

Periodization of Nature Protection in Ukraine in the Latter Half of the 20th Century: Legal Aspect

Periodización de la protección de la naturaleza en Ucrania en la última mitad del siglo XX: Aspecto legal

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Received: xx/01/2018 • Approved: XX/02/2018

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ABSTRACT:

The article provides an overview of existing periodization of nature protection in Ukraine in the latter half of the 20th century. The absence of a single accepted periodization is explained by the structural-functional character of this sphere, as well as, by the lack of special historical and legal studies. The paper deals with the main criteria for definition the historical stages of the legal nature protection in Ukraine. The periodization on the «statutory» criterion is proposed and justified. Author gives the timeline of nature protection in Ukraine divided into five stages in the indicated period.

Keywords: nature protection, Ukraine, legal norms, environmental law, legal history

RESUMEN:

El artículo proporciona una visión general de la periodización existente de la protección de la naturaleza en Ucrania en la segunda mitad del siglo XX. La ausencia de una única periodización aceptada se explica por el carácter estructural-funcional de esta esfera, así como por la falta de estudios históricos y jurídicos especiales. El documento trata de los principales criterios para la definición de las etapas históricas de la protección legal de la naturaleza en Ucrania. La periodización en el criterio «estatutario» se propone y justifica. Autor da la línea de tiempo de la protección de la naturaleza en Ucrania dividida en cinco etapas en el período indicado.

Palabras clave: protección de la naturaleza, Ucrania, normas legales, derecho ambiental, historia legal

1. Introduction

The development of Ukraine as a legal and social state implies, inter alia, the full-fledged legal framework for sustainable environment and protection of natural resources. Nature protection is a pressing issue nowadays, but that is not to deny that it has a certain history of development, - its timeline. In order to predict further environmental trends it is necessary not only to use the latest research, statistical data, acts of state bodies, but also to refer to past historical events and adopted acts. The point to note is that historical

experience contains both positive and negative unsuccessful decisions; these findings can indicate where we started to move, and therefore suggest what we should come to. In order to figure out this timeline it is necessary to designate the periodization of nature protection (the case study of Ukraine in the latter half of the 20th century). As a preliminary, it should be determined what is meant by "periodization". It is a special kind of systematization, which consists in the conditional division of the historical process into certain chronological periods. The allocated periods have certain distinctive features, which are depend on the chosen basis, i.e. criterion. This paper defines the adoption of basic legal regulations in the environmental field as a criterion. During the past century, the legal protection of nature found diverse forms of expression, which depended on various factors– the subject of protection, and social, political and economic circumstances of that time. That is the reason why the paper presents a number of distinct scientific periodization of the legal protection of nature in Ukraine from the second half of the twentieth century (it is intended Ukraine as a republic of the USSR and during the independence). Each of the designated periods reflects the current (at that point of time) legal tradition in ecological maintaining. The main criteria for distinguishing historical stages and vectors of development of environmental activity in the legal arena were determined, as well as author's periodization is proposed and substantiated. The absence in Ukrainian science of a generally accepted periodization of the development of legal protection of nature is due to the structural and functional multidimensionality of the problem, as well as the lack of special historical and legal studies on this topic.

2. Methodology

Methods can be considered as a set of approaches and techniques for conducting a specific study. Any historical and legal research is based on both general scientific and special-scientific methods, among which, in particular, can be named comparative historical-legal, historical-genetic, historical-typological, etc. In the context of this work, which aims to develop an author's periodization of legal protection of nature in the second half of the 20th century, the historical-typological method is the scientific tool of a particular importance. At the heart of this method is the adoption of typology, which involves the division of the totality of objects or phenomena on the qualitatively defined types (classes) on the basis of the common essential features present to them. The construction of typologies in comparative studies can give a powerful impetus to rethinking and updating the traditions and paradigms already established in the historical and legal science (Shygal, 2015). The author has chosen the "statutory" criterion to define the periodization. Thus, this requires recourse to primary sources as: international conventions, basic laws, acts adopted by the Ukrainian SSR's state bodies, etc. Methodology mostly is grounded on the diachronic vector of cognition, allowing us to determine the historical (in our case, historical and legal) features of the timeline development. It gives the historical understanding and explanation of the «cause chains». Secondary sources are mostly focused on the research in modern environmental policy in Ukraine, ecological management and environmental law etc., do not pay specific attention to its historical development. Secondary sources serve as the basis for analysis and a critical view of the existing periodizations.

