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International legal guarantees for the exercise of the human and civil right to environmental information

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This paper raises an urgent issue of securing guarantees for the exercise of the right to access information on the state of the environment in international legal documents. Accordingly, the purpose of this paper is aimed at coverage and analysis of international legal norms that establish guarantees for the exercise of human and civil rights to environmental information, as well as access to information about the activities of state authorities. The method for investigating this issue is to analyse the current national legislation, which suggests that international legal norms meet their conditions in national regulations. The presentation of the general material includes the normative content of international legal documents that directly or indirectly relate to the implementation of the right of human and citizen to information and establish guarantees for the exercise of the right to environmental information, as well as the importance of media in covering the activities of state authorities. This paper analyses the state of exercise of such international norms in national legislation. Certain legal guarantees for the exercise of the right to

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receive environmental information are investigated. Examples of protection of the violated right of access to environmental information are given. To exercise the right to information, it is important not only to have the norms consolidated in the legislation, but also to have a system of guarantees and opportunities for their implementation, which should be provided by public authorities. International legal instruments establish only general approaches to the protection of rights, and their further development and consolidation is undoubtedly the responsibility of national bodies. However, over time, approaches to understanding environmental information, expanding its list, and subjects who have the right to receive it change, and therefore work in this area should continue for a wider opportunity to exercise the right of access to such information. The materials of this paper are of practical value for persons who were denied or made difficult in any form to obtain the desired information, having the right to do so per Article 50 of the Constitution of Ukraine, which stipulates that every person is guaranteed the right to free access to information about the state of the environment

Keywords: environmental law, right of access to environmental information, guarantees of the right of access to environmental information, international legal guarantees of the right of access to environmental information

Introduction

With the development of public relations since the mid-20th century, a special role has been given to environmental human rights in the international arena, which include the right to access information about the state of the environment. Numerous international documents stipulate that information about the state of the natural environment, events, and phenomena related to it is open and not subject to restrictions. However, in practice, there is sometimes resistance to providing such information to the interested public. To protect the interests of each individual, current and future generations who want to live in a safe environment, international legal documents provide numerous guarantees that allow them to effectively protect their rights at the stage of collecting information about the state of the environment,

since access to information is not an end in itself, but the latter is a necessary condition for high-quality public involvement in environmental decision-making and protection of violated rights.

The purpose of this study is to analyse the system of guarantees in the implementation of the right to access environmental information, which are consolidated in international documents, and the state of implementation of these norms in Ukrainian legislation.

Results and Discussion

Everyone has inalienable rights that are prescribed in international and national legislation. Thus, on December 10, 1948, the General Assembly of the United Nations adopted the first international legal document that

proclaimed basic human rights and freedoms – the Universal Declaration of Human Rights.

The provisions of the Declaration received their further development in many international documents: the Convention on the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Economic, Social, and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on Access to Information, Public Participation in the Decision-Making Process and Access to Justice on Issues Related to the Environment, etc. These documents are mandatory for the countries that have ratified them, including Ukraine, and are part of the national legislation.

The norms prescribed in them have found their further consolidation in Ukrainian legislation, specifically in the Constitution of Ukraine, the provisions of which are rules of direct action. This means that a person whose rights or interests are violated can file a claim with the court, referring only to the relevant provisions of the Constitution of Ukraine, while the absence of special legislation that would govern legal relations between the parties in detail is not an obstacle to the protection of violated rights.

At the same time, the consolidation of personal rights and freedoms in legislation is an important, but not the only sign of legal order in society.

To guarantee the opportunity to enjoy all human and civil rights and freedoms, the state must ensure the implementation of constitutional rights and freedoms, create a suitable mechanism for guaranteeing them [1]. The main element of this system is guarantees, which constitute numerous

particular means by which citizens can effectively exercise their rights and freedoms, protect them and secure them from offences. Their main purpose is to provide everyone with equal legal opportunities to acquire, exercise, secure, and protect subjective rights and freedoms.

The role and significance of guarantees of individual rights and freedoms is determined by the fact that they are essential factors in the economic, political, legal, cultural, and other spheres of society, create conditions for the real possibility of exercising individual rights and freedoms [2].

Based on the interpretation of this word, to guarantee means to give an assurance in something, to protect [3].

