

**THE DEVELOPMENT OF UKRAINIAN LEGISLATION
IN THE FIELD OF PROVISION OF ENVIRONMENTAL SAFETY
IN THE CONTEXT OF NEW INTERNATIONAL OBLIGATIONS:
A VIEW THROUGH THE PRISM OF MARTIAL LAW**

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INTRODUCTION

Today, the effectiveness of legal regulation of environmental relations in Ukraine is conditioned by taking into account international legal and European approaches to the development of national environmental legislation, the results of international and European cooperation, the introduction of the principles of sustainable development, scientific validity, ecosystem approach, mutual responsibility of countries for the environmental future of the Earth, inevitability of legal liability and compensation for environmental damage.

The problems of forming a legal mechanism for ensuring environmental safety are complex in nature, and the following Ukrainian scholars have paid attention to this issue in their research: V. I. Andreitsev (formation of environmental safety law, the doctrine of environmental risk, justification of the need to adopt the Law of Ukraine «On Environmental (Natural and Technological) Safety»); H. I. Balyuk (modern topical legal issues of ensuring environmental, nuclear and radiation safety, consideration of the worldview principles of development of environmental law and the place of environmental safety law in it); L. O. Bondar (ensuring environmental safety in industry, the doctrine of environmental risk); A. S. Yevstigneev (ensuring environmental safety of nature management, development of environmental impact assessment, permitting of environmentally hazardous activities in the system of environmental safety); M. V. Krasnova (methodology of formation of environmental safety law, legal mechanism of calculation and compensation of environmental damage, environmental assessment and its role in the mechanism of environmental safety); Y. A. Krasnova (theoretical aspects of development of environmental safety law of Ukraine, ensuring environmental safety in the field of air transport), N. R. Malysheva (development of the mechanism of ensuring environmental safety in international law and EU law), T. O. Tretiak (formation of a mechanism for exercising the right of citizens to environmental safety, development of legislative The actual environmental problems related to ensuring environmental safety were considered in their works by experts in the field of natural sciences.

The authors of this chapter also touched upon this issue¹, since the fact that Ukraine acceded to the UN Convention on the Transboundary Effects of Industrial

¹ Olha Sushyk, Olena Shompol. The Climate change impact on the Human Right to Environmental Conditions of a specified quality (safe, clean, healthy and sustainable Environment) : some International and Ukrainian Environmental Law Issues // *Review of European and Comparative Law* 36 (1), 2019, p. 93 – 112. DOI: <https://doi.org/10.31743/recl.4764>; Позняк Е.В. Правова культура розвитку

Accidents during the period of martial law necessitates a deeper analysis of its provisions. In this section of the collective monograph, the authors continue and expand the study of environmental safety issues by implementing the provisions of the UN Convention on the Transboundary Effects of Industrial Accidents into Ukrainian environmental legislation.

The purpose of this study is to consider the main factors of strengthening the safety component of the national environmental policy and the development of legislation based on the international obligations of Ukraine through the prism of martial law, to analyse the provisions of the Convention on the Transboundary Effects of Industrial Accidents, to identify ways to increase the effectiveness of law-making activities in connection with the necessity of improvement of environmental legislation, with other factors of social development. Achievement of this goal will be facilitated by the following tasks: studying scientific approaches of representatives of, first of all, the legal field of knowledge, as well as certain provisions of environmental and other branches of legislation in the field of legal support for environmental safety.

1. Ukraine's accession to the Convention on the Transboundary Effects of Industrial Accidents as a factor in strengthening the safety component of national policy and current legislation regarding the prevention and response to emergence of environmental risks and threats

The practical solution to the problems of ensuring environmental safety, rational use and reproduction of natural resources, and environmental protection with the help of legal instruments is based on the provisions of the Constitution of Ukraine². These are the provisions on human beings as the highest social value (Article 3), on the right of ownership of the Ukrainian people to natural resources (Article 13), on the duty of the state to ensure environmental safety and maintain ecological balance in the territory of our country, to overcome the consequences of the Chornobyl disaster (Article 16), on environmental rights and obligations of everyone (Articles 50 and 66), on legislative regulation of the most important social relations (Article 92), etc.

For a long time, Ukraine has been fighting for its freedom, independence and territorial integrity since the Russian Federation invaded our country. However, this

системи екологічної безпеки в Україні: гарантії ефективності попередження ризиків. Соціально-екологічні ризики в Україні: правовий аспект: монографія / Г.І. Балюк, Ю.Л. Власенко, М.І. Іншин, Т.Г. Ковальчук та інш.; ред. колег.: М.І. Іншин (голова) та Я.Я. Мельник (заст. голови). Київ: «Видавництво Людмила», 2021. С. 97 – 117 (208 с.); Позняк Е., Шараєвська Т., Шомпол О. Конвенція ООН про трансдондонний вплив промислових аварій: перспективи реалізації в Україні в сучасних умовах. *Юридичний вісник*. 2022/6. С. 166 – 176. DOI: <https://doi.org/10.32782/yuv.v6.2022.20>; Sharaievska T. Model of Legal Ensuring Environmental Security in the Civil Protection Sector and Its Strategy. Model of socio-environmental security doctrine: environmental and legal concept: monograph / H.I. Baliuk, Yu.L.Vlasenko, M.I. Inshyn, T.H. Kovalchuk, et others. Editorial board: M.I. Inshyn (chairman) and Ya.Ya. Melnyk (deputy chairman). Vol. 2. Kyiv: «Publishing house Ludmila», 2021. P. 149– 177 (210 p.); Шомпол О.А. Вдосконалення законодавства України про екологічну безпеку в контексті міжнародно-правових зобов'язань: монографія. Чернівці: Кондратьєв А.В., 2018. 204 с.

