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ENVIRONMENTAL RIGHTS OF UKRAINIAN CITIZENS: INTERNATIONAL AND EUROPEAN STANDARDS AND DOMESTIC PROBLEMS

***Abstract.** The paper deals with modern problems of improving the consolidation, implementation, and protection of environmental rights of citizens of Ukraine; it analyzes the system of formation and development of international, European and national legal norms on the implementation and protection of environmental rights of citizens and Ukraine's commitments to the international community to consolidate, guarantee the implementation and protection of environmental rights of citizens. Theoretical and legal analysis of the mechanism of realization of environmental rights is carried out on the basis of concrete examples at the level of national legal proceedings and cases that have been considered by the European Court of Human Rights.*

***Key words:** environmental rights; human rights; mechanism of realization of environmental rights; guarantees of realization of rights.*

The purpose of this article and its tasks are dictated by the topicality of modern problems of improving the con-

solidation, enforcement, and protection of environmental rights of citizens of Ukraine, taking into account the require-

ments of international European law and Ukraine's commitments towards the international community (in particular, towards the Council of Europe).

The study of environmental rights as a complex legal phenomenon in terms of concept, features, system, mechanism of realization and protection, ensuring and implementation, formation, and development in Ukraine was conducted in the professional literature by such scholars as Andreitsev V.I. [1; 2], Anisimova H. V. [3], Baliuk H. I. [4], Bredikhina V. L. [5], Vlasenko Yu. L. [6], Hetman A. P. [7], Hrytskevych S. H. [8], Kobetska N. R. [9], Kovalchuk T. H. [10], Kostytskyi V. V. [7], Kostyashkin I. O. [11], Krasnova M. V. [12;13;18], Malyshева N. R. [14;18], Medviediev K. V. [15], Pozniak E. V. [16], Reshetnyk L. P. [17], Tretiak T. O. [19], Cherkashyna M. K. [20] and many others.

The International Bill of Human Rights defines that human life is only fulfilled when it is illuminated by human rights.

Presently, one of the major problematic issues in international, European and national law is the issue of strengthening, ensuring the implementation and protection of environmental rights of human beings and citizens, as it is closely linked to their right to life and health care itself.

Harmonization of domestic legislation in this area of public relations should be carried out with mandatory consideration of provisions and principles of both international and European law, in particular, environmental law.

Traditionally, the international standard in the field of human rights is the

Universal Declaration of Human Rights of 1948 and the International Covenants on Economic, Social, Cultural Rights and on Civil and Political Rights of 1966. However, none of these documents mention environmental rights. However, the Universal Declaration of Human Rights emphasized the right to life. The reasons for this state of things are related to the fact that in the mid-twentieth century the problems of environmental protection, ensuring the environmental security of human beings were less acute than today. These problems of the global community attracted attention only in the early 70s of the last century. For the first time at the international level, the right to life in a healthy environment was fixed in the Declaration on Environment adopted at the UN Conference in Stockholm in 1972 [21].

The first principle of the UN Stockholm Declaration proclaims that human beings have the fundamental right to enjoy a healthy environment, which allows them to live in dignity and well-being. The Rio Declaration on Environment and Development, adopted at the UN Conference held in 1992 in Rio de Janeiro [22], established the right to a healthy and productive life in harmony with nature and formulated the rights of access to information on the state of the environment, participation in decision-making, access to justice in environmental matters.

Environmental human rights are more comprehensively reflected in the UN Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, adopted in Aarhus on 25

June 1998 and ratified by the Verkhovna Rada on 6 July 1999 [23]. The Convention proclaimed human rights to a favorable environment; environmental information; participation in environmental decision-making; and development of environmental programmes, plans, policies, and draft regulations. The Aarhus Convention has become an important mechanism for the development of democracy and human rights. The Convention's preamble links environmental protection with human rights, raising environmental rights to the level of other fundamental human rights.

The international community is known to celebrate Human Rights Day on December 10 annually. Celebrating this event is an excellent occasion to address the problems of consolidation, implementation, and protection of human and civil rights in Ukraine.

It is worth noting that over the years of independence, Ukraine has adopted a number of legislative acts aimed at strengthening the rights and freedoms of citizens. First of all, it is the Constitution of Ukraine, which states that human rights and freedoms determine the content and direction of the entire state [24]. To affirm and consolidate the exercise of human rights and freedoms is its main duty. Several international conventions have been ratified, including the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms already mentioned above [25]. By the way, its ratification became a determining factor, from which the transfer of European legal values to the domestic legislative field began.

However unfortunate it may be, it is also a fact that the development of the legislative framework and institutional mechanisms to consolidate, ensure the implementation and protection of human rights under the standards of international and European law noticeably outstrips Ukraine's performance. Ukraine should not only recognize this lag but also come to the realization of the need to intensify work to bring domestic legislation in this area into full compliance with European and world standards.

