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EUROPEAN LEGAL STANDARDS IN THE SPHERE OF BIODIVERSITY CONSERVATION AND FORMATION OF A COHERENT ECOLOGICAL NETWORK

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Summary

The article is devoted to research of European environmental legislation in the field of biodiversity conservation and formation of a single ecological network in European continent. There was established two main directions of environmental politic realization in this sphere. The issue of conformity of Ukrainian environmental legislation to European legal standards in the sphere of biodiversity conservation and formation of ecological network was considered. The attention has been focused both on terminology base improvement and meaningful approaches related to regulation of nature reserved fund in Ukraine.

Key words: biodiversity conservation, formation of a coherent European ecological network, NATURA – 2000, European legal standards, protection of wild flora and fauna, biosphere protection.

Аннотация

Статья посвящена исследованию европейского экологического законодательства в сфере сохранения биоразнообразия и формирования единой экологической сети на европейском континенте. Установлено два основных направления реализации экологической политики в этой сфере, а также рассмотрен вопрос о соответствии украинского экологического законодательства европейским правовым стандартам в сфере сохранения биоразнообразия и формирования экологической сети. Акцентировано внимание на совершенствовании как терминологической базы, так и содержательных подходов к регулированию природно-заповедного фонда в Украине.

Ключевые слова: сохранение биоразнообразия, формирование Всеевропейской экологической сети, НАТУРА – 2000, европейские правовые стандарты, защита дикой флоры и фауны, охрана биосферы.

Problem setting. Expression of the European integration intentions of Ukraine since independence can be absolutely estimated as the beginning of a new page in the political, economic, cultural and legal life of a Ukrainian society. At the same time, the EU as an interstate association of European countries imposes a number of various requirements, which Ukraine should follow to become a full EU member.

The legal obligations have a special importance among all variety of requirements and their essence is reduced to approximation of Ukrainian legislation with the European legal standards (ELS). However, the issues related to elucidation of content, features and specific legal instruments environmental of policy realization in the current state of development are insufficiently studied by environmental law science.

State of research. The issues related to the studying of general theoretical

analysis of ELS, in particular, the definition of the ELS, description of their characteristics and place in the international legal system were studied by domestic and foreign scientists: O. Kyivets', Ye. Onyshko, L. Luts', R. Petrov, D. Ratsiboryns'ka, O. Strel'tsova.

Ascertainment of ELS features in the field of organization, protection, effective usage of nature reserve fund and formation of ecological network has been the subject of research of such specialists in environmental law: V. Andrejtsev, M. Vaschyshyn, P. Hvozdyk, A. Het'man, V. Lozo, M. Maksymenko, N. Malysheva, A. Sokolova, Yu. Shemshuchenko.

So, **the purpose** of this article is a comprehensive analysis of European environmental legislation in the sphere of biodiversity conservation and formation of a coherent European ecological network.

Basic material. European legal standards in the field of biodiversity conservation and ecological network



formation are the highest in the World. It is a result of fruitful EU cooperation towards sustainable development, work for which according to F. Aldson, is one of the most explicit legal commitments to the sustainable future [1, p. 1].

The lack of a single complex definition of ELS results in broad discussions around this term. For instance, D. Ratsiboryns'ka delineates European legal environmental standard as a legal norm based on principles and comprising primary and secondary European legislation, aiming at the most objective, effective, and contemporary implementation of environmental law [2, p. 48]. Such position is enough reasonable because if the primary legislation lays down the most important principles of EU policy implementation, the secondary legislation details the concrete objectives of environmental policy.

A. Zhloba has supplemented the European environmental legislation by acts of case law and international treaties [3, p. 50].

The deep analysis of the European approach to such legal form of environmental protection as the creation of protected areas (which is typical for Ukraine) and studying the legal principles of the EU in this area give an opportunity to make conclusion about different views on the formation of ecological network and place of protected areas in this network. Thus, they do not use the term "nature reserve fund" (as they use in Ukraine) in Europe. Taking into account the functionality of protected areas, the EU operates by term "nature protection and biodiversity conservation".

The prepotency of this approach is associated, primarily, with the fact that human pressure is not directly harmful to the land or water areas that are especially protected, but to living organisms that find their salvation in these. Therefore, ELS in the field of biodiversity conservation and econetwork formation are reduced to protection of biodiversity through the announcement of certain areas especially protected.

Thereby, the concept of "nature protection and biodiversity conservation" is a broad category and it comprises several directions: 1) the protection and conservation of biodiversity; 2) the protection of natural habitat; 3) the legal protection of wild flora and fauna [4, p. 325, 331, 335].

