DOI https://doi.org/10.36059/978-966-397-417-0-4

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CHAPTER 4. FEATURES OF THE LEGISLATIVE PROVISION OF WIND ENERGY IN UKRAINE

4.1. State of legislation in the field of wind energy

The beginning of domestic wind energy creation can be called 1994, when the resolution of the Cabinet of Ministers of Ukraine " On the construction of wind power plants " dated June 15, 1994 No. 415 was issued. This regulatory act stipulated that the Ministry of Economy, the Ministry of Energy and Electrification should provide electricity tariffs, and funds in the amount of 0.5 percent of the volume of commodity electricity production, which must be accumulated in the Ministry of Energy and Electrification in a separate account and directed in a targeted manner to the construction of wind power plants in various regions of the country and the expansion of wind power equipment production capacities[1]. The first mass-produced Ukrainian wind turbine production was carried out by enterprises of the military-industrial complex headed by Pivdenmash. These installations with a capacity of 107 kW each in the amount of 550 pieces represent the basis of the industrial park at the Donuzlavska, Sakska, Novoazovska, Tarkhankutska, and Truskavetska wind power stations[2]. However, this direction of alternative energy did not develop, due to low tariffs for energy from traditional sources.

The Law of Ukraine "On Energy-Saving" dated July 1, 1994, for the first time, defined the term "unconventional and renewable energy sources", which meant sources that constantly exist or periodically appear in the surrounding natural environment in the form of energy flows from the Sun, wind, and Earth's heat, the energy of seas, oceans, rivers, biomass. The law defined the legal regulation applicable to legal entities and individuals who carry out the construction and reconstruction of renewable energy facilities. In accordance with the Decree of the President of Ukraine " On the construction of wind power plants " dated March 2, 1996, the target fee was

[1] Про будівництво вітрових електростанцій: постанова Кабінету Міністрів України від 15 червня 1994 року. URL: https://zakon.rada.gov.ua/laws/show/415-94/ (дата звернення 16.08.2023 року)

[2] Мандрик О. М. Аналіз використання потенціалу вітрової і сонячної енергії в Карпатському регіоні. *Науково-технічний журнал*. 2016. № 1 (13). С. 158–166.

increased from 0.5 to 0.75% of the total electricity production. This Decree also instructed the Cabinet of Ministers of Ukraine to approve the State program for the construction of wind power plants by December 31, 1996[3]. The comprehensive program for the construction of wind power plants was approved by the resolution of the Cabinet of Ministers of Ukraine dated February 3, 1997[4]. This resolution provided for the creation of an inter-sectoral coordination council for the construction of wind power plants and the approval of regulations on it, as well as the development of measures to attract investments for the construction of power plants and the production of modern wind energy equipment.

The priority of the development of the wind energy industry was also confirmed at the level of the Law of Ukraine dated June 8, 2000 "On Amendments and Additions to Certain Laws of Ukraine on Promoting the Development of the Wind Energy Industry of Ukraine", which was amended for the period until January 1, 2011, in particular to the Law of Ukraine "On Energy Industry":

– regarding the mandatory purchase by the Wholesale Electricity Market of Ukraine of the entire amount of electrical energy produced at the wind farm;

– regarding the establishment of a target surcharge of 0.75% to the existing electricity tariff for financing the construction of wind power plants by the Comprehensive Program.

"The development of alternative energy in Ukraine began in 2009 when the "green" tariff was established in the Law of Ukraine "On Energy Industry". Wind power began to actively scale only in 2011-2012. This is because at least one year of wind monitoring is required for wind turbines, which is required by banks to grant a loan. At the same time, the migration routes of birds are also monitored, and builders need to solve complex engineering tasks, ensure the construction of roads (to deliver windmill blades), etc. It is because of this that wind energy projects take longer than other alternative energy projects[5]. At the end of 2012, the capacity of wind power plants in Ukraine amounted to almost 263 MW, and seven years

[3] Про будівництво вітрових електростанцій: указ Президента України від 2 березня 1996 року. URL: https://zakon.rada.gov.ua/laws/show/159/96 (дата звернення 16.08.2023 року)

[4] Про Комплексну програму будівництва вітрових електростанцій: постанова Кабінету Міністрів України від 3 лютого 1997 року. *Офіційний вісник України.* 1997. № 8. Ст. 139.

[5] Кузьміна М. Вітроенергетика в Україні: законодавче регулювання. *Підприємство, господарство і право.* № 11. 2014. С. 35–38.

later, Ukraine joined the "Gigawatt Club": it unites countries with installed wind energy capacity exceeding 1,000 MW[6].

Throughout the existence of independent Ukraine, there have been constant changes in the legal regulation of relations in this area, but a comprehensive legal framework that would be able to regulate all types of alternative energy in our country has not yet been built. The use of wind energy instead of traditional energy sources requires a legal analysis of what kind of energy can be obtained to determine the prospects for its use. The Basic Law of Ukraine "On Alternative Energy Sources" [7] does not define wind energy, but only refers to wind energy as renewable energy sources as one of the types of alternative energy sources. The definition of this type of energy is contained in DSTU 2275-93 "Energy Saving. Non-traditional and renewable energy sources. Terms and definitions", according to which wind energy is "the energy of the natural movement of air relative to the surface of the Earth". However, as we can see, the last document does not define the type of energy, but rather its source.

With the adoption of the Law of Ukraine "On the Electric Energy Market" dated April 13, 2017,[8] new legislative terms appeared in the current legislation on alternative energy sources: " wind power plant" and "wind power installation", the purpose of which is the production of electrical energy by converting kinetic energy wind into electrical energy. The difference between them is that a wind power plant is a single electric plant, and a wind power plant is a group of wind power plants or individual wind power plants, equipment, and structures located in a certain territory, which are functionally connected and constitute a single complex.

However, according to Art. 1 of the Law of Ukraine "On Alternative Energy Sources", the energy produced from alternative sources can be not only electrical but also thermal and mechanical energy. This is also true for energy derived from wind energy. However, at present, the main attention is paid to only one type of energy that can be obtained from the conversion of wind energy – electrical energy. Although both in our country and in the world, other directions are actively developing. For example, regarding the conversion of wind energy into mechanical energy for the direct mechanical drive of machines and mechanisms for various purposes: raising water, irrigating land, harvesting wood, ventilating warehousei and basements, etc. There are also developments regarding the direct conversion of wind energy

[6] Вітрова енергетика в Україні та світі. URL: https://hmarochos.kiev.ua/2022/01/18/vitrova-energetyka-v-ukrayini-ta-sviti/ (дата звернення 01.07.2023 року)

[7] Про альтернативні джерела енергії: Закон України від 20 лютого 2003 року. *Офіційний вісник України*. 2003. № 12. Ст. 522.

[8] Про ринок електричної енергії: Закон України від 13 квітня 2017 року. *Офіційний вісник України*. 2017. № 49. Ст. 1506.

into thermal energy for obtaining hot water and heating (greenhouses)[9]. In connection with the improvement of technologies, the task is now to increase the penetration and optimize the design, construction, and performance of wind energy systems.

An analysis of the legislation regulating wind energy in Ukraine demonstrates some features of its formation and development. The following signs of legal regulation of the specified industry can be singled out.

1. *Mainly the general non-specialized character of the legislative framework.* In accordance with international standards and priorities, several normative legal acts aimed at the development of the modern energy industry were adopted in Ukraine. The main legislative act in the researched area is the Law of Ukraine "On Alternative Energy Sources"[10], which established the legal, organizational, technical, and socio-economic principles of electricity production from renewable sources. Wind energy is regulated by general legal mechanisms common to all types of alternative energy. However, at the same time, it is possible to trace some special norms that reflect the specifics of wind energy. For example, the rulemaker needs to emphasize the ecological importance of wind energy and the possible negative impact on the environment. Relevant aspects are reflected in the norms of the laws of Ukraine "On Environmental Impact Assessment"[11] and "On Strategic Environmental Assessment"[12], which will be mentioned below.

2. *A significant part of program norms.* Taking into account the traditional division of wind energy into "large" and "small" according to the criterion of the power of wind turbines, some program documents pay attention to the need for the development of "small", and "non-commercial" wind energy. In the special literature, it is also called "rural", "farm", and "for the yard", referring to its wind energy installations of low power (up to 30 kW), which can work both independently and in combined wind-diesel, wind-hydro or wind-helio installations using energy accumulators[13].

Certain measures for the development and support of "small" wind energy were provided for by the Program of State Support for the

[9] Рудь Ю. М. Правове регулювання енергозбереження у сільському господарстві України: автореф. дис. … канд. юрид. наук 12.00.06. Київ, 2015. 18 с.

[10] Про альтернативні джерела енергії: Закон України від 20 лютого 2003 року. *Відомості Верховної Ради України.* 2003. № 24. Ст. 155.

[11] П ро оцінку впливу на довкілля: Закон України від 23 травня 2017 року. *Відомості Верховної Ради України.* 2017. № 29. Ст. 315.

[12] Про стратегічну екологічну оцінку: Закон України від 20 березня 2018 року. *Відомості Верховної Ради України.* 2018. № 16. Ст. 138.

