

ПОВІТРЯНЕ, КОСМІЧНЕ, ЕКОЛОГІЧНЕ ПРАВО

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CERTAIN TYPES OF INSTRUMENTS OF THE ADMINISTRATIVE AND LEGAL MECHANISM FOR ENSURING AIR PROTECTION AND AIRSPACE SAFETY

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*The purpose of the article is to characterise certain types of instruments of the administrative and legal mechanism for ensuring air protection and airspace security. **Research methods:** the chosen topic of scientific research requires the use of various scientific methods and approaches to obtain high-quality results. Therefore, the following research methods were used to solve the tasks set: analysis; systematic method; analytical method, etc. **Results:** one of the most urgent tasks facing Ukraine today is the problem of preserving, improving and restoring the state of atmospheric air, which is favourable for life. Technical regulations play an important role in the protection of atmospheric air. It is indicated that, in accordance with the provisions of the current regulatory legal acts in the field of atmospheric air protection, the main legal mechanisms of state regulation of atmospheric air protection are rationing and standardisation in the field of atmospheric air protection, regulation of the location of facilities and sources of atmospheric air pollution, conducting state environmental and other expert examinations of facilities which have a significant impact on the environment and human health, and the permitting procedure for authorisation by the State of activities which may be accompanied by emissions into the environment. **Discussion:** the author highlights such instruments as accounting and monitoring of atmospheric air quality and control over the air condition by the state and polluters themselves. These mechanisms and instruments of state regulation allow to protect the atmospheric air from excessive exposure to pollutants and other interference, as well as to carry out state management of the use of atmospheric air.*

***Key words:** instruments of the administrative and legal mechanism; ensuring the protection of atmospheric air; airspace safety.*

Problem statement and its relevance. One of the most urgent tasks facing Ukraine today is the problem of preserving, improving and restoring the state of atmospheric air favorable for life. Among the priority tasks that stand out in this context is the solution of the problems of legal protection of atmospheric air.

Atmospheric air, as a natural component, has its own characteristics, related to both physical indicators and forms of its use by people. Being the basis for the existence of all living things on Earth, it per-

forms the most important ecological functions: life-supporting, climate-regulating, protective, heat-regulating, energy-regulating, etc. Atmospheric air has a significant social value, exerting a decisive influence on human health, the quality of the environment, determining its sanitary and hygienic characteristics.

The main causes of air pollution are the use of technologies, most of which do not meet modern environmental requirements, failure to comply with

weather-protective measures to reduce harmful emissions in due time, and low level of operation of dust and gas treatment facilities.

Summary of the main research material. The ecological crisis situation that exists now in Ukraine is objectively the result of the general unfavorable socio-economic circumstances and the policy of nature management in the country, which has developed in previous years. In modern conditions, it has become obvious that the problem of the environment and economic development cannot be considered in isolation. It is also necessary to take into account the fact that air pollution, emissions of heat and toxic substances into the atmosphere are transboundary in nature, and cause significant damage to the environment not only in one, but also in many countries. Intensive air pollution, the problems of ozone depletion, acid precipitation, and climate change prevention need to be addressed immediately.

These issues are of the greatest concern, which is why they should be given careful attention at the regional, national and international levels. Air pollution as a global problem requires efforts from Ukraine, first of all, in the international legal plane. Ukraine is a party to most international conventions and other regulations aimed at protecting atmospheric air, including the Montreal Protocol on Substances that Deplete the Ozone Layer, the UN Framework Convention on Climate Change and others. In accordance with international obligations, our state has developed a number of important documents that contribute to the development of national air protection legislation. Despite the positive actions, Ukrainian legislation on air protection needs further development and bringing it in line with international standards. Another direction in the development of national air protection legislation is its approximation with the relevant legislation of the European Union, since Ukraine's accession to the EU is proclaimed one of the main goals of our country's foreign policy.

According to the Association Agreement between Ukraine and the European Union, ratified by the Verkhovna Rada of Ukraine on September 16, 2014, it is envisaged that our country will develop and strengthen cooperation with European countries in the field of environmental protection. Coopera-

tion is aimed at preserving, protecting, improving and restoring the quality of the environment, human health, reasonable and rational use of natural resources and promoting the adoption of measures at the international level to solve regional or global environmental problems. One of the eight areas that constitute the most important environmental commitments and applies to all sectors is ambient air quality.

There is a position in the legal doctrine that environmental problems are most successfully solved in the context of European integration. Thus, it is believed that the most intensive national and international regulation is carried out on the European continent [1, p 124-125]. And the environmental standards and programs developed in the European Union are of interest not only to integration associations of other regions, but also to neighboring countries, in particular Ukraine, which are extremely interested in the development and improvement of environmental legislation [2, p. 326].

The National Program of Adaptation of the Legislation of Ukraine to the Legislation of the European Union states that one of the priority areas of modern state policy is to conduct a comparative legal study of the compliance of Ukrainian legislation with European legal standards, as well as to carry out a comprehensive comparative legal analysis of the regulation of relations in the field of health and life of humans, animals, plants, and the environment. These areas are identified as priority and those in which the adaptation of Ukrainian legislation is carried out in the first place – at the first stage of the Program implementation [3].

