

Ukraine

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I- ENVIRONMENTAL LAW EVOLUTION SINCE 1992

Progress in Development of Environmental Legislation

Some of the basic principles and provisions of Ukrainian national policy on the environment can be traced to the influence of the Stockholm Declaration of 1972. Others were the result of experiences with the Chernobyl nuclear disaster in 1986, including public anger at the withholding of important information from the public. Some have taken into account decisions and documents that came out of the UN Conference on the Environment and Development (UNCED) in Rio de Janeiro, in 1992.

The past ten years have been busy ones for Ukraine in the sphere of environmental protection, as in most other spheres. Ukraine started to create its own environmental legislation shortly after becoming an independent state in 1991,² just before the Rio Conference of 1992. Some principles relating to the environment are so fundamental that they were put into the Constitution of Ukraine when it was developed in 1996.

Constitution of Ukraine

According to article 50 of the Constitution of Ukraine (1996), each citizen has a right to an environment safe for life and health, and to compensation for damages caused by violation of this right. The state also guarantees to each citizen the right to free access to information about the state of the environment, reflecting Principle 10 of the Rio Declaration.

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² Prior to then, its legislation was that of the Soviet Union, and some parts of the old legislation are still in existence.

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Law on Protection of Natural Environment of 1991

One of the first pieces of legislation adopted by the new Republic in 1991 was the Law on the Protection of Natural Environment. The new law proclaimed principles and main provisions of environmental law and policy. Among them are:

- Priority of environmental safety requirements and guarantee of ecologically safe conditions for health and the living environment,
- Scientifically based balance of ecological, social, and economic interests of society,
- Openness and transparency of making decisions which may impact the environment; protection of territory and species diversity, and formation of an environmental worldview (consciousness) of the population through environmental education.

Chapter II of the Law on Protection of Natural Environment is dedicated to environmental rights of citizens, including:

- A guarantee of an environment safe for life and health,
- Access to information,
- Public participation in law-drafting (and in other decisions that may impact the environment including planning and activities of environmental protection), and access to the courts for compensation for damage inflicted to health and property as a result of negative impacts to the environment.

This law also contains provisions on monitoring and informing the public in the sphere of the environment, determines the authority and obligations of different governmental bodies responsible for environmental protection, and includes special provisions for local government. It creates compliance and enforcement mechanisms, and creates administrative, civil, and criminal responsibility for environmental transgressions.

Land, Forest, Mining, and Water Codes

Ukraine's Land Code was adopted in 1991, containing new provisions allowing private property in land (there was no such phenomenon in Ukraine during Soviet time), new forms of collective property, and regulation of the use of agricultural lands for farmers' activity. It should be noted, however, that implementation of the Land Code has not been efficient. Especially the privatization of land is a very slow process. The farm economy has encountered many obstacles, including an absence of state supports and a lack of financial resources among farmers. A draft of a new Land Code is under preparation now. It passed a first hearing in the Parliament. It will make changes and accelerate land reform in Ukraine.

Many other laws were adopted during the last ten years. Among them Forest Code (1994), Code on Entrails of the Land (Mining Code)

(1994), and Water Code (1995). These laws seek to regulate, protect, and promote rational usage of natural resources.

Air Pollution Law

The Law on Protection of Atmospheric Air (1992) contains standards and norms for air pollution, such as norms of ecological safety of the air (ambient air quality standards) and maximum permissible levels for emission of pollutants to the air by stationary sources (enterprises and companies) and moving sources (transport). It seeks to limit negative impact on physical and biological factors, and to provide norms on usage of the air as a source of economic activity.

The law imposes obligations on activities of industrial enterprises, institutions and organizations that are related to emissions of air, obliging them to take organizational, economic, and technical measures to comply with norms and standards and to reduce levels of pollution of the air. It is necessary to comply with air protection requirements during usage of fertilizers and other means for plants' protection, during mining, during explosions, and other economic activities. This law also regulates activities that may impact on weather and climate.

Wildlife Law

Ukraine's Law on Protection of the Animal World was adopted in 1993 and regulates protection, usage, and recreation regarding wildlife, whether the wildlife may be found in state, collective, or private property. Wildlife may be used for hunting, fishing, usage of products of their life cycle as well as for cultural and education, scientific and esthetic purposes.

The Law contains the concept of protection of wildlife itself and conditions of their environment and migration paths. For the purpose of biodiversity protection it regulates breeding in captivity of endangered species, and creates special genetic funds. Protection of wildlife should be done during application of pesticides and mineral fertilizers, usage of industrial and transport facilities, and development of any biotechnology.

