PROBLEMS OF LAND LEGISLATION OF UKRAINE AND EUROPEAN UNION INTEGRATION

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ABSTRACT

One of the ways to prevent legal defects in land and legal regulation in Ukraine at present and in the future is to ensure the adaptation of the national land legislation to the requirements of the European Union. The implementation of the course on Ukraine's European integration is an integral part of domestic reforms aimed at economic growth, improving the living standards of the people, developing democracy, building a civil society, guaranteeing the rule of law, freedom of speech, protecting human rights and freedoms and strengthening national security. Deepening cooperation with the European Union is an important element in strengthening stability and security in the European continent, stimulating domestic economic and political reforms, promoting public progress and developing a socially oriented economy of Ukraine. The signing and ratification by the Parliament of Ukraine in 2014 of the Association Agreement between Ukraine, on one hand, and the European Union, the European Atomic Energy Community and their member states, on the other, and the need to adapt national legislation to EU requirements in the legal regulation of the use and protection of lands as the main national wealth, determine the urgency of the chosen research topic. Comparative analysis of domestic and foreign regulatory control of issues of environmental responsibility and compensation for land damage as a result of economic and other activities allows us to point out the need to take into account a number of the directives' provisions, which will help build a European model of financial responsibility for land offenses in Ukraine. Taking into account the European experience in resolving issues related to environmental damage, it should be noted that for all positive aspects, the institution of environmental responsibility and its effectiveness depend on the level of development of the financial guarantees mechanism. Until 2010 the Directive provided for the development of mandatory financial guarantees' system in case of harm to the natural environment. While insurance is considered as the most accessible and universal form of financial guarantees. Therefore, for Ukraine, in addition to improving the institution of financial responsibility, it is necessary to pay special attention to the formation of a real system, ensuring its implementation, one of the ways of which is environmental insurance. Therefore, it is necessary to establish the legal basis for its regulation by adopting the Law of Ukraine "On Environmental Insurance". Particular attention should be paid to the harmonization of methods for assessing environmental damage that must provide an adequate real damage assessment. Methods for assessing damage caused to land resources operating in Ukraine, in general, comply with modern procedures, enshrined in European legislation. The calculation method used to determine the extent of harm meets the requirements of a market economy and makes it possible to display the real size of the damage caused. However, the specified methodologies do not establish a mechanism for compensation for harm caused by pollution of the life and health of people. The expediency of such a settlement is important for the legal norms of a protective nature, considering that the Directive of the European Parliament and Council of Europe 2004/35/CE regulates the issues of compensation for harm caused to

lands, in particular soil and through their properties – to life and health of people and also to ecological interests.

Keywords: Land Resources Turnover, Crime Prevention, Legislation Integration, Ukraine, European Union, Association, Principle of Law.

INTRODUCTION

Regulatory acts of the European Union play a significant role in regulating land relations in the EU member states. Thus, according to the draft Treaty on the Introduction of the Constitution for Europe (2003/C169/01), adopted by the consensus of the European Convention on June 13 and July 10, 2003, the Council of Ministers unanimously adopts European laws, European framework laws, implements land use measures, excluding the organization of waste collection and disposal (Sulyagina, 2012; Kokanovska, 2016).

According to Art. 51 of the Agreement on Partnership and Cooperation between Ukraine and the European Union (EU) and Member States of June 14, 1994, Ukraine has undertaken to take measures to gradually bring national legislation into line with the legislation of the European Community, that is, to adapt national legislation to the EU legislation requirements. Among the spheres of adaptation there is, in particular, the institution of legal responsibility as an important way of protecting the environment, including lands, as follows from the provisions of the Law of Ukraine "On the State Program for Adaptation of Ukrainian Legislation to the Legislation of the European Union" of March 18, 2004.

The implementation of the course on the European integration necessitates the adaptation of the national land legislation to the EU requirements. According to Art. 51 of the Agreement on Partnership and Cooperation between Ukraine and the European Union (EU) and Member States (Agreement on partnership and cooperation between Ukraine and the European Communities…, 1994) an important condition for strengthening economic ties between Ukraine and the Community is the convergence of the existing and future legislation of Ukraine with Community legislation. Ukraine will take measures to ensure the gradual harmonization of legislation with the legislation of the Community. Adaptation of land legislation is the process of bringing the laws of Ukraine and other regulatory legal acts that are sources of land law of Ukraine, as well as the step-by-step adoption and implementation of Ukrainian regulations, developed in accordance with EU legislation, conformably with the acquis communautaire.

Acquis communautaire (acquis) the legal system of the European Union, which includes, but is not limited to, acts of European Union legislation adopted within the framework of the European Community, the Common Foreign and Security Policy and the Co-operation in the Field of Justice and Home Affairs. At the same time, it is necessary to take into account that in the EU operates the principle of the EU rule of law over national law, which found its confirmation in the decisions of the Court of Justice of the EU. Thus, in the judgments of the Court of Justice of the European Communities in case 26/62, Algemene Transporten Expeditie Ondernemingvan Gend v. Nederlandse Administratieder Belastingen, in case 6/64, Flaminio Costa v. ENEL and in case Variola v. S. P. Administatione Italianadelle Finanze there is entrenched:

- The principle of priority of EU law over the national law of member states (Supremacy of European law principle).

- The principle of direct application of EU law (the principle of direct application of EU law).

The scale of the influence of EU law is evidenced by the fact that approximately 80% of laws and other legal acts in the economic and social spheres that in the past belonged to the competence of states are produced by Union bodies and are unified for all its members (Magnovsky, 2005).

