

Ukrainian Legislation on Biodiversity Protection in Latter Half of 20th Century: Problematic Issues and European Experience

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OIDA International Journal of Sustainable Development, Ontario International Development Agency, Canada
ISSN 1923-6654 (print) ISSN 1923-6662 (online)
Available at <http://www.ssm.com/link/OIDA-Intl-Journal-Sustainable-Dev.html>

Abstract: The purpose of the research is to show the development of Ukrainian legislation on biodiversity protection with accordance to European tendencies and identify its stages in the latter half of the 20th century. The absence of an effective legal mechanism motivates to give the legal history review to define the problematic issues of this legal field. The paper defines two phases of Ukrainian legal base approximation to the European legislation on biodiversity protection and outlines their peculiarities. The article is separated in two main parts as- (a) historical stages of Ukrainian legislation development in accordance with European focus; (b) problematic issues of Ukrainian legislation on biodiversity conservation: level of detalization, textual form, spirit of law, public concern. This is the research of a top priority, as the community faced the tasks of protecting not only humanity but also the natural environment; within the biodiversity protection is one of the pressing challenges.

Keywords: biodiversity protection, Ukrainian legislation development

Introduction

Ukraine is one of the biggest countries in Europe and makes a huge impact on the ecological situation of the continent. Occupying about 6% of Europe, Ukraine has about 35% [1] of its biodiversity resources due to the specific location of its territory as the cross of numerous natural areas, migration routes of animals and plants. That is the reason to evaluate the process of integration and harmonization of biodiversity conservation legal provision with European legislation. The Constitution of Ukraine (1996) proclaims the duty of the state “to ensure environmental safety and to maintain the ecological balance on the territory of Ukraine” [2] (art. 16). At the same time, Ukraine is anxious to join in the international community in order to implement effective European legal experience into the legislation at the national level. Art. 18 of Ukrainian Basic Law prescribes that “the external political activity of Ukraine is aimed at ensuring its national interests and security by maintaining peaceful and mutually beneficial co-operation with members of the international community, according to generally acknowledged principles and norms of international law” [3]. Contemporary direction of Ukrainian external policy is the integration into the EU, which consequently requires the proper regulation of the national legislation. The basic component of the cooperation agreements between the EU and the third countries is the harmonization of their legislation with the EU’s standards. Thus, it would be useful to analyze the historical process of the approximation of Ukrainian nature conservation legislation with the Pan European legal framework.

The author of this article tries to study the historical background of Ukrainian legal evolution from the early stage of international cooperation in the field of biodiversity conservation (1970s) to the later approximation with European principles after the proclamation of independence in Ukraine (1991) and to highlight the main problematic issues in this field.

Historical stages of Ukrainian legislation development in accordance with European focus

Current development of Ukraine as a social state is accompanied by consistent reform in public life and government strategy. They are designed to cooperation with the European countries and involves the harmonization of legislation in the field of biodiversity conservation as an element of the sustainable development. Unfortunately, all aspects of this issue do not have a holistic understanding nor by legislators,

neither by civil society. Thus, there is a need to create the coherent picture using historical experience to arrive at the solution of this complex problem and its critical evaluation. There can be defined two historical periods of the Ukrainian legal base on the legal biodiversity protection approximation to international and European trends:

(a) the last mid-century (1970th); (b) 1991 (proclamation of independence) - until now.

