

ORIGINAL ARTICLE

Features of the transformation of environmental legislation under the conditions of the military state

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The article is devoted to the discussion of such environmental and legal issues as environmental safety, implementation and satisfaction of environmental rights and interests, the possibility of using natural resources under martial law. The purpose of the study is a comprehensive and comprehensive study and analysis of the norms of environmental protection legislation from the point of view of the introduction of martial law. In view of this, the methodological basis of this work is a synthesis of the general philosophical method, the general scientific method, the special scientific method, and the practical legal method. It is believed that the ecological function of the state to ensure ecological safety, natural use of ecological balance and maintenance of ecological balance within the borders of Ukraine should become the main goal of today, which will contribute to the formation of a new ecological legal order during martial law. It is proposed to improve the system of compensation for Russia's aggression against the environment and the ecological rights and interests of citizens, to optimize the system-legal framework for ensuring environmental security in the conditions of martial law. On the basis of own conclusions and generalizations, proposals and recommendations for improving the current national legislation are put forward. Practice has proven that at the legislative level there must be a clearly defined legal mechanism for the protection of environmental rights and interests of citizens during hostilities. A conclusion was made about the absolute impossibility of proper regulation of the state sovereignty of Ukraine in the conditions of martial law without taking into account some environmental and legal factors: a) further improvement of the legal basis for the implementation and protection of the mechanisms of environmental rights and human rights; b) to create effective legal guarantees for ensuring environmental safety; c) improvement of the legal system of use, reproduction (restoration) and protection of natural resources and complexes, full use of natural resources of Ukraine, etc.

Keywords: Environmental security, The right to use nature, Natural resource potential, Environmental rights and interests, Martial law, Legal system.

Introduction

According to the summary, as a result of the full-scale invasion of Russia, Ukraine was forced to respond quickly to new environmental threats and threats to people's lives and health, the destruction of ecosystems, and violations of the environmental rights of Ukrainian citizens. Environmental safety and other negative phenomena as a result of hostilities. Based on this, the main carrier of modern national and world policy should be the environmental function of the state to ensure environmental safety, rights and interests, as well as the preservation of ecological balance in our country. Eliminating the damage caused by hostilities actually became as urgent as "overcoming the consequences of the Chernobyl disaster", by the way, Article 16 of the Constitution of Ukraine is declared the main duty of the state. This seems logical and understandable because due to a full-scale invasion, our country faces

challenges and major threats that affect many areas of national security, namely military, public, cyber security, environment, energy, food security, etc., which will surely affect on world security.

It is worth noting that it is planned to turn Europe into a climate-neutral continent by 2050, but now, in the context of hostilities, one can count on more ambitious goals and steps in the opposite direction, and the battlefield can contribute to both acceleration and inhibition of this process. In particular, despite the disappointing statistics, the share of budgetary expenditures in the total expenditures of the budget of Ukraine, which was forced to direct the planned funds to energy efficiency, green economy and environmental protection, has significantly decreased, Emerald Network object. Creation of a nature reserve fund to protect biodiversity, to lead the fight against invaders, to purchase protective equipment, etc. The above proves once again that the war "made its corrections" in all spheres of Ukraine, and the country's development strategy, including the strategy of environmental protection, will inevitably affect the "plans" of European countries. The Ukrainian eco-community started collecting signatures on a petition calling on international organizations to use all available forces and means to prevent a global environmental catastrophe caused by the war waged by the Russian Federation against Ukraine (Malysheva N., 2022; Petitions), which will have a military nature. And also to minimize the risk of dangerous phenomena that negatively affect the environment, life and health of citizens all over the world, not only in Ukraine.

