ENVIRONMENTAL CONTROL AND ASSESSMENT OF ECOLOGICAL STATUS OF UKRAINE

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Abstract

The article analyses the mechanisms of ecological control in Ukraine, their development in recent years. The citizens' participation in public environmental control is the exercise of their constitutional right to a safe environment for life and health. The ecological status of Ukraine was assessed from the point of view of realization of a citizen's ecological and legal status.

Keywords: *environmental control, ecological status, ecological safety, the environment, public control, public association, environmental law, a person's legal status, monitoring*

The problem statement: it is possible to assess the ecological status of the state only by assessing the ecological and legal status of a citizen of this state, with an understanding of environmental control at the territory of this state. The implementation of a person's environmental status and environmental control in the state are interconnected. Only their joint implementation in the political development of the state allows us to consider the development of Ukraine as a European country.

The Constitution of Ukraine proclaims the principle of priority of human rights and freedoms over the state and other interests. In article 3 of the Constitution of Ukraine the point at issue is that a person, his or her life and health, honour and dignity, inviolability and security are defined as the highest value in Ukraine. Section II of the Constitution of Ukraine, which provides a list of rights, freedoms and obligations of a person and citizen, contains a significant number of environmental standards that suggests that a person's environmental legal status in Ukraine is assigned at the highest level.

But despite the large number of laws in Ukraine and the weak tendency to changes, it is concluded about the inefficiency of the state environmental control in Ukraine. The problem is also the recognition of the facts of the environmental violations by the judicial system of Ukraine and the inability to compensate for losses or damage to human health.

There is also a lack of understanding among people themselves that the environmental legal status of a person and citizen is not only rights, but also a person's position and role in society and the state relating to the environmental sphere. If within the framework of the development of democracy in Ukraine, people have begun to understand their rights and tried to defend them, then they refuse to understand and fulfill their duties within the framework of the environmental legal status.

The purpose of this article is to study the effectiveness of environmental control in Ukraine and to assess the environmental status of Ukraine in 2019; to consider public monitoring as one of the methods of environmental control.

Analysis of publications: after the signing of Agreements between Ukraine and the EU, Ukraine has started many reforms, new laws are being adopted and new regulations are being developed in accordance with the European standards. The sphere of environmental protection is not an exception. During this time, many scientific articles have been written that analyse the environmental control in the state. Scientific articles for the last years have been considered: S. S. Syrovotka, R. Sh., Ivanko [2]. The essence of a person's ecological status is well revealed in the article of Voloshchuk [3]. This paper is a continuation of a number of observations.

Environmental control is one of the main functions of environmental protection management and rational use of natural resources. The use and protection of land, mineral resources, surface and groundwater, air, forests and other vegetation, wildlife, marine environment and natural resources of the territorial waters, continental shelf and exclusive (marine) economic zone of the republic, natural areas and objects subject to special protection, the state of the environment are subject to control. The tasks of the environmental control are formulated in article 34 of the Law of Ukraine "On Environmental Protection" [4]. They consist in ensuring compliance with the requirements of the current environmental legislation by all state bodies, enterprises, institutions and organizations, regardless of ownership and subordination, as well as by citizens.

The legislative grounds of public environmental control are established by the Law of Ukraine "On Environmental Protection", which defines the basic powers of public organizations (associations) and public inspectors in this area of activity.

In Ukraine it is possible to observe two types of environmental control today:

- state ecological control;
- public environmental control.

