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Prospects for the introduction of the ecological court in Ukraine

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Effective legal regulation of environmental protection and protection of environmental relations in modern conditions is a necessary condition for the successful development of human society. Given the specifics of existing environmental problems, the article is devoted to the coverage of various forms and models of specialized environmental courts operating in different countries. The scientific opinions on the organization of activity of ecological courts are covered, the normative-legal acts regulating ecological legal relations are analyzed. The conclusion on prospects of introduction of ecological court in Ukraine is made. To this end, it is necessary to reform the legislation on the judiciary, update procedural legislation to ensure a harmonious combination of private and public interests in the field of environmental relations

Keywords: Environmental protection, ecological legal relations, organization, activity, ecological court

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Introduction

The issue of protection of environmental rights of citizens, environmental protection requires effective steps of the Ukrainian state to implement various forms and methods in the fight against the ecological crisis situation in Ukraine. It is worth noting that among the 180 countries on the index of environmental performance, which is a comprehensive comparative indicator of the success of environmental policy around the world, used 19 indicators divided into nine “political categories”. The categories are grouped into two major groups: ecosystem viability (assessment of the level of protection of ecosystems and efficiency of natural resources management) and environmental health, which assesses the level of protection of human health from adverse environmental factors, Ukraine ranks 44th. Among the post-Soviet countries after Ukraine are Moldova, Kyrgyzstan, Tajikistan, Kazakhstan, Turkmenistan, Georgia, and Uzbekistan. The top ten includes Finland, Iceland, Sweden, Denmark, Slovenia, Spain, Portugal, Estonia and France.

The above indicates the existence of a difficult environmental situation in the country, the acute environmental crisis in Ukraine is indicated by the Law of Ukraine “On Basic Principles (Strategy) of State Environmental Policy of Ukraine until 2030” of 28.02.2019 No. 2697-VIII.

Given the importance of the problem, in scientific circles, the study of the organization and prospects of the implementation of the environmental court in Ukraine is given considerable attention. Among the scientists who examined this issue, it is worth noting G.I. Balyuk, A.I. Bryntsov [1], A.P. Hetman [2], V.M. Zavgorodnya, V.V. Kovalenko, Ya.V. Kravets [3], Yu.A. Krasnova [4] and

others. However, given the ongoing judicial reform and the constant changes in legislation and lawmaking, many problematic issues remain in this area that need to be studied.

The purpose of the article is to study the possible prospects for the organization and operation of environmental justice in Ukraine and the formation of the given proposal for their creation.

Results and Discussion

The analysis of official sources, mass media and scientific publications testifies to the existing ecological crisis situation in Ukraine. In order to eliminate the negative phenomena, various ways of solving them are proposed by implementing organizational and legal measures aimed at protecting the environmental rights of citizens, as well as introducing new forms and methods related to environmental protection, protection of environmental rights.

Since environmental protection and protection of environmental rights is impossible without the administration of justice, the idea of organization and functioning of environmental courts and their possibility of introduction in the judicial system of Ukraine, attracts the attention of researchers. Referring to the foreign experience of environmental courts, more and more scientists are paying attention to various forms and models of organization and operation of environmental courts.

Yu.V. Kravets [3] believes that the introduction and establishment of environmental courts in Ukraine is necessary, given both the number of problems in domestic environmental legislation and law

enforcement, and the progressive global trends. It should be gradual and include three functional stages: training of judges who would be competent in the areas of specification and start their work in courts of general jurisdiction, but whose competence would include relevant environmental disputes; creation of "Green benches". At this stage, it would be appropriate to provide, in addition to the obligation of environmental justice, also the obligation to allocate resources; creation of a system of specialized environmental courts [3].