² Normative and legal acts are given according to the official website of the Verkhovna Rada of Ukraine. URL: <http://www.rada.gov.ua>.

does not stop the development of our country and its growth, in particular in the environmental and legal sphere. During the period of martial law, a number of new and long-awaited environmental laws and regulations were adopted, based on responses to the humanitarian and environmental challenges of the war. It was extremely important that the provisions of the United Nations Economic Commission for Europe Convention on the Transboundary Effects of Industrial Accidents (Helsinki, 17 March 1992, as amended on 19 December 2015) became binding on Ukraine on 4 October 2022.

In Ukraine, the process of forming of scientific foundations and a legal mechanism for provision of environmental safety has been underway since the late 1980s. Over the more than thirty years of Ukraine's independence, the concept of environmental security law was formed³, a number of international legal treaties have been ratified (or Ukraine has acceded to), a significant part of which is aimed at establishing requirements, criteria, means, methods, guarantees, etc. for ensuring environmental safety and its individual components in various fields of activity.

The Constitution of Ukraine guarantees the validity of international treaties ratified by the Verkhovna Rada of Ukraine and their incorporation into the national legislation. Legislation defines the principles of Ukraine's exchange of environmental information with other countries on the state of the environment, the level of environmental safety, measures to prevent environmental emergencies, the extent of use and ways of reproducing natural resources, forecasting environmental risks and various threats, and choosing ways to overcome them.

As of today, in accordance with the Law of Ukraine of 03 May 2022 «On Ukraine's Accession to the Convention on the Transboundary Effects of Industrial Accidents», the said Convention has become part of Ukrainian legislation, an important source of environmental, commercial and other branches of law. In connection with this fact, the scientific literature noted the need to bring the provisions of a number of legal acts into line with the provisions of this Convention. First of all, those that are the main sources of environmental safety law and regulate social relations in the implementation of various types of environmentally hazardous activities. The aim is to avoid the negative transboundary impact of industrial accidents, to prevent threats and risks of environmental emergencies⁴.

Ukraine's accession to the Convention on the Transboundary Effects of Industrial Accidents was subject to certain reservations regarding dispute resolution, as two methods of dispute settlement are recognised. These methods are provided for in paragraph 2 of Article 21 of the Convention as mandatory for our country and all other states parties to the Convention that have assumed the obligations provided for by it.

³ Андрейцев В.І. Право екологічної безпеки: навч. та наук.-практ. посіб. К.: Знання-Прес, 2002. 332 с.; Краснова Ю.А. Право екологічної безпеки України: теоретичні аспекти. Монографія. К.: НУБіП України, 2017. 589 с.

⁴ Позняк Е., Шараєвська Т., Шюмпол О. Конвенція ООН про транскордонний вплив промислових аварій: перспективи реалізації в Україні в сучасних умовах. *Юридичний вісник*. 2022/6. С. 173. DOI: <https://doi.org/10.32782/yuv.v6.2022.20>.

These are disputes between the parties to the Convention regarding the provisions of the Convention and their implementation. In our opinion, even the existence of this reservation only confirms the importance of the decision taken by the authorities of our country to accede to this Convention. For a long time, Ukraine has been acceding to international environmental agreements without any reservations.

This event is crucial, although discussions on the need to accede to Ukraine's obligations under this Convention have been ongoing among scientists and legal practitioners since its signing – almost 30 years ago. Even the presence of this reservation, in our opinion, only confirms the importance of the decision taken by the authorities of our country to accede to this Convention. For a long time, Ukraine has been acceding to international environmental agreements without any reservations.

Today, the representatives of the International Charitable Organization «Ecology. Law. Human» appealed to the Ministry of Environmental Protection and Natural Resources of Ukraine with a justification of the need for Ukraine's urgent accession to this agreement under martial law. They noted that the Parliament and the Government can already be congratulated for taking an important and correct step that will have long-term positive consequences for public health and the environment⁵. This will also have positive consequences for the further development of the environmental and legal culture of safety as a guarantee of ensuring the effectiveness of preventing environmental risks in our lives, a guarantee of the exercise of the right of citizens to a safe environment for life and health⁶.

It is regrettable to realise that such rapid and, in our opinion, positive changes in the development of environmental law and legislation in Ukraine are taking place during the period of martial law. The Russian aggression against Ukraine is accompanied by ecocide and significant environmental damage to the state, society, citizens and the environment of Ukraine.

The consequences of military actions negatively affected the natural resource sphere of relations (subsoil and mining, land, water, floristic, forest, faunal, atmospheric). This led to the risk of reducing the amount of natural resources suitable for use to meet public needs, the danger of losing their ecological and economic value. As a result of military actions, irreversible changes occurred in ecosystems, therefore, in the field of environmental protection (natural reserve, recreation and tourism, formation of ecological network of Ukraine) there is a risk

⁵ МБО «Екологія.Право.Людина». Коли правильні кроки робляться швидко – Україна приєднується до Конвенції ЄЕК ООН про транскордонний вплив промислових аварій, 6 травня 2022 року. URL: <http://epl.org.ua/announces/koly-pravylni-kroky-robyatsya-shvydko-ukrayina-pryyednuetsya-do-konventsiyi-yeek-oon-pro-transkordonyj-vplyv-promyslovyh-avarij/>.

⁶ Позняк Е.В. Правова культура розвитку системи екологічної безпеки в Україні: гарантії ефективності попередження ризиків. Соціально-екологічні ризики в Україні: правовий аспект: монографія / Г.І. Балюк, Ю.Л. Власенко, М.І. Іншин, Т.Г. Ковальчук та інш.; ред. колег.: М.І. Іншин (голова) та Я.Я. Мельник (заст. голови). Київ: «Видавництво Людмила», 2021. С. 117.

of loss of valuable natural complexes, objects of spiritual culture, aesthetics and natural scientific research.

As a result of the destruction and damage to a number of industrial facilities, there is an urgent need to improve the security component of national policy and current legislation on preventing and responding to various environmental risks and threats.

The provisions of the Convention on the Transboundary Effects of Industrial Accidents play an important role in the system of international legal measures to ensure international and transnational environmental safety. Its development and approval by the world's states was a legal response to the cases of major industrial accidents in the 1980s and 1990s. For example, the pollution after the accident at the «Sandoz» plant in Schweizerhall in 1986, which at one time had a significant impact on all countries downstream of the Rhine River⁷.

