

## РОЗДІЛ V. АДМІНІСТРАТИВНЕ ПРАВО І ПРОЦЕС; ФІНАНСОВЕ ПРАВО; ІНФОРМАЦІЙНЕ ПРАВО

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### ADMINISTRATIVE- LEGAL REGULATION IN THE AREA OF PROTECTION OF NATURAL ENVIRONMENT

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**Key words:** *administrative-legal regulation, the area of protection of natural environment, natural resources, nature management, state control, monitoring, cadastre, system of management and regulatory entities, efficiency.*

The article is devoted to the clarification of theoretical and practical issues of administrative and legal regulation in the field of environmental protection and finding optimal ways to improve the latter. The normative and legal framework in the field of environmental protection is characterized, administrative and legal norms as the main and necessary component of the mechanism of administrative and legal regulation are identified, the main classification criteria for dividing these norms into types are identified. Based on the analysis of the existing modern approaches in the theory of administrative and environmental legal approaches to the classification of bodies that carry out management in the field of environmental protection, nature management and ensuring environmental safety, as well as relevant regulatory and legal acts, a system of subjects of administrative and legal regulation in the field of environmental protection is defined. Attention is paid to the issues of state monitoring of the environment, environmental information support, maintaining state cadastral of natural resources, state accounting of objects that have a harmful effect on the state of the environment, state control and supervision in the fields of nature management and environmental protection. The main groups of reasons for the unsatisfactory level of functioning of the state control system in this area are identified.

The emphasis is on the need to increase the level of environmental and legal culture as an important factor in the effectiveness of legal (administrative – legal) regulation of social relations in the field of environmental protection and an effective tool of environmental policy in the state, and therefore, a factor in ensuring the sustainable development of society.

It was emphasized that increasing the level of effectiveness of the regulatory and legal framework in the field of environmental protection, in particular, by codifying environmental legislation and bringing it into line with international norms and obligations of Ukraine, strengthening the institutional and functional capacity of entities that manage and regulate in this area, as well as ensuring an effective mechanism for their interaction, will contribute to increasing the level of effectiveness of administrative and legal regulation and, in general, the sustainable development of public relations in the field of environmental protection, nature management and ensuring ecological safety.

## АДМІНІСТРАТИВНО-ПРАВОВЕ РЕГУЛЮВАННЯ В ГАЛУЗІ ОХОРОНИ НАВКОЛИШНЬОГО ПРИРОДНОГО СЕРЕДОВИЩА

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**Ключові слова:**

*адміністративно-правове  
регулювання, галузь охорони  
навколишнього природного  
середовища, природні ресурси,  
природокористування,  
державний контроль,  
моніторинг, кадастр,  
система суб'єктів  
управління та регулювання,  
ефективність.*

Статтю присвячено з'ясуванню теоретичних і практичних питань адміністративно-правового регулювання у галузі охорони навколишнього природного середовища та пошуку оптимальних шляхів удосконалення останнього. Схарактеризовано нормативно-правову базу в галузі охорони навколишнього природного середовища, адміністративно-правові норми як основну та необхідну складову частину механізму адміністративно-правового регулювання, виокремлено основні класифікаційні критерії поділу цих норм на види. На основі аналізу існуючих у теорії адміністративного й екологічного права сучасних підходів до класифікації органів, що здійснюють управління у сфері охорони навколишнього природного середовища, природокористування та забезпечення екологічної безпеки, а також відповідних нормативно-правових актів визначено систему суб'єктів адміністративно-правового регулювання в галузі охорони навколишнього природного середовища. Приділено увагу питанням здійснення державного моніторингу навколишнього природного середовища, екологічного інформаційного забезпечення, ведення державних кадастрів природних ресурсів, державного обліку об'єктів, що шкідливо впливають на стан навколишнього природного середовища, державного контролю та нагляду у сферах природокористування й охорони навколишнього природного середовища. Виокремлено головні групи причин незадовільного рівня функціонування системи державного контролю у цій сфері.

