

CONSTITUTIONAL PRINCIPLES OF THE FUNCTIONING OF THE MECHANISM OF ADMINISTRATIVE AND LEGAL REGULATION IN THE SPHERE OF ENSURING ECOLOGICAL SECURITY OF UKRAINE

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Annotation. The study of the constitutional principles of the functioning of the mechanism of administrative and legal regulation in the sphere of ensuring the ecological security of Ukraine is an urgent scientific problem, the solution of which can provide clear guidelines for its reform and improvement. The article analyzes the role and significance of the Constitution of Ukraine as the Fundamental Law in the aspect of ensuring the functioning of a holistic mechanism of administrative and legal regulation in the sphere of ensuring the ecological security of Ukraine. At the same time, the fact is stated that the Constitution of Ukraine laid the basic principles for the formation of such a mechanism in the sphere of ensuring ecological security as the leading type of national security of Ukraine. It is also noted that the Law of Ukraine “On Environmental Protection” was adopted before the Constitution of Ukraine came into force, but it was after the adoption of the Fundamental Law of Ukraine that the process of amending this Law and its gradual modification was significantly intensified. Such modification, in particular, concerned the formation at the legislative level of the status of subjects of power that carry out public administration in the field of ensuring environmental security. It is proved that since the Constitution of Ukraine at the time of its adoption was a progressive document that significantly outpaced the fundamental provisions that existed within the national legal system before the adoption of the Constitution of Ukraine, it is the Fundamental Law that should be the basis for reforming the mechanism of administrative and legal regulation in the field of ensuring the environmental security of Ukraine as a type of national security. All this made it possible to accelerate the processes of appropriate reform, relying on such constitutional values as stability, security and balance, which in the modern world serve as the foundation for the development of statehood, social progress and guaranteeing the vital interests of every person. Thus, today the Constitution of Ukraine as the Basic Law has laid a solid foundation in the system of regulating a wide range of various social relations. Among them, issues related to ecology, ecological balance and ecological safety occupy a leading place. Moreover, the Constitution forms such principles comprehensively, starting from the preamble and including all its other provisions. For example, the preamble of the Constitution of Ukraine, having a direct correlation with other provisions of the Basic Law, forms a significant basis for improving the mechanism of administrative and legal regulation in the field of ensuring the ecological safety of Ukraine.

Key words: Constitution, constitutional principles, administrative and legal regulation, administrative and legal principles, mechanism of administrative and legal regulation in the field of ensuring environmental safety, environmental safety as a type of national security of Ukraine.

1. Introduction.

Ensuring environmental safety and balance in Ukraine is one of the priority tasks of a far-reaching nature. That is why the issue of ensuring the functioning of a clear mechanism of administrative and

legal regulation in the field of ensuring the environmental safety of Ukraine is of urgent importance. In this regard, it should be assumed that in this system the Constitution of Ukraine is of particular importance as the Fundamental Law of the state and society, which laid a powerful foundation for regulating the basic blocks of social relations and had a significant impact on the formation of a holistic and effective mechanism of administrative and legal regulation in the field of ensuring the environmental safety of Ukraine. That is why the study of the constitutional principles of the functioning of such a mechanism is an urgent scientific problem, the solution of which can provide clear guidelines for its reform and improvement.

2. The state of scientific research on the topic.

Certain aspects related to the administrative and legal principles of management in the field of ensuring environmental safety were studied by such scientists as O.I. Bezpalova, L.O. Yemets, I. Zharovska, T.E. Kaganovska, I.D. Kazanchuk, D.M. Lukyanets, D.V. Lazarenko, L.V. Mendyk, L.O. Ostapenko and others. At the same time, the issue of the influence of constitutional principles on the formation of the mechanism of administrative and legal regulation in the field of ensuring environmental safety in Ukraine is much less in the legal doctrine, and the relevance of this view exists.

3. The purpose of the article is to study the constitutional principles of the functioning and further improvement of the mechanism of administrative and legal regulation in the field of ensuring environmental safety in Ukraine.

4. Main results of the study.

When analyzing the formation of legislative regulation of mechanisms for ensuring environmental safety, including the mechanism of administrative and legal regulation in this area, it should be noted that the adoption of the Constitution of Ukraine in 1996 was a leading milestone in the above-mentioned long process [1]. After all, it laid the basic foundations for the formation of a holistic mechanism of administrative and legal regulation in the field of ensuring environmental safety as a type of national security. Although the Law of Ukraine "On Environmental Protection" of June 25, 1991 [2] was adopted long before the development, adoption and entry into force of the Constitution of Ukraine (June 28, 1996), it was after the adoption of the Fundamental Law of Ukraine that the process of amending this Law was significantly intensified and its further modification was ensured, which also concerns the improvement of the functioning of the mechanism of administrative and legal regulation in the field of ensuring environmental safety in Ukraine.