[13] Носенко Ю. Вітроенергетика – практичні аспекти і перспективи. *Агробізнес сьогодні*. 2012. № 1/2. С. 42–44. С. 43.

Development of Non-Traditional and Renewable Energy Sources and Small Hydro– and Thermal Energy, approved by the Cabinet of Ministers of Ukraine resolution of December 31, 1997. Thus, point 4.1 of the Program, dedicated to wind energy, among others, determined priority measures for the development of autonomous wind energy for the period up to 2010. Scientific and technical support was to be concentrated on the development and introduction into serial production of wind pump installations, autonomous wind electric installations, autonomous wind, and wind-diesel power plants, the main consumer of which was to become agriculture[14]. At the same time, the Program did not envisage any other mechanisms of state support for "small" wind energy, as well as stimulating the interest of investors and consumers in it.

The attraction of wind energy legislation to program norms is evidenced by the content of the Energy Strategy of Ukraine for the period until 2035 "Safety, energy efficiency, competitiveness", which became invalid due to the adoption of the decree by the Cabinet of Ministers of Ukraine dated April 21, 2023 " On the approval of the Energy Strategy of Ukraine for the period until the 2050 year". Thus, among the main measures in the field of renewable energy sources at the stage of optimization and innovative development of the energy infrastructure until 2025, the specified legal act provided for the need to stimulate the construction of wind farms and the generation of electricity by low-power installations of renewable energy sources, to ensure the implementation of projects on the decentralization of energy supply at the local level, including based on the use of renewable energy. It was determined that the priorities for Ukraine are, in particular, the development of a competitive fuel and energy complex, the development of the infrastructure of renewable energy sources, and the increase of their share in the total volume of energy consumption to the level of 12% by 2025 and 25% by 2035. The document also stated that wind energy should contribute to the reduction of the carbon footprint in the context of combating climate change[15]. As the analysis of the pre-war indicators of the development of the wind energy sector shows, not all the tasks foreseen by the Strategy were fulfilled in full.

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[14] Про Програму державної підтримки розвитку нетрадиційних та відновлюваних джерел енергії та малої гідро– і теплоенергетики: постанова Кабінету Міністрів України від 31 грудня 1997 року. URL: https://zakon.rada.gov.ua/laws/show/1505-97-п#Text (дата звернення 16.08.2023 року)

[15] Про схвалення Енергетичної стратегії України на період до 2035 року "Безпека, енергоефективність, конкурентоспроможність": розпорядження Кабінету Міністрів України від 18 серпня 2017 року. *Урядовий кур'єр.* 08.09.2017. № 167. *(втратило чинність)*

The analyzed strategic program documents indicate a declarative and ineffective state policy in the field of wind generation development. It was due to the high generalization of the provisions of the legislation; the fragmented, inconsistent nature of measures aimed at placing wind power plants on the territory of the country; and the lack of legal mechanisms for stimulating the development of the domestic wind energy industry. The specified miscalculations subsequently negatively affected the provision of integral and systemic legal regulation of the construction of wind power plants.

3. *A significant specific weight of norms of a procedural and technical nature.* In order to further reform and develop the energy industry, a number of secondary legal acts were adopted, which, on the one hand, detail the provisions of the adopted energy laws, and on the other hand, specify the issue of calculating "green" tariffs, establishing quotas for producers of alternative energy and the procedure for carrying out auctions regarding their distribution, regulate the technical nature of the operation of renewable energy facilities. Among the normative acts that establish the technical provisions and procedures for making calculations for "green" energy, the following can be noted: the resolution of the Cabinet of Ministers of Ukraine " On the determination of authorized banks of the electric energy market" dated February 27, 2019[16], the resolution of the Cabinet of Ministers of Ukraine "On the formation of state-owned enterprise "Guaranteed buyer" and "Market operator" dated April 17, 2019[17], the resolution of the Cabinet of Ministers of Ukraine "On the introduction of competitive conditions for stimulating the production of electricity from alternative energy sources" dated December 27, 2019[18], numerous resolutions and orders of the NCSEPU, etc. Common to these normative legal acts is that they are general and apply to all areas of alternative energy[19].

4. *Tendency to the market model of regulation of social relations.* This characteristic was manifested, in particular, during the introduction of further changes to the legislation in 2019. Thus, the legal category

[16] Про визначення уповноважених банків ринку електричної енергії: постанова Кабінету Міністрів України від 27 лютого 2019 року. *Урядовий кур'єр.* 28.02.2019. № 41.

[17] Про утворення державних підприємств "Гарантований покупець" та "Оператор ринку": постанова Кабінету Міністрів України від 17 квітня 2019 року. *Урядовий кур'єр.* 20.04.2019. № 77.

[18] Про запровадження конкурентних умов стимулювання виробництва електричної енергії з альтернативних джерел енергії: постанова Кабінету Міністрів України від 27 грудня 2019 року. *Урядовий кур'єр.* 31.01.2020. № 19.

[19] Караханян К. М. Становлення та сучасний стан законодавчого забезпечення вітроенергетики в Україні. *Міжнародний науковий журнал "Інтернаука". Серія: "Юридичні науки"*. 2021. № 11. С. 25–32. С. 31–32.

"combined wind-solar generating systems" was introduced with a tariff of 16.37 cents per kWh. The changes were supposed to stimulate the development of more balanced "sun + wind" systems that generate electricity throughout the year regardless of the season[20]. However, the innovations were adopted only in August 2019, and this tariff was valid for four months. This is explained by the fact that in 2020 the Cabinet of Ministers of Ukraine signed a memorandum with producers of alternative energy, which provided that the authorities undertake to determine and approve annual quotas for the support of "green" energy and ensure the holding of auctions for the distribution of such quotas. Instead, the manufacturers agreed to adjust the terms of putting new facilities into operation at the "green" tariff[21]. On July 21, 2020, the Law of Ukraine "On Amendments to Certain Laws of Ukraine on Improving the Conditions for Supporting the Production of Electricity from Alternative Energy Sources " was adopted[22], which enshrines the key provisions of the government's memorandum with producers of "green" energy and allows reducing energy tariffs for wind power plants – to 7.5%, which enables the state to save almost UAH 7 billion annually.

5. *Relative protection of legislation.* In order to adhere to the course of decarbonization of production and to achieve climate neutrality in the country, a number of norms were established in the current legislation, which contribute to the development of the energy sector and the increase of wind energy facilities, as well as provide additional guarantees to entities carrying out their activities in the field under study. So, for example, Art. 208 of the Land Code of Ukraine establishes that citizens and legal entities are exempted from compensation for forestry production loss in case of land plots being used for the construction and maintenance of energy facilities that produce electricity from alternative energy sources[23].

The Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding the Peculiarities of Regulating Land Relations in Martial

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[20] Дороніна І. І. Інструменти державної підтримки використання енергії з відновлюваних джерел. *Збірник наукових праць НАДУ.* 2020. Вип. 2. С. 47–55. С. 54.

[21] Караханян К.М. Законодавчі засади економічного стимулювання розвитку вітроенергетики в Україні. *Актуальні проблеми земельного, аграрного, екологічного та природоресурсного права*: матеріали круглого столу (Харків, 10 грудня 2021 року). Харків, 2021. С. 98–101.

[22] Про внесення змін до деяких законів України щодо удосконалення умов підтримки виробництва електричної енергії з альтернативних джерел енергії: Закон України від 21 липня 2020 року. *Відомості Верховної Ради України*. 2020. № 50. Ст. 456.

[23] Земельний кодекс України від 25 жовтня 2001 року. *Відомості Верховної Ради України*. 2002. № 3. Ст. 27.

Law" of May 12, 2022, [24]added paragraphs 21 p. 27 of the Transitional Provisions of the Land Code of Ukraine by the norm that the terms of payment by the land user (except for land users of state, communal property) of rent, sublease fees for land plots, fees for the establishment of a land easement, fees for the use of a land plot on the conditions of superficies, if appropriate the right to use a land plot granted for the placement of energy infrastructure facilities, which occurred during martial law, is transferred for a period of up to six months from the date of termination or cancellation of martial law.

The Law of Ukraine "On the Electric Energy Market" [25]gives certain groups of consumers the right to install generating units intended to produce electric energy. For example, domestic consumers in their private households may place generating units with an installed capacity of no more than 50 kW, intended for the production of electrical energy from the energy of solar radiation and/or wind energy. As for energy cooperatives, the capacity of their generating units must not exceed 150 kW. In addition, an additional stimulating factor is the fact that the production of electrical energy by consumers from the energy of solar radiation and/or wind energy is carried out without a corresponding license.