Unfortunately, it is now impossible to talk about the adoption of precautionary measures (they are now impossible to foresee and predict), since in the first weeks of martial law it is difficult to determine which measures will be effective in ensuring environmental protection, citizen safety and constitutional environmental rights, prevention of threats and risks. To sum up, under modern conditions, overcoming the consequences of damage and restoring the integrity of the ecosystem, compensation for environmental damage, and protection of the environmental rights of citizens are more relevant than ever. In addition, the focus should remain on ensuring the ecological safety of human activities and protecting the environment for the benefit of present and future generations. The purpose of this work is a comprehensive and comprehensive study, analysis of legislative norms and environmental legal doctrine in the context of ensuring environmental safety, life and health of citizens, use of the potential of Ukraine's natural resources, as well as observance and protection of environmental rights and interests under martial law. Undoubtedly, the chosen goals determine the setting and solution of the following tasks: to describe the main trends in the development of current legislation and carriers of greening in the light of today's challenges and threats, to investigate the legal basis for ensuring environmental rights under martial law; expedient measures to suspend some environmental and legal mechanisms for the protection of private interests in the absence of circumstances, a review of the modernization of environmental management systems and functions (monitoring, control, insurance, etc.), legal norms and systems for the use of natural resources, compensation for damage to the environment, etc. wartime.

Analysis of recent research and publications

Taking into account the chosen topic of research, the theoretical basis is the scientific works of domestic and foreign scientists in the field of environmental law and related legal sciences, general economic works, statistical data. This topic is considered in the works of such jurists as: Matus S.A., Levina H.M., Karpyuk T.S., Denyshchik Yu., Hetman A.P., Shulga M.V., Balyuk G.I., and other.

Materials and Methods

The main environmental problems in Ukraine are considered to be:

- 1) Climate change
- 2) Atmospheric air pollution
- 3) Clogging, pollution and depletion of water
- 4) Degradation and pollution of land and soil
- 5) Intensive underground development of minerals and serious changes in the geological environment, occurrence of natural and man-made emergency situations
- 6) Conservation of biodiversity
- 7) Waste management

8) "Specificity" of individual territories (regarding illegal amber mining, ecological condition of Donbas, exclusion zones), etc. (Matus S., 2019; Analytical report "Basic study of the state and directions...").

However, in the context of today's events, it can be safely asserted that certain problems not only persist, but also worsen, acquire new "colors" and become more and more dangerous.

Considering the military actions, it is now important to imagine the extent of the damage caused to the environment, life and health of citizens. It should be noted that "the ecological impact of the war is difficult to calculate, and the conflict continues, this is the first (approximate) estimate of the emissions of additional harmful substances that have accumulated in the atmosphere in recent months. 220,000 tons is equivalent to the annual emissions of the plant." (Lanzar R. 2022; Ukraine, Minister of Ecology: "To date, 150 ecocides in Russia, Italy will help us").

Military operations will lead to significant pollution of water resources, soils and forests, and restoration and improvement of their quality characteristics will take decades, but only if these are natural objects that are restored/regenerated. Therefore, industrial enterprises and infrastructure in the east of Ukraine now have the greatest risk of environmental pollution, especially due to the flooding of mines in Donbas, shelling and bombing of industrial and energy facilities, forest fires, explosions of oil storage facilities, pollution of the Black Sea (mainly due to ingress of water from ships, fires at oil depots, gas stations, landfills, damage to heat and water supply facilities, i.e., sewage pumping stations, filter stations, water pipes, high-voltage lines), etc. The State Inspectorate of Ukraine created an operational headquarters for accounting, summarizing information and creating a single register of damage caused to the environment as a result of the invasion of the Russian Federation into the territory of Ukraine, and began work on March 1, 2022.

Environmental damage assessment and environmental restoration priorities in eastern Ukraine, especially from ecosystems, soil, surface water, industrial enterprises that may threaten and flooded mines and their impact on forests, require special attention to resources, nature conservation areas and biodiversity.

Results and Discussion

This is explained by the state in accordance with the norms of Art. 50, 16 of the Constitution of Ukraine not only guarantee everyone the realization of the right to the environment to an environment safe for life and health, but also provide for compensation for the damage caused, i.e., the duty of the citizen to perform the functions of environmental protection and maintain balance in his territory. Thus, while proclaiming the above rights, it should now be a priority to create an effective system of safeguards and protections (through appropriate laws to ensure/guarantee the constitutional right to a safe environment for life and health) without which environmental rights will be stored. This is fully in line with the basic assumptions established by Articles 3, 5 and 69, etc., of the Law of Ukraine "On Environmental Protection": full compensation, as well as unearned profit for the time needed to restore health, environmental quality and restore natural resources to condition suitable for intended use.

