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Науково-практичний журнал «Економічні студії»

присвячений актуальним проблемам розвитку сучасної економіки та пропонує своїм читачам розмаїття високоякісної інформації в галузі економічної науки.

Видання має тематичну спрямованість в межах таких наукових спеціальностей, як світове господарство і міжнародні економічні відносини; економіка та управління національним господарством; економіка та управління підприємствами; розвиток продуктивних сил та регіональна економіка; економіка природокористування; гроші, фінанси і кредит; демографія, економіка праці, соціальна економіка і політика та інші галузі економічної науки.

Цільова аудиторія журналу: вчені, викладачі, докторанти, аспіранти, студенти, економісти, бухгалтери, державні службовці та всі, кого цікавить економічна тематика.

Відповідальність за достовірність фактів, цитат, власних імен, географічних назв, назви підприємств, організацій, установ та за порушення прав інтелектуальної власності інших осіб несуть автори статей. Висловлені у цих статтях думки можуть не збігатися з точкою зору редакційної колегії і не покладають на неї ніяких зобов'язань. Передруки і переклади дозволяються лише за згодою автора та редакції журналу. Автори зберігають за собою всі авторські права і одночасно надають журналу право першої публікації, що дозволяє поширювати даний матеріал із зазначенням авторства та первинної публікації в даному журналі.

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LEGAL FEATURES OF ENSURING ENVIRONMENTALLY HEALTHY ECONOMIC DEVELOPMENT

ПРАВОВІ АСПЕКТИ ЗАБЕЗПЕЧЕННЯ ЕКОЛОГІЧНО БЕЗПЕЧНОГО ЕКОНОМІЧНОГО РОЗВИТКУ

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The study highlighted a variety of issues that need to be addressed in the field of legal support for environmentally healthy economic development. The purpose of the article is to investigate the system of environmental law and legal regulation of economic development on an environmentally healthy basis. Further, a thorough analysis of recent scientific research in this area was made. Based on the theoretical analysis, was concluded that environmental law, in addition to prohibitive, protective and preventive measures, should include a mechanism for implementing legal norms and principles, and a mechanism for environmental and economic safety, which plays a very important role in the strategy of sustainable development. The genesis of the concept of ecological law, the essence of the concept of legal regulation of ecological relations are studied, the main sources of environmental law are considered, the system of legal regulation of ecologically safe economic development is analyzed. The main shortcomings of the Ukrainian legislation are revealed and measures for their elimination are offered.

Keywords: economic development, environmental security, global environmental issues, legal regulation, environmental law.

У дослідженні окреслено коло проблемних питань, що потребують вирішення у сфері правового забезпечення екологічно безпечного економічного розвитку. Метою статті є дослідити систему екологічного права та правове регулювання забезпечення розвитку економіки на еколого-безпечних засадах. Здійснено ґрунтовний теоретичний аналіз наявних досліджень у цій сфері. На основі цього зроблено теоретичне узагальнення, що екологічне право окрім заборонних, захисних та превентивних заходів, повинно містити в собі механізм реалізації юридичних норм та принципів, та механізм забезпечення еколого-економічної безпеки, що відіграє дуже важливу роль при розробці, впровадженні та реалізації стратегії збалансованого розвитку держави. Досліджено сутність поняття екологічне право та правового регулювання екологічних відносин, розглянуто основні джерела екологічного права, проаналізовано систему правового регулювання забезпечення екологічно безпечного економічного розвитку України. Виявлено основні недоліки українського законодавства та запропоновано заходи щодо їх усунення.

Ключові слова: економічний розвиток, екологічна безпека, глобальні екологічні проблеми, правове регулювання, екологічне право.

В исследовании очерчен круг проблемных вопросов, требующих решения в сфере правового обеспечения экологически безопасного экономического развития. Целью статьи является исследовать систему экологического права и правовое регулирование обеспечения развития экономики на эколого-безопасных началах. Проведен подробный анализ имеющихся исследований в этой сфере различных ученых. На основе теоретического анализа сделан теоретическое обобщение,

что экологическое право кроме запретительных, защитных и превентивных мер, должно включать в себя механизм реализации юридических норм и принципов, и механизм обеспечения эколого-экономической безопасности, играет очень важную роль при разработке, внедрении и реализации стратегии сбалансированного развития государства. Исследован генезис понятия экологическое право, суть понятия правовое регулирование экологических отношений, рассмотрены основные источники экологического права, проанализирована система правового регулирования обеспечения экологически безопасного экономического развития. Выявлены основные недостатки украинского законодательства и предложены меры по их устранению.

Ключевые слова: экономическое развитие, экологическая безопасность, глобальные экологические проблемы, правовое регулирование, экологическое право.

