Law. Human. Environment

Journal homepage:
Law. Human. Environment, 13(2), 7-16

UDC 349.6
DOI: 10.31548/law2022.02.001

Features of Judicial Protection of Environmental Rights of Citizens in the European Court of Human Rights

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Article's History:

Received: 05.01.2022
Revised: 23.03.2022
Accepted: 24.04.2022

Abstract

The research is dedicated to the issue of the opportunity to apply to the European Court of Human Rights for the protection of environmental rights. The relevance of the study is explained by the fact that the global environmental crisis raises the issue of ensuring the human right to a safe environment and its protection. The necessity of conducting a separate study on this issue arose since the Convention for the Protection of Human Rights and Fundamental Freedoms, defining the rights it guarantees, does not separately allocate environmental rights. That is why the question logically emerges: can individuals apply to the European Court of Human Rights to protect a right that is not specifically mentioned in the Convention. The purpose of the study is to explore the legal framework and grounds for applications to the European Court of Human Rights. In the process of the research, legislative acts, international legal acts, and the activities of the European Court of Human Rights, which purpose is to protect, in particular, environmental human rights, were analysed. The methodological foundation of the study was established by the Aristotelian method, methods of analysis and synthesis and comparative legal method. The study explores both general theoretical aspects related to the protection of environmental rights and analyses the practice of courts in protecting environmental rights, particularly at the international level. The study established that the European Court of Human Rights admits applications from individuals for the protection of violated environmental rights, which it considers through the prism of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms – the right to respect for private, family life and the home of individuals. The practical value of the study lies in the fact that the research analyses national and international law and the practice of the European Court of Human Rights and provide conclusions that identify specific problems related to environmental protection activities and proposes specific mechanisms for overcoming them to avoid violations of citizens' environmental rights

Keywords: human rights, environmental pollution, right to respect for private and family life, justice, protection of rights

Suggested Citation:

Buzunko, O.A., & Krasnova, Yu.A. (2022). Features of judicial protection of environmental rights of citizens in the European Court of Human Rights. *Law. Human. Environment*, 13(2), 7-16.

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Introduction

The imperative, embodied in Article 16 of the Constitution of Ukraine, to guarantee "ecological security and maintenance of ecological equilibrium on the territory of Ukraine, overcoming the consequences of the Chernobyl disaster – the tragedy of planetary scale, preservation of the gene pool of the Ukrainian nation", demonstrates that the issue of ecological rights must be at the centre of the state attention.

Issues connected with the protection of citizens' environmental rights and the protection of the natural environment require significant steps from the Ukrainian authorities to efficiently combat the environmental situation that has developed in Ukraine. The acute environmental crisis in Ukraine is highlighted by the Law of Ukraine "On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the period up to 2030" [1].

One of the methods of combating the current situation in the environmental sphere is the appeal of citizens for the protection of their rights in court. However, the judicial system is currently undergoing reform, which results in a shortage of staff and, consequently, lengthy court proceedings, in particular, to protect violated environmental rights. Occasionally, there are cases where no judge is available in court – and citizens are not able to defend their violated rights at all.

However, despite all these problems, the judicial system, in one way or another, copes with the challenges it faces and defends the violated environmental rights of citizens. However, there are cases where citizens turn to the European Court of Human Rights for protection of their rights if they believe that their rights have not been properly protected at the national level.

Considering the relevance of the issue, the scientific community has investigated the environmental protection issues in the practice of the European Court of Human Rights and its impact on the judicial practice in the sphere of environmental rights protection of citizens in Ukraine.

Thus, H. Anisimova and Ie. Kopytsia conducted a study on the role of courts in the protection of environmental rights in the context of the national policy of Ukraine. The study suggests a restructuring of Ukraine's modern judicial system that will ensure the speedy and efficient handling of environmental cases, which should include a reasonable timeframe for consideration of cases and a clear impact of judicial decisions on the further improvement of environmental public policy [2, p. 164-176]. M.V. Krasnova and Yu.A. Krasnova explored the theoretical, legal and practical aspects of the implementation and protection of environmental rights of individuals. Scholars have exposed the foundations that have contributed to the establishment of this institution, identified the mechanisms by which what is outlined in the paper can be implemented and outlined the protection of human legal options in the field of resource use, environmental protection and security in the environmental sphere [3].