Despite such differentiated approach, all elements forming the system of nature protection and conservation of biodiversity in the EU are interconnected and interdependent with each other. Accordingly, the productive protection of wild flora and fauna on the sustainable development conditions is impossible without legal protection of their natural habitat. In turn, the protection of natural habitats has purposeful character – the creation of favorable conditions for the natural existence of all biodiversity components, including wild flora and fauna.

Environment Action Programmes had progressive significance throughout the entire history of European legislation about nature protection and biodiversity conservation. Despite its recommendative character, they have promoted the establishment of clear principles of EU environmental policy implementation.

The Sixth Community Environment Action Programme "Environment 2010: Our Future, Our Choice" (2002 – 2012) has a crucial importance for nature protection and biodiversity conservation [5]. The idea of creating a network Natura-2000 and the promotion of expansion the network in the candidate countries for EU membership was the innovation of the Sixth Action Programme.

The Seventh Environment Action Programme to 2020 "Living well, within the limits of our planet" of 23 November 2013 is valid currently and EU has expressed the intentions to take measures that are aimed to halting the loss of biodiversity by this Programme [6].

The activity of the European institutions is diverse and carries out according to many vectors. Given their specificity, they can include concrete directions, which are aimed at realization of the key objectives and goals of particular environmental protection aspects.

For example, based on the fundamental analysis of European environmental legislation A. Getman and V. Lozo designate biosphere protection as one of the sphere of environmental policy implementation. In the scientists' opinion, the development of EU legislation on biosphere protection includes such directions: 1) wild flora and fauna protection; 2) biodiversity conservation; 3) protection of forests; 4) solution of climate change problem; 5) organization

of natural resources; 6) regulation of genetically modified organisms [7, p. 98].

Despite the organic interrelation of all the above mentioned aspects of nature protection and biodiversity conservation, their interdependence and prosecution of a common goal - maintaining the ecological balance in Europe by preserving the natural heritage of wild flora and fauna and their habitats, we consider it advisable to differentiate ELS through functional criterion on such groups:

1. *ELS in the sphere of conservation and sustainable use of biodiversity*

The adoption in 1992 of the Convention on biological diversity (CBD) is doubtless achievement on the way to reach the effective protection of all biodiversity components. The measures and methods, fixed by the Convention and aimed to anticipate, prevent and attack the causes of significant reduction or loss of biological diversity are the main instruments of CBD realization. There are two main tools of conservation and sustainable use of all biodiversity resources, fixed by the Convention: ex-situ conservation (means the conservation of components of biological diversity outside their natural habitats) and in-situ conservation (means conditions where genetic resources exist within ecosystems and natural habitats, and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties) [8]. It is necessary to emphasize that it was the innovative approach to biodiversity protection.

Pan-European Biological and Landscape Diversity Strategy, adopted in Sofia 1995, was the mechanism of CBD implementation in the EU. The execution of a EU priority task – formation of Member States national ecological network and development of program for the formation of European single ecological network as a means of preservation, enhancement and restoration of key ecosystems, natural habitats, species and landscape elements is the main value of this strategy [9].

On 4th February 1998, the European Commission adopted a Communication on a European Biodiversity Strategy. The main quintessence of this Strategy was establishing the mechanism to ensure the integration of biodiversity concerns into other policy areas with aim to anticipate, prevent and attack the



causes of significant reduction or loss of biological diversity. Biodiversity Action Plans, adopted in 2001, are the practical tools of goals achievement which assigned by the Strategy and there are: The Biodiversity Action Plan on Economic and Development Cooperation; The Biodiversity Action Plan on Agriculture; The Biodiversity Action Plan on Conservation of Natural Resources; The Biodiversity Action Plan on Fisheries [10].

Currently, the EU has adopted the Biodiversity Strategy to 2020, which includes six major objectives. The particular attention is paid to strategies of combating with invasive alien species that threaten biodiversity in the EU. To this end, the EU Council and European Parliament adopted Regulation №1143 / 2014, which aims to prevention and management of the introduction and spread of invasive alien species [11].

2. ELS in the sphere of wild flora and fauna protection and their natural habitats.

Awareness by the European community of common gene pool of fauna and flora for maintaining ecological balance and the need to protect the natural heritage from human over-exploitation led to the accession of the European legal space to a number of international legal instruments that are related to various aspects of the legal regime of wild flora and fauna. First of all, there are Convention concerning the protection of the world cultural and natural heritage (1972); Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, 1973 p.); Convention on the conservation of migratory species of wild animals (Bonn Convention, 1979); The Bern Convention on the Conservation of European Wildlife and Natural Habitats (1979 p.); Convention on Wetlands of International Importance especially as Waterfowl Habitat (1971 p.).