Акцентовано на необхідності підвищення рівня еколого-правової культури як важливого чинника ефективності правового (адміністративно-правового) регулювання суспільних відносин у галузі охорони навколишнього природного середовища та дієвого інструмента екологічної політики в державі, а відтак, фактора забезпечення сталого розвитку суспільства.

Наголошено, що підвищення рівня ефективності нормативно-правової бази у галузі охорони навколишнього природного середовища, зокрема, шляхом кодифікації природоохоронного законодавства та приведення його у відповідність до міжнародних норм і зобов'язань України, посилення інституційної та функціональної спроможності суб'єктів, що здійснюють управління та регулювання у цій галузі, а також забезпечення дієвого механізму їх взаємодії сприятиме підвищенню рівня ефективності адміністративно-правового регулювання та в цілому сталому розвитку суспільних відносин у сфері охорони навколишнього природного середовища, природокористування та забезпечення екологічної безпеки.

**Problem statement.** The existence of a significant number of problems in the field of environmental protection requires an urgent response from the state, aimed at ensuring the constitutional

right of everyone to an environment safe for life and health and compensation for damage caused by the violation of this right, optimal conditions for nature use by introducing waste-free and low-waste,

environmentally friendly technologies, preserving and restoring natural resources, developing environmental education and training, and raising the level of environmental culture and awareness. The state, as a subject that has the exclusive right to influence other subjects of legal relations through a set of measures aimed at environmental protection and plays a pivotal role in ensuring sustainable development and environmental protection. At the same time, the existence of destructive processes caused by the ruthless exploitation of natural resources necessitates the need to increase the level of efficiency of administrative-legal regulation in the environmental protection sector and raises the issue of developing reasoned proposals and recommendations aimed at improving and developing this regulation.

#### **Analysis of recent research and publications.**

The problem of administrative and legal regulation of social relations was in the circle of interests of many theorists of legal science, including V. Averyanov, O. Andriyko, O. Bandurka, N. Berlach, Yu. Bytyak, O. Bondar, V. Galunko, V. Garashchuk, I. Golosnichenko, P. Dikhtievsky, T. Kolomojets, V. Kolpakov, A. Komzyuk, V. Kurylo, V. Olefir, S. Petkov, O. Piddubny, O. Svitlychny, S. Stetsenko, I. Shopina and others.

Various aspects of legal regulation of relations in the field of environmental protection, rational use, reproduction and protection of natural resources were studied by such scientists as O. Artemenko, N. Bondarenko, M. Gavriltsiv, I. Hyrenko, T. Grigor'eva, N. Zolotareva, V. Zuev, I. Kazanchuk, V. Knysh, N. Kobetska, L. Kovalenko, A. Kotelevets, V. Lazarenko, O. Lazor, Yu. Legeza, V. Oliynyk, O. Onyshchuk, V. Petrenko, I. Petrova, K. Ryabets, V. Strelnyk, O. Surilova, O. Ulyutina, V. Shekhovtsov, K. Yashchuk and others. It should be noted that in modern conditions of excessive dynamism of law and low efficiency of state management in the field of environmental protection, rational use and reproduction of natural resource potential, there is a need for a systematic analysis of theoretical and practical issues of administrative and legal regulation in the field of environmental protection, and the search for optimal ways to improve the latter.

**The purpose of the article** is to investigate theoretical and practical issues of administrative and legal regulation in the field of environmental protection, based on the analysis of theoretical sources and current regulatory legal acts.

**Main research material.** The use of a comprehensive approach to the creation and functioning of a unified system of state management and regulation in the field of environmental protection is due to the indissoluble unity and interconnection of all components of the latter as integral components of ensuring ecological balance, as well as the need to take

into account all systemic aspects (legislative, organizational, financial, technical and informational, etc.) that affect the system of state management and regulation in the field of environmental protection as a whole [1, p. 66].