3. Theoretical Framework and Discussion

Mostly scientists realize that «subdisciplines of historical studies appear only to have begun to engage with the topic of environmental history in a systematic way in the very recent past» (Freytag, 2016). The previous author's research of that field (Kazak, 2017) in the form of dissertation "Legal basis of biodiversity protection in Ukraine and the EU: legal history research" (in Ukrainian) gave the sufficient quantity of legislative data to provide a periodization of the designated period, highlighting the characteristics and the definition of criteria for such a kind of historical and legal study. Currently, at the worldwide level, the nature protection became «progressively integrated into more global concerns such as the biodiversity crisis and climate change» (Pochet, 2017), that is the reason of complexity in the defining stages of its shaping. There is a large number of classifications of individual nature elements, methods of their protection, etc. which complicates the identification of

general patterns and trends in the evolution of legislation. Consequently, all attempts to give periodization in this field is subject of much debate.

Since the territorial scope of the study is Ukraine, as the developing and the largest country in Europe, whose influence on the ecological situation cannot be underestimated, let's provide a critical overview of the existing periodizations of nature protection in Ukraine. As a resume, there will offered an overall complex periodization on the statutory criterion. Some authors (Fefelova I. A., 2010) distinguish three the most general stages in periodization of nature protection in Ukraine in the 20th century: 1) pre-revolutionary (until 1917), 2) Soviet stage, 3) modern stage of independent Ukraine. Considering the chronological limits of the article, namely the second half of the 20th century, it is necessary to pay attention to the second above mentioned stage – the Soviet one. Considering the issues of periodization of the development of the environmental activity of the Soviet period, one should draw the opinion of Bely I. L. (1983), who noted that over the time, this activity has found the four forms of its expression: 1) conservation, conservative protection; 2) rational use of nature; 3) the restoration of natural resources; 4) protection of the environment. Thus, it should be noted that time it was developed the main feature – an integrated approach. In the latter half of the 20th century the environmental activities became enriched with new aspects due to the fact that the USSR became a party to the International Conferences and signed Conventions on the protection of nature and biodiversity. Conversely, Perimilovsky M. S (2014) defines the Soviet stage of development of environmental legislation as showing that there was no special value to the environment, since none of the adopted normative legal acts had a complex nature of environmental protection and its restoration. Critically considering this standpoint, it is necessary to adduce a counterargument. For instance, Resolution of the Council of Ministers of the Ukrainian SSR "On the protection of nature on the territory of the Ukrainian SSR" of July 3, 1949, the Law "On the protection of nature of the Ukrainian SSR" in 1960, the Decree of the Central Committee of the CPU and the Council of Ministers of the Ukrainian SSR "On strengthening the protection of nature and improving the use of natural resources of the republic" of May 8, 1973, fully developed a comprehensive and systematic approach to the protection of nature. Analyzing these acts, it can be seen that the ideological coloration in this area was minimal. Moreover, reflected the norms and principles and like then European law. It can be confirmed by the legislature's goal of protecting nature, namely, "the recognition of the vital necessity of solving these issues not only for the Soviet people but for all mankind" in Resolution "On the radical restructuring of the protection of nature in the republic" of November 18, 1988. Notwithstanding the above, it is worth pointing out that the level of maintenance of these legally fixed ideas remained low, was more declarative.

