

ENVIRONMENTAL LEGISLATION OF UKRAINE: TOWARDS THE EUROPEAN UNION STANDARDS

Igor Yakymenko*, Olena Dotsenko, Victoria Negretova, Oleksandra Pobuta,
Maryna Hrychenko, Svitlana Madzhd

National University of Food Technologies, Kyiv, Ukraine

*Corresponding author: iyakymen@gmail.com

Environmental legislation of Ukraine is based on the fundamental principles of sustainable development and constitutes an important part of the national legislation. It includes a number of articles of the Constitution of Ukraine, the Law of Ukraine on Environmental Protection, relevant articles of the Code of Ukraine on Administrative Offenses and the Criminal Code of Ukraine among many others. Starting from 2014, Ukraine began implementing the key elements of the EU legislation in terms of the EU – Ukraine Association Agreement. According to the Cabinet of Ministry of Ukraine, currently Ukraine has implemented about 80% of the European Union legal norms on environmental protection into the national legislation. A good example of the effective implementation of the EU laws into the legislation of Ukraine is the new Law of Ukraine on Waste Management (2022), which introduced basic European principles and hierarchy of waste management into Ukrainian legislative landscape. Meanwhile, one of the crucial parts of the legislation of Ukraine, which still needs a radical upgrade, is a set of norms for legal responsibility for environmental offences. Due to the outdated Code of Ukraine on Administrative Offenses, the state can currently impose only a symbolic fine for environmental offences. These norms rather provoke potential wrongdoers to break the laws than to follow good social practices. However, all parts of the society, including citizens, business circles, authorities and social services are deeply interested in maintaining clean environment now and for the future generations. Consequently, the legislative changes should be implemented urgently, even despite the other huge challenges for the country during these days.

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Introduction

Ukraine is a European country currently involved into the devastating war against the terrorist Russian regime, the biggest war in Europe after the World War II. On the other hand, Ukraine is the country with long-term European integration ambitions, currently on its way to the European Union membership. These two key aspects of modern status of Ukraine determine current state of all national institutions and social processes, including transformation of the national legislation towards European Union norms and high social standards. According to the European Union – Ukraine Association Agreement adopted back in 2014 (AA, 2014), Ukraine took obligations to implement a significant parts of EU directives and regulations into its own legislation. Particularly, the Annex XXX to Chapter 6 "The Environment" of the EU – Ukraine Association Agreement provided a list of

more than 20 EU directives and regulations on the environmental protection, that should be implemented into Ukrainian laws. In this paper, we provide a brief analysis of the current state of the implementation of environmental legislation of the EU into the legislative field of Ukraine, as well as progress and challenges along the way.

Background of environmental legislation of Ukraine

Ukraine has a developed system of environmental legislation based on the generally accepted international principles and norms of environmental protection. It is also worth to note, that, according to the legal practices in Ukraine, the Parliament (Verkhovna Rada) of Ukraine typically amends existing laws rather than adopts new laws instead of existing ones. Official website on the legislation of Ukraine (<https://zakon.rada.gov.ua>) provides all the laws and other regulatory acts of Ukraine, indicating the dynamics of its amending. It means that even if the law was passed many years ago, it can still remain an up-to-date piece of the current legislation because of subsequent amendments.

The fundamental law of Ukraine, the Constitution of Ukraine (VRU, 1996), clearly states that the duty of the state is to ensure ecological safety and to maintain the ecological balance on the territory of Ukraine (Article 16). The Article 50 of the Constitution of Ukraine guarantees to everyone the right to have the environment that is safe for life and health, with a compensation for any damages inflicted through the violation of this right. Everyone is also guaranteed the right of free access to information about the environmental situation, as well as the right to disseminate such information. On the other hand, according to the Article 66 of the Constitution, everyone is obliged not to harm the nature and to be responsible for any damage he or she has inflicted.