The purpose of adapting the land legislation of Ukraine to the EU legislation is to achieve compliance with the legal system of the country acquis communautaire, taking into account the criteria set by the European Union to the states that intend to join it. The development of Ukrainian legislation in the direction of its approximation to the legislation of the European Union is a priority component of the process of Ukraine's integration to the European Union, which in turn is a priority direction of Ukrainian foreign policy.

LITERATURE REVIEW

The issues of the domestic institute of legal responsibility for land offenses adaptation to EU legislation have been studied in a fragmentary way by such scientists as Andreitsev, Hetman, Balyuk, Kovalenko, Krasnova, Malysheva, Miroshnichenko and others.

The purpose of the section is to determine the directions of adaptation of the domestic institution of legal responsibility for land violations of existing EU legislation in this area. Main goals:

- To analyse the existing system of norms of the European legislation, which directly regulate legal responsibility for violations of the order of land use and protection;
- To carry out a comparative legal description of the legal provision of the legal responsibility institution for violation of the norms of land legislation in Ukraine and the EU.

The legal regulation of legal liability for land offenses in European Member States is in the joint competence of the Community and Member States. The legal regulation of the institution of legal liability for land offenses in the EU countries is primarily the subject of national regulation (Entin, 2017), as well as in accordance with the provisions of the EU directives, which are binding on member countries since their adoption and a number of conventions of the Council of Europe.

In addition, based on the content of Art. 175 of the EU Treaty with the EU Member States, the right remains to introduce more stringent protective measures in the fight against environmental, including land, offenses in comparison with the measures established by the European Community.

It should be noted that European legislation is aimed at combating environmental crime, so the adaptation of the domestic institution of legal responsibility for violation of land legislation will concern environmental land offenses.

The most developed in the European system of legal responsibility for land offenses with an ecological colour is the institution of criminal and environmental responsibility, on which we will concentrate our attention.

The basis of the environmental liability system in European law is made up of such documents as the Convention on Civil Liability Resulting from Activities Dangerous to the Environment of 1993 (Deikalo, 2014) (hereinafter the Lugano Convention) and the Directive 2004/35/EC of the European Parliament and the Council of Europe on Environmental

Responsibility for the prevention and liquidation of environmental damage of April 21, 2004 (hereinafter referred to as Directive 2004/35/CE) security (primarily insurance and other forms of financial security).

The Lugano Convention was adopted by the Council of Europe on June 21, 1993 and signed by 9 countries (Italy, Iceland, Cyprus, Liechtenstein, Luxembourg, Netherlands, Portugal, France, Finland), but did not enter into force because it did not pass the ratification in one of the countries, which signed it. However, this document introduces a number of new provisions, which explains attention to it.

The Convention introduces a strict liability regime for harm caused by activities dangerous to the environment. An important part of this document is the provision on the subject of liability: in accordance with Art. 2 §5 it is a person who exercises control over such activities (operator). In addition, the Convention, along with individual, provides for collective (subsidiary) liability. When resolving the issue of compensation for harm caused, it is provided that the court considering the case has the right to take into account the causal relationship between hazardous activities and harm and also take into account the fault of the injured persons and thus partially reduce the amount of compensation. The Convention also defines the conditions for the release of the operator from liability (Art. 8 and 9).

General Understanding of the Possibilities of Ukraine's Integration and EU Legislation In Different Legal Families

General principles and directions of the land legislation of Ukraine adaptation to the legislation of the EU are defined in the National program of adaptation of the legislation of Ukraine to the legislation of the European Union, approved by the Law of Ukraine of March 18, 2004 (The national program of adaptation of the legislation of Ukraine to the legislation of the European Union…, 2004). Adaptation of the legislation of Ukraine is a systematic process, including several successive stages, each of which must achieve a certain degree of compliance of Ukrainian legislation with the acquis of the European Union. At the first stage of the Program implementation, which was calculated before the completion of the Partnership and Cooperation Agreement between Ukraine and the European Communities and their member countries on June 14, 1994, the priority areas in which Ukraine's legislation is being adapted is, in particular, the sphere of health care and the lives of people, animals and plants, as well as the environment.

The signing and ratification by the Verkhovna Rada of Ukraine in September 2014 of the Association Agreement between Ukraine, on one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand (On ratification of the Association Agreement…, 2014) (hereinafter referred to as the Association Agreement) is a significant impetus to the activation of the processes of adaptation of national land legislation to the requirements of the EU. Adaptation of the land legislation of Ukraine to the acquis communautaire is not defined as a separate direction to bring the national legislation of Ukraine in line with EU requirements. However, some articles of the Association Agreement refer to the measures taken by the Parties to ensure environmental safety and protection, of which land plots and land resources are an integral part. In particular, the Association Agreement fixes:

- The need for the Parties to recognize the importance of fully taking into account the economic, social and environmental interests of not only their respective populations, but also of future generations and ensuring that economic development, environmental and social policies are supported jointly (Art. 289).

- The importance of international environmental governance and agreements as a response of the international community to global and regional problems in the field of environmental protection, while the Parties guarantee that their environmental policy will be based on the precautionary principle and principles that require the application of preventive measures, reimbursement in the priority order of damage caused to the environment and payment of a fine by the environment polluter (Art. 292).
- Cooperation of the Parties with a view to facilitate the rational use of natural resources in accordance with the objectives of sustainable development in order to strengthen the trade and environmental policy and practice of the Parties (Art. 292).
- Development and strengthening of cooperation between the Parties on environmental protection, which should contribute to the implementation of long-term goals of sustainable development and a green economy. It is expected that the strengthening of environmental activities will have positive consequences for citizens and enterprises in Ukraine and the EU, in particular through improving the health system, conserving natural resources, increasing economic and environmental efficiency, integrating environmental policy into other areas of state policy. And also increase of production level due to modern technology. Cooperation is carried out taking into account the interests of the Parties on the basis of equality and mutual benefit and also taking into account the interdependence existing between the Parties in the field of environmental protection and multilateral agreements in this area (Art. 360).