Natural Reserves and Other Protected Areas

The Law on Protection of Natural Reserves (specially protected areas, including natural and biosphere reserves, national parks, regional landscape and dendrology parks, natural monuments and botanical gardens) was adopted in 1992. It regulates their creation and proclamation, provides different regimes for each of mentioned above categories, contains limitations or prohibition of economic activities, specifies responsibility for violations, and encourages international cooperation in this sphere.

Environmental Impact Assessment and "Expertise"

The Law on Environmental Expertise (1995) is a rather progressive one. The term and phenomenon of "environmental expertise" should be explained, because this procedure exists only in the Newly Independent

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States (NIS) of the former Soviet Union and differs somewhat from environmental impact assessment (EIA) procedure in other countries. It usually combines Environmental Impact Assessment (EIA) as a first stage of Environmental Expertise (EE). A developer (itself or some independent professional body, which the developer hires) has to prepare EIA documentation, and send it for approval to the Ministry of Environment.

A positive conclusion by the Expertise is necessary to start any activity that may have a negative impact on the environment. The Ministry may give a positive conclusion if the documentation is satisfactory, may continue research and investigation if it has some questions, or may give a negative conclusion. The main goal of EE is prevention of negative impacts of anthropogenic activity on the environment and evaluation of the environmental safety of economic activity. In other words, the process is intended not only to assess environmental impacts (as in the United States, for example), but also to limit them.

The Law on Environmental Expertise declares that the principles of the EE process are:

- To guarantee an environment that is safe for life and the health of people,
- To balance ecological, economic, and social interests,
- To insure that decisions are made on a scientific basis,
- To ensure an independent analysis;
- To deal with complexity,
- To promote prevention of environmental harm, and
- To promote openness through a statement on environmental consequences to be made available for the public through the mass media.

The law has special provisions on public participation, public hearings, and the possibility for the public to provide written or oral comments, and requires the taking of public opinion into account in decision making. Furthermore, the law allows non governmental organizations to prepare a “public expertise” along with the state expertise. However, its conclusions and results are not obligatory for decision makers.

Law on Pesticides and Agrochemicals

The use of pesticides and agricultural chemicals is covered by Ukraine’s Law on Pesticides and Agrochemicals (1995). This law deals with state registration, production, buying, transportation, storage, and safe usage of pesticides and agrochemicals. It also determines the rights and duties of companies and citizens as well as governmental bodies and officials. All pesticides produced in Ukraine or brought from abroad have to meet requirements of safety for people’s health and the environment. Rules for their usage, state standards, and sanitary norms are provided.

Law on Wastes

The Law on Wastes (1998) determines principles of state policy, main conditions, requirements, and rules regarding ecologically safe conduct with wastes. The law is intended to ensure minimization of the creation of wastes and prevention of negative impact on the environment and health of the population.

This law contains legal, organizational, and economic measures for reducing the amount of wastes or prevention of their creation. It also has measures for their collection, transportation, storage, recycle, utilization, removal, reactivation and burial, as well as prevention of their negative impact on the environment. As large amounts of dangerous and toxic wastes have been created in Ukraine, the problem of their utilization and reactivation poses a danger of aggravating the environmental crisis and social-economic situation. That is why a "State Program on Conduct with Toxic Wastes" was adopted in year 2000 for the next five years.

Law on Conduct with Radioactive Wastes

The Law on Conduct with Radioactive Wastes (1995) has a goal to protect people's health and the environment from negative impacts of radioactive wastes. It determines principles of state policy, among them: priority of life; safety of personnel and the population; providing for state control of activities connected with radioactive wastes; making decisions about location of new storage facilities for radioactive wastes (with participation of citizens and their associations, as well as local government); guarantee of the reliable isolation of radioactive wastes from the environment; and the responsibility of producers of radioactive wastes for safe activities with them.

The right to handle radioactive wastes is given only to legal and physical persons who receive special permission from the state authority responsible for the regulation of nuclear and radioactive safety. Such persons have a duty to ensure safety during project development, selection of sites, construction, and usage.

Sanitary and Epidemiological Law

The Law on Providing Sanitary and Epidemiological Well-being of the Population (1994) declares the rights of: an environment that is safe for health and life, safe food, good drinking water, and proper conditions of work, education, and daily life and recreation. It determines the duties of enterprises, institutions, and organizations to take measures for providing sanitary measures and measures against epidemics and to comply with sanitary requirements.