However, it is time to consider the possibility and expediency of using the environmental-legal category "ecological damage", to comprehensively solve this issue from the standpoint of the ecosystem approach, ensuring the specificity of the natural resource potential that it compensates for, without waiting for compensation. and donations, Find out how long these processes take. In addition, appropriate compensation for environmental damage is not only a means of protecting environmental rights and interests, but also a legal guarantee of environmental safety.

This looks quite logical, since in the environmental legal doctrine, the concept of "environmental rights of a citizen" is divided into three categories.

1. The right to challenge the actions of state authorities in court provides environmental rights. In addition, these rights include the legal protection provided by the legal system-also known as the judicial process-for both the protection of the natural environment and the rights of citizens.
2. The damage directly caused to the plaintiff gives rise to a right belonging to private law-both in relation to the application of the provisions contained in the restrictive agreements, and in relation to the damage caused to the plaintiff.
3. Additional rights belong to the third category, which are usually ignored by the mainstream culture. Among these rights is the right to free access to information about the state of the environment, as well as the right to an unpolluted environment.

The list of standard human rights usually includes the right to an environment safe for life and health, as well as the right to receive compensation for environmental damage caused by the violation of this right. Crimes against the environment fit into the category of war crimes under international criminal law.

As you know, the right of citizens to an environment safe for life and health was grossly violated during the military invasion of the Russian Federation. This is contrary to the fact that victims of international armed conflicts are protected under Protocol I to the Geneva Conventions of August 12, 1949 (Protocol I of June 8, 1977) "prohibiting the use of methods or means of warfare intended to inflict or can be expected to cause widespread, long-term serious damage to the natural environment" (Part 3 of Article 35). (UN, 1977; Additional Protocol to the Geneva Convention dated August 12, 1949, relating to the Protection of Victims of International Armed Conflicts).

At the international level, a number of important UN conventions were adopted in areas related to ensuring environmental security, especially in the military sphere, for example:

-*"On the Prohibition of Military or Any Other Hostile Use of Means of Influence on the Natural Environment"* (May 18, 1977), it establishes that each state party to this convention undertakes not to use military or any other hostile means on the natural environment with wide, long-term use or serious consequences, as a means of destruction, damage or harm to any other participating state (Part 1, Article 1).

Each state party to this Convention undertakes not to assist or encourage any state, group of states or international organization to carry out the activities specified in part 1 of this article (part 2 of article 1).

The convention was signed on behalf of the USSR on 05/18/1977 and ratified by the Presidium of the Supreme Council of the USSR on 05/16/1978. At the same time, the concept of "means of influence on the "natural environment" refers to a change in the dynamics, composition or structure of the Earth, including its biota, lithosphere, the hydrosphere and atmosphere or outer space, through deliberate management of natural processes (paragraph 2); (UN, 1977; *On the prohibition of military or any other hostile use of means of influence on the natural environment*).

-*"On the prohibition of the development, production, stockpiling, use of chemical weapons and their destruction"* (January 13, 1993), if each state declares itself a party to this Convention, the Convention undertakes that under no circumstances will it: a) develop, produce, otherwise acquire, stockpile, produce, or transfer chemical weapons, directly or indirectly to anyone; b) not to use chemical weapons; c) not to carry out any military preparations for the use of chemical weapons; d) not to help, encourage or incite anyone in any way to any activity prohibited by the state party to this Convention (Part 1, Article 1); (UN, 1993; *On the prohibition of the development*).

