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The Concept and Essence of Judicial Protection of Environmental Human Rights

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Abstract

The study is devoted to the examination of the essence of judicial protection of environmental human rights and the definition of the concept of "judicial protection of human rights". The relevance of the study is due to the importance of the subject of judicial protection of environmental rights in war conditions. In the context of the implementation of the purpose of the study, the issues of judicial protection of environmental human rights in general and in war conditions, the study of legal doctrine and legislation in the relevant field, considering the judicial practice of resolving relevant disputes, are identified. During the study of the issue of judicial protection of environmental human rights, a comparative legal method was used, which helped to analyse and compare scientific views, theories, and approaches and consider problematic issues for their further solution. Due to the generalisation method, forecasting or proposing statements for improving the legal regulation of the protection of environmental human rights is applied, and due to the analysis method, the features of the principles of legal regulation of the protection of environmental rights are determined. In addition, the study is accompanied by quoting normative regulations, in particular, international treaties, which regulate all events that are currently taking place between Ukraine, the Russian Federation, and Belarus, but notes the non-fulfilment of such international treaties by Belarus and the Russian Federation. The study analyses the opinions of researchers in the field of environmental rights protection, which generally characterise the judicial practice of considering environmental disputes and emphasises the need to increase public activity in the protection of violated environmental rights. The study considers the practice of judicial protection of environmental human rights and describes the problems that exist in the context of the protection of environmental human rights. The specific features of judicial protection of environmental human rights are identified and the main examples of substantial violations of environmental human rights during the war with the Russian Federation are indicated, it is indicated what actions of the Russian Federation and Belarus caused damage to Ukraine in the field of environmental safety, with direct indication of specific objects that were hit by military equipment, as a result of which there is still a risk of environmental disasters not only in Ukraine but also in neighbouring countries. The proposals for improving the judicial protection of environmental rights outlined in this study are unique and effective for compiling scientific texts and conducting classes in the relevant field of law

Keywords: judicial practice, legal regime of martial law, environmental disputes, environmental disaster, legal proceedings in the field of environmental law

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Introduction

The issue of judicial protection of environmental human rights is important because it is the result of the greatest value – human life according to the Constitution of Ukraine. Judicial protection of environmental human rights allows a person to apply for protection of a violated right and protect it.

Researchers V. Ladychenko, A. Melnychuk, L. Golovko, A. Burmak devoted considerable attention to the study of the issue of protecting environmental human rights because in a joint scientific work on the subject “Waste management at the local level in the EU and Ukraine” they raised an issue that is one of the most important in the field of environmental safety [1]. In addition, M.V. Krasnova and Yu.A. Krasnova also considered the above, because in their study titled “Realisation and protection of ecological rights of citizens: Theoretical and legal aspects” they investigated all components of Environmental Rights Protection, cited existing problems and suggested ways to eliminate them and further prevent them [2].

Also researchers V.V. Ladychenko and L.O. Golovko in their scientific work “Organisational and legal principles of environmental management” identified the issues of judicial protection of environmental human rights, in particular [3]. In the paper on the subject “Legal regulation of waste management in Ukraine on the way to European integration”, researchers S. Kidalov, V. Vitiv, L. Golovko, V. Ladychenko analysed the legal regulation of the implementation of environmental rights of citizens through the prism of international regulatory regulations, investigated the compliance of national environmental norms with international standards [4].

The issue of judicial protection of environmental human rights, in particular, during the war, is extremely important, because it implies a direct need for victims to apply to international courts for the protection of their rights.

Human life, which is the highest value, constantly needs proper environmental conditions, which must always be observed to ensure the normal existence of people in the world. Environmental rights are often violated and constantly need to be protected. The obligations of states, regarding access to justice in environmental matters, are defined by the UNECE Convention on access to information, public participation in decision-making and access to justice in environmental matters (hereinafter referred to as the Convention) [5].

According to the provisions of the Convention, the right to access environmental information, take part in the process of making environmentally important decisions, and challenge violations of such rights are guaranteed. States are required to ensure that the public has access to procedures to appeal against actions that violate the requirements of national environmental legislation.

The practice of applying the convention by Ukrainian courts, given the twenty-year period from

the moment of its ratification in Ukraine, is low. In the Unified State Register of court decisions, there is almost no information about quoting the convention in court decisions, which indicates a low level of use of environmental legislation in Ukraine.