The relationship between human rights and environmental protection was established by D. Shelton, who concluded that human rights depend on environmental protection, and environmental protection depends on the exercise of existing human rights [4]. E. Mykhajlova-Stratilati explored the case law of the European Court of Human Rights on environmental issues and access to justice at the level of the mentioned court [5].

The work of Jean-François Brakeland on access to justice in environmental matters at the European Union level cannot be ignored. In his opinion, the European Union law on access to justice in environmental matters would allow the public to better control the implementation of the Union environmental law [6].

K. F. Braig's research on the European Court of Human Rights' jurisprudence on the right to clean water and sanitation is interesting. This study explores the said court's jurisprudence on the right to clean water and sanitation using two methods of interpretation, namely the "living instrument" doctrine and the "practical and efficient" doctrine. The European Court of Human Rights has recognised that a breach of the state's obligation to respect the water right may amount to a violation of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms on inhuman or degrading treatment. In addition, the Court has held that a State may be liable for a violation of Article 8 of the Convention, namely the right to respect for private and family life [7].

B. Peters studied the case law of the European Court of Human Rights on environmental protection. The author analysed the court practice on this issue and, in general, concluded that such protection by the court is efficient [8].

In her work, I. Leijten analysed a particular case and concluded that efforts should be made to ensure that human rights "fit" climate change cases and that courts can provide efficient protection in this regard [9].

As it appears, the issues of environmental rights protection at the level of the European Court of Human Rights were dealt with by both Ukrainian and foreign scientists. Undoubtedly, many contributions have been delivered by scholars, but the authors of this study, through an analysis of the practice of the European Court of Human Rights in cases initiated against Ukraine, demonstrate the problems that exist at the national level and propose specific ways of tackling them.

The purpose of the research is to explore the issue of the possibility for citizens to appeal to the European Court of Human Rights through the prism of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. To obtain the purpose, national and international legislation was analysed, and the case law of the European Court of Human Rights and academic research on the issue were examined.

Materials and Methods

In preparing this research, the authors considered the legal framework of Ukraine (the Constitution of Ukraine, the Law of Ukraine "On the Execution of Judgments and Application of the Practice of the European Court of Human Rights", the Law of Ukraine "On Environmental Protection", the Law of Ukraine "On the Basic Principles (Strategy) of State Environmental Policy of Ukraine until 2030", etc.), international law (the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, etc.), and the case law of the European Court of Human Rights has been analysed.

This work is a theoretical study, connected with practical aspects. Using the method of analysis and synthesis, the legal framework that regulates the relations in the studied issue is examined. The Aristotelian method allowed identifying the content of legislative acts related to the protection of environmental rights in the European Court of Human Rights. Using the comparative legal method is conditioned upon the necessity to compare the regulation of the issue of judicial protection of environmental rights in domestic and international legislation in the investigated area, considering the European integration intentions of Ukraine and implementing its international obligations.

Results and Discussion

Ukraine is at the stage of political, organisational and legal development. This development affects all spheres of life in society, including the activity of the judicial branch of power, designed to protect the rights, freedoms and interests of citizens, the interests of society and the state. However, such development does not always occur within the framework of civil and democratic principles.

The Constitution of Ukraine guarantees the right of every person to protection by the court, which is one of the fundamental human and civil rights. The judicial system and the judiciary in Ukraine encounter specific challenges and problems from time to time. The test for the judicial system and citizens was the armed aggression of the russian federation against Ukraine, when there were conditions under which some judges stopped performing their duties and courts stopped their activities. Currently, it is still difficult to assess the extent to which citizens remain limited in protecting their violated, disputed or unrecognised rights and interests. Before this event, the COVID-19 pandemic was a challenge. According to Article 64 of the Constitution of Ukraine, restriction of the right to go to court for the protection of one's rights is not allowed. During the period when the Government introduced quarantine restrictions and judges and court staff were diagnosed with COVID-19, the courts continued to administer justice. Currently, the judicial system is in a state that leaves much to be desired: there is a large number of vacant positions of judges, a lack of proper funding for the judicial system, and a lack of appropriate technical equipment and expenditures on the information. The imperfection of the system, which is designed to defend the rights of citizens, according to the Ombudsman, is indicated by the number of reports received by the Ukrainian Parliament Commissioner for Human Rights in 2020 – 10,426 [10, p. 91].