From a legal standpoint, scientists P.M. Rabinovych and M.I. Khavroniuk define guarantees of human and civil rights and freedoms as conditions and means, principles and norms that ensure the exercise, security, and protection of these rights, are the key to fulfilment of duties assigned to the state and other subjects of legal relations to exercise the constitutional rights and freedoms of human and citizen [4].

A.M. Kolodii and A.Yu. Oliinyk indicate that the guarantees of fundamental rights and freedoms can be characterized as a system of norms-principles, conditions and means that collectively ensure the exercise of constitutional rights, freedoms, and legitimate interests of a person and a citizen [5].

Considering the broad concept of this category, there are different approaches to classifying guarantees of human rights and freedoms.

The most common opinion on the classification and content of guarantees is the opinion of M.V. Vitruk, according to which all guarantees of rights and freedoms are divided into general social (general) and legal (special). General guarantees are objective material and spiritual conditions for the exercise of fundamental human rights and legitimate interests. These include economic, political, social, and spiritual guarantees [6].

Similar opinion is shared by P.N. Rabinovych, who divides guarantees of rights and freedoms into general social and special ones. To the general social guarantees, he refers economic, political, spiritual, and ideological ones. Special guarantees are legal norms established by the state that are aimed at ensuring human rights, as well as practical activities on the application of these norms and law enforcement acts of the corresponding authorities [7].

This position is also defended by V.F. Pohorilko, who divides guarantees into two main groups: general social and legal. In turn, among the general social guarantees, the scientist distinguishes between political, economic, social, and spiritual (cultural) guarantees, i.e., according to the social systems – political, economic, social, cultural (spiritual), which have developed and function in society [8].

This study considered only legal guarantees of human rights and freedoms to access environmental information.

As for the general definition of legal guarantees, scientists, namely P.O. Nedbailo, mentions the following – means provided by law, which directly ensure the lawful behaviour of subjects of social relations [9].

A.V. Mitskevych calls legal guarantees of citizens' rights the procedure for the activities of state bodies and institutions, public organizations, aimed at preventing and stopping encroachments on citizens' rights, restoring these rights and bringing those responsible for their violation to justice [10]. M.V. Vitruk understands legal guarantees as a set of conditions and means that ensure the factual implementation and full protection of the rights and freedoms of all workers and every person [6]. V.S. Nersesiants defines legal guarantees as a system of interrelated forms and means (normative, institutional, and procedural) that ensure proper recognition, protection, and implementation of certain rights corresponding to their obligations [11].

Nationally, the right to access environmental information is regulated and guaranteed by constitutional, administrative, environmental, and other information legislation.

Thus, according to Article 34 of the Constitution of Ukraine, everyone is entitled to freely collect, store, use, and disseminate information in spoken, written, or in any other form of their choice.

As for environmental information, Article 50 of the Constitution of Ukraine prescribes that everyone is guaranteed the right of free access to information on the state of the environment, on the quality of food and household items, as well as the right to distribute it. Such information cannot be classified by anyone.

At the same time, in terms of the protection of the violated right to free access to environmental information, the norms of the Constitution of Ukraine do not contain

a special procedure for their protection. In this case, Article 50 of the Constitution of Ukraine makes provision for general ways to protect violated and disputed rights, such as judicial protection, an appeal to the Commissioner for Human Rights of the Verkhovna Rada of Ukraine, a constitutional complaint, an appeal to the corresponding international judicial institutions or to the corresponding bodies of international organizations of which Ukraine is a member or participant, and the use of other means of protecting rights that are not prohibited by law.

Therewith, it should be considered that international treaties, the binding nature of which has been approved by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine (Article 9 of the Constitution of Ukraine), and therefore the norms and guarantees prescribed in them provide an opportunity to enrich the content of the national legislation of Ukraine with norms and principles that are unified and consolidated in international acts and reflect the achievements of world civilization in international law.

The main international legal acts that concern the implementation of the right of a person and a citizen to environmental information, guarantees of its provision should include the following: Universal Declaration of Human Rights; Convention on the Protection of Human Rights and Fundamental Freedoms; International Covenant on Civil and Political Rights; Okinawa Charter of the Global Information Society; World Charter of Nature [12]; Stockholm Declaration; Declaration of Rio de Janeiro [13] on environment and development; Aarhus Convention

on access to information, public involvement, and decision-making or access to justice in environmental matters [14].