6. *Combination of economic and environmental aspects in legislation.* Wind energy is one of the most environmentally friendly types of energy because carbon emissions during the production of electricity by a wind turbine are zero. However, despite this, it must be completely safe for all components of the natural environment, which is why additional environmental measures must be taken to avoid possible risks. Legislative acts that regulate the purely ecological component of the development of renewable energy and its impact on the natural environment are promulgated by the Government of Ukraine "On Environmental Impact Assessment" of May 23, 2017, and [26]"On Strategic Environmental Assessment" of March 20, 2018[27]. The specified normative legal acts establish the legal and organizational principles of environmental impact assessment, aimed at preventing environmental damage, ensuring environmental safety, environmental protection, and rational use and

[24] Про внесення змін до деяких законодавчих актів України щодо особливостей регулювання земельних відносин в умовах воєнного стану: Закон України від 12 травня 2022 року. *Офіційний вісник України*. 2022. № 47. Ст. 2556.

[25] Про ринок електричної енергії: Закон України від 13 квітня 2017 року. *Офіційний вісник України*. 2017. № 49. Ст. 1506.

[26] Про оцінку впливу на довкілля: Закон України від 23 травня 2017 року. *Відомості Верховної Ради України.* 2017. № 29. Ст. 315.

[27] Про стратегічну екологічну оцінку: Закон України від 20 березня 2018 року. *Відомості Верховної Ради України.* 2018. № 16. Ст. 138.

reproduction of natural resources, in the process of making decisions about the implementation of economic activities that may have a significant impact on environment, taking into account state, public and private interests, as well as the obligation to evaluate state planning documents that relate to agriculture, forestry, fisheries, energy, industry, transport and other spheres of life.

The assessment of the impact on the environment as part of the preparation of the wind energy project must be comprehensive. As in the case of the construction of any energy facility, the possible impact of the wind power plant on such natural resources as air, soil, surface, and underground water resources is considered. In order to study and evaluate the impact of the wind power plant on biodiversity and the habitat, for at least one year, studies of existing natural environmental complexes in the area of the planned construction are conducted **with a focus on avian fauna** (birds, bats). It is worth noting that this list of studied environmental components is not exhaustive, because there are also **studies specific to wind energy.** In particular, aspects unique to a wind energy project can be studied, such as acoustic impact, shadow flickering effect, possible scattering of ice from frozen wind turbine blades, and visual impact on the landscape[28].

The above-mentioned laws contain detailed regulations on the issue of assessment and preparation of conclusions regarding such assessment, and post-project monitoring. Yes, holding a positive conclusion does not mean the end of the environmental impact assessment process. During construction works, and then during the operation phase of wind power plants, environmental impacts are monitored, and plans for managing environmental components are developed. In case of inconsistency with the results predicted as part of the assessment, additional measures are implemented to reduce the impacts.

4.2. Legal conditions and peculiarities of placement of wind energy facilities

Legal regulation of wind energy is carried out by numerous legal acts common to all RES[29]. The legal conditions and features of land-legal,

[28] Шмідт Галина. Оцінка впливу на довкілля – складова успіху кожного вітроенергетичного проєкту. URL: https://ecolog-ua.com/news/ocinka-vplyvu-na-dovkillya-skladova-uspihu-kozhnogo-vitroenergetychnogo-proyektu (дата звернення 01.07.2023 року)

[29] Платонова Є. О. Правові умови та особливості розміщення і функціонування вітрових електростанцій в Україні. *Юридичний науковий електронний журнал.* 2021. № 9. С. 122–129.

ecological-legal, urban-planning legal, organizational-legal, and economic-legal aspects that require mandatory consideration during the placement and operation of wind turbines and the development of balanced mechanisms for stimulating their development are highlighted.

Land legal aspect. The specifics of the use of wind energy for the production of electricity lies in the close relationship with land plots, which are the territorial basis for the production of electricity. By the regulatory requirements of the Land Code of Ukraine and the Law of Ukraine "On Energy Lands and the Legal Regime of Special Zones of Energy Objects", the relocation, construction, and operation of wind power plants, wind power installations as objects of alternative energy are allowed to be carried out on a separate category of land "industry, transport, communication, energy, defense, and other purposes".

Within this general category of land, according to Part 1 of Article 76 of the Land Code of Ukraine, the lands of the energy system are recognized as the lands allocated for electricity-generating facilities, including wind power plants, except in cases defined by law where such facilities are located on lands of other designated purposes[30]. The Law of Ukraine " On the Power Engineering Lands and the Legal Status of Special Zones of the Power Engineering Objects " (Article 7) specifies that *energy land includes* land plots granted for the location, construction, and operation of facilities for the production of electric and thermal energy, namely wind power plants, belong to the lands of energy-generating enterprises[31].

Positive developments in the direction of simplifying access to land plots for the placement of alternative energy facilities, including wind energy, took place as a result of the adoption of the Law of Ukraine "On Amendments to the Tax Code of Ukraine and some other legislative acts of Ukraine on improving the administration and revision of the rates of individual taxes and fees" dated November 23, 2018 (entered into force on January 1, 2019)[32]. According to the legislative amendments, it is allowed to place alternative energy facilities that use wind energy not only on land designated as "energy land", but also on other land included in the general

[30] Земельний кодекс України від 25 жовтня 2001 року. *Відомості Верховної Ради України.* 2002. № 3. Ст. 27.

[31] Про землі енергетики та правовий режим спеціальних зон енергетичних об'єктів: Закон України від 09 липня 2010 року. Відомості Верховної Ради України. 2011. № 1. Ст. 1.

[32] Про внесення змін до Податкового кодексу України та деяких інших законодавчих актів України щодо покращення адміністрування та перегляду ставок окремих податків і зборів: Закон України від 23 листопада 2018 року. *Офіційний вісник України*. 2018. № 98. Ст. 3220.

category of “land of industry, transport, communication, energy, defense, and other purposes” without the need to change their intended purpose.

Given the specific dependence of wind power plants(WPP) on natural conditions, restrictions on the territorial location of wind energy facilities undoubtedly hinder the development of the industry. In addition, according to Art. 18 of the Law of Ukraine “On Energy Lands and the Legal Regime of Special Zones of Energy Facilities” to ensure the reliable operation and protection of energy-generating facilities and facilities for the transmission of electric and thermal energy, as well as the safety of the population and environmental protection, sanitary and protective zones of power plants. The requirement to establish such zones significantly increases the amount of land required for the construction of wind energy facilities[33].

At the same time, it should not be assumed that the lands used for the production of electricity belong exclusively to the lands of the energy industry. Land used for electricity generation, including wind power, belongs to different land categories.

Legislation on alternative energy allows for land rezoning before ownership or lease, if necessary, for wind energy needs. Features of establishing and changing the purpose of land plots are provided for in Art. 20 of the Land Code of Ukraine. Most often, the plots of land allocated for wind turbines are agricultural. Practice shows that quite often the change of purpose of land plots is carried out in violation of the requirements of the legislation.

During the implementation of projects related to the creation of wind power plants, the most common ways of acquiring rights to land plots, along with acquiring the right of ownership of the corresponding land plots, are the conclusion of lease agreements and agreements on establishing the right of land easement. At the same time, the indisputable advantage of land easements is that the legislation does not contain restrictions on the form of ownership and purpose of land plots for which a land easement is established. Therefore, to place wind turbines on agricultural lands, it is not necessary to change the purpose of the land plot, unlike a lease agreement. That is why it is not surprising that there is an established legal practice, according to which, if the land plot belongs to an individual, preference is given to the conclusion of an agreement on the establishment of an easement; and if the plot is owned by the state or territorial community, as a

[33] Харитонова Т. Є. Деякі проблеми використання об’єктів альтернативної енергетики на землях сільськогосподарського призначення. *Актуальні правові проблеми інноваційного розвитку агросфери:* матеріали наук.-практ. конф. (Харків, 20 листопада 2020 року). Харків, 2020. С. 273–276.

rule, a lease agreement is concluded, less often – an easement is established[34].

Therefore, a necessary condition for the realization of the right to build a WPP is the acquisition of the corresponding rights to the land plot. At the same time, the transfer (granting) of land plots from state or communal property to the ownership or use of natural or legal persons for urban planning purposes is allowed, provided that the corresponding land plots are located within the territory for which at least one of the following types of urban planning documentation has been approved at the local level: a comprehensive plan, a component of which is the territory zoning plan; the general plan of the settlement, a component of which is the territory zoning plan; the territory zoning plan as a separate type of urban planning documentation at the local level (approved before the entry into force of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding Land Use Planning"); detailed plan of the territory. However, the mentioned restriction does not apply to the case of providing a land plot for placing linear objects of transport and energy infrastructure (roads, bridges, overpasses, power transmission lines, communication), which significantly simplifies access to land plots for placing wind turbines.

Environmental and legal aspect. The system of normative legal acts devoted to environmental and legal requirements for the construction and operation of wind power plants is extensive, as it includes a considerable number of regulatory acts, including codes, special laws, government orders, orders of relevant ministries, and state standards[35].

Even though wind energy is traditionally considered a standard of energy generation, which has a minimal impact on the environment, such an impact still exists. When designing and building wind turbines and their infrastructure facilities, negative effects on the environment are not always taken into account. A significant achievement in the implementation of environmental criteria for alternative energy sources was the adoption of the Law of Ukraine "On Environmental Impact Assessment", which became an important step in the direction of solving the problems of ensuring the environmental and social safety of the functioning of wind energy facilities.