The statement that has failed to defend environmental rights and legitimate interests in domestic courts, more and more Ukrainian citizens are applying to the European Court of Human Rights (further – the ECHR, the Court) will not be groundless. This right is guaranteed by Part 4 of Article 55 of the Constitution of Ukraine, according to which every person, after exhausting all national remedies, has the right to apply to the relevant international judicial institutions or organisations if they believe that their rights or freedoms require protection. Such right can be exercised only in those international judicial institutions or organisations of which Ukraine is a member [11]. Thus, it can be concluded that the Basic Law of Ukraine explicitly provides for the right of citizens to apply to the ECHR. But this right is not unconditional, and the possibility of its full implementation is associated with the observance of specific conditions, which will be discussed below.

M.V. Krasnova states that "the courts, as representatives of one of the branches of state power in Ukraine, owe the citizens of this country a proper open, objective, legal, impartial consideration of cases with their participation, especially in terms of protection of their violated environmental rights"[12, p. 51]. Despite this statement of M.V. Krasnova, notably, the analysis of decisions based on the results of consideration of cases in the field of protection of environmental rights of citizens, the courts in the vast majority ensure proper consideration of this category of cases and defend human rights.

The Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (hereinafter – the Convention) was ratified by Ukraine in 1997. By ratifying the Convention, Ukraine has thus agreed to and ensured its application in the territory of Ukraine; without concluding any additional agreement, it has confirmed the Court's jurisdiction in the areas that concern issues of interpretation and application of the Convention [13]. Notably, ratification of the Convention has become a powerful instrument in matters relating to the protection of citizens' environmental rights, in particular.

According to Article 34 of the Convention, the Court accepts applications from all individuals, non-governmental organisations or groups of individuals if they are victims and in case of violation of their rights [14]. It emphasises that the Court does not ignore the issues raised by non-governmental organisations, as they are an efficient lever of influence on the state's activities in case it ignores the requirements of environmental legislation.

Considering that by ratifying the Convention, Ukraine assumed the obligation to implement the Court's

judgments in cases against Ukraine and considering the necessity to eliminate the reasons why Ukraine violated the Convention, in 2006, the Ukrainian legislature adopted the Law on Enforcement of Judgments and Application of Practice of the European Court of Human Rights, according to which ECHR judgments are obligatory for our country; Ukrainian courts apply the Convention and the Court's jurisprudence in cases, as they are sources of law [15]. Such step was a breakthrough in the possibility of applying the Court's decisions as a source of law.

Notably, environmental rights and obligations of citizens should be implemented in particular legal forms:

1) the rights of authorised persons should be used "as part of active environmentally oriented behaviour", meaning participation in hearings (in particular public hearings), meetings (including public meetings) when there is a discussion on environmental impact assessment materials for dangerous activities, in the case of "strategic environmental assessment of national programmes, plans", etc;

2) as the authorised persons have duties which are defined at the national level, they have to perform them: to protect the environment, to compensate for damage if it occurs, to pay the appropriate charges if pollution occurs, to be liable if offences are committed, etc;

3) although specific parties are holders of rights, they are obliged to comply with the requirements that exist in the environmental field [12, p. 52].

By ratifying the Aarhus Convention [16] (Law of Ukraine "On Ratification of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters", 6 July 1999, No. 832-XIV [17]), Ukraine guaranteed the right of citizens to apply to international courts. Thus, Ukraine is gradually orienting its actions to establish appropriate conditions for its citizens to live in a safe environment.

It is essential that according to Article 35 of the Convention, the Court has the power to examine the case only if all remedies have been exhausted at the national level and the person applies to the Court within 4 months from the date of the final decision in the country against which they apply to the Court [14].

By recognising the Court's case law as a source of law in our country, the legislature has thus established the conditions for the implementation of human rights standards in the Ukrainian legal system, which are based on the European community. Embodying the further development of the rule of law, the legislator enshrined that the decisions of the ECHR, which were made in cases against one of the countries that is a member of the Council of Europe, are binding on the courts in Ukraine, that is, they can be legal precedents [18]. It has significantly expanded the possibility of applying in jurisprudence both the conclusions and legal positions adopted in cases against Ukraine and those adopted in cases against other states. Considering that in the environmental field few judgments have been issued against Ukraine, thus, using the positions expressed in other Court decisions provides an opportunity to be proactive and avoid the mistakes made by authorities in implementing their public policies in the environmental field in other countries.

