategic state goals and needs of sustainable development. Therefore, one should agree with T.V. Kurman that today one of the defining, guiding principles of agrarian law is the principle of greening of agricultural production, "which consists in stimulating ecologically safe farming and implementing environmental programs in the countryside"[15].

T.K. Overkovska notes that the environmentalization of agricultural production can be traced in two main directions: firstly, by observing and implementing ecological imperatives in the process of production and economic activity of agricultural commodity producers, which necessitates the need for rational and ecologically safe use of agricultural lands and other natural resources; secondly, ensuring the production of ecologically safe agricultural products[16].

According to the conclusion of N.V. Kravets, "the system of legislation in the sphere of greening of agricultural production includes several levels of norms: 1) constitutional norms; 2) norms of a general nature (for example, the Law of Ukraine "On the Fundamentals of National Security of Ukraine"); 3) norms of ecological legislation; 4) special level – norms of agrarian legislation. Separately, one should highlight the norms of an international-legal nature in this area – these are international treaties,

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[15] Kurman, T.V. (2012). Pro pryntsyp ekolohizatsii ahrarnoho vyrobnytstva [About the principle of greening of agricultural production]. *Ahrarne pravo yak haluz prava, yurydychna nauka i navchalna dystsyplina:* materialy Vseukrainskoho kruhloho stolu (25 travnia 2012 r.): zb. nauk. pr. [*Agrarian law as a branch of law, legal science and educational discipline:* materials of the All-Ukrainian Round Table (May 25, 2012): coll. of science works]. Kyiv: Vydavnychyi tsentr NUBiP Ukrainy, 91 [in Ukrainian].

[16] Overkovska T.K. (2018). Pravovi zasady silskohospodarskoho vyrobnytstva [Legal basis of agricultural production]. *Pidpryiemnytstvo, hospodarstvo i parvo* [*Enterprise, economy and law*], no. 6, 137 [in Ukrainian].

conventions, as well as acts of a regional nature (such as, for example, Regulations and Directives of the Council of the European Union)”[17].

So, in our opinion, the main directions of the environmentalization of modern agrarian legislation are the following:

- legislative consolidation of the peculiarities of the legal status of producers of agricultural products as nature users in the acts of agrarian legislation;
- further specialization of environmental requirements regarding land reclamation, chemical treatment in agriculture, implementation of certain types of agricultural production activity and consolidation of these specialized legal prescriptions of a complex nature at the legislative level;
- regulatory support for the rational usage and protection of agricultural lands, preservation and reproduction of soil fertility (by supplementing the Land Code of Ukraine with regulations on land protection, greening of land legal prescriptions that regulate relations of land usage for the needs of agricultural production);
- legislative support for the process of environmentalization of agriculture as a branch of material production, which provides for both the adoption of new legal acts and the introduction of changes and additions to existing acts on the implementation of progressive farming systems, resource-saving technologies of agricultural production, etc.[18].

On the basis of what was mentioned above, it can be concluded that the greening of agricultural legislation is a conceptual direction of its modern development, which involves the implementation of ecological principles and requirements in the content of legal acts that regulate

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[17] Kravets, N.V. (2015). *Ekolohizatsiia ahrarnoho vyrobnytstva yak pryntsyp ahrarnoho prava:* avtoreferat dys. … kand. yuryd. nauk [*Greening of agricultural production as a principle of agrarian law:* thesis abstract of the Candidate of Juridical Sciences]. Kharkiv, 8–9 [in Ukrainian].

[18] Bahai, N.O. (2011). Ekolohizatsiia ahrarnoho zakonodavstva: sutnist i napriamy [Greening of agricultural legislation: essence and directions]. *Aktualni problemy vdoskonalennia chynnoho zakonodavstva Ukrainy* [*Actual problems of improving the current legislation of Ukraine*], no. 25, 160–161 [in Ukrainian]; Bahai, N.O. (2022). *Teoretychni problemy rozvytku ahrarnoho zakonodavstva Ukrainy:* monohrafiia [*Theoretical problems of the development of agrarian legislation of Ukraine:* monograph]. Ivano-Frankivsk: Suprun V.P., 237–238 [in Ukrainian].

agricultural production. The essence of such greening consists, first of all, in the formation of qualitatively new legal prescriptions based on general principles and ideas of environmental protection and rational nature management, which will ensure specialized legal regulation of agrarian relations[19].

2. Legislative ensuring of environmental protection in agriculture

The process of agricultural production is objectively related to the usage of natural resources and the impact on the environment. Therefore, a necessary condition for conducting agricultural production is its compliance with environmental and legal requirements. Proper legislative regulation of environmental relations in the agricultural sector is a necessary condition for ensuring the sustainable development of agriculture and rural areas.

The legal regulation of environmental protection in agriculture was analyzed by the representatives of the science of environmental law: V.I. Andreytsev, A.P. Hetman, V.V. Kostytskyi, N.R. Malysheva, V.L. Muntyan, Yu.S. Shemshuchenko, as well as by the representatives of agrarian-legal science: V.M. Yermolenko, I.I. Karakash, O.O. Pohribnyi, N.I. Tytova, M.V. Shulha, V.Z. Yanchuk and others.

At the same time, the constant development of environmental and agrarian legislation in the context of European integration necessitates further scientific research in this area. Therefore, it is important to analyze the system of legal acts that ensure the regulation of environmental protection relations in agriculture, the analysis of connections and relationships between them, as well as the determination of trends in the future development of legislation in this part.

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[19] Bahai, N.O. (2011). Ekolohizatsiia ahrarnoho zakonodavstva: sutnist i napriamy [Greening of agricultural legislation: essence and directions]. *Aktualni problemy vdoskonalennia chynnoho zakonodavstva Ukrainy* [*Actual problems of improving the current legislation of Ukraine*], no. 25, 161 [in Ukrainian]; Bahai, N.O. (2022). *Teoretychni problemy rozvytku ahrarnoho zakonodavstva Ukrainy:* monohrafiia [*Theoretical problems of the development of agrarian legislation of Ukraine:* monograph]. Ivano-Frankivsk: Suprun V.P., 238 [in Ukrainian].

Agriculture is organically connected with the use of land, water and other natural resources. Therefore, rational nature management and protection of the natural environment are an integral part of the production and economic activity of all agricultural enterprises.

As rightly noted by N.I. Tytova, work in the agrarian sector of the economy means the organic usage of the natural qualities of the land in the process of agricultural production, therefore labor relations here are, in fact, complex land-labor or ecological-labor relations[20].

In the previous century, V.L. Muntyan singled out the following areas of legal protection of the environment in agriculture: “protection and improvement of land productivity; prevention and elimination of pollution of land, water, and vegetation by waste of industrial enterprises; protection of the environment from contamination by chemical substances”[21].

In the modern period, scientists rightly distinguish the two most important vectors of environmental protection activity in agriculture: “protection of the natural environment and all its elements from the negative impact of agricultural production and protection of agriculture from the harmful effects of the anthropogenic environment”[22].

Understanding the ecological function of the state, the essence of which, according to I.I. Karakash, consists in the regulation of nature usage with the aim of giving it an economically rational, ecologically safe and socially oriented direction, is important in this context[23]. At the same

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[20] Titova, N.I. (1989). *Prodovolstvennaya problema: zemlya, trud (pravovye aspekty).* [*Food problem: land, labour (legal aspects)*]. Lvov: Izdatelstvo pri Lvovskom Gosudarstvennom universitete izdatelskogo obedineniya “Vysha shkola”, 149 [in Russian].

[21] Muntian, V.L. (1982). *Pravova okhorona pryrody URSR.* Vydannia druhe, dopovnene [*Legal protection of nature of the Ukrainian SSR.* The second edition, supplemented]. Kyiv: Holovne vydavnytstvo vydavnychoho obiednannia “Vyshcha shkola”, 212 [in Ukrainian].

[22] Anisimova, H.V., Sokolova, A.K., Hryhorieva, T.V., Hetman, A.P., Shulha, M.V. et all. (2005). *Ekolohichne pravo Ukrainy:* pidruchnyk [*Ecological Law of Ukraine*: Textbook]. Kharkiv: “Pravo”, 346 [in Ukrainian].

[23] Karakash, I.I. (2013). Ekolohichna funktsiia suchasnoi ukrainskoi derzhavy [Ecological function of the modern Ukrainian state]. *Suchasni naukovo-praktychni problemy ekolohichnoho, zemelnoho ta ahrarnoho prava: materialy “kruhloho stolu” (Kharkiv, 6 hrudnia 2013 r.)* [*Modern scientific and practical problems of environ-*

time, the main goals of the ecological function of the state, according to the scientist, are: "protection of the natural environment for normal human existence, ensuring environmental safety for the life and health of citizens, creating favorable conditions for them to exercise their environmental rights and providing appropriate guarantees for their implementation"[24].

Accordingly, legal protection of the environment is carried out both through the establishment of legal descriptions for the protection of certain types of natural resources used in agriculture, and through legal regulation of the agricultural activity itself[25]. It should be noted that the processes of intensification of agricultural production, the use of mineral fertilizers, pesticides, means of combating plant pests have a negative effect on the state of land and other natural resources. At the same time, the authors rightly note that agricultural activity is not only a source of environmental threats, but also an object of protection against them[26]. It is necessary to agree with I.I. Karakash that "economic and ecological interests are objectively contradictory, their convergence, and even more so their combination, is extremely difficult"[27]

In connection with this, the Law of Ukraine dated February 28, 2019 "On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the Period until 2030" provides for measures to ensure the

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mental, land and agrarian law: materials of the "round table" (Kharkiv, December 6, 2013)]. Kharkiv: Pravo, 32 [in Ukrainian].

[24] Karakash, I.I. (2013). Ekolohichna funktsiia suchasnoi ukrainskoi derzhavy [Ecological function of the modern Ukrainian state]. *Suchasni naukovo-praktychni problemy ekolohichnoho, zemelnoho ta ahrarnoho prava*: materialy "kruhloho stolu" (Kharkiv, 6 hrudnia 2013 r.) [*Modern scientific and practical problems of environmental, land and agrarian law*: materials of the "round table" (Kharkiv, December 6, 2013)]. Kharkiv: Pravo, 32 [in Ukrainian].

[25] Bahai, N.O., Bondar, L.O., Hurevskyi, V.K., Luniachenko, O.V., Pohribnyi, O.O. et all. (2004). *Ahrarne pravo Ukrainy:* pidruchnyk [*Agrarian Law of Ukraine:* Textbook]. Kyiv: Istyna, 414–415 [in Ukrainian].

[26] Bahai, N.O., Bondar, L.O., Hurevskyi, V.K., Luniachenko, O.V, Pohribnyi, O.O. et all. (2004). *Ahrarne pravo Ukrainy:* pidruchnyk [*Agrarian Law of Ukraine:* Textbook]. Kyiv: Istyna, 414 [in Ukrainian].

[27] Bavbekova, E.A., Bondar, L.O., Havrysh, N.S., Hlotova, O.V., Hurevskyi, V.K., Karakash, I.I. et all. (2005). *Pryrodnoresursove pravo Ukrainy:* navch. posib. [*Natural resource law of Ukraine:* Tutorial.]. Kyiv: Istyna, 9 [in Ukrainian].

sustainable usage and protection of lands, the creation of conditions for mandatory consideration of the ecological component during the development and approval of state planning documents and in the process of making decisions about the implementation of economic activity that may have a significant impact on the environment, etc.[28].

According to L.O. Bondar, "the legal institution of environmental protection in agriculture is a complex institution of both agrarian and environmental law as complex branches of law"[29]. Therefore, the legislative basis of environmental protection in agriculture is a large system of legal acts of various branches. In particular, regulations on the protection and rational usage of natural resources in the process of agricultural production and on the prevention of negative impact on the environment are contained in the acts of environmental and agrarian legislation.

In general, legal acts regulating environmental protection relations in agriculture can be divided into three groups[30].

The first group should include environmental legal acts that establish the general principles of environmental protection and contain defining provisions regarding the directions of environmental protection in various spheres of interaction between society and nature including agriculture.

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[28] *Zakon pro Osnovni zasady (stratehiiu) derzhavnoi ekolohichnoi polityky Ukrainy na period do 2030 roku* 2019 (Verkhovna Rada Ukrainy) [Law on the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the Period until 2030 2019 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/2697–19#Text> [in Ukrainian]. (2022, November, 01).

[29] Bahai, N.O., Bondar, L.O., Hurevskyi, V.K., Luniachenko, O.V, Pohribnyi, O.O. et all. (2004). *Ahrarne pravo Ukrainy:* pidruchnyk [*Agrarian Law of Ukraine:* Textbook]. Kyiv: Istyna, 2004, 414 [in Ukrainian].

[30] Bahai, N.O. (2016). Zakonodavche zabezpechennia okhorony dovkillia u silskomu hospodarstvi [Legislative ensuring of environmental protection in agriculture]. *Ekolohichne pravo Ukrainy*: Naukovo-praktychnyi zhurnal [*Ecological law of Ukraine:* Scientific and practical journal.], no. 3–4, 7 [in Ukrainian]; Bahai, N.O. (2022). *Teoretychni problemy rozvytku ahrarnoho zakonodavstva Ukrainy:* monohrafiia [*Theoretical problems of the development of agrarian legislation of Ukraine:* monograph]. Ivano-Frankivsk: Suprun V.P., 231–232 [in Ukrainian].

Such acts include the Laws of Ukraine “On Environmental Protection”[31], “On Environmental Impact Assessment”[32], “On Waste”[33] and others.

The second group includes standard legal acts of environmental legislation that determine the requirements for the protection of individual natural resources: the Land Code of Ukraine[34], the Water Code of Ukraine[35], the Code of Ukraine on Subsoil[36], the Forest Code of Ukraine[37], the Laws of Ukraine “On the Wildlife”[38], “On the Plantage”[39], “On Air

[31] *Zakon pro okhoronu navkolyshnoho pryrodnoho seredovyshcha* 1991 (Verkhovna Rada Ukrainy) [Law on Environmental Protection 1991 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/1264–12#Text> [in Ukrainian]. (2022, November, 01).

[32] *Zakon pro otsinku vplyvu na dovkillia* 2017 (Verkhovna Rada Ukrainy) [Law on Environmental Impact Assessment 2017 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/2059–19#Text> [in Ukrainian]. (2022, November, 01).

[33] *Zakon pro vidkhody* 1998 (Verkhovna Rada Ukrainy) [Law on Waste 1998 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/187/98-%D0%B2%D1%80#Text> [in Ukrainian]. (2022, November, 01).

[34] *Zemelnyi kodeks Ukrainy* 2001 (Verkhovna Rada Ukrainy) [Land Code of Ukraine 2001 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/2768–14#Text> [in Ukrainian]. (2022, November, 01).

[35] *Vodnyi kodeks Ukrainy* 1995 (Verkhovna Rada Ukrainy) [Water Code of Ukraine 1995 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/213/95-%D0%B2%D1%80#Text> [in Ukrainian]. (2022, November, 01).

[36] *Kodeks Ukrainy pro nadra*1994 (Verkhovna Rada Ukrainy) [Code of Ukraine on Subsoil, 1994 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/132/94-%D0%B2%D1%80#Text> [in Ukrainian]. (2022, November, 01).

[37] *Lisovyi kodeks Ukrainy* 1994 (Verkhovna Rada Ukrainy) [Forest Code of Ukraine 1994 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/3852–12#Text> [in Ukrainian]. (2022, November, 01).

[38] *Zakon pro tvarynnyi svit* 2001 (Verkhovna Rada Ukrainy) [Law on Wildlife 2001 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/2894–14#Text> [in Ukrainian]. (2022, November, 01).

Protection"[40] and others. In these acts, along with the provisions of general importance that regulate relations of the use of individual natural resources, there are also special prescriptions for ensuring their protection in the process of agricultural production.

Land legislation acts are especially important in the system of these acts, because land is the main and irreplaceable means of agricultural production. Beside the Land Code of Ukraine, relations regarding land protection in agriculture are also regulated by special Laws: "On Protection of Lands"[41], "On Melioration of Lands"[42] and others.

The third group consists of the acts of agrarian legislation containing legislative provisions on environmental protection. This group includes the Laws of Ukraine "On Pesticides and Agrochemicals"[43], "On Plant Protection"[44], "On Plant Quarantine"[45], "On Basic Principles and Require-

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[39] *Zakon pro roslynnyi svit* 1999 (Verkhovna Rada Ukrainy) [Law on Plantage 1999 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/591–14#Text> [in Ukrainian]. (2022, November, 01).

[40] *Zakon pro okhoronu atmosfernoho povitria* 1992 (Verkhovna Rada Ukrainy) [Law on Air Protection 1992 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/2707–12#Text> [in Ukrainian]. (2022, November, 01).

[41] *Zakon pro okhoronu zemel* 2003 (Verkhovna Rada Ukrainy) [Law on Protection of Lands 2003 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/962–15#Text> [in Ukrainian]. (2022, November, 01).

[42] *Zakon pro melioratsiiu zemel* 2000 (Verkhovna Rada Ukrainy) [Law on Melioration of Lands 2000 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/1389–14#Text> [in Ukrainian]. (2022, November, 01).

[43] *Zakon pro pestytsydy i ahrokhimikaty* 1995 (Verkhovna Rada Ukrainy) [Law on Pesticides and Agrochemicals 1995 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/86/95-%D0%B2%D1%80#Text> [in Ukrainian]. (2022, November, 01).

[44] *Zakon pro zakhyst roslyn* 1998 (Verkhovna Rada Ukrainy) [Law on Plant Protection 1998 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada. gov.ua/laws/show/180–14#Text> [in Ukrainian]. (2022, November, 01).

ments for Organic Production, Circulation and Labeling of Organic Products"[46] and others. The legislative directions included in the acts of agrarian legislation are mainly aimed at regulating certain types of agricultural production activity and at the same time provide for measures concerning the prevention of the impact of agricultural production on the environment.

Thus, environmental protection in agriculture is provided by a system of legislative directions included in legal acts of environmental and agrarian legislation and forms a complex inter-branch legislative institute. The basic meaning in the system of this institute belongs to environmental-legal norms and directions[47].

Among the shortcomings of the legislative regulation of these relations, it is possible to note the scattering of directions on environmental protection in agriculture in various legal acts (both among acts within the limits of one branch of legislation and among acts that belong to various branches), the absence of a "central" act, which to some extent complicates application of such prescriptions in practice.

In addition, the drawback of the modern legislative regulation of environmental protection in agriculture is the consolidation at the legislative level of mainly general requirements for the protection of

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[45] *Zakon pro karantyn roslyn* 1993 (Verkhovna Rada Ukrainy) [Law on Plant Quarantine 1993 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/3348–12#Text> [in Ukrainian]. (2022, November, 01).

[46] *Zakon pro osnovni pryntsypy ta vymohy do orhanichnoho vyrobnytstva, obihu ta markuvannia orhanichnoi produktsii* 2018 (Verkhovna Rada Ukrainy) [Law on Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products 2018 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/2496–19#Text> [in Ukrainian]. (2022, November, 01).

[47] Bahai, N.O. Zakonodavche zabezpechennia okhorony dovkillia u silskomu hospodarstvi [Legislative ensuring of environmental protection in agriculture]. *Ekolohichne pravo Ukrainy*: Naukovo-praktychnyi zhurnal [*Ecological law of Ukraine:* Scientific and practical journal.], no. 3–4, 8 [in Ukrainian]; Bahai, N.O. (2022). *Teoretychni problemy rozvytku ahrarnoho zakonodavstva Ukrainy:* monohrafiia [*Theoretical problems of the development of agrarian legislation of Ukraine:* monograph]. Ivano-Frankivsk: Suprun V.P., 232 [in Ukrainian].

natural resources in the process of carrying out various types of economic activity and the insufficient consideration of the specifics of the production process of crop and livestock products. Such specificity is to some extent taken into account only in special acts of agrarian legislation (for example, in the Laws of Ukraine "On Pesticides and Agrochemicals", "On Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products", etc.).

Ensuring proper protection of the environment in the process of agricultural production should become one of the important priorities of the state agrarian policy determined at the legislative level.

The Law of Ukraine "On the Basic Principles of State Agrarian Policy for the Period until 2015" provided for separate provisions on ensuring land and soil protection, promoting the implementation of resource-saving, safe and environmentally friendly technologies for the production of agricultural products and food[48]. However, despite the formal validity of this Law, its very name indicates its temporary nature, and therefore today there is a need for the formation of the state agrarian policy for the long term as well as for defining its main priorities and enshrining them at the legislative level.

By the order of the Cabinet of Ministers of Ukraine dated September 23, 2015 No. 995-r, the Concept of the Development of Rural Territories was approved. The purpose of the Concept is to create the necessary organizational, legal and financial prerequisites for rural development by: protecting the natural environment, preserving and restoring natural resources in rural areas; bringing legislation in the field of rural development into compliance with EU standards[49]. In order to implement the Concept,

[48] *Zakon pro osnovni zasady derzhavnoi ahrarnoi polityky na period do 2015 roku* 2005 (Verkhovna Rada Ukrainy) [Law on the Basic Principles of State Agrarian Policy for the Period until 2015 2005 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/2982–15#Text> [in Ukrainian]. (2022, November, 01).

[49] *Rozporiadzhennia pro skhvalennia Kontseptsii rozvytku silskykh terytorii* 2015 (Kabinet Ministriv Ukrainy) [Order on the approval of the Concept for the Development of Rural Areas 2015 (Cabinet of Ministers of Ukraine)]. *Ofitsiynyi sayt*

certain measures were envisaged, in particular, the development and implementation of measures for the protection and preservation of natural resources in rural areas (development of a nature reserve fund with the involvement of territorial communities of villages, settlements and business entities; organization of work on the removal of agrochemical residues from abandoned warehouses and other, including in unequipped places for their storage; strengthening of control and responsibility for throwing away household waste, organization of spontaneous landfills, discharge of polluted water into surface reservoirs in rural areas; support for energy production from alternative sources, etc.). On July 19, 2017, the Cabinet of Ministers of Ukraine approved a corresponding plan of measures to implement the above-mentioned Concept[50].

In the modern period, there is a need for legislative enshrining of the requirements for environmental protection in agriculture as priority foundations of the state agrarian policy of Ukraine for the long term.

In the context of Ukraine's integration with the European community, legislative support for the development of the agricultural sector of Ukraine's economy should be based on the principles of the Common Agrarian Policy (CAP) of the EU, which aims at rational use and protection of natural resources and comprehensive development of rural areas.

As noted by foreign researchers, "it is inevitable to conclude that CAP, especially in its early forms, accelerated changes in agriculture, influencing the intensification of production and structural changes in farms. It can be argued that it had a harmful effect on the environment due to an increase in the intensity of production in more productive areas, and

Verkhovnoyi Rady Ukrainy [*The official website of the Verkhovna Rada of Ukraine*]. < https://zakon.rada.gov.ua/laws/show/995–2015-%D1%80#Text> [in Ukrainian]. (2022, November, 01).

[50] *Rozporiadzhennia pro zatverdzhennia planu zakhodiv z realizatsii Kontseptsii rozvytku silskykh terytorii* 2017 (Kabinet Ministriv Ukrainy) [Order on the approval of the plan of measures for the implementation of the Concept for the Development of Rural Areas 2017 (Cabinet of Ministers of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/489–2017-%D1%80#Text> [in Ukrainian]. (2022, November, 01).

at the same time a positive effect on supporting production in less productive areas”[51].

Art. 404 of the Association Agreement between Ukraine and the European Union provides that cooperation between the parties in the field of agriculture and development of rural areas covers, among others, the following areas: “promotion of modern and sustainable agricultural production, taking into account the need to protect the environment and animals, in particular spreading the use of organic production methods and the use of biotechnology, through the implementation of best practices in these areas; exchange of best practices regarding policy support mechanisms in the field of agriculture and rural development; promotion of agricultural product quality policy in the areas of product standards, production requirements and quality schemes”[52].

A feature of the CAP for the period until 2020 is that, along with the goals related to the development of agriculture and its subjects, more and more attention is paid to social and legal goals and environmental protection[53]. The main priorities of the Common Agrarian Policy include: sustainable use of natural resources and economic activity coordinated with the climate; legislative guarantee of sustainable production activity and ensuring the supply of natural public goods; supporting the growth of ecologically clean production through the introduction of innovative

[51] Hodge, I., Hauck, J., Bonn, A. (2015). *The alignment of agricultural and nature conservation policies in the European Union*, 7–8. <https://www.repository.cam.ac.uk/bitstream/handle/1810/248182/Hodge%202015%20Conservation%20Biology.pdf?sequence=1> [in English]. (2022, November, 01).

[52] *Uhoda pro asotsiatsiiu mizh Ukrainoiu, z odniiei storony, ta Yevropeiskym Soiuzom, Yevropeiskym spivtovarystvom z atomnoi enerhii i yikhnimy derzhavamy-chlenamy, z inshoi storony* 2014 [Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/984_011#Text> [in Ukrainian]. (2022, November, 01).

