

MODERN LEGISLATION TO PROTECT THE ENVIRONMENTAL INTERESTS OF CITIZENS: NEW CHALLENGES IN THE CONTEXT OF ARMED CONFLICT IN UKRAINE

LEGISLAÇÃO MODERNA PARA PROTEGER OS INTERESSES AMBIENTAIS DOS CIDADÃOS: NOVOS DESAFIOS NO CONTEXTO DO CONFLITO ARMADO NA UCRÂNIA*

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Abstract: Protecting the environmental interests of public society is a priority for every civilized state, and therefore the issues of legislative support for such activity are of particular relevance. In this context, the authors of the article refer to the experience of developed democratic countries in order to adapt specific practical tools (means) to improve the legal regulation of the environmental sphere in Ukraine. In Western countries, in particular, such as the USA, Canada and EU members, the environment and the problems of its proper functioning have long been one of the highest priority topics for public, political and research discussion. That is why in recent years, discussions about the need to properly ensure the environmental safety of Ukraine have intensified, since attention is increasingly focused on possible threats to the domestic environment. It is emphasized that the low level of efficiency of state entities in the field of environmental policy, as well as the state of constant general inconsistency of domestic politics create certain barriers to effective solution of environmental problems. At the same time, issues related to environmental issues, including in the field of their legislative support, are increasingly raised both among scientists and in society as a whole.

Keywords: Ecology. Public safety. Interests of citizens. Legislative provision. Civil society.

Resumo: A proteção dos interesses ambientais da sociedade pública é uma prioridade para todo Estado civilizado e, portanto, as questões de apoio legislativo para tal atividade são de particular relevância. Neste contexto, os autores do artigo se referem à experiência dos países democráticos desenvolvidos a fim de adaptar ferramentas práticas específicas (meios) para melhorar a

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regulamentação legal da esfera ambiental na Ucrânia. Em países ocidentais, em particular, como os EUA, Canadá e membros da UE, o meio ambiente e os problemas de seu bom funcionamento têm sido há muito um dos tópicos de maior prioridade para a discussão pública, política e de pesquisa. É por isso que nos últimos anos, as discussões sobre a necessidade de garantir adequadamente a segurança ambiental da Ucrânia têm se intensificado, uma vez que a atenção está cada vez mais voltada para possíveis ameaças ao meio ambiente doméstico. É enfatizado que o baixo nível de eficiência das entidades estatais no campo da política ambiental, bem como o estado de constante inconsistência geral da política doméstica, criam certas barreiras para a solução efetiva dos problemas ambientais. Ao mesmo tempo, questões relacionadas às questões ambientais, inclusive no campo de seu apoio legislativo, são cada vez mais levantadas tanto entre os cientistas quanto na sociedade como um todo.

Palavras-chave: Ecologia. Segurança pública. Interesses dos cidadãos. Disposições legislativas. Sociedade civil.

1. INTRODUCTION

Issues related to environmental safety standards have been posed to governments for a long time. This question is quite justified, because every day the planet Earth suffers from environmental disasters. Deforestation, exploitation of seas and soils, air and water pollution - all these factors are pushing our world into ecological catastrophe. This document, developed by the Intergovernmental Science and Policy Platform on Biodiversity and Ecosystems, should help create a plan for urgent nature conservation. More than 500 experts from 50 countries warn about this in a major UN report, including the losses suffered by the world over the past 50 years, and a rather bleak future for tens and hundreds of thousands of species (Briggs, Becky, Nassos, 2019).

Although the Earth has always suffered from human actions, over the past 50 years these scratches have become deep scars. Since 1970, the world's population has doubled, the global economy has quadrupled, and international trade has increased tenfold. In order to feed, clothe and energize this ever-growing world, forests are being cut down at an incredible rate, especially in the tropics. Between 1980 and 2000, 100 million hectares of tropical forests were destroyed, mainly for cattle pastures in South America and palm oil plantations in Southeast Asia. The situation with wetlands is even worse than with forests. In 2000, only 13% of the territories that existed in 1700 survived. Our cities have expanded rapidly, and since 1992 the area of cities has doubled (McGrath, 2019).