At the same time, despite the above, it is internationally recognized that in some areas of Ukrainian legislation the bar for strengthening human and civil rights even exceeds international standards. One such branch of legislation is the environmental legislation of Ukraine.

In particular, for the first time in domestic legislation, the environmental rights of citizens as currently understood have been enshrined in article 9 of the Law of Ukraine «On environmental protection» dated 25 June 1991 [26]. The preamble to the law states that the protection of the environment, the rational use of natural resources and the environmental safety of human activity are essential conditions for the sustainable economic and social development of Ukraine.

In accordance with article 9 of the law, every citizen of Ukraine has the right to: an environment that is safe for his or her life and health; to participate in the discussion and submission of proposals for draft regulatory and legal instruments and materials concerning the placement, construction and reconstruc-

tion of objects that may have a negative impact on the environment; to submit proposals to State and local government bodies and legal entities that participate in decision-making on these issues; to participate in the development and implementation of measures for the protection of the natural environment, rational and complex use of natural resources; to implementation of general and special use of natural resources; association in public environmental formations; to free access to information on the state of the natural environment (environmental information) and free acquisition, use, distribution and storage of such information, except for restrictions established by law; to participate in public discussions on the impact of planned activities on the environment; environmental education; to the submission to court of claims to state bodies, enterprises, institutions, organizations and citizens for compensation of damage caused to their health and property due to negative impact on the environment; to appeal in court on decisions, actions or inaction of state bodies, local authorities, their officials on violation of environmental rights of citizens in respect of Ukrainian legislation; to participate in the strategic environmental assessment process. The laws of Ukraine may also define other environmental rights of citizens [26].

One of the most significant in the domestic system of environmental rights enshrined in article 9 of the law is the right of citizens to a natural environment that is safe for life and health [26]. In 1996, the right to a safe environment for life and health was enshrined in the

Constitution [24]. This right is also set out in sectoral and special legal and regulatory instruments. In particular, the right of citizens to a safe environment is addressed in Chapter 4 of the Fundamental Health Law [27]. Article 26 of this Law provides that the state provides protection of the natural environment as an important prerequisite for human life and health through the protection of living and non-living nature, protection of people from negative environmental impact, through achieving harmonious interaction between individuals, society and nature, rational use and reproduction of natural resources [27]. Article 293 of the Civil Code of Ukraine contains a list of rights, among which is the right to demand the cessation of activities that harm the environment; the right to safety of food products and household items; the right to safe living conditions during education, work, and residence [28].

The rights enshrined in the following laws are also of an environmental nature: «On Ensuring the Sanitary and Epidemic Well-being of the Population», «On Waste», «On the Use of Nuclear Energy and Radiation Safety», «On Protecting Human Beings from Ionizing Radiation» and a number of others.

The conditions for ensuring citizens' right to a safe environment for life and health are detailed in numerous by-laws, standards, regulations, sanitary and hygiene rules, building regulations and other norms and rules. These instruments provide for specific actions to be taken in order to minimize the impact of harmful factors on the environment. For example, such acts may include, in particular, SOS

360–92 «Urban Planning. Planning and Development of Urban and Rural Settlements» of 17 April 1992 [29]. Norms of maximum permissible discharge of pollutants are developed according to the Resolution of the Cabinet of Ministers of September 11, 1996 No. 1100 «Procedure for Development and Approval of Norms of Maximum Permissible Discharge of Pollutants». [30] and others. However, in the context of quality and identity of the regulatory framework for strengthening, ensuring implementation and protection of the right of citizens to a safe environment for life and health, it is necessary to agree with the opinion that Ukrainian environmental legislation on these issues is currently neither systematic nor consistent. However, it is also true that the adoption of even an absolutely perfect regulatory act from the point of view of implementation and protection of human rights is not yet a guarantee of the elimination of all obstacles in the use of certain rights.

Unfortunately, there are few constitutional human rights and freedoms left in Ukraine, which are not simply violated but cynically trampled.

However, in our opinion, the need to ensure the environmental rights of Ukrainian citizens is more acute than in many other areas. There are a number of reasons for this.

In particular, one of them is a massive violation of these rights for a long period of time. Environmental human rights in Ukraine have been and continue to be a kind of hostage to the complex processes of the state, the object of systematic political speculation on the part of almost

all political forces, which largely levels out the very value of environmental rights in the public consciousness.

During the years of Ukraine's independence, the principles of implementing and ensuring the protection of environmental human rights enshrined in the Constitution and international legal instruments have often remained the image of the Ukrainian State, concealing behind it a not quite decent facade and «the kitchen» of the State apparatus.