Notably, court decisions issued by Ukrainian courts sometimes trace attempts to apply Convention provisions on the rights of the public to appeal to the courts of decisions, actions, or inactions that were accordingly committed in violation of environmental legislation, given that the appealed decisions do not concern the rights and interests of plaintiffs.

In general, the protection of environmental rights, together with ensuring environmental stability on the territory of Ukraine, is the responsibility of the state, so the subject under study is relevant. According to Art. 50 of the Constitution of Ukraine, public authorities and their officials must ensure that citizens exercise the right to a safe environment for life and health [6].

In addition, Art. 11 of the Law of Ukraine “On Environmental Protection”, the rights of citizens in the field of Environmental Protection, which were accordingly violated, should be restored and protected in court [7].

The purpose of the study is to examine the issue of judicial protection of environmental human rights in general and in war conditions, in particular, a study of legal doctrine and legislation in the relevant field, considering the judicial practice of resolving relevant disputes.

1. Theoretical and Regulatory Features of Judicial Protection of Environmental Rights

The researcher S.V. Storozhenko emphasises the importance of ensuring the strict implementation of environmental human rights by the state, the introduction of an effective system for their protection, the legislative consolidation of responsibility for violation of such rights and the algorithm for restoring violated environmental rights. The protection of environmental human rights, according to the researcher, is a system of legal means to ensure the exercise of environmental rights by a person in the relevant field [8, p. 12].

The field of environmental safety and environmental protection as a function of the state is of particular importance because the implementation of the relevant state task is aimed at preserving human life, the gene pool of Ukraine, so it is to ensure the rights of citizens.

According to V.M. Lagovsky, in the protection of environmental human rights, it is the court that plays an outstanding role, because the issue of violation of environmental law can be fully investigated during the work of judicial bodies involved in the relevant legal mechanism [9, p. 27-28].

There is no specialised court for consideration of cases in the field of environmental law, so the consideration of relevant cases is conducted in administrative proceedings since more often the other party is a state body and in civil, economic, and criminal proceedings.

Thus, courts of general jurisdiction consider cases in the field of environmental law, although they do not meet the needs of society, despite the comments of Ukrainians on judicial forums. For the protection of their environmental rights, there is an opportunity and the right to apply to international courts, because according to Art. 9 of the Convention, citizens have the right to apply to the court to appeal against the actions or inactions of authorised bodies or persons, in case of violation of the legislation on the natural environment.

The corresponding right of citizens to apply to international courts for the protection of their environmental rights is confirmed by the Law of Ukraine "On Ratification of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters" [10].

After analysing the practice of cases against Ukraine and not only, most often people apply to the ECHR for the protection of environmental rights. In particular, the Convention for the Protection of Human Rights and Fundamental Freedoms provides for the possibility for the International Court to accept complaints from individuals, groups of individuals, or organisations, if the latter consider themselves to be those whose right has been violated [11].

2. Features of Judicial Practice

Paying attention to the well-known cases of the ECHR against Ukraine for the protection of environmental rights, it is necessary to consider the decision in the case "Dubetska and others v. Ukraine", where an initiative group of people appealed to the court for violation of their environmental rights, namely, for detecting water pollution along with subsidence of soils, flooding of the territorial community in which they live, etc. The issue was the impossibility of resolving the dispute between the administration and the residents of the territorial community, no balance was found in the interests of these parties, so the International Court decided that state bodies, during their industrial policy, should establish a fair balance between interested persons whose rights were substantially violated and society in general. The court's decision indicates the well-being of the population of the whole of Ukraine, in particular, in the context of resolving a dispute over industrial pollution, which has a negative impact on people's health, which allows using the appropriate decision when considering the future similar cases [12].

Therewith, it is necessary to emphasise that this does not mean English case law, which does not apply on the territory of Ukraine, this refers to familiarising with such cases before making decisions by national courts in Ukraine.

Some researchers consider the most important issue in the context of violating the environmental rights of citizens – waste management. This refers to the deterioration of the environmental situation due to the lack of organised monitoring, prevention of environmental

hazards caused by the management of household waste, etc. Unfortunately, the attention paid by researchers to the legal doctrine in general does not affect the reform of the state monitoring system or environmental safety in waste management, and the national judicial system has had almost no practice over the past few years regarding the successful consideration of cases on the issue of illegal waste management [13].