The given negative cases, unfortunately, also concern Ukraine. Thus, according to the results of the survey, in Ukraine, among the environmental problems that respondents are most concerned with are water pollution and drinking water shortage (51.0%), increasing the amount of household and industrial waste (45.9%) and air pollution (38, 1%).

The whole world is now coming to understand the importance of protecting the environment. In particular, the European Union has launched an ambitious EU Green Deal that will put all areas of human activity on the rails of sustainable development (The State Environmental Inspectorate named the top 3 environmental problems in Ukraine, 2021).

According to recent research, each country in the world, depending on the level of efficiency of its public bodies, as well as the reliability and development of political, social and scientific institutions, solves the above problems with varying degrees of success. Taking into account the significant growth of world globalization processes, so far no state is able to achieve the level of absolute environmental protection. This is especially true in cases where the state has neighbors with negative environmental indicators. That is, it can be stated that only through the joint efforts of several states can a qualitative environmental situation in the region be achieved. As for the elimination of environmental problems and dangers around the world, it is necessary to ensure a strong and sincere, as well as mutually beneficial alliance of many states. At the same time, the implementation of individual efforts by civil society and government agencies of each state is an important step in the struggle for future environmental well-being. Special attention should be paid to certain problems in national legislation. Given the many problems in the field of ecology and the environment (such as the consequences of the Chernobyl accident, non-transparent activities of industrial production, etc.), improving the legal regulation of environmental protection mechanisms in Ukraine is extremely important.

Given the significant public attention to the problems of ecology and the environment, especially in recent years, we state that a lot of research papers and publications have been devoted to the problems of legal regulation of this sphere of public life. In particular, it should be noted the works that analyze the need to regulate legislation related to environmental safety, as well as works that explore the specifics of legal regulation of environmental issues in developed and democratic countries.

2. THE PURPOSE AND OBJECTIVES OF THE STUDY

The main purpose of this article is to form the most effective ways to improve the modern legislation of Ukraine, which regulates the protection of environmental interests of citizens. This involves the following tasks: consideration of current issues in the field of legislative support mechanisms and tools for environmental protection in Ukraine; analysis of the current state of affairs in this area in the developed countries of the world and

identification of prospects for the adoption of specific practical experience of those countries that occupy the highest places in international environmental rankings; formulation of proposals for improving the norms of environmental legislation of Ukraine.

3. METHODOLOGY

When writing the article, the authors used the bibliographic research method, due to which, from leading foreign and domestic researchers of the present, up-to-date information was received regarding the current state of affairs in the field of environmental legislation of Ukraine and the directions of its possible development.

The empirical and empirical-theoretical method was also used, which was necessary for the proper disclosure of terms important for the subject of this article. The use of historical and legal method was due to the analysis of the emergence and development of environmental law (including regulations governing environmental protection processes), both in Ukraine and around the world, as well as the actual study of historical prerequisites and requirements for appropriate legislation in the field of environmental protection.

The comparative method was used to conduct a qualitative comparative analysis of the levels of effectiveness of protection of environmental interests of communities in foreign countries and individual regions of the world.

Based on the analysis of legal material and practice, the systematic method made it possible to identify problems of environmental safety during the military conflict in Ukraine, and the forecasting method allowed to draw conclusions about the prospects for improving legal mechanisms to ensure environmental safety in the context of a military conflict.

4. RESULTS AND DISCUSSION

As history shows, the eco-destructive nature of war always exceeds the negative impact on the environment of a peaceful period of a country's life. In addition, the range and depth of eco-destruction of wars with each round of scientific and technological progress are increasing. And it's not just the extremely negative environmental consequences of the war. Moreover, the potential trend of the military to consider a special, direct transformation of the environment as a means of defeating the enemy, which is now

described by the term "environmental war", "environmental weapons", etc. (Mashnenkov, 2018).