[53] Sherstiuk, S.V. (2014). Spilna ahrarna polityka YeS na 2014 – 2020 roky: oriientyry dlia Ukrainy [Common agricultural policy of the EU for 2014–2020: guidelines for Ukraine]. *Porivnialno-analitychne pravo* [*Comparative-analytical law*], no. 5, 189 [in Ukrainian].

technologies[54]. Therefore, since 2014, the EU has applied a special regime of support for small businesses, and with the help of the system of so-called "green" payments within the framework of the EU CAP, the stimulation of greening of agricultural production will continue[55].

Therefore, the legislative prescriptions on the protection and rational use of natural resources in the process of agricultural production and on the prevention of negative impact on the environment are included in the acts of environmental and agrarian legislation and form a complex interdisciplinary legislative institute[56].

Ensuring environmental protection during the production of agricultural products should become one of the priorities of the state agrarian policy determined at the legislative level[57].

3. Legal regulation of organic production

One of the means of greening of agricultural production activity is the development of the production of organic agricultural products (raw materials). The implementation of the organic production of agricultural

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[54] Sherstiuk, S.V. (2014). Spilna ahrarna polityka YeS na 2014 – 2020 roky: oriientyry dlia Ukrainy [Common agricultural policy of the EU for 2014–2020: guidelines for Ukraine]. *Porivnialno-analitychne pravo* [*Comparative-analytical law*], no. 5, 189. <http://ird.gov.ua/irdp/e20150303.pdf> [in Ukrainian].

[55] Kazmir, L.P. (2015). *Perspektyvy vykorystannia mekhanizmiv Spilnoi ahrarnoi polityky YeS dlia aktyvizatsii rozvytku silskykh terytorii Ukrainy:* ekspertnyi komentar i propozytsii [*Prospects for the use of mechanisms of the Common Agricultural Policy of the EU to activate the development of rural areas of Ukraine:* expert commentary and suggestions]. DU "Instytut rehionalnykh doslidzhen im. M.I. Dolishnoho NAN Ukrainy", Lviv, 5. <http://ird.gov.ua/irdp/e20150303.pdf> [in Ukrainian].

[56] Bahai, N.O. Zakonodavche zabezpechennia okhorony dovkillia u silskomu hospodarstvi [Legislative ensuring of environmental protection in agriculture]. *Ekolohichne pravo Ukrainy*: Naukovo-praktychnyi zhurnal [*Ecological law of Ukraine:* Scientific and practical journal.], no. 3–4, 8–10 [in Ukrainian]; Bahai, N.O. (2022). *Teoretychni problemy rozvytku ahrarnoho zakonodavstva Ukrainy:* monohrafiia [*Theoretical problems of the development of agrarian legislation of Ukraine:* monograph]. Ivano-Frankivsk: Suprun V.P., 232 [in Ukrainian].

[57] Bahai, N.O. Zakonodavche zabezpechennia okhorony dovkillia u silskomu hospodarstvi [Legislative ensuring of environmental protection in agriculture]. *Ekolohichne pravo Ukrainy*: Naukovo-praktychnyi zhurnal [*Ecological law of Ukraine:* Scientific and practical journal], no. 3–4, 10 [in Ukrainian].

products (raw materials) and state support for the producers of such products are a guarantee of quality and safety of agricultural production, and hence, a guarantee of the rights of consumers of agricultural products (raw materials). At the same time, the development of organic production is possible only with the establishment of a proper regulatory framework for the implementation of such activity by agricultural commodity producers as well as with the definition of clear and stable conditions for state support and regulation of such activity, etc.

The legislation on the production of organic agricultural products (raw materials) includes a system of legal acts of various legal force that regulate social relations in the field of production and circulation of organic agricultural products (raw materials) and determine the order and conditions for the implementation of organic production[58].

The development of the legislation on organic production began with the adoption of the Law of Ukraine "On the Production and Circulation of Organic Agricultural Products and Raw Materials" dated September 3, 2013[59]. Now these relations are regulated by the Law of Ukraine dated July 10, 2018 "On Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products"[60]. According to Part 1 of Art. 3 of the last Law, "relations in the field of organic pro-

[58] Bahai, N.O. (2018). Legislative Regulation of the Production of Organic Agricultural Products in Ukraine. *Journal of Vasyl Stefanyk Precarpathian National University. Scientific edition Series of Social and Human Sciences, v*ol. 5, no. 2, 84 [in English].

[59] *Zakon pro vyrobnytstvo ta obih orhanichnoi silskohospodarskoi produktsii ta syrovyny* 2013 (Verkhovna Rada Ukrainy) [Law on Production and Circulation of Organic Agricultural Products and Raw Materials 2013 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/425–18#Text> [in Ukrainian]. (2022, November, 01).

[60] *Zakon pro osnovni pryntsypy ta vymohy do orhanichnoho vyrobnytstva, obihu ta markuvannia orhanichnoi produktsii* 2018 (Verkhovna Rada Ukrainy) [Law on Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products 2018 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/2496–19#Text> [in Ukrainian]. (2022, November, 01).

duction, circulation and labeling of organic products in Ukraine are regulated by this Law and the normative legal acts issued in accordance with it, the legislation on safety and individual indicators of the quality of food products, on state control over compliance with the legislation on food products, fodder, by-products of animal origin, animal health and welfare, plant quarantine, plant protection, seed production and nurseries, veterinary medicine, beekeeping, aquaculture, viticulture and winemaking, protection and use of the plant and animal world, as well as land, forest, environmental and other special legislation regulating relations in this area"[61].

In order to ensure the implementation of legislative provisions, a number of legal acts regulating social relations in the field of production of organic agricultural products (raw materials) were developed and adopted. Of particular importance among them is the Order (detailed rules) of organic production and circulation of organic products[62], which defines detailed rules of organic production and circulation of organic products in the following branches of organic production: organic crop production (in particular, seed production and nursery); organic animal husbandry (in particular, poultry farming, beekeeping); organic mushroom cultivation (in particular, cultivation of organic yeast); organic aquaculture; production of organic seaweed; production of organic food products (in particular, organic winemaking); production of organic fodder; harvesting organic objects of the plant world.

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[61] *Zakon pro osnovni pryntsypy ta vymohy do orhanichnoho vyrobnytstva, obihu ta markuvannia orhanichnoi produktsii* 2018 (Verkhovna Rada Ukrainy) [Law on Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products 2018 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/2496–19#Text> [in Ukrainian]. (2022, November, 01).

[62] *Postanova pro zatverdzhennia Poriadku (detalnykh pravyl) orhanichnoho vyrobnytstva ta obihu orhanichnoi produktsii* 2019 (Kabinet Ministriv Ukrainy) [Order on approval of the Procedure (detailed rules) for organic production and circulation of organic products (Cabinet of Ministers of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/970–2019-%D0%BF#Text> [in Ukrainian]. (2022, November, 01).

According to Art. 1 of the Law "On Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products", organic production is a certified activity related to the production of agricultural products (including all stages of the technological process, namely primary production (including harvesting), preparation, processing, mixing and related procedures, filling, packaging, processing, restoration and other changes in the state of products), which is carried out in compliance with the requirements of the legislation in the field of organic production, circulation and labeling of organic products. The law also defines the concept of "organic products" – agricultural products, including food products and fodder, obtained as a result of organic production[63].

When analyzing the relationship between the concepts of "organic agricultural products" and "environmentally safe agricultural products", T.K. Overkovska notes that the latter concept is broader, because "organic products should be considered only those that are obtained as a result of production that has undergone assessment and confirmation of compliance of the production of organic products (raw materials) and received a certificate of conformity"[64].

According to V.Yu. Urkevych, organic production can be defined as a special means (method) of agriculture (production of agricultural products), carried out on certified agricultural lands and subject to mandatory certification, that provides for the use of such a production management system that takes into account and improves the condition of the agro-ecosystem (including biological diversity, biological cycles, and biological nature of the soil), minimizes soil cultivation, and uses energy- and

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[63] *Zakon pro osnovni pryntsypy ta vymohy do orhanichnoho vyrobnytstva, obihu ta markuvannia orhanichnoi produktsii* 2018 (Verkhovna Rada Ukrainy) [Law on Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products 2018 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/2496–19#Text> [in Ukrainian]. (2022, November, 01).

[64] Overkovska, T.K. (2017). Pravovi oznaky orhanichnoho vyrobnytstva silskohospodarskoi produktsii v Ukraini [Legal signs of organic production of agricultural products in Ukraine]. *Pidpryiemnytstvo, hospodarstvo i pravo* [*Enterprise, economy and law*], no. 11, 96 [in Ukrainian].

resource-saving technologies, is characterized by the care for all the components of the environment as well as by the refusal to use artificial fertilizers or synthetic chemicals and genetically modified organisms, the purpose of which is the most complete satisfaction of consumers with products manufactured with the use of natural substances and mechanisms[65]. As the scientist points out, the notions of organic production and organic farming should be correlated as a general and a component, and the categories "organic production" and "organic agriculture" should be considered synonymous[66].

The principles of state policy in the field of organic production, circulation and labeling of organic products are also defined at the legislative level. V.O. Melnyk defines the legal principles of organic production as a system of "legally defined requirements, which should correspond to the practice of public relations in the production, storage, transportation, and sale of organic products (raw materials)"[67]. However, according to scientists, these principles are the criteria for assessing the legality of decisions of public authorities and the subjects of agrarian relations[68].

As scientists rightly note, the norms of the legislation on organic production in relation to environmental safety are combined into an independent legal institute of environmental safety in the production of organic agricultural products, which has an inter-branch nature. The norms of this institute are included both in the law of environmental safety and in

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[65] Urkevych, V.Yu. (2013). Aktualni pravovi pytannia orhanichnoho vyrobnytstva v Ukraini [Current legal issues of organic production in Ukraine]. *Naukovyi visnyk Natsionalnoho universytetu bioresursiv i pryrodokorystuvannia Ukrainy. Seriia: Pravo* [*Scientific bulletin of the National University of Bioresources and Nature Management of Ukraine. Series: Law*], no. 182 (2), 26 [in Ukrainian].

[66] Hetman, A.P., Ihnatenko, I.V., Korniienko, V.M., Stativka, A.M., Shulha, M.V. et all. ((2016). *Problemy pravovoho zabezpechennia staloho rozvytku silskykh terytorii v Ukraini:* monohrafiia [*Problems of legal ensuring of sustainable development of rural areas in Ukraine:* monograph]. Kharkiv: Pravo, 70 [in Ukrainian].

[67] Melnyk, V.O. (2018). *Pravove rehuliuvannia orhanichnoho silskohospodarskoho vyrobnytstva v Ukraini:* avtoref. dys. ... kand. yuryd. nauk [*Legal regulation of organic agricultural production in Ukraine:* thesis abstract of the Candidate of Juridical Sciences]. Kyiv, 4 [in Ukrainian].

[68] *Ibid.*

the agrarian law, since organic products are the result of agricultural activity[69].

According to Article 1 of the Law of Ukraine “On Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products”, an operator is a legal entity or an individual entrepreneur who is engaged in the production and/or circulation of products in accordance with the requirements of legislation in the field of organic production, circulation and labeling of organic products[70]. Such a definition of “an operator” in general meets the requirements of Council Decree (EU) No. 834/2007 dated June 28, 2007 “On Organic Production and Labeling of Organic Products and on the Repeal of Regulation (EEC) No. 2092/91”, where “operators” include natural or juridical persons responsible for ensuring the fulfillment of the requirements of this Decree in the process of production of organic products which they manage[71].

It should be noted that the term “operator” was introduced by the Law of Ukraine “On Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products”, which took effect

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[69] Urkevych, V.Yu. (2014). Pro pravove rehuliuvannia ekolohichnoi bezpeky pry vyrobnytstvi orhanichnoi silskohospodarskoi produktsii [On the legal regulation of environmental safety in the production of organic agricultural products]. *Aktualni problemy stanovlenni i rozvytku prava ekolohichnoi bezpeky v Ukraini:* mater. nauk.-prakt. Kruhloho stolu (m. Kyiv, 28 bereznia 2014 r.) [*Actual problems of the establishment and development of environmental safety law in Ukraine*: Mater. science and practice round table (Kyiv, March 28, 2014)]. Chernivtsi: Kondratiev A.V., 51 [in Ukrainian].

[70] *Zakon pro osnovni pryntsypy ta vymohy do orhanichnoho vyrobnytstva, obihu ta markuvannia orhanichnoi produktsii* 2018 (Verkhovna Rada Ukrainy) [Law on Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products 2018 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/2496–19#Text> [in Ukrainian]. (2022, November, 01).

[71] *Postanova pro orhanichne vyrobnytstvo ta markuvannia orhanichnykh produktiv ta pro skasuvannia Rehlamentu (YeES) № 2092/91* 2007 (Rada (YeS)). [Resolution on organic production and labeling of organic products and on the repeal of Regulation (EEC) No. 2092/91 2007 (Council (EU)]. <http://organicstandard.com.ua/files/standards/ua/ec/EU%20Reg_834_2007%20Organic%20Production_UA.pdf> [in Ukrainian].(2022, November, 01).

on August 2, 2019. Until then, the term “producer of organic agricultural products (raw materials)” was used in the legislation.

The concept of operators involved in the production and circulation of organic products (organic product manufacturers) is also defined by the representatives of legal science. Thus, V.O. Melnyk understands them as “subjects of agrarian relations who own separate property, are endowed with special legal capacity and legal personality, carry out economic activities using land as the main means of production of raw materials and products of plant and animal origin, beekeeping products or with the use of a fishery facility for the production and processing of aquaculture facilities in order to ensure food safety and subject to compliance with environmental safety requirements”[72].

Today scientists substantiate important proposals regarding the need to expand the circle of producers of organic agricultural products (raw materials) and to enable natural persons who are not entrepreneurs to also produce organic agricultural products (raw materials) that would meet European standards[73].

The legal status of operators engaged in the production and circulation of organic products, according to national legislation, is currently generally brought into line with the requirements of European legislation regarding organic production[74]: Council Resolutions (EU) No. 834/2007 dated June 28, 2007 “On organic production and labeling of organic products

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[72] Melnyk, V.O. (2018). *Pravove rehuliuvannia orhanichnoho silskohospodarskoho vyrobnytstva v Ukraini:* avtoref. dys. kand. yuryd. nauk [*Legal regulation of organic agricultural production in Ukraine*: thesis abstract of the Candidate of Juridical Sciences]. Kyiv, 4 [in Ukrainian].

[73] Melnychuk, O.F., Melnychuk, M.O. (2017). Pravove rehuliuvannia vyrobnytstva orhanichnoi silskohospodarskoi produktsii v Ukraini [Legal regulation of production organic agricultural products in Ukraine]. *Ekonomika. Finansy. Menedzhment: aktualni pytannia nauky i praktyky* [*Economy. Finances. Management: topical issues of science and practice*], no. 5, 100 [in Ukrainian].

[74] Bahai, N.O. Zakonodavche rehuliuvannia pravovoho statusu operatoriv, shcho zdiisniuiut vyrobnytstvo orhanichnoi produktsii [Legislative regulation of the legal status of operators producing organic products]. *Pravo i suspilstvo*: Mizhnarodnyi zhurnal [*Law and society*: International magazine], no. 9, 6 [in Ukrainian].

and repealing Regulation (EEC) No. 2092/91”[75], EU Commission Resolutions 889/2008 dated 5 September 2008 “Detailed rules on organic production, labeling and control for the implementation of Council Decree (EU) No. 834/2007 on organic production and labeling of organic products”[76], Codex Alimentarius “Guidelines on production, processing, labeling and sale of organic products”[77].

Article 4 of the Law of Ukraine “On Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products” defines the basic rights and obligations of operators involved in the production and circulation of organic products[78].

The Law of Ukraine “On Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products” provides measures for the responsibility of operators for violations of legislation in

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[75] *Postanova pro orhanichne vyrobnytstvo ta markuvannia orhanichnykh produktiv ta pro skasuvannia Rehlamentu (YeES) № 2092/91 2007* (Rada (YeS)) [Regulation on organic production and labeling of organic products and repealing Regulation (EEC) No. 2092/91 2007 (Council (EC))]. <http://organicstandard.com.ua/files/standards/ua/ec/EU%20Reg_834_2007%20Organic%20Production_UA.pdf> [in Ukrainian]. (2022, November, 01).

[76] *Postanova “Detalni pravyla shchodo orhanichnoho vyrobnytstva, markuvannia i kontroliu dlia vprovadzhennia Postanovy Rady (YeS) № 834/2007 stosovno orhanichnoho vyrobnytstva i markuvannia orhanichnykh produktiv”* 2008 (Komisiia YeS) [Resolution “Detailed rules on organic production, labeling and control for the implementation of the EU Council Regulation № 834/2007 on organic production and labeling of organic products” 2008 (EU Commission)]. <http://apk.cg.gov.ua/web_docs/2141/2017/04/docs/EC_Reg_889_2008_Implementing_Rules_UA.pdf> [in Ukrainian]. (2022, November, 01).

[77] *Kodeks Alimentarius “Kerivni polozhennia z vyrobnytstva, pererobky, markuvannia ta realizatsii orhanichnykh produktiv”* 1999 (Komisiia YeS) [Codex Alimentarius “Guidelines for the production, processing, labeling and sale of organic products” 1999 (EU Commission)]. <https://admin.uteka.ua/uploads/2018/06/19/5b29046d1ce70.pdf> [in Ukrainian].(2022, November, 01).

[78] *Zakon pro osnovni pryntsypy ta vymohy do orhanichnoho vyrobnytstva, obihu ta markuvannia orhanichnoi produktsii* 2018 (Verkhovna Rada Ukrainy) [Law on Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products 2018 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/2496–19#Text> [in Ukrainian]. (2022, November, 01).

the field of organic production, circulation and labeling of organic products (Part 1 of Article 40)[79].

A necessary condition for carrying out activity in the field of production of organic agricultural products and raw materials is the registration of operators engaged in the production and circulation of organic products. Inclusion in the State Register of operators producing products in accordance with the requirements of legislation in the field of organic production, circulation and labeling of organic products is an important and necessary stage in the procedure for the subject to acquire operator status. When carrying out a comparative analysis of conventional, natural and organic products, V.M. Yermolenko reasonably notes that entities engaged in the production of organic products must be included in the relevant Register[80].

According to part 6 of Article 27 of the Law of Ukraine "On Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products", a person who has concluded a contract for certification with a certification body becomes an operator and is introduced by the central executive body, which ensures the formation and implementation of the state agrarian policy, to the Register of Operators within 10 days from the date when he receives relevant information from the certification body[81]. The procedure of certification of organic pro-

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[79] *Zakon pro osnovni pryntsypy ta vymohy do orhanichnoho vyrobnytstva, obihu ta markuvannia orhanichnoi produktsii* 2018 (Verkhovna Rada Ukrainy) [Law on Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products 2018 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/2496–19#Text> [in Ukrainian]. (2022, November, 01).

[80] Yermolenko, V.M. (2016). Osnovni problemy vyrobnytstva ta realizatsii orhanichnoi produktsii v Ukraini [The main problems of production and sale of organic products in Ukraine]. *Upravlinnia rozvytkom* [*Development management*], no. 4 (186), 23 [in Ukrainian].

[81] *Zakon pro osnovni pryntsypy ta vymohy do orhanichnoho vyrobnytstva, obihu ta markuvannia orhanichnoi produktsii* 2018 (Verkhovna Rada Ukrainy) [Law on Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products 2018 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/2496–19#Text> [in Ukrainian]. (2022, November, 01).

duction and/or circulation of organic products, which precedes the registration of operators, is determined by Article 27 of the Law of Ukraine "On Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products"[82].

V.O. Melnyk considers inclusion of producers of organic products (raw materials) in the Register as a component of the process of certification of organic products[83]. However, in the Law of Ukraine "On Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products", these procedures are distinguished. At the same time, certification of organic production and/or circulation of organic products is a necessary condition for inclusion of the entity in the State Register of operators producing products in accordance with the requirements of the legislation in the field of organic production, circulation and labeling of organic products.

In accordance with Article 1 of the Law of Ukraine "On Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products", "The State Register of operators manufacturing products in accordance with the requirements of the legislation in the field of organic production, circulation and labeling of organic products is an official list of operators that carry out organic production and/or circulation of organic products in accordance with the requirements of the legislation in the field of organic production, circulation and labeling of organic products contained in the information database"[84].

[82] *Zakon pro osnovni pryntsypy ta vymohy do orhanichnoho vyrobnytstva, obihu ta markuvannia orhanichnoi produktsii* 2018 (Verkhovna Rada Ukrainy) [Law on Basic Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products 2018 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/2496–19#Text> [in Ukrainian]. (2022, November, 01).

[83] Melnyk, V.O. (2018). *Pravove rehuliuvannia orhanichnoho silskohospodarskoho vyrobnytstva v Ukraini:* avtoref. dys. kand. yuryd. nauk [*Legal regulation of organic agricultural production in Ukraine:* thesis abstract of the Candidate of Juridical Sciences]. Kyiv, 16 [in Ukrainian].

[84] *Zakon pro osnovni pryntsypy ta vymohy do orhanichnoho vyrobnytstva, obihu ta markuvannia orhanichnoi produktsii* 2018 (Verkhovna Rada Ukrainy) [Law on Basic

Thus, the legislation on the production of organic agricultural products (raw materials) includes a system of legal acts of different legal force that regulate social relations in the field of production and circulation of organic agricultural products (raw materials). The most important is the Law of Ukraine dated July 10, 2018 No. 2496-VIII "On the basic principles and requirements for organic production, circulation and labeling of organic products".

An important direction in the development of national legislation on organic production is the development and adoption of subordinate legal acts that will determine the mechanism for implementing legislative provisions[85].

The legal status of operators engaged in the production and circulation of organic products, according to the national legislation, is generally brought into line with the requirements of the European legislation regarding organic production. At the same time, the procedure of registering operators engaged in the production of organic products, as well as ensuring the openness and public accessibility of such a Register, needs improvement.

One of the essential vectors of the development of the legislation on the production of organic agricultural products and raw materials is its harmonization with the legislation of the European Union and the implementation of state support measures for producers of organic agricultural products (raw materials)[86].

Principles and Requirements for Organic Production, Circulation and Labeling of Organic Products 2018 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/2496–19#Text> [in Ukrainian]. (2022, November, 01).

[85] Bahai, N.O. (2018). Legislative Regulation of the Production of Organic Agricultural Products in Ukraine. *Journal of Vasyl Stefanyk Precarpathian National University. Scientific edition Series of Social and Human Sciences, v*ol. 5, no. 2, 88 [in English]; Bahai, N.O. (2022). *Teoretychni problemy rozvytku ahrarnoho zakonodavstva Ukrainy:* monohrafiia [*Theoretical problems of the development of agrarian legislation of Ukraine:* monograph]. Ivano-Frankivsk: Suprun V. P., 256 [in Ukrainian].

[86] Bahai, N.O. (2018). Legislative Regulation of the Production of Organic Agricultural Products in Ukraine. *Journal of Vasyl Stefanyk Precarpathian National*

4. Legislation on usage and protection of lands in agriculture

A necessary prerequisite for ensuring environmental safety is the planned, scientifically based development of legislation on the protection of the natural environment and individual natural objects. When analyzing agriculture as a sphere of social production, it should be noted that agricultural lands are the main and indispensable means of production in the agricultural sector.

Theoretical and practical problems on development of the legislation on usage and protection of lands were examined by numerous representatives of ecological-legal, land-legal and agrarian-legal sciences of Ukraine. In particular, we are talking about the works of V.I. Andreytsev, O.G. Bondar, D.V. Busuyok, I.I. Karakash, T.O. Kovalenko, P.F. Kulynych, A.M. Miroshnichenko, V.V. Nosik, V.L. Muntyan, V.D. Sydor, N.I. Tytova, M.V. Shulha, Yu.S. Shemshuchenko, and other scientists. However, the mentioned problems still remain topical nowadays because of the development of land and agrarian legislation.

One needs to agree with I.I. Karakash that among all categories of lands, the most important is agricultural lands, which is a special object of productional- economic activity in the agro-industrial complex[87].

According to P.F. Kulynych, it is quite obvious that "the land legislation of Ukraine does not fully fulfill the function of a regulator of agricultural lands usage relations, as it does not ensure reliable protection of agricultural lands from the negative impact of natural and anthropogenic processes"[88]. That is why the most important task for today is the proper legislative ensuring of land protection as a central object of the ecosystem.

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*University. Scientific edition Series of Social and Human Sciences, v*ol. 5, no. 2, 88 [in English]; Bahai, N.O. (2022). *Teoretychni problemy rozvytku ahrarnoho zakonodavstva Ukrainy:* monohrafiia [*Theoretical problems of the development of agrarian legislation of Ukraine:* monograph]. Ivano-Frankivsk: Suprun V. P., 256–257 [in Ukrainian].

