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FORMATION OF ECOLOGICAL AND LEGAL SCIENCE: RESOURCE ASPECT AND ITS INTEGRATION PROBLEMS

A general problem statement. The current stage of environmental law elaboration is characterized by two opposite, although interrelated, trends: the science of environmental law perceives the need, on the one hand, to stop expansive development and provide internal structur-

ing and differentiation, while on the other hand – to respond adequately to the changing social and economic factors, emergence of new legal regulation objects and their impacting factors, fulfillment of environmental policy objectives of different levels (international, state,

public, industrial) and orientation (internal or external). Nonetheless, being inclined to consistency, the environmental law science cannot but be sensitive to present challenges and is evolving in accordance with the needs of the society and the call of the times, involving an increasing number of new phenomena in its sphere of influence.

As researchers emphasize, from time to time any science reaches the level where it has to rethink its own essence in order to continue its evolution. This rethinking should be based, primarily, on a critical evaluation of a science's fundamental principles and validation of its methodological efficiency. Where this is the case, relevant changes of its content may be expected¹.

The European democratic community presents Ukraine with a necessity to fulfill a broad range of political, socio-economic, cultural and educational, and other kinds of «home tasks»; bringing the national legislation requirements in line with international standards; and conducting scientific, in particular legal, research in various social spheres. The research in question includes considerable scientific efforts made in environmental law with account of domestic approaches to rule-making and foreign practices of regulating relations in the sphere of natural resource utilization and reproduction, environment protection, promoting en-

vironmental safety. In this sense, environmental legal science as a component of judicial science is of great importance to the public life.

Recent research and publications analysis regarding formation of environmental and natural resources laws, their place in the system of environmental legal science and systemic structural links is a matter for perpetual scientific inquiry. The prospects and areas of further development of environmental legal science are constantly in the focus of the leading research and educational judicial centers of our state and individual researchers, in particular A. Getman²,

² Гетьман А. П. Витоки науки екологічного права України / А. П. Гетьман // Проблеми законності. – 2009. – Вип. 100. – С. 165–175; Генеза науки екологічного права: історичний аспект // Збірник наукових праць за результатами Міжнародної науково-практичної конференції «Актуальні проблеми реформування земельних, екологічних, аграрних та господарських правовідносин в Україні». – Хмельницький : Вид-во Хмельниц. ун-ту упр. та права, 2010. – С. 196–198; Гетьман А. П. Ретроспектива розвитку екологічної правової науки / А. П. Гетьман // Держава і право у світлі сучасної юридичної думки : зб. наук. праць на пошану акад. Ю. С. Шемшученка. – К. : Юрид. думка, 2010. – С. 342–347; Гетьман А. П. Витоки екологічного законодавства в наукових працях учених-юристів / А. П. Гетьман // Бюлетень Міністерства юстиції України. – 2012. – № 11 (133). – С. 38–43; Гетьман А. П. Доктрина науки екологічного права: генеза теоретичних досліджень еколого-правових проблем у XX ст. / А. П. Гетьман // Право України. – 2014. – № 12. – С. 143–154; Getman A. Environmental and legal science: current state and prospects of development / A. Getman // Yearbook of Ukrainian law : coll. of scientific papers / responsible for the issue O. V. Petryshyn. – 2016. – № 8. – P. 259–267.

¹ Миколенко О. І. Суб'єктивні фактори, які негативно впливають на розвиток науки адміністративного права / О. І. Миколенко // Актуальні проблеми держави і права. – 2012. – № 68. – С. 453–458. – С. 455.

E. Orendarets¹ and other scientists. In the aspect of forming an empiric foundation for the problem range study, it is necessary to mention systemic works by such scholars as V. Andreitsev, V. Yermolenko, M. Krasnova, N. Malysheva, M. Shulha and others. However, despite numerous research works, the said problem issues largely remain debatable.

In light of the foregoing, **the main paper objective** is a theoretical analysis of the current state of environmental law development, formation of the next stage of natural resource relations, their expansion and transformation into environmental resource management with the aim to respond adequately to differentiation and complication of structural and systemic links.

The discussion of the material. The evolution and dynamics of environmental legislation, natural resource laws is largely determined by the global and European processes and requires a continuous revision and upgrading in order to cover gaps, respond timely and adequately to modern challenges and value paradigms change etc. One of the problems is development of traditional branches of law and lines of scientific research, which in turn raises an issue of the content and structural-systemic links of these legal branches. It should be noted that some research works are marked by a scientific dissonance, when researchers, unable to withdraw from the conventional rules and standards

while justifying new legal phenomena, are squeezing them into the ready-made parameters of legal ideas and approaches without a cardinal transformation of their methodological and worldview component. This situation results in legal thought stagnation, immobilization, conservative-regressive opinions and conclusions, the so-called «rope-pulling» between the branches of law. It makes sense that a famous British researcher of legal philosophy Dennis Lloyd emphasized the changeability, dynamic nature of legal thought, concluding that it is difficult to quarrel with the statement that the idea of law made an invaluable contribution into the human culture. The author believed that political instability of the contemporary world made it clear that the humanity civilization's survival would depend largely on its ability to respond adequately to new growing demands made on the essential concepts. He was sure that the agenda of the day should include the idea of a more creative approach to law than ever before².

