

ASSESSMENT OF THE IMPACT ON THE ENVIRONMENT WHEN PERFORMING ECONOMIC ACTIVITIES AS A LEGAL GUARANTEE OF THE IMPLEMENTATION OF CONSTITUTIONAL ENVIRONMENTAL RIGHTS

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Annotation. *The article discusses the issue of environmental impact assessment as a procedure designed to guarantee the constitutional rights of a person to life and to an environment safe for life and health, to ensure the balance of economic and ecological components of sustainable development. The authors briefly analyze the political and legal prerequisites for the introduction of the environmental impact assessment procedure into national legislation in view of Ukraine's European integration obligations, the main stages of such a procedure and its importance for guaranteeing the realization of the above-mentioned right. Recommendations were formulated for improving the regulatory regulation of the environmental impact assessment procedure in order to increase its effectiveness as a guarantee of the implementation of the specified constitutional human rights.*

Key words: *constitutional right to an environment safe for life and health, environmental impact assessment, human rights, guarantees of constitutional rights.*

1. Formulation of the problem.

The global environmental crisis that humanity is experiencing in the 21st century has put on the agenda the issue of the preservation of homo sapiens on planet Earth. Significant climate changes, depletion and pollution of natural resources, accumulation of waste, implementation of environmentally hazardous activities produce negative effects on all living beings, often causing irreparable damage to human health and life.

The understanding of these dangers led to the recognition and consolidation in the legislation of Ukraine of the constitutional rights of individuals of an ecological orientation, the main of which should be recognized as provided for in Art. 50 of the Constitution of Ukraine [1] the right to an environment safe for life and health, which is closely related to another constitutional natural human right to life.

Taking into account the importance and meaning of such a right, legal means (guarantees) that contribute to its proper implementation are of particular importance, one of which is expedient to consider conducting a normatively regulated procedure for assessing the impact on the environment [2], in the implementation of which, prior to the start of the corresponding activity, its consequences for the life and health of the population can be assessed, and in the case of establishing a significant danger of the corresponding activity for the mentioned goods – the granting of permission documents for the implementation of such activity can be refused.

In the article, the authors analyze the political and legal prerequisites for the introduction of the environmental impact assessment procedure and its importance for ensuring the sustainable development of Ukraine in the context of the balance of its ecological and economic interests, examine the current national legislation on relevant issues for its effectiveness and formulate separate proposals for improving the relevant legislation .

2. Analysis of scientific publications.

The issue of environmental impact assessment as a legal procedure has become the subject of scientific research, in particular, such well-known scientists as N.R. Malysheva [2], Yu.S. Shemshuchenko [2], V.V. Nosik [3], T.O. Tretyak [2], O.A. Shompol [4] and others, by February 24, 2022 a number of studies of individual aspects of the specified procedure were conducted.

3. The aim of the study.

At the same time, during the full-scale war of Russia against Ukraine, attention to the environmental impact assessment procedure on the part of representatives of the domestic legal science decreased somewhat, therefore the authors of this article intend to renew attention to this procedure in the context of its importance as an important legal guarantee of the realization of constitutional human rights to life and for an environment safe for life and health.

4. Presentation of the main material of the study.

According to Art. 360 of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand (hereinafter – the Association Agreement) [5] the parties develop and strengthen cooperation on issues of environmental protection and thereby contributing to the realization of long-term goals of sustainable development and green economy; it is assumed that the strengthening of environmental protection activities will have positive consequences for citizens and enterprises in Ukraine and the EU, in particular, due to the improvement of the health care system, conservation of natural resources, increased economic and environmental efficiency, integration of environmental policy into other areas of state policy, as well as increased production level thanks to modern technologies.

At the same time, Article 360 of the Association Agreement stipulates that cooperation aims to preserve, protect, improve and reproduce the quality of the environment, protect public health, prudent and rational use of natural resources, and encourage measures at the international level aimed at solving regional and global environmental problems, in particular, in such areas as: atmospheric air quality; water quality and management of water resources, including the marine environment; waste and resource management; nature protection, in particular preservation and protection of biological and landscape diversity (eco-networks); industrial pollution and industrial threats; chemical substances.

The analysis of the above-mentioned provisions of the Association Agreement indicates that its parties give priority to the prevention of violations of the constitutional human rights to life and to an environment safe for life and health during cooperation in the field of the environment, because all directions of cooperation, without exception, relate to spheres of activity in which to be violated and this right is often violated.

Annex XXX to the Association Agreement defines the list of EU acts and individual procedures provided for by them, which Ukraine must implement at the level of national legislation. One of the specified acts and procedures is the environmental impact assessment, regulated by Directive 2011/92/EU on the assessment of the impact of certain public and private projects on the environment [6].