[87] Karakash, I.I. (2007). *Pravovoe regulirovanie agrarno-zemelnyh i prirodoresursovo-ekologicheskih otnoshenij: Sbornik izbrannyh statej, dokladov i* recenzij (1997–2007*)* [*Legal regulation of agrarian-land and natural-resource-ecological relations: Collection of selected articles, reports and reviews (1997–2007)*]. Odessa: Feniks, 51 [in Russian].

[88] Kulynych, P.F. (2011). Aktualni pravovi problemy silskohospodarskoho zemlekorystuvannia v Ukraini [Actual legal problems of agricultural land usage in Ukraine].

The main legal acts that now regulate relations regarding the usage and protection of lands are the Land Code of Ukraine[89], Laws of Ukraine "On Environmental Protection"[90], "On Land Lease"[91], "On Land Protection"[92], "On State Control over the Usage and Protection of Lands"[93], "On Land Reclamation"[94], "On Land Management"[95], "On the State Land Cadastre"[96] and others. At the same time, normative directions regarding

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Problemy rozvytku ahrarnoho ta zemelnoho prava Ukrainy: materialy Mizhnarodnoi naukovo-praktychnoi konferentsii (m. Kyiv, 25 travnia 2011 r.) [*Problems of the development of agrarian and land law of Ukraine:* materials of the international scientific and practical conference (Kyiv, 25 May 2011)]. Kyiv: Vydavnytstvo heohrafichnoi literatury "Obrii", 11 [in Ukrainian].

[89] *Zemelnyi kodeks Ukrainy* 2001 (Verkhovna Rada Ukrainy) [Land Code of Ukraine 2001 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/2768–14#Text> [in Ukrainian]. (2022, November, 01).

[90] *Zakon pro okhoronu navkolyshnoho pryrodnoho seredovyshcha* 1991 (Verkhovna Rada Ukrainy) [Law on Environmental Protection 1991 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/1264–12#Text> [in Ukrainian]. (2022, November, 01).

[91] *Zakon pro orendu zemli* 1998 (Verkhovna Rada Ukrainy) [Law on Land Lease 1998 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/161–14#Text> [in Ukrainian]. (2022, November, 01).

[92] *Zakon pro okhoronu zemel* 2003 (Verkhovna Rada Ukrainy) [Law on Land Protection 2003 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/962–15#Text> [in Ukrainian]. (2022, November, 01).

[93] *Ibid*.

[94] *Zakon pro melioratsiiu zemel* 2000 (Verkhovna Rada Ukrainy) [Law on Melioration of Lands 2000 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/1389–14#Text> [in Ukrainian]. (2022, November, 01).

[95] *Zakon pro zemleustrii* 2003 (Verkhovna Rada Ukrainy) [Law on Land Management 2003 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/858–15#Text> [in Ukrainian]. (2022, November, 01).

[96] *Zakon pro Derzhavnyi zemelnyi kadastr* 2011 (Verkhovna Rada Ukrainy) [Law on the State Land Cadastre 2011 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*].

the usage and protection of lands are also included in the acts of agrarian legislation of Ukraine: Laws of Ukraine "On Collective Agricultural Enterprise"[97], "On Farming"[98], "On Individual Peasant Farming"[99] and others.

Thus, the legislative regulation of relations regarding the usage and protection of lands in agriculture is carried out by legal acts of land and agrarian legislation. The structural interconnections between land and agrarian legislation led to the formation of complex inter-branch institutions that ensure the regulation of land relations in agriculture. In particular, such institutes include the institutes of private ownership of agricultural land, communal ownership of agricultural land, emphyteusis, lease of agricultural lands, and others.

As noted by M.V. Shulha, "relations in the field of usage, protection and reproduction of all lands, including agricultural lands, are regulated primarily by the directions of land legislation. At the same time, the regulation of land relations is carried out by the norms of agrarian legal acts"[100]. The peculiarity of the modern legal regulation of land relations,

<https://zakon.rada.gov.ua/laws/show/3613–17#Text> [in Ukrainian]. (2022, November, 01).

[97] *Zakon pro kolektyvne silskohospodarske pidpryiemstvo* 1992 (Verkhovna Rada Ukrainy) [Law on Collective Agricultural Enterprise 1992 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/2114–12#Text> [in Ukrainian]. (2022, November, 01).

[98] *Zakon pro fermerske hospodarstvo* 2003 (Verkhovna Rada Ukrainy) [The Law on Farming 2003 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/973–15#Text> [in Ukrainian]. (2022, November, 01).

[99] *Zakon pro osobyte selianske hospodarstvo* 2003 (Verkhovna Rada Ukrainy) [The Law on Personal Peasant Farming 2003 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/742–15#Text> [in Ukrainian]. (2022, November, 01).

[100] Shulha, M.V. (2018). Ahrarno-pravove rehuliuvannia zemelnykh vidnosyn [Agrarian-legal regulation of land relations]. *Priorytetni napriamy rozvytku ahrarnoho zakonodavstva i prava v suchasnykh umovakh:* Materialy naukovo-praktychnoi konferentsii (Kharkiv, 20 kvitnia 2018 r.) [*Priority directions for the development of agrarian legislation and law in modern conditions*: Materials of the scientific and practical conference (Kharkiv, April 20, 2018)]. Kharkiv: Yurait, 91 [in Ukrainian].

according to the scientist, "consists in the fact that it includes, first of all, the norms of not only public, but also private law"[101].

Land legislation is defined in legal encyclopedic literature as "a system of legal acts regulating public land relations"[102]. In a broad sense, land legislation is interpreted as such that "constitutes a set of laws and subordinate legal acts, which is a form of expression of land legal norms contained in these acts"[103].

V.D. Sydor considers the system of land legislation of Ukraine as a differentiated system based on the principles of subordination and coordination of its structural components, a set of legal acts organized according to various objective criteria, which is formed for the most effective use of land legal norms[104]. Since land law institutions are distinguished in the land law system, such differentiation is also characteristic of the cognominal branch of legislation.

In O.G. Bondar's opinion, "the consolidation at the legislative level of the plurality of subjects of land ownership rights and the gradual formation of land circulation led to the emergence of a significant group of significantly new land relations of a property nature (legal relations of land

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[101] Shulha, M.V. (2010). Zemelni vidnosyny v Ukraini: osoblyvosti pravovoho rehuliuvannia [Land relations in Ukraine: peculiarities of legal regulation]. *Aktualni problemy pravovoho rehuliuvannia ahrarnykh, zemelnykh, ekolohichnykh vidnosyn i pryrodokorystuvannia v Ukraini i krainakh SND*: Mizhnar. nauk.-prakt. konf. (m. Lutsk, 10–11 veresnia 2010 r.): zbirnyk naukovykh prats [*Actual problems of legal regulation of agrarian, land, environmental relations and nature use in Ukraine and the CIS countries:* International scientific and practical conference (Lutsk, September 10–11, 2010): Collection of scientific works]. Lutsk: RVV LNTU, 2010. 79 [in Ukrainian].

[102] *Velyka ukrainska yurydychna entsyklopediia. U dvadtsiaty tomakh* [Great Ukrainian Legal Encyclopedia. In twenty volumes]. (2019) Nats. akad. prav. nauk Ukrainy; In-t derzhavy i prava im. V.M. Koretskoho NAN Ukrainy: Nats. yuryd. un-t im. Yaroslava Mudroho, vol. 16, 203 [in Ukrainian].

[103] *Velyka ukrainska yurydychna entsyklopediia*. U dvadtsiaty tomakh (2019) [Great Ukrainian Legal Encyclopedia. In twenty volumes]. Nats. akad. prav. nauk Ukrainy; In-t derzhavy i prava im. V.M. Koretskoho NAN Ukrainy: Nats. yuryd. un-t im. Yaroslava Mudroho, vol. 16, 203 [in Ukrainian].

[104] Sydor, V.D. (2011). *Zemelne zakonodavstvo Ukrainy: suchasnyi stan ta perspektyvy rozvytku*: monohrafiia [*Land legislation of Ukraine: current state and development prospects:* monograph]. Kyiv: Yurydychna dumka, 2011, 236–237 [in Ukrainian].

ownership and in the field of land transactions), which, however, did not lose their land-legal nature"[105]. The scientist substantiates an important conclusion about the need to ensure the primacy of land law norms over civil law, which "is due to the need to ensure the realization of the social function of land and the protection of this natural resource (especially in light of the sharp increase in the intensity of its use and, as a result, the harmful anthropogenic impact on lands), the social and economic importance of land, its objectively existing limitation and irreplaceability"[106].

N.V. Ilkiv highlighted the peculiarities of the legal regime of agricultural lands, to which the scientist attributes the following: "they occupy a central place in the composition of the land fund of Ukraine due to the special features inherent in this object; the priority of usage of agricultural lands among other types of land usage; mandatory of targeted usage; a clearly defined circle of subjects to whom they can be provided for usage or ownership; a clear definition of the purpose for which they can be provided for usage or ownership, as well as of those who can be their buyers; establishing restrictions and guarantees in order to preserve their targeted usage, since these lands are not only a means of production, but also a natural object; the presence of an internal division of agricultural lands, since certain features are inherent to each of the subspecies; compensation for losses of agricultural production caused by the removal of agricultural lands for the usage for purposes not related to agriculture; the special nature of the competences of subjects, which is due to the peculiarities of these lands"[107].

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[105] Bondar, O.H. (2005). *Zemlia yak obiekt prava vlasnosti za zemelnym zakonodavstvom Ukrainy:* avtoref. dys. ... kand. yuryd. nauk [*Land as an object of property rights under the land legislation of Ukraine*: thesis abstract of the Candidate of Juridical Sciences]. Kyiv, 13–14 [in Ukrainian].

[106] Bondar, O.H. (2005). *Zemlia yak obiekt prava vlasnosti za zemelnym zakonodavstvom Ukrainy:* avtoref. dys. ... kand. yuryd. nauk [*Land as an object of property rights under the land legislation of Ukraine:* thesis abstract of the Candidate of Juridical Sciences]. Kyiv, 14 [in Ukrainian].

[107] Ilkiv, N.V. (2007). *Orenda zemel silskohospodarskoho pryznachennia v Ukraini: teoretychni y praktychni aspekty:* monohrafiia [*Lease of agricultural lands in Ukraine: theoretical and practical aspects:* monograph]. Kyiv, 24 [in Ukrainian].

Directions of improvement of the modern legislative regulation on the usage and protection of land in the agricultural sector include: regulation of all land relations by a single codification act of land legislation; elimination of contradictions between normative legal acts of land, agrarian, civil and other branches of legislation; ensuring stability in the legislative regulation of land relations in agriculture.

Particularly important in this context is, in particular, the development of the legislation on land protection. Since the 1970s, the rational usage and protection of land has been recognized as one of the main tasks of land legislation, which indicates the importance of legal protection of land in the mechanism of legal regulation of land relations[108].

In legal science, the term "legal protection of land", along with its legally defined interpretation as a system of appropriate measures[109], is also considered in other meanings: as an institution of land law, that is, as a set of land-law norms that regulate relations regarding rational usage and land protection; as a system of social relations regulated by legal norms to ensure rational usage and protection of land[110].

As M.V. Shulha rightly notes, "the declaration of land as the main national wealth, which is under special protection of the state, and the recognition of the Ukrainian people as the subject of the right to own natural resources, including land, inspired hope that land resources, being a unique natural resource, will form the basis of the economic development of the state and the material well-being of the people"[111].

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[108] *Velyka ukrainska yurydychna entsyklopediia*. U dvadtsiaty tomakh (2019) [Great Ukrainian Legal Encyclopedia. In twenty volumes]. Nats. akad. prav. nauk Ukrainy; In-t derzhavy i prava im. V.M. Koretskoho NAN Ukrainy: Nats. yuryd. un-t im. Yaroslava Mudroho, vol. 16, 497 [in Ukrainian].

[109] Zakon pro okhoronu zemel 2003 (Verkhovna Rada Ukrainy) [Law on Land Protection 2003 (Verkhovna Rada of Ukraine)]. *Ofitsiynyi sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/962–15#Text> [in Ukrainian]. (2022, November, 01).

[110] *Velyka ukrainska yurydychna entsyklopediia*. U dvadtsiaty tomakh (2019) [Great Ukrainian Legal Encyclopedia. In twenty volumes]. Nats. akad. prav. nauk Ukrainy; In-t derzhavy i prava im. V.M. Koretskoho NAN Ukrainy: Nats. yuryd. un-t im. Yaroslava Mudroho, vol. 16, 497 [in Ukrainian].

[111] Shulha, M.V. (2016). Okhorona zemel yak konstytutsiino-pravova katehoriia [Land protection as a constitutional-legal category]. *Konstytutsiini zasady ahrarnoho,*

Indeed, the Land Code of Ukraine, adopted on October 25, 2001, somewhat expanded the boundaries of legal regulation of relations regarding land protection, compared to the Land Code of Ukraine of December 18, 1990 in the version from March 13, 1992. Thus, if the Land Code of Ukraine dated December 18, 1990 contained only 6 articles on land protection (Chapter III, Articles 82–87), then the Land Code of Ukraine dated October 25, 2001 already contained 11 articles, combined into 3 chapters within the framework of Chapter 4 "Land Protection". The norms of the codified act of land legislation are devoted to defining the tasks, content and procedure of land protection, as well as establishing general provisions on the protection of technogenic polluted lands, land conservation, etc. it is important, in particular, to include legislative definitions of the concepts "technologically polluted land", "degraded land", "low-productivity land" in the Land Code of Ukraine and establishment of the basic principles of reclamation, land conservation, etc.

At the same time, it should be noted that the representatives of agrarian-legal science (V.I. Andreitsev[112], N.I. Tytova[113]) even during the development of the new Land Code of Ukraine justified the position that the norms regarding land protection must be contained in the codified act of land legislation. In spite of this, the Land Code of Ukraine contains a mandatory rule that the order of land protection is established by law (Part 2 of Article 164 of the Land Code of Ukraine). In addition, only chapter 4 of the Land Code of Ukraine contains 4 additional norms (part 2 of article 165, part 3 of article 169, part 2 of article 170, part 4 of article 172 of the Land Code of Ukraine). This situation led to the fact that the

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zemelnoho ta ekolohichnoho prava: 20 rokiv rozvytku: materialy "kruhloho stolu" (m. Kyiv, 27 travnia 2016 roku) [*Constitutional principles of agrarian, land and environmental law: 20 years of development*: materials of the "round table" (Kyiv, May 27, 2016)]. Chernivtsi: Kondratiev A.V., 63 [in Ukrainian].

[112] Andreitsev, V.I. (1999). *Pravovi zasady zemelnoi reformy i pryvatyzatsii zemel v Ukraini:* navch.-prakt. posibnyk [*Legal principles of land reform and land privatization in Ukraine:* academic-practical manual]. Kyiv: Istyna, 35, 71 [in Ukrainian].

[113] Tytova, N.I. (2000). Do kontseptsii novoho osnovnoho zemelnoho zakonu Ukrainy [To the concept of the new basic land law of Ukraine]. *Pravo Ukrainy* [*Law of Ukraine*], no. 4, 68–73 [in Ukrainian].

norms of the Land Code of Ukraine regarding the protection of land did not have practical application for a long time because of the lack of a legally established mechanism for their implementation[114].

As N.I. Tytova rightly noted, "the widespread practice of adopting separate land laws on the regulation of relations, the content of which should be the legal matter of the code, has a negative effect on law enforcement practice"[115].

Legislative ensuring of land protection is carried out with the help of a large number of standard legal acts of different legal force, which will negatively influence the effectiveness of legal regulation of land relations[116].

In general, a significant drawback of the development of legislation on land protection is the lack of a unified state policy in the field of legal regulation of land relations. This is manifested, in particular, in determining the main directions of law-making activity of state bodies.

One of the main directions of further law-making activity of state bodies is the adoption of the "Transitional Provisions" provided for in Part 2 of Article 24, Paragraphs 2, 3 of the Law of Ukraine "On Land Protection" of the National Program for the Usage and Protection of Land[117].

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[114] Bahai, N.O. (2008). Zakonodavstvo Ukrainy pro okhoronu zemel: problemy rozvytku [Legislation of Ukraine on land protection: problems of development]. *Aktualni problemy vdoskonalennia chynnoho zakonodavstva Ukrainy:* zbirnyk naukovykh statei [*Actual problems of improving the current legislation of Ukraine:* Collection of scientific articles], no. 20, 141 [in Ukrainian].

[115] Tytova, N.I. (2004). Spivvidnoshennia Zemelnoho ta Tsyvilnoho kodeksiv Ukrainy: deiaki problemy [Interrelation Land and Civil Codes of the Ukraine: some problems]. *Pravo Ukrainy* [*Law of Ukraine*], no. 4. 77 [in Ukrainian].

[116] Bahai, N.O. (2008). Zakonodavstvo Ukrainy pro okhoronu zemel: problemy rozvytku [Legislation of Ukraine on land protection: problems of development]. *Aktualni problemy vdoskonalennia chynnoho zakonodavstva Ukrainy:* zbirnyk naukovykh statei [*Actual problems of improving the current legislation of Ukraine:* Collection of scientific articles], no. 20, 140 [in Ukrainian].

[117] Bahai, N.O. (2004). Rozvytok zakonodavstva Ukrainy pro okhoronu zemel: problemy i perspektyvy [Development of legislation of Ukraine on land protection: problems and prospects]. *Materialy Mizhrehionalnoi naukovo-praktychnoi konferentsii "Zabezpechennia ekolohichnoi bezpeky – obov'iazok Ukrainskoi derzhavy"* (Ivano-Frankivsk, 24–25 veresnia 2004 roku) [*Materials of the Interregional scientific and practical conference "Ensuring ecological security – the duty of the Ukrainian state"* (Ivano-Frankivsk, September 24–25, 2004)]. Ivano-Frankivsk, 139 [in Ukrainian].

Thus, the modern period of development of the land and agrarian legislation of Ukraine is characterized by the activation of the process of legal acts on land protection. However, the late adoption of the main legal acts on land protection had a negative impact on the implementation of measures to reform land relations in Ukraine. A significant drawback of the current stage of development of the legislation on land protection is also the absence of a national program for the use and protection of land.

Since unfortunately, neither the Land Code of Ukraine nor the Law of Ukraine "On Land Protection" do not currently provide comprehensive legal regulation of social relations in the field of land protection, the process of developing and adopting many legal acts designed to define the mechanism of implementation of the main norms of the Law of Ukraine "On Land Protection" is now underway. Such imperfection of Section 4 of the Land Code of Ukraine and the Law of Ukraine "On Land Protection" will lead to unnecessary layering of legal acts of different legal force dedicated to separate issues of land protection.

In this regard, there is a need to improve the legislative provision of land protection by filling existing gaps in the legal regulation of the specified relations, removing unnecessary overlaps and contradictions between regulatory and legal acts on land protection and their proper systematization[118].

In this context, proper legislative support for the implementation of the state land policy, which, according to M.V. Shulha, is a type of state policy "that includes a set of ideas, goals, tasks, methods, approaches aimed at the development of land and legal regulation"[119], is also important.

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[118] Bahai, N.O. (2008). Zakonodavstvo Ukrainy pro okhoronu zemel: problemy rozvytku [Legislation of Ukraine on land protection: problems of development]. *Aktualni problemy vdoskonalennia chynnoho zakonodavstva Ukrainy:* zbirnyk naukovykh statei [*Actual problems of improving the current legislation of Ukraine:* Collection of scientific articles], no. 20, 145 [in Ukrainian].

[119] Shulha, M.V. (3022). Aktualni aspekty derzhavnoi zemelnoi polityky [Current aspects of state land policy]. *Problemy rozvytku ahrarnoho ta zemelnoho prava Ukrainy:* materialy Mizhnarodnoi naukovo-praktychnoi konferentsii (m. Kyiv, 25 travnia 2011 r.) [*Problems of the development of agrarian and land law of Ukraine:* mate-

Proper legal regulation of land use relations is also significant: in particular, the inclusion of prescriptions regarding land leases in the codification act of land legislation, more detailed regulation of relations regarding limited property rights to land plots, in particular, superficies and emphyteusis.

Therefore, the legislative regulation of relations regarding the usage and protection of land in agriculture is carried out by the legal acts of land and agrarian legislation. The structural interrelationships between land and agrarian legislation led to the formation of complex inter-branch institutions that ensure the regulation of land relations in agriculture.

Directions of the improvement of the legislation on the usage and protection of land in the agricultural sector include: regulation of all land relations by a single codification act of land legislation; elimination of contradictions between legal acts of land, agrarian, civil and other branches of legislation; ensuring stability in the legislative regulation of land relations in agriculture[120].

Therefore, greening of agricultural legislation is a conceptual direction of its modern development, which involves the implementation of ecological principles and requirements in the content of legal acts that regulate agricultural production activity. The essence of such greening consists, first of all, in the formation of qualitatively new legal prescriptions based on general principles and ideas of environmental protection and rational nature management, which will ensure specialized legal regulation of agrarian relations.

So, in our opinion, the main directions of greening of the modern agrarian legislation are the following:

- legislative consolidation of the peculiarities of the legal status of producers of agricultural products as nature users in the acts of agrarian legislation;

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rials of the International Scientific and Practical Conference (Kyiv, May 25, 2011)]. Kyiv: Vydavnytstvo heohrafichnoi literatury "Obrii", 25 [in Ukrainian].

[120] Bahai, N.O. (2021). *Teoretyko-metodolohichni zasady rozvytku ahrarnoho zakonodavstva Ukrainy v umovakh yevrointehratsii:* avtoreferat dys. ... dokt. yuryd. nauk [*Theoretical and methodological foundations of the development of agrarian legislation of Ukraine in the conditions of European integration.* Thesis abstract of the Doctor of Juridical Sciences]. Kyiv, 20 [in Ukrainian].

- further specialization of environmental requirements regarding land reclamation, chemical treatment in agriculture, implementation of certain types of agricultural production activity and consolidation of such specialized legal prescriptions of a complex nature at the legislative level;
- regulatory support for the rational usage and protection of agricultural lands, preservation and reproduction of soil fertility (by supplementing the Land Code of Ukraine with regulations on land protection and by greening of land legal prescriptions that regulate relations of land usage for the needs of agricultural production);
- legislative support for the process of greening of agriculture as a branch of material production, which provides for both the adoption of new legal acts and the introduction of changes and additions to existing acts on the implementation of progressive farming systems, resource-saving technologies of agricultural production, etc.

The analysis of legal acts regulating relations of environmental protection in agriculture made it possible to conclude that they can be divided into three groups:

1) environmental-legal acts that establish the general principles of environmental protection and contain defining provisions regarding directions of environmental protection in various spheres of interaction between society and nature, including in agriculture;
2) standard legal acts of environmental legislation, which determine the requirements for the protection of individual natural resources;
3) acts of agrarian legislation containing legislative directions on environmental protection.

It is argued that the legislative institution of environmental protection in agriculture includes a system of legislative prescriptions contained in legal acts of environmental and agrarian legislation, and by its nature is a complex interdisciplinary legislative institution.

An important direction in the development of the national legislation on organic production is the development and adoption of bylaws that will determine the mechanism for implementing legislative provisions.

One of the essential vectors of the development of legislation on the production of organic agricultural products and raw materials is its har-

monization with the legislation of the European Union and the implementation of state support measures for producers of organic agricultural products (raw materials).

Legislative regulation of relations regarding the usage and protection of land in agriculture is carried out by legal acts of land and agrarian legislation. The structural interrelationships between land and agrarian legislation led to the formation of complex interdisciplinary institutions that ensure the regulation of land relations in agriculture.

Areas of improvement of the legislation on the use and protection of land in the agricultural sector include: regulation of all land relations by a single codification act of land legislation; elimination of contradictions between legal acts of land, agrarian, civil and other branches of legislation; ensuring stability in the legislative regulation of land relations in agriculture.

CHAPTER 3

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The main aspects of sustainable land use

The section was carried out research about termination land use in the case of the non-compliance principle of sustainable land use. The author proposes to consider sustainable land use from the point of view of social (territorial and spatial planning), economical (as a means of production), and ecological (as a natural resource) aspects. It is proposed to consider that the use of the land plot for its intended purpose and rational land use are components of the ecological part of sustainable land use, and territorial and spatial planning is the socio-economic aspect of sustainable land use. The position is proposed, in it is necessary to provide in the legislation additional grounds for the termination of land use, taking into account ecological, economic, and social aspects of sustainable land use, which should have a preventive function for the preservation of land resources.