On the other hand, one has to agree that the changing worldview approaches require certain revision of traditional areas of research, in particular natural resources law. It is no coincidence that the passport of the scientific discipline 12.00.06, among the research areas in the field of natural resources law, lays an emphasis on objective and subjective prerequisites for forming, developing,

¹ Орендарець О. О. Розвиток науки екологічного права : автореф. дис. ... канд. юрид. наук : 12.00.06 / Орендарець Олена Олександрівна. – К., 2015. – 16 с.

² Ллойд Д. Идея права / Деннис Ллойд ; пер. с англ. М. А. Юмашева ; науч. ред. Ю. М. Юмашев. – Изд. 5-е. – М. : Книгодел, 2009. – 376 с. – С. 349.

and functioning of natural resources law as an independent branch of the national legal system of Ukraine and such sub-branches as: energy law, land resource law, forestry law, water resource law, mineral resources utilization law¹. Although referring energy law to the block of natural-resource branches is still debatable, it demonstrates a trend of expanding the scientific cognition subject of natural resources law, which is to not only regulate a rational use of certain natural objects, but also provide incentives for their preservation, restoration, replacement etc.

In this case, an energy law example will be most illustrative for demonstration of contradictions occurring in the course of the Ukrainian science evolution. Thus, first of all, it is worthwhile to agree with the opinion of a Russian researcher O. Gorodov who stresses that determining the domain of any branch of law, especially a complex one, is always a product of long discussion in judicial science and never produces an absolute unity of opinion as to understanding of hierarchical links between the subjects of various branches of law within the legal system as a whole. The unity of opinion is baffled by numerous factors, including existence of priority branches of law such as civil and administrative law. They are built according to a model of well-defined domains and a finite set of methods of legal impact on social relations, incorporated

in these branches. According to the author, difficulty of defining the subject of energy law lies exactly in the fact that the Russian system of law already contains primary and specialized branches of law, formed as its elements, which comprise the most significant and well-structured spheres of the social reality². However, as opposed to the approach established in the Ukrainian legal science, O. Gorodov maintains a position, according to which the subject matter of energy law pertains to the topics of scientific discipline 12.00.07, and this point of view is quite common for the Russian legal system.

One might jump to a conclusion that including the area of energy law into the passport of discipline 12.00.06 in Ukraine became a clear-cut solution, which would improve the standard and orientation of scientific research works, their implementation, methods of teaching academic disciplines and so on; however, in practice this does not reflect the actual situation. Thus, at the faculty of law of Taras Shevchenko National University of Kyiv, the Master training program includes the course of «Energy Law», which is structurally divided among three departments of: environmental law, administrative law, and economic law, with the department of environmental law delivering a module of «Environmental legal problems in power engineering»³. The situation is some-

¹ Паспорти спеціальностей : затв. постановою президії ВАК України від 8 жовт. 2008 р. №45-06/7 / Атестаційний процес: нормативна база // Бюлетень ВАК України. – 2009. – №1. – С. 6-19.

² Городов О. А. Введение в энергетическое право : [учеб. пособие] / О. А. Городов. – М. : Проспект, 2015. – 224 с. – С. 7.

³ Балюк Г. І. Енергетичне право України. Модуль 1: Енергетичне право України. Еколого-правові проблеми в енергетиці : робоча

what different in the National Mining University, where the said discipline is taught at the department of civil and economic law. In particular, the developed educational and methodological materials for the discipline of «Energy Law»¹ specify that the course involves a study of the following subjects: a system of the energy law of Ukraine; energy law principles; organizational-legal framework of power engineering activity; public administration, supervision, and legal regulation of fuel-power complex functioning; general provisions of alternative fuels legislation; while its basic courses include the theory of state and law; constitutional law of Ukraine; administrative law; civil law; and economic law. Moreover, it is explicitly stated that, depending on the dominating legal relations, energy law can be regarded as a sub-branch of business law. Yet the topic of «System of sources» does not even mention any regulatory acts of the environmental legal field.

Therefore, the cited example testifies to the fact that a delay in creation of theoretical-methodological and scientific-legal foundation for the new legal phenomena within the framework of the science of environmental law paves the way for scientific expansion with regard to studying not only these phenomena, but also the established system of law and its division into branches.

навч. програма / Г. І. Балюк, Т. Г. Ковальчук, О. В. Сушик. – К. : Київ. нац. ун-т ім. Тараса Шевченка, 2012. – 47 с.

¹ Кострюков С. В. Навчально-методичне забезпечення дисципліни «Енергетичне право» / С. В. Кострюков. – Д. : НГУ, 2015. – 213 с. – С. 6.

It is noteworthy that despite a high standard of research carried out in a variety of scientific domains, and a tribute to scientists who have formed scientific and methodological basis for their scientific disciplines, the activity of experts in various sciences leaves its stamp on their approaches to solving scientific problems, sometimes provoking one-sidedness. Nevertheless, attempts to include environmental legal relations into a system of administrative, civil, or economic law are forlorn.