Sharing the above opinion of H. Vronskaya, however, it cannot be agreed with A. Babich's conclusions that the ECHR conclusions for the authorities in the country are not obligatory but recommendatory. If an efficient legal system is implemented, if controlling bodies are established that are sufficiently independent, and if citizens are allowed to influence specific decisions in the state – the situation may change for the better [19, p. 164-165].

Exercising the right granted by the Constitution of Ukraine and international law, citizens of Ukraine are increasingly applying to the Court.

To ensure the rule of law and the protection of the rights of citizens arising in environmental legal relations, the courts must be accessible and efficient for citizens to protect those rights that occur, in particular in the fields of environmental protection, management of natural resources etc.

International legal acts (in particular, the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights, the 1966 International Covenant on Economic, Social and Cultural Rights or the Convention) do not contain any references to human rights in the sphere involving environmental legal relations, nor do they provide for the protection of environmental rights but the international community is aware of the extreme significance of environmental issues and the link between environmental conditions and human rights [20, p. 67].

The analysis of the studied ECHR decisions demonstrates that in the issue of environmental rights and environmental protection, applicants focus on Articles 2, 6, 8, 10, 13, 34, 35 of the Convention [14].

The ECHR considered the case "Guerra and Others v. Italy" (application no. 116/1996/735/932, judgment of 19 February 1998), which concerned the danger to the environment and the welfare of the population. By the circumstances of the case, in 1988, the enterprise, which was engaged in the production of mineral and chemical fertilisers, received the status of a "high-risk" enterprise (this meant that the enterprise had a risk of large-scale accidents in specific areas of industry with danger to the environment and the welfare of the population living in a particular area). The persons, who appealed to the court, stated that during its operation, the plant emits a significant amount of gases, which may result in chemical reactions with emissions of explosive hazardous toxic substances (sulfur dioxide, nitrogen oxide, etc.). The government did not deny these circumstances. The applicants considered that there had been a violation of several articles of the Convention and asked for just satisfaction [21, p. 71-72].

Consider this case, analysing the relevant international provisions.

The Convention guarantees everyone "the right to freedom of expression" (Article 10) [14]. However, the court concluded that Article 10 (namely the protection it affords) has a preventive function in respect of possible violations of the Convention where there is substantial damage to the environment, and Article 10 applies even before the individual's right to respect for privacy, and family life or right to life has been violated, thus, Article 10 cannot be applied in this case [21, p. 83].

Article 8 of the Convention guarantees everyone "the right to respect for his private and family life" (Article 8) [14]. The Court concluded that the State, which was the respondent, in this case, had failed to perform its obligations to ensure the right of the applicants to respect their private and family life, thus violating Article 8 of the Convention [21, p. 86].

Accordingly, the Court concluded that it was not required to assess the applicants' arguments on the violation of Article 2 of the Convention ("everyone's right to life should be protected by law"), as the Court had already concluded that there had been a violation of Article 8 of the Convention and that this was sufficient to protect the applicants' rights [21, p. 86].

The ECHR decided that Italy should pay each of the applicants 10,000,000 Italian liras within three months as compensation for non-pecuniary damage suffered, subject to a 5% annual interest rate to be paid in the event of failure to comply with the Court's decision on non-pecuniary damage within the applicable period [21, p. 89].

The activity of the ECHR demonstrates that the court, while considering the case, was guided by Article 8 of the Convention, according to which everyone has the right to respect their private and family life, their home and correspondence. As a general rule, authorities may not interfere with the exercise of this right, but it may occur in exceptional cases, based on law, when it is in the public safety or national interest, or when it is essential to protect the economic welfare of the country, or to prevent criminal offences, to protect the health or morals or rights and freedoms of individuals [14].