The emergence of risks to human life and health, which often lead to unsatisfactory environmental conditions, requires the search for optimal ways to eliminate their consequences in case of environmental emergencies and possible prevention. In this case, a comprehensive state-legal mechanism is of primary importance, which provides a number of measures and tools aimed at maintaining and ensuring environmental safety. Since 2014, Ukraine has been in a state of armed conflict in Donetsk and Luhansk regions. Catastrophic destructive consequences of hostilities are evident in all spheres of public life - economic, social, ideological, psychological, etc. One of the most pressing levels of the negative impact of armed conflict is the impact on the environment. Therefore, an integral part of the adaptation of the legal system of Ukraine to the conditions of military conflict is to improve the state and legal mechanism for responding to environmental challenges and threats posed by them, and their possible prevention (Hrubinko, Kucher, 2019).

Since ancient times, humanity, although not fully understanding the mechanisms of the functioning of the natural system at that time, took care of the land and water resources on the territory of its community. For example, quite qualitatively developed (for that period) farming systems of the ancient Maya Indians are well known. They also existed in ancient Babylon and China. Elements of the processes of protection and conservation of ecology were reflected in the manuscripts of these ancient states, as well as in rock paintings (Kingsland, Sharon, 1995).

Since the 1970s, the Nordic countries have engaged forcefully in environmental policy – locally, nationally and internationally. They have taken leading positions in promoting environmental issues on the international stage and launched a number of worldwide initiatives to deal with specific environmental challenges (Midttun, Olsson, 2018, p. 204). Over time, especially with the beginning of the active industrialization of the countries of the world from the end of the 18th, as well as in the 19th and 20th centuries, the level of interest of public societies in different countries in environmental problems began to increase sharply. Especially in the developed countries of the world, representatives of different sectors of society began to pay increasing attention to environmental problems. Water and air pollution became the most common problems in the late 19th and most of the 20th centuries. Gradually, the subjects interested in improving the environmental situation began to clearly understand that in their countries there should be clear norms and principles prescribed in the legislation that ensure the safety of the

environment (Popkova, 2021). Thus, a powerful impetus was given to the development of environmental law in different states. This also affected Ukraine, which has experienced a significant development of environmental law since the first years of independence.

The modern American and European state, which in Ukraine was fairly called “civilized”, is essentially a liberal state, including Ukraine, which was incorporated into the essence of the state and the model of government by the parents of the Constitution of Ukraine. So far as, the content of the liberal model of the state, which is put into the Constitution of Ukraine as well, involves a number of important factors, in particular, the rule of law, the primacy of human rights and freedoms, proclaimed the highest social value (Kostytsky, 2020, p. 2). Today, the country is in conditions that it has never experienced before. On the one hand, it is a deep economic crisis and the need to reform key state institutions. On the other hand, the war in the east of the country and the annexation of Crimea, which require resources and mobilization of the whole society. The consequences of the armed conflict taking place in Ukraine are felt in various spheres of a person's life, the functioning of enterprises, society and the state as a whole. Attempts have already been made to assess the consequences of hostilities in the east of the country and the annexation of Crimea, which took place directly during the conflict and were felt by all parties, but unfortunately the consequences of this conflict will continue in the future. Preliminary estimates of direct losses are constantly updated and revised upwards (Ivanov, 2015).

The armed conflict in eastern Ukraine, which is taking place in one of the most industrialized and urbanized regions of Europe, leads to a significant increase in interrelated man-caused and environmental threats to the population, in particular due to disruption of the technological regime of many dangerous facilities. Prior to this conflict, almost a quarter of Ukraine's industrial potential was concentrated in Donetsk and Luhansk regions, up to 80% of which were environmentally hazardous industries that have the most negative impact on the environment, causing a complex, largely irreversible impact on it. Inherited from the former USSR, a complex of mining, processing, chemical, energy and other facilities with a large number of industrial and urban agglomerations poses significant risks of man-caused environmental disasters with large-scale transboundary consequences due to hostilities in their locations. The greatest threat among these facilities may be posed by power plants, chemical plants, mines, product pipelines and hydraulic structures, including hazardous waste disposal sites (Special Project, 2021).