For example, the Law of Ukraine "On Amendments to the Law of Ukraine "On Environmental Protection" of March 5, 1998 [3] changed a number of formulations within the framework of the primary law, including, in particular, those related to their unification with the constitutional text. Thus, the specified Law on Amendments provided for replacing the words "republican extra-budgetary" with the word "State" in paragraph "d" of Article 17, and adding the words "as part of the State Budget of Ukraine" after the word "environment". That is, in this case, we are talking about those changes that relate to the understanding of Ukraine as a full-fledged sovereign state without the remnants of rudimentary post-Soviet approaches, with the abandonment of the use of the term "republic" and its replacement with the term "state" and everything related to this.

In addition, this Law on Amendments significantly modifies the mechanism of administrative and legal regulation in the field of ensuring environmental safety in terms of building a system of entities ensuring such safety in accordance with constitutional requirements. Thus, in accordance with paragraph seven of this Law, parts three and four of Article 46 of the Law of Ukraine "On Environmental Protection" were set out in the following wording: "Fees for the use of natural resources are credited to the relevant budgets in accordance with the current legislation. Funds from the environmental pollution fee are distributed between local (rural, settlement, urban), regional and republican funds of the Autonomous Republic of Crimea, as well as the State Environmental Protection Funds in the ratio of twenty, fifty and thirty percent, respectively, and between the Kyiv, Sevastopol city and State Environmental Protection Funds - in the ratio of seventy and thirty percent.

That is, in this case, we are talking about the formation at the legislative level, in particular, of such subjects of power related to ensuring environmental safety as state authorities and local self-government bodies. In addition, the above legislative measure should be considered in the context of clarifying the powers of a wide range of public authorities (state authorities and local self-government bodies) and ensuring their proper public administration in fulfilling tasks in the field of ensuring environmental safety.

On December 14, 1999, the Law of Ukraine "On Amendments to the Law of Ukraine "On the Nature Reserve Fund of Ukraine" [4] in parts one and two of Article 4, the words "the people of Ukraine" were replaced by the words "the Ukrainian people". In this case, we are not only talking about the editorial clarification of the current legislation and bringing it into formal compliance with the provisions of the Constitution of Ukraine (in particular, the preamble), but also about clarifying the understanding of environmental issues in the security dimension. Indeed, in accordance with paragraph 9 of part one of article 1 of the Law of Ukraine "On National Security of Ukraine" [5], the national security of Ukraine is considered as the protection of state sovereignty, territorial integrity, democratic constitutional order and other national interests of Ukraine from real and potential threats. As will be shown below, one of the most important components of the constitutional order is to guarantee the status of such a leading subject as the Ukrainian people, as well as the issue of ecology and national security. In this regard, the above legislative steps can be considered in the context of building appropriate organizational and legal foundations for the functioning of a holistic mechanism for ensuring ecological security as one of the leading types of national security of Ukraine. In terms of forming a holistic and effective mechanism of administrative and legal regulation in the field of ensuring the ecological security of Ukraine, it should also be taken into account that the basic legislative acts in this area were adopted at the dawn of independence and before the adoption of the current Constitution of Ukraine. At the same time, after the entry into force of the Fundamental Law of Ukraine, a process (not always consistent and stable) began to bring this legislation into line with the basic provisions of the constitutional text. All this was caused by the fact that the Constitution of Ukraine at the time of its adoption was a progressive document that significantly outpaced the fundamental provisions that existed within the national legal system before the adoption of the Constitution of Ukraine. This statement also applies to the environmental sphere, which, primarily thanks to the Constitution of Ukraine, received its clearly defined development parameters, which find their concentrated embodiment in ensuring environmental security as a type of national security. All this made it possible to understand the above processes in view of such values as stability, security and balance, which in the modern world serve as the foundation for the development of statehood, social progress and guaranteeing the vital interests of every person.

That is why it is worth noting that the Constitution of Ukraine has gradually significantly modified the system of administrative and legal regulation in the field of ensuring the environmental security of Ukraine, although this process cannot be considered complete even today. First of all, it should be noted that the conceptual vision of building appropriate mechanisms for ensuring environmental security in the Constitution of Ukraine begins with its preamble. After all, it is in it that it is indicated that when adopting this document, the parliament is motivated by the desire to ensure the rights and freedoms of a person and decent living conditions, to develop and strengthen a democratic, social, legal state, and to take care of strengthening civil harmony on the land of Ukraine. In this case, what is indicated in the preamble indicates that the state is entrusted with multi-directional tasks, which in principle cannot but concern the resolution of environmental issues and ensuring environmental security.

After all, when we talk about the need to care for human rights, we can understand the introduction of a holistic mechanism of administrative and legal regulation, including in the field of ensuring environmental security. This is due to the fact that among human rights and freedoms in the modern world, a special place is occupied by rights of an ecological orientation. As noted by I. Zharovska, relying on the achievements of the ecological and legal doctrine, environmental human rights are traditionally considered as rights belonging to the third generation of rights. Which, as is known, are collective rights or rights of solidarity due to the fact that their main carriers are peoples, nations, associations of individuals, groups, and not individual individuals. At the same time, as international judicial and contractual practice shows, every person has the right to a favorable environment and the right to enjoy the full range of environmental rights that apply to both an individual and associations of individuals or peoples and nations [6, p. 42]. The Constitution of Ukraine in Article 50 enshrines a number of environmental rights: 1. The right of every person to an environment safe

for life and health. This right is both individual and collective, and also one that directly determines key aspects in the field of ensuring environmental safety. 2. The right to compensation for damage caused by a violation of the right to an environment safe for life and health. This right is already a guarantee of the implementation of the previous right. 3. The right of every person to free access to information about the state of the environment, the quality of food products and household items, as well as the right to disseminate it.