Scientists note that a system of legal norms on international measures, criteria and standards of environmental safety has been formed at the international level⁸. Their observance by all members of the international legal community allows ensuring the functioning and development of the system of international legal protection against man-made and natural risks in a transboundary context, as well as timely response to their manifestations, and ensuring and protecting environmental human rights.

Conditionally, it can be noted that the continuation of this Convention is another international document, namely the Convention on Civil Liability for Damage Caused by Activities Hazardous to the Environment dated June 21, 1993 (Lugano, Switzerland). The purpose of this Convention is to guarantee compensation for damage caused to the environment. Hazardous activity here is defined as any activity, in particular, if it is related to the production, use, storage and other handling or release of one or more hazardous substances or any other operations with these substances, etc.⁹.

Thus, in the event that preventive methods of protection did not work, a specific procedure for compensation for environmental damage will be applied. The peculiarity of the damage is that in most cases it is irreparable or relatively recoverable, since the reproduction of the components of nature is associated with a

⁷ Рубач Єлизавета. Конвенція про транскордонний вплив промислових аварій: сфера охоплення та основні вимоги. Секретаріат Конвенції ЄЕК ООН про транскордонний вплив промислових аварій Київ, 19 квітня 2018 р. URL: https://unece.org/fileadmin/DAM/env/documents/2018/TEIA/HL_Mtg_in_Ukraine/Presentations_UKR.

⁸ Краснова Ю.А. Право екологічної безпеки України: теоретичні аспекти. Монографія. К.: НУБіП України, 2017. С. 169 – 215; Малишева Н.Р. Міжнародно-правовий аспект забезпечення екологічної безпеки / Проблеми права екологічної безпеки : навч. посіб. / М.В. Краснова, Г.І. Балюк, А.Г. Бобкова [та ін.]; під заг. ред. М.В. Красної та Р.С. Кіріна; відп. ред. В.І. Андрейцев; М-во освіти і науки України; Київ. нац. ун-т, Нац. гірн. ун-т. Дніпро: НГУ, 2016. С. 522 – 547; Шомпол О.А. Вдосконалення законодавства України про екологічну безпеку в контексті міжнародно-правових зобов'язань: монографія. Чернівці: Кондратьєв А.В., 2018. С. 97 – 109.

⁹ Краснова М.В. Компенсація шкоди за екологічним законодавством України (теоретико-правові аспекти) : монографія. К.: Видавничо-поліграфічний центр «Київський університет», 2008. С. 244 – 245.

long period of time or may be impossible at all. This determines the priority of preventive measures in this sphere of relations, which emphasizes the importance of our country's accession to the Convention on the Transboundary Effects of Industrial Accidents.

2. Introduction of international legal measures to provide environmental safety into the environmental legislation of Ukraine through the prism of the provisions of the convention on the transboundary effects of industrial accidents

In the system of the most important international legal measures to ensure environmental safety, which should be fully implemented at the national level, the following should be mentioned.

Firstly, attention should be paid to expert assessment procedures, the formation and development of legal regulation of which in the world is associated with the development of the environmental risk assessment system in the late 60s and early 70s of the last century. In the same period, systematic works on risk analysis in connection with the risk assessment of industrial technologies appeared, which led to the introduction and implementation of applied research and the development of procedures for comprehensive technology assessment – environmental impact assessment and environmental expertise¹⁰.

Environmental impact assessment of planned activities and strategic environmental assessment were introduced in Ukrainian legislation with the adoption of the Laws of Ukraine «On Environmental Impact Assessment» of 23 May 2017 and «On Strategic Environmental Assessment» of 20 March 2018 in accordance with the UNECE Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 25 February 1991, ratified by the Law of Ukraine of 19 March 1999).

The adoption of these laws is conditioned by Ukraine's fulfilment of its obligations under the EU-Ukraine Association Agreement, Annex 30 of which provides for this. This is consistent with the theoretical approaches to the development of environmental expertise as an integral scientific discipline and its legal block – environmental and legal expertise – as an interdisciplinary doctrine of the legal principles and methodology for the implementation of expert evaluation procedures¹¹, within the framework of a special environmental management activity – environmental assessment as a legally defined preventive means of state environmental policy in the

¹⁰ Позняк Е.В. Поняття, об'єкти та форми екологічної експертизи як превентивної форми екологічного контролю / Правові форми екологічного контролю: навчальний посібник / Краснова М.В., Позняк Е.В., Коваленко Т.О. та ін. (за ред. Краснової М.В.). К.: Алерта, 2012. С. 261.

¹¹ Андрейцев В.І. Наукові засади розвитку екологічної експертизи / Екологічна експертиза: право і практика / В.І. Андрейцев, М.А. Пустовойта, С.В. Калиновський та ін., за ред. В.І. Андрейцева, М.А. Пустовойта. К.: Урожай, 1992. С. 29; Позняк Е.В. Оцінка впливу на довкілля крізь призму правових засад екологічної експертології в Україні: спадкоємність, сучасність та актуальність. *Земельне, екологічне, аграрне право: оцінка впливу на довкілля*: Збірник матеріалів Всеукраїнського круглого столу, 18 червня 2018 р., м. Київ / Укладачі: В.В. Носік [та ін.]; Національна академія правових наук України. Київський регіональний науковий центр. 2018. С. 122.

implementation of certain environmental management functions (environmental impact assessment, strategic environmental assessment, etc.)¹².

In general, environmental impact assessment and strategic environmental assessment are legal instruments of the state environmental policy of a preventive nature in terms of preventing negative transboundary impacts of their objects, and conducting transboundary consultations as part of Ukraine's fulfilment of its obligations under international treaties.

Secondly, it is necessary to ensure the effectiveness of mechanisms for the implementation of environmental human and civil rights in Ukraine, namely the right to a safe environment for life and health, the right to access environmental information, public participation in environmentally significant decision-making and access to justice. The provisions of the UN Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus, 25 June 1998, ratified by the Law of Ukraine of 06 July 1999) are aimed at this.