As an illustration of the above mentioned, one can cite, for instance, a thesis from a doctoral dissertation defended in 2010 by R. Melnyk who, in the course of his research, concluded that relations developing in the sphere of environmental protection are mostly of public-legal nature. That is why their security and protection is performed by a special group of public administration entities, the activity of which in the sphere is regulated by the norms of general administrative law and legal standards of the sub-branch of special administrative law i.e. environmental law. The content of this law, considering a principal difference between the objects of environmental relations, can be divided into sub-branches of law of the second level: land law, water law, forestry law, faunal law, atmospheric law, waste management law, landscape law, environmental safety law².

² Мельник Р. С. Система адміністративного права України : дис. ... д-ра юрид. наук : 12.00.07 / Роман Сергійович Мельник. – Х. : Харк. нац. ун-т внутр. справ, 2010. – 417 с. – С. 348.

In fact, the author negates almost a hundred-year history of separating from the relations of both private- and public-law nature of special relations, which were determined by their legal regulation subject – first, natural resources relations, and then environment management ones – with their internal transformation and complication, and further development on their basis of environmental law in its diversity of kinds and internal differentiation.

Similar trends are observed in economic law. Thus, G. Dzhumageldiieva in her monograph «Legal regulation of natural resources economical use» points out: «Narrow» codes (legislation), including natural-resource ones, were formed in the absence of an economic code and economic law of Ukraine. Impossibility of their inclusion into the then formulated branch-related codes rendered natural-resources legislation an air of independence and self-sufficiency, which was reflected in study programs for training lawyers. With adoption of the Economic Code of Ukraine the situation changed: there appeared an opportunity to incorporate into economic law, which includes the Code, a considerable array of natural-resource legal standards, in the first instance those regulating natural resource utilization in economic activity»¹.

Although in summation, the author is more reserved in her statements, remarking that «one of the major trends

in revision of the existing paradigm of legal legislation development is ecologization of laws on ecological use of natural resources»². At the same time, she is reasoning that «ecologization of laws on economical use of natural resources should be carried out not within the present resource-oriented approach, which is based on disintegration of legal standards by including them into specialized codes (Water, Land, Forest etc.), nor by arranging them in separate codified acts, oriented mostly to provide environmental protection, but rather by «coming out in a unified front», basing on the unified principles and approaches, included in the Economic Code of Ukraine»³. In fact, provisions of the Economic Code of Ukraine are virtually ignored, specifically its paragraph 3, Part 1, Article 4, which states clearly that relations pertaining to land, mining, forestry, and water laws, relations concerning the use and protection of plant and animal world, territories and objects of nature conservation reserve, and atmospheric air, do not pertain to the subject of the said Code regulation. That is to say, another attempt is made to extend artificially, idiomatically speaking, by hook or by crook, the subject of regulation, and to intervene into the related branches of law. Still less convincing an «educational effort» is a training guide titled «Administrative land law of Ukraine»⁴.

¹ Джумагельдієва Г. Д. Правове регулювання господарського використання природних ресурсів : [монографія] / Г. Д. Джумагельдієва. – К. : Юрид. думка, 2014. – 202 с. – С. 58.

² Ibid. – С. 178.

³ Ibid. – С. 178–179.

⁴ Бевзенко В. М. Адміністративно-земельне право України : навч. посіб. / В. М. Бевзенко. – К. : Алерта, 2015. – 180 с.

The said guide attempts to introduce into the study process and the language of science such terms as 'administrative-land law'; 'relationship at administrative-land law'; object of administrative-land legal relations'; 'administrative discretion in administrative-land legal relations' and the like. Thus, the author of the training guide, in particular points out that in fact administrative law as if «penetrates» other branches of law, «putting in action» such legal branches as civil law, economic law, environmental law, land law, financial law, criminal law, criminal procedure law etc.¹. To our mind, after this kind of «penetration», the legal science space may be deprived of the very mentioning of most of its law and legislation branches, except the administrative one.

In fairness, it must be said that researchers of environmental legal domain also provide grounds for that kind of interference by disputing incessantly about interrelation of environmental, land, and natural resource law, instead of forming a well-built system for regulating environmental legal relations, their hierarchical structure and grouping. On the one hand, this is an objective process, a response to new legal phenomena and challenges, which over the recent decades has come into the focus of attention of the entire humanity and our state in particular. Consequently, expansion of the sphere of environmental law regulation becomes an imperative of the time and the result of evolution and complication of environ-

mental relations, the structure of society-nature interaction, and permanent differentiation of a legal regulation object. On the other hand, despite the fact that environmental law is a relatively new legal branch, connected largely with economic, social, and technological changes and being very sensitive to them, its drawing new relations into its orbit sometimes induces criticism in legal science, which in turn results in attempts to squeeze the emerging relations into the Procrustean bed of «traditional» categories of administrative, civil, or economic science instead of giving them independence, thus providing an impetus to their acquiring a new qualitative coloring.

An example illustrative enough is a proposal to impose an atmospheric precipitation tax, which was put forward by V. Yureskul, who believes that introduction of a tax on rain precipitation would provide for a more effective planning of rainwater treatment and utilization. The author in particular remarks that skeptics refer this tax to a category of «taxation marasmus» mockingly suggesting that alongside with the rain tax, taxes on clean air, wind, and also dumplings, pork fat and other taxes should be imposed. However, such an economic tool of rain water management already exists and is increasingly applied, for example, in Great Britain, Canada, Lithuania, Germany, Poland, the USA, Sweden and other countries. Its application stimulates introduction of elements of the so-called 'green infrastructure', which imitates natural hydrological processes,

¹ Бевзенко В. М. Адміністративно-земельне право України. – С. 5.

including rain gardens, green roofs, parks, bio-marshlands, porous sidewalks, and rain water collection for future use¹.