All activities that may impact human health and environment should be licensed. All draft international, national, regional and local programs, investment projects and project of economic activities, land use and regional planning should be the subject of a sanitary-hygienic "expertise" process.

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The law declares administrative, civil, and criminal responsibility for violations of the sanitary legislation.

Law on Information

The Law on Information (1992) is an important aspect of the development of environmental legislation in Ukraine. It includes environmental information as a separate branch of information. This law requires state bodies to give information upon the request of any legal entity or citizen during one month and to disseminate information on their own initiative. Citizens or NGOs may apply to a higher-level authority or the court, if their requests are rejected.

A notable feature of Ukrainian legislation is that the law imposes administrative and criminal responsibility for concealing and falsification of environmental information.

Responsibility for Environmental Transgressions

All the laws mentioned above contain a chapter on responsibility for violations of their requirements, which consists of a list of violations and administrative, civil, and criminal responsibility for them. One can find sanctions for such violations in the Code on Administrative Transgression, the Civil Code, and the Criminal Code. All three of them were updated and changed recently.

The Code on Administrative Transgressions (2000) has special chapters dedicated to environmental transgressions. The Criminal Code (2001) has a special chapter on Environmental Crimes. Among environmental crimes there are: violation of rules of ecological safety, pollution of land, air and water, destruction or damage of forest and its clear-cutting, illegal hunting and fishing, destruction or damaging of specially protected areas, and others. The Civil Code determines principles of compensation for damage caused by environmental transgressions.

Difficulties of Implementation and Enforcement

It is evident that a new system of environmental legislation has been created during the last 10 years in Ukraine. It is rather good and modern in its design, meeting international standards.

However, a big gap exists between the legislation and its implementation between what is on paper and what is in reality. Many progressive legislative provisions are not enforced for a variety of reasons, among them:

- Poor economic situation, lack of finances for enforcement,
- low level of environmental awareness and consciousness of population and decision makers,
- Environmental problems not being priorities in state policy and decisionmaking,

- integration of environmental requirements in different sectors of economy not yet taking place,
- The court system is just now becoming an independent branch of power (in Soviet times it served only state interests, and citizens still do not believe that they may enforce the law and protect their environmental rights using the courts),
- Sanctions of responsibility for environmental transgressions are merely symbolic (many violations are not investigated or discovered or are being left without punishment, creating an attitude that environmental legislation is weak and may be violated without serious consequences.

II- SPECIFIC TOPICS

The most useful thing that can be done in this Country Report for Ukraine on the ten topics is to provide background information from Ukraine that may give rise to ideas and suggestions for our General Reports. Individual suggestions can be made during our discussions in Limoges.

The Land (desertification, pastoral activities, land)

Protection of the soil and its productivity is one of the most urgent tasks facing humankind. What has taken millions of years for nature to build can be destroyed by thoughtless actions of individuals and governments in just months.

One of the major problems Ukraine is currently facing is the state of its land resources. As is shown by data presented by the State Committee for Statistics of Ukraine, the land resources of Ukraine amounted to 60.4 million hectares at the beginning of 1999. Agricultural land occupies 72% of the country's territory, out of which 69% is arable land, including 54.4% of tillage, 0.4% of virgin land, 1.6% of perennial plantations, 3.8% of hayfields and 9.1% of pasturelands.

There is no desert on the territory on Ukraine, but many lands in Crimea (Black Sea region) are very dry, because problems with the water supply and a deficiency of water are very acute problems there.

A sizable area – 159,000 hectares – of arable lands is contaminated by radioactivity, as a result of the Chernobyl disaster. These are those that are not used for agricultural production. Another 161,400 hectares of deteriorated land is also a problem. As compared to 1997, pasturelands were expanded by 28,100 hectares in 1998, areas of forests and other plantations by 17,400 hectares, built-up territories by 105,100 hectares, and open swamplands by 3,700 hectares. The area of land without any plantation shrank by 10,400 hectares. The area of land utilized for environmental protection has increased considerably and now accounts for 2,314,500 hectares.