Measures to implement the provisions of the Aarhus Convention at the national level should be correlated with Ukraine's fulfilment of its international legal obligations under a number of international environmental agreements to which Ukraine is a party and international legal case law.

In the modern world, over the past half-century, from the second half of the twentieth century to the beginning of the twenty-first century, not only has the understanding of environmental human rights been significantly transformed by the international community and society in general, but the basic legal framework for ensuring environmental human rights has also been formed. Recognition of environmental human rights is based on their understanding as inalienable natural human rights. Environmental rights were not enshrined in the fundamental international legal documents on human rights, namely the Universal Declaration of Human Rights (1948), the International Covenants on Human Rights (the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, which were opened for signature in 1966 and entered into force in 1976). They have found their recognition and development in international environmental political and legal documents (Declarations of Principles on Cooperation between States in the Field of Environmental Protection and Sustainable Development – Stockholm (1972) and Rio de Janeiro (1992)) and a number of environmental international agreements, including the Convention on the Transboundary Effects of Industrial Accidents.

In our opinion, the practice of implementing the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, adopted by the States in Rome on 4 November 1950, in the activities of the European Court of Human Rights is quite illustrative in terms of recognition and protection of environmental human rights. The European Convention on Human Rights itself does not enshrine environmental rights, but the judgments of the European Court of

¹² Краснова М.В. Науково-правові питання екологічного оцінювання. Вісник Київського національного університету імені Тараса Шевченка. Юридичні науки. 2(107)/2018. С. 50.

Human Rights trace the process of «greening» the human rights enshrined in the Convention and its protocols by interpreting them within the framework of the rights clearly enshrined in the Convention. For example, we can cite such cases as *Lopez Ostra v. Spain*¹³, *Oneryildaz v. Turkey*¹⁴. The above suggests the need to apply a comprehensive approach to the implementation of international treaties on environmental human rights at the domestic level. The principle of a comprehensive approach should be applied both at the stage of systematisation of international legal obligations of our state and at the level of development and adoption of comprehensive amendments to national environmental legislation.

Thirdly, the system of prevention of industrial accidents at high-risk facilities, in the course of environmentally hazardous activities, and of the transboundary impact of such accidents should become an element of the international environmental safety system that Ukraine should introduce in accordance with the Convention on the Transboundary Effects of Industrial Accidents. Since the early 90s of the last century and as of today, Ukraine has recognised the general principles of international law on the prevention of industrial risks and accidents and their transboundary impact. A system of sources of environmental safety law was formed, starting with the provisions of the Law of Ukraine «On Environmental Protection» of 25 June 1991, which defined measures to ensure environmental safety. Subsequently, the Laws of Ukraine «On Protection of the Population and Territories from Technogenic and Natural Emergencies» of 08 June 2000 (expired in 2012), «On High Risk Facilities» of 18 January 2001, the Civil Protection Code of Ukraine of 02 October 2012 and many others were adopted.

However, the scope of the Convention on the Transboundary Effects of Industrial Accidents applies primarily to the prevention of industrial accidents, preparedness for them and response to accidents that may lead to transboundary effects, including the effects of accidents caused by natural disasters. It should be noted that the emphasis on international cooperation is important in terms of mutual assistance, research and development, exchange of information and technology in the field of industrial accident prevention, preparedness and response.

After Ukraine's accession to the Convention and its entry into force, it has taken a prominent place in the system of national legislation aimed specifically at regulating issues related to the establishment of preventive remedies in the field of prevention of environmental emergencies of a man-made and natural nature. Thus, in accordance with Article 6, the parties must take appropriate measures to prevent industrial accidents, including measures that encourage operators to take actions to reduce the risk of industrial accidents. According to Article 8, the parties are obliged to take appropriate measures to ensure and maintain appropriate emergency preparedness for the response to industrial accidents and to ensure that preparedness

¹³ Case of *López Ostra v. Spain* (Application no. 16798/90) Judgment, Strasbourg 09 December 1994. URL: <https://www.globalhealthrights.org/wp-content/uploads/2013/02/ECTHR-1994-Lopez-Ostra-v.-Spain.pdf>.

¹⁴ Case of *Öneryıldız v. Turkey* (Application № 48939/99) Judgment, Strasbourg 30 November 2004. URL: <https://hudoc.echr.coe.int/fre#%22itemid%22:%22001-67614%22>}).

measures are taken to mitigate the transboundary impact of such accidents. At the same time, the parties are encouraged to review their emergency plans on a regular basis, or when circumstances require, taking into account the experience gained in dealing with the consequences of past accidents. The measures to be taken by the parties to prevent and/or respond to industrial accidents are listed in the relevant annexes to this Convention, but are not limited to them.

In general, a comprehensive analysis of the provisions of the Convention on the Transboundary Effects of Industrial Accidents suggests that its main purpose is to minimise the risk of negative impact of industrial accidents on the population and the environment through, first of all, the use of preventive measures. According to scientists, it is better to prevent the occurrence of environmental problems than to passively wait for their occurrence, investing significant financial, material and technical resources to overcome their consequences¹⁵.

Such a mechanism was developed at the level of civil protection legislation and today it needs to be comprehensively developed and improved to simultaneously take into account the provisions of this Convention, EU legislation and UN programme documents in the field of ensuring environmental safety in the event of environmental emergencies and responding to them.

The Code of Civil Protection of Ukraine considers civil protection as a legal category that has a broad interpretation, as it includes various categories and constructions of protection. At first glance, they are extensive and incompatible, but they have one common goal – aimed at protecting the population and territories in emergency situations of any nature. These are manifestations of ecological risks caused by extraordinary ecological situations of man-made and natural nature, as well as those caused by military actions, which subsequently had a negative impact on the surrounding natural environment, life and health of people.