Without going into further debate on feasibility, purposefulness and timeliness of the above-mentioned proposal, one cannot but mention that it can serve as an explicit trend towards expansion of the subject of regulation of environmental relations and their transformation. Another, even more convincing, proof of the said trend relevancy and urgency was obtained during the roundtable discussion «Natural resources law within the legal system of Ukraine: history, modernity, prospects», held on October 30–31, 2015 at the National Academy of Legal Sciences of Ukraine. As V. Andreitsev, for instance, pointed out, to speak about the independent nature of natural resources law means, as a matter of fact, to distort the objects of that law which is likely to result in breaking their dialectic unity with landscapes and ecosystems, violation of safe conditions for conservation and protection, including prevention of negative impact on the human vital environment. The scholar further argues that the strongest social, economic, and environmental effects can be achieved in case of harmonious combination of natural resources

with other components of the life sphere (biosphere), provided all problems of sustainable development are solved². However, he was critical about an approach when the literature on natural resources law is focused solely on analyzing resource codes and laws, as well as processes of elaborating natural resources legislation based on traditional natural objects, while ignoring the new ones, which are increasingly involved into the sphere of environmental legal regulation, taking biological and genetic natural resources as an example.

The need for expanding environmental legal regulation was emphasized by N. Malysheva who in her report «Natural resource law must finally grow wings» stated that in the long run the natural-resource potential of the planet of Earth will be depleted and the humanity will have to look for new sources of energy, drinking water, food and the like. It means that we should look ahead, predicting future challenges proactively. New opportunities, although understudied yet, are opened by outer space and its resources, which tentatively speaking can be called potential natural resources as distinct from actual natural resources that are well explored by man and lay the foundation for the human vital activity³.

¹ Юрескул В. О. Щодо податку на атмосферні опади / В. О. Юрескул // Правове життя сучасної України : матеріали Міжнар. наук.-практ. конф., присвяченої ювілею акад. С. В. Ківалова (16–17 трав. 2014 р., м. Одеса) : у 2 т. Т. 2 / відп. ред. В. М. Дрьомін. – О. : Юрид. л-ра, 2014. – С. 511–513. – С. 511.

² Андрейцев В. І. Перспективи розвитку природноресурсового права в системі екологічного права України / В. І. Андрейцев // Природноресурсне право в системі права України: історія, сьогодення, перспективи : зб. матеріалів круглого столу, 30–31 жовт. 2015 р. / за заг. ред. М. В. Шульги. – Х. : Оберіг, 2015. – С. 8–12. – С. 9.

³ Малишева Н. Р. У природноресурсного права мають нарешті з'явитись крила /

In conclusion the researcher makes a point that environmental issues of space activity, specifically those related to environmental aspects of exploration of other celestial bodies' resources, should be placed in the focus of legislators' attention in the course of the initiate systematizing of an appropriate branch of law.

In this context, one should keep in mind the fact that the present situation is complicated by an ardent scientific debate on the independence and place of natural resources law both in the legal science as a whole and its environmental legal part. For example, V. Yermolenko considers that complication of the modern system of natural-resource relations, each individual resource sphere of which is based on a separate codified act, causes methodological difficulties of combining land, water, mining and other independent branches of law even within natural resource law, to say nothing of environmental law¹. Similar positions are also maintained by I. Karakash, under whose editorship virtually a single manual of the country's independence period, titled «Natural resources law»², was published

in 2005. The scholar believes that modern natural resources law is characterized by a number of specific and unique principles of legal regulation that testify to its independence³.

At the same time, P. Kulynych stresses that the fact of natural resources law formation has not been proved, as long as there is no proof of forming the subject of natural resources law as a separate branch of the Ukrainian legislation. He also emphasizes that in practice land, water, forestry, mining and other individual-resource relations are established, their legal regulation being provided in full by the relevant individual-resource branches of law. Whereas in case of relations arising in connection with ecosystem structures their legal regulation is provided by the environmental law branch⁴.

M. Krasnova also expresses her standpoint in relation to natural resources law objects, stating that sometimes researchers, for no good reasons, refer to the sphere of natural resources law such natural objects as forests, flora and fauna, atmospheric air,

Н. Р. Малишева // Природноресурсне право в системі права України: історія, сьогодення, перспективи : зб. матеріалів круглого столу, 30–31 жовт. 2015 р. / за заг. ред. М. В. Шульги. – Х. : Оберіг, 2015. – С. 132–134. – С. 132.

¹ Єрмоленко В. М. Природноресурсне право в системі права України / В. М. Єрмоленко // Природноресурсне право в системі права України: історія, сьогодення, перспективи : зб. матеріалів круглого столу, 30–31 жовт. 2015 р. / за заг. ред. М. В. Шульги. – Х. : Оберіг, 2015. – С. 65–67. – С. 65.