The procedure for determining the types of activities subject to environmental impact assessment is the initial stage of the environmental

[34] Мілімко Л. В., Остринський В. О. Проблеми правового регулювання договору оренди та встановлення права земельного сервітуту для потреб альтернативної (відновлюваної) енергетики. *Юридичний електронний науковий журнал*. 2017. № 6. С. 180–183.

[35] Павлига А. В., Дубінін Ю. С. Еколого-правові вимоги до розміщення та функціонування об'єктів вітрової енергетики в Україні. *Юридичний науковий електронний журнал.* 2021. № 11. С. 341–345.

impact assessment (EIA) procedure. The latter allows persons who will or may be negatively affected by the planned activity to take part in the decision-making, to whom the state gives permission to carry out the planned activity and establishes the conditions for its implementation. Traditionally, in Ukraine, the legal regulation of the EIA procedure is part of the procedure for designing construction objects and obtaining a permit for construction works[36].

According to the Law of Ukraine "On Objects of Increased Danger", wind turbines do not belong to potentially dangerous objects. Currently, at the legislative level, objects that produce electricity from wind energy can be classified as objects with minor consequences (CC1), subject to a positive conclusion of the authorized body for environmental impact assessment.

At the same time, according to the Law of Ukraine "On Environmental Impact Assessment", wind power plants with two or more turbines or a height of which is 50 meters or more are classified in the second category of types of planned activities and objects that can have a significant impact on the environment and are subject to EIA[37]. Therefore, these facilities are prohibited from starting any planned activity without carrying out an environmental impact assessment and, subsequently, without receiving a positive opinion from the Environmental Protection Agency. It is the conclusion of the EIA that is the basis for the authorized body both to grant permission for the planned activity and to refuse it. The environmental conditions for carrying out such activities, specified in the conclusion of the WPP, are mandatory. Public discussion is an integral part of the EIA procedure.

A significant modern problem is that the placement and construction of wind power plants are carried out in violation of environmental legislation, ignoring the criteria of sustainability: technical reliability and environmental safety. This leads to increased levels of noise, vibration, damage to soil and plant cover, death of birds and bats, and changes in landscapes[38]. As a result, one of the most valuable environmental rights of citizens is violated – the right to an environment safe for life and health. There are also violations of the rights of citizens to participate in the discussion and to submit proposals to the materials regarding the placement and construction

[36] Третяк Т. О. Процедура визначення видів діяльності та об'єктів, що підлягають оцінці впливу на довкілля в Україні. *Право і громадянське суспільство.* 2016. № 1. С. 112–127.

[37] Про оцінку впливу на довкілля: Закон України від 23 травня 2017 року. *Офіційний вісник України*. 2017. № 50. Ст. 1549.

[38] Вітряні електростанції та зміни клімату / Василюк О., Кривохижа М., Прекрасна Є., Норенко К. Київ: UNCG, 2015. 32 с.

of objects that may negatively affect the state of the environment, as well as the rights to participate in public discussions on the impact of planned activities on the environment[39]. As a result, there are social conflicts and opposition from public environmental organizations, as well as numerous lawsuits regarding the construction of wind power plants. In the conditions of the modern European integration process, the role of the social factor in solving issues of wind energy development is increasing.

Urban planning legal aspect. In accordance with the Law of Ukraine "On the Electric Energy Market", design and construction (new construction, reconstruction, overhaul), technical re-equipment of generating capacities are carried out following the legislation in the field of urban planning activities (Article 28). A positive achievement of modern legislation on the regulation of urban planning activities is the tendency to introduce legal mechanisms aimed at harmonizing public and private interests at various stages of WPP construction, taking into account their possible negative impact on the state of the environment, the level of danger to people, as well as causing material and social damage. The development of wind energy is inextricably linked with the need to take into account environmental requirements when carrying out activities related to the construction and operation of wind turbines.

The Law of Ukraine " On Amendments to Certain Legislative Acts of Ukraine Regarding the Improvement of Urban Development " of January 17, 2017, provided for the transition from categories of complexity of construction objects to class of consequences (responsibility) and introduced a simplified procedure for examining construction projects, obtaining construction permits and acceptance into operation of objects completed by construction[40]. Thus, it is legally established that the class of responsibility is influenced by three factors: the level of danger to people, material damage, and social loss. Currently, all objects are divided by a class of consequences (responsibility): minor consequences – CC1; medium consequences – CC2; significant consequences – CC3. It should be noted that the class of consequences is determined in accordance with the requirements of DSTU 8855:2019 "Buildings and structures. Determination

[39] Платонова Є. О. Правові аспекти забезпечення екологічних прав громадян при будівництві вітрових електростанцій в Україні. *Актуальні проблеми юридичної науки*: збірник тез Міжнародної науково-практичної конференції Двадцяті осінні юридичні читання "Права людини в сучасному світі проблеми теорії та практики" (м. Хмельницький, 1–2 жовтня 2021 року). Хмельницький: Хмельницький університет управління та права імені Леоніда Юзькова, 2021. С. 110–111.

[40] Про внесення змін до деяких законодавчих актів України щодо удосконалення містобудівної діяльності: Закон України від 17 січня 2017 року. *Офіційний вісник України*. 2017. № 15. Ст. 425.

of the class of consequences (responsibility)"[41]. The complexity, the amount of necessary documentation, and the order of construction depend on the class of consequences. Undoubtedly, these short stories directly affected the construction of the wind farm.

Simplification of the procedure for obtaining permits for starting the construction of facilities producing energy from wind energy and creating favorable conditions for investment and development of wind energy in Ukraine was introduced by the Law of Ukraine "On Amendments to Certain Laws of Ukraine Regarding the Investment Attractiveness of the Construction of Renewable Energy Facilities" of energy" dated September 4, 2018,[42] The innovations made to the Law of Ukraine "On Regulation of Urban Planning" were as follows.

Firstly, objects that produce electrical energy from wind energy were classified as objects with insignificant consequences (CC1), subject to a positive conclusion of the authorized body for environmental impact assessment (paragraph 14, part 5, article 32).

Secondly, WPP construction projects, which according to the class of consequences (responsibility) belong to objects with minor consequences (CC1), are not subject to mandatory examination of construction projects (Part 3 of Article 31). Instead, a mandatory examination is provided for those wind power construction projects that, according to the class of consequences (responsibility), belong to objects with medium (CC2) and significant (CC3) consequences or are subject to environmental impact assessment in accordance with the Law of Ukraine "On Impact Assessment on the environment" in terms of taking into account the results of EIA (Part 4 of Article 31).

According to the urban planning legislation, the construction of wind turbines, which according to the class of consequences (responsibility) belongs to objects with minor consequences (CC1), is carried out after the customer submits *a notice of the start of construction work* to the relevant state architectural and construction control body. The acceptance into operation of the completed wind power plant is carried out on the basis of *the declaration of readiness of the object for operation.*

On the other hand, in the case of the construction of a wind park, a wind power plant having two or more turbines or the height of which is 50 meters or more, which are classified in the second category of types of planned

[41] ДСТУ 8855:2019 Будівлі та споруди. Визначення класу наслідків (відповідальності). Київ ДП "УкрНДНЦ", 2019. 13 с.

[42] Про внесення змін до деяких законів України щодо інвестиційної привабливості будівництва об'єктів відновлюваної енергетики: Закон України від 4 вересня 2018 року. *Офіційний вісник України*. 2018. № 78. Ст. 2585.

activities and objects, may have a significant impact on the environment and are subject to EIA, – construction works can be performed after the customer is issued *with a construction work permit.* Acceptance into the operation of completed objects by issuing *a certificate to the developer* is provided only for objects that, according to the class of consequences, belong to objects with medium (CC2) and significant (CC3) consequences.

Organizational and legal aspect. The connection of wind energy installations to electrical networks requires the settlement of some organizational and legal issues.

At the initial stage of the implementation of the wind energy facility construction project, the main task is to obtain technical conditions – a set of conditions and requirements for the engineering supply of the customer's facility with electrical energy, which must correspond to its calculated parameters for electricity supply and is an integral appendix to the contract on joining the electrical networks. The technical conditions are valid until the construction of the object is completed, regardless of the change of the customer or the enterprise, institution, and organization that provided such technical conditions. Changes to the technical conditions can be made only with the consent of the customer.

The Law of Ukraine "On Amendments to Certain Laws of Ukraine Regarding Ensuring Competitive Conditions for the Production of Electricity from Alternative Energy Sources" dated April 25, 2019, provided that for objects that produce electricity from wind energy, the technical conditions are valid no more than three years from the date of their issue, regardless of the change of the customer.

If the customer is a business entity that acquired the right to support as a result of the auction, the technical conditions for this wind energy facility are valid for the period of fulfillment of obligations regarding its construction and commissioning in accordance with Art. 9 [3] of the Law "On Alternative Energy Sources"[43].