1. General characteristics of sustainable land use in the context of historical development

The use of natural resources affects not only the natural environment but also people. The practice has shown that the accelerated pace of the industrial revolution not only opened new economic horizons of development but also affected the environment. Everything on planet Earth is

interconnected, nothing disappears without a trace and nothing appears without a reason. Therefore, the exhausting attitude towards nature has led to the reduction of productive territories, the disappearance of entire species of animals and plants, and air and water resources carry a hidden threat of the emergence of new diseases. In this way, the gradual destruction of the human race is also taking place. At a certain stage in its development, humanity finally decided to stop destructive activities for future generations. The process of recovery and prevention of negative consequences for the environment, and at the same time gradual development, was called sustainable development.

Since 1972 – the time of the United Nations Conference on the Human Environment, which took place in Stockholm in June 1972, until now, countries around the world have, to one degree or another, struggled with environmental problems that affect all living things. The Declaration of the United Nations Conference on the Human Environment became the starting point for the formation of international environmental law, in this international act the main environmental challenges and the principles of overcoming them were united for the first time. Many years have passed since the international community paid special attention to environmental problems. If at first these were problems for which there is still time to solve, then today they are problems that should have been solved yesterday. Unfortunately, ecological processes, like all living things, cannot be put on hold. Therefore, if yesterday the issues of ecology deserved attention, today it is an ecological disaster.

As stated in the Stockholm Declaration of 1972, the time has come when we must regulate our activities around the world with greater concern for the environmental consequences of these activities. Through ignorance or indifference, we can cause enormous and irreparable damage to the earth's environment, on which our lives and well-being depend. We have broad prospects for improving the quality of the environment and creating good living conditions. In order to achieve freedom in the natural world, man must use his knowledge to create a better environment in accordance with the laws of nature. The protection and improvement of the environment for present and future generations has become the most important goal of humanity – a goal that must be achieved jointly and in

accordance with the established and fundamental goals of peace and international economic and social development[1].

For the first time at the international level, representatives of the world's countries spoke about preserving natural resources for present and future generations through careful planning and management. Environmental management is an integral element of the organization of production activities, thanks to which it is possible to predict the potential impact of such activities on the environment and, accordingly, to adjust them in order to prevent destructive consequences for nature. According to principles 13 and 14 of the Stockholm Declaration, in order to ensure more rational management of resources and thereby improve the environment, states must develop a unified and coordinated approach to planning their development to ensure that this development meets the needs of protecting and improving the environment for the benefit of the population of these states. Rational planning is an essential means of resolving any inconsistencies between the needs for development and the need for protection and improvement of the environment[2]. Thus, the first principle that can be formed from the above: the use of natural resources should be rational, that is, in such a way as to achieve a balance between the needs of humanity, environmental protection, and the possibility of reproducing such resources, their improvement.

The further development of international environmental law is associated with the adoption of the United Nations Environment Programme (UNEP) and the World Charter for Nature (1982). The provisions of international acts follow a clear position to stop the degradation of natural systems due to excessive consumption and improper use of natural resources, since such behavior leads to the inability to establish an appropriate economic order between peoples and between states, leads to the destruction of the economic, social and political basis of civilization[3]. As

[1] Declaration of the United Nations Conference on the Human Environment. (1972). *General Assembly of the United Nations*. <https://www.un.org/en/conferences/environment/stockholm1972> [in English]. (2022, September, 18).
[2] *Ibid*.
[3] World Charter for Nature. (1982). *General Assembly of the United Nations*. <https://digitallibrary.un.org/record/39295> [in English]. (2022, September, 18).

practice has shown, the exhausting and consumerist attitude to natural resources led to the degradation of these resources and the inability to reuse them, which in turn had a negative impact on the country's economic development. Environmental problems have no borders, so river pollution in one country affects water quality in another. Therefore, ecological management of economic activity aims to balance ecological and economic components for the sustainable development of states. The agenda for the 21st century, adopted as part of the Second UN Conference on Natural Environment and Development in Rio de Janeiro (1992), formulated in more detail the content of the principle of sustainable development, taking into account the rational use of nature. Within the framework of sustainable development research, attention is drawn to sustainable land use. Considering the fact that land, as a natural object, is a connecting link with other natural objects, and also plays an important socio-economic function, we consider it appropriate to investigate sustainable land use in the context of sustainable development. The exploration of compliance with the principle of sustainable land use is essential from the point of view of the ecological and economic value of land for the development of states and preservation of the natural environment.

According to Chapter 10 of Chapter II of the Agenda for the 21st Century, an integrated approach to planning and rational use of land resources consists in facilitating the allocation of land for those uses that provide the most sustainable benefits, and in promoting the transition to the rational and integrated use of land resources. At the same time, environmental, social, and economic aspects should be taken into account[4]. Thus, the legal regulation of land relations should contribute to the most optimal land use and rational management of land resources, taking into account the development and functioning of countries. Accordingly, the central concept of sustainable land use is the rational use of land resources.

Everything living in the surrounding natural environment is in one way or another connected with land resources. The broadest and most

[4] Adoption of the agreements on environment and development: agenda 21. (1992). *United Nations*. <https://digitallibrary.un.org/record/148150?ln=en> [in English]. (2022, September, 18).

comprehensive interpretation of land also includes natural resources, such as soil, minerals, water, and biodiversity of the land. These components form ecosystems and perform a number of functions that are necessary to preserve the integrity of life support systems and the productive capabilities of the environment. Land resources should be used in such a way as to benefit from all these characteristics[5]. Thus, at the international level, the concept of "land" is considered in the context of a combination of natural resources: soil, minerals, water, and biodiversity. Similarly, the concept of "land" is defined in the Great Explanatory Dictionary of the Ukrainian Language as: "1. The third large planet from the Sun, which rotates on its axis and around the Sun; 2. The upper layer of the earth's crust; 3. A dark brown substance that is part of the earth's crust"[6].

From the point of view of the law, the concept of "land" is defined in accordance with art. 1 of the Law of Ukraine "On Land Protection" as a land surface with soils, minerals, and other natural elements that are organically combined and function together with it[7]. Along with the concept of "land", Ukrainian legislation defines the concept of "land plot", which, in accordance with part 1 of art. 79 of the Land Code of Ukraine is considered "a part of the earth's surface with established boundaries, a certain location, with defined rights in relation to it"[8]. The concept of "soil" is defined separately in the legislation of Ukraine in accordance with art. 1 of the Law of Ukraine "On Land Protection" as "a natural-historical

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[5] Adoption of the agreements on environment and development: agenda 21. (1992). *United Nations.* <https://digitallibrary.un.org/record/148150?ln=en> [in English]. (2022, September, 18).

[6] Busel, V.T. (2005). *Velykyy tlumachnyy slovnyk suchasnoyi ukrayinskoyi movy [A large explanatory dictionary of the modern Ukrainian language].* Kyiv: VTF "Perun", 1728 [in Ukrainian].

[7] *Zakon pro okhoronu zemli* 2003 (Verkhovna Rada Ukrainy) [Law on land protection 2003 (Verkhovna Rada Ukrainy).] *Ofitsiynyy sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/962–15#Text> [in Ukrainian] (2022, September, 18).

[8] *Zemelnyy kodex Ukrainy* 2001 (Verkhovna Rada Ukrainy) [Land Code of Ukraine 2001 (Verkhovna Rada Ukrainy)]. *Ofitsiynyy sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/2768–14#Text> [in Ukrainian] (2022, September, 18).

organo-mineral body that formed on the surface of the earth's crust and is the center of the greatest concentration of nutrients, the basis of life and development of humanity due to its most valuable property – fertility"[9]. Also, the legislator defines the concept of "land resources" as the aggregate natural resource of the land surface as the spatial basis of settlement and economic activity, the main means of production in agriculture and forestry[10]. Thus, the legislation of Ukraine distinguishes between the concepts of "land", "land plot", "soil" and "land resources". It is clear that the concept of "land" is the broadest, as it includes all the natural and economic characteristics of this natural object, while the concept of "land plot" is a term used to denote a specific object of legal relations, which is registered in accordance with the law and with which a stable material relationship has been established. The concept of "land resources" defines those useful properties of land that are inherent to it as a natural resource used in economic or other activities.

According to parts 2, and 3 of art. 79 of the Land Code of Ukraine, the ownership right to a land plot extends within its boundaries to the surface (soil) layer, as well as to water bodies, forests, and perennial plantations located on it, moreover the ownership right to a land plot extends to the space located above and below the surface of the plot to the height and depth necessary for the construction of residential, industrial and other buildings and structures[11]. In accordance with part 9 of art. 79-1 of the Land Code of Ukraine, a land plot is considered an object of civil rights from the moment of its formation (except for cases of the sublease, and easement in respect of parts of land plots) and state registration of the ownership right to it[12]. That is, a land plot after its formation and state registration of rights to it can be considered an object of civil rights. In addition, the legal regime of the land plot extends to the surface (soil) layer, as well as to water bodies, forests, and perennial plantations, the space above and below the land plot, necessary for the construction of

[9] *Supra*, note 7.
[10] *Ibid*.
[11] *Supra*, note 8.
[12] *Ibid*.

buildings and structures. Note that the rights are established on a land plot, and not on land or a land resource, which confirms the position on the distinction of concepts highlighted earlier.

As noted by V.D. Sydor, the legal regime of land is "a special order of legal regulation of the behavior of participants in social relations in the field of land use and protection, as well as land resource management, which is expressed in a combination of legal means aimed at ensuring the rational use and protection of land in the interests of the entire society and specific landowners and land users"[13]. In this case, the scientist uses the concept of "land resources" in the context of designation of useful properties of the land that are used and subject to protection and rational use. The legal regime of lands is the procedure for the use and protection of lands established by law. A legal regime is established on each land plot depending on the land category and purpose.

According to art. 5 of the Land Code of Ukraine, the land legislation of Ukraine is based, among other things, on the principle of combining the features of land use as a territorial basis, a natural resource, and the main means of production and also ensuring the rational use and protection of land. It follows from the above that, according to the legislation of Ukraine, the land is considered in the context of the territorial basis, natural resource, and the main means of production. Researching the legal regulation of nature use, N.R. Kobetska comes to the conclusion that sustainable nature use must be considered "as the use of natural resources taking into account social, economic and ecological factors in their distribution and use"[14]. As stated in the Law of Ukraine "On Land Management", sustainable land use is the use of land, which is determined by the long-term use of a land plot without changing its purpose, deterioration of its quality

[13] Sydor, V.D. (2010). Pravovyy rezhym zemli v zemel'nomu zakonodavstvi Ukrainy [Legal regime of lands in the land legislation of Ukraine]. *Advokat* [*Lawyer*], 8, 27–31 [in Ukrainian].

[14] Kobetska, N.R. (2016). *Dozvilne i dohovirne rehulyuvannya vykorystannya pryrodnykh resursiv v Ukrayini: pytannya teoriyi ta praktyky [Permissive and contractual regulation of using natural resources in Ukraine: theory and practice issues].* Ivano-Frankivsk: Vasyl Stefanyk Precarpathian National University, 21 [in Ukrainian].

characteristics, and ensuring optimal parameters of ecological and socio-economic functions of territories[15]. It can be argued that sustainable land use should take place in accordance with social (territorial and spatial planning), economic (as a means of production), and environmental factors (as a natural resource).

In Ukraine, a distinction is made between permanent (permanent use of a land plot) and temporary land use (land lease), as well as land use on the basis of limited property rights, such as a land easement, the right to use someone else's land plot for agricultural needs (emphyteusis) or for construction (surfaces). Grounds for termination of each type of land use coincide with each other, with the exception of certain grounds, taking into account the property and obligation characteristics of land use relations. Chapter 22 of the Land Code of Ukraine defines the grounds for terminating the right of ownership and the right to use a land plot. Most of the reasons for termination of land use are of a civil law nature, such as: voluntary refusal of the right to use a land plot; systematic failure to pay land tax or rent; acquisition by another person of the right of ownership of a residential building, building or structure located on a land plot; liquidation of the lessee legal entity; expiration of the term for which the land easement was established; by agreement of the parties to the contract of emphyteusis, superficiation, and others.

Among other things, environmental and legal grounds for terminating land use are also defined, that is, grounds for terminating land use due to negative physical or chemical impact on the land. For example, the grounds for terminating the right to use land are the use of a land plot in ways that contradict ecological requirements; use of the land plot not for its intended purpose; damage or destruction of the object of the land lease. The legislation of Ukraine does not specify the grounds for termination of land use due to violation of the principle of sustainable land use, therefore,

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[15] *Zakon pro zemleustriy* 2003 (Verkhovna Rada Ukrainy) [Law on land management 2003 (Verkhovna Rada Ukrainy)]. *Ofitsiynyy sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/858–15#Text> [in Ukrainian]. (2022, September, 18).

we consider it necessary to investigate whether it is possible to terminate the use of a land plot as a result of the violation of the principle of sustainable land use.

If the first international acts only outlined the problems of the use of land resources, and defined natural objects that are subject to protection and management, then the further activities of international institutions were aimed at solving specific problems. In September 2015, the UN Summit on Sustainable Development was held in New York. The final document of the Summit "Transforming our World: The 2030 Agenda for Sustainable Development" approved 17 Sustainable Development Goals. Among the main principles, special attention was paid to the preservation of land resources. In particular, goal 15 enshrines the protection and restoration of terrestrial ecosystems and promotion of their rational use, rational forest use, combating desertification, stopping and reversing the process of land degradation, and halting the loss of biodiversity. It was assumed that countries should organize a set of measures to combat desertification, restore degraded lands and soils, in particular lands affected by desertification, droughts, and floods, and strive to achieve a neutral level of land degradation worldwide[16]. Today, the main problem in the use of land resources is land degradation and desertification. However, land degradation and desertification are the end result of certain activities. Negative economic activity is mainly considered the cause of land degradation.

The legislation of Ukraine defines the concepts of "land degradation" and "soil degradation". According to art. 1 of the Law of Ukraine "On Land Protection" soil degradation – deterioration of useful properties and soil fertility due to the influence of natural or anthropogenic factors; land degradation – natural or anthropogenic simplification of the landscape, deterioration of the condition, composition, useful properties and functions of the land and other natural components organically connected to the land[17]. That is, land degradation is a broader concept and includes soil

[16] *Transforming our world: the 2030 Agenda for Sustainable Development 2015* (General Assembly of the United Nations). <https://digitallibrary.un.org/record/3976972?ln=en> [in English].
[17] *Supra*, note 7.

degradation. Today, the main goal in the field of land resource management is the achievement by countries of a neutral level of land degradation. As the scientists note, "the neutral level of land degradation (LLD) is their state, when the quantity and quality of land resources needed to maintain ecosystem functions, services to increase food security, remain constant or increase within defined temporal and spatial frameworks and ecosystems. To achieve a neutral level of land degradation need:

• to develop and implement the policy and practice of sustainable land management to ensure the minimization of current land degradation and its prevention in the future;

• restore and renaturalize degraded and unproductive lands.

The main goal in achieving the neutral level of land degradation is to identify the factors that cause desertification, develop practical measures needed to combat this phenomenon, mitigate the effects of drought; improvement of the state of disturbed agroecosystems, including changes in land use; integration into global information systems (creation of basic information centers, databases, etc.)"[18].

According to scientists, "the reasons for the intensive degradation of the soil cover are caused by sectoral approaches to the use of land resources without awareness of their global and social role. In connection with the implementation of insufficiently scientifically based land reform (fragmentation of large farms, unsoldering of land, creation of new forms of management, privatization) in Ukraine, there was a need to improve existing measures, regulatory and legal materials on soil protection"[19]. In addition, it is worth noting that "the peculiarity of the development of land relations related to the ownership, use and disposal of land lies in the

[18] Balyuk, S.A., Medvedev V.V., Vorotyntseva L.I., Shimel V. (2017) Suchasni problemy dehradatsiyi hruntiv i zakhody shchodo dosyahnennya neytral'noho yiyi rivnya [In modern problems of soil degradation and measures to achieve a neutral soil level]. *Visnyk ahrarnoyi nauky* [*Herald of Agrarian Science*], 8, 6–7 [in Ukrainian].

[19] Voloshchuk, M. (2017) Dehradatsiya gruntiv – globalna ekolohichna problema. [Soil degradation is a global environmental problem]. *Visnyk L'vivs'koho universytetu. Seriya heohrafichna* [*Bulletin of Lviv University. The series is geographical*], 51, 68 [in Ukrainian].

absence of a single concept of land use and the mechanism of its implementation"[20]. The problem of land degradation is relevant today, taking into account the fact that the amount of productive, i.e. suitable for agricultural production, land is constantly decreasing. This situation leads to food problems all over the world.

Land degradation and soil degradation are interrelated phenomena and mean negative processes on lands that lead to the impossibility of their use as a natural resource. According to art. 171 of the Land Code of Ukraine, degraded lands include: a) land plots, the surface of which has been disturbed as a result of earthquakes, landslides, karst formation, floods, mining, etc.; b) land plots with eroded, overmoistened, with high acidity or salinity, soil contaminated with chemical substances and others[21]. That is, a distinction is made between land degradation of a natural nature and that which arose due to economic and industrial activity.

It is worth noting that among the reasons for the termination of land use, the legislation does not provide for such a reason as land degradation. We draw attention to this because the very doctrine of sustainable development and sustainable land use arose due to the massive degradation of land around the world, and therefore it is quite logical to limit at the state level the types of activities that lead to degradation. Most often, courts, even if they consider the issue of the use of a land plot, which has led to degradation, terminate the right to use a land plot in connection with the use of a plot of land not for its intended purpose or pollution of this plot or for other reasons provided for in the contract or the law. It is also possible to provide in the land lease agreement a special reason for terminating such an agreement – degradation of the land due to the lessee's fault.

In the Loziv City and District Court of the Kharkiv region, case No. 629/5221/16-ts dated 14.07.2021 on the termination of the land lease agreement was considered, the essence of which was that the lessor

[20] Kovalenko, L.M. (2015) Teoretychni zasady zabezpechennya staloho rozvytku zemlekorystuvannya [Theoretical principles of ensuring sustainable development of land use]. *Problemy bezperervnoyi heohrafichnoyi osvity i kartohrafiyi* [*Problems of continuous geographical education and cartography*], 22, 76 [in Ukrainian].
[21] *Supra*, note 8.

demanded the termination of the land lease agreement in connection with the degradation of the land plot due to the lessee's fault. At the same time, the land lease agreement itself provided that in the event that the land plot is degraded, depleted or its fertility reduced due to the fault of the lessee, as well as in the case of other actions of the lessee that lead to deterioration of its quality, including man-made pollution, the lessee compensates the lessor's losses in full in accordance with the established procedure[22]. However, in the course of the trial and based on the results of the re-examination, the court made a decision, taking into account the conclusion of the examination, to refuse to satisfy the claims for termination of the land lease agreement, since the main indicators of soil quality did not deteriorate on the land plots that were used and the tendency towards physical and chemical soil degradation is not observed[23].

In practice, it is very difficult to prove the fact that the land plot was degraded due to the fault of the user, since the degradation is already a consequence, and it is extremely difficult to establish a cause-and-effect relationship with the actions of the user. As mentioned earlier, land degradation can be natural and independent of land use. In case of land degradation, such lands are subject to conservation. According to art. 171, 172 of the Land Code of Ukraine, degraded and unproductive lands are subject to conservation. The procedure for land conservation is defined in the Land Conservation Procedure, approved by the Resolution of the Cabinet of Ministers of Ukraine dated January 19, 2022 No. 35. Clause 2 of the Land Conservation Procedure specifies that land conservation is carried out by terminating or limiting their economic use in the manner prescribed by law, on fixed term and afforestation or renaturalization. In accordance with paragraph 4 of the specified Procedure, land conservation is carried out regardless of the form of ownership of the land plot at the initiative of its owner or on the basis of a corresponding submission by the territorial

[22] *Sprava Lozivs'kyy mis'krayonnyy sud Kharkivs'koyi oblasti № 629/5221/16-ts. [Decision of the Loziv city-district court of the Kharkiv region № 629/5221/16-ts.].* (2021). < https://reyestr.court.gov.ua/Review/98300670> [in Ukrainian]. (2022, September, 18).
[23] *Ibid.*

bodies of the State Geocadastre and/or the territorial bodies of the State Geoinspection[24]. In this case, it is worth noting that the initiator of land plot conservation in accordance with Clause 4 of the current Land Conservation Procedure, approved by the Order of the Ministry of Agrarian Policy and Food of Ukraine No. 283 dated 04.26.2013, can be both the owner of the land plot and the land user.

As noted, the problem of land degradation is closely related to sustainable land use, therefore, to prevent land degradation, it is necessary to develop and implement the policy and practice of sustainable land management, as well as restore and renaturalize degraded and unproductive lands. The procedure for land conservation in Ukraine is regulated at the legislative level, but it is important to dwell in more detail on preventive measures for land degradation, such as the termination of the right to use land due to a negative impact on it. That is, one should not expect a documented fact of degradation with subsequent consequences in the form of restoration measures, but, having established the fact of violation, stop land use and prevent the consequences, as is necessary to achieve sustainable land use. Therefore, it is necessary to consider each of the elements (social, economic and ecological) of sustainable land use, the leveling of which can lead to devastating consequences for the land plot.

Since Ukraine became an independent state, the development of land relations took place according to the principle of "new power – new vector". The diversity of land policy and, as a result, land legislation led to the emergence of a situation in which different legal acts regulate the same land relations. Moreover, along with the usual concept of "land plot", another one – "land share (share)" arose. For many years, the Ukrainian government tried to carry out land reform, open the land market and finally end the era of the circulation of land shares. However, everything ended with another postponement and giving time to certificate holders to

[24] *Postanova Poryadok konservatsiyi zemel* 2022 (Kabinet Ministriv Ukrainy) [Resolution of the land conservation procedure 2022 (Cabinet of Ministers of Ukraine). *Ofitsiynyy sayt Verkhovnoyi Rady Ukrainy [The official website of the Verkhovna Rada of Ukraine]*. <https://zakon.rada.gov.ua/laws/card/35–2022-%D0%BF> [in Ukrainian]. (2022, September, 18).

allocate land plots in kind (on the ground). The situation is similar to the demarcation of state-owned and communal lands when the legislation[25] determined that from the moment the law came into force, the lands were considered demarcated, but in practice, state authorities and local self-government bodies had to conduct a mass inventory and develop land management documentation for each land plot, which, of course, required resources, time and a new approach to the demarcation of these lands.

The use of land resources cannot be considered sustainable only if there is such a definition in the law. Law must correspond to the development of social relations, and therefore even numerous changes to laws or ratified international acts will not be able to make land use in Ukraine sustainable. Law is only a reaction to social change and arises based on new social formation. In addition, it should be noted that the law should respond to possible changes in these relationships. Therefore, regulation of land use should take place with consideration of possible negative impacts on the land. According to some scientists, with whom it is worth agreeing, "the task of implementing norms and standards of environmental law into the practice of economic activity, in particular, at the level of technological processes, is important today. This will require the development of programs for the transition of certain industries and industries to new standards of environmentally safe activities, the implementation of extended monitoring practices, the improvement of the environmental control system, and the strengthening of public control as its component"[26].

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[25] *Zakon pro vnesennya zmin do deyakykh zakonodavchykh aktiv Ukrainy shchodo rozmezhuvannya zemel derzhavnoyi ta komunalnoyi vlasnosti 2012*. (Verkhovna Rada Ukrainy) [Law on making changes to some legislative acts of Ukraine regarding the demarcation of state and communal lands 2012 (Verkhovna Rada Ukrainy)]. *Ofitsiynyy sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/5245–17#Text> [in Ukrainian]. (2022, September, 18).

[26] Kravtsiv, V.S., Zhuk, P.V., Kolodiychuk, I.A. (2015). Rehulyuvannya ekolohichnoyi bezpeky transkordonnoho rehionu v umovakh yevrointehratsiyi Ukrainy: naukova dopovid [Regulation of ecological security of the cross-border region in the conditions of the European integration of Ukraine (scientific report)]. *DU "Instytut rehional'nykh doslidzhen' imeni M.I. Dolishnoho NAN Ukrainy"* [*State University Institute of Regional Studies named after M.I. Dolishnyi National Academy of Sciences of Ukraine*], 99 [in Ukrainian].

Therefore, it is necessary to understand that along with the rule of law, which sets the course for sustainable development and practical implementation, there are activities of state authorities with an active civil society and the judicial system, which complements the unity of decisions on sustainable land use.

The law as a regulator of relations only outlines the boundaries of land relations, state authorities and local governments supervise and control the use of land resources, and courts ensure the application of laws and punish those who encroach and violate them in the field of land use. Thus, in order to approve sustainable land use in Ukraine, a symbiosis of the law, orderly and delimited powers of state and local authorities, and an effective judicial system are needed. We need to start from the fact that the earth as a natural object exists in a relationship with other objects of the natural environment, and man and his needs are not at the center of these processes but are only one of the elements of the environment, which can`t interfere with the laws of nature. The transition from anthropocentrism to ecocentrism is characterized by the transfer of man, with his consumerist attitude to nature, to the same level as other elements of the environment.