Researcher Yu.A. Krasnova believes that the national judicial system should be changed to ensure rapid and effective consideration of environmental disputes because now the ineffective practice of environmental protection requires a change in the judicial protection of environmental human and civil rights. The researcher suggests summarising judicial practice on the consideration of environmental disputes and conducting information work to increase public activity on the protection of violated environmental rights. The researcher pays special attention to the problem of mandatory examinations to confirm the connection, which this study agrees with [14, p. 56].

Today in Ukraine, there is a problem with the practice of non-compliance by public authorities and courts (judges) with environmental legislation.

It is worth giving an example of the violation of the environmental rights of citizens due to the lack of organisation of regulation of the issue of waste in Ukraine because this problem existed before the war and also exists during the war. Spontaneous landfills and violations of the rules for recycling garbage pose a risk to the environment and human life. According to V. Ladychenko, in the field of household waste management, the main goal should be to prevent the formation of waste at the production stage and to ensure the maximum involvement of waste in civil circulation as secondary raw materials to minimise their disposal. The main task is to introduce an efficient system of separate waste collection, which allows attracting a substantial amount of resources to economic turnover with maximum economic effect [15, p. 329-338].

The above is the basis for citizens' appeals to international courts, and in case of preventing the above-mentioned problems, courts and state bodies should understand their duty to ensure the implementation of environmental rights of citizens and do everything possible to ensure the implementation of the relevant duty.

In addition to the typical characteristics of judicial protection of environmental human rights, today Ukraine is under the legal regime of martial law, and the environmental safety of citizens is violated and cannot yet be restored.

In connection with the military aggression of the Russian Federation against Ukraine, martial law has been imposed in Ukraine since 05:30 on February 24, 2022, which makes it necessary to take appropriate measures regarding the organisational and legal features of the state's life.

During the legal regime of martial law, the rights of legal entities and individuals may be violated. Considering the number of attacks on the territory of Ukraine by the Russian Federation and Belarus, and the number of hits in bases for processing petroleum products, institutions engaged in servicing or processing chemical products, and considering the conduct of military operations in the Chornobyl disaster zone, an important question arises regarding the violation of environmental rights of citizens, which can now be neither protected nor restored.

The actions of the aggressor during the war are a direct threat not only to the environmental security of Ukraine and its citizens but also to the environmental safety of the whole world. This study notes the urgent need to develop a mechanism for protecting the environmental rights of citizens in such cases and create an algorithm to prevent their violation.

It is proposed to consider examples of violations of the environmental rights of citizens during the war, in particular:

- February 24-25, 2022 capture of the Chornobyl zone, as a result of which the radiation background was exceeded by 7.6 times;
- February 26, 2022, the shelling of the Dergachevskiy District of the Kharkiv region caused damage to the transformer, which led to the risk of leakage of radioactive waste and failure of the radiation monitoring system;
- March 6 – rocket artillery attack on the Kharkiv Institute of Physics and Technology – location of a nuclear reactor with 37 nuclear fuel assemblies;
- March 10 – seizure of Zaporizhia NPP, mining of the Kakhovskiy reservoir (coast) on the border with the station [16]. Zaporizhia NPP is still captured and mined.

Regarding the damage caused by Russian troops in the Chornobyl zone and the shelling of other energy facilities in Ukraine, it is necessary to emphasise that the corresponding results of the actions of the Russian military carry the risk of energy danger. Researchers in the field of environmental safety, having analysed the consequences of improper handling of energy facilities and their impact on the environmental rights of citizens, concluded that it is the energy danger that can substantially affect the environment, with which this study fully agrees [16].

Despite the war, Ukraine must ensure that Ukrainian legislation, in particular, in the field of environmental law, is brought to international requirements and European standards, as researchers emphasise in their works [17; 18].

An important issue in terms of the environmental rights of citizens is access to information about the environmental situation because it is this right that is violated in the absence of factual data on environmental safety or the impact of events that occur on the territory of Ukraine or another foreign country on human environmental law, researchers note in their works [19, p. 68-73; 20, p. 172-176].

