

Environmental Protection Funds as a Component of National Financial and Environmental Security: Administrative and Legal Regulation*

Liudmyla Chupryna¹, Nataliia Zadyraka², Andrii Koshlia³,
Mykola Chabanenko⁴, Rostislav Lemekha⁵

Taras Shevchenko National University of Kyiv, Ukraine



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Abstract:

The purpose of the research. The scientific article is devoted to the coverage of environmental protection funds as a component of national financial and environmental security. Main content. It is substantiated that achieving the effectiveness of regulatory policy in the field of environmental protection requires the state to intensify the forms of its implementation, one of which is the activities of extra-budgetary trust funds. During the analysis of economic and sectoral extra-budgetary funds, the unification of legal regulation of the procedure for allocating funds provided to environmental funds was identified as a necessary measure, which will allow detailed regulation of such rules and establish a mechanism for liability for violations. Methodology: Consideration of materials and methods based on analyzing documentary materials for the environmental protection funds as a component of national financial and environmental security. Conclusions. The practicality of systematizing the legislation regulating extra-budgetary funds is argued for the purpose of further elaboration and adoption of the Law of Ukraine "On Public Funds".

Keywords: Administrative service; Environmental tax; Government service; Municipal service; Electronic service; Public service

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¹ **Liudmyla Chupryna** is an associate Professor, PhD in Law, Educational and Scientific Institute of Law, Department of Financial Law, Taras Shevchenko National University of Kyiv, Ukraine. ORCID ID: <https://orcid.org/0000-0002-2099-9689>

² **Nataliia Zadyraka** is a Professor, Doctor of Science of Law, Educational and Scientific Institute of Law, Administrative Law and Process Department, Taras Shevchenko National University of Kyiv, Ukraine. ORCID ID: <https://orcid.org/0000-0002-5866-7612>

³ **Andrii Koshlia** is a graduate student of the Department of the Civil, Commercial and Environmental Law, Dnipro University of Technology, Ukraine. ORCID ID: <https://orcid.org/0000-0002-4252-0376>

⁴ **Mykola Chabanenko** is a member of Department of Civil, Labour and Economic Law, Oles Honchar Dnipro National University, Ukraine. ORCID ID: <https://orcid.org/0000-0002-0661-7605>

⁵ **Rostislav Lemekha** is a Doctor of Law, Professor of the Department of Medical Law, Danylo Halytskyi Lviv National Medical University, Ukraine. ORCID ID: <https://orcid.org/0000-0001-9013-8318>

*Corresponding Author: chuprynamyla@gmail.com

Dana Perlindungan Lingkungan Sebagai Komponen Keuangan Nasional Dan Keamanan Lingkungan: Peraturan Administratif Dan Hukum

Abstrak.

Tujuan penelitian. Artikel ilmiah dikhususkan untuk cakupan dana perlindungan lingkungan sebagai komponen keuangan nasional dan keamanan lingkungan. Isi utama. Dibuktikan bahwa untuk mencapai efektivitas kebijakan regulasi di bidang perlindungan lingkungan hidup menuntut negara untuk mengintensifkan bentuk-bentuk pelaksanaannya, salah satunya adalah kegiatan dana perwalian ekstra anggaran. Selama analisis dana ekstra-anggaran ekonomi dan sektoral, penyatuan peraturan hukum tentang prosedur untuk mengalokasikan dana yang disediakan untuk dana lingkungan diidentifikasi sebagai tindakan yang diperlukan, yang akan memungkinkan regulasi terperinci dari aturan tersebut dan membangun mekanisme pertanggungjawaban atas pelanggaran. . Metodologi: Pertimbangan bahan dan metode berdasarkan analisis bahan dokumenter untuk dana perlindungan lingkungan sebagai komponen keuangan nasional dan keamanan lingkungan. Kesimpulan. Kemanfaatan sistematisasi undang-undang yang mengatur dana ekstra-anggaran diperdebatkan untuk tujuan elaborasi lebih lanjut dan adopsi Hukum Ukraina "Pada Dana Publik".