2. Ecological aspect of sustainable land use

The first we propose to consider is the ecological aspect of sustainable land use, which is reflected in the rational use of land within the limits of its intended purpose. Considering the fact that the ecological component of sustainable land use is related to the use of land as a natural resource, it is important to establish boundaries and types of economic activity on land plots that will allow achieving a balance between human needs and the reproduction of land resources. For the use of land in Ukraine, the category of land and the purpose of the land plot, which determine the legal regime of a specific land plot, are of great importance. According to the scientific interpretation, the purpose of the land plot is considered “as the procedure, conditions, limit of exploitation (use) of land for the relevant purposes established by law, in accordance with approved plans for the development of a certain territory and zoning of land, taking

into account the peculiarities of the legal regime of land categories”[27]. According to V.M. Yermolenko, “the division into categories of land according to the purpose was determined primarily by the practical needs of the growing weight of state control over the rational use and protection of land”[28]. It can be argued that the division of land into categories and purposes was intended to provide opportunities for state bodies to monitor the qualitative characteristics of the land in order to prevent their deterioration.

2.1. Purpose of the land plot

According to art. 1 of the Law of Ukraine “On Land Management”, the intended purpose of a land plot is the permissible directions of use of a land plot in accordance with the requirements established by law regarding the use of land of the corresponding category and the specified type of purpose[29]. In accordance with clause 1.4 of the Classification of Land Purpose Types approved by the Order of the Derzhkomzem “On Approval of the Classification of Land Purpose Types” dated 23.07.2010 No. 548, the land classification defines the division of land into separate types of land uses, which are characterized by their own legal regime and ecosystem functions, types of buildings, types of particularly valuable objects[30]. Thus, the target purpose of the land plot allows for the

[27] Hryhoretska, I.I., Izbash, K.S., Dombrovan, N.V. (2019) Pravove rehulyuvannya tsilovoho vykorystannya zemel u mezhakh naselenykh punktiv Ukrainy [Legal regulation of the targeted use of land within the population centers of Ukraine]. *Vydavets Bukayev Vadim Viktorovych* [*Bukayev Vadim Viktorovych publisher*], 43 [in Ukrainian].

[28] Yermolenko, V.M. (2020) Konstruktyvnist zastosuvannya pryntsypu tsilovoho pry-znachennya zemel [Constructiveness of the application of the principle of target land allocation]. *Pravo. Lyudyna. Dovkillya* [*Law. Human. Environment*], 3, 35 [in Ukrainian].

[29] *Supra*, note 15.

[30] *Klasyfikatsiyi vydiv tsil’ovoho pryznachennya zemel* 2010 (Nakaz Derzhkomzemu) [Classification of types of purpose land use 2010 (Order of the Derzhkomzem)]. *Ofitsiynyy sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/z1011–10#Text> [in Ukrainian]. (2022, September, 18).

establishment of directions of use of the land plot taking into account its physical characteristics. It can be argued that the purpose of the land plot is important for the territorial and spatial planning of land use as a component of the socio-economic aspect of sustainable development.

In accordance with part 1 of art. 20 of the Land Code of Ukraine, when establishing the purpose of land plots, they are assigned to a certain category of land and type of purpose[31]. According to part 3 of the mentioned article, the category of land and the type of purpose of the land plot is determined within the limits of the corresponding type of functional purpose of the territory provided for in the approved comprehensive spatial development plan of the territory of the territorial community or the general plan of the settlement[32]. Thus, today land plots are used in accordance with the type of functional purpose of the territory, the category of land, and the type of purpose of the land plot. In accordance with clause 3 of Appendix 58 of the Resolution of the Cabinet of Ministers of Ukraine dated July 28, 2021 No. 821 "On Amendments to Certain Acts of the Cabinet of Ministers of Ukraine", the change in the purpose of the land plot according to its code and name is carried out in accordance with the requirements of art. 20 of the Land Code of Ukraine. The change in the type of land plot in the information of the State Land Cadastre in the case of information on functional zones is carried out on the basis of the application of the owner (manager, in cases defined by law – the user) of the land plot located within the relevant functional zone[33].

In the Classifier of types of land plots approved by the Resolution of the Cabinet of Ministers of Ukraine, categories of land and types of land plots are defined. It is worth noting that until recently Ukrainian land

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[31] *Supra*, note 8.
[32] *Ibid*.
[33] *Postanova pro vnesennya zmin do deyakykh aktiv Kabinetu Ministriv Ukrainy* (Kabinet Ministriv Ukrainy) [Resolution on making changes to some acts of the Cabinet of Ministers of Ukraine (Cabinet of Ministers of Ukraine)]. (2021). [*Ofitsiynyy sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/821–2021-%D0%BF#Text> [in Ukrainian]. (2022, September, 18).

legislation contained such a concept as “type of land plot use”. At the time of the entry into force of the legal norm distinguishing the type of use of the land plot, the Supreme Court in its ruling dated 01.06.2021 in case No. 925/929/19 stated that “procedures for changing the type of use of the land plot, without changing its purpose category, is not provided for by the current legislation”[34]. Thus, it was envisaged to be able to change the type of use of the land plot within one purpose of the land plot. However, in accordance with the amendments to art. 20 of the Land Code of Ukraine, when the purpose of land plots is changed, the category of land and/or the type of purpose is changed. Only in certain cases in accordance with part 3 of art. 20 of the Land Code of Ukraine, it is allowed to deviate from the stipulated requirements in the process of establishing (changing) the purpose of the land plot.

According to art. 1 of the Law of Ukraine “On State Control over the Use and Protection of Lands”, non-fulfillment of the requirements regarding the use of land for – intended purpose is the non-use of a land plot, except for the implementation of scientifically based design decisions, or the actual use of a land plot that does not correspond to its intended purpose, established at the time of transfer land plot into ownership or provision for use, including for rent, as well as non-compliance with the regime of use of the land plot or its part in the event of restrictions (encumbrances) being established[35]. Thus, if the land plot is not used or is used in violation of the requirements for its intended purpose, the authorized bodies may stop such land use.

An important issue of termination of land use as a result of unintended use of a land plot remains the evidence base, that is, what evidence is considered appropriate and admissible to establish the fact of

[34] *Postanova №925/929/19 Velykoyi Palaty Verkhovnoho Sudu Ukrainy* [Resolution №925/929/19 of the Grand Chamber of the Supreme Court]. (2021). <https://reyestr.court.gov.ua/Review/97926626> [in Ukrainian]. (2022, September, 18).

[35] *Zakon pro derzhavnyy kontrol za vykorystannyam ta okhoronoyu zemel* 2003 [Law on state control over the use and protection of land 2003]. *Ofitsiynyy sayt Verkhovnoyi Rady Ukrainy* [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/963–15#Text> [in Ukrainian]. (2022, September, 18).

violation of the law. For example, in the decision of the Supreme Court from 21.06.2022, in case No. 912/1520/21, it is stated that the fact that the land plot is not being used for its intended purpose is confirmed not only by the materials of inspections of the local administration of the State Geocadastre, but also by the report of the survey of the land plot drawn up by the commission of use of land resources and environmental protection, as well as confirmed by the tenant himself[36].

In accordance with point "a" part 2 of art. 6 of the Law of Ukraine "On State Control over the Use and Protection of Land" and art. 17-1 of the Law of Ukraine "On Land Protection" the powers of central state authorities, which implement state policy in the field of land relations and implement state policy on state supervision (control) in the field of environmental protection, include state control over the use and protection of land. According to art. 10 of the Law of Ukraine "On State Control over the Use and Protection of Lands", state inspectors in the field of state control over the use and protection of lands have the right to issue mandatory prescriptions on issues of land use and protection and draw up inspection reports or protocols on administrative offenses in the field land use and protection. Similar powers in the field of supervision (control) over the use and protection of land are vested in the central executive authority in the field of environmental protection in accordance with art. 144 of the Land Code of Ukraine and point "a" part 1 of art. 20-2 of the Law of Ukraine "On Environmental Protection". Thus, the authorized bodies have the right to control the use of land plots. In case of violations, the specified bodies can issue an order to eliminate the violations or draw up a protocol for an administrative offense.

The purpose of the land plot is established for each land plot to control its use by the state, and to record the quantity and quality of land in Ukraine. When a person receives a plot of land either for ownership or for use, he knows that this plot of land belongs to a certain category and has a specifically defined purpose. With this in mind, a person who intends to

[36] *Postanova № 912/1520/21 Verkhovnoho Sudu Ukrainy* [Resolution № 912/1520/21 of the Supreme Court]. (2022). <https://reyestr.court.gov.ua/Review/105034147> [in Ukrainian]. (2022, September, 18).

engage in farming will use a plot of land for agricultural purposes, and not a plot of land for forestry purposes. In other words, the destination of the land plot serves as a certain reference point, boundaries within which you can engage in a certain type of activity on a specific land plot.

2.2. Rational use of land

Another, but the no less important, component of sustainable land use is reflected in the principle of rational land use. The United Nations defines sustainable land management (SLM) as "the use of land resources, including soils, water, animals and plants, for the production of goods to meet changing human needs, while simultaneously ensuring the long-term productive potential of these resources and the maintenance of their environmental functions"[37]. In practice, such land use is called rational. According to scientists, "rational use and protection of land are two interrelated processes aimed at increasing the productive forces of the land. They provide for:

- optimization of the distribution of the land fund between branches of the national economy and its use in each of them as efficiently as possible;

– optimization of the structure of certain types of land (arable land, perennial crops, hayfields, pastures, forests, land under water, etc.) in accordance with natural and economic zones and districts;

– development and implementation of a rational system of agriculture, which includes soil protection cultivation, fertilizers;

- liming of acidic and plastering of saline soils, crop cultivation technology, crop rotation system, etc.;

- drainage of swampy and over moistened lands and irrigation of arid lands"[38].

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[37] Sustainable Land Management. Food and Agriculture Organization of the United Nations. *Official website.* <https://www.fao.org/land-water/land/sustainable-land-management/en> [in English].

[38] Melnychuk, L.S. (2014). Problemy staloho ta ratsionalnoho zemlekorystuvannya v ukrayini [Problems of sustainable and rational land use in Ukraine]. *Hlobalni ta natsionalni problemy ekonomiky* [*Global and national economic problems*], 2, 911–912 [in Ukrainian].

Thus, rational land use is characterized by long-term production potential and at the same time prevention of negative impact from economic activity. Land during economic activity is protected by legislation following Chapter VI of the Law of Ukraine "On Land Protection". The specified section of the legislative act regulates the issues of land conservation during their use and outlines the boundaries of land use by landowners and land users. More detailed requirements for compliance with standards of quality and fertility of lands and soils are defined in the State Standards of Ukraine. For example, by Clause 3.6 of the DSTU "Soil quality. Soil fertility indicators" assessment of the quality of the land plot is based on the assignment of the land plot to a certain quality category based on natural and acquired properties, as well as on the degree of soil pollution that affects their fertility for certain crops[39].

As scientists note, "the rational use of land is such a targeted and complex use of land that achieves a balance (the most optimal, proportional and harmonious comparison) between the efficiency of land use and ecological requirements"[40]. Rational land use for each land category will differ depending on the intended use and soil composition. "Rational land use is their intended use to achieve the most optimal balance between efficient use and environmental requirements. The agricultural landscape does not remain unchanged. Human influence, for example, the application of fertilizers, leads to the flowering of water bodies; the increase in cars on the roads leads to soil and plant pollution. Therefore, the agricultural landscape needs constant supervision and control over it, as well as the implementation of several measures, for example, greening of coastal protective strips and territories along main roads, planting field protective forest strips, reducing the plowing of the territory, conducting crop

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[39] *DSTU 4362:2004 Yakist gruntu.* Pokaznyky rodyuchosti gruntiv. (Nakaz Derzhspozhyvstandartu) [State standard of Ukraine. 4362:2004 Soil quality (order of Derzhspozhivstandard)]. (2004). <http://online.budstandart.com/ua/catalog/doc-page?id_doc=67099> [in Ukrainian].

[40] Radchenko, G.O. (2005). *Ratsionalne vykorystannya zemel: ponyattya ta zmist* [Rational use of land: concepts and content]. 8, 93. <http://www.personal.in.ua/article.php?ida=14> [in Ukrainian].

rotations, creating parks and reserves"[41]. Thus, the use of land resources should be under state control to ensure a balance between efficient land use and environmental requirements.

However, it is not about control in the literal sense, since the constant intervention of state authorities in economic activity can limit the development of normal economic relations. In this case, it is, in particular, about providing the authorities with supervisory functions and the ability to react when non-compliance with the standards for the use of land resources is detected. To ensure sustainable land use, it is not enough to empower authorized bodies only with a punitive function, since such influence is directed not at the land plot, but at the offender. After bringing the culprits to justice, the stage of land restoration begins, which requires a lot of time and resources. therefore, the effective use of land and its preservation for future generations, as the main characteristics of sustainable development, lose their relevance, since the land needs restoration. the land should bear its fruits today and tomorrow, but if land resources lose their qualitative characteristics due to exhausting use, then the whole process of sustainable land use and sustainable development is disrupted. For sustainable development and sustainable land use, it is not enough to simply respond to violations, it is important to proactively influence activities. In this case, rational land use can be ensured.

Unfortunately, the legislation of Ukraine does not define the concept of rational use of a land plot, nor does it provide such grounds for terminating land use as irrational use of a land plot, in contrast to the use of a land plot not for its intended purpose. To date, in Ukrainian legislation, the environmental and legal grounds for the termination of land use are not systematized and do not reflect current environmental problems. In particular, they do not reflect the complexity of rational land use, since the land user is obliged not only to use the plot within the intended purpose but also to take measures to restore the quality characteristics of the land. In this case, if a person, carrying out a certain

[41] *Yak rozrobyty kompleksnyy plan hromady: posibnyk dlya profesionaliv* [How to Develop a Comprehensive Community Plan: A Guide for Professionals]. (2022), 62. <https://decentralization.gov.ua/news/15007> [in Ukrainian].

type of economic activity, uses land resources to the maximum extent, but within the limits of the purpose of this land plot, it is impossible to stop such land use due to the absence of a legally prescribed norm.

The essence of the termination of land use is that, unlike administrative or criminal law, such termination is not intended to punish the offender, but its purpose is to prevent violation and ensure the restoration of natural resources. Therefore, in addition to the general grounds for terminating the right to use lands, such as land pollution or the use of land not for its intended purpose, it is necessary to provide in the legislation grounds aimed at preventing the deterioration of the quality of land plots, and their degradation. In addition, it is necessary to provide in the law the ground for terminating the right to use land in connection with irrational use of land. The fact that the legislation provides a reason for the termination of land use in connection with non-purpose land use is positive for sustainable land use. However, the targeted use of land is only one of the components of sustainable use of land resources. Therefore, if there are no defined other components, it is not possible to form a unified approach to sustainable land use. Also, establishing at the legislative level the grounds for terminating the right to use land due to irrational use of land will be one of the preventive norms that will prevent land degradation. This is the main purpose of sustainable land use.

It is worth noting that the rational use of land resources is related to the purpose of the land plot, since certain types of activities are possible within each type of purpose, therefore, for example, it is prohibited to conduct agricultural production activities on a land plot for recreational purposes. In addition, "an effective organizational system of environmental safety management is designed to provide the state and regions with the opportunity to use available material and financial resources for the implementation of environmental protection measures and the implementation of a set of management actions to change the sectoral and technological structure of production in the direction of reducing its impact on the environment. This policy is implemented at three levels of government: national, regional, and local. The current administrative and institutional infrastructure of state environmental management is mainly centralized

with duplication of functions at the regional and local levels"[42]. In this case, state bodies have the authority to control the use and protection of land, which is aimed at ensuring the rational use of land plots at the national, regional, and local levels. However, as a rule, such control is carried out in the case of the lease of land plots of state or communal property, which, of course, does not allow controlling the use of privately owned land plots, since the acquisition of ownership rights to a land plot does not imply the acquisition of the right to use the land plot without complying with the requirements of the law. We draw attention to the fact that the implementation of sustainable land use requires not only appropriate regulatory acts but also the proper activity of state authorities and local self-government in combination with an active civil society.

The principle of sustainable development and, accordingly, sustainable land use arose under the influence of research by scientists from around the world with the participation of state and international institutions, combined with an active civic position and the understanding that the citizens of each state are the driving force of sustainable development. Therefore, the opportunities provided by the law for public participation in the decision of state affairs should be considered a real opportunity for every citizen to prevent negative impact on the natural environment.

An important issue in ensuring sustainable land use remains the ownership of a plot of land by a certain person with the right of private ownership. The constitutional right to land ownership is guaranteed, and the right to private property, as stated in the Constitution of Ukraine, is inviolable. In such a case, we consider it necessary to investigate the possibility of influence by authorities not only on land users but also on landowners. After all, the rule of law that regulates and ensures sustainable land use applies to both land users and land owners.

In the context of the research, we pay attention to the position of foreign scientists who believe that "a property right means an exclusive authority to determine how a resource is used. It means that no private or public actor can violate the right, i.e. harm the property, or use it without

[42] *Supra*, note 26, p. 44.

permission of the right holder”[43]. The guarantee of the right of ownership is also characteristic of the legislation of Ukraine. However, these guarantees are not unlimited, at least in the context that the property – obliges. According to Art. 13 of the Constitution of Ukraine property should not be used to the detriment of a person and society. Therefore, the right to own a plot of land has its limits, such as the fact that the use of land cannot harm a person and society. In this case, the concept of “society” means not only for the population living in the country but also for future generations. Thus, the principle of sustainable land use is directly related to land ownership.

It is worth paying attention to the fact that “the very notion of sustainability is contrary to an unlimited economic growth, as an unlimited exercise of property rights can lead to irreversible environmental harms. Property rights are traditionally used to establish privileges rather than set obligations for land and property owners” [44]. Thus, the ownership right to a land plot certifies the fact that this plot belongs to a specific person and gives him the opportunity to use this plot at his own discretion, but within the limits of the purpose of the land plot. However, ownership is not proof of permissiveness, but only provides certain economic privileges for the owner and gives him the right to dispose of the property. In addition to the constitutional basis – property obligates, the right to own land is limited by the special value of land for the country and society as a whole. In addition, we consider it expedient to limit the right to dispose of a plot of land if its owner irrationally uses this plot or otherwise negatively affects the land in his possession.

Note that art. 144 of the Land Code of Ukraine applies to land users, but the relevant authorities do not control the use of land by their owners. Such a position of the legislator seems strange considering the fact that land, like other natural resources, is protected by the Constitution of Ukraine regardless of the form of ownership. It does not matter what

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[43] Anu Lähteenmäki-Uutelaa, Annika Lonkilaa, Suvi Huttunena, Nicole Grmelováb (2021) Legal rights of private property owners vs. sustainability transitions? *Journal of Cleaner Production.* № 323. Co. 4 [in English].
[44] *Ibid.*

property right binds a person to a plot of land, state bodies are obliged to control the use and protection of land in order to observe the rational use of land and reproduction of natural resources. Of course, we are not talking about interference in the activities of the owner, but in order to preserve land resources, the influence of the authorities is necessary.

As foreign practice shows, “the basis of the entire system of environmental protection in economically developed countries is an active state regulation, in which significant priorities are given to economic stimulation and support of entrepreneurship, which develops in the direction of greening social production”[45]. Therefore, it is important to maintain a balance between state control over the rational use of land and the priority of the country’s economic development. The right of private ownership of land should not extend to land and land resources as something absolute that is not subject to control. Therefore, the legislation defines such concepts as: “land”, “land plot” and “land resources”. The fact that a legal relationship is established between a person and a plot of land does not mean that such a person can use the plot of land without any restrictions, as this violates the principle of sustainability of land use.

3. Socio-economic component of sustainable land use

An equally important component of sustainable land use is the socio-economic aspect. Therefore, next, we offer consideration of the socio-economic aspect of land use, which is manifested in territorial and spatial planning. As the scientists note, it is the social component of sustainable land use that “requires a special approach to the organization of its use, which necessitates the rational distribution of land between branches of the national economy, various landowners and land users. Hence there is a

[45] Gadzalo, A.Y. (2016) Problemy ratsionalnoho pryrodokorystuvannya v protsesi zabezpechennya zbalansovanoho rozvytku Ukrainy [Problems of rational nature management in the process of ensuring balanced development of Ukraine]. *Naukovyy visnyk Uzhhorodskoho natsionalnoho universytetu* [*Scientific Bulletin of the Uzhhorod National University],* 7, 1, 72 [in Ukrainian].

need for land management of the territory and land management, measurement of areas, and determination of boundaries for the economic use of land. Among the most characteristic properties of the land are its limitations in space, and the permanence of the location of the land fund, which necessitates the territorial organization of production and optimization of the development of productive forces"[46]. Spatial planning also reflects one of the principles of land legislation, in particular, the use of land as a territorial basis. Although the concept of "base" is considered mainly in economic studies and in mathematics, from the point of view of land legislation, it can be said that land as a territorial base is clearly defined and allocated in kind, according to land management documentation, a plot of land, with defined rights to it, which is part of spatial planning within the territorial unit.

According to scientists, "the essence of the concept of territorial land use planning is always conditioned by the definition of the species of rational land use and its regime in a certain territory, the assessment of the state of land resource use, alternative models, and another natural, social and economic conditions in order to choose and master the types and species of land use, directions activities that are the best for solving the tasks"[47]. In accordance with the above, territorial and spatial planning is an important component of sustainable development. The approved urban planning documentation allows for the establishment of functional zones and species of land categories, and their purpose for carrying out certain types of activities. Urban planning documentation is important from the point of view of regional planning and development of territories, and therefore directly affects the economic development of localities. The spatial planning system must take into account the qualitative characteristics of lands and soils. According to the European Charter of Regional / Spatial Planning dated 20.05.1983, the organization and

[46] *Supra*, note 20.
[47] Kuryltsiv, R.M. Prostorove planuvannya zemlekorystuvannya yak osnova intehrovanoho upravlinnya sil's'kymy terytoriyamy [Spatial planning of land use as the basis of integrated management of rural territories. Economy of regions]. (2016). *Ekonomichnyy visnyk Natsionalnoho hirnychoho universytetu* [*Economic Bulletin of the National Mining University*], 4, 108 [in Ukraine].

development of large urban and industrial complexes and infrastructure, as well as the protection of agricultural and forest lands, are of great importance for the rational use of land. Any policy of regional/spatial planning must necessarily be accompanied by a policy of land use to make it possible to achieve goals that are of public interest[48]. Thus, first of all, in order to achieve sustainable land use, it is necessary to develop a state policy that will become the basis for law-making and law enforcement in land legal relations.

It is considered that a balanced urban structure requires the systematic implementation of land use plans and the application of methodological recommendations for the development of economic activity for the benefit of the living conditions of city residents[49]. According to the scientists, "modeling of the organization and development of the territory allows you to justify the entire set of project solutions of the comprehensive plan, to determine the most rational distribution of the territory between various functions, types, and intensity of economic activity, mutual location of production and non-production objects, routing of engineering and transport communications, etc."[50]. Thus, sustainable land use is closely related to spatial planning policy.

At the legislative level, territorial and spatial planning of territories is manifested in the activities of state bodies, local self-government bodies, legal entities, and individuals, and the main instrument of state regulation of territorial planning is urban planning documentation, which is divided into the documentation of the state, regional and local levels. In accordance with the Law of Ukraine "On Regulation of Town Planning Activities", the main documents in the field of territorial and spatial planning are a comprehensive plan for the spatial development of the territory of the territorial community, general plans of settlements, and detailed plans of

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[48] *European Regional/spatial Planning Charter:* Torremolinos Charter 1983 (European Conference of Ministers Responsible for Regional Planning). <https://www.coe.int/en/web/conference-ministers-spatial-planning/6th-cemat> [in English]. (2022, September, 18).

[49] *Recommendation no. R (84) 2 1984 (Committee of Ministers).* <https://rm.coe.int/native/09000016804c87cb> [in English]. (2022, September, 18).

[50] *Supra,* note 41, p. 36.

the territory, as well as zoning plans of the territories of settlements[51]. According to the developed documents, the land belongs to certain categories and species of destination. It can be argued that spatial and territorial planning is related to the ecological component of land use in the context of rational use of the land plot within the target purpose.

Taking into account the fact that land can be the object of legal relations, it remains important to register a land plot in accordance with the requirements of the law. Land management and urban planning documentation are deterrents for land users, as their activities must comply with the specified documents. Moreover, urban planning documentation allows for the effective use of available land resources for the economic development of territories. Therefore, a comprehensive plan for the spatial development of the territory of the territorial community and general plans of settlements are being developed, which must reflect the location of residential and public building zones, industrial, transport, recreational, nature protection, health, historical and cultural and other zones and facilities.