² Природноресурсове право України : [навч. посіб. для вищ. навч. закл.] / Е. А. Бав-

бекова, Л. О. Бондар, Н. С. Гавриш та ін. ; за ред. І. І. Каракаш. – К. : Істина, 2005. – 374 с.

³ Каракаш І. І. Щодо принципів сучасного природноресурсового права України / І. І. Каракаш // Природноресурсне право в системі права України: історія, сьогодення, перспективи : зб. матеріалів круглого столу, 30–31 жовт. 2015 р. / за заг. ред. М. В. Шульги. – Х. : Оберіг, 2015. – С. 79–82.

⁴ Кулинич П. Ф. Природноресурсне право як юридичний феномен: полемічні аспекти / П. Ф. Кулинич // Природноресурсне право в системі права України: історія, сьогодення, перспективи : зб. матеріалів круглого столу, 30–31 жовт. 2015 р. / за заг. ред. М. В. Шульги. – Х. : Оберіг, 2015. – С. 111–113. – С. 113.

natural conservation reserve, recreational, health and leisure areas, as well as the ecological network, biological diversity, ozone layer, climate, which in fact are natural complexes, ecological free goods, which in accordance with regulatory requirements are to be protected and reproduced in the first place. This approach is acceptable only on condition that natural resources law is integrated into environmental law, despite the fact that the system of legal standards, meant to protect and reproduce natural resources and ecosystems, forms environmental law¹.

A direct evolutionary connection, interrelation and continuity of natural-resource and environmental relations were also noted by M. Shulga and L. Leiba, who indicate that the formation of natural resources law dates back to the 1980s, when the standards of that law used to regulate the then emerging environmental relations as well. The completeness of that branch of law was not doubted by anyone, being regarded as an independent sphere. Later on (in the 1990s), an advantage was given to environmental law, which became a priority, encompassing natural resource relations too².

¹ Краснова М. В. Сучасні реалії природноресурсного права України / М. В. Краснова // Природноресурсне право в системі права України: історія, сьогодення, перспективи : зб. матеріалів круглого столу, 30–31 жовт. 2015 р. / за заг. ред. М. В. Шульги. – Х. : Оберіг, 2015. – С. 105–106.

² Шульга М. В. До питання про природноресурсове право / М. В. Шульга, Л. В. Лейба // Природноресурсне право в системі права України: історія, сьогодення, перспективи : зб. матеріалів круглого столу, 30–31 жовт. 2015 р. / за заг. ред. М. В. Шульги. – Х. : Оберіг, 2015. – С. 208–211. – С. 209.

It seems likely that one of the main reasons for the scientific discussion was provided by a paper, written by N. Kazantsev, under the title of «Natural resources law and its bounds of an integrated branch of law», in which the scientist substantiates the ideas of separation of natural resources law as a complex legal branch having a composite structure that incorporates such independent branches of law as land, water, mining, forestry and other individual-resource laws³. This viewpoint was met with considerable degree of approval in the legal circles of the time because it facilitated unification of approaches to utilization of various resources, standardizing them, and bringing individual branches of natural resource legislation to a different level – that of an integrated branch of law – which opened up new scientific horizons.

However, emphasizing the methodological significance of the paper in question, it is hard to recognize the fact that for about 50 years the situation has remained unchanged, and that the formation of environmental legal science should be based on the same principles as those at the time of the publication. The said standpoint was characteristic of a certain methodological stage of legal thought evolution. It has played an important part; however today it does not comply with the modern worldview concepts and legal reality, having lost its strategic role in development of science.

³ Казанцев Н. Д. Природноресурсовое право и его пределы как интегрированной отрасли права / Н. Д. Казанцев // Вестник Московского университета. Серия 10 «Право». – 1967. – №6. – С. 3–9.

The same concepts have been maintained by both N. Malysheva and V. Nepyivoda who held that in fact there is every reason to regard the natural-resource approach as an attempt to consider legal regulation of social relations by taking to pieces the object of these relations i.e. the environment. The approach fitted the level of knowledge of those days, providing a certain standard for legal regulation of relations concerning separate parts of the whole (individual natural resources). Yet, the efficacy of the natural-resource approach, which overemphasizes the difference between the integral parts of the environment, cannot go beyond the limits set by a globalized anthropogenic impact, or environmental changes. In other words, it is unable to offer adequate means of affecting certain properties of the whole (in this context – global environmental problems), since it is impossible to attribute them to mere qualities of component parts of the whole or their interrelation¹.

It makes sense that A. Getman, while analyzing the concept of environmental law and legislation development, indicated that: «Considering the environmental policy contents from a perspective of specific results of the declared actions implementation, it is sad to recognize that nature-consuming, energy- and raw-material-intensive type of the country's current economy determines

its ranking low in development strategy. On the contrary, environmental factors should affect the economy's structuring and modernization»².

It is these factors, which justify, for instance, entrenchment of the environmental legal nature of the abovementioned energy law. Obviously, a further transformation of natural resources law into resource one is promising, its task being regulation of relations pertaining to natural objects, products of their utilization, and natural phenomena; setting requirements for resource economy; introduction of per unit cost of resources and other measures. Presently, a similar situation is observed in subsoil legislation that regulates the use of technogenic deposits of mineral resources, which, in effect, have lost their status of natural objects, but still possess a value to be preserved. The same is true for the waste treatment sphere, where wastes are increasingly frequently seen exactly as a potential source of resource and nature preservation.