Freedom of expression was given the highest status in the Universal Declaration of Human Rights by consolidating it in the preamble as one of the four inalienable freedoms: "People shall have freedom of speech and belief and shall be free from fear and deprivation" [15]. Freedom of expression is consolidated in the International Covenant on Civil and Political Rights as one of the fundamental democratic values necessary for the peaceful coexistence of nations. Everyone is entitled to freedom of belief and expression, which includes the freedom to hold one's personal beliefs without hindrance and the freedom to seek, receive, and impart information and ideas by any means and regardless of national boundaries.

The preamble of the central international regulatory document in the field of protection of environmental human rights – the Aarhus Convention, establishes that to ensure the opportunity to defend the right to live in an environment favourable for one's health and well-being, to fulfil this duty, citizens must have access to information, the right to take part in the decision-making process and access to justice on issues related to the environment.

According to the Aarhus Convention, the system of guarantees for access to environmental information covers the guarantee of the right to information; ensuring that state bodies have up-to-date environmental information at their disposal; its openness and accessibility; freedom of information

exchange; protection of a person from prosecution, oppression, responsibility for the exercise of the rights prescribed by the Convention; recognition of associations, organizations, or groups that contribute to environmental protection, guaranteeing free and open discussion of socially important issue in the field of ecology; access to justice in the event of non-receipt, wrongful partial or complete rejection, inadequate satisfaction of the request for information; determination of alternative ways of complying with the provisions of this Convention.

As for legal guarantees for the protection of the violated right of access to environmental information, Article 9 of the Convention makes provision for the obligation of member states to prescribe in national legislation such procedures that would allow independent and impartial review of the decision to refuse (full or partial) to provide information, inadequate satisfaction of such an application. Therewith, proceeding from a systematic interpretation of the Convention, a state can make provision for both one and several ways of protection in its national legislation. At the same time, the Convention stipulates that the bodies to review such decisions will have a sufficient level of independence and impartiality to objectively resolve disputes.

Understanding the value of information in its relevance, the Convention prescribes that member states should ensure prompt review of decisions, and access to justice should be free of charge or subject to a minimum fee.

In addition, a separate way to protect the right to information is prescribed by the Convention to appeal decisions in an

administrative procedure, which can be used as a means of pre-trial settlement of a dispute. The possibility of applying other remedies that would be adequate and effective is not excluded.

At the same time, the Convention does not make provision for a special international mechanism to protect violated public rights in the field of environmental rights. The only body that monitors compliance with the provisions of this Convention is the council of the parties, but it does not consider individual disputes.

In this regard, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the legislation of the European Court of Human Rights, the main international controller on these issues, are of immense importance for the development of both freedom of expression and freedom of information. It is the power of judicial coercion that is crucial in the development of both the rule of law and public relations in the field of access to information.

Although the ECHR does not directly make provision for the rights to a safe environment, issues of its protection are increasingly being considered by the European Court of Human Rights.

The decisions of the European Court of Human Rights form a precedent, according to which it is recognized that environmental pollution is the cause of violations of fundamental rights of citizens, such as the right to life, respect for private and family life. The most typical issues of ensuring citizens' access to justice in matters of environmental protection are the non-compliance with the

terms of consideration of cases; considerable legal costs (duty in property lawsuits, payment of expertise and expert services, payment of legal aid); lack of opportunity to obtain qualified legal and expert support; insufficient awareness of judges about legislation on environmental protection (especially international agreements) and on the rights of citizens and non-governmental organizations in this area; “narrow” procedural legal capacity of the public (especially in the context of opportunities for the public to challenge violations of environmental legislation in court and file lawsuits to protect the interests of an unlimited number of persons) [16].

To understand the nature of a democratic society in the field of freedom of information, one of the most important pieces is Article 10 of the ECHR, which holds a guarantee of the protection of freedom of expression and establishes that the right to freedom of expression includes the freedom to hold one’s opinions, receive and disseminate information and ideas without state interference and regardless of borders.