Among the few retrospective studies, it should be noted the general periodization which Hayday A.M. (2013) leads. Outlining the stages of development of the constitutional foundations of environmental law in the Ukrainian SSR (1917-1977) in order to determine the peculiarities of constitutional regulation of environmental relations before the adoption of the Constitution of the Ukrainian SSR in 1978. The modification of this periodization is that it is implemented on several criteria, namely, depending on the form of the state system (politics), the socialist period varies - from 1918 to 1991, and modern (post-socialist). The current (moders stage) is divided into two subperiods: from 1991 to the adoption of the Constitution of Ukraine in 1996, and from 1996 to the present time. In its turn, the socialist period is divided into four stages, the criterion of which is the adoption of acts of constitutional significance and Constitutions in the state: 1) 1919 - 1929; 2) 1929 - 1937; 3) 1937 - 1978; 4) 1978 - 1996. We agree with the conclusion of Hayday A. M. that in the period up to 1978 there was no regulation of the issues of nature conservation (environment) at the constitutional level. In our opinion, this problem firstly found its constitutional reflection only after the International Stockholm Conference of 1972, when the Constitution of the Ukrainian SSR in 1978 consolidated the principles of natural resources protection.

According to Malenko G. Yu. (2014), despite the fact that today's legislation in the field of environmental protection is profound and detailed, the establishment of environmental law in Ukraine until independence was held "quite slowly". In his article on the evolution of environmental legislation author focused solely at the present stage. One cannot agree with

the opinion of the researcher, who considers the "sufficiently successful" periodization of Bondar L. and Kurzova V. (2008), which distinguishes seven stages of the development of environmental law - the Old Ukrainian, Lithuanian epoch, Legislation of the Zaporozhian Cossacks, the law of the Hetmanate, legislation of the UNR, law of the USSR, Modern period. After all, as it can be read in the names of the stages, the criterion of this periodization is the state-legal system, without giving sufficient attention to the legal peculiarities of the adopted acts.

Some scientists estimate the dynamics of legislation on the protection of flora, fauna and habitats without analyzing the specific feature of periods. For example, Sokolova A. K. (2014) considers the range from 1917 to 1990 as the only (single) stage in the formation of the legal basis for the protection of the flora, noting the fragmentation of the legislation of this period, many gaps and shortcomings. Although Sokolova generally observes that "the development of legislation in the field of study can be considered positive, taking into account the adoption of complex legal acts at that time". The research of Chupryna Yu. A. (2015) is aimed at a meaningful analysis of the basic environmental legislation in the field of water legislation of Ukraine and the identification of the main stages of its evolution. Despite the review of the statutory framework in this area, Chupryna Yu.A. does not specify separate clearly defined periods, but only outlines the 1) 1940s, 2) 50s-60s, and 3) 70s-90s, indicating the basic acts that were adopted in those years.

Among the more narrow thematic studies, the classification of bird's protection by Ukrainian ecologist Boreyko V. Ye. deserves an attention. He divided this sphere into two stages: 1) 1917 - 1941, 2) 1944 - 1968. Deinega M. A in relation to agromeliorative legislation proposed to distinguish four stages, namely: 1) 1922 - 1945, as the period of formation of the Ukrainian Soviet agromeliorative legislation; 2) 1946-1966, as the period of its establishment; 3) 1966 - 1984, as a period of development of the Ukrainian Soviet agromeliorative legislation; and 4) 1984 - 1990 period - a period of large-scale shifts. On the downside, it is a way too narrow but noteworthy study, concerning the specific areas., Likewise too general classification by Kovtun O. M of the process of formation of legislation on the protection of territories and objects of the nature reserves of Ukraine into two stages: 1) 1917 - 1991, 2) 1991 - currently. In our opinion, such periodization means solely historical dates, without reflecting the specifics of the content and dynamics of the process. The criterion for this periodization was chosen only socio-political events in Ukraine dealing with the dates (as the Russian empire and the Soviet Union collapses, and before the proclamation of the Ukrainian independence). Through the most recent narrow topics it should be mentioned the doctoral thesis «Sanitary legislation in Ukraine in the XXth Century» (Hotsuliak S. L., 2017) which is related to environmental protection and general welfare to a certain extent. Its periodization is guided by the chronology of historical and political events of the twentieth century, as well as the sequence of adoption of legal acts in the area. The research singles out three historical periods: first, Russian Empire of the early twentieth centuries (1901-1917); second, the revival of Ukrainian statehood (1917-1921); third, the Soviet stage (1917-1991). In turn, the period of revival of Ukrainian state is separated into another three stages: first - during the Ukrainian Central Council (1917-1918) second - during the ruling of Hetman P. Skoropadsky (1918); third - the Directorate of the Ukrainian People's Republic and the Western Ukrainian People's Republic (1918-1921). Soviet period, due to the peculiarities of state and law-making, is divided into four stages: the first - the early years of the Soviet regime (1917-1922), the second - after establishing the USSR to adoption of the Constitution of 1937 (1922-1937); the third - 1937 - 1970 (to adoption of the basic law in the sphere of health protection; the fourth - 1970 - 1991 (to the proclamation of independence). This timeline was indicated accordingly to the distinctive features of state building and rulemaking of that time.

