

Implementation of European Environmental Policy in Ukraine: Problems and Prospects

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Abstract

The purpose of our scholarly work is to explore actual problems of harmonization of environmental legislation of Ukraine with the requirements and principles of EU environmental policy and development of proposals for the improvement of Ukrainian legislation. Main features of harmonization of Ukrainian legislation in the sphere of environmental protection and prospects for improvement of legal liability of business entities which activity is highly hazardous for violation of environmental law were analyzed. As a result of the study draft law "On prevention and elimination of damage caused to the environment" was elaborated. The authors also developed State concept of realization of human rights to qualitative and safe drinking water, basic concept of which was reflected in the article.

Keywords: Environmental policy, environmental safety, drinking water quality, adaptation of Ukrainian environmental legislation to EU standards.

1. Directions of Implementation of European Environmental Policy in Ukraine

Implementation of the EU-Ukraine Association Agreement means, among other things, the need for introduction of European standards and norms in the field of environmental protection. Implementation of European environmental policy in Ukraine demands obligatory coordination of organizational, economic and legal aspects of governance that is crucial for its effective functioning.

In 2011 the Law of Ukraine "On the Fundamental Principles (Strategy) of Ukraine's State Environmental Policy for the Period until 2020" came into force. According to the Strategy, it is extremely important to introduce ecosystem approach to management activities and ensure adaptation of Ukrainian legislation in the field of environmental protection in accordance with requirements of EU directives by 2020¹. The main priorities of this process should be: development of national strategies in the sphere of environmental protection; implementation of ideology of "green" economy, introduction of the "best available technologies"; definition of criteria of ecologization of consumer policy; activation of instruments of effective transition to sustainable consumption and production through the introduction of environmental audit tools, certification, labeling, etc².

¹ Law of Ukraine "On the Fundamental Principles (Strategy) of Ukraine's State Environmental Policy for the Period until 2020" // Bulletin of the Supreme Council of Ukraine. – 2011. – № 26 – St. 218

² Andronov V.A. Majstro S.V. (2014) Directions of transformation of state environmental policy in conditions of European integration of Ukraine // Government Development. – № 2. – [Electronic resource]. – Access mode: http://nbuv.gov.ua/UJRN/DeBu_2014_2_10 accessed 6 March 2017

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Root causes of environmental problems in Ukraine are as follows: inherited economic structure with the dominant share of resource- and energy-intensive industries, negative impact of which was intensified by transition to market conditions; depreciation of fixed assets of industrial and transport infrastructure; existing system of governance in the field of environmental protection, regulation of use of natural resources, lack of clear separation of environmental and economic functions; lack of understanding of priorities of preserving the environment and benefits of sustainable development in society; failure to comply with environmental legislation; insufficient monitoring of compliance with legislation; insufficient funding for environmental measures. Environmental policy and law takes a prominent role in the European integration project. Ukraine-EU Action Plan foresees adaptation of Ukrainian environmental legislation to the EU legislation and implementation of European models of management and protection of natural resources. Adaptation of Ukrainian legislation to EU legislation is one of essential preconditions for moving to the next stages of integration, including in the foreseeable future the obtainment of EU membership by Ukraine. At the same time, according to the candidate countries for EU membership, implementation of the EU environmental policy is one of the most difficult reform packages in the whole European integration process.

2. Problems of Adaptation of Ukrainian Legislation on Environmental Safety Requirements to European Union law

Current ecological situation in Ukraine has extremely negative parameters. Industrial accidents became more frequent, that have demonstrated improper situation concerning the compliance by business entities, which activity is highly hazardous, with requirements of environmental legislation and ignoring of basic safety rules. This determines the necessity of increased attention of the legislator to solution of problems of prevention of such cases and increase of responsibility of business entities in this area. In Ukraine most of the laws on economic activities provide compensation for damage due to environmental pollution, but they are not sufficient to ensure the prevention and elimination of damage caused to the environment. In order to adapt domestic legislation to the European legislation on environmental protection and Directive 2004/35/CE of the European Parliament and of the Council "On environmental liability with regard to the prevention and remedying of environmental damage" of 21 April 2004 in particular, in our opinion, it is necessary to adopt in Ukraine the Law "On prevention and elimination of damage caused to the environment". The law should define a) the rights and obligations of business entities, which activity is highly hazardous, in the sphere of prevention and elimination of environmental damage, b) the role of public authorities in the sphere of prevention and elimination of environmental damage, c) liability for breach of duties under this law.

The law should be aimed at:

- a) companies that produce or store hazardous chemicals;
- b) petrochemical companies;
- c) operators of waste management and landfill sites (of city, district, etc.);
- d) agricultural enterprises;

- e) water management organizations;
- f) carriers of dangerous chemicals;
- g) suppliers of electricity;
- h) investors who invest in land and real estate;
- i) environmental consultants.

