

# THE PRACTICE OF JUDICIAL PROTECTION OF ENVIRONMENTAL RIGHTS IN UKRAINE: PROBLEMS AND PROSPECTS

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**Annotation.** The scientific article is devoted to the study of the practical experience of judicial protection of environmental rights. The article defines the main concepts in the field of protection of environmental rights of citizens: “ecological rights”, “judicial protection”, “ecological policy”, “judicial protection of environmental rights” and other concepts in the context of the conceptual and categorical apparatus of the subject of research. The scientific article contains an analysis of the norms enshrined in the current legislation of Ukraine regarding the judicial protection of environmental rights of communities and the separate protection of environmental rights of citizens. The peculiarities of the practice of consideration by Ukrainian courts of cases regarding the violation of the environmental rights of citizens are given. The methodology of researching issues of environmental rights of citizens is given. The information policy of the state in the sphere of protection of environmental rights of citizens is defined. The peculiarities of the legal doctrine in the field of judicial protection of citizens’ environmental rights and the protection of citizens’ environmental rights in general are indicated, as well as the proposals of scientists in the field of law to improve the regulatory regulation of citizens’ environmental rights, as well as to improve the practice of judicial protection of citizens’ environmental rights. Peculiarities of normative and legal regulation of the sphere of judicial protection of citizens’ environmental rights have been studied. The environmental rights and obligations of individuals and legal entities in the field of protection of environmental rights are defined, and the responsibility of legal entities and individuals in terms of violation of environmental or nature protection legislation is defined. The importance of increasing the level of ensuring the realization of the environmental rights of citizens in Ukraine by implementing an effective state information policy, improving the legal regulation of ensuring judicial protection of the environmental rights of citizens, and forming an environmental policy to prevent violations of the environmental rights of citizens was emphasized.

**Key words:** environmental rights, judicial protection of environmental rights, environmental duties, regulatory regulation of environmental rights, environmental policy, informational environmental policy.

## 1. Statement of the problem and relevance of the research topic.

The issue of environmental rights of citizens is very important for Ukraine, especially during the state of war, where the environment suffers irreparable losses, negative impact as a result of military actions. A person’s constitutional guarantee of a safe environment for life can be violated due to both military actions and illegal interference in the human ecosystem, etc. This indicates the need to strengthen the protection of human environmental rights, and better yet, the formation of an effective practice of judicial protection of the environmental rights of citizens. The above indicates the relevance of the raised question, which requires research.

## 2. Analysis of the latest publications and research on this issue.

Such scientists as: Ladychenko V., Andrusiak V., Bakirova I., Storozhenko S., Pavlenko Zh., and other scientists were engaged in researching the issue of judicial protection of citizens’ environmental rights and researching other types of protection of citizens’ environmental rights.

### 3. Presentation of the research material.

Justice is an important manifestation of judicial power; the exercise of judicial power in terms of content is a much broader concept than the concept of justice. Environmental rights and responsibilities of citizens of Ukraine are a system of legally enshrined powers and obligations of citizens in the environmental sphere. The best environmental rights and obligations are enshrined in the Constitution of Ukraine and the Law of Ukraine "On Environmental Protection", because according to Articles 9-12 of this law, citizens of Ukraine have the right to: an environment that is safe for life and health; unification in public nature protection formations; receiving complete and reliable environmental information in the prescribed manner, etc.

Article 50 of the Constitution of Ukraine states that everyone has the right to an environment safe for life and health and to compensation for damage caused by the violation of this right. Everyone is guaranteed the right of free access to information about the state of the environment, about the quality of food products and household items, as well as the right to its dissemination [1].

Similar wordings are explained by the fact that this right is one of the main human rights, which corresponds to the duty of the state to ensure the implementation of sanitary and hygienic measures aimed at improving and improving the natural environment.

To achieve the goals and objectives of environmental policy, the state must properly create a mechanism for the implementation and protection of environmental rights and responsibilities of citizens. Such implementation and protection is possible not only as a fact of their formalization in legal norms, but also by clarifying their content in order to help citizens effectively implement them. Therefore, for a better understanding of the essence and significance of environmental rights and responsibilities of citizens, it is advisable to take into account the theoretical foundations of their structure and content as a subjective category.