In case of failure to provide access to environmental information or violation of the above-mentioned right of access, violators may be subject to liability, in particular, disciplinary or administrative. Notably, during the COVID-19 pandemic or the armed aggression of the Russian Federation against Ukraine, there is often a violation of the right of access to environmental information, because there is no information, in particular, the consequences of the presence of Russian troops on the territory of the Chornobyl nuclear power plant or Zaporizhia NPP, etc. [23, p.72-75; 24].

In addition, in the context of judicial protection of citizens' environmental rights, the availability of information as a citizens' right should be ensured by law, implemented in practice and protected in court to bring the protection of citizens' environmental rights to international, in particular, European, standards.

Conclusions

Today, in the conditions of the legal regime of martial law, the issue of judicial protection of environmental human rights is relevant, important, and requires attention from international courts.

In addition, today in Ukraine there is a problem regarding the guarantee of citizens' rights to a safe environment, and the problem of non-compliance by officials of public authorities and courts (judges) with environmental legislation.

The relevant military actions are a direct threat not only to the environmental security of Ukraine and its citizens but also to the environmental security of the whole world, and therefore there is an urgent need to develop a mechanism for protecting the environmental rights of citizens in such cases and create an algorithm to prevent their violation.

Ukraine should strive to improve and improve the regulatory support and implementation of environmental rights of citizens, to European integration in the field of environmental legislation, and the availability of information as a right of citizens should be ensured by law, implemented in practice and protected in court.

Only an effective information policy regarding the ability of individuals to protect their environmental rights and protect the right of citizens to information at the international level by applying to international courts is mandatory, and can become the only way to prevent critical consequences of violations of environmental safety within the country and abroad; the public should apply to international courts to protect their own environmental rights.

The issue of protecting environmental rights in court is relevant and remains insufficiently investigated from the review of the fleeting process of the relevant field, the need for constant monitoring of appeals of individuals for the protection of their environmental rights, monitoring the practice of the ECHR, etc.

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Поняття та сутність судового захисту екологічних прав людини

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Анотація

Наукова стаття присвячена дослідженню сутності судового захисту екологічних прав людини та визначенню поняття «судовий захист прав людини». Актуальність статті зумовлено важливістю теми судового захисту екологічних прав в умовах війни. У контексті реалізації мети наукової статті розкрито питання судового захисту екологічних прав людини загалом та в умовах війни, дослідження правової доктрини та законодавства у відповідній сфері з урахуванням судової практики вирішення відповідних спорів. Під час дослідження питання судового захисту екологічних прав людини використано порівняльно-правовий метод, що допоміг проаналізувати та порівняти наукові погляди, теорії, підходи та розглянути проблемні питання задля подальшого їх вирішення. Завдяки методу узагальнення застосовано прогнозування чи пропонування тверджень щодо вдосконалення правового регулювання захисту екологічних прав людини, а завдяки методу аналізу визначено ознаки принципів правового регулювання захисту екологічних прав. Крім того, наукова стаття супроводжується цитуванням нормативно-правових актів, зокрема міжнародних договорів, якими врегульовано всі події, що наразі відбуваються між Україною, рф та білоруссю, однак наголошується на невиконанні таких міжнародних договорів з боку білорусі і рф. У статті здійснено аналіз думок науковців у сфері захисту екологічних прав, які загалом характеризують судову практику з розгляду екологічних спорів, наголошують на необхідності підвищення активності громадськості до питань захисту порушених екологічних прав. Розглянуто практику судового захисту екологічних прав людини та зазначено характеристики проблем, які існують у контексті захисту екологічних прав людини. Визначено особливості судового захисту екологічних прав людини та зазначено основні приклади значного порушення екологічних прав людини під час війни з рф, зазначено якими саме діями рф та білорусі Україні нанесено шкоди у сфері екологічної безпеки, з безпосереднім зазначенням конкретних об'єктів, яким було нанесено удар військовою технікою, у результаті чого й зараз існує ризик екологічних катастроф не лише в Україні, а й у сусідніх країнах. Пропозиції до удосконалення судового захисту екологічних прав, викладені у цій статті, є унікальними та ефективними для складання наукових текстів та проведення занять у відповідній галузі права

Ключові слова: судова практика, правовий режим воєнного стану, екологічні спори, екологічна катастрофа, судочинство у сфері екологічного права