Considering this issue in a comparative international aspect (a case study of foreign countries) there should be stated the 'Discourse Analysis of Nature Conservation Policies in Africa: a Beninese Case' by Pochet F. (2014) wherein the four generations of nature conservation policies in this location were defined (1st generation (1900 - 1960), 2nd generation (1960 - 1992), 3rd generation (1992 - 2002), 4th generation (from 2002), with the profound and extensive analytical discourse to each of these stages

3.1. Results

Critically considered periodizations of nature protection in legal perspective have once again confirmed the disparity and the absence of a single criterion for classification. In order to determine such periodization, an integral aggregated approach should be chosen, namely, a combination of the key historical events of our country with the adopted basic acts in the investigated sphere. The review of the normative base in the field of nature protection allows to propose the following periods: 1) 1949 - 1960 ("restoration"), 2) 1960 - 1972 ("basic"), 3) 1972 - 1991 ("international"), 4) 1991 - 2004 ("independent"), 5) modern stage. The first chosen stage of the latter half of the 20th century originates from the adoption of the resolution of the Council of Ministers «On the protection of nature on the territory of the Ukrainian Soviet Socialist Republic» of July 3, 1949. In this legal act there was analyzed that time state of environment, and provided recommendations for the nature protection. This period can be called the "recovery" phase, because in the late 1940s normative acts in the field of nature protection fulfilled their task and, to some extent, restored the natural resources of the Ukrainian SSR. This conclusion can be drawn from the fact that in the 50's legislatures began to use the term "improvement" of nature protection instead of the term "restoration" of natural resources. Also, this stage can be formulated as a transition from the idea of consumption to the ideas of environmental protection per se. This period became a turning point in the idea about the importance of nature protection for the society - from pragmatic goals to maintaining the ecological balance. Namely, in 1949 in nature protection lawmakers saw "great importance for the national economy, science, culture", then in almost a decade, in the Decree "On Measures to Improve the Conservation of the Nature of the Ukrainian SSR" on June 3, 1958 nature protection goals have changed. It was noted that all natural wealth is a national heritage, which is used for "comprehensive development, to meet the growing cultural and material needs of the working people". Generally, the first phase is characterized by fragmentation of legislation, on the one hand, but at the same time, along with the tendency towards improvement of mechanisms and measures for the protection of nature in the republic the considerable work was devoted to the development and adoption of a single comprehensive legal act in this area. That is the reason why the next stage is called "basic" and was marked by the adoption of the basic Law "On the Protection of the Nature of the Ukrainian SSR" in 1960. In this act it was firstly established at the legislative level that the nature protection had a complex and comprehensive character. In accordance with this law, the enormous natural wealth of the Ukrainian SSR was attributed to use as a nationwide heritage for the comprehensive development of the national economy, to meet the growing material, cultural and aesthetic needs of the people. Protection of natural resources was put forward as the most important task of the state and the whole public. Involvement of the general public in the protection of nature contributed to the decision of the Council of Ministers of Ukrainian SSR adopted on September 18, 1962 "On Approval of the Statute of the Ukrainian Society for the Conservation of Nature and the Promotion of the Development of Natural Wealth". According to this act the selection and education of public inspectors were carried out of best specialists and activists for the purpose of transferring them the functions of state controllers for the protection of natural resources.