In addition, this is confirmed by the case "Lopez Ostra v. Spain" (case No. 41/1993/436/515, judgment of December 9, 1994). In this case, the essence was that in city of Lorca there are many enterprises whose activities are connected with the production of leather. Several workshops had established a water and waste treatment plant on communal land, but it was located 12 metres from the applicant's home. When the plant started operating, gases, specific fumes, and contamination began to be emitted, resulting in a deterioration of public health and causing inconvenience to residents of the mentioned town, including residents of the neighbourhood where the complainant lived. The local authorities resettled the residents of the quarter and provided them with free housing for 3 months in 1988. After this period the applicant and her family returned to their home, where they lived until February 1992 [22].

Having failed before the Town Hall, the Administrative Chamber of Murcia, the Supreme Court of Justice, to which Ms López Ostra appealed, and the Constitutional Court as the court of last resort (to which she had lodged her complaint), the case was referred to the Court by the European Commission of Human Rights on December 8, 1993. Having examined the evidence available in the case, the Court recognised that there had been a violation of Article 8 of the Convention [22].

In exploring the specifics of the application of Article 8 of the Convention when protecting citizens in the environmental sphere, L.A. Kalishuk concludes that neither Article 8 nor other provisions of the Convention at the official level recognise and guarantee both environmental rights of citizens in general and the right to an environment that is safe for the life and health of citizens, which would compromise the possibility of protecting these rights at all before the Court. However, the examples of applications to the Court and the analysis of the decisions issued in the categories of cases under consideration suggest a close connection between the right to a safe environment for life and health, which is guaranteed by national environmental legislation, and the right to respect for private and family life, which is set out in Article 8 of the Convention, in that environmental pollution may affect the welfare of persons in a way that would deprive them of the enjoyment of their home in a way that would harm their livelihood. It confirms the Court's recognition of the right to the environment that will be safe for life and health as a derivative right, which is evident from the provisions of Article 8 of the Convention [23, p. 79].

In such situations, the Court's objective, as stated in the judgment of the Kharkiv Administrative Court of Appeal of July 9, 2018 in case No. 816/117/18, is to assess whether the state has implemented all sufficient measures to ensure the protection of the applicant's rights under Article 8 of the Convention. In the case when there are provisions regulating environmental relations at the level of national legislation, non-compliance with these provisions may be considered as a violation of Article 8 of the Convention. In addition, the approaches in evaluating the State's responsibility under article 8 of the Convention in cases involving the protection of environmental rights are broadly similar, regardless of whether the case is to be judged in terms of the State's positive obligation to introduce measures necessary to guarantee the rights of the applicant under Article 8, paragraph 1, of the Convention, or in terms of the justification under Article 8, paragraph 2, of the Convention for "interference by public authorities". Where public authorities have been obliged by a court decision to act in a specific way, but the decision has been ignored or not implemented for a long period, the ECHR may hold the state responsible, as the guarantees available under Article 8 of the Convention may become inoperative ("Taşkin and Others v. Turkey") [24].

Notably, although Article 8 of the Convention does not explicitly mention the possibility of applying to the Court for the protection of citizens' environmental rights, the grounds for such an application can be identified in both domestic and international legal provisions. Such provisions, in particular, are the following:

- The Constitution of Ukraine, according to which everyone has the right to an environment that is safe for their life and health, the right to compensation for damage caused by the violation of this right (Article 50); everyone has the right to appeal to international judicial institutions or organisations of which Ukraine is a member or participant, to defend their rights and freedoms if they have used all national legal remedies (part 4 of Article 55) [11];
- Law of Ukraine "On Environmental Protection", according to which Ukraine guarantees the implementation of those rights in the field of environmental legal relations, which are provided by the legislator to citizens (part 1 of Art. 11), in the case of the international treaty ratified by Ukraine, provides rules that vary from the legislation of Ukraine on environmental protection, the rules provided by the international treaty are applied (part 2 of Art. 71) [25];
- The Law of Ukraine "On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the period up to 2030", according to which one of the main purposes of Ukraine is to ensure the rights and obligations of individuals in the field of environmental legal relations, access to justice in environmental protection and natural resource management [1];
- Universal Declaration of Human Rights, according to Article 8 of which everyone has the right to a remedy, which must be efficient and implemented by national courts [26];
- Convention:

– The European Court of Human Rights should be established to ensure that the signatory countries comply with their obligations under the Convention and its Protocols (Article 19).

– All issues relating to the interpretation and application of the Convention and the Protocols thereto should be under the jurisdiction of the Court (Article 32).