State environmental control (SEC) is a system of measures aimed at prevention, detection and suppression of violations of legislation in the sphere of environmental protection, ensuring compliance with the requirements by entities involved in economic or other activities, including standards and regulations in the sphere of environmental protection. The tasks of the SEC are to ensure compliance with the requirements of the legislation on environmental protection by all state bodies, enterprises, institutions and organizations, regardless of ownership and subordination, as well as by citizens. The peculiar feature of this type of control is that it is the prerogative of the relevant state bodies, which can apply measures of state coercion in cases provided by law. The legal grounds of SEC are determined by the Constitution of Ukraine, the environmental legislation, statutory instruments that regulate the legal status of the relevant state bodies, and the like. The supreme bodies of the state power of Ukraine carry out SEC in the context of their control functions as a whole. The President monitors the implementation of his environmental ordinances through the office of the Secretariat; the Verkhovna Rada, in particular, monitors the fulfilment of the adopted laws of environmental nature through its committees and commissions, by conducting the parliamentary hearings and the like; the corresponding structures operate as well as part of the Cabinet of Ministers, which supervise the implementation of government regulations on the protection of the environment. The right of citizens to participate in the decision-making process in the environmental management is provided for in many international legal acts. In particular, principle 10 of the Rio Declaration on Environment and Development [1] states: "Environmental issues are addressed in the most effective manner with the participation of all concerned citizens – at the appropriate level. At the national level, every person should have appropriate access to information on the environment available to public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States develop and promote public awareness and participation by making information widely available. Effective access to use judicial and administrative procedures, including redress and judicial remedies, shall be ensured."

On 23-25 October 1995, during the III EU-wide conference of Ministers for the Environment in Sofia, "the guidelines on access to environmental information and public participation in environmental decision-making" were adopted. The implementation of these provisions is reflected in the "Convention on access to information, public participation in decision-making and access to justice in environmental matters" –, the so-called Aarhus Convention, which was signed on 25 June 1998 and ratified by Ukraine in 1999. The peculiar feature of this Convention is that it, unlike others, not only contains substantive rules that assign the right of citizens to participate in the environmental management, but also establishes the procedural procedure for the exercise of these rights.

The national legislation of Ukraine also stipulates the possibility of citizens and their associations to exercise the environmental management functions. In many cases, it regulates public participation in environmental management much more than it is required by the international standards. In particular,

article 9 of the Law of Ukraine "On Environmental Protection" assigns the environmental rights of citizens of Ukraine. Section IV of this Law, "Powers of the authorities in the sphere of environmental protection", contains article 21 "Powers of public associations in the sphere of environmental protection", which establishes the rights of public environmental associations.

Based on the analysis of the legislative provisions on participation in the environmental management of citizens and their associations, the possibilities of participation in environmental management processes can be divided into several groups:

- influence on the formation of environmental policy at different levels and participation in the adoption of environmentally significant decisions;
- public environmental monitoring;
- initiation and conduct of environmental impact assessment;
- implementation of public environmental control.

The implementation of these opportunities is partly directly provided for in the environmental legislation, partly contained in other regulations and is a form of implementation of the general rights of citizens. In the latter case, the peculiar features of their application are characterized by the object, which is influenced – a person, and through it – the environment.

It is because of this classification, although relative, it is the most appropriate to consider public environmental management.

According to the legislation of Ukraine, citizens can influence the formation of environmental policy both directly and indirectly. The exercise of this right is carried out through elections to state and local government bodies, organization and participation in the activities of political parties and public organizations, making suggestions to the authorities, as well as hearing reports of officials.

The opportunities for cross-sectoral cooperation between authorities, business and the public are of greatest interest. Such forms of cooperation are becoming more frequent.

The Ministry of Ecology and Natural Resources ensures the organization and conduct of SEIA, state environmental control in Ukraine and currently has no territorial bodies.

The State Environmental Inspectorate (Derzhekoinspektsiia or SEI) is a government body of state administration, which operates on the basis of the Regulation on it within the MENR (hereinafter – the Ministry of Ecology and Natural Resources of Ukraine). The State Environmental Inspectorate in the regions, cities of Kyiv and Sevastopol (hereinafter – the Inspectorate) is a special unit of the MENR, which is accountable and controlled in terms of the state control of the State Environmental Inspectorate. Verification of compliance with the requirements listed in the conclusion of the SEI is entrusted to the main and regional state inspectors of the State Environmental Inspectorate in the sphere of state environmental control according to their competence. The chief state inspectors carry out control of objects, the list of which is established by the Cabinet of Ministers of Ukraine. Regional state inspectors carry out SEC for entities involved in economic or other activities, regardless of ownership, located at their territories of the region, with the exception of entities subject to the main state environmental control. They are obliged to: prevent; detect and suppress violations of legislation in the sphere of environmental protection; explain to violators of legislation in the sphere of environmental protection their rights and obligations; comply with the requirements of the legislation.