We will give one of the examples that confirms the above. It is known that among the first environmental laws of the new generation were the Laws of Ukraine «On the Status and Social Protection of Citizens Affected by the Chernobyl Disaster» [32] and «On the Legal Regime of the Territory Contaminated by the Chernobyl Disaster» [33]. These acts have been amended on several occasions for various reasons, one of which is the constant desire of the Cabinet of Ministers to reduce State budget expenditure by «cutting back» the rights of these categories of persons. In addition, among the reasons for this are the need to take special measures to protect the environmental rights not only of the victims or their children (born or unborn at the time of the Chernobyl disaster) but also of descendants of subsequent generations. This means that a large number of Ukrainian citizens are in need of protection of their rights to a safe environment and to compensation for damage to their health and property caused by violations of the requirements of environmental law.

It is known that Ukraine has had to make great efforts and commitments to

eliminate the consequences of the Chernobyl disaster, but the problems associated with the protection of the health of all victims remain and are aggravated by the lack of financial, medical and social security.

In recent years, the situation in Ukraine has been alarming with regard to the implementation of measures to reduce the risk of morbidity in areas affected by radioactive contamination as a result of the Chernobyl disaster. Despite the fact that there are direct requirements for the implementation of these measures in accordance with articles 17 and 19 of the Law of Ukraine «On the Legal Regime of the Territory Experiencing Radioactive Contamination as a Result of the Chernobyl Disaster» [33], the measures specified in the Law to reduce the risk of morbidity among the population, which include, for example, radiation monitoring and medical supervision, are not implemented.

Targeted state funding under the law for research into the radiation situation, exposure of the population and foodstuffs in the areas affected by the Chernobyl disaster is not being provided, and the facilities of the sanitary-epidemiological service are known to have been destroyed.

Investigations of radiation conditions, contamination of basic foodstuffs, doses to the population in recent years are carried out only in some settlements of Kyiv, Rivne and Zhytomyr regions (only 12 settlements are surveyed) that is explained by lack of financing of this direction of radiation protection of the population. This is despite the fact that

results of radiation hygienic studies in the period of 2015–2017 indicate individual cases of exceeding the limits of radiation exposure of the population in Rivne and Zhytomyr regions. The content of Cs-137 in cow's milk in the Rivne region is 84%, and in the Zhytomyr region, it is 4 times higher than the permissible levels of this radionuclide according to the requirements of DR – 2006. The situation is not much better with respect to the forest products, which, under environmental conditions in the state, are often one of the main sources of food for the inhabitants of Polissia, who have suffered radioactive contamination [34].

For example, dried mushrooms in almost 100% of cases exceed the permissible levels of this radionuclide according to the above requirements. And the contamination of Cs-137 in dried mushrooms collected in the Kyiv region in 28% of cases in the Zhytomyr region in 84% and in the Rivne region in 52% of cases gives reason to classify them as radioactive waste. However, through spontaneous trade, these dangerous products are spread throughout the country and, consequently, the number of potential Chernobyl victims in Ukraine is increasing [34].

A separate important issue is the status of the Chernobyl Disaster victims living in the enhanced radiological monitoring zone (Category 4B). In accordance with paragraph 4 of the Law of 28 December 2014 «On Amending and Determining the Voidance of Certain Legislative Acts of Ukraine», 837,111 citizens of Ukraine (as of 1 January 2015), who were affected by ionizing

radiation as a result of the Chernobyl Disaster unwillingly, were deprived of medical and social protection due to the loss of their status as victims of the Chernobyl Disaster. As of 1 January 2018, this figure had been reduced to 796,934 persons. On July 17, 2018, the Constitutional Court of Ukraine decided to restore social guarantees to the victims of the Chernobyl disaster (including category 4B victims) [35]. However, this issue is still unresolved and leads to increased social tensions in society. In addition, the decision of the Cabinet of Ministers of 11 July 2018 on the issuance of a new type of certificate to victims of the Chernobyl Disaster does not provide for the renewal of such documents for category 4B victims. Resolution of the Cabinet of Ministers of Ukraine No. 551 of 22 December 2018 [36] did not change this situation. This means that there is a real threat of losing the status of victims of the Chernobyl Disaster for 796,934 citizens of Ukraine with all social and medical consequences and the like.

So, taking into account certain social, political and economic factors, these rights – the right of citizens to an ecologically safe environment and to compensation for damages – are not easy to realize. But other environmental rights remain an ideal without content, as they are difficult, or more precisely impossible, to realize.