The third distinguished stage, "international", begins in 1972, when the beginning of pan-European and world cooperation in the field of nature protection was commenced. Ukraine also joined global legal ideas. Globalization offers a mix of new trajectories for resource use, and environmental conservation (Zimmerer, 2007). Therefore, it is worth considering that it was the joining of the USSR to the world vector in the 70th years that influenced the legislative changes in the Ukrainian SSR in the protection of nature and the so-called 'local-global' interactions. It is necessary to note the linchpin legal act of this stage – Decree of the Central Committee of the CPU and the Council of Ministers of the Ukrainian SSR "On Strengthening the Conservation of Nature and Improving the Use of the Resources of the Republic" adopted on May 8, 1973. In this act it can be observed a balanced scientific approach to the realization of nature protection. In particular, the Academy of Sciences of the Republic was entrusted with the task of providing methodological guidance,

development, coordination, forecasting of the protection of nature and the rational use of natural resources. This document is a rather interesting subject of investigation in historical and legal research, since it can be compared with the one adopted in the same year - the First Environmental Program of the European Community in 1973. From the positions of the First and Second Environmental programs (developed respectively in 1973 - 1977 and 1978-1982) one of the principles of EU environmental policy was to strengthen the level of scientific and technological knowledge to improve the quality of the environment. Consequently, the 70s of the 20th century can be described as a stage of legal protection of the scientific and informational principles of the nature protection and their consolidation at the legal level in Ukraine and in the European Union. The next stage coincides with the proclamation of Ukraine's independence in 1991 and the construction of national legislation up to 2004. According to the law, the formation of the National Ecological Network of Ukraine began by the Law of Ukraine "On Ecological Network" adopted on June 24, 2004. The current, «modern» stage, is transcend the scope of this work, namely chronological framework. But it should be noted its main feature is the harmonization of the normative base of Ukraine in the field of nature protection to international, specifically, the EU's standards.

4. Conclusions

Analysing various existing algorithms of the development of legislation on the nature protection and natural objects, it is emphasized that they do not reflect the specific content and the dynamics of the process. The absence of a single accepted periodization is explained, on the one hand, by the structural-functional multidimensional problem, and, on the other, by the lack of special historical and legal studies of this sphere. The following periodization of the legal protection of biodiversity in Ukraine was proposed (based on the chronology of the adoption of basic acts in this area in the second half of the 20th century), namely: 1) 1949 - 1960, the "reconstruction phase", 2) 1960 - 1972 "basic" 3) 1972 - 1991 "international and scientific", 4) 1991 - 2004 "independency" and 5) current "modern". The first stage is characterized by fragmentation, the second is justified by the adoption of the basic asset - the Law "On the Protection of the Nature of the Ukrainian SSR" on June 30, 1960, and the third - the beginning of deep international cooperation in the world arena since 1973. The fourth stage is limited to the framework of 1991 - 2004, namely, with the advent of Ukraine on the geopolitical map of the world as an independent state, and before the formation of the National Ecological Network of Ukraine, in accordance to the Law of Ukraine "On the Ecological Network of Ukraine".

Bibliographic references

1. Bely I. L. (1983) Природоохранительная активность Советского государства. Становление и развитие (К истории и теории вопроса)– (Doctoral dissertation) Retrieved from <http://www.dissercat.com/content/priodosokhranitelnaya-aktivnost-sovetskogo-gosudarstva-stanovlenie-i-razvitie-k-istorii-i-t> (in Russian)
2. Borejko V. E. (1995) Istoriya ohrany ptic v Kievskoj Rusi, Rossijskoj Imperii i Sovetskom Soyuze, *Praktichni pitannya oxoroni ptaxiv*, p. 172
3. Chuprina Yu. A. (2015) Bazovi kompleksni akti yak kriterij periodizacii istorii vodnogo zakonodavstva Ukraini u XX st. *Pravo i suspilstvo*, №. 6 (2), p.45-52. (in Ukrainian)
4. Dejneg M. A. (2012) Formuvannya ta rozvitok agromeliorativnogo zakonodavstva u 1922–1990, *Naukovij visnik nacionalnogo universitetu bioresursiv i prirodkoristuvannya ukraïni. Seriya: Pravo*, №. 173 (3), p. 65– 70.
5. Hotsuliak, S. L. (2017) Sanitary legislation in Ukraine in the XXth Century, Гоцуляк С. Л. Санітарно-епідеміологічне законодавство в Україні у XX ст. (Doctoral dissertation) Retrieved from http://nauka.nlu.edu.ua/download/diss/Goculjk/d_Goculjk.pdf (in Ukrainian)
6. Gayday A. M. (2013) Становлення і розвиток конституційних засад екологічного права в УСРР-УРСР (1917–1977 рр.) *Часопис Київського університету права*, № 3, с. 257-261. (in Ukrainian)
7. Kazak R. A. (2017) Правові основи охорони біорізноманіття в Україні та Європейському Союзі у другій половині XX ст.: історико-правове дослідження / Legal Basis of Biodiversity Protection in Ukraine and the European Union in the Latter Half of the XXth Century: Legal