The main environmental law of Ukraine, the Law of Ukraine on Environmental Protection (VRU, 1995) covers all key issues of environmental protection in the country, including civil rights and obligations of all parts of the society, including citizens, all branches of national authorities and local governments. In particular, the Article 68 of this law on Responsibility for the Violation of Legislation on Environmental Protection states that violating of the legislation of Ukraine on environmental protection shall entail disciplinary, administrative, civil and criminal responsibility established under this law and other legislation of Ukraine. Meanwhile, this law does not determine the scope of penalties for violations on the environmental protection. In fact, Ukrainian legislation has particular laws in the form of codes on different types of legal responsibility for all kinds of violations and offences, including the environmental issues.

Administrative responsibility in the field of environmental protection and natural resources is regulated by the Chapter 7 of the Code of Ukraine about Administrative Offences (VRU, 1984). About 40 articles of this code regulate administrative responsibilities for citizens and officials, mostly in form of various fines. The main drawback here is that calculation of the fines is based on the outdated so-called tax-free minimum income (TFMI) of citizens, which makes the penalties extremely low (as low as a few euros, see below).

Criminal responsibility in Ukraine is under the regulation of the Criminal Code of Ukraine (VRU, 2001). The Section VIII of this code includes 18 articles on criminal offences against the environment. The punishments for the criminal offences are much severe compared to the administrative offences and typically imply higher fines or imprisonments. For example, the Article 236 of the Criminal Code of Ukraine on violation of environmental safety rules reads as follows:

- Violation of regulations on environmental assessment or environmental safety during designing, location, construction, reconstruction, putting into operation, operation and closure

of production facilities, structures, mobile units and other objects, where it caused death of people, or environmental pollution of large areas, or any other grave consequences shall be punishable by imprisonment for a term of five to ten years.

The strictest punishment in the field is imposed for the ecocide (the Article 441 of the Criminal Code of Ukraine):

- Mass destruction of flora and fauna, poisoning of air or water resources, and any other actions that may cause an environmental disaster shall be punishable by imprisonment for a term of eight to fifteen years.

It is noteworthy here that one type of the numerous Russians war crimes during the current aggression against Ukraine is the ecocide in Ukraine, which strictly aligns according to the definition above (see, for example, (Kharchenko et al., 2024)).

Civil responsibility is regulated in Ukraine by Civil Procedure Code of Ukraine (VRU, 2005) and provides full compensation by the offender for the damage caused to the environment. However, this law defines only the general principles of civil responsibility. The amounts of specific fees for certain offenses are normally determined by relevant by-laws, e.g., government decrees or regulatory acts of the relevant ministries of Ukraine. For example, the fees for the damage caused by the violation of the legislation on the nature reserves are provided by the Decree of the Cabinet of Ministers of Ukraine from May 10, 2022 № 575 (CMU, 2022b).

In general, Ukrainian legislation on the environmental protection and natural resources covers all the main issues in the field. Nevertheless, current process of implementation of the EU legal norms into Ukrainian laws is extremely important both for effective regulation of the environmental protection and for the further European integration of the country.

Progress of Ukraine in the EU environmental legislation implementation

Starting from 2014, after signing the EU - Ukraine Association Agreement, the implementation of the EU environmental laws into Ukrainian legislation began. The obligations of Ukraine in the field were outlined in the Annex XXX to Chapter 6 "The Environment" of the EU – Ukraine Association Agreement with precise terms for particular provisions of the EU directives and regulations on air quality control, water protection, waste management and other environmental issues.

Ukrainian government and the European Commission permanently monitor the progress on Ukraine in this process. According to the last report of Ukrainian government (CMU, 2024a), by the end of 2023, Ukraine implemented 80% of its obligations in the field of environmental protection compared to 77% of overall progress in implementation of the Association Agreement obligations.