Using the term of 'resource consumption' as a synonym of 'environmental management' is gaining currency in legal literature. Thus, for instance, a Russian lawyer I. Kalinin in his work «Legal regulation of resource consumption» makes it clear that the two notions correlate, specifying that the book is

¹ Малышева Н. Соотношение природоресурсного права и права окружающей среды: новый взгляд на старую проблему / Н. Малышева, В. Непыйвода // Государство и право. – 2007. – №9. – С. 31–40. – С. 38.

² Гетьман А. П. Концепція розвитку екологічного права та законодавства як передумова забезпечення національної екологічної політики / А. П. Гетьман // Вісник Південного регіонального центру Національної академії правових наук України. – 2014. – № 1. – С. 107–114. – С. 111.

a continuation of his work on a study of the characteristic features of legal regulation of relations pertaining to resource consumption. An attempt is made to determine both systemic nature and specificity of legal mediation of social relations that make the subject of natural resources law and standards. While his first book (Natural resources law. Conceptual issues. – Tomsk, 2000) was devoted to general issues – the subject, method, principles and other basic notions and legal phenomena of the natural resources law domain, the cited paper highlights the specific features of regulatory controls over relations pertaining to exploitation of individual natural resources¹.

Therefore, with regard to the aforesaid, one may state that at the current stage, environmental legal thought needs new models and approaches to determining the system of environmental law, its subject matter and system-forming principles. In that respect, it is worthwhile to cite the work «New Approach to Environmental Law» by a Chinese researcher Lu Zhongmei who suggests quite an interesting idea, arguing that natural resources, from the ecological perspective, are an indispensable condition for the human existence and development. Due to energy, material, and information exchange, they form an ecological system of co-existence and co-wellbeing with the humanity. Considering this, natural resources

are environmental resources, and we put environmental meaning into their understanding – that the natural environment as an environmental resource possesses its integrality and self-regulation².

Consequently, the researcher in fact makes the point that environmental relations should include not only issues of determining the natural resource status, procedure and conditions of their exploitation, but also a number of related processes, in the first place, energy and material, associated with the processes of consumption and economic management.

In the Ukrainian environmental legal science, the abovementioned viewpoint was supported by professor M. Krasnova in the context of defining natural resources law and argumentation of inter-related and interdependent character on nature-protection, nature-resource, and anthropo-protection relations within the framework of the unified system of environmental law³.

It should be noted that the idea of extending the 'resource' category is not new in itself. Thus, a fairly well known fundamental work by N. Reimers «Ecology (theory, laws, rules, principles and hypotheses)» contains a special chapter titled «Resourcolo-

¹ Калинин И. Б. Правовое регулирование ресурсопользования : [учеб. пособие] / И. Б. Калинин. – Томск : Изд-во науч.-тех. лит., 2001. – 314 с. – С. 8.

² Цит. по: Хунянь Л. Концепт и взгляды на природу в экологическом праве / Лю Хунянь // Государство и право. – 2010. – № 3. – С. 90–99.

³ Краснова М.В. Методологічні засади сучасного екологічного права / М. В. Краснова // Вісник Київського національного університету імені Тараса Шевченка. Юридичні науки. – 2012. – № 92. – С. 5–8. – С. 7.

gy», which analyzes the matters of balancing the nature, economy, natural resources, and the restrictions on their use¹.

Economic literature substantiates the existence of resource economy as a science that forms a functional mechanism in the system of social sciences, functions and interacts with economics, ecology, resourcology etc., providing research, organization, and control of exploitation of all kinds of resources. It has been observed that the current stage of Ukraine's transformation, which also shows elements of crisis recovery, requires an active development and implementation of resource utilization directly at production units. As for scientific research on resource economy, for the time being there are some unsolved problems, and namely: an ill-defined system of economic categories in the field of resource economy; lack of works that explore an economic mechanism of resource saving in a transition economy and its place in the structure of the economic mechanism; underdeveloped strategy of economic mechanism formation; and the institutional-legal basis for resource utilization needs further improvement too².

Economic categories are reflected in legal regulation, although in a somewhat distorted form in terms of its objectives

¹ Реймерс Н. Ф. Экология (теории, законы, правила, принципы и гипотезы) / Н. Ф. Реймерс. – М. : Журнал «Россия Молодая», 1994–367 с. – С. 196.

² Ресурсономіка: теоретичні та прикладні аспекти / Б. М. Андрушків, Ю. Я. Вовк, І. П. Вовк та ін. – Тернопіль : Терно-граф, 2012. – 456 с. – С. 9.

and tasks. Thus, implementation of the said provisions has led to the situation when the Law of Ukraine «On Environmental Protection» in its Part IX «Regulation of the Utilization of Natural Resources» contains only three articles (38-40), namely: «General and Special Utilization of Natural Resources», «Natural Resources of National and Local Significance», and «Compliance with Environmental Requirements in Utilization of Natural Resources». Most researchers regard this Law as a central, systemically important act of the environmental legislation, around which its source framework is built, the provisions thereof being critical for the potential codification of environmental law.