It should be noted that for a long time, the special legal regulation of connection of wind power plants to electric networks was carried out in accordance with the Rules of connection of wind power plants to electric networks, approved by order of the Ministry of Fuel and Energy of Ukraine dated October 28, 2009 No. 570 (expired on May 7, 2019). Currently, the connection of electrical installations intended for the production of electric energy or the combined production of electric and thermal energy to the

[43] Про внесення змін до деяких законів України щодо забезпечення конкурентних умов виробництва електричної енергії з альтернативних джерел енергії: Закон України від 25 квітня 2019 року. *Відомості Верховної Ради України*. 2019. № 23. Ст. 89.

transmission system or the distribution system is carried out following the procedure established by Art. 21 of the Law of Ukraine "On the Electricity Market".

At the same time, the condition for connecting the customer's electrical installations to the transmission system or the distribution system is the customer's compliance with the connection procedure defined in the code of the transmission system [44]and the code of distribution systems[45]. In the future, the presence of such a connection is one of the special conditions for establishing a "green" tariff of a business entity: one of the documents that a business entity submits to the National Energy Regulatory Commission for the establishment of a "green" tariff are copies of the agreement on connection to electric networks and technical conditions for connection to electrical networks of an electrical installation that produces electrical energy using wind energy.

Economic and legal aspect. The existing economic and legal incentives for the use of wind energy contributed to the intensification of the growth of the construction of wind power plants in Ukraine. In general, the introduction of the "green" tariff creates favorable conditions for the development of the wind energy industry, but, unlike European countries, significant fluctuations in its size are observed in Ukraine. If we analyze the latest changes in the legislation, we can see a trend towards a significant reduction in the size of the "green" tariff, which until now has been the only effective means of stimulating the development of wind energy in Ukraine. Non-compliance with state guarantees regarding the revision of the size of the "green" tariff creates unstable conditions for conducting business in the field of wind energy[46].

On the path of reforming the energy legislation in Ukraine, there is a change in the protective conditions for the functioning of wind energy, namely: the transition from a support system based on a "green" tariff to a competitive model of stimulating the development of wind energy by holding *auctions for the distribution of support* ("green" auctions).

Thus, Article 9^3 of the Law of Ukraine "On Alternative Energy Sources" stipulates the obligation to participate in auctions for business entities that intend to produce electrical energy from wind energy if they intend to produce electrical energy at electric power facilities or queues (start-up complexes) of

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[44] Про затвердження Кодексу системи передачі: постанова НКРЕКП від 14 березня 2018 року № 309. *Урядовий кур'єр*. 2018. № 75.

[45] Про затвердження Кодексу систем розподілу: постанова НКРЕКП від 14 березня 2018 року № 310. *Урядовий кур'єр*. 2018. № 75.

[46] Рибнікова Е. Ю. Економіко-правовий механізм стимулювання виробництва та використання альтернативної енергії в Україні. *Південноукраїнський правничий часопис*. 2017. № 3. С. 62–65.

electric power facilities, the installed capacity of which is more than 5 MW. At the same time, the condition for participation in the auction is the absence of an established "green" tariff for the object of alternative energy and/or the absence of a previously obtained right to support based on the results of the auction for this object.

It is necessary to note the legislator's positive desire to support distributed, seasonally and during the day generation for private households, small and medium-sized businesses. Thus, a minor revival of the small wind energy market took place after the adoption of the Law "On Amendments to Certain Laws of Ukraine on Ensuring Competitive Conditions for the Production of Electricity from Alternative Energy Sources", according to which private households have the right to install generating units intended for the production of electricity without a corresponding license from wind energy, the amount of installed power of which does not exceed 30 kW, and sell the surplus of generated electricity to the network at the "green" tariff.

Unfortunately, the adoption of this Law did not affect the development of small wind energy due to the presence of some legislative barriers. The biggest obstacle was the difference in the amount of "green" tariffs for electricity produced by private households using solar energy and electricity using wind energy. With the parallel use of solar and wind generation, the difference in tariffs required households to install two electricity accounting systems, which led to double costs. Therefore, in 2016, only two small wind power plants were installed in the country under the "green" tariff[47].

In 2019, there were significant changes in the legislative sphere that directly affected the segment of small wind energy. First, for households that planned to use wind energy, the capacity of power generating units was increased to 50 kW, and for other consumers, including energy cooperatives – up to 150 kW. Secondly, a new category was introduced – "combined wind-solar generating systems" with a fairly good tariff. Thirdly, a simplified procedure for setting a "green" tariff for such electricity consumers was introduced. These legislative changes were supposed to stimulate the development of more balanced systems that generate electricity throughout the year regardless of the season. However, the reduction of the size of the "green" tariff for combined wind-solar generating systems by 25% already in January 2020 made the use of wind generators in such systems economically unattractive, and plans for the development of combined systems of distributed generation – are declarative. This fact is confirmed by disappointing statistics regarding the production and installation of small Ukrainian-made wind turbines in 2019 – only 24 kW[48].

[47] Вітроенергетичний сектор України 2016 (УВЕА, 2017). 44 с. URL: http://uwea.com.ua/ru/library/reviews/ (дата звернення 01.07.2023 року

[48]Вітроенергетичний сектор України 2019 (УВЕА, 2020). 87 с. URL: http://uwea.com.ua/ru/library/reviews/(дата звернення 01.07.2023 року)

4.3. Practical legal problems of wind energy development in Ukraine

The last few years have been marked by the rapid development of wind energy in Ukraine. The rapid appearance of wind energy facilities throughout the territory of our country has caused the need for a special study of the complex legal relations accompanying the relevant process. Their detailed analysis shows that land relations are the central basis. This is caused, in particular, by the fact that a feature of the development and scaling of wind energy is the expansion of the corresponding land use. At the same time, both relatively small areas of land (several tenths of a hectare) and quite impressive territories may be needed for wind energy purposes (for example, the construction project of the Tyligul wind power plant in the Mykolaiv region covers 35,000 hectares).

At the same time, it should be emphasized that, despite its environmental friendliness, climate friendliness, and encouragement from the state, wind energy experiences various types of legal opposition. This is especially clear when studying court practice, the analysis of which allows us to outline several main legal strategies for combating “unwanted” wind power plants (WPP) in Ukraine. Against the background of the aggravation of the problems of forming and maintaining the energy security of Ukraine during the conduct of military operations and at the stage of prospective post-war recovery, the identification of those real problems faced by the wind energy industry in Ukraine is especially relevant. Awareness of such legal problems will allow us to form effective and scientifically based ways of solving them to optimize the process of further development of “green” energy in general and wind energy in particular.

On the wave of the flourishing of “green” energy in Ukraine, wind energy facilities have appeared in many corners of our country. Most often, obtaining land plots for their construction takes place by concluding lease agreements with public authorities. However, this does not always cover all the practical issues that accompany the process of construction and operation of such alternative energy facilities. For example, Prymorska Wind Power Plant – 2 LLC was forced to conclude more than 100 agreements on the establishment of paid temporary easements with private owners of land plots to ensure the ability to build a power plant, lay underground cables, lay the necessary access roads, maintain equipment, etc.

However, modern legal practice demonstrates not only examples of a harmonious combination of interests and contractual settlement of land use issues in the field of wind energy. In many ca, the planning, construction, and operation of wind power plants cause considerable resistance and

desperate opposition[49]. If we analyze such ca, we can group them into four categories depending on the interested subjects.

Resistance from environmentalists and the public. The clearest, most frequent, and loudest example of such a case is the case of the planned construction of a wind farm in the Carpathian plain of Borzhava. In 2017, a Turkish investor in the person of Atlas Volovets Energy LLC began collecting all the necessary documents for the construction of the Borzhava wind farm with a total capacity of 120 MW. According to the project, it was planned to install 34 windmills 150 meters high together with mountain connecting roads and underground cables for tens of kilometers along the Borzhava River. Such a large-scale project threatens to destroy the valuable polony's ecosystem. The legal confrontation between the investor and the active public has been going on for several years. From a legal point of view, the main way of counteraction was to declare it illegal and cancel the opinion on environmental impact assessment (EIA). The argumentation and the chosen strategy of struggle mostly have an environmental-legal context, which is atypical for this kind of case, but it takes place entirely in the context of the general trend of the spread of the practice of judicial appeal of the violation of environmental rights in Ukraine. An equally interesting highlight of this case is the experience of applying to the Standing Committee of the Berne Convention in connection with the fact that Borzhava's captivity is included in the Emerald Network.