The EU Joint Strategy for Ukraine, which was adopted in 1999 in Helsinki, stated that the environment is a common property of the people of Ukraine and the EU, and the protection of public health from air pollution and the fight against transboundary pollution is one of the priorities in this area [4].

According to Chapter 6 of Title V of the Association Agreement between Ukraine and the European Union, cooperation is aimed at preserving, protecting, improving and reproducing the quality of the environment, protecting public health, prudent and rational use of natural resources and encouraging measures at the international level aimed at

solving regional and global environmental problems, inter alia, in such an area as ambient air quality [5]. The Decree of the President of Ukraine "On the Strategy for Sustainable Development "Ukraine – 2020" of January 12, 2015 provides for the provision of progressive economic and social development in order to introduce European standards of living in Ukraine and Ukraine's entry into leading positions in the world, including through the program of environmental protection [6]. Thus, the European integration process of Ukraine objectively consists in the formation of a common environmental, economic, social, political and legal space with the European Union. Ukraine, being a component of this geopolitical space and at the same time an ecosystem component of the pan-European natural resources, undoubtedly affects their condition and quality.

In turn, being inversely influenced by European environmental factors, Ukraine should properly perceive the trends in the EU's environmental policy, adapting them to national policy in the context of the formation of an environmentally safe European space and the realization of its own interests.

Therefore, the level of solving national environmental problems, which, in fact, are transnational and global, depends on the level and quality of development and implementation of political, economic and organizational mechanisms of European environmental integration. And one of the most important aspects is the proper legislative support of these processes.

Under such conditions, it seems expedient to study the EU legislation on regulation in the field of air protection in order to determine its basic principles and provisions that can be borrowed by the domestic legislator. Environmental protection is one of the most important goals of EU law, which is implemented through the legal regulations of the European Community, among which a special place belongs to environmental law [7, p. 107].

Legal regulation of issues related to the environment in the Member States is carried out by means of the norms of national, European and international law, but with the supremacy of European law, which is manifested in giving the norms of the latter the highest legal force.

Studying the European experience of regulating the issues of air rationing, it is worth pointing out that the Community's activities on environmental protection began in 1972 in connection with the UN Stockholm Conference on the Environment, which gave impetus to the formation of an independent EU policy in the field of environmental protection. Up to this point, the European Communities had no legal competence in the field of the environment, and therefore there was no supranational regulation of environmental issues. The applied legal measures only indirectly affected this area and were carried out to achieve other economically and socially significant goals [8, p. 640–643].

In October 1972, the member states of the European Economic Community adopted the Declaration on the Environmental Action Program, which became the basis for the subsequent adoption of several successive programs based on vertical and sectoral approaches to solving environmental problems. At the same time, the provisions of the founding treaty were not revised, and the EU's competence in the field of environmental protection was still not provided. The regulation of the new sphere was carried out mainly through the issuance of directives-acts of harmonization of the law of the member states, as well as accession to a number of the most important international conventions on environmental protection.

In 1986, the Single European Act amended the Treaty of Rome of 1957, which defined the goals and objectives, principles and directions of the EU policy in the field of environmental protection and which marked the beginning of active political action of the European Community and the introduction into its activities of the principle that environmental protection measures should be present in all legislative acts.

The role of environmental policy was significantly expanded by the Maastricht Treaty of 1992, which for the first time legislated the term "environment" (Articles 2 and 3), which had significant political and legal significance.

An important step in the development of legal regulation of environmental protection was the signing of the Amsterdam Treaty of 1997, which enshrined the principle of sustainable development as one of the goals of the European Community,

and a high level of protection and improvement of the quality of the environment, along with economic integration, was determined by one of the priority areas of development of the European Union (Article 3 of the Treaty) [9].

Thus, the principle of environmental protection becomes a principle of activity of the European Community, having received constitutional status. In addition, the Treaty enshrines the principle of "high level of protection" (Article 174), the principle of integration (Article 6), the possibility for Member States to deviate from harmonization measures in the field of the functioning of the common market for reasons of environmental protection (Article 95), the use of the joint decision-making procedure as a standard procedure of environmental legislation. In 1998, it was announced that environmental issues should be included in all areas of the EU Common Policies [10, p. 145]. Since 1972, the Community has adopted about 300 pieces of legislation, mainly concerned with the limitation of environmental pollution through the introduction of emission minimisation standards, in particular in the field of ambient air.

The issue of air quality is one of the priority areas of activity of the European Community, because in accordance with the provisions of EU environmental law, atmospheric air is one of the subject areas of its regulation. It should be clarified that the subject areas of regulation of European environmental law are those issues in relation to which the European Union carries out its policy and legal regulation in the field of environment [11, p. 32].