Kata Kunci: Pelayanan Administrasi; Pajak Lingkungan; Pelayanan Pemerintah; Pelayanan Kota; Pelayanan Elektronik; Pelayanan Publik

Фонды Охраны Окружающей Среды Как Составляющая Национальной Финансовой И Экологической Безопасности: Административно-Правовое Регулирование

Аннотация. Научная статья посвящена охвату фондов охраны окружающей среды как составной части национальной финансовой и экологической безопасности. Основное содержание. Обосновано, что достижение эффективности регуляторной политики в сфере охраны окружающей среды требует от государства интенсификации форм ее реализации, одной из которых является деятельность внебюджетных целевых фондов. В ходе анализа хозяйственных и отраслевых внебюджетных фондов в качестве необходимой меры была определена унификация правового регулирования порядка распределения средств, предоставляемых экологическим фондам, что позволит детально регламентировать такие правила и установить механизм ответственности за нарушения. . Методология: Рассмотрение материалов и методов на основе анализа документальных материалов по природоохранным фондам как составной части национальной финансовой и экологической безопасности. Выводы. Аргументируется целесообразность систематизации законодательства, регулирующего внебюджетные фонды, с целью дальнейшей разработки и принятия Закона Украины «Об общественных фондах».

Ключевые Слова: Административная Услуга; Экологический Налог; Государственная Услуга; Муниципальная Услуга; Электронная Услуга; Государственная Услуга

A. INTRODUCTION

The development of a welfare state involves the creation of specific prerequisites, in particular, an appropriate social state, within which the socioeconomic rights of a person and citizen are ensured, among which the human right to a safe environment occupies a special place.

Therefore, it becomes evident that Ukraine, as a social state, should create conditions for: reducing social tension in society, including assisting in developing entrepreneurship and environmental protection. Consequently, the further development of Ukrainian statehood and the establishment of Ukraine as a social state is directly related to the reform of the country's public finance system in general and the system of extrabudgetary trust funds in particular, as well as the improvement of legal regulation of the activities of bodies and institutions that carry out public financial activities within their competence ([Bit-Shabo, 2013](#)).

Thus, it becomes evident that Ukraine, as a welfare state, must create conditions for reducing social tensions in society by promoting entrepreneurship and environmental protection. Therefore, further development of Ukrainian statehood and establishing Ukraine as a welfare state is directly related to reforming the public finance system in general and extrabudgetary trust funds in particular, as well as improving the legal regulation of bodies and institutions engaged in public finance.

B. METHODS

Research of materials and methods based on the analysis of documentary sources and normative legal acts of environmental protection funds as a component of national financial and environmental security. The formal-dogmatic process contributed to development of the author's explanation of the current state, problems and practical role of legal technologies for further development and improvement of national financial and environmental security. The officially legal method gave an opportunity to suggest directions and types of using legal technologies as prospects of ensuring efficiency of environmental protection funds as a component of national financial and environmental security

C. RESULTS AND DISCUSSION

According to Article 16 of the Constitution of Ukraine "ensuring environmental security and maintaining the ecological balance in Ukraine, overcoming the consequences of the Chernobyl disaster - a global catastrophe, preserving the gene pool of the Ukrainian people is the duty of the state" is a priority of the Ukrainian state. This approach, defined by the Constitution of Ukraine, violated the need to reconsider the understanding of the environment category as a set of natural resources and the state of their use, which was a relatively stable category for an extended period of development of Ukraine's legal system.

In addition, the Stockholm Declaration on the Environment of 1972 defines the human right to favourable living conditions in the environment, which allows us to lead a dignified and prosperous life. Instead, according to the current legislation of Ukraine, the understanding of categories "environmental quality" and "environmental friendliness" is not defined. Establishing environmental friendliness should consider not only the requirements of compliance with established ecological safety standards but also relevant indicators of anthropogenic characteristics of society, in particular, determining life expectancy, and cancer, taking into account the latest technologies for industrial innovation and more. Only considering such indicators will reflect the interaction of man and the environment, optimizing the system to ensure its right to safety. Nevertheless, the national legal system is dominated by an approach to understanding the "environment" category as "a set of natural resources and natural objects" that require appropriate protection and protection mechanisms, not recognized as part of the human right to live in a favourable environment.

At the same time, the approach to understanding the human right to a safe environment for life and health is quite controversial if only its compliance with the standards and requirements established by the current legislation is achieved. This approach considers only regulatory requirements, which in their indicators may be outdated and ineffective. The basis for ensuring the environment's safety for human life and health should be based on anthropogenic indicators; in particular, the high percentage of cancer in individuals indicates a dire state of the region's environment.

According to Art. 50 of the Law of Ukraine "On Environmental Protection" stipulates that the category of "environmental safety" should be understood as a state of the environment that prevents the deterioration of the environmental situation and the danger to human health. Apart from the

Constitution of Ukraine and ratified international legal acts, the system of legislation in the field of environmental safety requirements includes several legislative acts, including the Laws of Ukraine "On the moratorium on continuous felling on mountain slopes in fir and beech forests of the Carpathian region". Thus, the lack of normatively established principles of ensuring the requirements of national environmental security reduces the effectiveness of such a function of the Ukrainian state. Therefore, in the conditions of ongoing transformational changes, it is expedient to develop and adopt a separate legislative act, which should establish the normative bases for the functioning of the financial mechanism for ensuring the requirements of national environmental security.