Private owners can abuse their land, but even great abuse can occur when nobody takes responsibility for the health of the land because it

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“belongs to someone else.” In 1991 the process of the land reform and privatization started very slowly, and it is continuing slowly until now as well. As of 1 January 1999 the state possessed 48.8% of the total land, collective agricultural enterprises owned 46.0%, and private owners possessed only 5.2% of all land. This 5.2% of land produced 8 % of agriculture production, however, indicating how private farmers can do a good job of land under their care. Agriculture activity by individual farmers is developing very slowly, however, because of financial and technical difficulties, high taxes, and a lack of state support. A new Land Code of Ukraine has passed the Verkhovna Rada (the Parliament) at the end of October 2001, although Communist members refused to vote and broke the electronic system of voting in the Parliament to try to prevent this, and then broke open boxes being used to collect paper ballots from members of Parliament. The new Land Code contains new legal mechanisms to accelerate privatization of land, as well as other land reforms.

International Trade, Environment, and Biodiversity

The protection of biodiversity is equally important as the protection of land resources. Ukraine has a very rich biological diversity: 25 000 plant species and more than 45 000 wildlife species. Ratification of the Convention on Biodiversity by Ukraine in 1994 made a new impulse for development of the activity and international cooperation in this sphere.

Legislation on biodiversity protection has been developed: the Law on Protection of Natural Reserve Fund (specially protected areas) was adopted in 1992 and the Law on Protection of Animal World (wildlife) was adopted in 1993; a State Program on Perspectives of the Development of Reserve Activity (Business) was adopted by the Parliament in 1995.

A network of specially protected areas has been created. Its territory occupies more than 3 million hectares or 3,37 % of the territory of Ukraine (in comparison with 2,3 in 1993). Public participation and support has increased in the creation of new (and development of existing) specially protected areas, as well as development of scientific potential and methodological approaches for biodiversity protection. Ukraine plays a role in international cooperation in the determination of priority problems, creation of a united classification of biodiversity objects on the regional level, and in collection and exchange of scientific research data.

In 1997 the Cabinet of Ministers of Ukraine adopted a Concept (Strategy) for Biodiversity Protection. For its implementation a National Program of Actions for 1998-2015 was prepared. It has main tasks are: protection and rehabilitation of degraded ecosystems and environment for the existence of some biological species; transition to sustainable usage of natural resources; minimization of direct and indirect negative impacts on ecosystems, components, and complexes; increase of public awareness and public participation in biodiversity protection; and strengthening of the

responsibility of enterprises, organizations, and citizens for activity that may have a negative impact on environment, in order to protect biodiversity.

It is important to resist the unregulated introduction of genetically modified organisms (GMO) into the environment. According to the Biodiversity Convention each Party has to take legislative measures, control, and limitation of risks related to usage and deliberate release of genetically modified organisms. The Cartagena Protocol to the Convention, signed by 130 countries in Montreal in 2000, has the aim of ensuring protection of people's health and environment in the transfer, development, and usage of living modified organisms (LMO), with an emphasis on transboundary transfer. It is based on the precautionary principle (Principle 15 of Rio Declaration). The Protocol was signed after the Aarhus Convention, which had an impact on its content: the Protocol has a special chapter on informing public on the safety of LMOs that may be exported, consultation with the public, and public participation in decision-making.

Coordination between the Cartagena Protocol and World Trade Organization rules was made in the introduction to the Protocol. According to the Protocol, it does not have an aim to subjugate other international agreements to its requirements and does not change the obligations of Parties of other agreements. The Protocol says that trade and environmental interests should be "balanced" in the process of reaching the goal of sustainable development. It does say that economic and trade policy should be coordinated with environmental requirements, but how this will work out in practice is uncertain. Since the loss of biodiversity is not remediable in our lifetimes, but lost economic opportunities can be regained, free trade should be made subordinate to environmental protection requirements.

In Europe, European Commission Directives in the sphere of GMO obligate all member-states to take necessary measures to eliminate negative affect of deliberate release and market use of GMO on people's health and environment. Each member-state has to determine a governmental body responsible for the implementation of the Directives.

Ukraine is interested in the legal regulation of living modified organisms. A Special Program of Genetic Monitoring in Ukraine during the period of 1999-2003 was adopted by a Decree of the President in 1999. A draft Law on State Policy of Regulation in the Sphere of Genetically Modified Organisms, a draft Regulation of the Verkhovna Rada on a State System of Biosafety During Implementation of Genetically-Engineering Activity and a draft law with the same title were prepared recently and given to the Parliament.

Ukraine has also signed and ratified other multi-lateral environmental agreements (MEAs) in the sphere of biodiversity protection: the Convention on International Trade of Endangered Species (CITES), the Ramsar Convention on International Wetlands, the Bern Convention on Protection of Wild Fauna and Flora and Natural Conditions of their Existence in Europe, and others.