Even during the last two years, i.e. during the full-scale war with Russia, Ukraine has continued its work on implementation of the European Union legislative norms into Ukrainian laws. For example, in 2022 Ukraine adopted critically important for the country law, the Law of Ukraine on Waste Management (VTU, 2022), which “introduces effective mechanisms of waste management both at the stage of generation and reuse of components with resource value, and at the stage of collection, processing and disposal. The law is based on the principles and best practices of the European legislation defined by the Directive 2008/98/EC on Waste” (CMU, 2023). In 2022, the Law of Ukraine on Chemical Safety and Management of Chemical Products (VRU, 2022) was also adopted. The law provides a legislative framework for the implementation in national legislation of the requirements of the EU Regulation (EC) № 1907/2006 concerning the registration, evaluation,

authorisation and restriction of chemicals / REACH (EP&CM, 2006) and the EU Regulation (EC) № 1272/2008 classification, labelling and packaging of substances and mixtures (EP&CM, 2008c).

As to the water related policies, in 2022 the Ukrainian government issued the Decree On Approval of the Water Strategy of Ukraine until 2050 (CMU, 2022a). This strategy is designed to solve the main water problems of the country, including ensuring equal access to drinking water of high-quality and safe for human health; achieving a “good ecological condition” of water; preventing droughts, floods and other harmful water related effects; sustainable management of water resources according to the basin principle (CMU, 2023). In 2023, following the strategy and implementing the requirements of the Directive 2000/60/EC (EU Water Framework Directive) (EP&CM, 2008a), nine draft river basin management plans have been developed for the Danube, Dniester, Dnipro, Don, Southern Bug, Wisla, Azov, and Black Sea & Crimean rivers (CMU, 2024b).

In forestry policy, in order to establish the legal and organisational framework for the production and circulation of forest reproductive material in Ukraine, its import and export, the Verkhovna Rada of Ukraine is considering a draft law on forest reproductive resources (Reg. № 9116 of March 17, 2023). This law is in line with the EU Directive 1999/105/EC (CM, 1999) on the marketing of forest reproductive material (CMU, 2024b)

Thus, even at the state of war, Ukraine continues its work on modernization of environmental legislation towards European Union high social standards. Nevertheless, a lot of work should be done yet in the field.

Further needs for updating environmental legislation of Ukraine

While Ukraine is moving forward to the European Union legislation norms and social standards, it seems that the national authorities sometimes do not follow the ambitious European Union environmentally friendly strategies. For example, abovementioned Law of Ukraine on Waste Management (VTU, 2022) makes substantial progress in the national legislation, implementing the EU hierarchy of waste management (Article 4) and European waste classification (Article 7). However, according to the Article 37 of the adopted law, by 2035 Ukraine should reuse or recycle only 25% of municipal waste, which means that 75% of waste will still go to the landfills. Meanwhile, the Directive (EU) 2018/850 (EP&CM, 2018) ensures that by 2035 the amount of municipal waste disposed in the landfills throughout the EU will be reduced to 10% or less of the total amount of municipal waste generated.

The other example of strategic policy gaps between Ukraine and the EU is the green energy transition. According to the Directive (EU) 2023/2413 (the revised Renewable Energy Directive) (EP&CM, 2023), the EU binding renewable target in all energy consumption for 2030 is 42.5%. Meanwhile, Ukrainian legislation does not provide any binding plans for renewables at all. The only Ukrainian government’s document on the issue is the draft of the National Action Plan for the Development of Renewable Energy for the Period up to 2030, from January 2022 (CMU, 2022c), which proposed the target of 27% of renewables for the total energy consumption in Ukraine by 2030.