As we have noted, a number of public funds in the country aim to achieve public interests. Public funds can be classified into several types depending on the purpose, formation methods and other features. O.A. Lukashev writes that state funds are represented primarily by the state budget and extra-budgetary funds. It is expedient to include in this type of fund the funds of persons formed exclusively for implementing special activities. First, we are talking about funds of central banks of states (National Bank of Ukraine) and funds of state unitary enterprises and institutions. Funds of local self-government bodies include funds for local budgets, extra-budgetary funds of local self-government bodies, funds for communal banks and enterprises and institutions that exist on the collective form of ownership. Finally, consolidated funds allow participation in the accumulation of funds of the state, local communities and other entities that pursue public interests in financial activities. That is why consolidated funds are formed at the expense of budget funds (state and local), extra-budgetary funds (state and local governments), and special insurance funds. The legal status of each fund is determined by special legislation and contained in the Law or regulations on the respective fund ([Lukashev, 2010](#)).

O.V. Makukh speaks similarly, allocating state and local budgets and state and local extra-budgetary funds in the system of public funds. In addition, public funds include funds for entities created exclusively for particular activities (National Bank of Ukraine, funds of state unitary enterprises and institutions) ([Makuh, 2017](#)). As we can see, this approach can be used to distinguish between public and extra-budgetary funds among public funds. It is no coincidence that O.P. Orlyuk notes that the legislation of Ukraine provides for the creation of special (extra-budgetary) funds, which are not directly related to the State Budget of Ukraine and local budgets but are a set of financial resources available to the state, and also replenishment of each of

these funds at the expense of the corresponding obligatory payments collected from insurers, and in some instances - and from insurers ([Orlyuk, 2010](#)).

It should be noted that today there are not many extra-budgetary funds at the local level, which can hardly be assessed positively. In this aspect, it is advisable to analyze the experience of foreign countries, where, in contrast to Ukraine, the practice of creating regional extra-budgetary trust funds is widespread, which may have different directions. The source of revenue for such state extra-budgetary trust funds may be part of the profits of economic entities specializing in mining, as well as the processing of primary and secondary minerals. The establishment of such funds is required in those regions that specialize in the extraction and processing of natural resources. If due to depletion or in case of economic unprofitability, requires the closure of production, there is a unique financial reserve to meet the socioeconomic needs of the region. Such extra-budgetary trust funds include the Alberta Heritage Fund in Canada, the Alaska Foundation for Perspective Development (United States) and the Employment Restructuring and Employment Development Funds in the Netherlands ([Kirilenko, 2014](#)).

For example, the budget of the Fund for Advanced Development of the State of Alaska is based on 25% of the rent for oil production, which is paid by businesses. The use of financial resources of this extra-budgetary regional trust fund is allowed only for the purpose of economic support of the region's development. The activities of such a fund are not controlled by the central state executive authorities; it is accountable only to local governments. The organizational and legal form of such a trust fund is a trusted company as part of an investment company. This administrative and legal form allows you to increase the capital accumulated in the fund ([Kirilenko, 2014](#)).

Thus, in the context of foreign experience, it is appropriate to restore the institution of local extra-budgetary funds in Ukraine and strengthen the capacity of local governments to form them. According to O.P. Orlyuk, by purpose, funds can be divided into social, socioeconomic, economic, environmental, and sectoral ([Orlyuk, 2010](#)). Following this classification, the following social funds can be distinguished: the Pension Fund of Ukraine, the Social Insurance Fund of Ukraine, the Fund of Compulsory State Social Insurance of Ukraine in the event of unemployment, economic extra-budgetary funds, including environmental funds (environmental funds).

The State Fund for Environmental Protection ([Law Of Ukraine, 1998](#)) is considered an ecological fund. It finances environmental and resource-saving measures that correspond to the main directions of state policy in

environmental protection; its competence includes using natural resources and, ensuring ecological safety, implementing measures to prevent and eliminate environmental pollution. However, the attribution to the extra-budgetary trust funds of the State Fund for Environmental Protection is quite debatable because, according to scientists, such a fund, on the one hand, has signs of separation and, on the other - is part of the State Budget of Ukraine ([Kucheryavenko, 2013](#)).