-*"On the prohibition of the development, production and stockpiling of bacteriological (biological) and toxic weapons and on their destruction"* (April 10, 1972), it stipulates that each participating country undertakes under any circumstances not to develop, to produce, not to store, not to buy and not to store in any other way: 1) microorganisms or other biological agents or toxins, regardless of their source or method of production, such types and in such quantity that are not used for preventive, protective and other peaceful purposes 2) weapons, equipment or means of delivery used for hostile purposes or during an armed conflict (Article 1). This Convention was signed on behalf of the USSR on April 10, 1972, entered into force on March 26, 1975, as well as many other conventions.

In addition, we add that the military aggression of the Russian Federation against Ukraine at the request of the State Security and Defense Council of Ukraine in accordance with Art. 106 of the Constitution of Ukraine, Part 1 of Art. 20 of the Law of Ukraine "On the Legal Regime of Martial Law" by Decree of the President of Ukraine No. 64/2022 "On the Introduction of Martial Law in Ukraine" (Danielle Wiener-Bronner, 2022; Wheat futures are soaring. Food prices could be next). Martial law was introduced in Ukraine from 5:30 a.m. on February 24, 2022, which continues to this day.

The list of rights that may be temporarily restricted during martial law includes the constitutional rights and freedoms of a person and a citizen provided for by Articles 30-34, 38, 39, 41-44 and 53 of the Constitution of Ukraine. However, the right to the environment (provided in Article 50) is not included in this list. Articles 3 and 22 of the Constitution of Ukraine provide guarantees and the possibility of deprivation of environmental rights: "constitutional rights and freedoms are guaranteed and cannot be revoked", "human rights and freedoms and their guarantees determine the content and direction of the state's activities."Based on the above, it can be stated that nature management and legislation of Ukraine today support the issues of natural resource

potential, environmental safety and environmental rights of citizens, minimizing environmental risks associated with military invasions.

Continuing to reflect on this, we note that together with ecological security, food security also becomes vulnerable. As a result, David Beasley, head of the UN World Food Program, reports that 45 million people in 38 countries are on the brink of starvation due to war, drought and the Covid-19 pandemic. The impact of the Ukrainian war on food prices, fuel and transport costs could increase this figure and limit the UN's ability to help them. (Nick Cumming-Bruce, 2022; The closing of Ukraine's southern ports could trigger a global food catastrophe, the U.N. warns).

Note that Ukraine's wheat exports were in the midst of a record year before the Russian invasion, according to USDA data, while Russian wheat exports have slowed (Danielle Wiener-Bronner, 2022; Wheat futures are soaring. Food prices could be next) for agriculture and other categories property It was for this purpose that the 3rd Act of Ukraine "On making changes to some legislative acts of Ukraine regarding the creation of conditions for ensuring food security under martial law" was adopted (Verkhovna Rada of Ukraine, 2022; On making changes to some legislative acts of Ukraine regarding the creation...), and some other laws relating to wartime, for example: "On amendments to the Tax Code of Ukraine and other legislative acts of Ukraine regarding the effect of norms during the period of martial law" (Verkhovna Rada of Ukraine, 2022; On amendments to the Tax Code of Ukraine and other legislative...), "On amendments to some laws of Ukraine regarding state guarantees in conditions of martial law, state of emergency or state of emergency" (Verkhovna Rada of Ukraine, 2022; On amendments to some laws of Ukraine regarding state guarantees...), "On Amendments to the Law of Ukraine "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine" in relation to Russia's military aggression Federation against Ukraine" (Verkhovna Rada of Ukraine, 2022; On amendments to the Law of Ukraine "On Ensuring the Rights...), etc. However, in the context of this publication, only the first will be analyzed, namely the need to ensure the Law of Ukraine dated 24.03.2022 No. 2145-IX. To make management decisions as quickly as possible in the areas of environmental safety, maintaining a balance of interests, preservation and protection of environmental rights, ecologically balanced use of natural resource potential, etc. By the way, in 2019, Regulation No. 264 of 05/28/2019, approved by order of the Ministry of Defense of Ukraine, "Environmental Safety and Mine Action" was adopted. (Ministry of Defense of Ukraine, 2019; Regulations on the Department of Environmental Safety and Mine Action...).

