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Disputes related to the protection of the right to a healthy environment: the experience of Ukraine and EU

Introduction. The long experience of building an economy based on the intensive use of natural resources has led to a violation of the balance of private and public interests in the implementation of environmental policy. The understanding of the right to a safe environment has therefore transformed from a right that provides only for the use of natural resources in accordance with the norms established in permits, to a person's right to create favourable conditions for their development, recreation and life. Thus, this study intends to justify the revision of normative approaches to understanding the right to a safe environment from the right to ensure the rational use of natural resources to the right, which is the basis for ensuring the quality of human life. The change in approaches to understanding the human right to a safe environment has led to a change in the understanding of the system of environmental disputes. The author substantiates the criteria for classifying disputes in the sphere of the implementation and protection of the right to a safe environment; this gives reason to justify the conclusion about their specific subject composition and methods of settlement.

Methodology. This article applies such methods of scientific research as the structural-logical method, scientific classification, comparative law, dialectical analysis, and content analysis of judicial practice.

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I. The transformation of the understanding of the human right to a safe environment as a component of the Sustainable Development Strategy

Long-term trends towards the intensive use of natural resources have led to the aggravation of global and national environmental problems, along with a lack of mechanisms to satisfy public environmental rights and the interests of an individual and society. The right to an environment that is safe for life and health in accordance with Article 293 of the Civil Code of Ukraine belongs to the category of personal non-property rights that ensure the physical existence of an individual.[2] The protection and proper implementation of this right – that is, the right to a healthy environment – is one of the urgent strategic tasks of the modern state.

The Constitution of Ukraine establishes that natural resources are the exclusive property of the Ukrainian people. Normative consolidation of the exclusive right of ownership of the Ukrainian people to natural resources should be considered as determining the priority of meeting the public interest and the needs of the population.[3]

Within the framework of the current legislation of Ukraine, for a long time, an approach was used to establish the content of "interest" as the "legitimate" or "protected" interest. The application of the category "legally protected interest" in accordance with judicial practice remained declarative in its functional content. In particular, according to the provisions of the Law "On the Protection of the Environment," it is established that the implementation of rational nature management should pursue the satisfaction of the interests of present and future generations. Article 3 of this law determines that the implementation of rational nature management requires a scientifically based harmonization of the environmental, economic and social interests of society. Article 12 establishes that the objects of environmental legal relations are the rights and legitimate interests of their participants. This approach is supported by natural resource codes and legislative acts. In particular, according to the Forest Code of Ukraine, the use of the term "interest" provides for the regulation of forest legal relations. Also, the Forest Code is defined by the subject composition of legal relations, where an interested person may also appear.[4] A similar approach is taken by the Water Code of Ukraine, which normatively regulates the functioning of business

2 Tsyvilnyi kodeks Ukrainy: Zakon Ukrainy [Civil Code of Ukraine: Law of Ukraine] vid 16 sichnia 2003 roku № 435-IV. URL.: https://zakon.rada.gov.ua/laws/show/435–15#Text

3 Moroz, Ganna (2020). The category "interest" from the point of view of the environmental and legal approach [Category "interests" from the position of the environmental-legal approach]. Academic notes of TNU by V.I. Vernadskyi. Series: legal sciences. No. 2. Volume 31 (70). Part 2. P. 10–14

4 Lisovyi kodeks Ukrainy: Zakon Ukrainy [Forest Code of Ukraine: Law of Ukraine] vid 21 sichnia 1994 roku № 3852-XII. URL.: https://zakon.rada.gov.ua/laws/show/3852–12#Text

entities as central participants in the field of water resource use. Within this framework, the application of the category "interest" is connected with the need to establish priorities for water use to achieve proportionality between the interests of society and private individuals.[5] Also, the strategic objectives of the development and adoption of the Subsoil Code of Ukraine include the settlement of "legitimate interests of enterprises, institutions, organizations and citizens" (Article 3).[6]

The development of judicial practice and the spread of the idea of observing the public interest caused its normative consolidation in the Law of Ukraine "On Administrative Procedure."[7] Therefore, according to the provisions of current legislation and the results of judicial practice, it is established that within the framework of ensuring the human right to a healthy environment, the public interest is dominant. This means introducing a mechanism for protecting subjective private law but also the public interest, both in court and out of court.