Some work in the sphere of regulation of obligatory ecological insurance is carried out in Ukraine. In particular, the draft law "On compulsory insurance of liability of business entities which activity is highly hazardous" of July 9, 2015 № 2327a was submitted to the Verkhovna Rada of Ukraine ³. Draft law establishes common conditions and procedure of mandatory insurance of responsibility of business entities which activity is highly hazardous, and aims to compensation for damage caused to property interests of individuals and legal entities as a result of environmental pollution caused by accident. According to the explanatory note to the draft law civil liability of companies consists in compensation for harm, which is caused by ecological violations of specific individuals to third parties ⁴. Instead, the purpose of Directive 2004/35/EC of the European Parliament and of the Council "On prevention and elimination of damage caused to the environment" of 21 April 2004 is to establish the framework of environmental responsibility for the prevention and elimination of environmental damage based on the polluter-payer principle. This Directive does not apply to cases of personal injury, to damage to private property or to any economic loss and does not affect any right regarding these types of damages. Thus, the main purpose of Directive 2004/35/EC of the European Parliament and of the Council is to protect the environment and the purpose of the Draft Law of Ukraine "On compulsory insurance of liability of business entities which activity is highly hazardous" – the protection of property rights of individuals and legal entities. In our opinion, the provisions of the Draft Law "On compulsory insurance of liability of business entities which activity is highly hazardous" of July 9, 2015 № 2327a is not sufficient to ensure the prevention and elimination of damage caused to the environment.

In our opinion, the Law of Ukraine "On the prevention and elimination of environmental damage" should also include provisions, which would enable the public to influence decisions concerning the necessary preventive measures. Non-governmental organizations working at the environmental protection and persons who suffered the adverse effects or are able to experience the damage from environmentally hazardous activities should have the right to require the competent authority to take the necessary preventive measures. This requirement is necessary because in Ukraine the public has actually no real impact on the environmentally significant decisions.

In our opinion, the Law of Ukraine "On the prevention and elimination of environmental damage" should provide for the establishment of the national automated information system of prevention and elimination of environmental damage.

³ Draft law "On compulsory insurance of liability of business entities which activity is highly hazardous" of July 9, 2015 № 2327a. – [Electronic resource]. – Access mode: http://search.ligazakon.ua/L_doc2.nsf/link1/JH1SN68A.html accessed 6 March 2017

⁴ Explanatory note to the Draft Law of Ukraine "On compulsory insurance of liability of business entities which activity is highly hazardous" [Electronic resource]. – Access mode: http://search.ligazakon.ua/L_doc2.nsf/link1/GH1SN68A.html accessed 6 March 2017

Information system of prevention and elimination of environmental damage should include the following information: a) type of damage caused to the environment or its direct threat, place and date of occurrence of harm or threat of its occurrence, its volume, dates of the beginning and the end of the proceedings in the case of an offense; b) full name and address of the entity; c) adopted and implemented preventive and remedial actions, including measures to mitigate environmental damage, the results of remedial action, d) the amount of spending on preventive actions and the size of spending on remedial actions: 1) incurred by entity; 2) from indemnity insurance; 3) not received from the entity with specifying the reason why they have not been received; 4) from the state budget; e) state of the environment and public bodies and organizations where is possible to get information necessary to determine the state of the environment, as well as other information on the environment, collected, stored and distributed in accordance with the law "On prevention and elimination of environmental damage" or according to special laws ⁵.

3. Ukrainian State Policy in the Sphere of Drinking Water Quality

Obligatory condition of a successful implementation by Ukraine of its potential opportunities is active and full-scale entry into the global political, economic and legal space. Overcoming the crisis in society and trying to take their rightful place in the international community, Ukraine must rely on its fundamental national interests, according to which principles, directions, priorities and functions of public policy are determined. In our opinion, the most successful definition of public policy should be considered as follows: public policy – is relatively stable, organized and purposeful activity (or inactivity) of state institutions, carried out by them directly or indirectly concerning a specific problem or set of problems that affect society ⁶.

One of the most important vital human needs is the satisfaction of need for qualitative and safe drinking water. The human right to drinking water is considered by us as a physical right without which human existence is impossible. The right to drinking water stands nearby other fundamental rights such as the right to life and the right to food. Therefore it is necessary to analyze and improve Ukraine's state policy in the field of drinking water and water supply as a way of ensuring the human right to drinking water quality in the context of security of the country as a whole and its citizens.

Therefore, we consider it necessary to improve organizational and legal mechanism of control of quality and safety of drinking water and to adopt the State concept of realization of human right to qualitative and safe drinking water. According to the Concept, state bodies should carry out the following activities:

- development of strategic policy of the executive branch for the implementation of internal and external state policy in the field of drinking water, including cooperation with civil society;
- direction and coordination of activities of executive bodies and its focus mainly on

⁵ Law of Ukraine "On prevention and elimination of environmental damage" // Bulletin of the Supreme Council of Ukraine. – 2003. – № 24. – St.155

⁶ Rebkal V.A., Tertychka V.V. (2000) Public policy: analysis and mechanism of its implementation in Ukrain. – K: Publishing house UAPA, 2000. – 232 p., p. 82-83

ensuring the rights and freedoms of citizens and providing them with administrative services;

- drafting laws and regulations aimed at ensuring the human right to drinking water, effective management of public finances and state property and control over their use.