It is also important to note that the operation of most national electronic registers has been suspended for security reasons, for example: the State Register of Property Rights to Immovable Property (CMU Decree No. 209 dated 06.03.2022 "Some issues of state registration and functioning of unified and state registers, the holder of which is Ministry of Justice, under martial law" (Cabinet of Ministers of Ukraine, 2022; Some issues of state registration...), State Land Cadastre (Cabinet of Ministers of Ukraine, 2022; Some issues of ensuring the functioning of information and communication...), as well as in compliance with Government decision No. 263 of March 12, 2022, the Ministry of the Environment has temporarily limited access to the Unified Register of Environmental Impact Assessments for external use (Ministry of Environment, 2022; Temporarily limited access to the register...).

In addition, the existence of outdated and imperfect environmental monitoring systems has currently proven to be a threat to national security. The existing monitoring network in our country was created without taking into account the recommendations of the UN European Economic Commission regarding the creation of an information network about the state of the environment in Europe, therefore it is impossible to assess the main parameters of the environment. It is worth reminding that the Law of Ukraine "On Protection of the Natural Environment" (Article 20, Clause 1 of Article 22) provides for the creation of a national system for monitoring the natural environment and monitoring its condition and level. pollution. The performance of these functions is entrusted to the Ministry of Natural Resources of Ukraine and other central management bodies, which are the main body of the State Environmental Monitoring System, as well as enterprises, institutions and organizations whose activities cause or may cause deterioration of the environment. But, unfortunately, the legislators did not choose a single approach to naming the functions of environmental management.

Thus, it should be noted that ensuring environmental safety and environmental rights of citizens, rational use of natural resource potential of the country have historically been the priority areas of national legal regulation, foreign and domestic policy. The

peacetime national environmental policy is aimed at achieving strategic objectives: protection of natural objects and complexes, ecosystems, maintenance of their integrity and life-supporting functions, sustainable development of society, improvement of the environment and quality of life, improvement of public health and the state of the population, environmental safety of the country is ensured, but, unfortunately, in modern conditions it is impossible to ensure it in full. However, it is worth the effort, so we must do our best.

It should be noted that as a category, dynamic environmental policy under martial law should be aimed at ensuring environmental safety, classification of environmental risks, protection of biological and landscape diversity, restoration of ecologically contaminated areas, protection and restoration of natural resources, protection of environmental rights, protection of citizens' rights, life and health.

Summing up, we can define the concept of "national environmental policy under martial law" (as a component of national policy) as a legal, organizational, economic, social, ideological system, etc. The state ensures its sovereignty over the protection of a safe environment, the sustainability of ecosystems, the diversity of organisms and landscapes, the protection of human life and health, the harmonious interaction of society and nature, the protection, rational use and reproduction of natural resources, to reduce environmental risks to the ecosystem and public health to a socially acceptable level and to overcome the negative consequences of military operations.

This is all the more important given that the legal system of martial law is currently in force. At the same time, it is advisable to be guided by the established practice of the EU countries and international environmental organizations, to review (adjust) the strategic goals of environmental policy every five to six years based on the results of the analysis of environmental policy and the effectiveness of its implementation. However, we do not have time to wait. Therefore, it is necessary to update and optimize the goals and objectives of the national environmental policy to adapt it to the challenges and conditions of martial law.

As part of the research of the topic of the scientific article, a sociological survey was conducted on the importance of amending the environmental legislation of Ukraine during martial law. Google forms were used for the survey (this made it possible to reach an audience of representatives of different ages and territorial location). These forms contained five open-ended questions, the answers to which allowed to characterize the position of Ukrainians on environmental legislation and the importance of changes in it. The majority of respondents (78%) agreed that Ukraine's environmental legislation needs immediate transformation, given the current realities, martial law and the prospects of Ukraine's accession to the European Union.