– The Court has jurisdiction to entertain the case when the remedies granted at the national level have been exhausted and within four months from the date of the final decision (Article 35, Protocol No. 11) [14].

Thus, the legislator (both by adopting separate laws and by ratifying the Convention) has established a fairly broad foundation for the possibility of protecting individuals' rights and legitimate interests in the field related to environmental safety.

Thus, justice has a crucial role to perform in addressing environmental human rights issues. In this context, everyone should be provided with free access to justice, including appealing court decisions to higher instances. According to the legal position of the ECHR, the principle of the rule of law and generally accepted conceptions of justice, national courts should presume the existence of positive obligations of the state in the field of environmental human rights protection, even if such obligations are not explicitly stated in the law, as it is the inaction of public authorities and/or lack of proper state regulation that results in violations of environmental human rights [27, p. 176]. The authors of the research support the opinion expressed by D.W. Jiga that it is the inaction of public authorities that frequently results in violations of the environmental rights of citizens. Looking ahead, the Court's case law on cases brought against Ukraine demonstrates this. Hopefully, allowing the legislator to use as a source of law decisions issued in cases initiated against other countries, as discussed above, will allow Ukraine to avoid specific mistakes in the future.

Currently, everyone can apply straight to the Court, which is, admittedly, a strong guarantee of citizens' rights in the environmental field. However, the Court's jurisdiction is related to the interpretation and application of the Convention and its Protocols, and there is no mention of environmental rights at all (and there is no explicit connection between human rights and the state of the environment in which they live). However, following the practice of decision-making by the Court, it can be concluded that such a connection can be observed [28, p. 371].

Based on an analysis of ECHR judgments, in particular in the cases "Dubetska and Others v. Ukraine" and "Fadeeva v. Russia", D.V. Jiga concludes that national courts and other competent authorities repeatedly encounter difficulties exactly in establishing the factual circumstances of the case, proving the fact of interference in the private life of a person and its connection with an environmental "irritant" which has a specific level of danger. Considering this, methods and means of proof in cases involving environmental human rights must be developed and established in Ukrainian law. Such evidence may include, among others, decisions of public authorities and local government on the specific situation of the person whose environmental right has been violated; and reports and studies performed by both public and private institutions. By analogy, this evidence should be evaluated by the court in the aggregate from the standpoint of its admissibility, relevance and reliability [27, p. 177]. The authors of this study agree with the position expressed by D.W. Jiga, as the issue of proving harm caused in environmental legal relations has its specific features, and evidence often disappears over time (considering their specifics), while consequences remain. And for establishing a cause-and-effect relationship, sometimes the evidence is not enough. Thus, while supporting the idea that evidence in such categories of cases could be the decisions of competent authorities in particular situations, in addition, it would be advisable to establish short time limits for such decisions, which would ensure that specific factual circumstances can be fully recorded to ensure that such decisions have the status of appropriate evidence in the future.

Unfortunately, an analysis of the Court's rulings demonstrates that the number of cases related to the protection of environmental rights is increasing. Currently, there is every reason to conclude that in the absence of an efficient mechanism for the protection of environmental rights at the national level, the number of such cases will only increase. In general, the ECHR considers the state as the entity primarily responsible for ensuring the legal regulation of the protection of environmental human rights. Thus, for the adoption of efficient legislation in the field of protection of environmental human rights, states should consider the practice of the ECHR in this field [29, p. 150].

Currently, the ECHR has already considered several cases against Ukraine concerning environmental protection and environmental rights of citizens. Considering their small number, consider them. In particular, in the judgment in the case of "Dubetska and Others v. Ukraine", Application No. 30499/03, concerning the application instituted by the Court against Ukraine on September 4, 2003 under Article 34 of the Convention, 11 Ukrainian nationals stated that the authorities had failed to protect their homes, and, thus, their private and family life, from pollution caused by two industrial plants, which was excessive and therefore the Court held that there had been a violation of Article 8 of the Convention. Following the examination of the case on February 11, 2011, the Court awarded the applicants the amounts they requested: one family – 32,000.00 euros, the other – 33,000.00 euros. In making its decision, the court considered various factors, in particular, the duration of the situation that resulted in the appeal to the court. In addition, in paragraph 142 of the judgment, in this case, the Court draws attention to "the complexity of issues relating to environmental policy, which results in the role of the Court being mainly subsidiary". However, when the issues concern the national policy, the Court first of all ascertains whether "the decision-making process was fair", and occasionally (in some cases) may "review the substantive conclusions of the national authorities" [30].