The first stage of the biodiversity protection formation in convergence with the international trends is the period of the 1970-th years. It was the phase of the global environmental concern arising. Ukraine, as a part of the USSR (hereafter: UkrSSR), was not an exception and the latter half of the 20th century can be characterized as an active period of providing a legislative framework on this issue. One of the basic acts in the field of the biological diversity protection is the Law on UkrSSR Nature Protection (1960). Notwithstanding the facts that this act was concentrated mostly on home affairs and its prescriptions were mostly declarative there was also a reference to the international activity and co-operation aspects. The further basic law should be noted is the Law "On environmental protection, strengthening and improvement of the natural resources use in the republic". Is a quite interesting act from the side of legal history research, as it was adopted on May 8, 1973 thus it can be compared with the First Environmental Action Programme of the European Community of the same year (1973), which many scientists considered as the "classic document" [4] in the field of environmental protection. Further standards to enhance the juridical responsibility in the field of fauna protection were reflected in the Supreme Council Decree of UkrSSR "On strengthening the responsibility for hunting violations and infliction of responsibility for illicit purchase, sale or recycling of fur skins, obtained by hunting" on April, 28, 1973. So, it is hard to escape a conclusion, that Ukrainian environmental legal evolution was not dramatically differ from contemporary international standards – it can be drawn some parallels between this Ukrainian act and European and international legal provisions. For instance, the International Convention CITES that is considered as an exemplary classical document in this area has been signed in the same year, and the EU provision of a similar nature was adopted in 5 years (1977). It seems, these matches were based on the fundamental unity of the Nature and Mankind, notwithstanding the difference in the social constructions, and, thus, appeared the possibilities for future convergence.

This period can also be characterize by the creation and expanding of special state bodies -the Interdepartmental Scientific and Technical Council for the complex problems of environmental protection and sustainable use of natural resources was established in Ukraine (hereinafter: ISTC) in 1974. The main task of ISTC was the objective to improve the organization, control, and coordination of the ministries, departments, enterprises and research organizations activities in order to develop the nature conservation practice. It had the points set of objectives: the powers volume, the working procedure, the staff, etc., and among the functions of ISTC this act assigned to provide the analyse of the current state of environmental protection in the UkrSSR, the Soviet Union and *abroad* (article 2). This provision obviously demonstrates the international character of the environment protection matters in UkrSSR. This legal act first used the term "natural environment" ('otochuyuche pryrodne seredovyshe') which indicates usage of international terminology and connection with the First Environment Action Programme.

Henceforward, we can confirm some historic continuation of the previous legal traditions in the field of biodiversity conservation: from UkrSSR to modern Ukraine approximation with European trends. Such assimilation of the previous legislation can be observed in nature reserves creation. In fact, nature reserves play a key role in the protection of flora and fauna in Ukraine and the planet, which can be supported by statistics. For example, fauna of Luhansk Nature Reserve (established by the Ukrainian SSR Council of Ministers Decree №568, November 12, 1968 [5]) "under the aegis of National Academy of Sciences of Ukraine comprises of 4,000 species, 99 of which are listed in the Red Book of Ukraine, 75 species - in the list of the Bonn Convention (1979), 196 - of the Berne Convention (1979), 53 species – of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, 1975), 22 species - in the list of the IUCN, 29 - in the European the Red List" [6]. In 1972 in order to improve nature reserve management, conservation and restoration of natural complexes in certain botanical and geographical areas, with their specific flora and fauna, dispersal of beneficial animals and conservation of plant communities, it was accepted the fundamental Ukrainian SSR Council of Ministers Decree "On measures for expanding the network of national reserves and improvement of the nature reserve management", on January 28, 1972. By the proposals of the National Committee on Nature Conservation and the UkrSSR Academy of Sciences, according to the list prescribed in Annex II of this Decree, there were determined the territories of major botanical - geographic regions of the state which were provided for nature reserves during the next eight years (1972-1980). Annex contained the list of such areas, including: the great forest landscapes of Transcarpathian region, Carpathian, Polissya lakes and bushes, the most ancient rocks, forest-steppe and steppe Right Bank, the Crimea mountains and Black Sea estuaries, and others (totally 28 items). So, the previous period (1970th) can be characterized by a) planned nature, b) the detailed list and spatial quantity of protected territories, c) certain period for their establishment.

After the proclamation of independence in Ukraine it was issued the act on "The nature reserve fund of Ukraine"

on June 16, 1992 with objectives: to regulate social relations on the organization; protection and use of the territories and objects of the natural reserve fund; reconstruction of its natural complexes; organization of management in this field (art.1) [7]. Unfortunately, it had only declarative statements; thus, in furtherance of its implementation in March 1994 it was issued a Presidential Decree Ukraine "On the reservation for the further reservation of valuable natural areas" which had already considered the detailed plan of the primary organization of new nature reserves and expansion of existing ones in the period of 1994 - 1996's; the Annex to the Decree has the specified list of such territories. The given model of organization of nature reserves, which had been developed in the second half of the twentieth century, became the basis for the adoption of legal provisions in Ukraine and a solid foundation for the borrowing of legal experience of the biodiversity protection in the EU.