There was adopted Agreement on the Conservation of African-Eurasian Migratory Waterbirds of 16 June 1995 under aegis of Bonn Convention. The main idea of Agreement is taking measures by Parties to conserve migratory waterbirds, giving special attention to endangered species as well as to those with an unfavourable conservation status. The Agreement was approved in EU by Council Decision on 18 July 1995 [12].

On the execution of the CITES, there were adopted Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein [13] and Commission Regulation No 865/2006 lays down detailed rules for the implementation of Council Regulation (EC) No 338/97 [14].

The Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (Birds Directive) and Council Directive 92/43/EEC of 21 May 1992 on the Conservation of natural habitats and of wild fauna and flora (Habitat Directive) are the cornerstones of nature protection in Europe.

The Birds Directive was adopted in context of public awareness about necessity of all species of wild birds conservation as a common natural heritage and taking particular legal mechanism of their protection. This Directive obligates the Members of EU to take measures for preservation, maintenance or re-establishment a sufficient diversity and area of habitats for all the species of birds by: a) creation of protected areas; b) upkeep and management in accordance with the ecological needs of habitats inside and outside the protected zones; c) re-establishment of destroyed biotopes; d) creation of biotopes [15]. For the preservation of wild birds and protection from hunting and trapping Directive provides the establishment of Special Protection Areas.

The aim of Habitat Directive shall promotion of ensuring biodiversity through the conservation of natural habitats and wild fauna and flora protection in the European territory [16]. The creation of Special Areas of Conservation is applied for the maintenance or restoration, at a favourable conservation status, of the natural habitats and the populations of the species for which the site is designated.

Despite the adoption of directives at different times, they establish a coordinated list of measures aimed at protecting the most valuable wild flora and fauna and their natural habitats. The formation of a coherent European ecological network Natura – 2000 is the key elements of implementation all above objectives.

So, these two Directives represent the most ambitious and large initiative scale ever undertaken to conserve Europe's rich

natural heritage and ecosystems [17]. In addition, they represent a new approach to biodiversity conservation, taking into account the complexity of natural habitats and associated species of wild flora and fauna, and a new challenge to develop the most effective system of protection through cooperation of many countries.

International territorial agreements aimed at sustainable development of the mountain regions may also be considered as sources of ELS.

First of all, it is the Alpine Convention, which was opened for signature in 1991 (entered into force in 1995). The main purpose of the Convention is the development of Alps region common heritage and its preservation for future generations through international cooperation. Convention is based on the fact that the Alps are unique and the only mountain areas where overlap interests of many countries [18].

Recognizing the experience gained in the framework of the Alps Convention as a successful model for the protection of the environment and sustainable development of mountain regions, the Framework Convention on the Protection and Sustainable Development of the Carpathians of 22 May 2003 was adopted. Ukraine, as a party of Convention, takes measures to ensure a high level of protection and sustainable use of natural and semi-natural habitats, their continuity and connectivity, and species of flora and fauna being characteristic to the Carpathians. The cooperation in developing an ecological network in the Carpathians, as a constituent part of the Pan-European Ecological Network, in establishing and supporting a Carpathian Network of Protected Areas is important direction of Convention implementation. [19].

Therefore, EU legislation can be considered as one of the most advanced in the universe due to compliance with current socio-economic and political transformation and strict regulation of all directions of nature protection and biodiversity conservation.

Besides, A. Hetman and V. Lozo give the complex character for EU legislation on the biosphere protection proved by the fact that improvement in one sector helps resolve related issues [7, c. 108].

It should be noted that Ukrainian approaches to protect species of wild



fauna and their natural habitats correspond to European approaches only in some extent. For example, the Law of Ukraine "On Fauna" directs to preservation and improvement of wildlife habitat and to providing the conservation of all species and population animals' diversity. At the same time, the protection of fauna provided, in particular, by the protection of habitats, breeding conditions and migration routes of animals and formation of ecological network, the creation of national parks, nature reserves and other natural protected areas [20].

However, the inconsistency of Laws "On Nature Reserve Fund in Ukraine", "On Ecological Network", "On Flora", "On Fauna" and lack of a complex approach to legal regulation of wild flora and fauna species and their natural habitats are the main imperfections in Ukraine. Ukraine legislation operates the term "places of settlement and growth" (the Law "On Ecological Network") instead of "natural habitats". Moreover, the concept of nature reserve fund isn't applied in Europe; environmental policy of EU aimed at formation of a coherent ecological network that comprises the SACs and SPAs.