Ensuring an appropriate level of implementation and protection of the human right to a healthy environment is directly related to the functioning of the organizational and legal mechanisms for the implementation of rational environmental management.[8] The idea of "good governance" in general, and in particular in the field of ensuring the human right to a healthy environment, is associated with the introduction of effective forms of public and judicial control aimed at its implementation and protection.[9] Therefore, the implementation of the strategically important task of ensuring the human right to a healthy environment should pursue the goal of satisfying the public interest. The basis of this is understanding the content of the exclusive property right of the Ukrainian people to the land, subsoil, atmospheric air, water and other natural resources located within the territory of Ukraine, along with the natural resources of its continental shelf and exclusive (marine) economic

5 Vodnyi kodeks Ukrainy: Zakon Ukrainy [Water Code of Ukraine: Law of Ukraine] vid 6 chervnia 1995 roku № 213/95-VR. URL.: https://zakon.rada.gov.ua/laws/show/213/95-vr#Text

6 Kodeks Ukrainy pro nadra: Zakon Ukrainy [Code of Ukraine on Nadra: Law of Ukraine] vid 27 lypnia 1994 roku № 132/94-VR. URL.: https://zakon.rada.gov.ua/laws/show/132/94-vr#Text

7 Pro administratyvnu protseduru: Zakon Ukrainy [About administrative record: Law of Ukraine] vid 17 liutoho 2022 roku. URL: https://zakon.rada.gov.ua/laws/main/2073–20#Text

8 Leheza Yu.O. Publichne upravlinnia pryrodo-resursnym potentsialom derzhavy: dosvid Ukrainy ta zarubizhnykh krain [Public management of the natural resource potential of the state: dosvid Ukraine and foreign countries]. Chasopys Kyivskoho universytetu prava. 2016. № 3. S. 139–143

9 Leheza Yu.O. Uchast hromadskosti v publichnomu upravlinni u sferi vykorystannia pryrodnykh resursiv [A site of vastness in public administration in the field of natural resources]. Pravo ta derzhavne upravlinnia. 2017. № 2. S. 62–69

zone, as defined in part 1 of Article 13 of the Constitution of Ukraine.[10] This approach determines the dominant public-legal nature of relations in ensuring the realization and protection of the individual's right to a healthy environment;[11] it should be taken into account when characterizing disputes arising in the process of using natural resources.

II. The characteristics of disputes over protection of the human right to a safe environment

Disputes related to ensuring the human right to a healthy environment belong to the category of legal conflicts, which often arise among users of natural resources for general and special purposes. The functional use of natural resources can be carried out in the areas of improving the population, recreation and restoration of health, as noted in the scientific publications of M.I. Erofeev.[12] Within the framework of special environmental knowledge, natural resources are related to the basis that ensures human life in the industrial and non-industrial spheres.[13]

Determining the volume of natural resources in a region enables one to form an idea of its natural resource potential. The formation of a person's idea of ensuring human rights and freedoms in the field of protecting the human right to a healthy environment is carried out through the creation of public information services; in particular, in Ukraine, the Ministry of Environmental Protection and Natural Resources (hereinafter MZDPR) and its territorial departments in certain regions.[14] These draw up detailed descriptions of how the state provides the population with natural resources and establishes prospects for the development of the country's natural resource potential.

In Ukraine, the requirements of national environmental security are currently threatened by the ongoing full-scale Russian military aggression. According to the annual reporting of the MZDPR, contained in the scientific

10 Konstytutsiia Ukrainy: Zakon Ukrainy [Constitution of Ukraine: Law of Ukraine] vid 28.06.1996 r. № 254k/96-VR. Vidomosti Verkhovnoi Rady Ukrainy (VVR). 1996. № 30. St. 141.

11 Nosik V.V. Problemy zdiisnennia prava vlasnosti na zemliu Ukrainskoho narodu [Problems of exercising the right of power to land to the Ukrainian people]: dys. … dokt. yuryd. nauk: spets. 12.00.06. Kyiv, 2006. 366 s.

12 Yurydychna entsyklopediia [Legal encyclopedia: in 6 volumes]: v 6 t. / redkol.: Yu.S. Shemshuchenko (holova redkol.) ta in. Kyiv: Ukr. entsykl., 1998–2004. T. 5: P-S. 736 s.