Generally, the political confusion of Ukraine in the early 90s played a negative role in environmental protection matters, as the government has been more concerned about taking up their posts rather than about sustainable development and efficient use of nature, which was radically different from then-effective European trends. Thus, in 1991 – 1994 Ukrainian legislation mostly developed without any accordance with EC legal provisions. But in 1994 Ukraine ratified the significant Convention on Biological Diversity 1992, accepting its affirmation that the biological diversity conservation is a *common concern* of humankind.

After the Act of Independence in 1991, Ukraine firstly adopted the EU legislation principles and standards in its own policy only in 1998 after the conclusion of the Partnership and Cooperation Agreement between the European Communities and their Member States, and Ukraine. Art. 51 of this Agreement recognized that “an important condition for strengthening the economic links between Ukraine and the Community is the approximation of Ukraine's existing and future legislation to that of the Community” [8]. In accordance with this act, the major purpose was to make the Ukrainian legislation gradually compatible with Community's one. Remarkable is part 2 of art. 51 which reinforced the need for the approximation not only in economic, property, taxation, *et alius* legal scopes, but in the «animals and plants, the environment» protection.

However, the legal mechanism and the tendency to the European policy trends in the field of nature conservation remained tenuous. For example, the "Pan-European Biological and Landscape Diversity Strategy" (1995) have been taken into account by Ukrainian side only in five years. In 2000 was adopted the Law of Ukraine "National Programme of forming the National Ecological Network of Ukraine in 2000 - 2015"[9], in accordance with the recommendations of the PEBLDS.

It stands to mention that both described periods were focused on protecting the diversity of biological species to preserve the nature and ecosystems, *per se*, using strategies, legal acts and international cooperation.

Problematic issues of Ukrainian legislation on biodiversity conservation: detalization, textual form, spirit of law, public concern.

Detalization

Comparing the current situation on biodiversity conservation in Ukraine and the EU, it can be seen numerous flaws of Ukrainian side. In our opinion, one of the most problematic challenges is the low degree of Ukrainian legislation detalization. Mostly, the EU legislation is accompanied by a large amount of annexes that comment and supplement provision of law, provide the quantitative characteristics of standards and indicate measurement methods, criteria, requirements, rational approach, methods of progress monitoring, and other details. Comparing with the EU level of detalization, in Ukrainian legislation this aspect seems to be insufficient. Consider the following example - Council Directive 92/43/EEC of 21 May 1992 'On the conservation of natural habitats and of wild fauna and flora' [10] has six particularized annexes: protected habitats are listed in Annex I; endangered, vulnerable, rare, endemic and requiring particular attention species are listed in Annex II and/or Annex IV or V; basis of the criteria set out in Annex III. Rational approach is settled in Part 3. Art.2 – “Measures taken pursuant to this Directive shall *take account* of economic, social and cultural requirements and regional and local characteristics”. The methods of progress monitoring are ensured in the form of reports – every two (part 2. Art.16) and six years (part 1. Art 17) Member States draw up a report on the implementation of the measures taken under this Directive. This Act consists of 24 articles and 6 Annexes, which is three times less comparing with Ukrainian Law “On wildlife” [11] which has 64 articles or the Law “On the environmental protection” [12] which consists of 72 articles; nevertheless, European act has a comprehensive and particular nature, lot more practical mechanisms, details, specific aspects ensured at the legal level (compared with Ukrainian legislation). Typically Ukrainian laws do not have annex or additional documents with specified lists, methods, particulars; a significant part of the provisions is declarative. Unfortunately, Ukrainian legislation does not involve clear methodological and practical mechanisms of its effective implementation into reality.

Summing up, such the problems of the Ukrainian legislation harmonization with European trends could be enumerated: (a) the lack of specific objectives, (b) weak regulation procedures, (c) the absence of effective

mechanisms for implementing the regulatory requirements, and process monitoring, (d) declarative nature of legal provisions.