Practice shows that over the past decade Ukraine has been among the top five countries in terms of the number of applications to the European Court of Human Rights. Such statistics to a

certain extent indicate their awareness of judicial and non-judicial international human rights mechanisms, but to a greater extent, it demonstrates the urgency of protecting the constitutional (including environmental) rights and freedoms of Ukrainian citizens.

Despite the fact that none of the major international and European documents fixes the human right to an ecologically safe environment, it should be noted that the lack of formalization of this right does not indicate its non-recognition by the international community and its impossibility of protection. Thus, although the Convention for the Protection of Human Rights and Fundamental Freedoms [25] does not contain this right in its text, the practice of the ECtHR indicates the activity of citizens' appeals for protection of their right to a safe environment. To confirm this, we will give several examples. In *Lopez Ostra v. Spain* [37], the applicant noted a violation of Article 8 of the Convention, because a liquid and solid waste processing plant was located near the house, which had long been causing unpleasant smells, noise, and other negative effects. As a result of the examination of the case, the ECtHR noted that severe environmental pollution may affect the well-being of people to the extent that it may have an extremely negative impact on their personal and family life, without causing significant danger to their health. The Court stated that the State failed to strike an appropriate balance between the interests of the economic well-being of the city and the proper observance of the applicant's rights with respect to the

inviolability of the home, personal and family life. The Court found such actions by the State to be a violation of Article 8 of the Convention [25].

Similar positions of the ECtHR are also contained in the cases against Ukraine. In *Dubetska and Others v. Ukraine* [38], the applicants considered that the state had failed to protect their housing, privacy and family life from the excess industrial pollution caused by two state-owned coal mines. The Court found this to be a violation of Article 8 of the Convention, noting that a frivolous claim under Article 8 could only take place if the environmental hazard reached such a serious level that it significantly interfered with the applicant's ability to use his or her accommodation, privacy or family life [25].

In another case, *Grimkovskaya v. Ukraine* [39], the applicant complained about the close proximity of a highway to her home, which threatened her home, private and family life. On examination of the complaint, the Court concluded that there had been a violation, since the significant influence of noise, vibration, air pollution in connection with the location of the highway impeded the possibility of exercising the right to use her home and threatened her private and family life [39]. In *Dzemyuk v. Ukraine* [40] the applicant complained that the establishment of a cemetery near his house had led to pollution of drinking water sources, which had prevented him from exercising his right to use his accommodation and adversely affected his physical and mental condition. As in the previous cases, the ECHR found a viola-

tion of Article 8 of the Convention, stating that the functioning of the cemetery at such a close distance from his home constituted an interference with the applicant's right to respect for his home and private and family life [25].

All of the above demonstrates the relevance for Ukraine of the European experience relating to the issues of strengthening, ensuring the implementation and protection of environmental human and civil rights, and above all, those elaborated by the institutions of the Council of Europe. What is this organization and why is its experience so important for Ukraine?

The Council of Europe as an inter-governmental regional organization was established on 5 May 1949 through the signature by government representatives of 10 Western European states (Belgium, Denmark, France, Great Britain, Ireland, Italy, Luxembourg, Netherlands, Norway, and Sweden) of the London Treaty establishing the Council of Europe and the Statute of the Council of Europe.

The purpose of the organization is to develop cooperation among its member States on the basis of common principles and ideals and to promote their economic and social progress. Its main areas of activity are related to its main idea – democracy for the individual.

The main document guiding the activities of the Council of Europe is the European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted on 4 November 1950 [25]. The Convention, firstly, consolidated the basic human rights standards in Europe. Secondly, it obliges states to

be consistent in their implementation. Third, it consolidated the international system of human rights and freedoms protection. The purpose of the Convention is to place Man at the center of European politics. It is the first international treaty aimed at the implementation of the 1948 Universal Declaration of Human Rights, which guarantees the rights to life, freedom from torture and other inhuman or degrading treatment or punishment; freedom from slavery and forced labor; the right to personal liberty and security of person; the right to fair and public administration of justice; freedom from retroactive application of the law; the right to privacy; freedom of thought, conscience, and religion; freedom of speech; the right to peaceful assembly and association; the right to establish a family.

Ukraine has been a member of the Council of Europe since 9 November 1995 and ratified the Convention on 17 July 1997 [25].

The main instrument for the protection of human rights under the Convention is the complaint, the conditions of which are as follows: Ukraine's recognition of the jurisdiction of the European Court; full exercise by a citizen of all national means of protection of the violated right (freedom) – the period for filing a complaint – six months from the date of the final «national» decision.

When signing the main document – the Convention, Ukraine made a statement on the recognition in law of the right of individual applications to the European Commission on Human Rights and the jurisdiction of the European

Court of Human Rights.