13 Zin E.A. Rehionalna ekonomika [Regional economics]: pidruchnyk. Kyiv: VD «Profesional», 2007. S. 61.

14 Rehionalni dopovidi pro stan navkolyshnoho pryrodnoho seredovyshcha u 2016 rotsi [Regional dopovidi about the camp of the necessary adaptation of the middle in 2016]. Ofitsiinyi sait Ministerstva ekolohii ta pryrodnykh resursiv. URL: https://menr.gov.ua/news/31778.html

and practical publication "Ecothreat," the greatest damage caused by the war is to the state of atmospheric air. On 4 November 2022, the Ministry of Health and Social Protection determined the estimated monetary losses from the level of atmospheric air pollution, as justified in the report of the State Environmental Inspectorate of Ukraine in accordance with the approved government methodology. It was established that the environmental damage added up to UAH 7 million, 67.51% of which was caused by atmospheric air; in monetary terms, this is UAH 1,373 billion. The amount of environmental damage caused by atmospheric air associated with the combustion of petroleum products was UAH 49,360 million; forest fires resulting from bombing came to about UAH 8 million, and the destruction of national natural monuments and culture cost more than UAH 6 million.[15]

Thus, the basis for understanding the content of the human right to a healthy environment is an expanded interpretation of the category "natural resources" to include both differential natural objects (forests, water, land, wildlife, flora, etc.)[16] and complex natural objects. Natural resources in their content establish the possibility of observing the conditions for ensuring their exhaustibility and renewability.[17] A broad understanding of the category of natural resources, in addition to generally recognized approaches to establishing the structure of a system of differentiated objects, should include such requirements as providing noise insulation to create a favourable environment.[18]

Therefore, in accordance with the provisions of the CAS of Ukraine, a public law dispute is understood as a conflict that arises with the participation of a subject of authority, where the subject of appeal is the legality and compliance with the requirements of the current legislation of Ukraine of their exercise of the competence granted to them. Thus, the implementation of the characteristics of a public law dispute in general, and in particular when ensuring the protection of the human right to a safe and healthy environment, should take place according to the subject and subjective criteria for assessing the content of the relevant public legal relations. Despite the existence of an appropriate regulatory and legal basis for understanding the

15 Vplyv voiennykh dii na yakist povitria v Ukraini [Influence of military actions on the quality of the wind in Ukraine]: dopovid Iryny Chernysh na Komiteti Verkhovnoi Rady Ukrainy z pytan ekolohichnoi polityky ta pryrodokorystuvannia. URL.: https://www.savednipro.org/vpliv-voyennix-dij-na-yakist-povitrya-v-ukrayini/

16 Leheza Yu.O. Sutnist ta struktura administratyvno-pravovoho mekhanizmu publichnoho upravlinnia u sferi vykorystannia pryrodnykh resursiv [The essence of the structure and administrative-legal mechanism of public administration in the field of extraction of natural resources]. Visegrad journal on human rights. 2016. № 6. P. 1. S. 104–114

17 Kirin R.S. Kodyfikatsiia zakonodavstva pro nadra [Codification of legislation on nadra]: dys. … dokt. yuryd. nauk: spets. 12.00.06. Kyiv: In-t ekonomiko-pravovykh doslidzhen NAN Ukrainy, 2015. S.118–119

18 Ekolohiia [Ecology]: pidruchnyk / S.I. Dorohuntsov, K.F. Kotsenko, M.A. Khvesyk ta in. Kyiv: KNEU, 2005. 371 s.

structure of a public law dispute, scientific discussion is ongoing regarding the interpretation of its functional structure. This discussion should be based on the use of the category of "public interest" as a certain criterion for the implementation of the delimitation of the subject jurisdiction of a specialized link in the judicial system.[19]

The category of "public interest" is defined by the Law of Ukraine "On Administrative Procedure," which describes it as a certain "interest of the state, society, [or] territorial society, as well as the interests and needs inherent in a large number of persons" (article 1).[20] At the level of by-laws and judicial practice, there are references to the content of public interest. In particular, the decision of the Grand Chamber of the Supreme Court of Ukraine on 13 February 2019 in case No. 810/2763/17 established that the public interest is the needs that are important for a significant number of individuals and legal entities, which, according to the statutory competence, are provided by subpublic administration. That is, "the public interest is nothing but a certain set of private interests."[21] Consequently, within the framework of judicial practice, the activities of the subject of authority should pursue the protection of the needs of society as a whole. This means recognizing the need to prevent developments that not only create a threat to environmental safety, but also to life and health. Thus, the basis for understanding the category of a "public law dispute in the field of ensuring the human right to a healthy environment" should be the establishment of an appropriate subjective characteristic of legal relations: the presence of a public interest in ensuring the requirements of national environmental security and creating conditions for an adequate standard of living and human activity.