At the same time, the Economic Code of Ukraine devotes six articles (148–153) of its Chapter 15 «The Use of Natural Resources in the Sphere of Economic Activity» to regulation of natural resource management by economic entities, specifically: «Peculiarities of Legal Treatment of the Use of Natural Resources in the Sphere of Economic Activity», «Use of Natural Resources by Business Entities», «Use of Natural Resources on the Ownership Right», «Use of Natural Resources on the Right of User», «Rights of Business Entities as to the Use of Land Resources», «Obligations of Business Entities Pertinent to the Use of Natural Resources».

It should be emphasized that with an approach, when it is the business entity and its activity that is taken as a basis for legal regulation, without considering the regulation objective, its value and worldview component is lost, affecting nega-

tively the legal regulation quality. It should also be noticed that in many cases limitations of that kind are caused by artificial internal constraints to the innovativeness within the environmental legal science, stipulated by application of such traditional notions as 'natural resource management', 'natural resources', 'natural objects'. This necessitates an urgent revision of the terms, and broadening of the notions, which they denote. One of the ways should be a more active application of the terms of 'resource management', 'ecomangement', 'resources', 'ecological resources', 'ecological objects' etc.

The need for going beyond the scope of the conventional terminology, embracing new phenomena and including them into an environmental economic system, has already been reflected in the related sciences and research, especially economic and natural: the notion of 'ecological resources' is penetrating gradually the working documents of international organizations; for example, in 2004, a reference book «Greenhouse Gases as Global Environmental Resource» was published¹. The regulation prepared by the UN Food and Agriculture Organization in 1995 on the implementation of Chapter 10 of Agenda 21 «Planning for Sustainable Use of Land Resources Towards a New Approach» applied the term of 'ecological resources' and introduced an interesting separation of ecological resources from the

natural ones in the land use context. It was noted that in terms of land use, natural resources are commonly regarded to be plots of land or surface climatic conditions used by local residents for economic purposes; soil and landscape elements condition; freshwater settings; as well as the state of flora and fauna, since they supply production.

To a large extent, these resources can be assessed in economic terms. It can be done regardless of their location (internal value) or according to a degree of their vicinity to populated areas (situational value).

It is commonly accepted that by ecological resources we mean those components of land, which possess their own internal value or are valued for their long-term use by man on a local, regional, or global scale. They include: biodiversity of plant and animal populations; scenic, educational, or scientific and research significance of landscapes; importance of vegetation for protection of soil and water resources in a local or a wider context; vegetation functions of a local or regional regulator of climate as a state of the atmosphere; water and soil conditions as regulators of nutrient turnover (C, N, P, K, S), as factors affecting human health, and as long-term storages countering extreme weather events; factors of human and animal disease vectors (mosquitos, tsetse flies, gnats etc.).

Ecological resources are mostly «nonmaterial» from the purely economic perspective. Within the framework of a comprehensive, holistic approach to land use planning, the division under

¹ Парниковые газы – глобальный экологический ресурс : справочник / под ред. А. О. Кокорина. – М. : WWF Россия, 2004. – 136 с.

discussion seems somewhat artificial, since ecological resources form a part of the natural resource complex. Nevertheless, it still serves the purpose of delineation of material components from non-material ones, and of dividing the components of a human vital activity system into those yielding immediate benefit at the local level and indirect-effect ones. In the context of Chapter 10, equal attention should be paid to both the groups¹.

The 'ecological resources' concept is also used in the report made by the Executive Director of the Board of Directors of UNEP «State of Environment and Contribution of the United Nations Environment Programme to Solution of Main Environmental Problems», which was prepared for the Global Forum on Environment held on the ministerial level (February 21–25, 2005, Nairobi). In particular, it is emphasized that in order to render information and data network structures active, the Intergovernmental consultative meeting called for strengthening of the national potentials to allow a more rational use of national ecological resources and productive participation in international environmental assessments². In addition, it was stressed

that the key problem, specifically in developing countries, lies in upgrading the collection, handling, analysis and exchange of reliable environmental data within the framework of the countries' innovative cost-effective approaches to efficient environmental resource management and participation in international environmental assessments. Therefore, it is clear that partnership programs should not be limited to assessments, but are to cover a wider scope of actions, related to monitoring of environmental situation³. The document uses the concepts of 'water resources', 'natural resources', 'energy resources' etc. Consequently, the point at issue is not about synonymy, but rather about broadening of traditional terms meaning, even without interpretation, and their gradual introduction into business conduct.

Conclusions of the research and prospects for further surveys. Thus, in summation, a conclusion can be made that the stage of relatively independent existence of natural resources law with its autonomy beyond the complex environmental science is over. Presently, it becomes destructive for development of both the entire field and its components, hindering their methodological progress and paving the way for expansion of

¹ Planning for sustainable use of land resources: towards a new approach // Land and water bulletin of the Food and Agriculture Organization of the United Nations. – 1995. – №2. – 60 p. – P. 6.

² Состояние окружающей среды и вклад Программы Организации Объединенных Наций по окружающей среде в решение основных экологических проблем : доклад Директора-исполнителя Совета управляющих Программы Организации Объединенных

Наций по окружающей среде : документ UNEP/GC.23/3 [Электронный ресурс] / Организация Объединенных Наций. – Режим доступа : <http://www.unep.org/GC/GC23/documents/GC23-3-Russian.pdf>. – 21 с. (дата обращения 15.02.2016). – С. 19.