Fourthly, the system of disaster risk management measures, which in the vast majority of cases can exacerbate negative man-made risks on a transboundary scale, occupies an important place in the system of international environmental security. In this regard, it is worth mentioning the international document entitled «Yokohama Strategy for a Safer World: Guiding Principles for Natural Disaster Prevention, Preparedness and Mitigation» (27 May 1994)¹⁶, approved by the UN General Assembly Resolution 54/219¹⁷ in 1999 and Resolution 56/195¹⁸. In order to continue the implementation of the UN measures on disaster prevention, the Third

¹⁵ Малишева Н.Р. Науково-практичний коментар до Закону України «Про охорону навколишнього природного середовища» / Н.Р. Малишева, М.І. Єрофєєв. Харків: Право, 2017. С. 258.

¹⁶ Малишева Н.Р. Науково-практичний коментар до Закону України «Про охорону навколишнього природного середовища» / Н.Р. Малишева, М.І. Єрофєєв. Харків: Право, 2017. С. 258.

¹⁷ International Decade for Natural Disaster Reduction: successor arrangements A/RES/54/219 3 February 2000, URL: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N00/271/75/PDF/N0027175.pdf?OpenElement>.

¹⁸ International Strategy for Disaster Reduction Resolution 56/195 adopted by the General Assembly. URL: https://disasterlaw.ifrc.org/sites/default/files/media/disaster_law/2020-08/I55EN.pdf.

UN World Conference on Disaster Risk Reduction, which took place in Japan on 14-18 March 2015, adopted the Sendai Framework for Disaster Risk Reduction for the period from 2015 to 2030¹⁹. The implementation of this programme is expected to significantly reduce the risks of natural disasters, human losses, deterioration of health, living conditions, economic, physical, social, cultural and natural assets of individuals, businesses, communities and countries, which is the result set out in the programme's objectives²⁰.

3. Prospects for legal regulation of relations in the field of environmental safety in Ukraine taking into account environmental and legal models of international and european cooperation

Thus, it is extremely important to take into account each of the elements of the international mechanism for ensuring environmental safety when improving national environmental legislation (in the context of the subject matter of this study). However, it should be noted that they will make sense only after their systematic implementation at the national level in all spheres of economy and public life²¹.

It is important to note the importance of introducing common approaches to understanding the specifics of the terminology used by the Convention on the Transboundary Effects of Industrial Accidents. Thus, among its important provisions is the consolidation of the approach to the definition of «industrial accident», which is understood as «an event arising from uncontrolled changes during any activity with hazardous substances or at an industrial facility, for example, during production, use, storage, movement or disposal; or during transportation» (we are talking about land transport, in accordance with paragraph «d» of Article 2 of the Convention) (Article 1 of the Convention). «Hazardous activity» within the meaning of the Convention is considered as «any activity during which one or more hazardous substances are present or may be present in quantities equal to or exceeding the maximum quantities listed in Annex I to this Convention and which may result in transboundary effects» (Article 2(b) of the Convention). In fact, these concepts are based on the concept of hazardous substances and the principles of chemical safety. Annex I to the Convention defines the quantitative and qualitative parameters of hazardous activities that may have a negative impact.

If we turn to the definition of the objects of such negative impact, they are listed in clause (c) of Article 1, where «impact» means any direct or indirect, immediate or arising after a period of time, harmful consequences of an industrial accident, namely: for people, flora and fauna; soil, water, air and landscape; the relationship between the factors mentioned above; as well as for material values and cultural

¹⁹ The Sendai Framework for Disaster Risk Reduction 20152030, Sendai, Japan, March 2015. URL:https://www.preventionweb.net/files/43291_sendaiframeworkfordrren.pdf.

²⁰ Гавронська І.В. Огляд Сендайської рамкової програми зі зниження ризиків стихійних лих на 2015 – 2030 роки. *Прикарпатський юридичний вісник*. Випуск 3 (12), 2016. С. 125.

²¹ Позняк Е., Шараєвська Т., Шомпол О. Конвенція ООН про транскордонний вплив промислових аварій: перспективи реалізації в Україні в сучасних умовах. *Юридичний вісник*. 2022/6. С. 172 – 173. DOI: <https://doi.org/10.32782/yuv.v6.2022.20>.

heritage, including historical monuments. It may be noted that this concept covers almost all objects of environmental legal protection and the natural (ecosystem) and legal relations existing between them. Important in the context of this Convention is the concept of «transboundary impact» as «a serious impact within the jurisdiction of a Party as a result of an industrial accident occurring within the jurisdiction of the other Party» (Article 1(d) of the Convention).

A similar definition of the concept of transboundary impact is contained in the Law of Ukraine «On High Risk Facilities», where it is considered as an impact on the territory and environment of one or more states as a result of an accident that occurred on the territory of another state (Article 1). This approach in the legislation of our country correlates with the conventional approaches.

The anthropogenic and man-made environmental pollution that accompanies the civilised development of mankind leads to an increase in the world community's need for information on negative environmental, climate and other changes and threats. Thus, the issue of the environmental information component of the Convention on the Transboundary Effects of Industrial Accidents is of considerable interest in practice. Part 1 of Article 2 of the Convention states that the Convention also applies to international cooperation concerning the exchange of information in the field of industrial accident prevention, preparedness and response.

In Ukrainian legislation, the formation of the legal regime for environmental information is associated with the adoption of the Law of Ukraine «On Environmental Protection». Further processes of development and systematisation of environmental legislation of Ukraine, increasing the role of the environmental component of sustainable development, comprehensive enshrining of various types of environmental forecasting, control, monitoring, etc. in the sources of environmental law have strengthened the role and importance of timely, objective and unbiased information.

The Law of Ukraine «On Information» of 02 October 1992 enshrined only certain provisions in this area of legal regulation – on the classification of information on the environment as information of a reference and encyclopaedic nature. Only later, as a result of the ratification of the UN Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters by the Law of Ukraine of 09 July 1999, Ukrainian legislation was amended and supplemented.