Therefore, speaking about the effective implementation and protection of environmental rights and responsibilities of citizens, it is advisable to take into account their legally defined structure and content, defined legal forms of implementation of legal norms about such rights and responsibilities, their guarantees, which are embodied in reality through the activation of ecological – the legal behavior of the holders of such rights and obligations, who can actively (or passively) use their rights, fulfill legally defined obligations in the field of ecology, comply with established environmental requirements and apply legal norms, taking an active part in the formation of an environmentally oriented society and state, in particular in the process of making ecologically important decisions.

The Law of Ukraine "On Protection of the Natural Environment" defines that citizens are obliged to: preserve, protect and rationally use natural resources; not to violate the environmental rights of other subjects; to compensate for the damage caused by them, etc.

Environmental laws of Ukraine provide for citizens' participation in decision-making and local authorities must guarantee a safe environment for citizens. Often, these obligations exist only on paper, because there is no procedure for implementing these norms in life. Every citizen of Ukraine has the right to: a natural environment that is safe for his life and health; participation in the discussion and submission of proposals to regulatory and legal acts, materials regarding the placement, construction and reconstruction of objects that may negatively affect the state of the environment, submission of proposals to state authorities and local self-government bodies, participating legal entities in making decisions on these issues; participation in the development and implementation of measures for environmental protection, rational and integrated use of natural resources; implementation of general and special use of natural resources; unification in public nature protection formations; free access to information about the state of the natural environment (environmental information) and free receipt, use, distribution and storage of such information, except for limitations established by law; participation in public hearings or open meetings on the impact of planned activities on the surrounding natural environment at the stages of placement, design, construction and reconstruction of objects and in conducting public environmental expertise; receiving environmental education; filing lawsuits against state bodies, enterprises, institutions, organizations and citizens in court

for compensation for damage caused to their health and property as a result of negative impact on the natural environment; appeal in court proceedings against decisions, actions or inaction of state authorities, local self-government bodies, and their officials regarding the violation of citizens' environmental rights in the manner prescribed by law.

The legislation of Ukraine also defines the general duties of citizens, such as: the duty to preserve nature, protect it, and rationally use its resources; the obligation to carry out activities in compliance with the requirements of environmental safety, environmental standards and limits of nature use; the obligation not to violate the environmental rights and legitimate interests of other subjects; the obligation to pay a fee for special nature use; the obligation to pay fines for environmental offenses.

Special duties of citizens are provided for by the system of environmental legislation and arise from the conditions of ownership of natural resources, nature use and implementation of environmentally hazardous activities by citizens. Such obligations are divided into property and non-property. The property obligations are: the obligation to pay a fee for pollution of the environment and overuse of natural resources in a timely manner; the obligation to effectively use natural resources, to implement a set of measures to restore them; the obligation to take measures to prevent the negative impact of activities on the state of the environment (pollution, clogging, depletion); the obligation to introduce the latest technologies, equipment and methods of activity capable of negatively affecting the state of the natural environment and people's health [2].

Non-property obligations include: the obligation to obtain permits for carrying out activities capable of negatively affecting the state of the environment and people's health; the obligation to submit ecologically dangerous objects for ecological expertise; the obligation to comply with the conclusions of the state environmental examination; the obligation to provide environmental control bodies with information about the nature of environmentally hazardous activities, etc.

According to the Law of Ukraine "On the Protection of the Animal World", citizens are obliged to: protect the animal world and the habitat of wild animals; to promote the reproduction of renewable objects of the animal world; use objects of the animal world in accordance with the law; compensate for the damage caused by them to the animal world as a result of violating the requirements of the legislation on the protection, use and reproduction of the animal world [3].