In Appendix XXXVIII to Chapter 17 "Agriculture and Rural Development" of Section V "Economic and Sectoral Cooperation" of the Association Agreement, it is envisaged to bring the land legislation of Ukraine closer to the legal requirements of the EU by taking into account Amendment to Commission Regulation (EC) No. 1973/2004 of 29 October 2004, which establishes detailed rules for the implementation of Council Regulation (EC) No 1782/2003 on support schemes provided under Sections IV and IVa of this Regulation and the use of withdrawn from the economic use lands, for the raw materials' production.

By ratifying the Association Agreement, Ukraine has established a number of reservations regarding the grounds, in particular with respect to land ownership (Annex XVI-D). Thus, foreign citizens and stateless persons do not have the right to acquire property rights to agricultural land. Foreign citizens and stateless persons do not have the right to receive free of charge land plots in state or municipal ownership or to privatize land that have been previously provided for their use. Foreign legal entities may acquire the right of ownership only for non-agricultural land plots on the territory of settlements in case of acquisition of immovable property objects connected with entrepreneurial activity in Ukraine and outside the settlements' territories in case of acquisition of immovable property. There are no restrictions on the lease of land by foreigners and foreign legal entities. Acquisition, possession, as well as leasing of real estate by foreign individuals and legal entities may require a permit.

In addition to the Association Agreement, certain areas of adaptation of the land legislation of Ukraine to the acquis communautaire are also fixed in other regulatory and legal acts, in particular:

- In order to support the process of economic transformation in Ukraine, the General Strategy of the European Union for Ukraine, approved by the European Council on December 11, 1999, provides for the implementation of land reform, which is necessary to ensure, among other things, the possibility of using the long-term lease of land as

security for loans, which will increase the volume of investment in the agricultural sector. In land and legal science, Nosik (2015) notes that in modern conditions the development of a new legal model for the development of land reform should take place according to the directions defined in the Strategy of Sustainable Development:

- Firstly, to base on an expert evaluation of existing land and legal relations taking into account the economic, social, legal, demographic consequences of land reforms.
- Secondly, it requires the revision of the entire legislative informative and legal basis for the legal regulation of land relations at the local, regional and national levels.
- Thirdly, it requires the abolition of the Land Code of Ukraine and other laws and by-laws that contradict Art. 13, 14, 41, 141 of the Constitution of Ukraine or do not meet the requirements of deregulation, decentralization in the sphere of land use and protection, use of land in economic activities.
- Fourthly, it is necessary to develop a new legislative framework for regulating land relations on the basis of the Constitution of Ukraine (Nosik, 2015).
- To ensure structural reforms in Ukraine, according to the Ukraine-European Union Action Plan, the European Neighbourhood Policy, approved by the Cabinet of Ministers of Ukraine on February 12, 2005 and the Council on Cooperation between Ukraine and the European Union on February 21, 2005, was deemed necessary to admit accompanying acts of legislation necessary for effective application of the Land Code of Ukraine of October 25, 2001. Also to abolish the existing restrictions set forth in Art. 82 of this Code, for possession of non-agricultural land plots by Ukrainian legal entities with a share of foreign capital, including those in which foreign capital is 100%. Indeed, according to §2 of Annex XIII of the European Treaty, the member states of the European Union are obliged to grant foreigners from the EU countries the right to land equal with the rights of citizens of their country. Therefore, the adaptation of national land legislation to the requirements of the European Union in the provision of equal rights to land for citizens of Ukraine and EU citizens is necessary. In particular, Poland and Hungary have already recognized the abovementioned EU norm and as a result, decisions have been made to authorize the sale of agricultural land to foreigners from 2008 and 2015 according to Podlesny (2004). At the same time, it should be noted that according to the Association Agreement, a number of EU reservations regarding the grounds have been established, in particular with regard to the acquisition of real estate in certain EU member states (Annex XVI). Thus, in the Republic of Bulgaria foreign physical and legal entities (including through branches) cannot acquire land ownership rights. Bulgarian legal entities with foreign participation cannot acquire ownership of agricultural land. Foreign legal entities and foreign citizens who permanently reside abroad can acquire ownership of buildings and limited property rights (right of use, building rights, superstructure rights and servitude) for real estate. Agricultural land and forestry land in the Czech Republic can only be acquired by foreign legal entities – permanent residents of the Czech Republic. Special rules apply to the agricultural lands and forestry lands, which are owned by the state. These restrictions are valid for 7 years after the accession of the Czech Republic to the EU. There are certain restrictions on the acquisition of rights to land plots also in the Kingdom of Denmark, Hungary, the Republic of Estonia, the Republic of Greece, the Republic of Croatia, the Republic of Poland, Romania, the Republic of Slovenia and the Slovak Republic.