For example, in accordance with the Law of Ukraine of 28 November 2002, Article 25 of the Law of Ukraine «On Environmental Protection» was adopted in a new version. It defines environmental information as any information in written, audiovisual, electronic or other material form, in particular about: sources, factors, materials, substances, products, energy, physical factors (noise, vibration, electromagnetic radiation, radiation) that affect or may affect the state of the environment and human health; threats and causes of environmental emergencies, results of liquidation of these phenomena, recommendations on measures aimed at reducing their negative impact.

The Law was also supplemented by a new article – Article 25-1, which sets out the legal mechanism for environmental information provision. Some ways of information provision are, in particular: systematic informing the population through the media about the state of the environment, the dynamics of its changes, sources of pollution, waste disposal or other changes in the environment and the nature of the impact of environmental factors on human health; immediate notification of environmental emergencies.

The Law of Ukraine «On High Risk Facilities» of 18 January 2001 stipulates the scope, content, form and procedure for the operator to provide information on high risk facilities centrally and at the request of legal entities and individuals (Article 15). Such information may also relate to hazards that have arisen at high-risk facilities and pose a threat to people and the environment.

Subsequently, the development of the legal regime for environmental information and guaranteeing access to it for the environmentally interested public was largely influenced by the adoption of the Law of Ukraine «On Information» in a new version in accordance with the Law of Ukraine of 13 January 2012 and the adoption of the Law of Ukraine «On Access to Public Information» of 13 January 2012. The Civil Protection Code of Ukraine dated 02 October 2012 specifies the peculiarities of the legal regime of information on ensuring technogenic (industrial) safety in the field of various types of activities and prevention of emergencies that may have a transboundary nature.

The Civil Protection Code of Ukraine directly enshrines the mechanism of alerting and informing civil protection entities in the context of preventing and responding to man-made and natural disasters (Articles 30 and 31).

Among the general provisions of the Conventions on the Transboundary Effects of Industrial Accidents it is noted that the parties, through the exchange of information, consultations and other joint activities, shall develop and implement, without undue delay, policies and strategies to reduce the risk of industrial accidents and improve measures for their prevention, preparedness and response, including remedial measures (part 2 of Article 3 of the Convention).

Thus, from the analysis of the provisions of this Convention, it can be concluded that there are two areas of environmental information support for the interaction of the parties for the effective and timely fulfilment of their obligations:

- 1) mutual exchange of information on planned activities, risks, possible consequences, consultations on the establishment of such hazardous activities, as well as scientific, technological and other aspects of interaction between the parties, functioning of the warning system (i.e., information interaction between the parties in the warning mode) on transboundary accidents and their consequences, etc;

- 2) providing environmentally relevant information to the public, holding consultations and other forms of interaction with the public within the legal forms of public participation in solving environmental problems determined by the national legislation of the parties (e.g., public hearings, consultations, taking into account public opinion, etc.).

The legal mechanism for environmental information support established at the national level needs to be constantly updated both from the standpoint of objectively existing social relations, which are in a state of evolution, and from the standpoint of international cooperation and European integration.

However, today's realities require the States Parties to the Convention on the Transboundary Effects of Industrial Accidents not only to develop legislation, but also to consider international legal obligations and national legislation from the point of view of their actual implementation. Such implementation, in the authors' opinion, will consist in the actual impact of the Convention's provisions on the relevant social relations, and the impact on environmentally significant behaviour of the subjects of environmentally hazardous activities. This is about the actual achievement of the goal of legal regulation – reducing the number of industrial accidents, limiting their transboundary impact, and creating a reliable system of emergency prevention.

Even though the Convention on the Transboundary Effects of Industrial Accidents has been implemented for a short period of time since Ukraine joined the Convention, its provisions have become: 1) a part of the national legislation of Ukraine; 2) a direct source of environmental law of Ukraine and environmental safety law within it; 3) a component of the mechanism of legal support for national environmental safety and the human right to a safe environment for life and health; 4) an element of the system of prevention and response to environmental emergencies of anthropogenic and natural nature; 5) a source of environmental and legal safety culture in the system of environmental entrepreneurship, prevention and/or overcoming the negative consequences of emergency and legal culture in general²².

Undoubtedly, it is difficult to achieve the ultimate goal of the Convention under martial law. In scientific publications on the study of the effect of the norms of international environmental agreements and the activities of international institutions in the context of armed conflicts and war, «a low level of effectiveness of international legal means in overcoming both armed conflicts and ensuring environmental safety and protection during such conflicts is noted»²³. However, the most important vector of the policy of a state in a state of war should be the victory over the aggressor, restoration of the violated sovereignty and formation of a system of measures (environmental – among the most important!) for recovery in the post-war – reconstruction period.

At the stage of implementation of the provisions of the Convention at the national level, it should be borne in mind the fragmentary nature of international

²² Позняк Е., Шараєвська Т., Шомпол О. Конвенція ООН про транскордонний вплив промислових аварій: перспективи реалізації в Україні в сучасних умовах. *Юридичний вісник*. 2022/6. С. 173. DOI: <https://doi.org/10.32782/yuv.v6.2022.20>.

²³ Баллок Г.І., Шомпол О.А. Національні та міжнародно-правові проблеми регулювання охорони довкілля та забезпечення екологічної безпеки під час збройних конфліктів. *Адміністративне право та адміністративний процес*. 2015. № 2. С. 156 – 157.

legal regulation²⁴. It is manifested in the fact that each international environmental convention establishes its own legal order in a specific area of international interaction and provides for a conventional mechanism for its implementation. At the same time, for the effective implementation of the Convention on the Transboundary Effects of Industrial Accidents and the implementation of its provisions in the current environmental legislation by our state, it is necessary to apply a comprehensive approach. It is necessary to comprehensively regulate and simultaneously apply measures to prevent the manifestation of hazards and assess environmental impact at the planning stage of environmentally hazardous activities that involve environmental risks, prevent natural and man-made risks, and effectively ensure, guarantee and protect the environmental rights of citizens.