Notably, in the practice of the European Court of Human Rights has no cases that would relate exclusively to the violation of the right to access environmental information by the state because access to information is not an end in itself, but the latter is a necessary condition for high-quality public involvement in decision-making related to the environment and protecting violated rights.

Thus, when considering cases in the field of environmental protection, the court, along with violating Article 10 of the Convention, establishes that states do not comply with

Articles 2 (right to life), 6 (right to a fair trial), 8 (right to respect for private and family life), 13 (right to an effective remedy) and other articles of the ECHR.

Applying Article 10 of the Convention in the context of access to environmental information in the case of *Guerra and Others v. Italy* for the first time, [17] the European Court of Human Rights has indicated that freedom of information essentially prohibits the Government from preventing a person from obtaining information that others wished or could have communicated to the subject concerned. However, this article does not impose a positive obligation on the Government to collect and disseminate information on its own initiative. Considering this, the court concluded that Article 10 was not violated in this case. However, the lack of measures to reduce the level of pollution and the risk of accidents at the factory violated the applicants’ rights to respect for life and physical integrity.

To date, the European Court of Human Rights has also considered several cases against Ukraine related to environmental protection. There are few such decisions – these are the cases *Dubetska and others v. Ukraine* [18], *Hrymkovska v. Ukraine* [19] and *Dzemiuk v. Ukraine* [20]. In the specified cases, violations of Article 8 of the ECHR (rights to respect for private and family life) were established.

Conclusions

Thus, it can be concluded that to exercise the right to information, it is important not only to have the norms consolidated in the

legislation, but also to have a system of guarantees and opportunities for their implementation, which should be provided by public authorities. International legal instruments establish only general approaches to the protection of rights, and their further development and consolidation is undoubtedly the responsibility of national bodies. The analysis of the current national

legislation suggests that in general, international legal norms are reflected in national regulations. However, over time, approaches to understanding environmental information, expanding its list, and subjects who have the right to receive it change, and therefore work in this area should continue for a wider opportunity to exercise the right of access to such information.

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Міжнародно-правові гарантії реалізації права людини і громадянина на екологічну інформацію

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Анотація

У статті піднімається актуальне питання закріплення у міжнародних правових документах гарантій реалізації права на доступ до інформації про стан довкілля. Відповідно до цього, мета даної статті спрямована на розкриття та аналіз міжнародно-правових норм, які встановлюють гарантії реалізації права людини і громадянина на екологічну інформацію, а також на доступ до інформації про діяльність органів державної влади. Методом для дослідження цієї проблеми є аналіз чинного національного законодавства, що дає змогу констатувати, що міжнародно-правові норми відповідають своїм умовам у національних нормативно-правових актах. Виклад загального матеріалу включає до себе нормативний зміст міжнародно-правових документів, що прямо чи опосередковано стосуються реалізації права людини і громадянина на інформацію та які встановлюють гарантії реалізації права на екологічну інформацію, також значення ЗМІ у висвітленні діяльності органів державної влади. Проаналізовано стан імплементації таких міжнародних норм у національне законодавство. Здійснено дослідження окремих правових гарантій реалізації права на отримання екологічної інформації. Наведено приклади захисту порушеного права на доступ до екологічної інформації. Для реалізації права на інформацію важливим є не лише наявність закріплених у законодавстві норм, а й система гарантій і можливостей їх реалізації, яка має забезпечуватися органами публічної влади. Міжнародно-правові документи встановлюють лише загальні підходи до захисту прав, а їх подальший розвиток і закріплення безперечно покладається на національні органи. Однак, з плином часу змінюються підходи до розуміння екологічної інформації, розширення її переліку, суб'єктів, які мають право її отримати, тому робота на даному напрямку має продовжуватися задля ширшої можливості реалізації права доступу до такої інформації. Матеріали статті становлять практичну цінність для осіб, яким було відмовлено, або ускладнено у будь-якій формі отримати бажану інформацію, маючи на це право згідно зі ст. 50 Конституції України де передбачено, що кожній людині гарантується право вільного доступу до інформації про стан навколишнього середовища

Ключові слова: екологічне право, право на доступ до екологічної інформації, гарантії права на доступ до екологічної інформації, міжнародно-правові гарантії права на доступ до екологічної інформації