This Directive provides a mechanism for preliminary, prior to the start of implementation of the relevant economic activity, assessment of its possible effects on the state of the environment and the life and health of the population. Thus, in clause 2 of the preamble of this act, it is noted that, in accordance with Article 191 of the Treaty on the Functioning of the European Union [7], the policy of the Union in the field of the environment is based on the principles of prevention and preventive action, on the principle of elimination, giving priority to elimination at the source, of damage for the environment, for which the environmental consequences of all technical planning and decision-

making processes should be taken into account as early as possible. At the same time, clause 14 of the same preamble stipulates that the consequences of the project for the natural environment must be assessed to take into account the aspirations aimed at protecting human health, contributing to a better natural environment for the quality of life, and monitoring the preservation of the diversity of biological species and preserve the reproductive capacity of the ecosystem as a fundamental life resource.

The above indicates that among the objects of prevention of negative impacts during the implementation of the researched procedure, the health and quality of life of a person are important, and the factors that can threaten these values are environmental factors, primarily its anthropogenic component - certain types of industrial economic activity.

The importance of the environmental impact assessment procedure for the realization of the constitutional right of a person to an environment safe for life and health is determined primarily by the high degree of probability of violation of such a right when carrying out activities that are subject to such an assessment. Thus, among the facilities for which it is mandatory to carry out the environmental impact assessment procedure in accordance with Directive 2011/92/EC, the following are specified: crude oil processing plants (with the exception of enterprises that exclusively manufacture lubricants from crude oil), as well as gasification and liquefaction installations with a capacity of at least 500 tons of coal or bituminous shale per day; nuclear power plants; installations for regeneration of irradiated nuclear fuel; plants of a full technological cycle for the first smelting of iron and steel; installations designed for the production of non-ferrous raw metals from ore, ore concentrates or secondary raw materials according to metallurgical, chemical or electrolytic technologies; installations designed for the extraction of asbestos, as well as for the treatment and processing of asbestos and asbestos-containing products: for asbestos-cement products - annual production of more than 20,000 tons of final products; for friction linings – annual production of more than 50 tons of final products; for other ways of using asbestos – use of more than 200 tons per year; integrated chemical plants, in other words – chemical plants intended for the industrial production of substances by chemical transformation, in which numerous blocks are placed next to each other and functionally connected to each other and which are intended: for the production of basic organic chemical products, for the production of basic inorganic chemical products, for the production of fertilizers based on phosphorus, nitrogen or potassium (simple or complex fertilizers), for the production of basic phytosanitary products and biocides, for the production of basic pharmaceutical products using chemical or biological technology, etc.

In addition, EU member states are given the right to independently determine whether to extend the environmental impact assessment procedure at the national level to such types of economic activity that are dangerous for human life and health, in particular, such as: projects for the use of uncultivated land or semi-natural territories for intensive farming; water resource management projects for agriculture, including irrigation and land drainage projects; certain types of intensive animal husbandry and intensive fish farming activities; underground mining works; drilling for the purpose of storing nuclear waste; land-based industrial installations for the production of coal, oil, natural gas and ore, as well as bituminous shale; coking plants; cement production; production of asbestos, as well as for the production of asbestos-based products; production of pesticides and pharmaceutical products, paints and varnishes, elastomers and peroxides; storage of oil, petrochemical and chemical products; production of animal and vegetable fatty substances; pulp production and processing; separate types of waste removal; deactivation or destruction of explosives; industrial wastewater treatment; separate types of activities related to the installation of oil pipelines and gas pipelines, as well as pipelines intended for the transportation of CO₂ flows for the purpose of their geological storage, etc.

The signing and subsequent ratification by Ukraine of the Association Agreement gave a powerful impetus to the activation of legislative work on the regulation of impact assessment by domestic legislative acts, because such regulation has acquired additional importance as a component of fulfilling the European integration obligations of our state. It should be noted the active support of the relevant legislative initiatives by public environmental formations, a number of which have made public appeals in support of the relevant draft law. In particular, it was noted in the said appeal that

Ukraine is the only country in Europe that does not have a proper system for assessing the impact on the environment and public health from the implementation of environmentally hazardous economic activities, which significantly hinders the adoption of informed decisions regarding such activities and carries a number of risks for of Ukraine in the areas of environmental protection, public health, democratic decision-making process, European integration aspirations, international obligations and investment climate, and also creates risks for the success of specific projects of economic activity [8].

The Law of Ukraine "On Environmental Impact Assessment", initially adopted by the Verkhovna Rada of Ukraine on October 4, 2016, caused significant comments, including from the President of Ukraine, in connection with which it was vetoed. The remarks of the head of state concerned, first of all, the vagueness of certain provisions of the specified law, which, from his position, could lead to abuse during its implementation and lead to unjustified restrictions and complications in the implementation of economic activity [9].