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Forest and Prospects for an International Convention

To develop a new global convention on the basis of the Forest Principles would be a good idea. In terms of forest areas and timber stands Ukraine is experiencing a shortage of forests. According to the latest forest inventory, the forest resource area in Ukraine is 10.8 million hectares, 9.4 million hectares of which are covered with forest vegetation. The percentage of forest area in Ukraine is 15.6%. Total timber stands in forests are estimated at 1,736 mi. Average timber stock per hectare of forest area is 185 mi. The stock of matured and over matured forest stands is 237 mi. Average increment per hectare of forest area is 3.8 mi.

National legislation in this sphere consists of the Forest Code (1994) and a large number of regulations. The Forest Code specifies that all forests in Ukraine are state property but maybe given for usage to legal and physical persons by state bodies. Users have property rights in the products of the forest economy and in income from their sale.

The Forest Code regulates rights and duties of users. The rights are: to conduct the forest economy; to use forest and forest lands for the needs of the hunting economy, to promote cultural and recreational needs, sport, and tourism, and to conduct scientific research. The duties are: to ensure reproduction and protection of forest; to increase the productivity of forest plantations; to comply with regulations on the usage of forest and forest lands; and to conduct the forest economy by methods that allow preservation of the recreational and ecological values of forest.

At the UN Conference on Environment and Sustainable Development in Rio de Janeiro in 1992, a document on Forest Principles was adopted. This document is the first global agreement related to forests. It advocates the need to protect forests as natural and cultural environments, as well as for purposes of economic development. However, this document merely declares obvious and commonly recognized principles and they are not obligatory for countries. That is why a new convention would be a good idea.

In some regions attempts are being made to prepare regional conventions for the protection of mountain ecosystems. For instance, a draft Carpathian Convention is being prepared now by the states of this region. One of the main goals of this convention is to protect Carpathian forests. The countries of the Caucasus region have a similar idea of preparing a Caucasus Convention.

New Rights and Anti-poverty

We must work to implement the third generation of human rights – and also the “fourth generation,” which are rights of participatory democracy. One aspect of these new rights – environmental rights – started their formation from the Stockholm Declaration, Principle 1 of which declared the “right of adequate conditions of life in an environment of a quality that permits a life with dignity and well being.” The development of

environmental rights continued in the Rio Declaration, Principle 1, which stated the right to a healthy and productive life in harmony with nature. Principle 10 of the Rio Declaration contains other new environmental rights on access to information and public participation in environmental decision-making. On the basis of this principle, Guidelines on Access to Information and Public Participation in Environmental Decision Making were prepared and adopted by European countries at the Ministerial Conference "Environment for Europe" in Sofia, Bulgaria, in 1995.

The next step in the development of new environmental rights was the Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters, signed by 40 countries of Europe in Aarhus, city of Denmark, in 1998. Ukraine was the second country that ratified the Convention, in 1999. A draft Law on Changes in Legislation Related to the Ratification of the Aarhus Convention is in the Parliament now.³

Twenty-nine years ago Indira Gandhi told the delegates to the Stockholm Conference: "Poverty is the worst form of pollution." Professor Klaus Topfer of the United Nations Environment Programme, has also said: "The most toxic element in the world is poverty." The social-economic situation in Ukraine since the breakup of the Soviet Union has been characterized by a sharp decrease in the quality of life of the population, reduced payments for salaries, and an increase of unemployment. During the decade of 1990-1999 Ukraine's gross national product was reduced by 60 %, its volume of industrial production by 48,9 %, and its agricultural production by 51,5 %. Real wages decreased by 3,8 times, and pensions by 4 times (75%). This level of salaries does not provide enough for the sustainability of the population's physical and intellectual potential for work. In the year 2000 monthly wages less than minimal was gotten by 22,3 % of workers in different branches of economy. But even this does not tell the true story. The minimum wage is far below the amount needed for survival. Official figures indicate that 70 percent of the population earns less than the minimum for survival. Of course, they are surviving, but only just barely. Some children do not go to school because they have no shoes, and for their families meat on the table is an occasion for celebration. In the past two years there has been some improvement in Ukraine's economy, but there is still a long way to go before the losses of the past decade are made up.

The main reasons for the growth of poverty are the lack of adequate economic reform, increased level of unemployment, low level of wages and pensions, and undeveloped system of social insurance.