The settlement of public law disputes in this area contributes to a nationwide need to create conditions for a decent level of development and human activity. This is a priority for the implementation of the requirements not only for environmental safety, but also for a favourable environment. K.S. Kuchma and Yu. O. Legeza emphasize that a healthy and safe environment should be understood as the rational use of natural resources and facilities, ensuring energy efficiency requirements and creating conditions for a favourable

19 Sposoby vyrishennia publichno-pravovykh sporiv z orhanamy vlady [Land Code of Ukraine: Law of Ukraine]: praktychnyi posibnyk / L.B. Salo, I. Ia. Seniuta, N. Ie. Khliborob, A.M. Shkolyk. Drohobych: Kolo, 2009. 112 s.; Yaniuk N. Aktualni problemy formuvannia publichnoi sluzhby v Ukraini. Visnyk Lvivskoho universytetu. Seriia «Iurydychna». 2010. Vyp. 51. S. 162–167

20 Pro administratyvnu protseduru: Zakon Ukrainy [Forest Code of Ukraine: Law of Ukraine] vid 17 liutoho 2022 roku №2073-IX. URL.: https://zakon.rada.gov.ua/laws/main/2073–20#Text

21 Postanova Velykoi Palaty Verkhovnoho Sudu [Supreme Court ruling] vid 13 liutoho 2019 r. u spravi № 810/2763/17. Yedynyi derzhavnyi reiestr sudovykh rishen. URL: http://reyestr.court.gov.ua/Review/79883398

environment for the life of an individual.[22] O.S. Karpova defines the provision of a favourable, safe and healthy environment as a component of creating conditions for the protection of the human right to life.[23] The category of "public interest" is correlated with the category of "environmental interest," which is understood as an objectively reflective attitude of a person to their need for favourable, appropriate and high-quality conditions for life, the improvement of settlements and the compliance of the natural environment with the requirements and standards established by current legislation. The rational use of natural resources and objects, and satisfaction of environmental interests and needs in a favourable environment, correlate with the effectiveness of the implementation of state policy and strategy for the natural and anthropogenic environment based on sustainable development.[24] This idea of the correlation between ecological interests and the human right to a safe and healthy environment is supported in the scientific works of G.V. Moroz,[25] M.M. Potip,[26] L.A. Zolotukhina,[27] and so on. The category of "public interest" has developed from a certain proportional consideration of the needs of the majority[28] to being understood as a certain strategic goal for the development of the state and society.

Based on an analysis of the Law of Ukraine "On Environmental Protection," A. Yu. Barlit argues that the system of subjective public environmental

22 Kuchma K.S., Leheza Yu.O. Administratyvno-pravove rehuliuvannia vidnosyn u sferi ekolohii ta pryrodnykh resursiv: protsedurnyi aspekt: monohrafiia [Administrative and legal regulation of relations in the field of ecology and natural resources: procedural aspect: monograph]. Zaporizhzhia: Vydavnychyi dim «Helvetyka», 2017. S. 95–101

23 Karpova O.S. Yurydychna pryroda katehorii «publichnyi ekolohichnyi interes» [Legal nature of the category "public environmental interest"]. Teoriia i praktyka pravoznavstva. 2014. № 1. URL: http://nauka.jur-academy.kharkov.ua/download/el_zbirnik/1.2014/8.pdf

24 Shakhov V.S. Ekolohichni interesy i prava liudyny [Ecological interests and human rights] Pravova derzhava: problemy perspektyvnoho rozvytku: korotki tezy ta naukovi povidomlennia 9–11 lystopada 1995 roku. S. 214–215

25 Moroz H.V. Sut ta zmist katehorii ekolohichnoho interesu [The essence of the category of ecological interest]. Aktualni problemy polityky : zb. nauk. pr. / redkol. : S.V. Kivalov (holov. red.), L.I. Kormych (zast. holov. red.), Yu. P. Alenin [ta in.] ; MON Ukrainy, ONIuA. Odesa : Feniks, 2009. Vyp. 38. S. 201–207