The imperfection of the specified normative-legal act from the point of view of its real, not formal, guarantee of the safety of the relevant activity for human life and health was emphasized in the remarks of the Main Legal Department of the Apparatus of the Verkhovna Rada of Ukraine dated October 3, 2016. Thus, it was noted that the proposed method of implementing the environmental impact assessment system in Ukraine, including, in the cross-border context, and the implementation of the norms of international treaties on public participation in the decision-making process and access to justice on issues related to the environment are selective, which primarily refers to the provisions of the project regarding the optional consideration of the comments and suggestions of the public by the business entity in the process of assessing the impact on the environment. In addition, it was indicated that the proposed version contains a number of provisions, the formulation of which did not take into account the requirement to ensure legal certainty of the legal norm, which is an integral component of the principle of the rule of law and according to which legal norms must be clear, clear and unambiguous, since otherwise can ensure their equal application, which does not exclude unlimited interpretation in law enforcement practice [7].

On May 23, 2017, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Environmental Impact Assessment" (hereinafter referred to as the EIA Law) [10], which, in accordance with the provisions of Part 1 of Art. 17 was put into effect six months after its entry into force, namely from December 18, 2017. It should be noted that certain positive changes were made to the text of the draft Law on ATS after it was vetoed, however, many of its provisions require further substantive improvement, which will be detailed below.

According to Art. 1 of the EIA Law, the impact on the environment, which is subject to assessment according to the established procedure, is any consequence of the planned activity, the list of types of which is given in Art. 4 of the same law, for the environment, including the consequences for the safety of people's activities and their health, flora, fauna, biodiversity, soil, air, water, climate, landscape, natural territories and objects, historical monuments and other material objects or for a combination of these factors, as well as the consequences for objects of cultural heritage or socio-economic conditions, which are the result of changes in these factors.

Part 1 of Art. 2 of the EIA Law establishes that environmental impact assessment is a procedure that involves the following stages (stages): 1) preparation by the business entity of an environmental impact assessment report in accordance with Articles 5, 6 and 14 of this Law; 2) public discussion in accordance with Articles 7, 8 and 14 of this Law; 3) analysis by the authorized body in accordance with Article 9 of this Law of the information provided in the environmental impact assessment report, any additional information provided by the business entity, as well as information received from the public during public discussion, during the implementation cross-border impact assessment procedures, other information; 4) provision by the authorized body of a reasoned conclusion on the assessment of the impact on the environment, which takes into account the results of the analysis provided for in clause 3 of this part; 5) taking into account the conclusion of the environmental impact assessment in the decision on the implementation of the planned activity in accordance with Article 11 of this Law.

Regardless of the formal compliance of the provisions of the EIA Law with the requirements of the Association Agreement and its content 2011/92/EU, the effectiveness of the procedure introduced by it as a legal guarantee of the implementation and protection of the constitutional right of a person to

an environment safe for life and health raises reasonable doubts, primarily due to the vagueness of the prescriptions regarding individual stages of the corresponding impact assessment, which allows to approach their conduct purely formally and often with various abuses. It is primarily about such important components of environmental impact assessment as: 1) collection and summarization of information about the planned activity, on the basis of which the assessment procedure takes place and the final decision is made; 2) involving the real public in the assessment procedure, rather than simulating this process using persons loyal to a certain person(s); 3) the obligation of real and not formal consideration of the public's position regarding the object of evaluation, etc.

Under such conditions, the possibility of achieving the real goal of environmental impact assessment, which consists in preventing activities dangerous for humans and preventing harm to human life and health, is doubtful, which, by the way, the scientific legal community has been paying attention to since almost five years ago.

Thus, on June 18, 2018, an All-Ukrainian round table on issues of land, agrarian, and environmental law regarding environmental impact assessment was held in the Kyiv regional center of the National Academy of Sciences of Ukraine. As a result of the round table, Recommendations were adopted, in which its participants expressed a position according to which the adoption of the Law on Environmental Protection can contribute to the prevention of economic activities that negatively affect the environment and the creation of a quality living environment for the Ukrainian people. At the same time, attention is focused on the fact that the relevant national legislation needs significant improvement with the aim of: ensuring the reliability, completeness and relevance of information containing information on environmental impact assessment issues, strengthening guarantees of real public participation in the process of the specified impact assessment and reducing opportunities for abuse on the part of applicants and assessment bodies during the relevant procedure [11].

In addition, attention should be paid to the textual similarity (if not the identity) of the Law on EIA to the provisions of Directive No. 2011/92/EC and the oversaturation of the Law on ATS with evaluative concepts, in connection with which it was rightly noted that a literal translation of the act of EU legislation is unlikely whether it is justified [12], including in view of the national specificity of law enforcement, which is not taken into account under such conditions.