Thus, the consequences of the armed conflict in eastern Ukraine, in addition to human losses, are significant damage to ecological systems and natural resources caused by

violations of international principles and national legislation. The ecological situation in Donbass, having been in a state of crisis for a long time, during the hostilities became a sign of ecological catastrophe. Pollution of the environment with heavy metals (titanium, vanadium, strontium) as a result of artillery shelling, poisoning of drinking water and the emergence of radioactively contaminated waters of the Azov Sea and the Siverskyi Donets as a result of mine flooding, destruction of vegetation and wild fauna can lead to an ecological catastrophe of the Chernobyl level. The fighting is also accompanied by massive deforestation in the "gray zone", the use of protected areas and tracts for military purposes, uncontrolled mining of the territory (Bushchenko, 2017).

Studying the environmental damage and priorities of environmental restoration in eastern Ukraine, the OSCE Project Co-ordinator in Ukraine, Ambassador Vaidotas VERBA, noted that as a result of the difficult situation that is taking place in eastern Ukraine, the state has faced new challenges related to security issues, overcoming the humanitarian and economic crises, etc. The environmental problems of Donbass, exacerbated by the crisis, have a negative impact on all spheres of public life - social, economic, humanitarian, political. The issue of environmental safety of the region is critical and requires an immediate response from all stakeholders and the public (Assessment of environmental damage and priorities for environmental restoration in the east of Ukraine, 2017).

It should be noted that in Ukraine, as in many other countries, periods of creation, as well as serious development and improvement of regulations related to environmental protection, usually come after serious environmental problems and sometimes disasters. On the example of Ukraine, we have the opportunity to observe how the accident of 1986, which occurred at the Chornobyl nuclear power plant, caused irreparable damage to all spheres of Ukrainian and then still Soviet society. Accordingly, it gave impetus to the development of norms and principles of law in the field of ecology, the purpose of which was to prevent similar situations in the future. This example of Ukraine is not the only one in this context. Earlier, in 1952, there was an environmental disaster in London called the Great Smog. This phenomenon, which is considered to be the reason for the increased use of coal in the cold season, lasted about 4 days (from 5 to 9 December 1952) and caused the death of 12,000 people (Bosselmann, 2020). Such harsh consequences shocked not only the United Kingdom, but the whole world. The political leadership of the country decided that it should give a clear and unambiguous response to this environmental catastrophe.

The most famous consequence in the field of legislation is the adoption by the British Parliament in 1956 of the Clear Air Act. This Act activated a number of specific actions, the ultimate goal of which was to achieve a significant reduction in the amount of negative emissions into the atmosphere (Clean Air Act, 1956). First of all, this concerned measures to reduce emissions of sand, coal and dust from chimneys and chimneys located on houses and other buildings. It is believed that this great smog of 1952 was the starting point in the development of the modern environmental movement. However, the tendency when real changes in legal and other spheres of public life took place only a certain environmental catastrophe of one scale or another had already happened, remains so. We must admit that, despite the widespread memory of Chernobyl and other environmental disasters in the Ukrainian and global society, the level of adaptation of domestic legislation in the field of proper environmental protection is still unsatisfactory.

Despite a number of adopted legislative acts, which were able to partially resolve and further improve the situation with environmental protection, there are still (or have arisen) many problematic areas in the domestic environmental sphere. But before considering in detail the current problems and shortcomings in this area, we consider it necessary to identify and name those landmark legal acts of Ukraine that have become the first steps towards the development of mechanisms for legal regulation of the environmental sector. In particular, we would like to note the Declaration of State Sovereignty of Ukraine of July 16, 1990, which also includes the term "environmental safety", which was not previously found in Ukrainian and Soviet legal acts.