According to internationally recognized criteria of poverty, in the year 2000 26,7% of the population belongs to the category of poor, and 14,7% belongs to the most poor (almost half of population of the country,

³ The author of this Country Report of Ukraine prepared this draft law and will work on its refinement in the coming months.

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combined). State financial support of poor families consists of just 6,1 UAH per adult per month (equivalent of USD \$1,30). According to data of the Ministry of Internal Affairs, the amount of registered homeless is 26,4 thousand people, 9,7 thousand of them being young people.

A Strategy for Overcoming Poverty was adopted by a Decree of the President of Ukraine on September 15, 2001. It is supposed to be realized in three steps:

First (2001-2002) - realization of a complex of measures for stabilization of life level and elimination of acute poverty;

Second (2003-2004) – creation of conditions for stable increase of the real money income of population, ensuring an optimal level of employment;

Third (2005-2009) – strengthening of the orientation of economic processes for the effective satisfaction of people’s needs, decrease of the depth of poverty in the most sensitive layers of the population, and creation of social defense and effective program of social insurance.

This strategy is written in the best tradition of our Soviet past. On paper, these declarations are impressive. In the past, we cheered and believed such words. Today, we ask whether this Strategy will be implemented or just wishes.

Democracy, Access to Justice, and Environment

Democracy in the 21st Century means more than just elections. It also means that government should consult with people on proposals for specific activities, plans, programs, policies, and laws. This is called “participatory democracy.” Our Conference should adopt a strong declaration on this principle.

A giant step forward for both democracy and environment was made by the Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters, which was signed by 40 countries of Europe in 1998. The Convention will come into force on October 30, 2001, just before the conference in Limoges will take place.⁴

The Convention improves the public’s rights in the making and implementation of environmental policy. It involves citizens and NGOs in decision-making and promotes its transparency. It develops participatory democracy. It is one of the most significant developments in the field of environment and sustainable development that has occurred since the Rio

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Convention in 1992, and should be studied for its potential relevance for others in the world.

Negotiation of the Aarhus Convention was the first time an international convention was prepared with the broad and intensive involvement of environmental organizations. A coalition of such organizations, the European ECO Forum, participated in the drafting and in all negotiating sessions organized by the United Nations Economic Commission for Europe (ECE).

The Convention recognizes the right to a healthy environment, the “right to know,” the right to participate in decision-making, and the right to access to justice.

The right to know means that anyone can get environmental information without proving his or her own interest. A response to a request for information should be given as soon as possible at the latest within one month. Public authority must collect and disseminate environmental information to the public, promote public awareness, including information on how to access information, how to participate in decision-making, and how to get access to justice. Furthermore, each Party of the Convention should ensure that environmental information increasingly becomes available in electronic databases easily accessible for public.

The Convention has clear procedures for involving the public concerned in participation in decision-making on specific activities that may have a significant impact on the environment. The Convention requires early notification of public when all options are open and when the public has enough time to prepare and to participate effectively.

The right to know and the right to participate will not be implemented without access to justice. According to the Aarhus Convention, every country is obliged to give members of the public “wide access to justice.” Wide access means that all persons should be able to enforce their rights in a court or other independent body.

The Convention encourages a broad interpretation of legal standing. Any person who asked for information and did not receive it or receive inadequate response can sue.

Any person who was not allowed to participate in decision-making can sue. Any person may sue for denial of the “right to live in an environment adequate to his or her health and well-being.” A non-governmental organization can also go to the court (according to national legislation of many countries), if its purpose is to protect the environment.

A new phenomenon is citizen’s enforcement to protect the environment, which has started in Ukraine during the last few years due to the creation and activities of a network of public interest law organizations, “Ecopravo,” and their Environmental Public Advocacy Centers (EPACs) in

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Lviv, Kiev, and Kharkiv.⁵ The EPACs represent citizens in courts and before governmental bodies of all kinds, provide training to judges, prosecutors, and NGOs, and consult with citizens in defense of their rights.

The Aarhus Convention is regional in scope, but its significance is global. As Kofi Annan, Secretary General of the United Nations, has said, It is the most ambitious venture in the area of “environmental democracy” so far undertaken under the auspices of United Nations. The Convention is open to accession by non-ECE countries, giving the potential to serve as a global network for strengthening citizens’ environmental rights. The 2002 Special Session of the UN General Assembly marking the 10th anniversary of Earth Summit, in Johannesburg, would be a timely occasion to examine the relevance of the Aarhus Convention as a possible model for strengthening the application of Principle 10 in other parts of the world.⁶

Legal conditions of the integrated management of the environment.