The plaintiff was the non-governmental organization "International Institute of Man and Global Studies "Noosphere", which demanded the annulment of the conclusion of the EIA of the planned activity "Construction of a 120 MW wind power plant on the territory of the Volovetska settlement council of the Volovetska district and the territory of the Berezniki, Dusynska, Nelipinska, and Tybavska village councils (outside settlements) of Svalyavsky district of Transcarpathian region", issued by the Department of Ecology and Natural Resources of the Transcarpathian Regional State Administration of Atlas Volovets Energy LLC. The lawsuit was based on a violation of the EIA procedure, in particular, *"violation of the public discussion procedure as a result of the unjustified disregard of the results of public participation and comments in the* EIA *assessment procedure; not taking into account the impact of the planned activity on the adjacent territories of the Mizhhirsky district and the territory of the nature reserve fund; lack of measures to protect and*

[49] Харитонова Т. Є., Григор'єва Х. А. Протидія розвитку вітроенергетики в Україні: правовий аналіз практики. *На сторожі земельного ладу: до 20-річчя Земельного кодексу України:* матеріали Міжнарод. наук.-практ. онлайн конф. (Київ, 26 листопада 2021 року). Київ: ФОП Гуляєва В.М., 2021. С. 77–80.

prevent the destruction of plant and animal species listed in the Red Book of Ukraine in the conclusion; disregarding the status of the territory of the planned activity as an object of the Emerald Network"[50]. In the first instance, the claim was satisfied[51], in the appellate court, the claims were rejected[52]. An important milestone in the consideration of this complex case was the adoption of the Resolution of the Supreme Court as part of the panel of judges of the Cassation Administrative Court dated April 13, 2022[53], according to which the conclusion of the Department of Internal Affairs was recognized as valid and the construction of the Borzhava wind farm was unblocked.

Interestingly, the problem of the development of the Carpathian region became the intersection of several defense strategies at once. In addition to the main environmental one, which was analyzed above, the administrative and legal one was additionally applied. Thus, in parallel, the issuing of a permit for the construction of a wind farm, carried out by the State Architectural and Building Inspection, was contested too hastily – until the moment of resolution of the main dispute regarding the legality of the conclusion of the State Inspection[54].

Another example of the application of an environmental and legal strategy to oppose the construction of wind power plants was the case regarding the construction of such a power plant in Odesa. Thus, the Public Organization "Mighty Kyivans" filed a lawsuit against Ovid Wind II LLC and the Ovidiopol District State Administration with a lawsuit to declare it illegal to cancel the order and invalidate the land lease agreement for the wind farm. Among the arguments of the lawsuit, the main ones can be singled out: a) violation of land legislation in terms of changing the purpose of land plots in the absence of a conclusion of the EIA, although such an assessment should have been carried out in view of the fact that there are

[50] Постанова Верховного Суду від 13 квітня 2022 року у справі № 260/771/19. URL: https://zakononline.com.ua/court-decisions/show/103944039 (дата звернення: 20.06.2023 року)

[51] Рішення Закарпатського окружного адміністративного суду від 18 березня 2020 року у справі № 260/771/19. URL: https://zakononline.com.ua/court-decisions/show/88498315 (дата звернення: 20.06.2023 року)

[52] Постанова Восьмого апеляційного адміністративного суду від03 листопада 2020 року у справі № 260/771/19. URL: https://zakononline.com.ua/court-decisions/show/92787005 (дата звернення: 20.06.2023 року)

[53] Постанова Верховного Суду від 13 квітня 2022 року у справі № 260/771/19. URL: https://zakononline.com.ua/court-decisions/show/103944039 (дата звернення: 20.06.2023 року)

[54] Постанова Восьмого апеляційного адміністративного суду від 02 вересня 2020 року у справі № 260/1058/19. URL: https://zakononline.com.ua/court-decisions/show/91353681 (дата звернення: 20.06.2023 року)

especially valuable soils in these territories (Part 3 of Article 3 of the Law of Ukraine "On Environmental Impact Assessment"); b) contrary to Art. 150 of the Land Code of Ukraine, the purchase of land plots were carried out precisely by the Ovidiopol District State Administration, although in accordance with part 2 of Art. 151 of the Land Code of Ukraine, approval of materials for locations of facilities on particularly valuable lands is carried out by the Verkhovna Rada of Ukraine. The decision of the Economic Court of the Odesa region rejected the claim on the following main grounds: a) the plaintiff did not prove the presence of particularly valuable soils on the land plots on which the construction of the wind farm is planned; b) violation of the common interest of the "interested public", whose representative the public organization – the plaintiff, considers itself to be – has not been proven; c) it has not been proven that the state authorities or local self-government bodies did not provide adequate protection of environmental legislation, and the filed lawsuit aims to exercise the powers of the state law enforcement agency, which does not meet the requirements of national legislation[55].

In general, it should be recognized that the environmental-legal strategy of opposing the construction of wind power plants does not seem to be quite successful within the framework of the existing judicial practice. In particular, the courts still have questions about the plaintiff's eligibility in the case of appeals by environmental organizations. At the same time, the only legal leverage that plaintiffs try to use in ca of this category is the search for procedural errors and omissions during the conduct of the EIA. That is, a huge layer of meaningful arguments regarding the negative impact on ecosystems in such ca is not considered and does not have proper legal significance. This approach generally corresponds to international practice and has its arguments. For example, N.R. Malysheva is convinced that *"the obligation to take into account the suggestions and comments of the public when making ecologically important decisions, which is recorded somewhat in different wordings in international treaties of Ukraine and its laws, including in the Law of Ukraine "On environmental impact assessment" should be interpreted in such a way that all public proposals must be studied, taken into account (that is, they cannot be ignored or unreasonably rejected) in the conclusion of the Environmental Impact Assessment, the public must be informed about the consideration its proposals or about the*

[55] Рішення Господарського суду Одеської області від 28 січня 2019 року у справі № 916/2272/18. URL: https://zakononline.com.ua/court-decisions/show/79687325 (дата звернення: 20.06.2023 року)

reasons for deviation"[56]. However, using the example of the development of wind energy, it can be seen that the implementation of modern legislation on EIA is often reduced to the ritual execution of a certain sequence of procedural actions, and not to a real analysis of the environmental impact of the planned activity. In this regard, the only thing that can be effectively challenged in court in such ca is the violation of the procedure for conducting the EIA.

Resistance from private individuals. The current structure of land use is not always ready for reformatting caused by the need to deploy investment energy projects. That is why wind energy sometimes becomes a field of collision between public and private interests, finding the balance of which is quite difficult. In the practice of recent years, there are examples of similar ca. Thus, during the construction of a wind power plant in the Mykolaiv region, one of the landowners of the adjacent plot refused to enter into a paid-term easement contract. Since the user of the plot of land provided for the construction of the wind farm could not use it for its intended purpose, the easement was established in court[57].

Analysis of practice shows that private individuals most often choose urban planning or land legal strategies to oppose the placement of wind turbines. The first illustration can be the appeal by a group of landowners of the urban planning documentation, which served as the basis for the deployment of the construction of the large-scale Tyligul wind farm in the Mykolaiv region. Thus, the landowners tried to recognize it as illegal and canceled the orders of the district state administration, which gave permission to develop a detailed plan of the territory and approved such a detailed plan. They are convinced that such a detailed plan is illegal, as it extends to their land plots. That is, the main strategy of the court appeal, in this case, was "town planning".

In the first instance, the claim was satisfied[58], but the appeal court changed the decision[59]. After the cassation review[60], the return of the case

[56] Малишева Н. Р. Від довкілля Землі до космічного простору. Київ: Норма права, 2023. 340 с. С. 128 – 129.

[57] Постанова Верховного Суду від 22 вересня 2021 року у справі № 325/329/19. URL: https://zakononline.com.ua/court-decisions/show/100179027 (дата звернення: 20.06.2023 року)

[58] Рішення Миколаївського окружного адміністративного суду від 16 вересня 2020 року № 400/3396/19.URL: https://zakononline.com.ua/court-decisions/show/100179027 (дата звернення: 20.06.2023 року)

[59] Постанова П'ятого апеляційного адміністративного суду від 02 грудня 2020 року у справі № 400/3396/19. URL: https://zakononline.com.ua/court-decisions/show/93503290 (дата звернення: 20.06.2023 року)

for reconsideration in the appellate court, [61]and review in the Supreme Court, the final decision was issued in favor of the WPP[62]. Analysis of this decision allows us to single out several important aspects. First, the court emphasized that the rights of the owners of land plots are not violated, since the detailed plan of the territory does not decide the question of ownership or disposal of the land. Secondly, within the scope of our research, it is important to note one of the arguments given by the plaintiffs in this case, namely: the absence, according to the data of the State Land Cadastre, of free land plots with an area of 35 thousand hectares in the specified area. At the same time, the Supreme Court emphasized that 35,000 hectares is a general area for design and research works, and directly under the placement of structures and the construction of wind turbines is provided 304 hectares. The need to develop a detailed plan of the territory for an area of 35,000 hectares is determined by the design features of the future wind power plant, and the point placement of wind turbines, which does not mean the construction of the entire territory[63]. Thirdly, the mere references of the plaintiffs to the violation of the procedure for public discussion of the detailed plan of the territory do not prove the illegality of the act contested by the plaintiffs and do not independently form an object of judicial protection. That is, procedural violations by themselves do not become grounds for recognition as illegal and annulment of the decision of a state body – it must be established how such procedural defects violate the rights of interested persons.