Since the creation of the above declaration, the concept of "environmental safety" began to appear in various legislative acts of an environmental orientation. Thus, the Law of Ukraine "About Protection of the Surrounding Environment" dated June 25, 1991 became the first of such legal acts. In particular, Art. 9 of this Law provides a definition of environmental safety as "a state of the natural environment, which ensures the prevention of environmental degradation and the emergence of a danger to human health, which is guaranteed by the implementation of a wide range of interrelated environmental, political, economic, technical, organizational, state-legal and other measures". The Law of Ukraine "About Protection of the Surrounding Environment" also fixes the key elements of the system of environmental standards. Their role, in particular, is to clearly specify the maximum allowable emissions of chemical and other pollutants into the environment.

According to the Protocol I to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, adopted in 1977,

requires states in warfare to protect the natural environment against “widespread, long-term and severe damage,” and prohibits methods or means of warfare “which are intended or may be expected to” cause such damage.

Principle 24 of the Rio Declaration on the Environment and Development proclaims that warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperate in its further development, as necessary.

The International Court of Justice in the Advisory Opinion on Legality of the Threat or Use of Nuclear Weapons has suggested that environmental obligations – in particular the obligation of States to ensure that activities within their jurisdiction or control do not adversely affect the environment of other States – apply in the context of armed conflict, at least insofar as they are not inconsistent with the law of war.

It should be noted that the Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment (1991) stipulates that each country provides initial, timely and effective opportunities for public participation in strategic environmental assessment of plans and programs. It shall, by electronic or other appropriate means, ensure that the draft plan or programs and the environmental report are communicated to the public in a timely manner. To do this, it is ensured that the circle of the interested public is identified and the opportunity for it to express its opinion on the draft plan or program and the environmental report within a reasonable time.

The Convention on Environmental Impact Assessment in a Transboundary Context stipulates that States Parties shall ensure that the public in the relevant areas receives information and opportunities to comment or object to the planned activity, to bring such comments or objections to the attention of the competent public authority. It also provides an opportunity for the public to participate in appropriate procedures for assessing the impact of planned activities on the environment.

The Aarhus Convention contains rules that, in cases that pose a direct threat to human health or the environment, resulting from human activities or resulting from natural phenomena, all information that could enable the public to take measures to prevent or reduce harm, which may be the result of such a threat and which is at the disposal of a public authority, should be disseminated immediately to members of the public who are potentially affected by the threat. Each of the Parties shall provide appropriate practical provisions on public participation on the principles of transparency and fairness in the process of preparing plans and programs related to the environment, providing the public

with the necessary information. Each country strives to provide the public with opportunities for its participation in the development of environmental policy (Garver, 2020). Thus, when we talk about the participation of civil society institutions in measures to ensure environmental safety, we must say that citizens exercise their rights and influence public policy in this area, both individually and collectively.

Scientists note that lawyers and legislators of Ukraine should pay special attention to the quality of those legal norms that, according to the original idea, should properly ensure compliance with environmental safety requirements by all entities (Wroth, 2020). Therefore, the problem of ignoring certain acts of legislation and their partial or complete non-compliance by certain entities poses a real threat to the environmental stability of Ukraine and the whole of Eastern Europe.

Activity to improve this situation should be carried out simultaneously in two areas. First, as mentioned above in this article, it should be a quality work in the legislative field. Namely, as a result of coordinated actions of domestic lawyers and legislators, new, or modified existing, regulations in the field of environmental protection should be created (Maloney, 2020). Their main difference from current or past regulations should be that they should take into account the mistakes and shortcomings of the latter. In other words, they should not contain legal conflicts, gaps, or any other violations of legal technique or common sense (Pan, 2020). In addition, of course, it is necessary to ensure full compliance of future legal acts with the Constitution of Ukraine. After all, it is well known that some entities of domestic politics, mainly the owners of large industrial enterprises, have the opportunity to influence the judicial and executive bodies of state power in Ukraine. In order not to jeopardize high-quality and useful laws in the field of ecology, they must be carefully worked out by leading representatives of domestic jurisprudence (Kostytsky, 2020).