Also, the preamble to the Constitution of Ukraine indicates that the Verkhovna Rada of Ukraine, representing the entire Ukrainian people, when adopting the Constitution of Ukraine and in the further implementation of its provisions, is aware of its responsibility before God, its own conscience, previous, present and future generations. Obviously, in this case we are talking about such a specific perspective of the vision of legal responsibility as its positive (prospective) aspect. It is traditionally perceived quite critically in modern legal science and there is a well-founded explanation for this. At the same time, with regard to issues of environmental safety, responsible prospective actions, deeds, acts, etc. will be of great importance. As L. V. Mendyk notes, given the possible qualitative and quantitative, sometimes long-term and inevitable, negative environmental consequences of anthropogenic activity on the state of the natural environment and its natural components, one should agree with the need for positive responsibility in the field of environmental protection, since it is primarily important to prevent and prevent violations of environmental and legal requirements and norms by taking active positive actions regarding the rational use of natural resources and ensuring compliance with environmental safety requirements [7, p. 188]. Moreover, L. V. Reshetnyk considers positive responsibility in the field of ecology as both a legal and economic guarantee of ensuring and implementing the basic environmental right of citizens to an environment safe for life and health, and therefore as one of the guarantees of ensuring environmental safety [8, p. 84]. From the perspective of the positive responsibility of the Verkhovna Rada of Ukraine, this means taking active, scientifically based, timely and balanced measures within the framework of its constitutional powers. This concerns not only legislative activity in the field of forming a holistic mechanism of administrative and legal regulation in the field of ensuring environmental safety, but also the adoption of effective control measures in this area (measures of parliamentary control).

It is also worth noting that the above is significantly correlated with the provision of the preamble on the need for care to strengthen civil harmony on the territory of Ukraine. Undoubtedly, ensuring social (civil) harmony is associated with a number of components of state and public life. For example, O. V. Batanov believes that today there is no doubt that the unitary nature of the Ukrainian state is one of the most important factors in strengthening civil harmony on the territory of Ukraine [9, p. 87]. The Constitutional Court of Ukraine, for example, in turn, considers the achievement of civil harmony in the context of the status of the state language (Paragraph four of subparagraph 4.1 of paragraph 4 of the motivational part of the Decision of the Constitutional Court of Ukraine (Grand Chamber) dated July 14, 2021 No. 1-r/2021 in the case on the constitutional submission of 51 people's deputies of Ukraine on the compliance with the Constitution of Ukraine (constitutionality) of the Law of Ukraine "On Ensuring the Functioning of the Ukrainian Language as the State Language") [10]. At the same time, we believe that the full strengthening of civil harmony on the land of Ukraine should cover the above aspects, and its basis should be guaranteed environmental safety on our land, and this requires taking decisive measures in the legislative, law enforcement, control and other spheres.

In the legal doctrine, there are positions related to the interpretation of civil harmony in the context of the security dimension and overcoming existential threats, which undoubtedly include threats in the environmental sphere. It is no coincidence that Y. Irkha writes that the defense of Ukraine, the protection of its sovereignty, territorial integrity and inviolability, constitutional order and other vital national interests is not only one of the most important functions of the state, but also the business of the entire Ukrainian people. The preservation and development of our statehood, national identity, consciousness and spirituality, the strengthening of civil harmony should be carried out comprehensively by both public authorities and civil society institutions, individual citizens. After all, only through cooperation are they able to create a reliable system for ensuring the national security of Ukraine, which is capable of protecting a person, society and the state from real or potential threats of a military and non-military nature [11, p. 91].

In turn, M. Savenko writes that, along with a wide range of different types of interests, the Constitution of Ukraine in Article 18 uses the term "national interest". There are different views on this concept, from which it is evident that there is no consensus regarding its content and, especially, the circle of

its bearers. At the same time, there is a position of scientists who consider it as a system of relations that combines the needs of the functioning and development of the nation-people and the basis of which are the needs of society necessary for its development and functioning, the protection of the people from threats from another state (states), as well as the maintenance of social peace, order and harmony within the country [11, p. 259]. That is why we can say that strengthening civil harmony on the land of Ukraine as a duty of the Ukrainian state and an indispensable desire of society can be considered in the system of ensuring environmental security as a type of national security of Ukraine.

5. Conclusions.

Thus, today the Constitution of Ukraine as the Fundamental Law has laid a solid foundation in the system of regulating a wide range of various social relations. Among them, the leading place is occupied by issues related to ecology, ecological balance and ecological safety. Moreover, the Constitution forms such principles comprehensively, starting from the preamble and including all its other provisions. For example, the preamble of the Constitution of Ukraine, having a direct correlation with other provisions of the Fundamental Law, forms a significant basis for improving the mechanism of administrative and legal regulation in the field of ensuring the ecological safety of Ukraine.

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