We believe that State concept of realization of human right to qualitative and safe drinking water should be based on the following principles:

- rule of law and humanity – to guarantee primary provision of drinking water to meet drinking, physiological, sanitary and household needs;

- legality – precise regulation of rights and obligations of participants of legal relations in normative and legal acts;

- unity of rights and obligations of participants of legal relations – equality of all subjects of relations in the field of drinking water supply concerning application of normative legal acts and standards;

- preventive protection and preventive measures in the sphere of protection of drinking water sources and water supply;

- inevitability of responsibility for violation of legislation on drinking water supply and compensation for damage;

- the principle of rationality – ensuring the implementation of the principle of rational consumption of drinking water (from underground and groundwater) and rational water tariffs;

- state protectionism of objects of drinking water supply and sanitation as objects of strategic importance;

- predicting the impact of economic, investment and other activities on the state of sources and systems of water supply;

- licensing of economic activity in the sphere of centralized drinking water supply;

- free access to information on the quality of drinking water, water supply systems; order of formation of tariffs for water supply and sanitation;

- scientific standardization and implementation of international experience – scientific justification of drinking water quality standards and norms of consumption (of water supply and sanitation services) and implementation of standards, methods of measurement adopted in the EU and evaluation of quality and safety of drinking water.

According to the report of the Ministry of Ecology and Natural Resources of Ukraine the degree of adaptation of Ukrainian legislation in the field of drinking water supply to the EU legislation is high ⁷. In our opinion, this statement is false. The Law of Ukraine "On Drinking Water and Water Supply" reflects basic principles of the state policy in the field of drinking water, namely convergence of national standards of drinking water quality and evaluation methods to appropriate standards and methods that are used in the European Union. However provisions of this law are mainly declarative, does not contain the terms for achieving quantitative and qualitative results. Therefore it is difficult to assess how the legislation is implemented in practice.

Adopted in Ukraine State standards 2.2.4-171-10 "Hygienic requirements for drinking

⁷ Information on the status of compliance of Ukrainian legislation to the requirements of EU law in the field of environmental protection [Electronic resource]. – Access mode: http://www.menr.gov.ua/docs/normakty/Dodatok2_571_261211_030112.pdf accessed 6 March 2017

water intended for human consumption" were designed to meet the requirements of Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption.⁸ This regulatory document is binding and has expanded the list of indicators of epidemiological safety of drinking water, sanitary-chemical indicators of its quality, determines the degree of microbiological, parasitological and viral contamination of water, as well as the maximum allowable concentration for a number of toxic compounds. At the same time it should be noted that the above mentioned state standards are not implemented due to lack of instrument base in laboratories and state methods of conducting the researches. Only two laboratories across the country can perform declared in the document research ⁹. So there are differences between the new standards of quality of drinking water in Ukraine, which are even stricter than European, and technical capacity of many water utilities to conduct appropriate testing.

Requirements of the article 13 of the Council Directive 98/83/EC concerning measures necessary to ensure that adequate and up-to-date information on the quality of water intended for human consumption is available to consumers also is not implemented in practice, although are provided by Article 9 of the Law of Ukraine "On Drinking Water and Drinking Water Supply" and by Order of preparation and publication of national reports on water quality and state of drinking water in Ukraine, approved by the Cabinet of Ministers of Ukraine of 29.04.2004, № 576.

Solving problems related to water supply requires a set of measures in order to update and modernize the network of water supply and sewage system, introduction of rational norms of water consumption for the population, improvement of accounting of water resources and tariff policy that could revive water supply of population, create the basis for stabilization of water use and improvement of water quality.

4. Conclusions

Most European directives and regulations are formulated very specific, with the establishment of parameters and criteria of quality of environmental components, specific responsibilities of specific subjects. Instead, Ukrainian environmental legislation establishes general requirements, defines the principles, goals, but does not determine the ways of their achievement. Specific regulatory parameters can be found only in the state standards, most of which are not in the public domain.

Ukrainian environmental legislation is declarative, does not contain the terms for achieving quantitative and qualitative results, does not establish effective system of control. Penalties for failure (improper execution) of relevant requirements are not set. Provisions of Ukrainian legislation are not sufficient to ensure the prevention and elimination of damage caused to the environment and must be improved. In particular, Law "On prevention and elimination of damage caused to the environment" and State concept of realization of human rights to qualitative and safe drinking water should be adopted.

⁸ Council Directive 98/83 of 3 November on the quality of water intended for human consumption, OJ L 330, 05.12.1998, p. 0032 – 0054

⁹ What Lies Behind the New Standard on Water Quality: Expert Opinion [Electronic resource]. – Access mode: <http://waternet.ua/uk/news/newsletter/102/> accessed 6 March 2017

To ensure the implementation of European environmental standards into Ukrainian legislation just adoption of laws is not enough. For implementation it is also necessary to ensure the availability of appropriate institutions and budgets for the implementation of these laws and other normative legal acts. Also it is necessary to create an effective system of monitoring and sanctions in order to insure that requirements of the laws are implemented completely and appropriately.

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