Citizens have other rights and obligations provided for by law. The ecological rights of citizens are ensured by carrying out large-scale state measures to maintain, restore and improve the state of the natural environment, and accordingly by the duty of ministries, departments, enterprises, institutions, organizations to implement technical and other measures to prevent the harmful impact of economic and other activities on the natural environment, to fulfill environmental requirements in the planning, placement of productive forces, construction and operation of national economic facilities.

Guarantees for the protection of environmental rights are understood as legal means of ensuring the implementation of environmental rights [4, c. 12].

Today, Ukraine has a certain legislative basis for the practical implementation by citizens of the right granted to them by the Constitution of Ukraine to appeal to public authorities and their officials, including to appeal decisions, actions or their inaction, but it is practically difficult to find information in available sources about the responsibility of state bodies or officials as a result of the violation of environmental rights, which indicates isolated cases of the realized right to protection.

According to the decision of the Constitutional Court of Ukraine dated May 23, 2001 No. 6-пр/2001, the right to judicial protection is one of the basic, inalienable rights and freedoms of a person, and in accordance with the second part of Article 64 of the Constitution of Ukraine, it cannot be limited even in conditions of war or a state of emergency, and the imperfection of the institution of judicial control over pre-trial investigation cannot be an obstacle for challenging the acts, actions or inaction of officials of state authorities [5].

The functions of the state to ensure the judicial protection of citizens' environmental rights are characterized by the principles and legal tools of guaranteeing the freedoms, realization of the

rights and interests of citizens, which includes a wide range of organizational and legal activities of authorized bodies of public authority, called to ensure the rights and legitimate interests of participants in environmental legal relations.

The functioning of the human rights system consists in the implementation of professional activities related to the emergence, termination, restoration of human and citizen rights and freedoms, their protection from unlawful encroachments through their prevention, termination, as well as the use of measures to restore violated rights. The most important components of the mechanism that ensures human and citizen safety are human rights and law enforcement bodies and institutions [6, c. 9].

According to their mentality, citizens of Ukraine are not yet accustomed to the possibility of judicial protection of their rights, freedoms and legitimate interests, and therefore do not use this method of protection to the full extent [7].

Ensuring judicial protection of citizens' environmental rights is impossible without the regulatory function of law and is carried out in accordance with legal norms inextricably linked to the regulation of social relations.

Legislative acts defining the environmental rights of citizens and guarantees of these rights (appeal of citizens to court for the protection of environmental rights and the mechanism of protection of these rights); organization and activity of executive authorities and local self-government bodies; the right to apply for the protection of violated and contested environmental rights to executive authorities (administrative protection); the right to appeal in court decisions, actions or inaction of state authorities, local self-government bodies, officials and officials; the right to apply to the court for the protection of one's personal non-property or property right and interest constitute a regulatory function of law [8, c. 202–211].

Relations regarding access to environmental information in Ukraine are regulated by a number of legal acts. In the modern information society, the constitutional consolidation of the right of citizens to free access to environmental information is of particular importance. National legislation refers to environmental information as one of the important functions of the state, and the provisions of Article 50 of the Constitution of Ukraine guarantee everyone the right to free access to information about the state of the environment, as well as the right to its dissemination. Such information cannot be classified by anyone [1].

Implementing its function of informational provision of environmental rights, the state, represented by authorized bodies, their officials and officials, guarantees citizens and legal entities free access to environmental information not prohibited by law, the right to public participation in the decision-making process and access to justice on issues, relating to the environment.

When deciding cases on the protection of the plaintiff's interest, he will always be opposed by the interests of the other party; the interests of the parties will always compete with each other, and as a result, the defense will be given to the one of them, which, from the point of view of the court, will prevail. Having protected the interest, the court opens the way to the emergence of the corresponding right.

#### 4. Conclusions.

Usually, only the person who is the subject (carrier) of violated rights, freedoms or interests has the right to legal protection. So, in order for a person to be granted judicial protection, the court determines whether the person actually has a right, freedom or interest violated, and this right, freedom or interest is violated by the defendant. Ukraine should restore the public's trust in the judiciary by forming an effective judicial practice of protecting the environmental rights of citizens.

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