Secondly, in order to overcome such a negative phenomenon as ignoring the environmental legislation of Ukraine by certain subjects, it is necessary that the executive branch of state power, as well as local governments, control the proper implementation of national laws. In this context, we note that the achievement of a higher efficiency of executive power in this direction intersects with other problems of the political everyday life of Ukrainian society, such as corruption, lack of transparency, etc. (Midttun, 2021).

An analysis of the experience of the most developed and democratic foreign countries helped to determine what specific measures the Ukrainian authorities should take to ensure the lawful behavior of all subjects of public legal relations that arise in the

environmental sphere, especially in relation to the environment (Garver, 2020). In particular, in the case of Israel, we see a vivid illustration of how high fines for illegal environmental activity encourage violators to avoid repeating their relapse. Thus, for example, for exceeding the norms of harmful emissions into the atmosphere or for polluting water bodies, the so-called "green police" of Israel, which is a structural unit of the Ministry of Ecology of this country, is authorized by law to collect significant amounts of fines from violators in court (Karatas, Acikgoz, 2019). These fines, which the Israeli "green" police are authorized to use, can create significant financial problems for offenders. For example, "the owner of a garage is fined almost \$ 900 for spilling used oils, \$ 82,000 for illegal operation of a gas station, and \$240,000 for illegal waste burning by a large enterprise".

In the United States of America, a specialized agency was established in 1970 in order to effectively deal with violators of legal norms in the field of ecology. It is endowed with broad powers both in the field of collecting large fines and in the field of issuing permits for a particular level of emissions (Joldžić, 2011; 2020).

The effectiveness of this agency is indicated by the fact that in 2019 it managed to "voluntarily eliminate violations at 1,900 facilities, reached \$ 4.4 billion in investments in the modernization of enterprises to enhance their environmental safety, collected \$ 472 million in fines, 170 criminal cases were opened" (Curran, 2017). Given such a high efficiency and effectiveness of the above foreign agencies, we consider it necessary to modernize the domestic state environmental inspection to the level of these agencies.

In the context of the above facts and analysis of the issue, it is worth supporting the statement of L. O. Yemets (2017, p. 23) that the modern development of civil society and the intensification of social movements in all spheres of public life require a rethinking of many forms and methods of citizen participation in the management of public affairs. The field of environmental safety and environmental protection is no exception.

5. CONCLUSIONS

Thus, Ukrainian society is in dire need of high-quality legislative support for environmental protection processes. In particular, it should be understood that given the high dynamism of modern life, new threats and challenges may arise for the national and global environment. Therefore, domestic jurists and legislators should adequately ensure the possibility of timely changes to existing legislation in the field of environmental protection.

Having analyzed the key regulatory legal acts of Ukraine in the field of ecology, we came to the conclusion that some parts of these legal acts do not correspond to the realities of our time. A deep comparative analysis between them especially helped to reveal the serious backwardness of domestic environmental legislation compared to the legislation of developed and democratic Western countries.

The national legislation of Ukraine in the field of environmental protection is in dire need of proper division of functions between the supervisory authorities of the state, as well as legal, personnel and logistical capabilities to ensure the implementation of environmental acts by all subjects of public relations. Also, in Western countries there is a much better and more comprehensive system of audit and self-control of enterprises which activity can potentially threaten the environment. It is argued that, given the high natural potential of Ukraine, it should be reliably protected both by law and by the quality of the work of regulatory and supervisory authorities competent to make decisions on environmental issues.

Conflict of interests

The authors declare no conflict of interest.

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