The integrated management of environment is a key tool to promote sustainable development in accordance with Agenda 21. An Environmental Program for Europe was endorsed in 1995 at the Ministerial Conference “Environment for Europe” to make Agenda 21 more operational in the European context. This program stated that environmental policy should be the concern of the entire governments of countries, and all governmental levels should work on reducing adverse environmental impacts of their own activities.

According to the decision of Ad Hoc Preparatory Working Group of Senior Officials, which took place in Geneva on 28 September 2000, integration of environmental considerations into sectoral policies is being planned to serve as an overarching theme for the next Ministerial Conference in Kiev in 2003.

This Working Group made a recommendation “to ensure the integration of environmental consideration into decision-making, including the consideration of environmental costs and benefits and the assessment of risks involved and application of precautionary principle in all key sectors and take further steps to promote partnership between parliaments, business and industry, non-governmental organizations (NGOs) and other major groups.”⁷

A trend of integration of environmental considerations into sectoral policies has appeared in Ukrainian legislation during the last decade. For instance, the Law about Foundations of City Construction (1992) requires that developers should fulfill main tasks and measures on sustainable

⁵ The author of this Country Report of Ukraine co-founded the first Environmental Public Advocacy Center at Ecopravo-Lviv in 1994.

⁶ Foreword. The Aarhus Convention: An Implementation Guide. United Nations, New York and Geneva, 2000.

⁷ Conceptual Framework for the Kiev Conference. Note by the secretariat. Prepared with the Government of Ukraine.

development and environmental safety. Environmental safety means compliance with requirements of environmental legislation on environmental protection, rational usage of natural resources, sanitary requirements on people health, and taking measures for neutralization, utilization, elimination, or recycling of dangerous substances and wastes.

Ukraine's Law on Transport (1994) and Law of Railway Transport require transport enterprises and companies to ensure protection of the environment from adverse impact of transport. The Law of Road Traffic (1993) contains a duty of Ministers and other governmental executive bodies as well as corporations which deal with design, producing, and exploitation of transport means to take measures for prevention and reducing of emission of pollutants into environment and also noise and vibration.

The Law on Uranium Ore Mining requires ensuring a control on the level of radiation and reducing negative impact of radon and radioactive gases and dust on personnel. The Law on Electric Energy (1997) contains an obligation of companies in this sphere to comply with requirements of environmental legislation, carry responsibility for its violation, and take technical and organizational measures for reducing adverse impact of electric energy objects to the environment. The Law on Nuclear Energy Usage and Radioactive Safety declares a priority of protection of people and environment as one of the main principles in this sphere.

Ukraine's Law on Wastes (1998) determines the main conditions, requirements, and rules concerning ecologically safe conduct with wastes and ensuring of minimal formation of wastes, as well as prevention of their adverse impact on the environment and health of people.

In the sphere of agriculture, the Law on Pesticides and Agrochemicals (1995) declares as a priority the protection of people's health and the environment in comparison with the economic effects of implementation of pesticides and agrochemicals. The Law on Land Reclamation (2000) contains a separate chapter on ensuring environmental safety during construction and exploitation of land reclamation systems. The Law of Plant Protection requires a priority of implementation of integrated and ecologically safe measure for plant protection.

There are provisions or chapters about integration of environmental considerations in different sectoral policies in other laws: Law on Enterprises, Mining Law, Law on Oil and Gas, Statute of Internal Service of Military Force of Ukraine, Law on Space Activity, in the Concept of Development of Water Economy, etc.

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Dangerous substances and activities

EC Directive 67/548 defines dangerous as substances and products that are explosive, oxidizing, flammable, toxic, harmful, corrosive, irritant, dangerous for the environment, carcinogenic, teratogenic, or mutagenic.⁸

Most of pollution of the environment has dangerous components and products.

Discharge of pollutants to the environment may take place during production, transport, distribution, utilization, and elimination of dangerous substances. Agriculture can be an important source of soil and water pollution by fertilizers and pesticides (fungicides, herbicides and insecticides), nitrates and phosphates.

Hazardous products include chemicals, pesticides, radioactive materials, and the wastes they produce. Evaluation of potential adverse effect on dangerous substances is needed before their usage for the prevention of harm to environment and human health.