It is noteworthy that since 1992 Ukraine has had a system of state trust funds for environmental protection at the national and local levels. Since 1998, they have been included in the relevant budgets (before that, they were extra-budgetary). Until 2010, the distribution of revenues to the funds was as follows: 30% - to the state fund, 50% - to the regional and 20% - to the local. Since 2010, the distribution of revenues to the funds has changed somewhat: revenues to local funds have increased by 50%, and revenues to the regional fund have decreased by 20%. As part of the implementation of the state policy on decentralization of public administration aimed at meeting the needs of local communities, in 2017, a new approach was introduced to determine the proportion of the distribution of revenues from the payment of environmental tax. Thus, following paragraph 41 of Part 1 of Art. Six hundred ninety-one of the Budget code of Ukraine, 55% of the ecological tax (except the ecological tax defined by point 16-1 of part two of article 29 of the Budget code of Ukraine) paid to special funds of local budgets, including: to the village, settlement, city budgets, budgets of the united territorial communities - 25%, regional budgets and the budget of the Autonomous Republic of Crimea - 30%, budgets of Kyiv and Sevastopol - 55%.

The procedure for crediting funds from the payment of environmental tax to local budgets is carried out by the decision of the relevant council ([Law of Ukraine, 2017](#); [The session of the Lviv City, 2018](#)). For example, in 2017, the distribution of environmental tax was carried out in the following proportions: 20% - to the state budget, 25% - to local budgets, and 55% - to the budgets of relevant regional councils. However, in 2018, due to changes in the Budget Code, the proportion of the distribution of revenues from the payment of environmental tax changed in favour of the state. It was as follows: 45% - to the state budget, 35% - to local budgets, and 20% - to the budgets of relevant regional councils. In particular, according to the Law of Ukraine of December 7, 2017, "On the State Budget of Ukraine for 2021" provides for 3,697 million hryvnias from the environmental tax ([Law of Ukraine, 2020](#)).

However, the mechanism for paying this tax is provided by contributing its amount to the general fund of the budget, from which funds are already allocated to finance the implementation of relevant budget programs; in particular, the budget program code 2401270 "Implementation of environmental measures" in 2021 is planned to allocate 119 million UAH, while local budgets from the payment of environmental tax immediately credited to the special fund for environmental protection ([Law Of Ukraine, 2021](#)). Thus, part of the funds from the amount of environmental taxation, which goes to local budgets, are used solely to implement environmental measures. Funds of local environmental funds of city, settlement, and village councils have a purpose: to distribute them and use them for ecological standards ([Leheza ect, 2020](#)). Thus, special funds for environmental protection are created following the Law of Ukraine "On Environmental Protection". The primary source of their income is the income from the payment of environmental tax and monetary penalties for environmental damage ([Leheza ect, 2018](#)).

Establishing a unified approach to the distribution of environmental tax revenues does not reflect the state of the environment of specific regions. Thus, the uneven distribution of industrial facilities that harm the environment is obvious; accordingly, such areas need to intensify environmental activities and have the right to claim an increased percentage of revenues from environmental taxes. In this way, the goal of introducing an environmental tax will be achieved. The entity that harms the environment must pay a certain amount, which will be spent on improving the region's climate where the industrial facility or another object of harmful influence. That is why the priority from the payment of environmental tax should be aimed at meeting the region's needs and allocated primarily to the implementation of natural resources. The list of environmental protection measures is established in accordance with the resolution of the Cabinet of Ministers of Ukraine of September 17, 1996, №1147. To the direction of optimizing the functioning of environmental protection funds, Yu. Legeza, O. Surilova substantiate the expediency of making changes and additions to Section 8, "Environmental Tax" of the Tax Code of Ukraine for environmental incentives for rational use and conservation of natural resources, expanding credit and financial support and assistance to businesses in implementing measures for reasonable use of natural resources through targeted special budget funds, as well as the redistribution of tax payments between budgets of national, regional and local levels ([Leheza, Surilova, 2019](#)).

D. CONCLUSIONS

Thus, the establishment of an effective regulatory policy in the field of economic development requires the state to intensify the forms of its implementation, one of which is the activities of extra-budgetary trust funds. Their operation allows to solve problems in the development and implementation of state, regional and other development programs of the industry; achieving faster growth rates of investments at the expense of internal and external sources; development of the market of innovative products; creation of innovation parks based on existing research institutions and educational institutions; use of budget funds on a competitive basis for investment projects of socioeconomic development of the country.