Conclusion

So, let's emphasize once again that the territory of Ukraine within the existing borders is integral and inviolable (Article 2 of the Constitution of Ukraine). A person, his life and health, honor and dignity, inviolability and security are the highest social values in Ukraine (Article 3 of the Constitution of Ukraine). Without taking into account some environmental and legal factors, it is certainly impossible to fully ensure the national sovereignty of Ukraine in the conditions of martial law: a) further improvement of the legislative framework of the interests of environmental rights and mechanisms for ensuring and protecting human rights; b) creation of effective laws to ensure guarantees of environmental safety; c) improvement of the legal system of use, reproduction (restoration) and protection of natural resources and complexes, the full potential of Ukraine's natural resources (especially their disposal). Currently, the main focus is on streamlining legal mechanisms and procedures for providing natural resources for use. Based on the analysis of the current legal behavior, the expediency of recognizing the priority of public (state) interests over private interests in wartime has been proven at the legislative level. In the case of Russian aggression, the suspension of some legal mechanisms for the protection of private interests is understandable.

If possible, it is still necessary to review and adapt the main tasks of the national environmental policy (to adapt it to the legal system of wartime), to adapt it to the conditions and challenges of today, to overcome the consequences of the military conflict.

Changes should also be made to the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the period until 2030, the Strategy for Environmental Security and Adaptation to Climate Change for the period until 2030, and the Operational Plan for its implementation in 2022–2024 should be adjusted (Cabinet of Ministers of Ukraine, 2021; Operational plan for the implementation in 2022-2024...) (bring it into line with the conditions of martial law), etc. Of course, this is not an exhaustive list of

the urgent tasks facing the country, but the future of many generations and the security of the European continent depend on the degree of their guarantee and legal support.

References

<https://ua.petitions.net/357845?s=94330299>

Matus, S. (2019).1 "Basic study of the state and directions of development of Ukraine's environmental policy and prospects for strengthening the participation of civil society organizations in the development and implementation of environmentally friendly policies" Kyiv.

Lanzar, R. (2022). Ukraine, Minister of Ecology: "To date, 150 ecocides in Russia, Italy will help us".

OON. (1977). Additional protocol to the Geneva Convention dated August 12, 1949, relating to the Protection of Victims of International Armed Conflicts (Protocol I), dated June 8, 1977.

OON. (1993). Convention on the prohibition of the development, production, stockpiling, use of chemical weapons and on their destruction (Ukrainian/Russian).

<https://www.president.gov.ua/documents/642022-41397>

Cumming-Bruce, N. (2022). The closing of Ukraine's southern ports could trigger a global food catastrophe, the U.N. warns.

Wiener-Bronner, D. (2022). Wheat futures are soaring. Food prices could be next.

Verkhovna, R. (2022). On the introduction of amendments to some legislative acts of Ukraine regarding the creation of conditions for ensuring food security in the conditions of martial law.

<https://zakon.rada.gov.ua/laws/show/212020#Text>

Verkhovna Rada of Ukraine. (2022). On making changes to some laws of Ukraine regarding state guarantees in conditions of martial law, state of emergency or state of emergency. Law of Ukraine.

Verkhovna Rada of Ukraine. (2022). On amendments to the Law of Ukraine "On ensuring the rights and freedoms of citizens and the legal regime in the temporarily occupied territory of Ukraine" in connection with the military aggression of the Russian Federation against Ukraine: Law of Ukraine.

<https://ips.ligazakon.net/document/MUS32065>

Cabinet of Ministers of Ukraine. (2022). Some issues of state registration and functioning of unified and state registers, the holder of which is the Ministry of Justice, in the conditions of martial law. Resolution of the Cabinet of Ministers of Ukraine.


Cabinet of Ministers of Ukraine. (2022). Some issues of ensuring the functioning of information and communication systems, electronic communication systems, and public electronic registers under martial law. Decree of the Cabinet of Ministers of Ukraine.

<https://www.kmu.gov.ua/news/mindovkillya-timchasovo-obmezhenno-dostup-do-reyestru-z-ovd>

Cabinet of Ministers of Ukraine. (2021). On the approval of the Strategy for Environmental Security and Adaptation to Climate Change for the period up to 2030. Order of the Cabinet of Ministers of Ukraine.

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