This category of ca of opposition to the construction of wind power plants can also include ca whose main strategy can be defined as land-legal. An illustration can serve as a dispute between LLC "Atlas Volovets Energy" and LLC "Taurus Property" in Transcarpathia. Thus, in order to build the already known wind farm on Borzhava, Atlas Volovets Energy LLC applied to the State Geocadastre Department in Zakarpattia Oblast for permission to develop a project for the allocation of a plot of land for long-term use (lease) with an approximate area 1 hectare state-owned agricultural

[60] Постанова Верховного Суду від 05 жовтня 2021 року у справі № 400/3396/19. URL: https://zakononline.com.ua/court-decisions/show/100155698 (дата звернення: 20.06.2023 року)

[61] Постанова П'ятого апеляційного адміністративного суду від 09 листопада 2022 року у справі № 400/3396/19. URL: https://zakononline.com.ua/court-decisions/show/107245028 (дата звернення: 20.06.2023 року)

[62] Постанова Верховного Суду від 23 лютого 2023 року у справі № 400/3396/19. URL: https://zakononline.com.ua/court-decisions/show/109161554 (дата звернення: 20.06.2023 року)

[63] Постанова Верховного Суду від 23 лютого 2023 року у справі № 400/3396/19. URL: https://zakononline.com.ua/court-decisions/show/109161554 (дата звернення: 20.06.2023 року)

land to change the target destination on the land of energy. Subsequently, a detailed plan of the territory was approved, according to which the predominant, accompanying, and permissible of territory, urban planning conditions and restrictions were established, and a sanitary and protective zone was defined. According to the data of the State Land Cadastre, the land plot of "Taurus Property" LLC is included in the sanitary protection zone of the planned wind farm. In this connection, the provisions of Part 5 of Art. 17 of the Law of Ukraine "On Energy Lands and the Legal Regime of Special Zones of Energy Objects", according to which *"the land management project regarding the allocation of a land plot for the location of an energy object, for which a special zone is established, is agreed only with the owners or permanent users of land plots located within the specified zone"*. Unlike the detailed plan of the territory, no protection zones or sanitary protection zones are shown in the land management documentation regarding the allocation of this land plot, and no approval was received from Taurus Property LLC. In this connection, the lease agreement for the land plot for the construction of the wind power plant was declared invalid[64].

Resistance from competitors. An objective feature of wind energy is the dependence on specific weather, climate and geographical conditions, which determine the expediency and profitability of the placement of the corresponding energy facilities. That is why it is not surprising that in Ukraine there are a lot of wind power plants competing for the right to produce "green" energy in a certain area. However, of course, disputed claims are "clothed" in completely different legal formulations. For example, in the Kherson region, the owner of an operating wind power plant, worried about the possible appearance of a competitor in the neighborhood, contested the order of the district state administration, which approved the detailed plan of the territory, indicating that this violated his interests as a land user of adjacent land plots. That is, an urban planning strategy was also chosen to resist the appearance of a new wind power plant.

Resistance from public bodies. There is practically no opposition to wind power from state authorities – on the contrary, most often they fully support and facilitate the investor. However, this mostly happens with a clear imbalance in the direction of economic priorities.

However, there are still ca when the construction of wind turbines is hindered by individual state bodies. For example, we can analyze the case regarding the Dolynskaya wind power plant in the Ivano-Frankivsk region. Thus, according to the case materials, in 2019 "Alternativa Energetica

[64] Постанова Верховного Суду від 17 вересня 2019 року у справі № 907/283/18. URL: https://zakononline.com.ua/court-decisions/show/84350356 (дата звернення: 20.06.2023 року)

Prykarpattia" LLC submitted to the Department of the State Architectural and Building Inspection in the Ivano-Frankivsk Oblast (DABI) a notice of the start of construction work on objects that, according to the class of consequences (responsibility), belong to objects with minor consequences. However, as a result of an unscheduled inspection of the DABI, a violation of the legislation was revealed, namely: the calculation of the definition of the class of consequences in the explanatory note to the project documentation was developed with violations and the class of consequences was underestimated to SS1. In this connection, DABI considered "Alternativa Energetika Prykarpattia" LLC to be guilty of the offense provided for in Clause 2, Part 2 of Article 2 of the Law of Ukraine "On Responsibility of Enterprises, their Unions, Establishments and Organizations for Violations in the Sphere of Town Planning" and imposed a fine for more than UAH 75,000. According to the results of the court proceedings, the compliance of the prepared project documentation with the current legislation was established, and the developer of the Dolyna WPP avoided fines[65].

In addition to opposition from ecologists, the public, private individuals, competitors, and some state bodies, wind energy sometimes encounters obstacles that are not specific, directed specifically against the construction of wind turbines. We are talking about such legal barriers, which are manifestations of separate general legal problems, which to a certain extent can inhibit the development of not only wind energy but also other industries.

A vivid example can be the situation in which "Ovid Wind II" LLC got into during the design and construction of a wind farm in Odesa. According to the concluded lease agreement, the investor received land plots for the construction of wind turbines. However, in order to start construction, he needed to additionally issue the right to use land plots under access roads. To its appeal, the LLC received a refusal and an explanation: since the plots of land in which the investor is interested still belong to the collective property of the collective agricultural enterprise (KAE) "Roksolana", no state bodies or local self-government bodies have the right to dispose of them. However, the problem was that the Roksolana KAE ceased its activities more than 10 years ago, and the State Act on the right of collective ownership of the land of this JSC was lost. In fact, as a result of this legal "trap", the construction of the wind farm was blocked. By the decision of the Economic Court of Odesa Region, the State Act (which does

[65] Постанова Восьмого апеляційного адміністративного суду від15 квітня 2021 року у справі № 300/555/20. URL: https://zakononline.com.ua/court-decisions/show/96508963 (дата звернення: 20.06.2023 року)

not physically exist, but the data about it has been preserved) was recognized as having lost its validity in connection with the liquidation of a legal entity[66]. This made it possible to start the necessary procedures for registration of the right to land plots of access roads to the future wind farm.

Thus, the WPP faced a general land-legal problem, when " *de jure remains collective ownership of part of the shared and unclaimed lands of former KAEs, although this is not provided for in the Land Code of Ukraine*[67]. "Although the problem of collective ownership is not directly related to the construction of wind turbines; it can still create legal obstacles for the construction of the relevant facilities. This example is just one illustration of the large array of similar general legal problems that prevent the normal development of wind energy relations.

Thus, several important conclusions can be drawn. First, the spread of wind energy in Ukraine objectively faces opposition from many subjects whose rights or interests may be violated as a result of the placement, construction, and operation of wind power plants. Such opposition, embodied in legal disputes, well illuminates the existence and, in some ca, the aggravation of the conflict of various public and private interests (ecological, economic, social). The relevant practice in Ukraine is still being developed, and in its structuring, understanding, and improvement, legal science should play a significant role.

Secondly, it is possible to highlight the following main legal strategies that are used in Ukraine to oppose the placement of wind turbines: land (based on violations of land legislation), urban planning (based on violations of urban planning requirements), environmental (based on violations of environmental norms), administrative (based on a violation of the administrative order, the procedure for carrying out certain actions, etc.). It should be emphasized that the environmental legal strategy demonstrates low efficiency. One of the reasons for this situation can be the methodology used during the development of legislation in the field of environmental impact assessment. As a result, the environmental-legal strategy of combating wind turbines is reduced to finding and proving the presence of formal violations in the conduct of the appropriate assessment, while the existence of a real environmental threat, i.e. the real content of the environmental impact assessment, remains outside of judicial review.

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[66] Рішення Господарського суду Одеської області від 12 жовтня 2018 року у справі № 916/1155/18. URL: https://zakononline.com.ua/court-decisions/show/77251860 (дата звернення: 20.06.2023 року)

[67] Носік В. В. Проблеми законодавчого забезпечення правових форм використання земель сільськогосподарського призначення колективної власності в Україні. *Вісник Національної академії правових наук України*. 2018. Т. 25. № 2. С. 72–82. С. 73.

Thirdly, ca of opposition to wind energy installations are classified depending on the interested parties: resistance from ecologists and the public; resistance from private individuals; resistance from competitors; and resistance from state authorities. At the same time, the analysis of practice showed that local state authorities and local self-government bodies practically do not oppose the development of wind energy, but on the contrary – often take the side of the investor[68].

4.4. Offshore wind farms: legal perspectives

Offshore wind energy, which occupies an increasingly important position in the world, is an important component of the energy transition and reducing dependence on traditional energy sources. As a country with a great potential for wind resources, sooner or later Ukraine will face the question of choosing its strategy for the development of offshore wind power plants – wind energy installations located in sea waters.

Offshore wind farms have a number of *advantages* that make them attractive for development:

– *great potential of wind resources*. Oceans and seas offer great potential for stable energy supply, as wind at sea is usually more stable and stronger, allowing for more efficient electricity generation;

– *less resistance.* The absence of obstacles in the form of buildings, forests, or mountains at sea allows the wind to move at an unlimited speed, which ensures greater productivity of the turbines;

– *environmental cleanliness*. Offshore wind farms do not emit harmful emissions into the atmosphere and do not pollute the environment, which makes them an environmentally safe source of energy.