Thus, in the Compendium of Environmental Legislation of the European Community [14], which is the official publication of the European Union, air is defined as a subject area with reference to the fact that atmospheric pollution since the 1980s. has played an important role in environmental policy, especially since the Community ratified the Convention on Long-range Transboundary Air Pollution in 1979. And its protection is ensured by setting limits on emissions of certain pollutants, protecting the ozone layer, preventing damage to forests from atmospheric pollution, etc. This provision is confirmed by the European doctrine of environmental law, which distinguishes the following areas of regulation: biodiversity and nature protec-

tion; soil conservation; drinking water; protection of the marine environment; atmospheric pollution [13].

The development of legal regulation in the field of environmental protection takes place in three main areas, one of which is the creation and functioning of the organizational mechanism for environmental protection. This organizational mechanism, along with monitoring, environmental certification, management and audit, includes the regulation of environmental quality and the introduction of uniform rules for assessing the impact on it.

The basis for the development of pan-European legislation on environmental protection and rational use of natural resources is the definition of a single environmental policy.

The environmental policy of the European Community is carried out in stages through the adoption of Environmental Action Programs and is characterized by its dynamism, taking into account the needs of society and the interests of its individual members. Thus, all priority actions of the Community in the field of environmental protection are determined by the Action Programs, which, although they are recommendatory, but through the establishment of clear directions, goals and principles of environmental policy of the European Community, together with a detailed description and schedule of implementation, contribute to the development and implementation of environmental legislation [14, p. 420–423].

In other words, the programmes are not legally binding and are not subject to the jurisdictional control of the Court of Justice of the EU, but by defining the main aspects of the activities, overall orientation and strategy of the Communities and the EU in the field of environmental protection, they inspire the development and adoption of legislation that gives the political agenda the form of legal regulations.

As part of the implementation of the Environmental Action Programs, a number of legislative acts related to the regulation of air quality were adopted. These include Council Directive 80/779/EEC on air quality limits and guidelines for sulphur dioxide and suspended particles, Council Directive 82/884/EEC on the limit concentration of lead in air, Council Directive 84/360/EEC

on the control of air pollution by industrial plants, Council Directive 85/203/EEC on air quality standards for nitrogen dioxide, Council Directive 87/217/EEC on the prevention and reduction of asbestos pollution, Council Directive 88/609/EEC on the limitation of emissions of certain air pollutants from large combustion plants, Council Framework Directive 96/62/EC on the assessment and control of the atmosphere, Council Directive 1999/30/EC on the limitation of values for sulphur dioxide, hydrogen dioxide and hydrogen oxide, suspended particulate matter and lead in ambient air, Directive 2001/81/EC on national limits for certain air pollutants, Directive 2004/107/EC on the concentration of arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in the air, Directive 2008/50/EC on ambient air quality and clean air for Europe [12].

Conclusions. Based on the results of the analysis of these regulations, it is possible to determine the following features of the air conditioning system operating in the EU. Rationing is carried out by setting quality standards (limit values or targets, the achievement of which must be ensured by a certain period).

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ОКРЕМІ ВИДИ ІНСТРУМЕНТІВ АДМІНІСТРАТИВНО-ПРАВОВОГО МЕХАНІЗМУ ЗАБЕЗПЕЧЕННЯ ОХОРОНИ АТМОСФЕРНОГО ПОВІТРЯ ТА БЕЗПЕКИ ПОВІТРЯНОГО ПРОСТОРУ

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***Метою** статті є надання характеристики окремим видам інструментів адміністративно-правового механізму забезпечення охорони атмосферного повітря та безпеки повітряного простору.*

***Методи дослідження:** обрана тема наукового дослідження потребує застосування різноманітних наукових методів і підходів для отримання якісних результатів. Тому для вирішення поставлених завдань використано такі методи дослідження: аналіз; системний метод; аналітичний тощо.*

***Результати:** одним з найактуальніших завдань, що стоять сьогодні перед Україною, є проблема збереження, поліпшення та відновлення, сприятливого для життя, стану атмосферного повітря. Важливе місце в охороні атмосферного повітря займають норми технічного характеру. Вказано, що відповідно до положень діючих нормативно-правових актів в галузі охорони атмосферного повітря, основними правовими механізмами державного регулювання охорони атмосферного повітря є нормування та стандартизація в галузі охорони атмосферного повітря, регулювання розміщення об'єктів та джерел забруднення атмосферного повітря, проведення державної екологічної та інших експертиз об'єктів, що мають значний вплив на довкілля та здоров'я людей, дозвільний порядок санкціонування державою діяльності, що може супроводжуватися викидами в навколишнє середовище, встановлення санітарно-захисних зон довкола підприємств, що є джерелом впливу на довкілля та людей. **Обговорення:** виділено такі інструменти, як облік та моніторинг якості атмосферного повітря та здійснення контролю за станом повітрям державою, і самими забруднювачами. Дані механізми та інструменти державного регулювання дозволяють зберігати атмосферне повітря від надмірного впливу забруднюючих речовин та іншого втручання, а також здійснювати державне управління використання атмосферного повітря.*

***Ключові слова:** інструменти адміністративно-правового механізму; забезпечення охорони атмосферного повітря; безпека повітряного простору.*

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