REFERENCES:

- Bilinsky, Dmitry. 2017. Legal nature of the public financial system of Ukraine (methodological aspect): dis. ... Dr Jurid. Science. Kharkiv. Ukraine.
- Bit-shabo, Inessa. 2013. Financial and legal regulation of the functioning of state extra-budgetary funds: a monograph. Moscow. Russia.
- Emelyanov, Alexey. 2005. Realization of protective function of the financial right: dis. ... Dr Jurid. Science. Moscow.
- Kirilenko, Olga. 2014. Local Finance: A Textbook. Ternopil. Ukraine.
- Kucheryavenko, Mykola. 2013. Financial Law. Kharkiv. Ukraine.
- Law of Ukraine. 1998. On approval of the Regulations on the State Fund for Environmental Protection: Order of the Cabinet of Ministers of Ukraine of May 07, 1998, № 634. Official Gazette of Ukraine. № 19.
- Law of Ukraine. 2017. About modification of the decision of city council from 16.10.1998 "About Fund of environmental protection of city council" with changes: the determination of Vinnytsia City Council of February 24, № 600. URL: <http://www.vmr.gov.ua/Branches/ContentLibrary/5d673b8a-4122-4a75-b5b5-86201e169017/9/Положення%20про%20Фонд%20охорони%20навколишнього%20природного%20середовища%20міської%20ради.pdf>
- Law of Ukraine. 2021. Some issues of use of funds provided in the state budget under the program 2701270 "Implementation of environmental measures, in particular, to improve the environment" for 2021: Order of the Cabinet of Ministers of Ukraine of December 13. № 1646-p. URL.: <https://zakon.rada.gov.ua/laws/show/1646-2021-p#n9>

Law of Ukraine. About the State Budget of Ukraine for 2021: Law of Ukraine of 15.12.2020 p. URL.: <https://zakon.rada.gov.ua/laws/show/1082-20#Text>

Leheza Yevhen, Deliya Yuriy, Ryzhkov Eduard, Albul Serhii, Shamara Oleksandr. (2021). Legal Regulation of the Status of Subjects of Special Competence in Relation to Public Administration in the Sphere of Intellectual Property in Ukraine. *Jurnal cita hukum indonesian law journal* Vol 9, No 2, 221-236. DOI: <https://doi.org/10.15408/jch.v9i2.22234>

Leheza, Yevhen, Odyntsova Iryna, Dmytrenko Natalia. (2021). Teoría y regulación legal del apoyo informativo de los procedimientos administrativos en Ucrania. *Ratio Juris UNAULA*, 16 (32). P. 291-306 <https://doi.org/10.24142/raju.v16n32a12>

Leheza, Yevhen, Savielieva, Maryna., Dzhafarova, Olena. 2018. "Structural and legal analysis of scientific activity regulation in developed countries". *Baltic Journal of Economic Studies*. Vol. 4 (3), pp. 147-157. Available online In: <https://doi.org/10.30525/2256-0742/2018-4-3-147-157>. DOI: <https://doi.org/10.30525/2256-0742/2018-4-3-147-157>

Leheza, Yevhen. Filipenko, Tatiana. Sokolenko, Olha. Darahan, Valerii, Kucherenko, Oleksii. 2020. Ensuring human rights in Ukraine: problematic issues and ways of their solution in the social and legal sphere. *Political questions*. Vol. 37 №º 64 (January-June 2020). P. 123-136. DOI: <https://doi.org/10.46398/cuestpol.3764.10>

Leheza, Yuliia, Surilova, Olena. Legal regulation of the application of economic mechanisms for ensuring the rational use of natural resources: the experience of foreign countries. *Baltic Journal of Economic Studies*. 2019. Vol.3 N5.P. 99-103. <https://doi.org/10.30525/2256-0742/2019-5-3-99-103>

Lukashev, Alexander. 2010. Theoretical problems of financial Law: a monograph. Kharkiv. Ukraine.

Makuh, Oksana. 2017. Dynamics of financial relations (methodological aspect): dis. ... Dr Jurid. Science. Zaporizhzhia. Ukraine.

Orlyuk, Olena. 2010. Financial Law. Academic course: textbook. Kyiv. Ukraine.

Pogrebnyak, Sergei. 2011. The welfare state: justification of the concept. *Bulletin of APRNU*. № 3.

The session of the Lviv City Council adopted a resolution "On approval of the Regulations on the city fund for environmental protection." 2018. URL: <https://city-adm.lviv.ua/news/culture/architecture-and-historic-heritage/249963-zatverdzheno-polozhennia-pro-miskyi-fond-okhrony-navkolyshnoho-pryrodnoho-seredovyshcha>