- With intent of stabilizing production and ensuring economic growth on a qualitatively new basis, the end of the privatization process by the Ukraine's Integration Program into the European Union, approved by the Decree of the President of Ukraine of September 14, 2000, involves the development and implementation of mechanisms for transferring land in long-term lease with the subsequent redemption, as well as the sale of enterprises together with land during their privatization process.
- With intent of adapting the land legislation to the EU requirements according to the Common Strategy of the European Union for Ukraine, approved by the European Council on December 11, 1999, Ukraine is obliged to take decisive measures in the field of environmental protection, in particular protection of public health from soil pollution, sphere of rational and responsible use of natural resources. The directions of implementation of these measures is to improve the accounting of land pollution by solid hazardous waste, the development of national environmental classifications that meet international standards, the monitoring of the environmental state of the environment taking into account the EU standards; provides for the adoption of such measures as the creation of satellite environmental accounts and alignment of indicators systems of statistical reporting on environmental protection and natural resources with them, carrying out statistical monitoring of the environmental state taking the EU standards into account.

In the Recommendations of the Parliamentary Hearings on the Status and Prospects of Development of Ukraine's Economic Relations with the EU (Free Trade Area) and the Customs Union, approved by the Decree of the Verkhovna Rada of Ukraine of May 19, 2011, draws attention to the need to step up the adoption of laws aimed at adaptation of Ukrainian legislation to EU legislation and the norms and principles of the WTO, the introduction of parliamentary control mechanisms, making it impossible to adopt legislative acts, which are related to the priority areas of adaptation of Ukrainian legislation to EU legislation and standards and principles of the WTO and does not meet the requirements of European law. The Cabinet of Ministers instructed to ensure the approximation of Ukrainian legislation to EU norms and standards in accordance with the annual action plans for the implementation of national adaptation programs of Ukrainian legislation to European Union legislation; define clear criteria regarding the content, duration and a list of normative acts of Ukraine in accordance with specific European counterparts, which should be implemented in full, in part or delayed; develop specific programs and the adaptation of the program of structural changes for each branch of the Ukrainian economy in terms of improving their international competitiveness and the mechanisms of compensation of possible losses due to the activities in the conditions of a free trade zone; bring health standards into line with EU standards and the WTO, to conduct land reform and the like.

In particular, Ukraine has approved the Program for the revision of state building codes and regulations for the period until 2015 (extended until 2020) (Program for the revision of state building codes…, 2011), which goal is to ensure the development of a national system of rationing in construction by reviewing state building codes and regulations, according to which they can be cancelled, changed, new building codes and rules developed. According to this Program, Land Allocation Standards for Reclamation Channels (SN 474-75), Land Allocation Standards for Main Pipelines (SN 452-73), Land Allocation Standards for Oil and Gas Wells (SN 459-74), Land Size Determination for Objects of Electric Power Lines (DBN.2.5-16-99), Land Allocation Standards for Airports (SN 457-74), Land Allocation Standards for the

Communications Line (SN 461-74), Land Allocation Standards for Railways (SN 46874) , Land Allocation Standards for the Construction (reconstruction) of Highways (DBN.2 .3-16-2007 Land Allocation Standards for Main Pipelines and Sewer Collectors (SN 456-73), Land Allocation Standards for Exploration Wells (SN 462-74), Planning and Building of Urban and Rural Settlements (DBN 360-92), Composition, Content, Procedure for the Development, Approval of Scientific and Project Documentation on the Definition of Boundaries and Regimes for the Use of Zones for the Protection of Architectural Monuments (DBN B.2.2-2-2008), Urban Planning (DBN B.2.4-1-94). These standards are currently quite contradictory. Basically, they correspond to the natural and climatic conditions in which the country is located, but at the same time, they do not conform to the qualitative indicators of the developed EU countries. However, in the European Community, more and more burdensome work is carried out using technologies that are largely developed in the USSR for road construction in unfavourable conditions. It is recommended to take into account and bring to a level not the standards themselves (they are quite appropriate) but the control and performance.

Influence of Integration Legislative Processes For The Purpose Of Reduction of Unlawful Acts in the Field Of Land and Legal Regulation

The first developments in the sphere of criminal and legal protection of the environment were carried out by the bodies of the Council of Europe. Thus, two conventions were prepared:

- Convention on Civil Liability Resulting from Activities Dangerous to the Environment, which was adopted in Lugano on June 21, 1993 (the main idea of which is to establish strict liability (without fault) on the basis of the "polluter pays" principle);
- Convention on the criminal and legal protection of the environment of 4 October 1998 in Strasbourg (hereinafter the Convention of 1998) in Art. 2-4 for the first time determined which acts should be criminalized at the national level. These ideas were subsequently used as the basis of the Framework Decision of the Council of the European Union 2003/80/JHA on the criminal and legal protection of the environment of January 23, 2003 (hereinafter referred to as the Framework Decision 2003/80/JHA).

So, according to Art. 5 of the EU Directive 2008/99/EC, among them, in particular, there must be such intentional unlawful acts that damage the quality of the soil, such as:

- The release, emission or introduction of a substance or ionizing radiation into/on the ground, if this entailed or could result in the death of a person or substantial harm to their health, a significant damage to the quality of the soil (item "a").
- Hazardous waste management (collection, transportation, disposal, processing, export/import of waste), if it caused or can cause death of a person, significant harm to their health or a significant deterioration in soil quality (item "b" and "c").
- The operation of an object of increased danger causes or can cause beyond the limits of death to a person, a significant deterioration in their health or a significant deterioration of the soil (paragraph "d").
- Activities involving nuclear materials and other dangerous radioactive substances that cause or may cause the death of a person, a significant deterioration in their health or a significant deterioration in the state of the soil (item "e").