In the case "Grymkivskaya v. Ukraine" (application No. 38182/03, judgment of October 21, 2011), the ECHR established a violation of Art. 8 of the Convention as there was no balance between the rights of the person applying to the Court for protection and the public interest: the state failed to prove that, before the road was used as a motorway, an environmental impact study was performed that would have been comprehensive and complete in this case; Ms Grimkovskaya was practically deprived of the opportunity to influence in any way key decisions relating to using the road as a motorway (which passed through the street where she lived). Considering the case, the Court held that Article 8 of the Convention had indeed been violated in this case [31].

In the case of "Dzemiuk v. Ukraine" (application No. 42488/02, judgment of February 4, 2014), Dzemiuk referred to a violation of Articles 6 and 8 of the Convention, as a cemetery was established near the house where he lived despite court ban on such location (38 meters from the house). Although Article 8 of the Convention is mainly designed to protect individuals from arbitrary encroachment by the state apparatus, it may provide for the adoption by the competent authorities of measures designed to ensure respect for private life and home. In this case, the Court concluded that there had been a clear violation of Article 8 of the Convention, as the authorities continued to violate the proximity of the cemetery to the applicant's house, although the court had prohibited such actions. Violation of the provisions of environmental legislation existing at the national level is perceived by the Court as a violation of Article 8 of the Convention [32].

Thus, the above list of environmental cases demonstrates that the ECHR, accepting a case concerning the protection of violated environmental rights, considers it by Article 8 of the Convention. And here it is hard to exaggerate the significance of such an approach of the Court to the issue of the possibility of protecting environmental rights in the Court. It can be stated that in the absence of such a so-called "creative" approach to the interpretation of Article 8 of the Convention, there could be no discussion about the protection of environmental rights at the level of the ECHR.

Based on the analysis of the Court's activity, V.V. Kovalenko concludes that the Court can recognise the violation of citizens' rights in environmental legal relations within the framework of Article 8 of the Conventio The court must examine whether the state was actually aware of the problem, whether it failed to act, whether there was a significant impact and substantial damage. As the Court's practice demonstrates, "the dynamic interpretation of the Convention enables the ECHR to constantly define updated approaches to the protection of environmental rights". The Court does not interfere in the national policy explicit but only identifies specific violations, thus, Ukraine should be guided by the conclusions reached by the ECHR in its judgments to develop guarantees of respect, protection and restoration of human rights in the field of environmental security [33, p. 455].

Indeed, an analysis of the Court's judgments in cases against several countries demonstrates that the ECHR has in all these cases established precisely a violation of Article 8 of the Convention and has allowed applications to be examined through the very prism of a possible violation of the right to respect for private, family life and the home of individuals. Notably, the low number of cases and decisions against Ukraine indicates that, at the national level, the state is generally coping with the issues that arise in the area of protecting citizens' environmental rights. However, the analysis of the judgments against Ukraine demonstrates that the issues have a problem that can be divided into two notional areas: 1) improper protection of environmental rights by state authorities at the pre-trial level, i.e. inappropriate implementation of environmental protection

activities (where there is a failure to implement specific decisions taken – in the cases "Dubetska and Others v. Ukraine" and "Grimkovskaya v. Ukraine", the decision concerning the eviction of applicants); 2) rejection of national court decisions by the authorities and abuse of power (the case "Dzemiuk v. Ukraine" – the court decided that a council decision which allocated a specific plot for building a cemetery was illegal, but subsequently the local council decided again under the same conditions to transfer the same plot for building a cemetery).