The authors of the European Convention devoted its provisions to the creation of a unique judicial mechanism, which, in fact, has made a kind of revolution in international law. For the first time in the field of human rights, States parties to the Convention had the opportunity to challenge judicially the failure of another State party to respect the treaty rights and freedoms of individuals, regardless of their nationality. For the first time, the right of individuals to complain directly to an international judicial body about violations of treaty rights was recognized, and for the first time, the decision of that international judicial body was strictly binding on the respondent State.

The European Court of Human Rights had become the only judicial body competent to interpret the provisions of the European Convention and to rule on the existence or otherwise of a violation of it in specific cases brought before it.

The main bodies of the Council of Europe are the Parliamentary Assembly of the Council of Europe, the Committee of Ministers, the European Commission of Human Rights and the European Court of Human Rights. The headquarters of the European Court of Human Rights is located in Strasbourg (France), where the Secretariat is also located and is organizationally part of the General Secretariat of the Council of Europe.

The European Court of Justice is competent to consider both interstate complaints filed by one State party and individual complaints, i.e. those submit-

ted by private persons (legal entities and individuals).

So, as it is not difficult to notice, the path of a Ukrainian citizen to the European Court is in fact open. In practice, the vast majority of complaints submitted to the European Court are individual complaints.

Complaints may not necessarily be filed by a citizen of the state against which he complains; the condition that the state against which the citizen complains is a party to the Convention is sufficient. Thus, Article 1 of the Convention states that States Parties shall ensure to everyone within their jurisdiction the rights and freedoms set forth in Section 1 of the said Convention.

A citizen of Ukraine may file a complaint with the European Court of Human Rights invoking the articles of the Convention. The European Court of Human Rights will accept a complaint from a citizen only on the violation of those rights and freedoms, which are contained in the Convention. And this, as described above, is a list of traditional civil and political rights. According to the Convention, the rights and freedoms that are of civil and political nature are subject to protection. This is what defines the characteristics of the subject matter of the complaint.

The complaint in the European tradition has one aspect that was previously unknown to Ukrainian citizens. A complaint filed for violation of human rights and freedoms can be both a recognition of a fact of violation and a signal of probable (possible) violation of human rights and freedoms. For example, it is possible

to draw an analogy: in the Ukrainian legislation, there is a concept of «appeal» to a state body with a request to take measures to prevent and eliminate violations.

Implementation of the right to protection in the European Court of Justice implies compliance with a number of conditions that are enshrined in the Convention. Let us dwell on the basic conditions for the admissibility of a complaint and the conditions for accepting it for consideration.

First, the need to exhaust national remedies. This means that before filing a complaint with the Court, the applicant must address this complaint to all domestic judicial bodies, up to the highest instance, since the system of protection of rights and freedoms under the Convention is subsidiary (complementary) to national systems. When filing an appeal, the applicant must clearly follow Article 35 of the Convention [25]. In practice, this means that the protection should be clearly defined in domestic law, and its use should not depend on the will of an official. Moreover, the protection must be able to lead to the restoration of the violated right.

We would like to draw your attention to the fact that the deadline for filing an appeal with the European Court is 6 months. The six-month time limit begins with the public announcement of the final reasoned decision of the last domestic authority or written notification of the complainant; the complaint is inadmissible if it has been or is being examined by another international body, such as the Human Rights Committee, which

was established under the Optional Protocol to the UN Covenant on Civil or Political Rights; the complaint must come directly from a person who considers him or her to be the victim of a violation of the Convention. Anonymous complaints are inadmissible (part 2 of Article 35 of the Convention); a complaint is considered only as a violation of rights and freedoms in the Convention; a complaint is accepted only for actions (inaction) that relate to violations of the Convention and only in relation to a State party to the Convention; a complaint for a violation of rights and freedoms under the Convention is admissible from the moment of its ratification, and the State is not responsible for the violation of the Convention on the facts that took place before its ratification. Ukraine is responsible for its obligations only for the period since its ratification of the Convention in 1997; a complaint must be substantiated. The Court considers the very essence of a complaint (art. 35, para. 1). A complaint submitted will be considered on the basis of adversarial proceedings. Not only the complaint of the applicant but also the arguments of the state are considered.

However, it should be stressed once again that a citizen, before applying for protection in the ECtHR, must exhaust all available means of protecting his right in the national legal system.

However, speaking about the implementation and protection of the environmental rights of citizens, it would be unjustified not to see the real changes that are taking place in Ukraine, which, in our opinion, indicate positive changes

in this area of relations. If a few years ago it was difficult to find a court decision on the case of ensuring and protecting the environmental rights of citizens, now there are grounds to state that the situation has changed for the better, and there are more of these decisions. This is evidenced, in particular, by court decisions.