Analysis of crimes under Art. 6 of the EU Directive 2008/99/EC, allows noting a number of features. Firstly, the soil as a surface layer of the earth's crust, which is a combination of minerals, water, living organisms and performs socio-economic and ecological functions, is a

special object of criminal-legal protection (Paragraph 1, item 1 of the Soil Protection Strategy of September 22, 2006). Secondly, for all the above mentioned crimes, guilt in the form of intent or negligence is recognized as a necessary condition for liability. If we recall the 1998 Convention, where the absolute majority of crimes are characterized by the subjective side in the form of intent, according to a single conclusion, the EU Directive 2008/99/EU applied a more rigid approach to criminal responsibility depending on the subjective side. So, Art. 6 of the Directive provides that States should establish responsibility for crimes not only in the presence of intent (as provided for in the 1998 Convention), but also negligence. Thirdly, for all crimes, a mandatory condition for liability is unlawfulness, which manifests itself in the form of the law violation, administrative order or decision of the competent authority. Fourthly, it should be noted that the EU Directive 2008/99/EC abandoned the dualistic understanding and application of the notion of "danger" in determining the socially dangerous consequences that occurred in the 1998 Convention. In Art. 2 of the Convention, the concept of "danger" is used in two different meanings: in 1b) as a "classic" example of a real danger "creates a significant danger" and "it can create a danger" as an example of a potential, possibly remote in time, danger manifestation.

The EU Directive 2008/99/EC continues the idea of introducing the institution of criminal liability of legal entities (Art. 6), first reflected in the 1998 Convention. It was noted that the state should implement the measures necessary to implement criminal or administrative sanctions against legal entities in whose interests the crimes envisaged by Art. C, were committed by their governing bodies or participants in these bodies or their representatives in the interests of the legal entity. At the same time, the responsibility of the corporation does not exclude the criminal punishment of an individual.

However, in determining the sanctions, the EU Directive 2008/99/EC is limited to defining them as "effective and adequate" (Art. 7). An approximate list of these sanctions can be found in Art. 6 of the Framework Decision 2003/80/JHA, among which, inter alia, deprivation of the right to state aid or grants; permanent or temporary disqualification (prohibition) in the implementation of entrepreneurial or industrial activities; the establishment of judicial supervision; the issuance of a court order for the liquidation of an enterprise or the obligation to take measures to prevent a re-offense.

The conducted analysis of the norms of European legislation and the analysis of the norms of domestic law make it possible to establish that the Ukrainian concept of criminal legal protection of lands is generally consistent with the concept adopted in the EU legislation.

So, during the reform of the criminal legislation of Ukraine and the adoption of the current Criminal Code of Ukraine in 2001 (hereinafter the Criminal Code of Ukraine), a separate chapter was singled out (Chapter 8 "Crimes against the environment"), combining all the components of environmental crimes, including crimes in the sphere of land use and protection. In particular, responsibility was established for causing damage to land resources in one case as a process, in the other as a result, which fully corresponds to the formulation of offenses set forth in the EU Directive 2008/99/EC.

So, Art. 236 of the Criminal Code of Ukraine provides for the responsibility for the environmental pollution of significant areas as a result of a violation of the procedure for environmental impact assessment, rules of environmental safety during the design, placement, construction, reconstruction, commissioning, operation and liquidation of enterprises, structures, mobile facilities and other facilities. Art. 254 of the Criminal Code of Ukraine establishes responsibility for the process for long-term reduction or loss of soil fertility, their removal from

agricultural circulation, washing off of the humus layer and disturbance of the soil structure due to negligent land use.

In Art. 239 of the Criminal Code of Ukraine, which provides for criminal liability for pollution and damage to lands, the terms "pollution" and "damage" can be considered simultaneously both as a process and as a result. Part 1 indicates the contamination and damage of the land as a consequence, which is the result of a violation by the person of special rules. And only then contamination or spoilage generates the onset of derivative consequences – creating a threat of harm to life, human health or the environment or real causing such harm. The latter act as qualifying circumstances in the composition of this crime (Part 2, Art. 239).

The Criminal Code of Ukraine, like the EU legislation, recognizes the protection of the soil cover. The fact that the term "soil" is used in the EU legislation when determining the object of a land offense and the current Criminal Code of Ukraine operates with the term "land" is not a basis for understanding them as two different objects of crime. After all, lands in general should not be considered the subject of criminal pollution or damage to lands, but specifically soil cover of lands as an integral part of lands of any category. It is a question of a crime provided for by Art. 1 (a) of Art. 2 of the 1998 Convention: "the release, emission or introduction of a substance or ionizing radiation into the land, if this entailed the death of a person or significant harm to their health", for which a fault was proved in the form of negligence.

Although the current land legislation as an object of legal protection provides for separate land (Art. 162 of the Land Code of Ukraine) and separately the soil (Art. 168 of the Land Code of Ukraine), the literature makes a substantiated conclusion that the meaning "land" used in Art. 239 of the Criminal Code of Ukraine coincide with the concept of soil (Melnik & Khavroniuk, 2011; Shulga, 2004).

The Ukrainian concept of responsibility for causing harm to the land rests on the classical construction of danger. In all articles of the Criminal Code of Ukraine provides for criminal liability and for harm, which has actually manifested itself (Art. 236, 254 of the Criminal Code of Ukraine) or created a danger to life, human health or the environment (Art. 239). The concept of "potential danger" was not found in the Criminal Code of Ukraine, as well as in the EU Directive 2008/99/EC, in contrast to the 1998 Convention, in which, for the majority of crimes under Art. 2, we are talking not only about the very fact of danger, but about the possibility of such danger (if this can create a danger...).

The only issue that becomes revolutionary for the Ukrainian legislation and doctrine of the, first of all, criminal law, is the question of recognizing a legal entity as a subject of crime.