It should be noted that one of such effective measures to prevent the occurrence of environmental emergencies is the implementation of industrial environmental control. At present, it is one of the most promising guarantees of ensuring environmental safety of the environment and humans by preventing and minimising the negative impact of activities on the environment by business entities²⁵.

At the same time, provision of environmental safety at potentially dangerous facilities requires technical re-equipment of production with the introduction of the latest resource- and energy-saving technologies, increased supervision of the strict implementation of industrial safety requirements at potentially dangerous facilities, and improvement of legislation on environmental safety²⁶.

In order to systematise legislative approaches to identifying potentially hazardous facilities and activities that pose an environmental risk, it is advisable to conduct a scientific substantiation of the criteria that can be used to develop and approve a universal list of environmentally hazardous activities and facilities that pose an increased environmental risk for the entire regulatory system. In general, this list is currently used to determine the scope of environmental impact assessment in accordance with Article 3 of the Law of Ukraine «On Environmental Impact Assessment». We consider it expedient to consolidate this list in the provisions of the Law of Ukraine «On Environmental Protection», which will allow it to be used in other types of management, environmental protection or law enforcement activities. For example, when monitoring objects of high environmental hazard, or when bringing the owners of objects of high environmental hazard to absolute (strict) environmental and legal liability. The environmental risk inherent in

²⁴ Задорожний О.В., Медведєва М.О. Міжнародне право навколишнього середовища: підручник для ВНЗ / Київ.наук.ун.ім. Тараса Шевченка, Ін.міжнар.відносин. К.: Видавничий дім «Промінь», 2010. С. 217 – 218.

²⁵ Sharaievska T., Slepchenko A. Current Issues of Industry Environmental Self-control Legal Nature in Ukrainian Environmental Law Doctrine. *19th International Multidisciplinary Scientific GeoConference SGEM 2019* (30 June – 6 July, 2019), Volume 19. N 54. P. 443. DOI: <https://doi.org/10.5593/sgem2019/5.4/S23.059>.

²⁶ Краснова Ю.А. Правове регулювання екологічної безпеки в Україні: монографія. К.: Алєрта, 2013. С. 193.

economic and other types of activity is a mandatory element of an environmental offence²⁷.

When studying the implementation of the provisions of the Convention on the Transboundary Effects of Industrial Accidents, one cannot ignore the fact that Ukraine, under martial law, is fulfilling its obligations to join the European Union in accordance with the provisions of the EU-Ukraine Association Agreement²⁸, including in terms of adapting Ukraine's national legislation to EU law.

Thus, the legal regulation of relations in the field of environmental safety in Ukraine needs to be supplemented by European environmental and legal models of international and European cooperation of states with the participation of Ukraine. In this regard, our state faces the task of gradually adapting Ukrainian legislation to the legislation and policy of the European Union in the field of regulation of environmental relations, in particular, in the field of environmental safety. The modern development of Ukrainian legislation in the field of environmental safety should be carried out in line with the processes of globalisation, since most man-made and natural disasters are international in nature, as their consequences extend beyond the borders of one country²⁹. That is why for our country, accession to the Convention on the Transboundary Effects of Industrial Accidents has become an extremely important area of public policy in general and environmental policy in particular. Ukraine's ratification of the Convention promotes the development of the lawmaking process, management and environmental management, economic relations, and ultimately determines the vectors for further development of environmental policy and law³⁰.

At the EU level, relations on the prevention of major industrial accidents are currently enshrined in Directive 2012/18/EU of the European Parliament and of the Council of 04 July 2012 on the control of the threats of major accidents involving the use of hazardous substances and amending and subsequently repealing Council Directive 96/82/EC³¹. The provisions of this Directive need to be taken into account

²⁷ Позняк Е.В. Историчне значення Закону України «Про охорону навколишнього природного середовища» для розвитку еколого-правової культури в Україні. *Ефективність регулювання екологічних, природоресурсних та космічних відносин для сталого розвитку: право, інституції, сучасні інформаційні технології*: Матеріали Всеукр. наук.-практ. конф. до 30-річчя Закону України «Про охорону навколишнього природного середовища» та 20-річчя Земельного кодексу України (м. Київ, 12 листопада 2021 р. К.: Видавництво «Наукова Столиця», 2021. С. 137 – 138.

²⁸ Угода про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським співтовариством з атомної енергії і їхніми державами-членами, з іншої сторони (м. Брюссель, 21 березня 2014 р., 27 червня 2014 р.); ратифікована Законом України від 16 вересня 2014 р. URL: https://zakon.rada.gov.ua/laws/show/984_011#Text.

²⁹ Шараєвська Т.А. Перспективи вдосконалення національного законодавства у сфері екологічної безпеки в умовах євроінтеграції. *Evropský politický a právní diskurz. Svazek 4. Vydání I.* 2017. S. 177.

³⁰ Позняк Е., Шараєвська Т., Шомпол О. Конвенція ООН про транскордонний вплив промислових аварій: перспективи реалізації в Україні в сучасних умовах. *Юридичний вісник.* 2022/6. С. 173. DOI: <https://doi.org/10.32782/uv.v6.2022.20>.

³¹ Директива Європейського Парламенту і Ради 2012/18/ЄС від 4.07.2012 р. про контроль загроз виникнення значних аварій, пов'язаних із використанням небезпечних

when Ukraine fulfils its obligations under the Convention, as Ukraine must simultaneously combine measures to achieve the objectives of both the Convention and the Directive.

Based on the above, the improvement of national legislation should be carried out taking into account, first of all, international and European legal approaches. This is consistent with the state environmental policy of Ukraine and necessitates the approximation of the legislation of our state to the EU legislation on the regulation of relations and on civil protection in order to ensure environmental safety in emergency environmental situations of man-made and natural nature. In this regard, Ukraine recently became a member state of the EU Civil Protection Mechanism, a European system of solidarity that helps countries affected by natural disasters and man-made disasters³².

CONCLUSIONS

The following conclusions can be drawn from the study.