The socio-economic aspect of sustainable land use, which is manifested through territorial and spatial planning, is the element that connects rational land use and the purpose of land, since the land management documentation reflects the type of purpose of the land plot according to which economic activity is carried out. Development, planning, development, and use of territories of administrative-territorial units and their individual parts are determined in accordance with urban planning documentation. The importance of urban planning documentation is manifested in determining the functional purpose of territories. That is, in the zone of residential and public development, land plots cannot be allocated for industrial facilities, as these are different categories of land. Thus, non-observance of the procedure defined by law for the registration of land plots or the conduct of economic activity outside the appropriate

[51] *Zakon pro rehulyuvannya mistobudivnoyi diyalnosti* [Law on regulation of urban planning activities]. (2011). *Ukrainy Ofitsiynyy sayt Verkhovnoyi Rady Ukrainy*. [*The official website of the Verkhovna Rada of Ukraine*]. <https://zakon.rada.gov.ua/laws/show/3038–17#Text> [in Ukraine]. (2022, September, 18).

zone may lead to a violation of the principle of sustainable land use and sustainable development in general.

Therefore, in the process of research, it was found that sustainable land use is reflected in social, economic, and ecological aspects, which is manifested in the characteristics of the land as a territorial basis, the main means of production, and a natural resource. It was established that social, ecological, and economic aspects are interconnected. In particular, it was investigated that rational land use and land use for the intended purpose in combination form the basis of sustainable land use, and the non-compliance with the principles of at least one of the elements affects the qualitative characteristics of land resources. It was found that the biggest problem of land use in Ukraine and the world is land degradation and desertification. Land degradation occurs due to natural factors or as a result of human activities. Thus, a connection was established between non-compliance with the requirements of the legislation regarding the rational and targeted use of land plots and the consequences of such behavior – land degradation.

In particular, it is about the lack of proper legal regulation of rational land use. In the legislation of Ukraine repeatedly uses the phrase "rational land use", but there are no requirements for activities that would be recognized as rational or irrational. Therefore, it is impossible to stop the irrational use of land due to the absence of a rule of law. Therefore, the legislation should initially define what constitutes rational land use and the requirements for economic activity that must correspond to such land use.

It was found that the regulatory regulation of sustainable land use has a partial and unsystematic nature, as it does not reflect an important component of the sustainable use of natural resources – ensuring their renewability. There are no grounds for terminating land use that would allow us to react preventively, i.e. to stop using at the moment of detecting a negative impact on the land plot, and not at the moment of establishing the fact of degradation. Therefore, we consider it expedient to provide in the legislation the possibility of terminating land use in case of irrational use of land resources. In this case, the legislation will regulate not only the targeted use of lands but also their rational use.

It has been established that the acquisition of the right to private ownership of land should not guarantee the owner unlimited opportunities to use the land plot, as land is an important natural resource. Therefore, the activities of land plot owners cannot be contrary to the principle of sustainable land use. The owner of the land plot is obliged, like other land users, to use it in accordance with the intended purpose and within the limits of rational land use.

In addition to problems with the regulation of sustainable land use, there are shortcomings of law enforcement. In particular, state authorities, whose sphere of authority includes supervision (control) in the field of land relations, react only in the event of an offense against land resources. This position is subject to criticism since land protection should also have a preventive, not only a punitive, function. In general, the analysis of national and international legislation in the field of sustainable land use allows us to conclude that Ukraine has been trying to implement the principle of sustainable land use for quite some time, but it is still partial. It is necessary to understand that numerous normative acts will not introduce sustainable land use. Here, a symbiosis of normative regulation, state, and public control, and proper judicial protection is necessary.

Termination of land use due to non-compliance with the principle of sustainable development needs to be enshrined in Ukrainian land legislation, and most importantly in practice. In particular, it is important to develop effective methods of establishing a cause-and-effect relationship between non-compliance with the principle of sustainable land use and land degradation, which in turn will allow for the formation of an evidence base in case of bringing the guilty parties to justice. The essence of sustainable land use is the restoration of land resources for future generations, prevention of land degradation, and timely response to irrational land use, regardless of the form of land ownership. Therefore, the further implementation of the principle of sustainable land use requires the establishment of an expanded list of reasons for terminating the right to use land.

Part III

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Implementation of the principle of sustainable development in the mechanism for regulation environmental conflicts

The world we have created today as a result
of our thinking thus far has created problems
that cannot be solved by thinking the way we
thought when we created them.
Albert Einstein

The scope of environmental law is the most conflictual and aims to find a balance between social needs, tasks of the economy and opportunities of the environment. In this section, sustainable development is analysed as a concept of coordination of ecological, economic and social interests through the prism of the interaction of the subjects of environmental relations of a conflict nature.

The concept of sustainable development at the stage of ecoconflict settlement acquires a practical embodiment when conciliatory dispute resolution procedures are used. Because, in this case, we will get a result compatible with the doctrine of sustainable development – a legal decision that reflects the interests of each of the participants in the conflict to one degree or another.

The need to develop consensual forms of environmental conflict resolution in national law enforcement practice, which should become a full-fledged alternative to judicial, administrative and other jurisdictional forms of dispute resolution, has been argued. On the agenda is the formation an independent legal institute of environmental law, which will

specialize in the settlement of environmental-legal conflicts, and will contribute to the introduction of an effective mechanism for managing environmental conflicts with maximum consideration of the legitimate socially acceptable interests of all participants.

The effectiveness of alternative forms of environmental disputes settlement is also predetermined by specific conditions that are characteristic exclusively for this type of conflict. Consensus (compromise) building in environmental-legal conflicts must comply with the postulates of sustainable development – respect for the general interests of the environment and the health of the population.

The system of alternative dispute resolution includes a large number of methods of conflict resolution, which in some cases have a number of differences in terms of the approaches used during their use. At the same time, for the field of environmental conflicts, traditional methods of alternative dispute resolution acquire certain specificities, which are analysed in this section (negotiations, claim procedure for environmental conflict settlement, arbitration, environmental mediation).

1. Sustainable development and alternative forms of dispute settlement as consensual forms of environmental relations regulation

The ecological crisis, which increasingly threatens humanity with self-destruction at the beginning of the 21st century, is reflected in the aggravation of socio-ecological conflicts that are taking on new and new forms. The increase in the number of the planet's population with the simultaneous reduction of territories suitable for human habitation, the depletion of non-renewable natural resources with the simultaneous growth of their consumption, the ever-increasing limitation of the ecological needs of people gives rise to new and new types of such conflicts that attract more and more people, social groups and states into their orbit.

The relationship between man and the environment is quite complex, internally contradictory and inextricably interdependent, the positivity of which for both parties is possible only on the basis of the coordination of the laws of the development of nature and society. The use of natural

resources and the corresponding load on the surrounding natural environment is a field of human activity that determines a wide range of social, economic and environmental problems.

The basis of the interaction between man and nature is the implementation of needs and interests, which in their essence have the opposite nature in content: on the one hand, the satisfaction of the economic needs of nature users, which determine the specifics of the use of natural resources, the location of industries, the development of infrastructure, etc., on the other, ecological, aimed at ensuring the integrity of the ecosystem, its protection and the reproduction of natural resources, and impose on all subjects of nature management additional duties regarding the protection, preservation and provision of environmental safety. Therefore, we state that the scope of environmental law is the most conflictual and aims to find a balance between social needs, tasks of the economy and the opportunities of the environment. We find such a balance to the conception of a global political agreement[1], whose essence is sustainable development principle. The agreement's objective is to achieve a social transformation in which economic growth could be maintained, but at the same time, the environment could be preserved[2]. This concept was continued in the Resolution of the General Assembly of the United Nations Organization "Transforming our world: the 2030 Agenda for Sustainable Development"[3], which was adopted in October 2015. The adaptation of the Sustainable Development Goals, taking into account the Ukrainian context, is reflected in National report "Sustainable Development Goals: Ukraine" and found support in the corresponding decree of the President

[1] *Rio Declaration on Environment and Development:* Report of the United Nations Conference on Environment and Development (3–14 June 1992). <https://www.un.org/en/development/desa/population/migration/general/assembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf> [in English]. (October 5, 2022).

[2] Plicanic, S. (2020). The Role of State in Achieving Sustainable Development Goals in Slovenia. *Studia Iuridica Lublinensia*, 29 (4), 234. doi: http://dx.doi.org/10.17951/sil.2020.29.4.233–249.

[3] *Transforming our world: the 2030 Agenda for Sustainable Development*: Resolution adopted by the General Assembly on 25 September 2015. <https://www.un.org/ga/search/viewdoc.asp?symbol=A /RES/70/1> [in English]. (October 5, 2022).

of Ukraine[4]. Based on this, a national system of sustainable development goals was developed in Ukraine, which aims to provide a basis for further planning of Ukraine's development, overcoming imbalances that exist in the economic, social and environmental spheres; to ensure such a state of the environment that will contribute to the quality of life and well-being of current and future generations; create the necessary conditions for a social contract between the government, business and civil society to improve the quality of life of citizens and guarantee socio-economic and environmental stability; achieve a high level of education and public health protection; implementation of regional policy, which will be based on a harmonious combination of national and regional interests; preservation of national cultural values and traditions.

The concept of sustainable development provides a mechanism for the development of consensual forms of interaction between the subjects of environmental relations with the aim of harmonizing multifaceted interests – ecological, economic and social. This requires the involvement of the maximum range of interested participants (individual citizens, business entities, the state, etc.) in the process of making environmental decisions and during their implementation. First of all, the problem is the practical involvement of the interested public. In Art. 9 of the Law of Ukraine "On Environmental Protection"[5] enshrines a system of environmental laws, including those that provide for the active actions of citizens aimed at protecting the environment, preventing negative impact on it, and taking measures to restore and improve it. As noted in the scientific literature, it was the recognition and consolidation of the rights of citizens to influence the environmental policy of the state, through the use of forms established

[4] *Pro tsili staloho rozvytku Ukrainy na period do 2030 r.* 2019 (Prezydent Ukrainy) [On the goals of sustainable development of Ukraine for the period until 2030 2019 (President of Ukraine)]. *Ofitsiinyi visnyk Ukrainy* [*Official Bulletin of Ukraine*], 79, 2712 [in Ukrainian].

[5] *Zakon pro okhoronu navkolyshnoho pryrodnoho seredovyshcha* 1991 (Verkhovna Rada of Ukraine) [Law on Environmental Protection 1991 (Verkhovna Rada of Ukraine)]. *Vidomosti Verkhovnoi Rady Ukrainy* [*The Official Bulletin of the Verkhovna Rada of Ukraine*], 41, 546 [in Ukrainian].

in legislation, that initiated the formation of a new system of preventing, smoothing, resolving environmental conflicts, taking into account and ensuring the interests of the community[6]. Ukraine's ratification of the 1998 Aarhus Convention on Access to Information, Public Participation in the Decision-Making Process, and Access to Justice in Environmental Matters[7] played a special role in these processes. For its implementation, Ukraine adopted a number of normative legal acts, in particular, the Regulation on public participation in decision-making in the field of environmental protection[8], which defines the procedure for public (common) discussion of decisions in the field of environmental protection. The adoption of the relevant provision and the introduction of relevant procedures had a significant positive impact on the practice of environmental activities.

The next step for the practical implementation of the principle of sustainable development was the regulatory consolidation of consensus building in the decision-making process on the implementation of planning activities that may have a significant impact on the environment (the Law of Ukraine "On Environmental Impact Assessment"[9]) and during the development and approval of state planning documents, that provide for the impact on the natural environment and human health (Law of Ukraine

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[6] Catherine Choquette, Veronique Fraser (Eds.) (2017). *Environmental Mediation: An International Survey*. UK: Routledge, 12. <https://www.routledge.com/Environmental-Mediation-An-International-Survey/Choquette-Fraser/p/book/9781138048089> [in English]. (September, 18 2022).

[7] *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (United Nations, 1998) <https://treaties.un.org/doc/Treaties/1998/06/19980625%2008–35%20AM/Ch_ XXVII_13p.pdf> [in English]. (September 22, 2022).

[8] *Polozhennia pro uchast hromadskosti u pryiniatti rishen u sferi okhorony dovkillia* 2003 (Ministerstvo okhorony navkolyshnoho pryrodnoho seredovyshcha Ukrainy) [Regulations on public participation in decision-making in the field of environmental protection 2003 (Ministry of Environmental Protection of Ukraine)]. (2004). *Ofitsiinyi visnyk Ukrainy* [*Official Bulletin of Ukraine*], 6, 357 [in Ukrainian].

[9] *Zakon pro otsinku vplyvu na dovkillia* 2017 (Verkhovna Rada of Ukraine) [Law on Environmental Impact Assessment 2017 (Verkhovna Rada of Ukraine)]. *Vidomosti Verkhovnoi Rady Ukrainy* [*The Official Bulletin of the Verkhovna Rada*], 29, 315 [in Ukrainian].

"On Strategic Environmental Assessment"[10]). These legislative institutes provide for the mandatory involvement of the public in decision-making through public discussion, which ultimately makes it possible to make decisions taking into account state, public and private interests. H.V. Moroz notes that these procedures are fairly well regulated, but in practice they are often reduced to formally (allegedly) carried out. The author emphasizes the importance of the issue of full implementation of all stages of project documentation research regarding the implementation of environmentally hazardous activities, in compliance with the principle of alternative and compromise approach[11].

As a result, we have to state that today the principle of sustainable development has not received proper practical implementation. Thus, in the Basic principles (strategy) of the state environmental policy of Ukraine for the period until 2030[12], it is recognized that for a long time the economic development of the state was accompanied by unbalanced exploitation of natural resources, low priority of environmental protection issues, which made it impossible to achieve balanced (sustainable) development. The reason for this is: subordination of environmental priorities to economic expediency; failure to take into account the consequences for the environment in legislative and regulatory acts, in particular in the decisions of the Cabinet of Ministers of Ukraine and other executive bodies; the predominance of resource- and energy-intensive industries in the structure of the economy, with a mostly negative impact on the environment, which is significantly aggravated by the unsettled legislation

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[10] *Zakon pro stratehichnu ekolohichnu otsinku* 2018 (Verkhovna Rada of Ukraine) [Law on Strategic Environmental Assessment 2018 (Verkhovna Rada of Ukraine)]. *Vidomosti Verkhovnoi Rady Ukrainy* [*The Official Bulletin of the Verkhovna Rada*], 16, 138 [in Ukrainian].

[11] Moroz, H.V. (2022). *Vzaiemodiia publichnykh i pryvatnykh interesiv v ekolohichnomu pravi Ukrainy*: monohrafiia [*Interaction of public and private interests in environmental law of Ukraine:* monograph]. Ivano-Frankivsk, 351 [in Ukrainian].

[12] *Pro Osnovni zasady (stratehiiu) derzhavnoi ekolohichnoi polityky Ukrainy na period do 2030 roku* 2019 (Verkhovna Rada Ukrainy) [On the Basic principles (strategy) of the state environmental policy of Ukraine for the period up to 2030, 2019 (Verkhovna Rada of Ukraine)]. *Vidomosti Verkhovnoi Rady Ukrainy* [*The Official Bulletin of the Verkhovna Rada of Ukraine*], 16, 70 [in Ukrainian].

during the transition to market economic conditions; a low level of understanding in society of the priorities of environmental protection and the benefits of balanced (sustainable) development, the imperfection of the system of environmental education and enlightenment, and a number of others.

In Ukraine, there are many problems that disrupt the balance of interests, primarily environmental and economic, and lead to the emergence of environmental-legal conflicts:

1) Problems of pricing natural resources and services: “any assessment, whether it is an assessment based on the costs of development and maintenance of the object in operational condition or based on the measurement of the results of its functioning, cannot fully reflect the value that this or that object of nature use has for society[13]”.
2) Formation of rent policy. The economic use of certain natural resources, which are both raw and non-raw, cause the objective necessity for nature users to make settlements with the state, which is in most cases the owner of these resources and is responsible to society for the protection and restoration of natural potential on the territory of Ukraine.
3) Complexities of economic assessment of the efficiency of natural resource use. Often, an economic entity consciously chooses alternative options for the use of a resource in favour of “quick” benefits in the short term.
4) The imperfection of the economic and legal mechanisms for acquiring property rights to natural resources is one of the main factors in the emergence of conflicts between subjects of nature use. In Ukraine, at the current stage of development, there are no favourable conditions for the rational use of natural resources by private owners, and the withdrawal of the state from the natural resource sector of the economy is premature, in particular, with regard to subsoil use.

[13] Novytska, O.V. (2009). Finansovyi mekhanizm u sferi pryrodokorystuvannia [Financial mechanism in the field of nature management]. *Naukovyi visnyk Natsionalnoho universytetu DPS Ukrainy (ekonomika, pravo)* [*Scientific Bulletin of the National University of the State of Ukraine (economics, law)*], 3 (46), 69 [in Ukrainian].

5) Lack of adequate environmental taxation policy and investment attraction. There is no environmental taxation of finished products in Ukraine.
6) Insufficient and sometimes ineffective participation of public organizations and lack of awareness (lack of information) of interested parties.
7) Undeveloped and/or inadequacy of norms, standards, agreements, quotas, licenses regarding the management of natural resource potential, etc[14].

Environmental conflicts have a number of features that make their resolution difficult:

a) by its nature, the nature of its occurrence, it is a specific type of conflict: it is expedient to consider the environmental conflict exclusively as a social contradiction occurring in special conditions – the environment of human existence;
b) arises as a result of the inconsistency of antagonistic interests: as a rule, we are talking about the opposition of the economic interests of one subject to the ecological (preserving the environment as an ecological value) interests of society (or other subject/subjects);
c) the subject of an environmental conflict is the problem of ownership of a natural resource (ecological value) and/or control over it, which can bring certain benefits (not necessarily financial) to one or several subjects. Accordingly, the object of an environmental conflict is a natural resource or ecological value, which due to certain circumstances are at the intersection of the interests of different social or economic groups, which strive for ownership or control over them[15].

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[14] Fedorchak, V. (2013). Uzghodzhennia ekoloho-ekonomichnykh interesiv pry realizatsii protsedury stratehichnoho proektuvannia ekolohichnoi bezpeky na rehionalnomu rivni [Coordination of ecological and economic interests during the implementation of the strategic planning procedure of environmental security at the regional level]. *Aktualni problemy derzhavnoho upravlinnia* [*Actual problems of public administration*], 1, 151–156 [in Ukrainian].

[15] Sabadash, V.V. (2006). Metodolohichni pidkhody do determinatsii ekolohichnoho konfliktu [Methodological approaches to environmental conflict determination]. *Mekhanizm rehuliuvannia ekonomiky* [*Mechanism of economic regulation*], 4, 56–57 [in Ukrainian].

d) as a rule, the subject composition of environmental conflicts is numerous, the parties are endowed with unequal opportunities to influence the stabilization of the situation, with different amounts of authority, knowledge, skills, and experience (state bodies, officials, public representatives, business structures);
e) the results of eco-conflicts can be irreversible, cause significant damage to people's lives and health, but it is quite difficult to realistically assess the damage caused, to identify all participants in this conflict.

Taking these features into account, we understand that environmental conflicts are difficult to resolve, especially using only traditional jurisdictional mechanisms for their resolution. In this case, judicial and administrative procedures are not effective enough, and, as a rule, lead not to the resolution of the conflict, but to its temporary termination with further escalation.

The essential characteristics of the environmental-legal conflict require a change in approaches to understanding the problem and the transformation of this disharmony between people and nature (because ultimately any environmental-legal conflict has negative consequences for the environment) into a constructive course of interaction that will encourage us as individuals people and as a society, act now for socio-ecological benefit for all generations. This requires a change in approaches to solving eco-conflict:

- will we choose the way of the usual dispute settlement procedure? It can be characterized as a symptomatic approach, that is, when a problem arises, we solve it on the basis of the existing legal mechanisms of analysis of the causes of occurrence and search for mechanisms to prevent a similar legal dispute in the future. As Albert Einstein observed more than half a century ago: “We can't solve problems by using the same kind of thinking we used when we created them”[16].

- shall we choose the path of finding consensus by applying a systematic approach to the analysis of environmental-legal conflict? This

[16] Brainy Quote. *Albert Einstein Quotes.* <https://www.brainyquote.com/authors/albert-einstein-quotes>. (October 5, 2022).

will require an in-depth study of the problem, comparison and finding a balance between public, state and private interests. The way we choose to actually solve the environmental conflict will contribute to the adoption of a legal decision that will reflect the interests of all participants in the conflict to one degree or another. Again, let's quote the most prominent physicist: "No problem can be solved from the same level of consciousness that created it"[17]. As our foreign colleagues aptly note: "to actually elevate our conscious awareness, we must become students of processes and let go our advocacy of positions and embattlements over winning agreement with narrow points of view"[18].

The principle of sustainable development as a concept of coordination of ecological, economic and social interests should be reflected not only in the process of rulemaking and law enforcement, but also at the stage of settlement of environmental relations of a conflict nature, introducing consensual forms of conflict resolution: "The acceptance of "sustainability" as a practical policy goal and the increasing use of consensus-based processes in the resolution of a broad array of resource management disputes are two important trends of the past decade"[19]. O.L. Dubovik emphasizes that it is fundamental to introduce methods and techniques of conflict resolution, first of all, an approach from the standpoint of weighing costs and benefits in a broad understanding of these concepts in all components of the subject of environmental-legal regulation[20]. Only in the case of using consensus conflict resolution procedures will we get a result compatible with the concept of sustainable development.

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[17] Brainy Quote. *Albert Einstein Quotes*. <https://www.brainyquote.com/authors/albert-einstein-quotes>. (October 5, 2022).
[18] Maser, C., de Silva, L. (2019). Resolving Environmental Conflicts: Principles and Concepts. *CRC Press,* 21.
[19] Cormick, G., Dale, N., Emond, P., Sigurdson, S.G., Stuart, B.D. (1996*). Building consensus for a sustainable future: Putting principles into practice*. Ottawa: National Round Table on the Environment and the Economy, 2.
[20] Dubovik, O.L. (2006). Ekologicheskoje pravo i ekologicheskie konflikty [Environmental law and environmental conflicts]. *Pravo i politika* [*Law and politics*]*,* 5, 118 [in Russian].

2. Conciliation procedures in the system of legal forms of environmental-legal conflict settlement

Considering the characteristic features of the environmental conflict, the formation of a complex mechanism for its settlement is an important issue. V.V. Sabadash draws attention to the distinctive features of the environmental conflict, which will determine the nature, elemental structure, and functional connections in the mechanism of reconciliation of conflicting interests: the type of resource involved in the environmental conflict is natural; the temporal aspect of the eco-conflict – the ecological and economic consequences of the conflict can be significantly delayed in time; manifestation of synergistic effect in conflict; indeterminacy of risk factors; several parties (economic entities, territorial units, states) are involved in the conflict; at the same time, the potential for conflict increases significantly, and the potential for settlement decreases due to the expansion of the range of conflict actors and the inconsistency of their interests (up to antagonistic goals); lack of development of organizational, economic and legal mechanisms and tools for the settlement of eco-conflicts, especially international ones; the problem of transboundary natural resources; unsettled property rights to a natural resource; the problem is extremely urgent for developing countries; information inequality in conflict; we include the following information risk factors: limitedness, asymmetry of information; impossibility of access to information; use of insider information; misinformation; silencing / concealing (intentionally) the causes, scope, risks and consequences of the eco-conflict; unintentional twisting; involvement of unqualified experts / analysts / specialists; the practice of “closed” reports, etc.; economic-social and technical-technological inequality forms different models of production and consumption, first of all in terms of attraction/consumption/use of natural resources[21].

As a result, the methods and tools for environmental-legal conflict settlement will differ significantly in terms of their applicability and

[21] Sabadash, V.V. (2013). Kontseptualni ramky mekhanizmu vrehuliuvannia ekolohichnoho konfliktu [Conceptual framework of the ecological conflict settlement mechanism]. *Mekhanizm rehuliuvannia ekonomiky* [*Mechanism of economic regulation*], 2, 55 [in Ukrainian].

effectiveness in a specific situation. The choice and implementation of this or that method of prevention or settlement of an environmental-legal conflict depends on many factors, most of which are subjective in nature. Therefore, the formation of a unified conflict resolution mechanism is impossible from a legal point of view.

In the scientific literature, the influence on the conflict with the aim of its settlement is denoted by the term "conflict management". As the Belarusian scientist E.V. Bogdanov notes, conflict is a phenomenon that has a complex structure, which determines the specifics of conflict management[22]. The concept of "conflict management" is a multifaceted concept and is understood as a purposeful influence on the processes of conflict interaction, which seeks to provide a constructive solution to socially important tasks that have become actualized under the conditions of the conflict. The management of a conflict situation has its own characteristics and involves: − a well-thought-out influence on the conflict behaviour of subjects with the aim of achieving a reconciliation result; − turning the conflict into a channel of rational human interaction; − limitation of confrontation within the framework of constructive inclusion of subjects in social processes[23].