26 Potip M.M. Pryntsypy publichnoho upravlinnia u sferi pryvatyzatsii yak administratyvno-pravova katehoriia [Principles of public administration in the field of privatization as an administrative and legal category]. Aktualni problemy vitchyznianoi yurysprudentsii. 2019. № 5. S. 119–122

27 Zolotukhina L.O. Administratyvno-pravovyi mekhanizm zabezpechennia realizatsii publichnoho interesu [Administrative and legal mechanism for ensuring the implementation of public interest]. Jurnalul juridic national: teorie şi practică. 2019. № 4 (38). S.61–64

28 Sposoby vyrishennia publichno-pravovykh sporiv z orhanamy vlady [Methods for removing public law disputes from glucose-containing substances: a practical guide]: praktychnyi posibnyk / L.B. Salo, I. Ia. Seniuta, N. Ie. Khliborob, A.M. Shkolyk. Drohobych: Kolo, 2009. 112 s.

rights, as the content of the administrative and legal status of a private person, should include the rights to access public information, to create and join public environmental formations, to have environmental education, and to participate in public discussion of projects and normative legal acts in the field of environmental protection.[29] This allows us to conclude that the content of a public law claim in the field of ensuring the human right to a healthy environment may include advancing requirements for the protection of 1) the right of access to public information; 2) the right to create and unite with public environmental formations; 3) the right to environmental education; and 4) the right to participate in public discussion on draft regulatory legal acts in the field of environmental protection.

III. Classification of disputes in the field of protection of the human right to a safe environment

Disputes in this field are not allocated to a particular differentiated category; however, such a specification occurs in various parts of the natural resource legislation of Ukraine: Article 158–159 of the Land Code, Article 103 of the Forest Code, Article 109 of the Water Code, and so on. The current CAS of Ukraine has established a list of such public law disputes. These include disputes between individuals or legal entities arising from actions, decisions or inaction of the subject(s) of power, which in the opinion of a private person were committed unlawfully, and where in the opinion of the applicant there are grounds for appeal; disputes related to the implementation of staffing of state authorities and local self-government over the use of natural resources and environmental protection; disputes related to the establishment of the scope of delegated powers and limits of discretionary influence; disputes related to the conclusion, execution, termination, cancellation or invalidation of administrative agreements in the field of natural resources and environmental protection; disputes arising in connection with the provision of an appeal to the subject of power, including in connection with the provision of access to public information on the state of the use of natural resources; disputes on the seizure or expropriation of property for public needs or based on public necessity associated with the use of natural resources; and disputes arising with the participation of the subjects of authority on the implementation of an analytical review of compliance with the requirements for public-private partnerships.[30]

29 Barlit A. Iu. Subiektyvni publichni prava yak skladova administratyvno-pravovoho statusu pryvatnoi osoby [Subjective public rights as a warehouse of the administrative-legal status of a private individual]. Visnyk Zaporizkoho natsionalnoho universytetu. Seriia Yurydychni nauky. 2020. №3. S. 70–77

30 Kodeks administratyvnoho sudochynstva Ukrainy [Code of administrative judiciary]: Zakon Ukrainy vid 6 lypnia 2005 roku № 2747-IV. URL.: https://zakon.rada.gov.ua/laws/show/2747–15#Text

According to their functional content, public law disputes in this field can be classified into claims related to the protection of national environmental security, disputes related to waste management, disputes related to environmental impact assessments, disputes related to the acquisition of title-establishing administrative acts for natural resources, disputes related to the implementation of permit-licensing administrative procedures, and disputes related to the application of measures of administrative responsibility. One example is Case No. 804/16102/15, where the subject of appeal was the actions of the State Environmental Inspectorate in the Dnipropetrovsk region to invalidate the decision of the State Environmental Inspectorate in the Dnipropetrovsk region based on the results of a scheduled inspection.[31]