A list of activities and objects that may have high ecological danger was adopted by a decree of the Cabinet of Ministers of Ukraine in 1995. It includes 22 types of activities, among them: nuclear energy and nuclear industry, biochemical, biomechanical and pharmaceutical industry, collection, recycle, storage, burring and utilization of all types of wastes, oil and gas mining and refinery, chemical industry, coal and mining industry, energy production, and others.

The financing of the environment

Fees collected from polluting and environmentally harmful activities should be completely dedicated the environmental protection, not mixed in general budgets. This could happen internationally as well as nationally. This principle is sometimes followed in Ukraine and sometimes violated. According to the Law on the Protection of the Environment, all money collected for the usage of natural resources goes to local budgets, the budgets of the Autonomic Republic of the Crimea, and the Ukraine State Budget. This money should be used for reproduction and maintenance of natural resources and protection of the environment. Starting from 1994, fees from the environmental protection and nuclear safety component were allocated to the State Budget. The Cabinet of Ministers of Ukraine issued an Executive Order N735 on July 9, 1997, on the Financing of Environmental Measures from the State Budget and local budgets, with the aim of effective use of allocated funds. Resources from the State Budget's environmental and nuclear safety component are used for financing the activities envisioned in

⁸ 67/358/EEC of 27 June 1967, on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labeling of dangerous substances

national environmental programs and in resolutions of Verkhovna Rada (the Parliament) and the Cabinet of Ministers.

However, the regulation did not specify a mechanism for accumulation and purposeful use of funds collected from the special usage of natural resources. As a result, the payments are not “marked” in the budget revenues and are “dissolved,” which leads to a corresponding reduction in receipts for the State Budget’s environmental component.⁹

In 1999 the consolidated budget received 1 billion and 303 million UAH (Hrivna) from the collection for the special use of natural resources. Out of the scheduled amount of 80,9 million UAH in the environmental and nuclear safety component, only 51,4 million were allocated for financing environmental activities. As a result, financing of environmental protection measures is very poor, and monies collected from special usage of natural resources are used for different other purposes not related to the environment. The situation should be changed by restoration of the system of special environmental funds, separated from the State Budget.

The Local Management of the Environment

Local government deals with local management of the environment. In some of the cities of Ukraine Local Environmental Action Plans (LEAPs) are developed and being implemented. Such localization is good, but it cannot be allowed to undercut measures that are of national concern.

Legal Mechanism of Control and Follow-up of Environmental Measures

Enforcement and follow-up is often the forgotten aspect of environmental protection. State control of environmental measures is the prerogative of State Ecological Inspection of the Ministry of Ecology and Natural Resources. It coordinates the activity of state bodies authorized for controlling environmental protection and usage of natural resources. The State Ecological Inspection’s bodies interact with the Ministry of Health, the Ministry of Internal Affairs, the Ministry of Defense, local government, and self-government bodies, as well as with prosecutor’s offices and courts.

The control mechanism can be illustrated by the following data. In 1999 inspectors of State Ecological Inspection checked 79 270 businesses for compliance with environmental legislation. 10 000 (13%) enterprises were checked for a full range of environmental arrangements. For the violation of environmental laws, 35 113 individuals were held administratively responsible, of whom 34 982 were penalized, 113 were warned, and 18 deprived of the right to operate animal and plant-related businesses. Prosecutor’s offices filed 27 626 cases.¹⁰

⁹ National Report on the State of Environment in Ukraine. 1999. Ministry of Environment and Natural Resources. Kyiv, 2000, p.158.

¹⁰ National Report on the State of Environment in Ukraine, 1999, Ministry of Environment and Natural Resources. Kyiv, 2000, p.143

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In addition to the inspection of the environmental protection activities of enterprises, the inspectors identified unauthorized refuse dumps and infringements in the storage of prohibited pesticides and agricultural chemicals, and checked operators of fossil fields and ground water sources for compliance with environmental legislation within reserves and other specially protected areas. Also inspection was undertaken to check individuals for meeting fishing and hunting requirements.

As a rule, the inspection actions are carried out in collaboration with police, prosecutors, Ministry of Health representatives, and public environmental inspectors.

Special Environmental Prosecutor Department created in Prosecutor General office as well as on regional prosecutor's offices.

These figures suggest an active enforcement program, but the reality is that fines and penalties are small and most enterprises pay little attention to environmental concerns.

One solution to the lack of enforcement and follow-up by government is citizen enforcement. This is an important, new phenomenon in Ukraine. This was discussed above under Topic 5, which includes access to justice.