The science of conflict studies various mechanisms of influence, ways and means of solving environmental conflicts. In particular, the following functional mechanisms of its regulation are offered: economic, juridical-legal, administrative-economic, financial-economic, market instruments, innovation-investment, information-analytical and socio-cultural.

We are primarily interested in legal mechanisms by which conflict can be prevented or stopped: "a legal approach to resolving controversial issues and conflicts is necessary in society and can be effective, especially if the case falls under legal norms. Law, as an important regulator of social relations, provides greater stability to social development, provides the

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[22] Bogdanov, E.V. *Pravosudie kak deyatelnost po upravleniyu konfliktom [Justice as a conflict management activity].* <https://elib.bsu.by/bitstream/123456789/23553/1/22_богданов.pdf> [in Russian]. (October 15, 2022).

[23] Herasina, L.M., Trebin, M.P., Vodnik, V D. (2012). *Konfliktolohiia: navch. posib. [Conflictology: a study guide].* Kharkiv: Pravo, 101 [in Ukrainian].

possibility of an optimal combination of various interests and needs, and contributes to the maximum consideration of all aspects of life”[24].

At the same time, O.L. Dubovik emphasizes, the possibilities of law in resolving environmental conflicts are limited in principle. This is due to the fact that the parties to the conflict oppose themselves to the law, and legal prescriptions in this case do not work; the positions of the parties are not qualified on the basis of legal norms, that is, they are legally neutral; conflict resolution procedures are not defined by law. Among the groups of norms closest to the problem of conflict resolution can be named: norms that determine the rights and obligations of potential participants in the conflict; norms establishing the relationship of various legal subjects to a natural object and fixing their interests; norms that establish the mode of use or protection of a natural object; procedural rules that regulate the procedure for resolving conflicts specifically in the field of ecology[25].

In the issues of the legal mechanism of conflict resolution, modern conflictology singles out two general approaches to conflict resolution:

1. The legal approach is to apply the law in court, arbitration or administrative proceedings; it may also include the use of coercion, in particular, when it comes to the procedure of executive proceedings. This approach ensures the equality of the parties before the law; more fair and predictable, based on rational agreements; can be used if the disputed situation clearly falls under legal norms; creates many problems in the relations between the parties to a settled legal conflict.
2. The approach from the position of interests is to determine what became the basis for the dispute and, if possible, to satisfy those interests that were violated. This approach is not directly focused on

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[24] Podkovenko, T.O. *Stanovlennia pravovoi konfliktolohii yak nauky ta yii mistse v systemi yurydychnoi osvity [Formation of legal conflictology as a science and its place in the system of legal education].* <library.wunu.edu.ua/images/stories/praci_vukladachiv/Факультет%20Юридичний/Каф%20теорії%20та%20іст%20д%20і%20пр/Подковенко%20Т.О/СТАНОВЛЕННЯ%20ПРАВОВОЇ%20КОНФЛІКТОЛОГІЇ%20ЯК%20НАУКИ%20ТА%20ЇЇ%20МІСЦЕ%20В%20СИСТЕМІ%20ЮРИДИЧНОЇ%20ОСВІТИ.pdf > [in Ukrainian]. (October 15, 2022).

[25] Dubovik, O.L. (2006). Ekologicheskoje pravo i ekologicheskie konflikty [Environmental law and environmental conflicts]. *Pravo i politika* [*Law and politics*], 5, 128 [in Russian].

legal laws and regulations, but on a fair resolution of the dispute from the point of view of what each of the parties understands by justice; it facilitates the resolution of the dispute between the parties on the basis of negotiations with the participation of a neutral mediator; ensures that the parties to the dispute reach an agreement, helps to restore or maintain relations, etc.

Based on this, the scientific literature offers two options for ending a legal conflict: resolution or settlement. The resolution of a legal conflict involves its completion by encouraging or forcing one of the parties to accept an offer beneficial to the other party. As a rule, a third party is involved in the decision. According to some scientists, this makes post-conflict relations unstable: there is a possibility of the conflict continuing. Conflict resolution is the final stage of the conflict, at which the opposition ceases and the subjects overcome the contradiction (in whole or in part), which led to the conflict.

Demarcating the concepts of resolution and settlement, scientists distinguish two forms of conflict management, which, as a rule, are opposed to each other. Thus, V.M. Krivtsova singles out legal mechanisms and non-legal means (mediation, intermediation, public arbitration) for managing various legal conflicts, in particular, their resolution[26]. P.A. Astakhov, researching modern forms of resolving legal conflicts, points to the possibility of using various methods and procedures for their resolution, which together form a certain system of resolving legal conflicts. Conceptually, such a system, according to the author, is a set of organizational and procedural elements. Within this system, two functional subsystems are distinguished: the system of jurisdiction, the basis of which is the principle of coercive resolution of legal conflicts, and the system of alternative settlement (consensual form), which is based on the principle of compromise[27].

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[26] Krivtsova, V.M. (2005). *Yurydychnyi konflikt yak fenomen pravovoi diisnosti [Legal conflict as a phenomenon of legal reality]* (avtoref. dys. … k-ta yuryd. nauk). Kharkiv, 5 [in Ukrainian].

[27] Astahov, P.A. (2006). *Yuridicheskie konflikty i sovremennye formy ih razresheniya (teoretiko-pravovoe issledovanie) [Legal conflicts and modern forms of their resolution (a theoretical and legal study)]* (avtoref. dys. … d-ra yuryd. nauk). Moskva, 23 [in Russian].

Traditional legal forms of legal conflict resolution are judicial and administrative procedures. Thus, Art. 158 of the Land Code of Ukraine provides a list of bodies authorized to consider and resolve land disputes – courts and local self-government bodies (part 1) and determines the competence of each in relation to land dispute resolution (parts 2-5).

It is accepted that judicial protection of environmental rights is the most qualified and universal way of protection. However, analysing judicial statistics and the practice of resolving environmental disputes, one can hardly agree with such conclusions. In particular, it is about the duration of the court proceedings, the overloading of the courts, the ambiguous resolution of cases due to the lack of a uniform practice for the consideration of such disputes, etc. At the same time, there is probably not a single state in the world whose judicial system could ensure effective resolution of all disputes to the mutual satisfaction of the parties[28].

The administrative, or as it is also called, the out-of-court procedure for resolving environmental and legal conflicts, provides for the possibility of resolving the dispute by appealing to a state body. Among the state bodies entrusted with the task of ensuring the prevention and effective resolution of environmental and legal conflicts, it is appropriate to single out:

- *bodies of general competence, their specialized structures* (Verkhovna Rada of Ukraine, the President of Ukraine, the National Security and Defense Council of Ukraine, the Commission on Nuclear Policy and Environmental Safety under the President of Ukraine, bodies of local executive power and local self-government);
- *bodies of special supra-departmental competence* (bodies of the Ministry of Environment and Natural Resources, Ministry of Emergencies and Affairs of Population Protection from the Consequences of Chornobyl Catastrophe, Ministry of Health).

Modern ecological science, considering the administrative form of resolving environmental conflicts, defines it as a separate management

[28] Fedchyshyn, V. (2019). Do pytannia pro protsedury alternatyvnoho vyrishennia zemelnykh sporiv v Ukraini [Regarding the procedure of alternative resolution of land disputes in Ukraine]. *Naukovyi visnyk KhDU. Seriia Yurydychni nauky* [*Scientific Bulletin of KhDU. Series Legal Sciences*], 1, 46 [in Ukrainian].

function in the field of nature management and environmental protection. The out-of-court (administrative) form of settlement of environmental disputes is an ecological-procedural procedure for their resolution, since it is a procedural activity of specially authorized state management bodies, other subjects of environmental relations, carried out on the basis of prescriptions contained in the procedural norms of environmental law.

At the same time, the traditional adversarial resolution of disputes within the framework of a court hearing or through the application of an administrative procedure often contributes to the aggravation of environmental conflicts and the termination of general relations between the parties. Today, the problems of the judicial system quite often lead to considerable expenditure of energy, time and money by the participants, and the overload of courts with a large number of cases leads to the fact that the judge often makes a decision without a detailed analysis of all the circumstances of the case. Again, among the fundamental principles of the jurisdictional form of dispute resolution, the determining principle is the principle of legality, which underlies the adoption of a court decision or a decision of a state authority and obliges to make a decision in accordance with the norms of substantive law in compliance with the requirements of procedural legislation. As a result, such a decision, as a rule, does not satisfy at least one of the parties to the dispute, which complicates its implementation.

Taking into account all of the above, it seems valuable to turn to alternative forms of ending legal disputes and the use of conciliation procedures for the settlement of environmental-legal conflicts. In this case, the resolution of the environmental-legal conflict will be based on the theory of reaching a compromise. According to the definition of S.V. Bobrovnyk, a legal compromise is a compromise mediated by legal norms, a value-oriented means of conflict resolution (including a legal one), which is based on the mutual concessions of the participants in social relations, the purpose and result of which is the state of social agreement and consolidation of democratic values in society[29]. O.O. Grigor, researching the

[29] Bobrovnyk, S.V. (2012). Pravovyi kompromis i pravovyi konflikt yak tsinnisni vymiry prava [Legal compromise and legal conflict as value dimensions of law]. *Almanakh prava* [*Almanac of law*], 3, 111 [in Ukrainian].

practice of resolving political conflicts, testifies that it can take place in three main forms: essential, but not complete coordination of the interests and positions of the conflicting parties (compromise); their mutually beneficial reconciliation (consensus); transformation of confrontation and opposition into cooperation[30]. In our opinion, it is not necessary to single out the form of cooperation, because the achievement of both compromise and consensus is possible only through constructive interaction (active cooperation) between the parties. Therefore, cooperation is only a means to settle the dispute peacefully.

Regarding the concept of compromise, it can be said that these are concessions with a certain benefit to one party to achieve a mutual result, that is, one party sacrifices its interests for the sake of the other or for the sake of someone. In the case of a compromise, a peaceful result seems to be achieved, but negative consequences appear, such as the irrational loss of the interests of one of the parties. Consensus is characterized as a sacrifice of the interests of both parties for the sake of a common result, or a joint agreement without negative consequences for both parties. In both cases, reaching a compromise and consensus, there is a peaceful resolution of the dispute, but the result, consequences, and nature of the implementation of the decision are different[31].

Adapting the proposed definitions to the problem of solving environmental conflicts, it is worth noting the following. Both compromise and consensus are achieved through the voluntary will of the parties and on the basis of mutual concessions of interests. Considering that we are talking about conciliation procedures, which are built on the parity principles of the equality of the parties, it is worth talking about the result of these

[30] Hryhor, O.O. (2019). Poniattia konsensusu v suchasnii vitchyznianii filosofsko-politychnii dumtsi [The concept of consensus in modern domestic philosophical-political thought]. *Naukovyi chasopys Natsionalnoho pedahohichnoho universytetu imeni M.P. Drahomanova* [*Scientific journal of the National Pedagogical University named after M.P. Drahomanov*], 25, 13 [in Ukrainian].

[31] Shumna, L.P., Sikun, A.M., Kyselov, D.V. (2020). Instytut mediatsii yak alternatyvnyi sposib vyrishennia trudovoho sporu [Institute of mediation as an alternative way of resolving a labor dispute]. *Aktualni problemy derzhavy i prava* [*Actual problems of the state and law*], 88, 165 [in Ukrainian].

agreements: if the parties ultimately adopted a decision that partially reflects the interest of each and an agreement was reached on the essence of the conflict, we can consider that it was achieved consensus; if the solution is based on understanding the essence of the problem, taking into account interests, but not fully solving it, we are talking about a compromise.

Canadian researchers, analysing the consensual forms of environmental conflict settlement, proposed the main definitions, which, in our opinion, fully reflect the essence of conciliation procedures during the settlement of an ecological conflict in order to ensure the sustainability of environmental legal relations: "A consensus process is one in which all those who have a stake in the outcome aim to reach agreement on actions and outcomes that resolve or advance issues related to environmental, social, and economic sustainability. In a consensus process, participants work together to design a process that maximizes their ability to resolve their differences. Although they may not agree with all aspects of the agreement, consensus is reached if all participants are willing to live with the total package. … A consensus process provides an opportunity for participants to work together as equals to realize acceptable actions or outcomes without imposing the views or authority of one group over another"[32].

Therefore, it is possible to use both traditional dispute resolution mechanisms (with the improvement and adaptation of legal norms to the specifics of environmental disputes) and develop extrajudicial forms to settle the environmental-legal conflict. In our firm belief, in the conditions of the practical implementation of the concept of sustainable development of society, preference should be given to alternative forms and methods of conflict resolution that will contribute to the effective resolution of environmental conflicts with maximum consideration of the legitimate socially acceptable interests of all participants. To this end, it is necessary to improve the mechanism of legal regulation of non-traditional conflict resolution procedures, which will contribute to their development and the possibility of becoming a full-fledged alternative to judicial, administrative and other jurisdictional forms of dispute resolution in the future.

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[32] Cormick, G., Dale, N., Emond, P., Sigurdson, S.G., Stuart, B.D. (1996). *Building consensus for a sustainable future: Putting principles into practice*. Ottawa: National Round Table on the Environment and the Economy, 4.

3. Alternative forms of environmental-legal conflict settlement

3.1. Normative principles of the application of consensus procedures for the settlement of environmental and legal conflict in Ukraine

Today, there is an intensification of the practice of using alternative procedures as an innovative approach to ending legal disputes. At the same time, historical and legal traditions, social and economic conditions have a significant impact on the current state and prospects for the development of this direction in each individual country. In particular, one of the main factors that directly affect the introduction of conciliation procedures in Ukraine and public trust in them are national characteristics, as well as legal traditions, which include the traditions of dispute resolution. First of all, it is worth paying attention to the fact that the legal system of Ukraine was formed under the influence of the Romano-Germanic legal tradition. This influence is due to the widespread approach to dispute resolution in society, giving preference to judicial dispute resolution as the most reliable and effective.

The impetus for introducing a non-jurisdictional form of legal conflict resolution in Ukraine was our state's desire for full membership in international institutions, in particular, the European Union. Such a position requires following modern legal trends, including ensuring the protection of the rights and legally protected interests of individuals and legal entities, expanding the possibilities of such protection and granting the right to choose the method of protection, including on the conditions of alternative[33].

Thus, Article 49 of the Treaty establishing the European Community of February 7, 1992[34] defines two groups of membership requirements:

- the state must be European, which includes not so much geographical location as culture, political and legal traditions;

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[33] Krasilovska, Z. (2015). Alternatyvni sposoby vyrishennia sporiv u sferi derzhavnoho upravlinnia: poniattia ta sutnist [Alternative ways of resolving disputes in the field of public administration: concept and essence]. *Derzhavne upravlinnia ta mistseve samovriaduvannia* [*State administration and local self-government*], 1 (24), 159 [in Ukrainian].

[34] *Treaty establishing the European Community 1957 p.* <https://eur-lex.europa.eu/eli/treaty/tec_ 2002/oj>. (October 5, 2022).

- respecting democratic principles.

Bringing the national legislative system of Ukraine into compliance with the acquis communautaire mainly concerns the issue of adapting national legislation to the legislation of the European Union. In this regard, on August 16, 1999, the Cabinet of Ministers of Ukraine approved the Concept of Adaptation of the Legislation of Ukraine to the Legislation of the European Union[35], on March 18, 2004, Verkhovna Rada of Ukraine adopted the Law of Ukraine "On the Nationwide Program of Adaptation the Legislation of Ukraine to the Legislation of the European Union"[36], and already on September 16, 2014, the Association Agreement between Ukraine and the EU[37] was ratified. Directly in Ch. 15 of the Agreement defines a mediation mechanism, the purpose of which is to reach a mutually agreed solution based on comprehensive and accelerated procedures with the help of a mediator and provides wide opportunities for the application of the mediation procedure.

As for Ukraine, when solving the issue of its membership in the European Union, one must also bear in mind the additional criteria for membership in the EU, which were formulated for the countries of Central and Eastern Europe at the Copenhagen meeting of the European Council in June 1993 – the "Copenhagen criteria", and exactly:

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[35] *Pro Kontseptsiiu adaptatsii zakonodavstva Ukrainy do zakonodavstva Yevropeiskoho Soiuzu* 1999 (Kabinet ministriv Ukrainy) [On the Concept of Adaptation of the Legislation of Ukraine to the Legislation of the European Union 1999 (Cabinet of Ministers of Ukraine)]. *Ofitsiinyi visnyk Ukrainy* [*Official Bulletin of Ukraine*], 33, 168 [in Ukrainian].

[36] *Pro Zahalnoderzhavnu prohramu adaptatsii zakonodavstva Ukrainy do zakonodavstva Yevropeiskoho Soiuzu* 2004 (Verkhovna Rada of Ukraine) [On the State Programme for Adaptation of Ukrainian Legislation to the Legislation of the European Union 2004 (Verkhovna Rada of Ukraine)]. *Vidomosti Verkhovnoi Rady Ukrainy* [*The Official Bulletin of the Verkhovna Rada*], 29, 367 [in Ukrainian].

[37] *Uhoda pro asotsiatsiiu mizh Ukrainoiu, z odniiei storony, ta Yevropeiskym Soiuzom, Yevropeiskym spivtovarystvom z atomnoi enerhii i yikhnimy derzhavamy-chlenamy, z inshoi storony* 2014 (Verkhovna Rada of Ukraine) [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 2014 (Verkhovna Rada of Ukraine)]. *Ofitsiinyi visnyk Ukrainy* [*Official Bulletin of Ukraine*], 75 (1), 2125 [in Ukrainian].

1) achieving the stability of institutions that guarantee democracy, the rule of law, human rights, the observance and protection of minority rights (“political criterion”);
2) the existence of a functioning market economy, as well as the ability to withstand competitive pressure and the action of market forces within the EU (“economic criterion”);
3) the ability to assume obligations arising from membership, including compliance with the goals of the political, economic and monetary union by bringing the national legal system into compliance with the acquis communautaire (“legal criterion”).

It is in the context of compliance with the legal criterion that the issue of introducing a system of alternative dispute resolution in Ukraine should be considered[38].

The significant success of the use of conciliation procedures was caused by the evolutionary interpretation of the international standard of access to justice, which is currently interpreted not only as the availability of courts of the classic type, but also as the availability of alternative ways of resolving disputes, if the latter are provided for by national legislation. This was repeatedly emphasized by the Committee of Ministers of the Council of Europe. Thus, in Recommendation No. R(81)7 dated 14.05.1981[39] on measures to facilitate access to justice, it is stated that the courts should take measures to promote conciliation or, where possible, encourage the parties to conciliation or amicable settlement of the dispute to commencement of court proceedings or during it. Recommendation No. R(86)12 dated 16.09.1986[40] on measures to prevent and reduce

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[38] Spektor, O.M. (2012). Zaprovadzhennia alternatyvnoho vyrishennia sporiv (AVS) yak nevidiemna skladova protsesu yevropeiskoi intehratsii Ukrainy [Introduction of alternative dispute resolution (ADR) as an integral part of the process of European integration of Ukraine]. *Aktualni problemy mizhnarodnykh vidnosyn* [*Actual problems of international relations*], 105 (1), 100 [in Ukrainian].

[39] *Recommendation R (81) 7 of the Committee of Ministers to member states on ways to facilitate access to justice 1981*. <https://rm.coe.int/168050e7e4>. (October 5, 2022).

[40] *Recommendation No. R (86) 12 of the Committee of Ministers of the Council of Europe to member states on measures to prevent and reduce excessive workload in courts 1986*. <https://rm.coe.int/16804f7b86> [in English]. (October 5, 2022).

excessive workload in courts proposes separate measures to achieve this goal, in particular:

a) provide, along with appropriate incentives, conciliation procedures before court proceedings or other methods of settling disputes outside the framework of court proceedings;
b) assign judges, as one of their main tasks, the duty to facilitate the amicable settlement of disputes by all possible methods and on all relevant issues before the start of court proceedings in the case or at any stage of such proceedings;
c) consider it an ethical duty of lawyers or propose to the competent authorities to recognize as such a duty to facilitate reconciliation with the other party before the start of legal proceedings in the case or at any stage of such proceedings.

The constitutional amendments of Art. 124 of the Constitution of Ukraine[41], which is the basic constitutional norm, is devoted to issues of justice, and the provisions of part 3 of which establish that “a mandatory pre-trial dispute settlement procedure may be determined by law”. It is believed that the establishment of this norm at the constitutional level is aimed at creating specific conditions for the settlement of conflicts outside the boundaries of the judicial process.

As noted in the scientific literature, it is about the introduction of the idea of “compromise justice and social peace”[42] at the constitutional level, according to which the primary task is the reconciliation of the parties, and not the resolution of the dispute. In the event that reconciliation is not achieved, the Constitution of Ukraine establishes the extension of the jurisdiction of the courts to any dispute and any criminal accusation. Therefore, the right to judicial protection is not lost, but, on the contrary, is optimized by time and property limits through the introduction of alternative methods of dispute settlement.

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[41] *Konstytutsiia Ukrainy* 1996 (Verkhovna Rada of Ukraine) [Constitution of Ukraine 1996 (Verkhovna Rada of Ukraine)]. *Vidomosti Verkhovnoi Rady Ukrainy* [*The Official Bulletin of the Verkhovna Rada*], 30, 141 [in Ukrainian].

[42] Zdrok, O.N. (2013). *Primiritelnyje procedury v civilisticheskom processe: sovremennaya teoreticheskaya koncepciya [Conciliation procedures in the civil process: a modern theoretical concept]*. Minsk: Biznesofset, 4 [in Russian].

The Aarhus Convention[43] and the obligations assumed by Ukraine in connection with its ratification are of great importance in the field of environmental and legal conflict settlement. As basic principles, it targets the state bodies of the Parties to the convention on a number of specific functions, the implementation of which is important in a non-conflict format. Fulfilment of tasks set before the state will be more effective if conciliation procedures and the tools they provide are applied. Thus, the participation of mediators in the process of interaction between the state and public bodies at the stages of information, discussion, and decision-making will contribute to finding a balance of interests and will perform preventive functions to prevent the occurrence of environmental conflicts in the future. In other cases, alternative settlement can be used as a technology for resolving disputes that have already arisen and various sides of environmental relations, which will also serve to implement the principles of this convention.

Thus, the conditions for the introduction of an alternative mechanism for the settlement of environmental and legal conflicts have been properly created in Ukraine today. First of all, this is due to the concept of sustainable development, which requires maximally developing the mechanism of compromise interaction of various subjects of environmental legal relations with the aim of harmonizing their interests and overcoming existing and preventing the emergence of new environmental conflicts. Secondly, the European integration processes of our country impose on Ukraine obligations to ensure the protection of the rights and legally protected interests of individuals and legal entities, the state, to expand the possibilities of such protection and to grant the right to choose the method of protection, including on the conditions of alternative.

[43] *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (United Nations, 1998). <https://treaties.un.org/doc/Treaties/1998/06/19980625%2008–35%20AM/Ch_XXVII_13p.pdf>. (September 22, 2022).

3.2. Effectiveness of conciliation procedures for the settlement of environmental-legal conflict

Unlike adversarial methods, conciliatory methods do not require detailed procedural regulation and the establishment of a system of evidentiary rules, since they are based on the settlement of the dispute by the parties themselves by harmonizing each other's interests, jointly searching for possible options for ending differences and making mutual concessions, aimed at achieving a mutually acceptable or mutually beneficial solution by the parties agreement regarding the dispute that exists between them. Since the parties to the conflict agree voluntarily, it can be argued that each is confident that as a result of such an agreement, they get something clearly better than what they could have without such an agreement.

Alternative approaches to conflict resolution are criticized by both practitioners and their supporters. In particular, the difficulties of financing, the inequality of the parties, the unpredictability of the process, the exclusion of the public from the negotiations, the limitation of publicity (transparency), the instability of the agreement at the implementation stage, the potential incompetence of the mediator, the possibility of powerful political influence on the settlement process, and the unsuitability of these approaches for managing conflicts of values are noted.

Scientific studies determine the conditions when alternative methods of environmental conflict management "work" with a greater or lesser degree of effectiveness:

1) when the number of interests offered for settlement does not exceed reasonable limits;
2) when there are no global problems associated with scientific uncertainty;
3) when the essence of the dispute is not related to fundamental problems of a value or symbolic nature;
4) when the parties are able to achieve a certain level of mutual trust and understanding of common goals;
5) when approximately the same, equal strength and capabilities of the parties.

At the same time, it is important to take into account the circumstances that to one degree or another prevent the application of conciliation procedures for the settlement of environmental conflicts. Among them, the following are distinguished: a) public health or safety require immediate response; b) the dispute concerns issues of national security; c) participants in the conflict do not recognize the rights of the other party; d) the party paying for the mediator's services insists on full control over the process; e) there are reasonable fears that the mediation may be used in bad faith for the purpose of gathering information or delaying the resolution of the dispute; e) the parties have principled uncompromising positions, etc.[44].