Analyzing the prospects of environmental justice in Ukraine and taking into account the principles of organization of the judiciary, A.I. Brintsov [1] notes that environmental litigation in Ukraine can be implemented in several possible ways. In his opinion, this can be achieved by introducing in the courts the specialization of judges in cases arising from environmental legal relations, as well as the creation in the courts of judicial chambers for certain categories of cases, including separate judicial chambers for cases arising from environmental legal relations. Along with this, the scientist notes that the activity in the judicial system of higher specialized courts as courts of first and appellate instances to consider certain categories of cases suggests the possibility of introducing in Ukraine a higher specialized court to consider cases arising from environmental relations, or simply "higher environmental court" [1].

According to Yu.A. Krasnova [4], the solution of problems is possible with two options for further development of the judiciary, which would allow for a rapid and effective consideration of environmental cases: the creation of a judicial system based on internal specialization of the judiciary

(creation of so-called "green benches" or green judges without a formal change in the judicial structure); creation of an independent environmental judicial system or tribunal. This means that the modern judicial system of Ukraine must exist rebuilt in a new way – fast and effective consideration of environmental disputes [4].

However, among scientists there are opponents of the creation of environmental courts. Giving answers to opponents of the creation of environmental courts, Professor Richard Macrory concludes that the possible shortcomings of specialized environmental courts should be considered only as "warning signs". Implementation strategies and best practices can and should be planned to avoid potential disadvantages and maximize access, equity and future benefits of specialization of environmental courts (tribunals) [5].

However, according to foreign experts, specialization itself does not guarantee any of these potential positive characteristics of specialized environmental courts. However, the structure of such courts may include special design features to ensure the proper functioning of courts, which are not typical and may not be possible for traditional courts [6].

A.P. Hetman believes that among the main factors leading to the deepening of the crisis in the ecological component of our state should be identified defects in the organization of public administration of environmental protection and ensuring the rational use of nature (Hetman, 2013: 168).

Thus, ensuring the constitutional right of every citizen of Ukraine to a clean and safe environment is impossible without the work of the court. This was expressed in

the Decree of the President of Ukraine “On the National Strategy for Human Rights” of 24.03.2021 No. 119/202, where in § 15. “Ensuring environmental rights”, it is stated that the strategic goal is the environment, which must be safe for human life and health in Ukraine. The main indicators are the level of public awareness of environmental rights, mechanisms for their implementation and protection and the number of citizens appeals to authorized state authorities, local governments, courts, as well as to the Verkhovna Rada Commissioner for Human Rights on violations of environmental rights.

To this end, the main task of the Decree of the President of Ukraine “On the National Strategy in the field of human rights” of 24.03.2021 No. 119/202, is: to ensure free access to information on the state of the environment and the free receipt, use, dissemination and storage of such information; to raise the level of public awareness about environmental rights, mechanisms for their implementation and protection; improve legal procedures for environmental impact assessment and strategic environmental assessment, in particular in terms of ensuring public awareness and participation in the decision-making process; to create a nationwide ecological automated information and analytical system to ensure access to environmental information; to improve the responsibility for violation of the legislation on environmental protection; to create an effective mechanism for compensation for damage caused as a result of violation of the requirements of environmental legislation.

The above is evidence that the protection of environmental relations can not be done without justice. The existing problems can be overcome by generalizing the case law on

environmental disputes, as has been done, in particular, in the European Court of Human Rights (cases of: hazardous industrial activities; the impact of industrial emissions on human health; property, access to court in the context of appealing permits for environmentally hazardous activities, non-enforcement of final court decisions on cessation of environmentally hazardous activities, environmental risks and access to information, industrial pollution, impact of mobile antennas, noise pollution, impact of urban planning activities, treatment of waste, pollution of drinking water, warning of emergencies, compensation for damage caused by natural forces [4].