The regulatory and legal basis for administrative and legal regulation of relations in the field of environmental protection is the Laws of Ukraine "On Environmental Protection", "On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the Period Until 2030", "On Waste Management", "Land Code of Ukraine", "Water Code of Ukraine", "Forest Code of Ukraine", Code of Ukraine "On Subsoil", "On Animal Life", "On Plant Life", "On Protection of Atmospheric Air", "On the Red Book of Ukraine", "On Veterinary Medicine", "On Pesticides and Agrochemicals", "On Management of Radioactive Waste", "On the Nature Reserve Fund of Ukraine", "On Fisheries, Industrial Fishing and Protection of Aquatic Bioresources", "On the Permit System in the Sphere of Economic Activity", "On the Zone of Emergency Environmental Situation", "On the Ecological Network of Ukraine", "On Strategic Environmental Assessment", Code of Ukraine on Administrative Offenses, etc.

As is known, administrative-legal norms are the main and necessary component of the mechanism of administrative legal regulation. The effectiveness of the latter depends on a number of factors, the leading of which is the effectiveness of the administrative legal norms themselves, their compliance with the real needs of society in ensuring the sustainable development of social relations in the field of environmental protection [1, p. 88]. Given the huge array of legislative and subordinate normative legal acts in the field under study, administrative legal norms regulating social relations in the field of environmental protection can be classified depending on the goals of administrative legal regulation, by the addressee of the prescriptions, by functional purpose, by the form of the prescription, by the scope of action, by the completeness of the stated commands, by legal force. At the same time, the issue of codification of environmental legislation remains relevant given the imperfection of regulatory and legal support in the field of environmental protection and the need for its improvement, which is emphasized in their scientific research by such scientists as G. Balyuk, N. Bondarenko, A. Getman, I. Hyrenko, O. Golovkin, T. Grigor'yeva, I. Hrytsenko, N. Zolotareva, V. Knysh, M. Krasnova, Yu. Legeza, L. Nechyporuk, V. Ovdiyenko, O. Onyshchuk, V. Petrenko, O. Pogribnyi, O. Surilova, Yu. Shemshuchenko, V. Shekhovtsov, M. Shulga, etc. [2, p. 221].

The existence of a significant array of problems in the field of environmental protection is due, among other things, to the imperfect organizational

and legal mechanism of environmental protection, which, in turn, actualizes the need to improve its institutional and functional components. Therefore, we will focus on clarifying the system of entities that carry out state (public) management and regulation in this area. The problem of classifying state bodies in the field of environmental protection, nature management and ensuring ecological safety in modern legal science is solved in different ways. The approach that distinguishes bodies of general and special competence is quite established (A. Getman, Yu. Krasnova) [3, pp. 70-73; 4, p. 89]. O. Myniuk and D. Myniuk, when characterizing the system of subjects of administration in the field of environmental safety, in addition to bodies of general and special competence, also distinguish a third group of state bodies that perform special functions of control and supervision over compliance with legislation and law enforcement in the state [5, p. 183]. Another approach to the classification of subjects of regulation of environmental relations, proposed by V. Kostytsky, consists in distinguishing two levels of their functioning – national and territorial (local) [6, p. 468]. A comprehensive analysis of the system of subjects of administration in the field of environmental protection allowed O. Artemenko to carry out an expanded classification of them, which combines both the above-mentioned classification criteria used by scientists and purely specific ones. Thus, the scientist proposes the following classification: by territorial scale of activity – national and local; by nature, areas of work and powers – general competence and special competence; bodies of exclusive competence; the public [7, p. 116].

Taking into account the above, as well as the content of sections III, IV of the Law of Ukraine “On Environmental Protection” [8], in our opinion, the system of subjects of administrative and legal regulation in the field of environmental protection should include:

1) state authorities:

a) general competence (Verkhovna Rada of Ukraine, President of Ukraine, Cabinet of Ministers of Ukraine, local state administrations);

b) special competence (authorized central executive authorities in the field of environmental protection, in the field of environmental protection and use of natural resources; other authorized state authorities that perform certain special functions of management and regulation in this field);

2) local self-government bodies;

3) non-state institutions that have delegated state powers (public environmental organizations, public environmental inspectors).