Textual meaning

Within a relatively short period of time the term "biodiversity" got an extended multi-level interpretation and became one of the very few general biological terms, whose formulation is fixed at the legal level of major international agreements. But such a broad interpretation made further approximation a lot more complicated by an *incorrect textual form* of legal nomenclature *viz.* – incorrect definition of the term 'biodiversity' in Ukrainian legal acts. For instance, this study has identified the following violations of the requirements for textual expression of regulations on the protection of biodiversity: an infringement of originality and stability of the term, an erroneous definition of terminology. These facts are reflected in certain Ukrainian laws with various meanings of the term "biological diversity". The most sustainable correct definition of this term (i.e., acknowledged by 156 countries) referred to the art. 2 of the Convention on Biological Diversity – 'the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part: this includes diversity within species, between species and of ecosystems' [13]. In contrast, the Ukrainian Law "On National Programme for Ecological Network of Ukraine in 2000 - 2015" which was developed in accordance to the recommendations of the "Pan-European Biological and Landscape Diversity Strategy" (1995) has such definition as "biological (biotic) diversity – is the totality of all species plants, animals and micro-organisms, their groups and ecosystems within the territory of Ukraine, its territorial sea and inland waters, the exclusive (maritime) economic zone and continental shelf. Biological diversity consists of a species, population, cenotic, genetic diversity" (article 1) [14]. The author finds this definition flawed for several reasons. Firstly, it significantly differs from conventional (Art. 2 of the Convention on Biological Diversity), and thus violates the principle of sustainability of the legal term. Secondly, Ukrainian legislator provides the specification of biological diversity like *biotic*, i.e. "living", contrary such a constitutive element of biodiversity as an ecosystem, abiotic elements. By *CBD ecosystem means* «a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit» [15], so it includes non only biotic, but non-living (abiotic) elements. The conception of biodiversity element of "ecosystem" is erroneous. Thus, the author finds out that the Ukrainian legislator: (a) considers the elements of biodiversity separately, without paying due attention to the complex character of the biodiversity; (b) enshrines incorrect definitions in the legal texts; (c) breaks the stability and legal certainty of the term "biodiversity". These irregularities along with unreflected interpretation of the term and its disordered import from the European and international law represent the complexities of the Ukrainian legal development in accordance with European trends.

Public awareness on biodiversity protection issues

Effective harmonization of legislation is not only the formal interpretation of its legal provisions, but its approximation according to the *spirit of law*. For this purpose, it is necessary not just to adhere to the proper statutory wording and to fix terminology discrepancies indicated in the paragraph above, but also to bring publicity to the urgent need of legislation comprehension. Nowadays, one of the most "popular trend" in Europe is a public environmental concern. In fact, in recent times, Ukraine displays the trend of arising awareness of this challenge, but it still remains insufficient for effective implementation. The analytical reports of the Commission of the European Union "Attitudes towards biodiversity" illustrates that these problems are not confined only to Ukrainian but also to European society. According to the analytical report 2013, about 74 % of EU citizens were in some way familiar with the term "biodiversity" - slightly less than half of Europeans have heard of the term "biodiversity" and know what it means (44%) and three in ten have heard of it, but don't know what it means (30%), but more than a quarter have never heard of it (26%) [16]

Conclusions

The absence of an effective legal mechanism and productive international cooperation is a big challenge for Ukraine. Many questions stays unresolved, adopted plans of actions and detailed agenda are inadequate. The main objectives in order to harmonize Ukrainian legislation in field of biodiversity conservation with European trends are:

- (1) establishment of a new system of environmental legislation and greening of other branches of law (administrative, civil, criminal, entrepreneurial, etc.);
- (2) approximation to the principles of European legislation and the leading countries of the world; stray from declarative character of adopted legal provisions;
- (3) formation of effective and detailed mechanisms of the legal ensuring of environmental requirements (practical relevance, the results monitoring, etc.).

Plan of actions in the sphere of nature protection and biodiversity conservation has a distinctive feature – supranationalism. Improvement of the legislation on this issue is a great concern not only for Ukraine, but also European colleagues in order to support the sustainable development of the entire of Europe; thus it's a deal of an equal interest.

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