As an example, we can consider the decision of the Kherson City Court dated September 21, 2017, in the case № 766 / 10892/16-ts [42], which states that a citizen applied to the court with a claim to the service of construction and civil works on the obligation to perform certain actions. The defendant was the balance holder of an apartment building, which was provided, built and equipped with a system for collecting solid waste in the form of a garbage chute in the staircases. However, the defendant, on its own initiative, placed the waste collection bins on the roadside. These bins are not equipped with lids, not fenced, which results in constant spreading and dispersal of the waste along the roadway, light waste (paper, bags, etc.) is constantly flying into the yards of nearby private houses. In addition, the smell of open containers attracts stray dogs that scatter garbage in search of food and, being aggressive, pose a threat to the lives and health of citizens, especially children.

The court has fully satisfied this claim. Remarkable for this case is that the court in its decision referred to «detailed» bylaws. In particular, the CBN 1.1-1-0-93 «System of Standardization and Normalization in Construction. Ba-

sic provisions», State sanitary norms and rules of maintenance of territories of settlements from 17.03.2011 № 145 [42].

One more example. By the decision of the Court of Appeal of Kyiv region on May 19, 2017, in case 372/4399/15-ts it was established that there was a fire at the oil depot of LLC «Pobutrembudmaterialy» which lasted 10 days [43]. The consequence of the fire was causing damage to the natural environment with the risk to life and health of people. Plaintiffs, as inhabitants of the specified region, were inflicted moral harm in the form of a number of psychotraumatic factors connected with damage to health, destruction of property of claimants (namely, vegetables, which claimants grew, consumed and partially sold, for what they received the certain income). The plaintiffs asked to claim from defendants (from several enterprises) the caused moral damage at a rate of 263 088 UAH. The claim was satisfied. It is noteworthy that the court applied the provisions of the Convention on Civil Liability for Damage Caused by Activities Hazardous to the Environment of 21 June 1993 [44].

The right of citizens to an environment safe for life and health provides certain guarantees for its implementation. Such guarantees are set out in article 10 of the Law of Ukraine «On Environmental Protection». [26]. The major ones should include: carrying out state measures aimed at maintaining, restoring and improving the state of the natural environment; ensuring access of public organizations and citizens to environmental protection activities; control over

compliance with environmental legislation by the state and public formations; compensation in accordance with the established procedure for damage caused to health and property of citizens as a result of violation of legislation on environmental protection. These guarantees are aimed at ensuring normal exercise by citizens of their environmental rights.

Part 2 of the above article enshrines an extremely important provision that any activity that hinders or somehow burdens the implementation of citizens' rights to a safe environment is subject to mandatory termination in accordance with current legislative norms.

As for the protection of citizens' environmental rights, a number of normative acts provide for such protection. For example, article 11 of the Law of Ukraine «On Environmental Protection» state guarantees citizens the exercise of their environmental rights under the law. For today the forms of such protection are administrative, judicial and public protection, self-protection, appeal to the Ombudsman, and appeal to the Constitutional Court of Ukraine.

The administrative form of protection is envisaged in article 40 of the Constitution of Ukraine [24] and article 1 of the Law of Ukraine «On Citizens' Appeals». [45], according to which citizens have the right to apply to public authorities, citizens' associations, institutions, enterprises, organizations of all forms of ownership. Such appeals may reflect comments, suggestions, and complaints, including on issues related to ensuring the implementation of the environmental rights of citizens. The persons, to whom

such appeals are directed, should carry out their consideration and give an answer with certain justification within one month from the date of receipt of the appeal. However, in reality, unfortunately, it is necessary to assert that the administrative form of protection of citizens' rights is ineffective. Public authorities approach such appeals of citizens formally, without going into the essence of the issue and having no desire to solve the existing problem.

The public order of protection includes protection provided by the legislation on holding referendums, public hearings, general meetings of citizens at their place of residence, meetings, demonstrations, etc. [46, c. 265]. It should be recognized that, like the administrative form of protection, public protection is not particularly effective. At present, it can only justify itself in the case of high-impact situations for society, involving a significant number of the population.

In legal science, self-protection is also singled out as a form of protection of citizens' rights. Its peculiarity is the ability to protect the right without turning to the competent authorities. Self-protection refers to constitutional rights. Thus, according to part 5 of Article 55 of the Constitution [24], everyone has the right to protect his or her rights and freedoms by any means not prohibited by law from violations and unlawful encroachments. It is characteristic that the number of means of self-defense is not restricted. They can be used both separately and as a package, but only with the obligatory observance of conditions of lawful realization. A person may in-

dependently choose the methods of self-defense taking into account the content of the violated rights and the characteristics of unlawful behavior. But the chosen method of self-defense may not contradict the requirements of the law.