- History Research, (Doctoral dissertation). Retrieved from http://dspace.nulau.edu.ua/bitstream/123456789/12591/1/Kazak_2017.pdf (in Ukrainian)
8. Kovtun O.M. (2008) Zakonodavstvo Ukraini pro oxoronu prirodno-zapovidnogo fondu: stanovlennya, suchasnij stan, problemi reformuvannya, *Advocat (Адвокат)* №2, p. 21– 24.
 9. Malenko G. Yu. (2014) Evolyuciya normativno-pravovoї bazi v galuzi zabezpechennya ekologichnoї bezpeki v Ukraini, *Aktualni problemi derzhavnogo upravlinnya*, № 1, p. 201-208 (in Ukrainian)
 10. Permilovsky M. S. (2014) Пермиловский М. С. Право на благоприятную окружающую среду как конституционная ценность (Doctoral dissertation) Retrieved from <https://www.prilib.ru/item/468609> (in Russian)
 11. Sokolova A. K. (2014) Zakonodavchi peredumovi formuvannya pravovoї osnovi oxoroni obektiv roslinnogo svitu, *Problems of Legality*, vol. 125. – p. 129-137. (in Ukrainian)
 12. Shygal, D. (2015) The analogy and typologization in comparative historical and legal research, *Problems of Legality*, 128, - p. 95-103
 13. Fanny Pochet, Discourse Analysis of Nature Conservation Policies in Africa: a Beninese Case Study, *EchoGéo* [En ligne], 29 | 2014, mis en ligne le 18 novembre 2014, consulté le 15 novembre 2017. URL : <http://echogeo.revues.org/13964> ; DOI : 10.4000/echogeo.13964
 14. Fefelova I. A. (2010) Istoriya vzniknoveniya i razvitiya ekologicheskogo prava, *История государства и права*, № 10, p. 35–37. (in Russian)
 15. Freytag Nils, Nature and Environment, in: European History Online (EGO), published by the Leibniz Institute of European History (IEG), Mainz 2016-09-07. URL: <http://www.ieg-ego.eu/freytag-2016-en> URN: <urn:nbn:de:0159-2016080101> [2017-11-15].
 16. Zimmerer, K.S. (2007) Agriculture, livelihoods, and globalization: The analysis of new trajectories (and avoidance of just-so stories) of human-environment change and conservation *Agriculture and Human Values* 24: 9. <https://doi.org/10.1007/s10460-006-9028-y>

Legal references

Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water, Official Journal of the European Communities OJ L 031 05.02.1976

Declaration of the Council of the European Communities and of the representatives of the Governments of the Member States meeting in the Council of 22 November 1973 on the programme of action of the European Communities on the environment Official Journal of the European Communities, C 112, 20 December 1973 // OJ C 112 20.12.1973

Resolution of the Council of the European Communities and of the Representatives of the Governments of the Member States meeting within the Council of 17 May 1977 on the continuation and implementation of a European Community policy and action programme on the environment, Official Journal of the European Communities/ OJ C 139, 13.6.1977

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Revista ESPACIOS. ISSN 0798 1015
Vol. 39 (Number 19) Year 2018

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