One of the negative factors that significantly hinders the development of legal (administrative and legal) regulation of relations in the field

of environmental protection is the low efficiency of the activities of management and regulatory entities in this area, which, in turn, necessitates the need to strengthen their functional capacity, in particular in terms of maintaining a cadastre of natural resources and monitoring the environment, executing state control, and providing informational resources [2, pp. 221–222].

It should be noted that the theoretical foundations of the functional component of the organizational-legal mechanism of environmental protection have always been in the field of view of scientists. A significant number of dissertations and monographs have been devoted to the study of various management functions in the field of nature management and environmental protection [3, pp. 86-87]. Despite a significant amount of scientific work on the issues of the main areas of activity of state executive bodies, local governments, public associations regarding ensuring the organization of rational use of natural resources, their reproduction and protection, environmental protection and ensuring environmental safety, the issues of the functional capacity of entities that carry out administrative and legal regulation in this area, as well as ensuring an effective mechanism for their interaction remain relevant. The legal principles of state monitoring of the environment, environmental information support, maintaining state cadastres of natural resources, state accounting of objects that have a harmful effect on the state of the environment are regulated by the Law of Ukraine “On Environmental Protection” (Chapter V) [8] and other resource-specific legislative and regulatory acts.

One of the factors that negatively affects the solution of the problem of environmental protection and preservation in the conditions of growing anthropogenic pressure is the decrease in the effectiveness of government agencies in the field of control over the use and protection of natural resources and the low activity of environmental protection agencies in preventing, detecting and stopping violations in this area. Various aspects of state control and supervision in the fields of environmental use and environmental protection were studied in the works of such scientists as V. Andreytsev, G. Balyuk, A. Getman, I. Hyrenko, O. Golovkin, T. Kychylyuk, V. Knysh, V. Kostytsky, A. Kotelevets, M. Krasnova, V. Kurylo, O. Lazor, S. Marchenko, V. Pakhomov, O. Piddubny, K. Ryabets, O. Svitlychny, O.A. Ulyutina, Yu. Shemshuchenko, M. Shulga and others. Analysis of scientific and theoretical sources devoted to the study of problems of state control (supervision) in the spheres of environmental protection and nature management indicates that the latter is considered as: an independent function (direction) of management in this sphere, with the help of which “...the subject of management not only has the opportunity to adjust management activities, but



also helps to predict the prospects of further development and achievement of a specific result” [9, p. 31]; a special type of social control; a method (means) of ensuring legality in the relevant sphere; a legal form of (environmental) activity of authorized entities; a special type of state management activity.

Analysis of sources dedicated to the diagnosis of the effectiveness of the implementation of the national environmental policy, as well as conceptual legal acts on the reform of the system of supervision (control) in the field of environmental protection provides grounds to identify the main groups of reasons for the unsatisfactory level of functioning of the state control system in this area:

- structural and functional nature (imperfect organizational structure of control subjects, duplication of supervision (control) functions by central executive bodies, lack of proper coordination of their activities in environmental monitoring and harmonization of legislation);

- informational nature (lack of effective state monitoring of the state of the environment, unified electronic registers of natural resources, unsatisfactory level of information exchange and access to information on the state of the environment and its objects);

- resource-providing nature (low level of financial, technical and personnel potential) [1, p. 196].

It should also be noted that increasing the level of environmental and legal culture is an important factor in the effectiveness of legal (administrative and legal) regulation of social relations in the field of environmental protection and an effective tool of environmental policy in the state, and therefore, a factor in ensuring sustainable development of society [10].

**Conclusions.** Thus, increasing the level of effectiveness of the regulatory and legal framework in the field of environmental protection, in particular, by codifying environmental legislation and bringing it into line with international norms and obligations of Ukraine, strengthening the institutional and functional capacity of entities that manage and regulate in this area, as well as ensuring an effective mechanism for their interaction, will contribute to increasing the level of effectiveness of administrative and legal regulation and, in general, the sustainable development of public relations in the field of environmental protection, nature management and ensuring ecological safety.

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