It is also necessary to agree with the following, partially mentioned in legal science [12], shortcomings of the environmental impact assessment procedure defined by the Law on Environmental Protection, which need to be corrected:

1) the quantitative indicators of activity defined in the Law on EIA, under the condition of achieving which it is subject to impact assessment according to the specified procedure, are not properly substantiated. For example, peat extraction will be subject to an environmental impact assessment only if it is carried out on an area of more than 150 hectares, and operations in the field of household waste management - if they are carried out in the volume of 100 tons per day or more. However, it is obvious that from the point of view of safety for life and health, there is actually no difference between the above threshold indicators of activity and the same types of activity carried out, for example, on an area of 149.9 hectares or a volume of 99.99 tons per day, respectively;

2) lack of real legal guarantees of the completeness and reliability of the information provided both in the notification of the planned activity, which is subject to environmental impact assessment, and in the environmental impact assessment report. The organization of the development of both of these key documents is based on an a priori biased person – interested in getting a positive decision regarding the planned activity of the business entity, and the relevant authorized state authorities are not empowered to verify the submitted information on the ground or to carry out control measurements of any quantitative and qualitative indicators;

3) the Law on EIA does not provide for detailed reasoning by the relevant authorized body when adopting a conclusion on the environmental impact assessment of the reasons for rejecting the public position, because it only provides for "consideration" of the report on the results of the said discussion without any detail, what exactly is meant, what are the grounds for taking into account (full, partial) the given arguments or rejecting them;

4) the lack of norms in the Law on EIA that would provide for effective procedures for appealing decisions made as a result of the environmental impact assessment procedure. In this case, the out-of-court procedure can be more effective than a court appeal, because it is possible to organize it with the involvement of experts in the field of nature management and assessment of the environmental consequences of the planned activity, who will be able to independently make a professional decision on the merits, while the court will always need the help of experts, and it is far from a fact that the currently existing domestic forensic expert institutions can professionally conduct appropriate expert studies, the consequences of which can establish the validity of the decision made based on the results of the evaluation procedure impact on the environment.

If the above deficiencies are corrected, the level of effectiveness of the environmental impact assessment procedure as a legal guarantee of the human right to an environment safe for life and health will be significantly increased.

However, the proposals made at the mentioned event have not been taken into account by the legislator until now. Separate changes to the current legislation [13] on relevant issues do not solve the global problems that have been brought to attention.

5. Conclusions.

Based on the results of the research conducted in this article, the following conclusions can be reached:

The introduction of the environmental impact assessment procedure in Ukraine took place primarily in the context of the fulfillment of obligations regarding the adaptation of national legislation to the EU legislation provided for in the Association Agreement, and with the aim of implementing an effective procedure for the prevention of violations of the constitutional human rights to life and safety for life and environmental health;

Under the condition of proper regulatory and legal regulation, environmental impact assessment can be a sufficiently effective legal mechanism for harmonizing the ecological and economic components of sustainable development and a legal guarantee of preventing the violation of the human constitutional right to an environment safe for life and health, because the specified assessment is carried out before the beginning implementation of a certain type of economic activity that is dangerous to the mentioned goods, and the possibility of issuing permits for the relevant activity and starting its implementation depends on the results of such an assessment;

During the adoption process, the Law of Ukraine "On Environmental Impact Assessment" was subjected to well-founded criticism from the President of Ukraine and the structural units of the Apparatus of the Verkhovna Rada of Ukraine, however, only some of the comments were taken into account in its final version;

The main shortcomings of the environmental impact assessment procedure regulated by the Law on EIA are: a) unreasonableness of the defined quantitative indicators of activity, on condition of achievement of which it is subject to impact assessment according to the specified procedure; b) lack of real legal guarantees of the completeness, relevance and reliability of the information provided in the environmental impact assessment documentation (notices on planned activities subject to environmental impact assessment and in the environmental impact assessment report), the preparation of which is ensured by an interested party in a positive passing the procedure by a person – a business entity that intends to carry out activities that are subject to the specified assessment; c) lack of requirements for detailed reasoning in the environmental impact assessment conclusion of the deviation of the public's position regarding the object of the assessment expressed during the relevant procedure; d) the lack of norms in the Law on EIA that would provide for effective procedures for out-of-court appeal of decisions made as a result of the environmental impact assessment procedure;

During the time that has passed since the entry into force of the Law on Internal Affairs, no changes have been made to it that would allow to eliminate the shortcomings mentioned in the previous paragraph, and draft law No. 8410 introduced by the Cabinet of Ministers of Ukraine in 2023 to the Verkhovna Rada of Ukraine is also not directed for such elimination [14].

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