The Institute of Criminal Responsibility of Legal Entities underwent substantial reform in the European community itself. The adopted EU Directive 2008/99/EC insists on the concept of criminal liability of legal entities (Art. 6), whereas the 1998 Convention did not recognize it as an imperative. Art. 9 of the Convention left the states with the right not to accept the institution of legal responsibility of legal entities, establishing that: 1) that the requirements of the Convention are considered fulfilled if at least administrative responsibility of legal entities is imposed and not criminal, for the acts provided for in Art. 2; 2) the state generally cannot accept this provision. Consequently, the proposed model was perceived only by some European states (for example, France).

We are to distinguish three standards (regimes) of liability, based on subjective signs of the offense, namely:

- Guilty liability (based on the thought of carelessness).
- Strict (severe) responsibility or responsibility without the guilt.

- Unconditional responsibility (responsibility without the possibility of justification, which is possible in the case of nuclear attack (Krasnova, 2008).

Within the European Union there were also several attempts to introduce a unified regime of European environmental responsibility. Thus, the draft of the Directive on Civil Liability for Damage Caused by Waste of 1989 was drafted (Directive on Civil Liability for Damage..., 1989) and subsequently the Commission initiated a discussion on the introduction of a mandatory environmental liability regime not only in the field of waste management. Was presented the Green Book on Reducing Harm to the Environment (Green Book..., 1993).

After a lengthy debate on the provisions of the White Book on environmental liability in 2000, the results of which were summarized in 2001, in the Environmental Final Report on the Prevention and Reimbursement of Environmental Damage, on January 23, 2002, the Commission promulgated the first proposals of the Directive on Environmental Liability. On 24 April, 2004 the European Parliament and the Council of Europe adopted Directive 2004/35/EC.

Directive 2004/35/EC of the European Parliament and of the Council of Europe on Environmental Liability for the Prevention and Elimination of Environmental Damage of April 21, 2004 (hereinafter referred to as Directive 2004/35/EC) provides for laying of financial responsibility for the implementation of preventive measures to reduce the risk of harm to the environment and the responsibility for the elimination of damage, including land on the operator, whose activities have caused or are at risk of causing environmental damage. According to Art. 2 item "c" direct or indirect pollution of the earth, which created a significant risk of adverse effects on human health due to direct or indirect ingress of substances, preparations, organisms and microorganisms into/on the ground should be understood as environmental damage to land.

The main goal of Directive 2004/35/EC is to continue the approval of the "strict liability" regime based on the European "polluter pays" principle in the framework of a negative form of legal responsibility and the development of a positive form of legal responsibility.

The above-mentioned forms of liability are based on three basic principles: the principle of preventing damage, the principle "polluter pays" and the principle of liability imminent.

In order to increase the effectiveness of the institution of legal liability for the land pollution, the Directive gives priority to the prevention of harm.

According to Paragraph 4 of the Preamble, one of the main objectives of the Directive is to prevent and reduce harm. Its achievement, first of all, is ensured by imposing on the operator the obligation to take preventive measures, an indicative list of which is defined in Art. 5. In addition, the specially authorized body of the state is responsible for monitoring the operator's acceptance of all necessary preventive measures or independently implementing them with future cost recovery.

Secondly, Art. 18 impose on the subjects of economic activity the obligation to take measures to minimize the risks of financial responsibility, by stimulating the development of financial support tools.

Financial responsibility consists in assigning the responsibility to the operator to make expenditures to prevent the risk manifestation or to eliminate its negative consequences. In some cases, this obligation may be fulfilled by the public authority, but the text of Directive 2004/35/CE repeatedly emphasizes that even in such a situation, the funds spent in the end should be recovered from the operator.

The principle of preventing damage found its consolidation in the current legislation of Ukraine. Thus, in particular, Art. 104 of LC of Ukraine assigns to owners and land users the right to demand the termination of activities in a neighbouring area, the implementation of which can

lead to harmful effects on the health of people, animals, air, land and other. Art. 167 of the LC of Ukraine contains a prohibition to carry out economic and other activities that lead to contamination of land and soil in excess of the established TLV of hazardous substances. Art. 282, 293 of the Civil Code of Ukraine provide that the activities of a physical and legal entity that harms the environment can be terminated by a court decision. In respect of owners of high-risk facilities, the obligation to take measures aimed at preventing accidents and protecting human beings and the environment from their impact is also established in Art. 8 of the Law of Ukraine "On the objects of increased danger".

The principle of necessity to take measures is defined in the Constitution of Ukraine (Art. 16, 50, 66) and also Art. 3, 9, 10, 12, 41, 68, 69 of the Law of Ukraine "On Environmental Protection".

The principle of preventing damage is continued in another principle – "polluter pays". The responsibility of the operator in accordance with the "polluter pays" principle ensures an increased responsibility of the entity in carrying out economic activities with increased environmental risk (Paragraph 2 of the Preamble).

The "polluter pays" principle is one of the most important principles of environmental responsibility in the field of environmental protection, which is enshrined at the international level, in particular the Declaration on Environment and Development of 1992 in Rio de Janeiro (Items 13, 16). The content of this principle consists in assigning the operator the responsibility to take the necessary measures to prevent and eliminate environmental damage or the risk of causing it and in case of its failure to attract the operator to financial responsibility.

In the scientific literature, the opinion is expressed that this principle actually creates the basis for introducing a system of fines for an environmental offense (White Book..., 2000).