In the **conclusion**, we focus on the need to harmonize Ukrainian conceptual and categorical apparatus with the generally recognized concepts and terms used in the EU. Herewith, it can be reached by the coordination and synchronization of terminological base of European nature protection and biodiversity conservation in the Ukrainian legislation, but not a complete duplication of EU terminological apparatus. It is a necessary adaptation requirement of Ukrainian legislation to European legal values, because the effectiveness of legal regulation of certain social relations depends on the state of terminology database providing.

In our point of view, the revision of Ukrainian conceptual approaches to ecological network forming is also a topical requirement in current state of development. In the process of research it was established that the EU uses the habitat concept as a base of ecological network. In Ukraine, this concept reflected fragmentarily, in particular, ecological network creates with the purpose of improvement of conditions for forming and renewal of environment, increase of natural resource potential of

Ukrainian territory, saving landscape and biological diversity, places of settlement and growth of valuable kinds of flora and fauna, genetic fund, ways of migration of animals through joining territories and objects of nature reserve fund, as well as other territories which are especially valuable for environmental protection and are subject to special protection.

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ЭЛЕМЕНТЫ СУБЪЕКТИВНОЙ СТОРОНЫ АДМИНИСТРАТИВНЫХ ДЕЛИКТОВ В ЗАКОНОДАТЕЛЬСТВЕ УКРАИНЫ И СТРАН ЕС: СРАВНИТЕЛЬНЫЙ АНАЛИЗ

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Summary

This article devoted to comparative analysis of Ukrainian's Code of administrative offences and laws of European Union countries, namely interpretation of basic notion – administrative offence, and also interpretation of elements of subjective aspect (mental elements) of offence. In article are gradually considering conceptual apparatus in laws of such European countries as Austria, Poland, Czech Republic, Slovakia, Moldova, Germany, Italy, Bulgaria, Estonia. Also is being paid special attention to differences between law systems of countries, because in some countries administrative offence is a part of criminal law. Except it attention pays to mental elements which have or not have normative consolidation.

Key words: subjective aspect (mental elements), fault, intent, imprudence, motive, purpose, emotional state.

Аннотация

Статья посвящена сравнительному анализу Кодекса об административных правонарушениях Украины и законов стран Европейского Союза, а именно тому, как интерпретируются в них такое основное понятие, как административное правонарушение, а также элементы субъективной стороны правонарушения. В статье постепенно рассматриваются понятийные аппараты законов таких европейских стран, как Австрия, Польша, Чехия, Словакия, Молдова, Германия, Италия, Болгария, Эстония. Также обращено внимание на особенности законодательства некоторых стран, а именно на то, что в некоторых странах административные нарушения считаются частью уголовного права. Проводится сравнение того, какие элементы субъективной стороны находят нормативное закрепление, а каким не уделено внимание. Рассмотрены особенности в интерпретации понятий таких форм вины, как умысел и неосторожность.

Ключевые слова: административное нарушение, вина, умысел, неосторожность, мотив, цель, эмоциональное состояние.

Постановка проблемы. Украина является молодым развивающимся государством, многие законы которого являются видоизмененными законами СССР, и Кодекс об административных правонарушениях Украины не является исключением. В кодексе упущены многие моменты, которые имеют место в нынешнее время (например, сосредоточенность лишь на физических лицах и упущение юридического лица как субъекта ответственности). Субъективная сторона является теоретическим понятием и не имеет нормативного закрепления. Среди ученых существует множество мнений насчет того, что же такое субъективная сторона, но в целом большинство сходится на том, что это психическое состояние правонарушителя, которое обязательно включает в себя вину (психическое отношение к

противоправному действию), а также может включать в себя мотивы, цели, эмоциональное состояние в момент совершения. В отличие от самого понятия субъективной стороны, понятия ее элементов часто закреплены в законах.

Актуальность темы исследования. Украина стремится к тому, чтобы ее законы соответствовали европейским нормам, немаловажным является ознакомление с европейским законодательством для того, чтобы обратить внимание на некие упущения в украинском законодательстве. Субъективная сторона является одной из составляющих правонарушения. Если объект посягательства и объективная сторона обязательно содержатся в дефинициях статей, то субъект и элементы субъективной стороны указываются в статье для конкретики, то есть когда необходимо указать, что определенный