Problem statement. The threatening environmental situation in the world and, in Ukraine in particular, is a consequence of the long-term dominance of the principle of obtaining maximum benefits. That is, achieving the maximum economic effect at minimum cost, disregarding and not taking into account environmental losses. At the same time, economic growth did not take into account any interests of the environment. The dominant role was played by the economic aspect of nature management, the issue of ecology and environmental safety receded into the background. As a result of such nature management policy, the ecological situation is approaching a critical level. Therefore, there is an immediate need to develop another, environmentally healthy management. That is, obtaining the maximum possible economic benefit while unconditionally maintaining the balance of ecological and economic systems. Consequently, one of the main directions of state policy is the legal regulation of environmental and economic relations.

Theoretical framework and literature review. The issues related to the legal regulation of environmentally healthy economic development and the study of foreign experience in the legal regulation of environmental protection have been studied by several scientists. In particular, the scientific research was focused on investigating the evolution of scientific doctrines of environmental law [2]. Scientists have also studied the features of legal support for the use of natural resources in the field of management and the formation of a system of rational use of nature [3]. Scientific research was pointed in the research of theoretical and legal aspects of ecologically safe nature management in Ukraine, especially in the requirements of a sustainable development model [5]. The law of ecological safety, its modern features and Ukrainian realities has also become the subject of scientific research [7]. Ukrainian scientists have also focused on the study of legal regulation of environmental, agricultural and land relations in Ukraine, the study of the current state, and the main areas of improvement [8]. The problem of codification of national and international environmental law as an

important area of research was deeply investigated by scientists [12]. In general, the study of the drawn issues is given much attention by the scientific community. Despite this, several problematic issues remain unexplored. In particular, analysis and search for ways to ensure environmentally friendly economic development.

Study objectives. To analyze the legal support of environmentally healthy development of Ukraine's economy, to identify the main weaknesses and develop ways to eliminate them.

Results and discussions. The concept of legal regulation is a set of legal means by which the state regulates public relations. The essence of legal regulation of environmentally sound economic development is a system of norms and principles that contain certain rules of behavior of people and economic entities to the environment. These rules are enshrined in law and become binding. The system of legal regulation also provides for measures of coercion and punishment for non-compliance with certain rules. Having analyzed several studies in the field of environmental law, we can debate that environmental law, in addition to prohibitive, protective and preventive measures, should contain mechanisms for implementing legal norms and principles, and mechanisms to ensure environmentally healthy economic development. In addition, these mechanisms perform a very important role in the state's development and implementation of a strategy for the balanced development of the state.

Legal regulation outlines human behavior to nature, enshrines the rights and responsibilities of nature users, the use of natural resources. The system of legislation on environmental protection has a unique structure and consists of general legislation, special legislation and bylaws. In the field of nature management, as in any other field, the basic norms are the norms of the constitution, namely Article 16 stipulates that the state has to ensure environmental safety and maintain ecological balance in the state [6].

Moreover, environmental law is an independent branch of law that regulates relations between

society and humans with the environment to protect the lives and health of citizens. Furthermore, to protect their environmental rights and freedoms, and ensure the quality of the environment for the benefits present and future generations of people. The independence of environmental law is conditioned by the presence of its subject of regulation and special tasks that cannot be solved by other branches of law (ensuring the human right to a safe environment, conservation of biological diversity, sustainable use of nature, etc.).

Sources of environmental law are regulations that contain environmental regulations that meet the following requirements:

- normative legal act, to be a source of law, must be adopted by an authorized body in a legally defined form;

- normative legal act must be adopted by the established procedure (in particular, the adoption of laws is carried out according to the procedure defined by the Constitution of Ukraine and the Rules of Procedure of the Parliament of Ukraine) [5].

The Constitution has the highest legal force because of the principle of the rule of law. That's why all laws and regulations, in particular in environmental legislation, must be adapted based on the Constitution and comply with it. The Constitution, in particular Articles 13, 14, 16, 41, 50, 66, 85, 92, 116, 119, 137, 138 regulates the most important aspects of environmental relations. Article 13 stipulates that land, its subsoil, atmospheric air, water and other natural resources located within the territory of Ukraine, natural resources of its continental shelf, exclusive (marine) economic zone are objects of property of the Ukrainian people. Ensuring environmental safety and maintaining ecological balance on the territory of Ukraine, overcoming the consequences of the Chernobyl catastrophe on a global scale, preserving the gene pool of the Ukrainian people is, in accordance with Art. 16 of the Constitution, the duty of the state [6].

No less important are the norms: the Water Code of Ukraine, the Land Code of Ukraine, the Subsoil Code of Ukraine, the Forest Code of Ukraine, the Law of Ukraine "On Environmental Protection", the Law of Ukraine "On Nature Reserves", the Law of Ukraine "On Atmospheric Air Protection", as well as the rules of criminal, administrative and civil law and other regulations relating to environmental activities.