Judicial protection remains, in our view, the most effective form of the legal protection of environmental rights. The possibility of judicial review is a constitutional right and does not require subsidiary regulation in other legal acts. Article 55 of the Constitution of Ukraine [24] provides for the possibility for everyone to appeal in court against decisions, actions or omissions of bodies of state power, bodies of local self-government, officials and officers. The direct judicial protection of the right to an environment that is safe for life and health is established by part 3 of article 11 of the Law of Ukraine «On Environmental Protection». [26], according to which the violated rights of citizens in the field of environmental protection should be restored and their protection should be carried out in court.

In addition to the Convention for the Protection of Human Rights and Fundamental Freedoms, the Aarhus Convention of 25 June 1998 is of great importance [23]. Thus, article 9 of the said Convention guarantees the possibility to realize the right of non-governmental organizations to apply to the court in cases involving public participation. In particular, the decision of the Kharkiv Administrative Court of Appeal of 3 November 2014 in case No. 243/12077/13-a [47] took into account the above provisions. The court decision contains quite

a broad rationale, referring to the case-law of the European Court of Human Rights (ECtHR), which is considered a source of law in Ukraine. In particular, the decision in the ECtHR case *Grimkovskaya v. Ukraine* [38] of 21 July 2011, was recognized as such, which falls under the protection of the Convention for the Protection of Human Rights and Fundamental Freedoms, the violation of the right to public participation in decision-making on environmental issues as a procedural guarantee of the rights enshrined in Article 8 of the Convention.

Analyzing the ways in which the environmental rights of citizens are protected under environmental law, it should be noted that they have not been legislated in a generalized form. By analogy with the civil legislation, the main methods of protection, which are most often found, include compensation of losses and other ways to compensate for property damage; restoration of the violated right; termination of an action that impedes or violates the right; recognition as illegal of decisions or actions (inaction) of representatives of public authorities and other methods established in legislative acts.

It should be noted, for example, that there are also many challenges in compensating for losses related to the actual costs of restoring health. Thus, firstly, there is legislative uncertainty as to who is directly implementing the state obligation to create appropriate guarantees, and there is no clear definition of the actors to whom the obligation is imposed and what specific responsibilities will be in-

curred for not creating conditions for the realization of the right to a safe environment for life and health. In other words, it is important to establish the responsibility of a particular actor. Secondly, it is almost impossible to prove a causal link between the harm caused to the life or health of citizens and the violation by public authorities.

Another example of the use of remedies is the requirement of an individual to prohibit the activities of an enterprise that aggravates the environmental situation at the place of residence of a person. However, it is important to approach the appropriate respondent, who has the authority to do so. Thus, for example, the decision of the Donetsk District Administrative Court № 2a / 0570/6915/2012 [48] of July 23, 2012, states that the plaintiffs appealed to the court with a statement of claim to the Chief State Sanitary Doctor of Mariupol on the recognition of illegal inactivity regarding the renewal of the violated right to safe living conditions for life and health, the obligation to temporarily stop the activities of the enterprise in the sanitary protection zone of PJSC «Ilyich Iron and Steel Works», because this enterprise violates the sanitary regulations, and obliges them to take measures in accordance with the sanitary legislation regarding the resettlement of complainants from the sanitary protection zone of PJSC «Ilyich Iron and Steel Works». However, the court, referring to the norms of the legislation, pointed out that the list of powers of the chief state sanitary doctors of the cities, as well as the actions that they can take in case of de-

tection of violations of sanitary norms and rules, does not provide for the renewal of the constitutional right to safe living conditions by resettlement from the sanitary protection zone.

The protection of the right to a safe environment for life and health may also take place through the recognition as unlawful a decision, action or inaction of a public authority, an authority of the Autonomous Republic of Crimea or a local government body, their officials and officers. As an example, we can cite the decision of the Ivano-Frankivsk District Court No. 809/739/17 [49] of June 23, 2017. The plaintiff sued the Main Department of the State Geocadastre in Ivano-Frankivsk Oblast for invalidation of the order to lease the land plot. The lawsuit is motivated by the fact that on this land plot without changing its intended purpose a third party is building a pig farm in Hrushka village, which will be located at a distance of 1–1.3 km from the house of the plaintiff, which would constitute a threat of violation of the right to safe life and health of the environment guaranteed by Article 50 of the Constitution of Ukraine [24], because usually, pig farms with pig stock from 4 to 12 thousand heads produce about 7.47–186.47 tons of contaminants per year, including substances that emit specific odors. The claim was fully satisfied, and the order was rescinded.

Thus, as we can see, the domestic legislator gives citizens a wide range of powers to protect their right to a safe for life and health environment. This is manifested in a variety of forms and methods of protection, as well as protection of the

said right, provided by the current legislation.