However, based on the content of a number of provisions of the Directive, the liability mechanism, built on the "polluter pays" principle, can be effective only under certain conditions, among which:

- The possibility of identifying the polluter (polluters).
- Real one, that is, one that can be calculated.
- A cause-effect relationship can be established.

On the EU Member States Art. 11 of the Directive entails the obligation to identify the authorized body responsible for meeting the requirements of the Directive, whose task is to identify the responsible polluter and to determine the necessary remedial measures that he must apply.

In turn, the Directive provides for two modes of liability. The first applies to entities that engage in environmentally friendly activities defined in Annex III of the Directive. Under this regime, the operator is liable irrespective of his fault, except as provided by the Directive 8. The second liability regime extends to all other activities: the operator of such activities will be liable solely in the presence of his guilt in the form of intent or negligence in the harm done.

The operator is exempted from the obligation to bear financial responsibility if he proves that the environmental damage or risk is caused by a third party and occurred despite the fact that all the security measures were implemented or is a consequence of the execution of a binding order of the public authority (Article 8, Paragraph 3). In addition, the state can free the operator from the costs of eliminating environmental damage, when the operator proves that his activities are related to a substance for which there is no information on the possibility of causing dangerous consequences (Article 8, Paragraph 4).

National environmental legislation defines such subjects in Part. 66 of the Law of Ukraine "On Environmental Protection", Art. 1 of the Law of Ukraine "On High-Risk Facilities" and in the List of Activities and Objects Presenting High Environmental Danger approved by Cabinet of Ministers of Ukraine Decree No. 808 of August 28, 2013. The special legal personality of such persons is partially reflected in laws regulating a particular type of environmentally hazardous activities: The Law of Ukraine "On Pesticides and Agrochemicals" of March 2, 1995, the Law of Ukraine "On Waste" dated March 5, 1998, the Law of Ukraine "On Radioactive Waste Management" of June 30, 1995.

The regime of strict liability of economic entities, cause or bear the risk of causing harm, enshrined in Art. 1187 Civil Code of Ukraine and the Law of Ukraine "On the Objects of Increased Danger" of January 18, 2001.

National legislation of Ukraine implemented the "polluter pays" principle only in terms of assigning the obligation to incur expenses for necessary restorative measures, leaving out of sight the costs of preventive measures. Taking this into account, we join the position of A.M. Miroshnichenko. On the need to "consistently introduce into the legislation the" polluter pays "principle, which requires large-scale changes in legislation" (Miroshnichenko, 2009).

The basic principle of the "polluter pays" Directive is also underlined by the principle of the inevitability of environmental liability, according to which both the operator and the public authorities must be responsible, which should create conditions in which the subject will not escape responsibility. If it is not possible to identify the operator whose activities have caused harm or there are grounds for releasing the operator from liability, the authorized authorities are obliged to take the necessary measures independently.

Irreversibility of responsibility for violation of the environmental legislation requirements is established in Art. 41 of the Law of Ukraine "On Environmental Protection" of June 25, 1991.

The Directive specifies the procedure for compensation of damage caused to land resources. To determine the extent of land damage, it is proposed to use the risk assessment procedure, which determines the negative impact on human health. According to Art. 11 of the Directive, the responsibility for assessing the amount of damage and determining the necessary measures for its liquidation rests with the competent authority.

In Annex II (paragraph 2) of the Directive it is stipulated that the elimination of damage to land should be ensured, at the very least, by the elimination of polluters or by reducing their quantity in order to eliminate the risk of negative effects on human health. In turn, risk assessment is proposed to determine by taking into account the characteristics and functions of the soil, the type and concentration of harmful substances, preparations, organisms and microorganisms, their danger and the possibility of spreading. In addition, the possibility of natural restoration of the damaged area should be taken into account.

The directive provides for various remediation measures depending on the type of pollution. On the contamination of the land, its purification should be carried out until it ceases to pose a threat to human health. In the event that the contaminated site cannot be restored, another, situated nearby and equivalent for the ecological value of the land plot should be expanded (in terms of area as well).

The EU has accumulated some experience in various models of general compensation schemes established at the state level. For example, the Swiss government established a fund to finance the restoration of abandoned contaminated sites, which is replenished by an established landfill tax. In Germany, compensation schemes are used for various hazardous waste management operations in the Hessen lands (based on voluntary cooperation between industry,

local authorities and local authorities), Baden-Württemberg, Rheinland-Faltz, Bavaria and Lower Saxony. The common thing is that contributions for all enterprises are determined depending on the amount of waste produced by a specific industry.

CONCLUSION

On the way to improving the legal regulation of public relations on the basis of the best practices of other countries, according to Kulinich (2010), Ukraine faces a danger that cannot always be avoided. This danger consists in the rejection of our own experience in the legal regulation of public relations, which, being tested by the time worked out in accordance with the realities of domestic historical development and institutionalized in the form of integral legal entities, has proved its effectiveness and prospectivity. That is why before the legal science of Ukraine there is a unique task of preserving from destruction by means of pseudo-reform those sectors of domestic legislation that need to be updated not by replacing foreign legal products, but along the way by improving the conceptual bases and theoretical postulates of the legal regulation of public relations (Kulinich, 2010). In this regard, when adapting national land legislation to EU legislation, addressing the issue of concluding international treaties and implementing them, Nosik's (2005) caution should be taken into account. That the bringing of laws and other normative legal acts on the regulation of land relations in accordance with the legislation of the European Union should start not with the improvement of the Land Code of Ukraine and the legislative acts issued in accordance with it, but with the obligatory use in constitutional law of the constitutional principles of implementation Property rights and other rights to land, the harmonization of draft land laws with EU law, while taking into account the priority in securing the territory National supremacy of Ukraine, national security of the state and people (Nosik, 2005).