Disputes related to the implementation of administrative-tort proceedings arise in connection with the subject's improper observance of the powers of authority granted to them by the scope of competence enshrined in the current legislation, entailing the unjustified application of measures of administrative responsibility. There are many examples of such disputes. For example, in case No. 644/1043/17, the Ordzhonikidzevsky District Court of Kharkov[32] found that the subject of authority in the field of forest resources use (the relevant officials of the Dergachevskoye forestry of the State Enterprise Kharkiv Forest Research Station) was applied to a person 1 measure of administrative responsibility, which, the court concluded, had happened without proper legal grounds – that is, there was no composition of the administrative offence established by Article 65 of the Code of Administrative Offences.[33] The specific characteristic of disputes related to measures of administrative responsibility is the presence of numerous legal norms, characterized by a blanket presentation of the disposition of the provisions of administrative and tort legislation, requiring recourse to special legislation and an expert assessment of the existing terminology. In particular, in the case under study, the subject of the judicial appeal was the misinterpretation by the subject of authority of the content of the category "illegal felling and damage to trees and shrubs; destruction or damage to forest crops, seedlings or saplings in forest nurseries and plantations; as well as young growth of natural origin and self-seeding in areas intended for reforestation. Person 1 was brought to administrative responsibility for illegal felling; however, it was established during the trial that the person was only loading already prepared forest resources onto his

31 Postanova Dnipropetrovskoho okruzhnoho administratyvnoho sudu [Decree of the Dnepropetrovsk District Administrative Court] vid 26.01.2016 r. u spravi № 804/16102/15: URL: // http://www.reyestr.court.gov.ua/Review/57094955

32 Sprava № 644/1043/17 [Court Case]: Postanova Ordzhonikidzevskoho raionnoho sudu m. Kharkova vid 05.07.2017 r. URL: http://www.reyestr.court.gov.ua/Review/67643959

33 Kodeks Ukrainy pro administratyvni pravoporushennia [Code of Ukraine on Administrative Offenses]: Zakon URSR vid 07.12.1984 r. № 8073-X. Vidomosti Verkhovnoi Rady URSR. 1984. Dodatok do № 51. St. 1122

own vehicle. The court, therefore, concluded that it was unlawful to bring him to administrative responsibility."

Establishing the content of public legal disputes in the field of ensuring the implementation and protection of the right to a safe environment requires a study of their inherent features. The signs of public law disputes, in general, should include the presence of a special reason for the dispute – that is, for its occurrence; this should be the satisfaction of the public interest. In addition, the specifics lie in the corresponding subject composition of the studied legal relations. It must be emphasized that the subject of a public law dispute is the content of a managerial decision and the issue of the action or inaction of a subject of power. Thus, the understanding of such disputes should be based on the delimitation of personal and public interests associated with the managerial functions of subjects of power. Establishing the content of managerial functions by subjects of power requires their classification. A number of scientists classify managerial functions according to their content, highlighting functions in the field of norm-setting; implementation of strategic programmes and concepts for the development of the state, including the provision of administrative services; and interaction with the public.[34] Accordingly, by defining the range of relations within which it is permissible to have disputes in the sphere of the use of natural resources, the tasks of implementing the ecological functions of the state are solved. The implementation of these functions is associated with the development of state policy, its implementation through managerial legal acts and administrative services (relevant special administrative procedures aimed at meeting the needs for the use of natural resources by special entities) and, finally, ensuring efficiency control and supervisory activities by public authorities.

Consequently, one of the subjects of public law disputes in this article's field is legal relations over the provision of administrative environmental services. In the scientific literature, the understanding of the category "administrative services in the field of ensuring the human right to a healthy environment" is insufficiently formed. A dissertation by K.S. Kuchma managed to substantiate the author's approach to understanding the category of "administrative services in the field of ecology and natural resources" as a certain standardized activity of subjects of power empowered to develop and adopt an individual administrative act (certificate, registration certificate, permit, decision, licence, etc.). This should be functionally capable of achieving the

34 Kolomoiets T.O. Vyznachenist poniattia «administratyvnyi protses» – umova efektyvnosti normoproektnoi ta pravozastosovnoi (v tomu chysli sudovoi) diialnosti [The importance of the concept of "administrative process" is the intellectual effectiveness of normative design and law enforcement (including the number of court) activities]. Slovo Natsionalnoi shkoly suddiv Ukrainy. 2012. № 1 (1). S. 153–160; Derzhavna polityka [State policy]: pidruchnyk / Nats. akad. derzh. upr. pry Prezydentovi Ukrainy; red. kol.: Yu.V. Kovbasiuk (holova), K.O. Vashchenko (zast. holovy), Yu.P. Surmin (zast. holovy) ta in. Kyiv: NADU, 2014. 448 s.