Despite the positive features, offshore wind power plants also have their *drawbacks*:

– *high costs.* The construction and operation of offshore wind farms require significant costs related to engineering and technical works, transportation, installation and maintenance;

– *complex infrastructure*. The location of wind farms in open waters requires special infrastructure, such as offshore platforms, power transmission cables and cooling systems, which can be difficult to maintain;

– *lack of qualified specialists*. Despite the experience of wind equipment manufacturers, at the initial stage of market development, there

[68] Григор'єва Х. А. Протидія розвитку вітроенергетики в Україні: правовий аналіз практики (земельні, екологічні, містобудівні, кадастрові аспекти). *Юридичний науковий електронний журнал*. 2023. № 6. С. 246–250.

were problems with insufficient qualifications of companies and personnel for project development and transportation of installations to the open sea.

Currently, offshore wind energy is developing significantly in various countries of the world. Countries such as Denmark, Germany, Great Britain, the Netherlands and China are taking active measures to develop offshore wind energy. They develop special strategies, programs and regulatory mechanisms aimed at stimulating investment and supporting research in this field.

For example, Denmark has extensive experience in the development of offshore wind farms and is the world leader in the volume of offshore wind energy production. This has been achieved thanks to long-term support programs, a transparent regulatory framework and effective financing mechanisms. The development of wind energy is handled by the Danish Energy Agency, which closely cooperates with other authorities. Denmark also adopted the Energy Charter for the period until 2024, which provides for an increase in the share of renewable energy sources in total consumption to 55%. To achieve this goal, it is planned to build three offshore wind power plants with a total capacity of 2400 MW[69].

Great Britain is also successfully developing offshore wind energy and setting new records for connecting offshore wind farms to the electricity grid. The country actively promotes the development of infrastructure, provides support for energy projects and attracts investments in the field of offshore wind energy[70]. In the UK, the Department for Business, Energy & Industrial Strategy is responsible for implementing the offshore energy strategy, the Marine Management Organization (MMO) is responsible for developing plans for offshore construction, and the Crown Estate, which is part of this division, issues permits for offshore wind farms[71]. A Memorandum of Understanding exists between various government

[69] Norsk IndustriAS. Regulators and legislation for offshore wind in selected countries. URL: https://www.norskindustri.no/siteassets/dokumenter/rapporter-og-brosjyrer/leveransemodeller-havvind/leveransemodeller-havvind_hovedrapport_vedlegg-regulators-and-legislation-for-offshore-wind-in-selected-countries_dnv_2021-06-02.pdf (дата звернення: 06.07.2023).

[70] Українська вітроенергетична асоціація. Світовий прорив офшорної вітроенергетики. URL: http://uwea.com.ua/ua/article/mirovoj-proryv-offshornoj-vetroenergetiki/ (дата звернення: 04.07.2023).

[71] Norsk IndustriAS. Regulators and legislation for offshore wind in selected countries. URL: https://www.norskindustri.no/siteassets/dokumenter/rapporter-og-brosjyrer/leveransemodeller-havvind/leveransemodeller-havvind_hovedrapport_vedlegg-regulators-and-legislation-for-offshore-wind-in-selected-countries_dnv_2021-06-02.pdf (дата звернення: 06.07.2023).

agencies and organizations responsible for health, environmental, coastguard and marine casualty investigations[72].

On January 14, 2021, Poland adopted its first law on offshore wind energy in order to achieve the goal of the state program for the development of offshore wind energy – to achieve 28 GW of capacity by 2050. The first objects are planned to be commissioned by 2025[73]. The Polish Law: a) simplifies the procedure for obtaining permits for the construction of offshore wind power plants; b) installs a fuse to ensure the continuation of the project in case of non-compliance of some construction stages with the requirements; c) provides significant investments of 29 billion euros and the creation of up to 10,000 jobs according to expert assessments[74].

The domestic regulatory framework for the regulation of offshore wind energy should be divided into acts of international law and national legislation.

For example, one of the fundamental international legal acts is the UN Convention on the Law of the Sea of December 10, 1982[75,76], which gives the right to build offshore wind power plants in the exclusive economic zone and on the continental shelf. The exclusive economic zone (EEZ), in terms of the law of the sea, is a maritime zone extending from 12 to 200 nautical miles from the baselines of a country's coast. An EEZ is defined as an internal maritime zone where a state has special rights and jurisdiction over natural resources and economic activities such as fishing, oil and gas extraction, wind energy, research and environmental protection. Countries have sovereign rights over the resources within their EEZs, but they also have an obligation to preserve and protect the marine environment and ecological resources in these areas.

EEZs in two seas – Black and Azov – are important for Ukraine. Ukrainian territorial waters in the Black Sea are equal to 12 nautical miles, and the exclusive economic zone is 200 nautical miles from the coastline[77].

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[72] Memorandum of understanding between HSE, MCA and MAIB. 22.09.2021. URL: https://www.gov.uk/government/publications/memorandum-of-understanding-between-hse-mca-and-maib (дата звернення: 06.07.2023).

[73] Poland adopts historic Offshore Wind Act. 14.01.2021. Wind Europe. https://windeurope.org/newsroom/news/poland-adopts-historic-offshore-wind-act/ (датазвернення: 04.07.2023).

[74] Павлига А. В. Правові перспективи розвитку офшорних вітроелектростанцій в Україні. *Юридичний науковий електронний журнал.* 2022. № 6. С. 210 – 214.

[75] Конвенція ООН з морського права від 10.12.1982. URL: https://zakon.rada.gov.ua/laws/show/995_057#Text (дата звернення: 06.07.2023).

[77] Білоцький С. Д. Міжнародно-правове регулювання відновлюваної енергетики в рамках міжнародного морського права. *Актуальні проблеми міжнародних відносин*. 2012. № 108. С. 197–205.

The difference in their legal status is that the territorial waters fall under the full sovereignty of Ukraine, while the exclusive economic zone has limited sovereign rights, such as economic activities and fishing[78]. Therefore, subjects (legal entities, other states, and international organizations) who want to build wind power plants in the exclusive economic zone of Ukraine must obtain the appropriate permission.

The fate of the Treaty of December 24, 2003 between Ukraine and the Russian Federation on the legal regime of the Sea of Azov and the Kerch Strait is quite logical. Since this agreement did not contribute to the modern realities of the development of Ukrainian statehood, on February 24, 2023, the Verkhovna Rada of Ukraine denounced all agreements with the Russian Federation regarding the Sea of Azov.

The national legislation is a system of acts consisting of laws, resolutions of the Cabinet of Ministers of Ukraine, decisions of the National Committee of the National Committee of the National People's Republic of Ukraine, etc. Since offshore wind power plants are renewable energy sources, the main regulatory act in this area will be the Law of Ukraine "On Alternative Energy Sources" dated February 20, 2003[79].

However, an equally important legal act that establishes general environmental requirements for any activity, including and offshore wind energy, is the Law of Ukraine "On Environmental Protection" dated June 25, 1991[80]. It is this act that establishes requirements for environmental impact assessment and procedures for obtaining environmental permits for the construction and operation of offshore wind farms. Of course, the development of offshore wind energy in Ukraine has a significant potential to reduce greenhouse gas emissions and reduce dependence on fossil fuels, but potential negative impacts on the environment and biodiversity must be taken into account. It is important to carry out proper environmental assessments before construction, take into account the impact on marine flora and fauna, and ensure control over the efficient use of water resources.

A significant body of domestic legislation, that regulates the current issues of the functioning of alternative energy facilities, is made up of the decisions of the NCSEPU (National Commission for State Regulation of Energy and Public Utilities), which establishes tariffs for the production of electricity using wind energy and other economic conditions for wind power plants.

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[78] Павлига А. В. Правові перспективи розвитку офшорних вітроелектростанцій в Україні. *Юридичний науковий електронний журнал.* 2022. № 6. С. 210–214.

[79] Про альтернативні джерела енергії: Закон України від 20 лютого 2003 року. *Відомості Верховної Ради України.* 2003. № 24. Ст. 155.

[80] Про охорону навколишнього природного середовища: Закон України від 25 червня 1991 року. *Відомості Верховної Ради України.* 1991. № 41. Ст. 546.

The analysis of maritime practice also reveals the problem of the need to inform sea vessels during the laying and maintenance of power cables. In order to prevent incidents related to cable layers/maintenance fleet being hampered, as well as the need to adhere to the accuracy of charting of cables so that marine vessels do not damage the cable when anchoring, these conditions should be clearly spelled out and regulated in legislation.

Today, the offshore wind energy sector in Ukraine faces a number of strategic goals and challenges, such as the development of scientific and technological potential and the creation of a stable legal environment. At the same time, challenges related to the procedures for obtaining permits and licenses, financing and infrastructure require effective cooperation of government bodies, development of relevant legislation and support of investment potential. According to I. I. Doronina, the creation of a legal mechanism that simplifies and implements the work of the EU in this field is one of the key directions of development[81]. In general, offshore wind power plants have great potential for ensuring sustainable energy development in Ukraine, reducing dependence on fossil fuels and negative impact on the environment.

[81] Дороніна І. І. Нормативно-правове забезпечення розвитку відновлюваної енергетики в Україні. *Державне управління та місцеве самоврядування*. 2020. № 1. С. 31–43. URL: http://www.dridu.dp.ua/zbirnik_dums/2020/2020_01(44)/07.pdf (дата звернення: 06.07.2023).