Since it is a question of bringing the national legislation into full compliance with the European one, it is fair to say that in addition to the positive moments, such that are acceptable to our legal system, it is necessary to absorb into it also the moments that completely contradict the essence of legal relations, are regulated by the legislation of Ukraine. Land law and land legislation will not be an exception. Let us consider this with concrete examples.

At the present stage of the development of land law science of Ukraine, land is considered to be inseparably linked, as a specific natural resource, which is the basis for the existence of all other natural resources, objects and complexes; as a territorial basis for the placement of any fixed objects and as the main means of production in agriculture and forestry. In addition, the law provides for the land protection precisely based on the transparency of its understanding. If we consider the norms of European law, then on the basis of the availability and interpretation in some international legal acts of terms such as "landscapes" and "territories", it can be argued that European legislation seeks to understand the land as a natural resource and, less pronounced, as Territorial basis, although this is very arbitrary. As can be seen, national legislation, using the achievements of the science of land law, regulates land relations taking into account certain features, including the presence of a fertile soil layer and its use in agriculture. Full compliance with European law in this case will lead to a loss of accounting for features in the regulation of land relations.

In modern legal science, to describe the processes of Ukraine's entry into the European legal space, are often used such terms as "harmonization", "approximation" and "rapprochement". As for the current legislation, it deals exclusively with the adaptation of

legislation, which is understood as the process of bringing the laws of Ukraine and other regulatory and legal acts into line with the acts of EU legislation. The term "harmonization (alignment)" refers to the process of bringing national standards in line with EU standards.

The most appropriate is the term "approximation" as a characteristic of the legal essence of the processes of harmonizing the norms of the current legislation with the provisions of international acts in accordance with the obligations assumed by Ukraine in accordance with these international instruments. It most fully reflects the legal essence of the actual process of development of the legal system of Ukraine in the conditions of the formation of the European legal space from the point of view of the legal system's narrow understanding.

It seems that the process of bringing the norms of the land legislation of Ukraine should not be "blind". This can lead to the complete destruction of land use in Ukraine, to the violation of the principles of targeted, rational, effective land use. It should be remembered that land in Ukraine is a national wealth recognized by law.

The state authorities, namely those that directly implement the approximation of the legal system of Ukraine to the legal system of the European Union, in particular the Verkhovna Rada of Ukraine, should be more balanced in understanding the terms, the implementation of integration processes. It is the acceptance of the positive experience of European law, the identification of norms that are inadmissible for domestic land law, the preservation of features and the correct interpretation and application of terms such as adaptation, should become prerequisites for the further development of land law in Ukraine

The provisions of Directive 2004/35/EC on the full list of harmful factors that may lead to soil pollution remain unaccounted for (Subitem "c" of Item 1 of Art. 2), which is important in qualifying such an offense. The current version of Art. 1 of the Law of Ukraine "On Land Protection" and Art. 1 of the Law of Ukraine "On State Control over the Use and Protection of Land" stipulate that soil contamination takes place due to the accumulation of harmful substances, whereas in Directive 2004/35/EC, in Subitem "c" of Item 1 of Art. 2, in addition to substances, compounds, organisms and microorganisms are indicated.

The order of legal responsibility for "past environmental damage", that is, harm caused as a result of previous economic activity and the so-called "accumulated harm", needs to be settled.

Summarizing the analysis of EU legislation in the field of legal liability for land violations, we can note the following:

From our point of view, adaptation of Ukrainian legislation in the sphere of legal regulation of land protection relations of a protective type to EU legislation, first of all, should take place taking into account the main principles of the EU of a preventive nature: the principle of a high level of environmental protection; the principle of a reservation; the principle of preventive actions for land protection; the principle of eliminating sources of significant harm to the environment, enshrined in Art. 174 of the Treaty on the Community. Preceding from the fact that legal liability for land infractions is only one way to protect land, this will help to introduce the main idea of the European institution of legal responsibility: not to bring the guilty person to account for the already committed offense, but to prevent it.

The criminal and legal protection of the lands of the Criminal Code is generally consistent with the basic ideas of EU legislation in this part. Full adaptation of our criminal legislation to EU legislation can lead to significant changes only to the institution of criminal liability of legal entities for the commission of land crimes of environmental orientation.

The analysis of the European institution of environmental responsibility allows us to state that the Ukrainian legislation is sufficiently close to the legal regulation of the institution of

property liability for land crimes. The Ukrainian legislation has reflected both positive and negative forms of legal responsibility, as well as a strict liability regime for causing damage to land resources.

The main principles on which the EU environmental liability institution is based: "polluter pays", the principle of damage prevention, the principle of the inevitability of environmental responsibility are reflected in national legislation. At the same time, significant changes are required by the national legislation regarding the introduction of the "polluter pays" principle on imposing the obligation to finance the costs of preventive measures.

Attention is drawn to the trend in international jurisprudence regarding the responsibility of the state for violations of legislation in the sphere of environmental protection. Today the scale of responsibility of the modern state is increasing, even for those phenomena that 30-40 years ago were treated as a doctrine to the action of force majeure (Knyazev, 2008). The state acts as the subject of responsibility in litigation cases on environmental disputes both when there is pollution with which the state is directly connected and in situations where private companies are negatively impacted by a lack of proper regulation.

Therefore, Ukraine, which belongs to the industrially developed states, has the task of taking measures to prevent the causing of environmental and ecogenic harm and its compensation in cases where the authorities could not provide or mitigate negative consequences.

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