However, a number of forms of protection in the light of modern realities, in our opinion, are ineffective, unable to fully ensure the implementation of the right of citizens to a safe environment. At the moment, as noted, the most effective form of protection is judicial protection. However, it also contains a number of drawbacks, including the complexity and duration of the procedure, the difficulty in proving the harm caused and establishing the culpability of the subjects of power. Therefore, we believe that it is necessary to define by law the responsibility of public authorities in the exercise by citizens of all forms of protection of environmental rights, as well as to detail the range of subjects to which binding regulations of the constitutional norm to ensure the right of citizens to a safe environment.

In particular, one of the ways to protect citizens' rights is a legally provided opportunity to address the Ombudsman of the Verkhovna Rada of Ukraine for Human Rights. According to the Law of Ukraine «On the Authorized Human Rights Commissioner of the Verkhovna Rada of Ukraine» adopted on December 23, 1997, an annual report on the state of observance and protection of human and civil rights and freedoms in Ukraine, including environmental rights, should be submitted. However, despite the law's requirement, such reports do not appear frequently. This is an example of gross violation of legal requirements at the level of such a high institution as the Ombudsman of Ukraine. This state of

affairs should be urgently rectified. In particular, we suggest that the legislation should provide for liability of this body for failure to perform its duties.

Unfortunately, domestic legislation does not yet have a clear legal mechanism in which all the links of the system of consolidation, enforcement, and protection of citizens' rights, including environmental rights, would be organically connected.

According to the assessment of many domestic and foreign experts, the ambiguity, vagueness, blurring and sometimes lack of legal norms regulating the mechanism of ensuring the implementation and protection of the rights of citizens, including environmental rights of citizens, is evidence of an unsatisfactory legal situation in modern society. In this state of affairs (if not corrected), the legal status of a person and a citizen, enshrined in the Constitution of Ukraine, loses its real basis, and this threatens to turn real rights into an empty declaration, detached from the reality. Given the above, we believe that one of the most important and urgent tasks of the state is to improve procedures to ensure the implementation and protection of the environmental rights of citizens.

The human right is the core of the legal system of the state, the main thing that defines its social, political and legal meaning. The criterion of stability of the legal system of the society and the indicator of the level of its legal development in conditions of economic, political and social instability is the ability of the state to ensure the realization of human

and civil rights. In our opinion, the main condition for the realization of individual rights in Ukraine is strong state power. The state requires a reasonable expansion of power in relation to society. For this purpose, there is a need to review stereotypes about the role of state power in society. However, this does not mean that the state should strengthen authoritarianism at the expense of democracy. It means that the state is obliged to create a legal mechanism that can fully ensure human rights. And the first step towards this should be to establish a proper order and introduce an effective system of governance.

After all, the work of both legal and other mechanisms to regulate environmental public relations depends on it, and it is these mechanisms that ultimately ensure the rights of citizens.

Conclusions. Environmental rights of citizens can be considered as a set of rights established in international and European acts, the Constitution of Ukraine, special environmental and related legislation, the rights of the individual, that is, a person and a citizen, which are exercised in the process of interaction with the environment and ensure the satisfaction of his basic needs in this area. The system of environmental rights of Ukrainian citizens has not yet been finalized and is still in the process of being developed.

The real, practical implementation and protection of citizens' environmental rights in Ukraine is still low. One of the reasons for this state of affairs is non-compliance with, and disregard for, legal requirements.

Furthermore, unfortunately, in all the years of independence, Ukraine has never established a coordinating body of executive power responsible for ensuring the rights of citizens, including environmental rights.

The main point that we would like to stress finally – there is a need to bring our country to a qualitatively new stage of activity in the field of strengthening, ensuring the implementation and protection of citizens' rights, including environmental rights.

There is no doubt that our state will face great difficulties and significant barriers on this way, but sooner or later (preferably, sooner) they will have to be overcome. We should note that the first steps in this direction have already been taken by the state. For example, on June 17, 1999, the Verkhovna Rada

of Ukraine approved the «Principles of State Policy of Ukraine in the Field of Human Rights». This document is of a framework nature and can be developed into a large-scale document. In particular, such a document could become the National Program of Adaptation of Ukrainian Legislation to its International Obligations in the Field of Human and Civil Rights and Freedoms.

In order to optimize the processes of bringing domestic legislation into line with international and European standards in the field of human rights, there is also a need to make amendments to Article 9 of the Constitution of Ukraine regarding the operation of generally recognized principles and norms of international law in Ukraine and recognition of the precedence of our state's international legal obligations.

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Published: Екологічне право України. 2019. Вип. 3–4. С. 2–16.