rational use of natural objects in accordance with their intended purpose for the effective conduct of economic activities and the implementation of the realization of personal private interests of a person to create optimal healthy living conditions in the manner established by the legislation of Ukraine."[35] Kuchma identifies a number of categorical features, according to which it is expedient to classify administrative services in the field of ecology and natural resources. One of the criteria scientists single out is the legal consequences of their implementation, which make it possible to classify them as services of a constituent, restorative, terminating, or mixed nature. To the criteria that allowed Kuchma to classify administrative environmental services, it is necessary to attribute the concept of a variety of an adopted administrative act.[36] From the point of view of scientific novelty, Kuchma's dissertation is valuable because of its conclusions on the correlation between the categories of "public environmental services" and "administrative services in the field of ecology and natural resources." The research substantiated the impossibility and inexpediency of identifying such categories.[37]

In Ukraine, such types of administrative environmental services are provided by the Ministry of Health and Social Protection, both in electronic form and in the form of offline appeals or appeals to authorized entities. For example, it is possible to issue a waste declaration or a permit for special water use through the Internet resource "Action." The decrease in manifestations of subjectivism in providing access to administrative environmental services is, of course, evidence of the intensification of the processes of introducing the ideas of openness and transparency in the implementation of managerial functions; these are, therefore, good ways to prevent corruption and optimize the work of public servants. The digitalization of the implementation of managerial functions helps to reduce the subjective factor in the regulation of administrative service activities, as does the idea of the optimal provision of services in the fastest possible time, guided by the principle of reasonableness. Today, there is ongoing reform to the structure of the provision of administrative services in the field of ecology and natural resources. The main functional direction of this is the idea of digitalisation, and, therefore, the implementation of e-government.[38]

35 Kuchma K.S. Administratyvni posluhy u sferi ekolohii ta pryrodnykh resursiv [Administrative pogi in the field of ecology and natural resources]: dys. … kand. yuryd. nauk: spets. 12.00.07. Zaporizhzhia: ZNU, 2016. P.34

36 Kuchma K.S., Leheza Yu.O. Administratyvno-pravove rehuliuvannia vidnosyn u sferi ekolohii ta pryrodnykh resursiv: protsedurnyi aspect [Administrative and legal regulation of allotment in the field of ecology and natural resources]: monohrafiia. Zaporizhzhia: Vydavnychyi dim «Helvetyka», 2017. P. 11–12

37 Kuchma K.S. Administratyvni posluhy u sferi ekolohii ta pryrodnykh resursiv [Administrative pogi in the field of ecology and natural resources]: avtoref. dys. … kand. yuryd. nauk: spets. 12.00.07. Zaporizhzhia: ZNU, 2016. P. 7

38 Pro skhvalennia Kontseptsii rozvytku elektronnoho uriaduvannia v Ukraini [About the approval of the concept for the development of an electronic certificate

The transformation of approaches to understanding the right to a safe environment affects the results of judicial practice. In particular, the case "Sdruženi Jihočeské Matky" (Commonwealth of Mothers of South Bohemia) v. the Czech Republic (application no. 19101/03, 10 July 2006)[39] established the possibility of the public interest as a subject of protecting the right to a safe environment. In this decision on the admissibility of an application, the European Court of Human Rights applied Article 10 of the Convention for the first time in a case where the authorities had denied a request for access to administrative documents, although they did not acknowledge that it had been violated. The Court noted: "As a result, the Court considers that Article 10 of the Convention cannot be interpreted as guaranteeing an absolute right of access to all technical details connected with the construction of a nuclear power plant, since, in contrast to information about the consequences of the latter's impact on the environment, such data cannot be of general interest." Thus, a public environmental organization was denied access not to information on the state of environmental pollution, but directly to technical documentation related to the organization of a nuclear power plant. The Sdruženi Jihočeské Matky judgment is nonetheless important as it contained an explicit and undeniable recognition of the application of Article 10 in cases where a request for access to public or administrative documents is denied. The right of access to administrative records is not absolute and indeed may be restricted under Article 10 § 2; this implies that such a waiver must be prescribed by law, have a legitimate aim and be necessary in a democratic society. The judgment of the ECtHR of 10 July 2006 provided additional support and opened up new perspectives for citizens, journalists and civil society organizations regarding access to administrative documents on matters of public interest.