Admittedly, the existing judgments of the Court in cases against Ukraine establish case law and define the gaps that exist in this area, thereby demonstrating what the state should consider when developing and implementing national policy in the field of environmental legal relations. The authors of the study consider it possible to propose the implementation of various measures that strengthen the legal awareness of decision-makers in the field of ensuring the right to a safe environment (lectures, training, seminars, etc.). In addition, consideration should be given to the necessity of short time limits for the competent authorities to decide on specific situations relating to the protection of citizens' environmental rights since the analysis suggests that the issues before the Court were sometimes decided over more than a decade ago. The authors of the research proposal to strengthen the liability of officials who abuse their power or official position (which occurred in the circumstances specified in the judgment of the Court in the case "Dzemiuk v. Ukraine"). In the field of environmental rights protection, the establishment and operation of an environmental court are very relevant, in the author's opinion, whose efficient work will contribute to the protection of individuals' rights to a safe environment and thus reduce the number of applications to the ECHR, but this is the subject of a separate study.

Conclutions

The analysis of judicial protection of the environmental rights of citizens in the Court demonstrates that the Court serves as a guarantor of the protection of the environmental rights of citizens. Guided by Article 34 of the Convention, the ECHR accepts applications from Ukrainian citizens in case of violation of their rights. However, a person (the applicant) can only apply to the ECHR when all domestic remedies have been exhausted and only within four months from the date of the final decision, which will ensure that the case can be accepted by the Court for examination (Article 35 of the Convention).

In the absence of a provision in the Convention and its Protocols that provides for a violation of environmental law, the ECHR, has accepted the case, and will examine it by Article 8 of the Convention, "Right to respect for private and family life". The analysis suggests that the Court does not pursue a perfunctory approach in cases involving the protection of environmental rights but delves more deeply into the spirit of the individual's right to respect for private and family life, thus enabling human rights to be fully protected.

The activity of the ECHR is of great significance for the judicial practice in Ukraine, and its decisions urgently indicate the necessity of changes in the activities of public authorities and domestic courts, to which citizens apply to protect environmental rights.

The results of the study demonstrated gaps and imperfections in the protection of environmental rights at the national level. To overcome this, the authors of the study suggest:

- to introduce various measures that strengthen the legal awareness of decision-makers in the field of ensuring the right to a safe environment (lectures, training, seminars, etc.);
- establish a short time frame for decision-making by the competent authorities in particular situations concerning the protection of citizens' environmental rights;
- strengthen the responsibility of officials for abuse of power or official position in the environmental field;
- to introduce the activities of the environmental court.

The authors of the study consider the idea of introducing an environmental court to be quite relevant and one that will be further explored and implemented in practice.

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Особливості судового захисту екологічних прав громадян у Європейському суді з прав людини

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Анотація

Статтю присвячено питанню можливості звернення до Європейського суду з прав людини за захистом екологічних прав. Актуальність дослідження зумовлено тим, що з огляду на глобальну екологічну кризу гостро постало питання гарантії права особи на безпечне довкілля та його захист. Необхідність проведення окремого дослідження з окресленого питання виникла в зв'язку з тим, що Конвенція про захист прав людини й основоположних свобод, визначаючи права, які вона гарантує, окремо не виділяє екологічних прав. Саме тому логічно постає питання: чи можуть особи звертатися до Європейського суду з прав людини для захисту права, яке безпосередньо в згаданій Конвенції відсутнє. Мета статті – вивчення правової бази та підстав звернень до Європейського суду з прав людини. У дослідженні проаналізовано законодавчі та міжнародно-правові акти, а також діяльність Європейського суду з прав людини, метою якої є захист прав громадян, зокрема екологічних. Методологічну основу дослідження склали формально-логічний метод, методи аналізу та синтезу й порівняльно-правовий метод. У роботі розкрито загально-теоретичні аспекти, пов'язані із захистом екологічних прав. Проведено аналіз практики захисту судами екологічних прав, зокрема на міжнародному рівні. За результатами проведеного дослідження встановлено, що Європейський суд з прав людини допускає до розгляду заяви осіб з метою захисту порушених екологічних прав, які розглядаються крізь призму ст. 8 Конвенції про захист прав людини і основоположних свобод: право на повагу до приватного, сімейного життя та житла людей. Практична цінність дослідження полягає в тому, що в статті проведено аналіз національного та міжнародного законодавства, а також практики Європейського суду з прав людини, зроблено висновки, які розкривають певні проблеми, пов'язані з природоохоронною діяльністю, та запропоновано певні механізми їх подолання з метою уникнути порушень екологічних прав громадян

Ключові слова: права людини, забруднення довкілля, право на повагу до приватного та сімейного життя, правосуддя, захист прав