The answer to this question can also be found in the Decree of the President of Ukraine “Strategy for the development of the justice system and constitutional justice for 2021-2023” of 11.06. 2021 No. 231/2021, which identifies priorities for improving the legislation in the field of the judiciary, the status of judges, the judiciary and other institutions of justice, as well as the implementation of urgent measures to ensure positive changes in the functioning of relevant legal institutions. The issue of reorganization of local courts in the Decree refers to the revision of the network of local courts taking into account the administrative-territorial reform, economic feasibility, the number of appeals to the court with preservation at the first stage of the possibility of local general courts of justice at the existing local courts, conditions of access to justice for members of territorial communities, consideration after the creation of a new network of courts of first instance and, depending on the effectiveness of their work, the possibility of further optimization of the local court system by consolidating courts.

Along with this, it is worth paying attention to the Resolution of the Verkhovna Rada of Ukraine "On the formation and liquidation of districts" dated 17.07.2020 No. 807-IX. According to this Resolution, there will be a new administrative-territorial system in Ukraine, which will inevitably lead to the reform of the judicial system.

Of course, these regulations do not contain instructions on the establishment of environmental courts. Moreover, in part 1 of Art. 18 of the Law of Ukraine "On the Judiciary and the Status of Judges" of 02.06.2016 No. 1402-VIII, states that the courts specialize in civil, criminal, commercial, administrative cases, as well as cases of administrative offenses. At the same time in part 2 of Art. 18 of the same Law states that in cases specified by law, as well as by the decision of the meeting of judges of the relevant court may be introduced specialization of judges to consider specific categories of cases.

Conclusions

Thus, the study of the prospects for the introduction of the environmental court in Ukraine indicates the feasibility of their creation with the appropriate reform of legislation on the judiciary and updating procedural legislation, refining the organizational and legal framework of courts to ensure a harmonious combination of private and public interests in environmental relations. This provides for the possibility of ensuring proper judicial protection of environmental legal relations by introducing specialization of judges in environmental cases. Such specialization can be carried out in local courts, the consolidation of which is envisaged.

At the first stage of the introduction of environmental courts, it is necessary to first determine the scope of jurisdiction and jurisdiction of environmental cases, the solution of which should be attributed to the specialization of judges who must protect environmental rights and the environment.

The next step is the possibility of a gradual transition to the establishment of chambers of appeal in the courts of appeal.

The outlined features of the study of environmental cases involve the possession of special knowledge by judges. This is indicated by the rules of Art. 12 of the Law of Ukraine "On Environmental Impact Assessment" of 23.05.2017 No. 2059-VIII, according to which the conclusion on the environmental impact assessment, other decisions, actions or inaction of public authorities or local governments in the process of environmental impact assessment, as well as violation of the procedure for environmental impact assessment, unfounded and unreasonable disregard or improper consideration of the results of public participation, other violations of legislation in the field of environmental impact assessment are grounds for revoking the conclusion of the environmental impact assessment and the decision to carry out planned activities, can be appealed by any individual or legal entity.

Accordingly, judges may consider cases arising from environmental legal relations, must have special knowledge. At the same time, the outlined perspective of the introduction of the environmental court in Ukraine is a long-term perspective, but the issue of judicial protection of all participants in environmental legal relations remains problematic today.

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Перспективи впровадження екологічного суду в Україні

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Анотація

Ефективне правове регулювання охорони довкілля та захист екологічних праввідносин у сучасних умовах є необхідною умовою успішного розвитку людського суспільства. З огляду на специфіку наявних екологічних проблем, статтю присвячено висвітленню різноманітних форм і моделей діяльності спеціалізованих екологічних судів, що діють у різних країнах світу. Висвітлено наукові думки щодо організації діяльності екологічних судів, проаналізовано нормативно-правові акти, що регулюють екологічні праввідносини. Зроблено висновок щодо перспектив впровадження екологічного суду в Україні. З цією метою необхідно реформувати законодавство про судоустрій, оновити процесуальне законодавство задля забезпечення гармонійного поєднання приватних і публічних інтересів в галузі екологічних праввідносин

Ключові слова: охорона довкілля, екологічні праввідносини, організація, діяльність, екологічний суд