Conclusions

The understanding of the category of public law disputes in the sphere of natural resource use should, therefore, be based on the legal conflict having arisen as a result either of management activities or inaction by public administration entities, or between business entities or other participants in legal relations.

in Ukraine]: Rozporiadzhennia Kabinetu Ministriv Ukrainy vid 20.09.2017 r. № 649-r. Ofitsiinyi visnyk Ukrainy. 2017. № 78. St. 2402

39 «'Sdruženi Jihočeské Matky (Spivdruzhnist materiv Pivdennoi Chekhii) proty Cheskoi Respubliky» (zaiava № 19101/03, vid 10 lypnia 2006 roku). URL.: https://webcache.googleusercontent.com/search?q=cache:gvEXt00VDJoJ:https://hudoc.echr.coe.int/app/conversion/docx/%3Flibrary%3DECHR%26id%3D001-76707%26filename%3DSDRU%25C5%25BDEN%25C3%258D%2520JIHO%25C4%258CESK%25C3%2589%2520MATKY%2520c.%2520REPUBLIQUE%2520TCHEQUE.docx%26logEvent%3DFalse&cd=3&hl=ru&ct=clnk&gl=de&client=opera

The cause should be non-compliance with the principles of ensuring the Ukrainian people's right to ownership of certain types of natural resources, or violation of the interests of the territorial community or the state as a whole, rational nature management, targeted use of natural objects, environmental information circulation regimes, and so on.

Thus, the classification of public law disputes in the field of protecting the human right to a healthy environment can be carried out according to such criteria as functional purpose (claims related to the protection of national environmental security, disputes related to waste management, disputes related to environmental impact assessments, disputes related to the acquisition of administrative acts of title to natural resources, disputes related to permitting and licensing administrative procedures, disputes related to administrative liability measures); the object of the dispute (disputes related to the use of differentiated natural objects and resources or complex natural objects and resources); and the content of the legal relations (disputes related to the implementation and protection of the right of access to public information, or the right to create and unite in public environmental formations; disputes related to the implementation and protection of the right to environmental education, or the right to participate in public discussion over draft regulatory legal acts in the field of environmental protection).

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Disputes related to the protection of the rightto a healthy environment: the experience of Ukraine

Abstract

This article discusses approaches to understanding the right to a safe environment in accordance with the legislation of the EU and Ukraine. It has been established that in modern conditions, the concept of the right to a safe natural and anthropogenic environment has undergone a transformation. The basis for protecting this right must be understood as a balance between private and public interests, as a principle for implementing and achieving the goals of the Strategy for Sustainable Development. The author has carried out a classification of disputes related to the implementation and protection of the human right to a safe natural and anthropogenic environment. The analysis substantiates the

interaction between changing the understanding of the right to a safe environment and the right to initiate a claim for its protection. This leads to the conclusion that the leading bearers of public interest in the field of environmental protection are public organizations. The author's classification of disputes in the field of implementation and protection of the natural environment is then substantiated.

Keywords: public law disputes, administrative proceedings, classification, subjective public rights.

Kwestie sporne związane z ochroną prawa do czystego środowiska – doświadczenie Ukrainy i UE

Streszczenie

W artykule omówiono różne podejścia do rozumienia prawa do bezpiecznego środowiska w świetle ustawodawstwa UE i Ukrainy. Ustalono, że współcześnie koncepcja prawa do bezpiecznego środowiska naturalnego i antropogenicznego przeszła transformację. Podstawę ochrony tego prawa należy rozumieć jako równowagę między interesami prywatnymi i publicznymi, zasadę wdrażania i osiągania celów strategii zrównoważonego rozwoju. Autor przeprowadził klasyfikację kwestii związanych z realizacją i ochroną prawa człowieka do bezpiecznego i antropogenicznego środowiska naturalnego. Analiza potwierdza wątpliwości związane z ochroną prawa do zdrowego środowiska, a także związek zmiany rozumienia prawa do bezpiecznego środowiska z prawem do wystąpienia z roszczeniem o jego ochronę. Prowadzi to do wniosku, że głównymi przedstawicielami interesu publicznego w zakresie ochrony środowiska są organizacje społeczne. W ostatniej części artykułu przedstawiono autorską klasyfikację dyskursów dotyczących zakresu ochrony środowiska naturalnego.

Słowa kluczowe: spory publicznoprawne, postępowanie administracyjne, klasyfikacja, podmiotowość publicznoprawna