The effectiveness of the development of environmental legislation in general and the achievement of the goal of legal regulation of relations to provide environmental security in Ukraine depend entirely on a number of objective factors that should be considered through the prism of responses to the challenges of the martial law caused by Russian aggression on the territory of Ukraine. The implementation of international legal norms, the adaptation of Ukrainian legislation to the legislation and policy of the European Union in the sphere of regulating relations to ensure environmental safety, compliance with the strategy of sustainable development should guarantee a reduction in the number of industrial accidents, limit their cross-border impact, and create a reliable system for preventing environmental emergencies.

Since Ukraine's ratification of the Convention on the Transboundary Effects of Industrial Accidents, its provisions have become part of national legislation, which determines a new stage in the further development of national environmental legislation. Such development should be based on the principles of comprehensiveness of comparative analysis of international, national and EU law, comprehensiveness in the development and implementation of national legal measures and in the development of comprehensive amendments to the current legislation in order to actually implement the provisions of this Convention. Today, Ukraine must demonstrate not only its desire to join international treaties/documents, but also to introduce an appropriate organizational and legal mechanism for the effective implementation of their provisions in practice.

Taking into account the informational component of the international legal obligations of our state will contribute to the formation of a comprehensive mechanism for ensuring free access to environmental information in the regulation

речовин, та про внесення змін і подальше скасування Директиви Ради 96/82/ЄС. URL: https://zakon.rada.gov.ua/laws/show/984_011-12#n3.

³² Україна приєднується до Механізму цивільного захисту ЄС, 20 квітня 2023 року: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_2360).

of relations to ensure environmental safety at various levels, in particular: at the level of implementing the right of citizens to access environmental information; at the level of regulation of environmentally hazardous activities, within which there is an environmental risk; in the conditions of prevention of emergency ecological situations of man-made and natural nature; in the conditions of the manifestation of environmental risk and the functioning of the notification system in this area.

The introduction into the national legislation of Ukraine of various international models of civil protection in emergency environmental situations, both preventive in nature and compensation for environmental damage, will only strengthen environmental safety. This will help increase the level of national security of our state, including during martial law.

The implementation of the provisions of the UN Convention on the Transboundary Impact of Industrial Accidents at the national level actually affects the improvement of all elements of the national mechanism for ensuring environmental safety, which allows us to say that this Convention is not only the source of the development of environmental legislation of Ukraine and its part, but also the development of law environmental safety as a field of law. The introduction into the national legislation of Ukraine not only of the provisions of the UN Convention on the Transboundary Impact of Industrial Accidents, but also of other international environmental agreements, including the environmental priorities of the Association Agreement between Ukraine and the EU, will allow Ukraine to achieve international and European standards for the provision and protection of environmental rights a person

The guarantee of the prevention of environmental risks, the implementation of the national environmental policy by our state, the realization by citizens of the right to a natural environment safe for life and health and other subjective environmental rights should be the further development of the legal culture of ensuring environmental safety and the environmental and legal culture as a whole with taking into account moral and ethical norms and international legal obligations.

SUMMARY

The section of the monograph on the topic «Development of the Legislation of Ukraine in the Field of Provision of Environmental Safety in the Context of New International Obligations: A View Through the Prism of Martial Law» is devoted to considering the problems of efficiency and further development of legal regulation of environmental relations in Ukraine, in particular, in the field of environmental safety.

The purpose of this study is to consider the main factors of strengthening the safety component of the national environmental policy and the development of legislation based on the international obligations of Ukraine through the prism of martial law, to analyse the provisions of the Convention on the Transboundary Effects of Industrial Accidents, to identify ways to increase the effectiveness of law-making activities in connection with the necessity of improvement of environmental legislation, with other factors of social development.

Firstly, as of today, in accordance with the Law of Ukraine dated May 3, 2022 «On the Accession of Ukraine to the Convention on the Transboundary Effects of Industrial Accidents», the mentioned Convention has become part of Ukrainian legislation, an important source of environmental, economic and other fields of law. In connection with this fact, the scientific literature noted the need to bring the provisions of a number of normative legal acts regulating social relations to provide environmental safety into compliance with the clauses of this Convention. This process must take into account the harmful environmental consequences of military actions as a result of the full-scale invasion of the Russian Federation, as a result of which a number of industrial facilities were destroyed and wiped out, and there was an urgent need to improve the security component of national policy and current legislation regarding the prevention and response to various emerged environmental risks and threats.

Secondly, the most important elements of the system of international legal measures to provide environmental safety are considered, which must be fully implemented at the national level, including 1) expert assessment procedures, in accordance with the UNECE Convention on Environmental Impact Assessment in a Transboundary Context (1991); 2) mechanisms for exercising the environmental rights of a person and a citizen in Ukraine, namely, the right to an environment safe for life and health, the right to access to environmental information, the right to public participation in the adoption of environmentally significant decisions, access to justice in accordance with the provisions UN Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998); 3) a set of measures to prevent industrial man-made accidents at high-risk facilities, in the process of carrying out environmentally hazardous activities, as well as the transboundary impact of such accidents, taking into account the relevant provisions of the Convention on the Transboundary Impact of Industrial Accidents; 4) a system of measures in the field of civil protection concerning management natural disaster risks, which in the vast majority of cases are capable of deepening negative man-made risks on a cross-border scale, taking into account the provisions of the Sendai Framework for Disaster Risk Reduction 2015-2030.

Thirdly, the prospects for the development of Ukrainian legislation on environmental safety are outlined, taking into account environmental and legal models of international and European cooperation. List of types of environmentally hazardous activities and objects that constitute an increased environmental hazard universal for the entire system of regulation of relations to ensure environmental safety is proposed to be developed and approved in the Law of Ukraine «On Environmental Protection» a. This will allow use it in the implementation of other types of management, nature protection or law enforcement activities.

As a result of the conducted research, conclusions were formulated regarding the new stage of development of environmental legislation and environmental legal culture based on a complex approach to the introduction of international and European models of provision of environmental safety, civil protection in

emergency environmental situations – both preventive as well as compensational for environmental damage. The designated legal measures would only strengthen the environmental safety in Ukraine.

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