One of the most critical issues in the environmental legislation of Ukraine is the norms of legal responsibility for the environmental violations. The most articles of the Code of Ukraine about Administrative Offences (VRU, 1984) on environmental offences provide outdated and ineffective penalties. One of the formal reasons of this legal nonsense is that the Tax Code of Ukraine (VRU, 2010) uses the outdated TFMI of citizens, which is applied for calculation of penalties in other laws / codes. The TFMI established by clause 5 of subsection 1 of the Chapter XX of the Tax Code of

Ukraine is 17 UAH, which currently (on June 2024) equals to about 0.4 euro. This makes some particular articles of the Code of Ukraine about Administrative Offences sound ridiculous. For example, according to the Article 59 of the Code, the pollution and contamination of natural waters entails the imposition of a fine on citizens from three to seven TFMI (i.e. up to 2.5 euros) and on officials from five to eight TFMI (i.e. up to 3.2 euros). Moreover, this article imposes a fine on officials for commissioning of the companies, utility and other objects without constructions and devices preventing pollution and contamination of natural waters in the amount of five to eight TFMI (i.e. up to 3.2 euros). Similarly, the Article 78 of this Code indicates that the emission of pollutants into the atmospheric air without permission of specially authorized body or exceeding of admissible emission of pollutants of stationary sources during operation of processing equipment, constructions and objects results in penalty on officials from five to eight TFMI (up to 3.2 euros again).

Obviously, such penalties sound absurd and rather provoke offences against the environment than prevent them. For comparison, according to the Federal Immission Control Act (BT, 2002), in Germany the administrative fines may be up to €50,000 for less severe environmental offenses, and much higher for severe violation against the environment. In Poland, administrative fines for the environmental offences may be up to PLN 1,000,000. (about 230,000 euros) (Sejm, 2001).

On the other hand, the articles of the Criminal Code of Ukraine on the criminal offences against the environment provide much stricter penalties compared to the national administrative fines. However, the definition of criminal offences in many cases are similar to the administrative violations description. For example, the Article 241 of the Criminal Code of Ukraine defines as a criminal offence the pollution or other change of natural characteristics of air by hazardous substances, waste or other material generated by industrial or other production, as a result of violation of special rules, where these acts exposed human life and health or the environment to danger. Keeping in mind that any exceeding of admissible emission of pollutants is harmful and may be dangerous for human health, this definition is very similar to those in the above-mentioned Article 78 of the Code of Ukraine about Administrative Offences. But according to the Criminal Code's article, the offence shall be punishable by a fine of one thousand eight hundred to three thousand six hundred TFMI (up to 1440 euros) or imprisonment for up to three years. Therefore, it seems that depending on the court decision, the same pollution of atmospheric air may be classified as an administrative violation with the penalty in about 3 euros or as a criminal offence with the punishment up to three years of imprisonment. As for the fines, it is obvious that even criminal offences against the environment imply inadequately low fines according to the current Ukrainian legislation. This is in direct contradiction with the Article 5 of the EU Directive 2008/99/EC on the protection of the environment through criminal law (EP&CM, 2008b), which demands Member States to take the necessary measures to ensure that the offences against the environment are punishable by effective, proportionate and dissuasive criminal penalties.

Most articles of the Criminal Code of Ukraine on the environment offences also imply years of imprisonment in case when the environmental pollution caused death of people. However, in this case, the penalties are actually applied for killing people through the environmental violations, not for the environment violation per se.

Taken together, despite a significant progress of Ukraine in implementation of the EU legislative norms into the national legislation, Ukraine still needs further upgrading of the environmental legislation towards the European Union green ambitions and as for relevant legal responsibility for the environmental offences.

Conclusions

Ukraine has a rather well developed system of environmental legislation, based on the Constitution of the country, environmental laws and subordinate regulatory legal acts. During last years, Ukraine also made a significant progress in approaching the national legislation to the European Union legal norms. The last analysis of the Ukrainian government indicates that Ukraine implemented 80% of the European Union legal documents on the environmental protection, indicated in the Ukraine – EU Association Agreement. Nevertheless, further improvement of national environmental legislation is urgently needed. One of the most critical pieces of environmental legislation of Ukraine, which is outdated and needed to be significantly reformed, is laws on legal responsibility for violations against the environment. The relevant and just legal responsibility will have significant social effect and bring real benefits both for the environment and for the society.

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Conflict of interest

The authors state no conflict of interest.

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