The effectiveness of alternative forms of settlement of environmental disputes is also conditioned by specific conditions that are characteristic exclusively for this type of conflict. The field of environmental legal regulation is special and requires special regulatory mechanisms, which is also reflected in the procedure for resolving environmental conflicts. In previous sections, we have already substantiated the importance of using consensus procedures for resolving environmental disputes with the aim of practical implementation of the principle of sustainable development. In this case, it is important to find the limits of a legal compromise, within which it will act as an effective mechanism for regulating environmental relations. What do we mean? Consensus (compromise) building in environmental and legal conflicts must comply with the postulates of sustainable development. An alternative settlement of the eco-conflict can be built only by respecting the general interests of the environment and the health of the population: "ensuring compliance with environmental protection legislation and ensuring the sustainable development of society are two important missions that can be entrusted to environmental mediation"[45]. Unlike the classic model of alternative settlement, which assumes

[44] Kononov, V.V., Petrovska, M.P. (2016). Kryterii mediabelnosti zemelnykh sporiv [Criteria for the mediability of land disputes]. *Yurydychnyi naukovyi elektronnyi zhurnal* [*Legal scientific electronic journal*], 4, 91 [in Ukrainian]; Susskind, L., Amundsen, O., Matsuura, M. (1999). Using assisted negotiation to settle land use disputes. *Lincoln Institute of Land Policy*, 2.

[45] Vassallo, Laurent. *La médiation environnementale, stratégie pour la résolution des conflits liés à l'environnement.* <https://www.reglementation-environnement.com/

that each party takes a step to meet the other, in ecological reconciliation these steps can be taken only under the condition of compliance with the norms and requirements of environmental law. To illustrate, there can be no environmental mediation where two opposing parties have agreed to relocate a project that has an environmental impact if the relocated project continues to have environmental emissions that do not meet applicable standards.

That is, the compromise (consensus) as a consequence of the conflict resolution should first of all be aimed at the benefit of the environment and the health of the population. In this context, it is worth investigating the concept of ecological interest, its content and normative consolidation. The primary goals and tasks of legal regulation in the field of environmental protection are to ensure an ecologically safe environment as a general public good and a necessary condition for the existence of humanity. This determines the presence of one of the most important principles of state environmental policy and environmental law – the principle of priority of public interest in environmental protection (public ecological interest).

This principle received legislative consolidation in the fundamental regulatory act of environmental legislation – the Law of Ukraine "On Environmental Protection"[46]. In Art. 3 among the principles of environmental protection, the legislator defines: the priority of environmental safety requirements; the obligation to comply with environmental standards and limits on the use of natural resources when carrying out economic, managerial and other activities; guaranteeing an ecologically safe environment for people's life and health; greening of material production based on the complexity of solutions in matters of environmental protection, use and reproduction of renewable natural resources, wide implementation of the latest technologies and a number of others.

15307-mediation-environnementale-strategie-resolution-conflits-environnement.html> [in French]. (September 28, 2022).

[46] *Zakon pro okhoronu navkolyshnoho pryrodnoho seredovyshcha* 1991 (Verkhovna Rada of Ukraine) [Law on Environmental Protection 1991 (Verkhovna Rada of Ukraine)]. *Vidomosti Verkhovnoi Rady Ukrainy* [*The Official Bulletin of the Verkhovna Rada of Ukraine*], 41, 546 [in Ukrainian].

Undoubtedly, these legislative provisions certify the priority of public ecological interest and determine further ways of implementing ecological principles into the legal policy of the state, greening all spheres of public life. The principle of priority of public environmental interest has also found support in scientific literature. The theory of public (societal) ecological interest was developed in detail by M.I. Vasylieva. In her opinion, public environmental interests are the interests of the entire society, consisting of the interests of social groups and individual citizens, in maintaining the quality of the natural environment that ensures the life and health of a person and his future generations, in the fair distribution of benefits received from the use of natural resources, which form the basis of the activity of the country's population, balanced with the needs of economic growth, mediated by law, protected and guaranteed by the state[47].

The latest concept of environmental law focuses not only on environmental protection, but also pays attention to establishing requirements for economic and other activities in order to ensure human environmental safety. In this regard, the right to an environment that is safe for life and health has been constitutionally enshrined (Article 50 of the Constitution of Ukraine[48]). For the development of this constitutional provision, the Law of Ukraine "On Environmental Protection"[49] among the main principles of environmental protection defines the guarantee of an ecologically safe environment for the life and health of people, the priority of environmental safety requirements (Article 3), provides a provision according to which the health and life of people are also subject to state protection from

[47] Vasileva, M.I. (2004). Publichnye ekologicheskie interesy: problemy teorii [Public ecological interests: problems of theory]. *Ekologicheskoe pravo* [*Environmental law*], 4, 12 – 20 [in Russian].
[48] *Konstytutsiia Ukrainy* 1996 (Verkhovna Rada of Ukraine) [Constitution of Ukraine 1996 (Verkhovna Rada of Ukraine)]. *Vidomosti Verkhovnoi Rady Ukrainy* [*The Official Bulletin of the Verkhovna Rada*], 30, 141 [in Ukrainian].
[49] *Zakon pro okhoronu navkolyshnoho pryrodnoho seredovyshcha* 1991 (Verkhovna Rada of Ukraine) [Law on Environmental Protection 1991 (Verkhovna Rada of Ukraine)]. *Vidomosti Verkhovnoi Rady Ukrainy* [*The Official Bulletin of the Verkhovna Rada of Ukraine*], 41, 546 [in Ukrainian].

the negative impact of an unfavourable ecological situation (Article 5, Part 3), and establishes the subjective right of citizens of Ukraine to a natural environment that is safe for their life and health (Article 9). The norms of the Civil Code of Ukraine[50] define the right to an environment safe for life and health as a personal non-property right that ensures the natural existence of a natural person. As noted in educational and scientific legal literature, the right to an environment safe for life and health is inalienable and belongs to absolute rights, which corresponds to the duty of the state and all other persons to refrain from violating this right[51].

From the above, we can see that both the principle of priority of public (namely, ecological) interest and the principle of priority of human rights (in particular, the right to an environment safe for life and health) received legislative consolidation. The public environmental interest, as the interest of society in preserving the environment, the ultimate goal of which is to ensure the right to a natural environment that is safe for life and health of current and future generations, cannot go against the private environmental interest (the interest of individuals or their group), is not mutually exclusive categories, and on the contrary, the proper provision of public ecological interests will contribute to the maximum provision of private ecological interests, and, conversely, protection of the right to an environment safe for life and health indirectly contributes to the protection of public ecological interests. It is these categories that are the basis for the settlement of the environmental-legal conflict, regardless of whether we will resolve it in court or using alternative forms of dispute settlement.

The next point worth paying attention to is the method and principles on which interests will be mutually agreed upon during the settlement of

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[50] *Tsyvilnyi kodeks Ukrainy* 2003 (Verkhovna Rada of Ukraine) [Civil Code of Ukraine 2003 (Verkhovna Rada of Ukraine)]. *Vidomosti Verkhovnoi Rady Ukrainy [The Official Bulletin of the Verkhovna Rada of Ukraine]*, 40–44, 356 [in Ukrainian].

[51] Kobetska, N.R. (2009). *Ekolohichne pravo Ukrainy:* navch. posib. 2 [*Environmental law of Ukraine:* study guide]. Kyiv: Yurinkom Inter, 45 [in Ukrainian]; Krasnova, M.V., Krasnova, Yu.A. (2021*). Realizatsiia ta zakhyst ekolohichnykh prav hromadian: teoretyko-pravovi aspekty:* naukove vydannia [*Implementation and protection of environmental rights of citizens: theoretical and legal aspects:* scientific edition]. Kyiv: FOP Yamchynskyi O.V., 54 [in Ukrainian].

eco-conflicts by means of conciliation procedures. What is it about? For environmental and legal regulation, it is important that the maximum interests of all interested parties are taken into account in the decision-making process. The consequence of this should be the adoption of a "law-forming" ("norm-forming")[52] interest, the achievement of which is possible only on the basis of a legal compromise – a conciliation procedure, which consists of comparison, proportionality, mutual consideration of individual, state and public interests (in various combinations depending on the situation), the result of which is an "abstract legal construction of general interest[53]", which "partially reflects the interest of each of the parties and the implementation of which does not harm them"[54].

In this regard, the mechanism of modern democracy, which involves decision-making by the majority and disregarding the interests of the minority, is not effective for regulating environmental relations. More weight is given to deliberative democracy as such, which "must help participants see the complexity of the problem, go beyond the win/lose scenario and agree on joint solutions"[55]. For the first time, the term "deliberative democracy" (from English deliberation – discussion, meeting) appears in 1980 in the work of the American political scientist J. Bessett, who gives it the following characteristics: "the decision-making process based on a broad discussion of alternatives, taking into account the arguments of all interested parties with the aim of making a decision

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[52] Kazimirchuk, V.P., Kudryavcev, V.N. (1995). *Sovremennaya sociologiya prava*: Ucheb. dlya vuzov [*Modern sociology of law*: Textbook for universities]. Moskva, 62 [in Russian].

[53] Lapaeva, V.V. (2000). Sociologiya prava [Sociology of law]. Moskva, 173 [in Russian].

[54] Sokolova, A.A. (2003). *Mehanizm soglasovaniya interesov v processe formirovaniya prava* [Mechanism of coordination of interests in the process of formation the law]. <https://elib.bsu.by/bitstream/123456789/20957/1/4_%D1%81%D0%BE %D0%BA%D0%BE%D0%BB%D0%BE%D0%B2%D0%B0.pdf> [in Russian]. (September 28, 2022).

[55] *Deliberation. Getting Policy-Making Out from Behind Closed Doors* / The Open Government Partnership Practice Group on Dialogue and Deliberation <https://www.opengovpartnership.org/wp-content/uploads/2019/06/Deliberation_Getting-Policy-MakingOut_20190517.pdf > (October 18, 2022).

acceptable to all (consensus) or the maximum possible number of discussion participants"[56]. That is why the principles of deliberation are effective for the settlement of environmental conflicts and help the participants of the discussion to understand the justified demands of the opposite side and to reach a common understanding of the legitimacy of the decision, "based on the understanding and recognition by the participants in the dispute of how and why a specific decision was made, even if they, as well as earlier, do not agree with him on the essence"[57]. Thus, deliberative democracy offers a way to resolve environmental conflicts, which are often characterized by incompatible values and the impossibility of reaching a consensus. Thanks to this, we get a good result and achieve the goals of the alignment of interests. According to L.M. Demchuk, with the help of the principles and methods of deliberative democracy in the eco-conflict settlement mechanism, it is possible to: 1) ensure the legitimacy of collective decisions under the condition of limited resources (when distribution issues are resolved), 2) ensure real protection of public interests in relation to issues of public significance; 3) promote mutual respect in the decision-making process (subject to incompatible moral values); 4) to help avoid or correct inevitable mistakes in the process of making collective decisions (provided there is incomplete understanding)[58].

Only as a whole, taking into account the general conditions of consensus practices and special mechanisms of legal regulation of environmental relations, will we get a positive result and an effective, effective solution that would satisfy the interests of the parties and be "favourable" for the environment.

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[56] Bessette, J. (1980). Deliberative democracy: the majority principle in Republican Government. *How Democratic is the Constitution?* / Goldwin R. A., Schambra W. A. (eds.) Washington, DC: American Enterprise Institute, 102–116.

[57] Smith, G. (2003*). Deliberative democracy and the environment*. London: Routledge, 102.

[58] Demchuk, A. L. (2020). Vozmozhnosti i perspektivy ispolzovaniya principov deliberativnoj demokratii v upravlenii sovremennymi ekologicheskimi konfliktami. [Opportunities and prospects for using the principles of deliberative democracy in managing modern environmental conflicts]. *Cennosti i smysly* [*Values and Meanings*]*,* 2, 28 [in Russian].

3.3. Optimal forms of alternative settlement for environmental conflicts

The system of alternative dispute resolution includes a large number of methods of conflict resolution, which in some cases have a number of differences in terms of the approaches used during their use. In this regard, in foreign and domestic legal science, various criteria for assigning alternative methods to subject groups are distinguished depending on tasks, nature, content, order, scope of application, final result and other characteristic features.

It is traditional to divide alternative methods depending on their status and importance in the system of alternative dispute resolution into basic and combined ones.

Among the main alternative methods of dispute resolution, as a rule, the following three methods and the procedures inherent in them are considered, namely:

– negotiations constitute the process of settlement of a legal conflict (dispute) by the parties without the involvement of a third person (mediator) to provide assistance in reconciliation and reaching an agreement. Negotiations are focused on independent termination of existing disagreements by the parties at their own discretion;

– mediation is the settlement of a legal conflict (dispute) by the parties with the assistance of an impartial, disinterested mediator, who is called to facilitate the reconciliation of the parties and their reaching an agreement. Mediation is focused on the termination of existing disagreements by the parties themselves with the general guidance of the procedure by the mediator;

– arbitration is the resolution of a legal dispute by a private (non-state) court authorized to make a binding decision based on the results of a case review, which is usually carried out with the participation of the parties. Arbitration is focused on the resolution of existing disagreements by a neutral third party (arbitrator) taking into account the legal positions of the parties in the dispute.

Hybrid (combined) methods of alternative dispute resolution are formed due to the combination of the main methods (med-arb, arb-med) or

as a result of their evolution (mini-trial, collaborative procedures, participatory procedures, etc.). For example, med-arb arose as a combination of mediation and arbitration and was aimed at overcoming the shortcomings of the latter when used separately. This method combines features of conciliatory and quasi-judicial methods of alternative dispute settlement. Separately, it is worth mentioning the field of online dispute resolution (Online Dispute Resolution – ODR), which has recently been gaining more and more popularity, connected with the general trends of the increasing use of information technologies in all spheres of social life. Currently, the features of ODR are related to the use of conference calls during the application of traditional methods of conciliation procedures (online mediation, online arbitration, etc.), as well as the use of special platforms that allow individuals to conduct online negotiations in order to resolve their dispute.

The authors of the textbook "Mediation in the professional activity of a lawyer" emphasize that a wide range of methods of ABC combines procedures that are quite different in nature, some of which are based on the principle of quasi-judicial procedures (arbitration court, arbitration, etc.), while others are focused on the reconciliation of the parties (mediation, conciliation, collaborative procedures, etc.) or have a recommendatory nature (independent assessment of facts, preliminary neutral assessment, etc.):

- *Quasi-judicial or adversarial methods,* which are built by analogy to court proceedings with its clear structure, competition, the need to examine evidence and make a decision in the case. In this case, a third independent person acts as an arbitrator, who has to make a legal and justified decision based on a fully and comprehensively investigated case and evidence. Such alternative methods of dispute resolution include arbitration courts, the institution of a private judge (private judge, rent-a-judge), etc.
- *Consensual or conciliatory methods,* which, in contrast to quasi-judicial methods of resolving disputes based on competition, are based on the use of the technology of reconciliation of the parties to the dispute. These circumstances determine the role of a third neutral person who participates in the mentioned procedures (mediator,

conciliator, etc.): such a person is not entrusted with the task of resolving the dispute and making a decision, instead, he is responsible for establishing communication between the parties in order to reach an agreement between them. Sometimes such procedures can be conducted not as negotiations with the involvement of one independent mediator, but according to the model of negotiations with the participation of representatives, who together guide the parties to a peaceful settlement of the dispute (collaborative procedures, participatory procedures, etc.).

- *Consultative methods* aimed at advising the parties to assess the prospects of their case in court or other quasi-judicial body, or analysing a legal dispute and providing recommendations on possible options for its resolution. These methods of alternative dispute resolution include, for example, summary jury trial, neutral expert fact-finding, early neutral evaluation, etc[59].

In the scientific literature, there are other classification groups of ABC methods, depending on the chosen criterion. As you can see, the scope of conciliation procedures is diversified and includes a large number of methods that differ from each other in specific features that are the basis of the criterion chosen for the classification of alternative dispute resolution methods.

Applying the acquired knowledge of the forms, methods, and substantive characteristics of certain types of conciliation procedures for the settlement of an environmental-legal conflict, it is worth noting that in order to choose an adequate method of dispute resolution or conflict settlement, it is necessary to take into account not only the specifics, advantages and disadvantages of this or that alternative method of dispute settlement, but also its procedural features, relations between the parties, etc. In particular, in the case of settlement of environmental conflicts, it is necessary to take into account specific procedures, which can also be defined as a special way of dispute settlement. Yes, the negotiation process is always at the heart of

[59] Krestovska, N.M., Romanadze, L.D., Mykytyn, Yu.I. (2019). *Mediatsiia u profesiinii diialnosti yurysta* [*Mediation in the professional activity of a lawyer*]. Odesa: Ekolohiia, 88–89 [in Ukrainian].

solving any conflict, as it is the easiest way to learn about the position of the other party and demonstrate yours to the opponent. However, two approaches to understanding negotiations can be distinguished – as an integral part of resolving a disputed situation and as an independent organizational and legal mechanism. In the first case, negotiations, for example, are actively used during mediation and the conclusion of a settlement agreement. In the second – as a form of conciliation procedure. We have already talked about them in chapter 1, when it came to public participation in environmentally significant decisions (public discussions, hearings, citizen participation in environmental impact assessment, strategic environmental assessment, etc.). The implementation of the mentioned forms of relationship regulation is to one degree or another aimed at avoiding socio-ecological conflicts and necessarily involves long negotiation procedures as one of the alternative ways to resolve conflicts.

Another type of consensus procedure, in which the parties can settle a dispute without the participation of a third party, is a claim proceeding – a form of out-of-court dispute settlement established by law or contract. This procedure is based on sending a claim and responding to it. A claim is a written offer to voluntarily settle a dispute. Application of the claim procedure can be both imperative and dispositive in nature. There is a claim proceeding, the specifics of which are determined by public and legal interest. Thus, a claim for compensation for damage caused to the environment is presented to the person who caused such damage, from the state body exercising control in the field of environmental protection, rational use of natural resources within its competence. This claim is presented before the corresponding lawsuit is filed. If a person agrees to compensate for the damage caused to the environment, then the conflict is over and does not require further litigation.

Another alternative method of conflict resolution is the institution of arbitration. According to Art. 2 of the Law of Ukraine “On Arbitration Courts”[60], an arbitration court is a non-state independent body formed by

[60] *Zakon pro treteiski sudy* 2004 (Verkhovna Rada of Ukraine) [Law on Arbitration Courts 2004 (Verkhovna Rada of Ukraine)]. *Vidomosti Verkhovnoi Rady Ukrainy* [*The Official Bulletin of the Verkhovna Rada of Ukraine*], 35, 412 [in Ukrainian].

agreement or relevant decision of interested individuals and/or legal entities in accordance with the procedure established by law to resolve disputes arising from civil and economic legal relations. The principle of arbitration, which is the basis of the work of the arbitration court, is not aimed at considering the dispute on its merits. Its goal is maximum assistance to the parties to the conflict in reaching a compromise and concluding an amicable agreement. The legislator provides for two forms of arbitration proceedings: on a permanent basis (permanent arbitration courts) and for the resolution of a specific dispute ("ad hoc" courts). The main advantages of the arbitration court are that the court's activity has a contractual basis, the case is considered relatively quickly, the decision of the arbitration court is final, and its execution is carried out through enforcement agencies. However, unlike decisions made by courts of general jurisdiction, which are issued in the name of the state of Ukraine and are binding on all individuals and legal entities, the decisions of the arbitration court are binding only on the parties to the arbitration proceedings.

However, this form of alternative dispute resolution has limitations regarding the possibility of application for environmental dispute settlement. The following cases cannot be the subject of consideration in the arbitration court: the invalidation of normative legal acts; in disputes arising from the conclusion, change, termination and execution of business contracts related to the satisfaction of state needs; related to state secrets; cases in which one of the parties is a state power body, a local self-government body, their official or official, another subject during the exercise of power management functions based on legislation, including the performance of delegated powers, a state institution or organization, state enterprise; in disputes regarding real estate, including land plots; cases, based on the results of consideration of which the implementation of the decision of the arbitration court will require the taking of appropriate actions by state authorities, local self-government bodies, their officials or officials and other subjects during their exercise of power management functions on the basis of legislation, including the implementation of delegated powers. It is these categories of cases that make up the lion's share of environmental legal conflicts.

The most promising direction for the development of alternative forms of settlement of environmental and legal conflicts is the institution of mediation. This form of solving environmental conflicts is the most common in the world, and with the adoption of the Law of Ukraine "On Mediation"[61] in 2021, we hope that positive changes will take place in the national law enforcement practice as well. It is also worth reminding about the accession of Ukraine as a signatory on August 7, 2019 to the United Nations Convention "On International Settlement Agreements Resulting Mediation"[62], which adds to legal mediation a guarantee of the execution of agreements and is the piece of the "puzzle" an effective and unified procedure for the implementation of agreements concluded as a result of mediation, which was lacking before. By the way, this is the only type of conciliation procedure, which is directly defined in environmental legislation: in accordance with the changes introduced in 2021 in Art. 158-1 of the Land Code of Ukraine[63] establishes the possibility of settling land disputes through mediation.

Consensus building is a powerful and effective decision making and dispute resolution tool. However, like any tool, it must be used with skill for the purposes for which it is intended. Where the process is inappropriately or ineffectively applied, participants could be misled and situations made worse. Canadian scientists, who worked on the problem of solving environmental conflicts taking into account the principle of sustainable development, developed 10 practical principles for building consensus for a sustainable future:

[61] *Zakon pro mediatsiiu* 2021 (Verkhovna Rada of Ukraine) [Law on mediation 2021 (Verkhovna Rada of Ukraine)]. (2022). *Vidomosti Verkhovnoi Rady Ukrainy* [*The Official Bulletin of the Verkhovna Rada of Ukraine*], 7, 51 [in Ukrainian].

[62] *Ukraina pidpysala Konventsiiu OON "Pro mizhnarodni uhody za rezultatamy mediatsii"* [Ukrained signed the United Nations Convention "On International Settlement Agreements Resulting from Mediation"]. (2022). <http://namu.com.ua/ua/resources/news/tsnualratketyfaoa-nsrvyershchkyu-ssr-tus-pkzrauserk-tsgsey-ia-uyeitsoekhakhapypyeekashchkl/> [in Ukrainian]. (October 18, 2022).

[63] *Zemelnyi kodeks Ukrainy* 2002 (Verkhovna Rada of Ukraine) [Land code of Ukraine 2002 (Verkhovna Rada of Ukraine)]. *Vidomosti Verkhovnoi Rady Ukrainy* [*The Official Bulletin of the Verkhovna Rada of Ukraine*], 3–4, 27 [in Ukrainian].

Principle 1. Purpose-Driven. People need a reason to participate in the process.
Principle 2. Inclusive. Not Exclusive. All parties with a significant interest in the issues should be involved in the consensus process.
Principle 3. Voluntary Participation. The parties who are affected or interested participate voluntarily.
Principle 4. Self-Design. The parties design the consensus process.
Principle 5. Flexibility. Flexibility should be designed into the process.
Principle 6. Equal Opportunity. All parties have equal access to relevant information and the opportunity to participate effectively throughout the process.
Principle 7. Respect for Diverse Interests. Acceptance of the diverse values, interests, and knowledge of the parties involved in the consensus process is essential.
Principle 8. Accountability. The participants are accountable both to their constituencies and to the process that they have agreed to establish.
Principle 9. Time Limits. Realistic deadlines are necessary throughout the process.
Principle 10. Implementation. Commitments to implementation and effective monitoring are essential parts of any agreement[64].

The determining conditions when choosing a type of conciliation procedure are, first of all, the goal (substantive legal result) that the parties (party) seek to achieve when using it (applying): protection of subjective rights, reconciliation of the interests of the parties or establishment of certain circumstances; as well as the specific procedural result of applying one or another method: a decision of an arbitration court or a competent authority, an agreement to settle a dispute, an expert opinion, and their legal consequences for the parties to the dispute. When choosing the optimal method of alternative dispute resolution, the parties should take into account, based on their own needs and capabilities, other factors, such as the costs of conducting the procedure (the profit must cover the costs of

[64] Cormick, G., Dale, N., Emond, P., Sigurdson, S.G., Stuart, B.D. (1996). *Building consensus for a sustainable future: Putting principles into practice*. Ottawa: National Round Table on the Environment and the Economy, 7.

conducting it), the time of the procedure, preservation of confidentiality of information, preservation of partnership relations, the need to obtain a decision (precedent) of a competent authority and others.

Thus, the choice of the most effective way of resolving a dispute or settling an environmental-legal conflict can be guaranteed only if the method of conciliation procedure chosen by the parties (party) ensures the achievement of the necessary material and legal goal. At the same time, to the maximum extent, the parties should take into account those factors that determine their own needs and capabilities.

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