³ Состояние окружающей среды и вклад Программы Организации Объединенных Наций по окружающей среде. – С. 11.

researchers from other branches of law who use the internal environmental-legal debates and contradictions to prove their own conclusions about fictitious, synthesized nature of environmental law, contrivedness of its scientific problems etc. One of the ways to integrate and coordinate the natural resource component within the environmental law framework consists in switching its orientation from exclusively traditional natural objects to a more progressive and promising theory of resource or ecological-resource law that is able to combine harmoniously both traditional (established) and inno-

vative approaches to the essence of environmental law relations, their extension and diffusion within a unified methodological approach and legal doctrine, with underlying environmental legal science goals i.e. environmental protection, use of ecological resources, and ensuring environmental safety of the humanity. The areas in question have already been reflected in works by scientists of more or less related subject matter, specifically, wastes management¹.

Published: Проблеми законності. – 2016. – Вип. 132. – С. 104–123.

¹ Зуев В. А. Правовое регулирование обращения с отходами // Управление устойчивым развитием в условиях переходной экономики : [монография] / ред. М. Шмидт, Б. Хансманн, Д. А. Палехов, Г. Г. Пивняк, Ю. С. Шемшученко, А. Ф. Павленко, А. Г. Шапарь, В. Я. Швец, Л. Л. Палехова. – Днепропетровск-Коттбус : НГУ – БТУ, 2015. – С. 118–128; Зуев В. А. Правовые проблемы формирования права обращения с отходами и направления систематизации законодательства в данной сфере в национальном законодательстве / В. А. Зуев // *Legea si Viata*. – 2014. – Septembrie. – С. 50–53; Зуев В. А. Від природоресурсного до ресурсного права: оцінка перспектив та потенціалу // Природноресурсне право в системі права України: історія, сьогодення, перспективи : зб. матеріалів круглого столу, 30–31 жовтня 2015 р. / за заг. ред. М. В. Шульги. – Х. : Вид-во ТОВ «Оберіг», 2015.

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Pysarenko N.

- Impact of the resolution of the European court of human rights
on formation of the position regarding the application of the separate
provisions of the legislation on administrative offences..... 126

CIVIL-LEGAL SCIENCES

Kuznetsova N.

- Invalid transactions and their legal consequences
according to the legislation of Ukraine..... 132

Maydanyk R.

- Relations of property foundations of engaging in commercial
activity in Ukrainian law..... 144

Kohanovska O.

- Value of precedents in the sphere of the right of intellectual property
in the USA and practitioners of court in Ukraine: certain aspects 166

Spasybo-Fatyeyeva I.

- Regarding the legal entities of public and private law 176

Kharytonov Ye., Kharytonova O.

- Adaptation of law of Ukraine to the EU law in the context
of European traditions of private law 186

Yarotskiy V.

- Realities and prospects of title insurance implementation
in the domestic insurance services market..... 196

Kot O.

- Derivative suit as an instrument to protect corporate rights..... 205

ENVIRONMENTAL, ECONOMIC AND AGRICULTURAL LAW

Getman A., Zuiiev V.

- Formation of ecological and legal science: resource aspect
and its integration problems 211

Andreitsev V.

- Current challenges of adapting environmental legislation
of Ukraine to laws of the EU..... 227

Nosik V.

- Problems of exercise of the constitutional right to a safe
and healthy environment in Ukraine..... 247

Stativka A.

- Legal framework of state support
of agriculture as a means of ensuring food security 256

Shulha M., Ihnatenko I.

- The legal basis of expanding the power of local councils
in the sphere of land relations..... 263

Писаренко Н.

Вплив рішень Європейського суду з прав людини на формування
позицій з приводу застосування окремих положень законодавства
про адміністративні правопорушення..... 126

ЦИВІЛЬНО-ПРАВОВІ НАУКИ

Кузнєцова Н.

Недійсність правочинів та її правові наслідки
за цивільним законодавством України 132

Майданик Р.

Відносини майнової основи господарювання в праві України..... 144

Кохановська О.

Значення прецедентів у сфері права інтелектуальної власності
в США і практика суду в Україні: окремі аспекти..... 166

Спасибо-Фатєєва І.

Про юридичні особи публічного та приватного права..... 176

Харитонов Є., Харитонova О.

Адаптація законодавства України до законодавства ЄС в контексті
європейських традицій приватного права 186

Яроцький В.

Реалії та перспективи здійснення страхування правового
титулу на вітчизняному ринку страхових послуг..... 196

Кот О.

Похідний позов як засіб захисту корпоративних прав 205

ЕКОЛОГІЧНЕ, ГОСПОДАРСЬКЕ ТА АГРАРНЕ ПРАВО

Гетьман А., Зуєв В.

Формування еколого-правової науки: ресурсний аспект
та проблеми його інтеграції..... 211

Андрейцев В.

Сучасні проблеми адаптації екологічного законодавства України
до законодавства ЄС..... 227

Носік В.

Проблеми здійснення конституційного права на безпечне
для життя і здоров'я довкілля в Україні 247

Статівка А.

Правове регулювання державної підтримки вітчизняних
сільськогосподарських виробників як засобу забезпечення
продовольчої безпеки..... 256