Natural resource codes have a largely similar structure. They contain sections on general provisions, rights and responsibilities of nature users, powers of state bodies about management

and control in the relevant field, dispute resolution, legal liability, international relations, etc. At the same time, each code has its significant differences. They are due to significant differences in the characteristics of the subject and object of legal regulation. These differences are related, in particular, to the rules for the use of land, water, forests and the mechanism for their implementation. The form of systematization of legislation through the adoption of appropriate codes is a necessary measure to improve the legal regulation of a particular group of public relations [1].

Among the sources of environmental law, an important role is played by bylaws, which occupy a relevant place in the regulatory system [2]. By-laws are adopted by the central executive body in the field of nature management. Moreover, they are adopted by the law or to detail the main provisions of the resolutions of the Cabinet of Ministers of Ukraine. By-laws are also adopted by other central executive bodies on matters within their competence in the field of environmental protection. Decisions made by local governments to address issues at the local level are also by-laws. In particular, by the Law of Ukraine "On Local Self-Government in Ukraine", local governments, taking into account environmental requirements, approve planning and development of settlements, their master plans and schemes of industrial units, approve local environmental programs, decide on the organization of territories and objects of the nature reserve fund of local significance, restrictions in cases of threat to the health of the population from the implementation of general nature use (for example, establish bans on bathing in reservoirs), etc.

The group of bylaws is divided into types according to the following criteria:

- by external form of expression (for example, resolutions, orders, decisions, rules, etc.);

- by subjects (for example, regulations of the government, central executive bodies, local governments, etc.);

- by time of action (permanent and temporary).

A special place among the sources of environmental law is controlled by normative legal acts of the President of Ukraine. The normative competence of the President of Ukraine is provided by the Constitution of Ukraine, according to which the President of Ukraine issues decrees and orders that are mandatory for their observance on the territory of Ukraine. Sources of environmental law also include international treaties.

According to the Constitution of Ukraine (Article 9), international treaties ratified by the Parliament of Ukraine are part of national

legislation [6]. If the norms of an international treaty differ from the norms of national law, the norms of international law apply because Ukrainian law separates the principle of the supremacy of international law over national law. The share of international legal agreements in the environmental legislation of Ukraine is quite significant and is constantly growing. However, those norms of international agreements that have not been ratified by the Parliament are in force in Ukraine. This is due to the constitutional recognition of Ukraine's universally recognized principles and norms of international law (Article 18 of the Constitution of Ukraine). Thus, the relevant principles and norms of international law in the field of environmental protection are sources of environmental law of Ukraine [6].

In recent years we can trace the growing trend of the share of international legal acts as sources of national environmental legislation in the world, including Ukraine. This is primarily due to the presence of environmental problems that escalate into trans boundary environmental disasters [7].

It should be noted several shortcomings of domestic environmental legislation. In particular, a significant number of norms of environmental law are quite generalized and not specified. This is especially true of economic tools to stimulate greening processes and strengthen environmental safety.

Thus, it is necessary to adopt a normative legal act that would cover the main provisions on greening, economic incentives for greening processes, regulation of these processes, assessment of their effectiveness and responsibility for the deterioration of environmental safety by various nature users. That is the Law of Ukraine "On Environmental Safety".

It is expedient to carry out systematization of the ecological legislation having formed accordingly – the Ecological code of Ukraine. Note that the Environmental Code does not have to be an act of codification; it can be an act of related consolidation. That is the consolidation of several

regulations into one without a significant change in their content. Accordingly, it is proposed to adopt several amendments to improve and harmonize regulations in the field of environmental relations and to consolidate them.

We consider it expedient to improve the system of economic incentives for environmental safety, in particular amendments to the Law "On Environmental Protection", Art. 48 [11]:

– establish criteria according to which the relevant activity is interpreted by the legislator as economic incentives for greening (environmental safety);

– identify promising activities that require state support in the form of soft loans to provide a mechanism for the legal regulation of such activities;

– expand and detail the list of measures and activities for which it is advisable to apply economic incentives, in particular, to determine preferential tax rates, rates of accelerated depreciation of environmental funds, etc.

Conclusions. To sum up the study results we can conclude that the world community is deeply concerned about the environmental problems, which is manifested in the relevant processes of international law and national legislation greening. In general, the priority of development is the ecological balance of forms, methods and ways of interaction between society and nature. Regarding national legislation, it is worth noting the positive trends in the codification of norms (Forest Code, Water Code, and Land Code) and harmonization of national legislation with international law and EU environmental law. As a result of the analysis, the shortcomings of domestic environmental law were identified. Based on the results of the study, the main directions of improving the legal support of environmentally safe economic development were proposed: to systematize environmental law by adopting the "Environmental Code of Ukraine" and improve the system of legal support for economic incentives for environmental safety.

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