Procurator's supervision over the implementation of legislation and regulatory provision of the environmental safety played a significant role in the state mechanism of environmental control until 2015. Prevention of environmental crimes was assigned by the Prosecutor General's office of Ukraine to the priority areas of the prosecution authorities, especially in relation to the SEI. The Prosecutor General of Ukraine and his subordinate prosecutors exercised a control function in the order of prosecutorial supervision of compliance with the law in the sphere of environmental protection. But these powers were abolished by the reform, which had a negative impact on the effective mechanism of the environmental control. Part of the ecological control would become citizens' complaints in the

SEC but that it did not happen. It is the study of the reasons for this that some non-governmental public organizations are engaged in.

What is the reason in practice of the lack of evidence of environmental control? Why do people point to the inaction of SEC at the local level? How to fix the situation? These issues are very urgent for Ukraine.

PA MPO "Ecological Patrol" has been working since May 2017 and in the process of work the facts have been revealed why people shift their social responsibilities to the members of the association:

1. *Fear*. 80% of addressed people speak about fear of own structures of Ukraine. About the protection of personal data, about the corruption in law enforcement agencies.
2. *Lack of understanding of "how the system works in Ukraine*. Every citizen understands at the same time that it is their obligation to call the police and at this they have experience of inaction and lack of results or elimination of violation.

Therefore, such a mechanism was worked out, which would allow to eliminate violations without violating the complainant's privacy and the publication of the results of the work. As a result, not only citizens, but also the state bodies, local self-government bodies, law enforcement agencies began to address to PA MPO "Ecological Patrol".

PA MPO "Ecological Patrol" has a structure that allows distributing the functional responsibilities of the members as follows:

- headquarters, it includes the head of the executive body of the association, environmentalists, an accountant, lawyers, project managers and the chief inspector on environmental safety;
- mobile units of inspectors (it is they, who check the information from citizens about violations);
- members of the association (these are the members of the association who are not involved permanently);
- an environmental laboratory (in prospect).

Working at law infringements of environmental nature, there is an analysis of several aspects:

- why the environmental control does not work at the state level;
- environmental monitoring in any of its manifestations or database of environmental indicators;
- how to influence the quality of development of the environmental control system in Ukraine.

Recently, more and more attention has been paid to procedural issues regarding public participation in environmental decision-making. For example, in the Aarhus Convention, which was mentioned above, articles 6, 7 and 8 stipulate that each of the countries-parties of the Convention provides for public participation in decision-making on specific types of activities, in the development of plans, programs and political documents related to the environment, preparation of normative legal acts of the executive power and/or generally binding legal acts.

Until recently, holding of public hearings was only required on the use of nuclear energy and radiation safety. Cases and the procedure of their holding are established by the Resolution of the Cabinet of Ministers of Ukraine of 18 July 1998 "On approval of the procedure for holding public hearings on the use of nuclear energy and radiation safety". With the ratification of the Aarhus Convention, the list of cases of public hearings on environmental issues has expanded significantly. But public hearings can be held in cases not provided for by these regulations. In particular, according to article 13 of the Law of Ukraine "On Local Self-government", holding of public hearings are mandatory at least once a year. The procedure of their holding is defined by the charter of a territorial community. Thus, the obligation to hold public hearings on environmental issues can be regulated at the local level.

The main problem in holding public hearings is to take into account the comments that have arisen during their holding. According to the Law of Ukraine "On Local Self-government" and the resolution

of the Cabinet of Ministers of Ukraine "On approval of the Procedure for public hearings on the use of nuclear energy and radiation safety" all suggestions on the results of public hearings are subject to mandatory consideration by local self-government authorities. But consideration does not mean recognition, that is, the very idea of holding public hearings can turn into a formality, an unpleasant but necessary procedure for the authorities.

Many scientific articles refer to the environmental impact assessment and public environmental impact assessment, which was one of the mechanisms of environmental control until the end of 2017. But it was cancelled because the Law of Ukraine "On Environmental Impact Assessment" came into force [5]. Environmental impact assessment is carried out in compliance with the requirements of the legislation on environmental protection, taking into account the state of the environment in the place where it is planned to carry out the planned activities, environmental risks and forecasts, prospects for socio-economic development of the region, capacity and types of cumulative impact (direct and indirect) on the environment, including the impact of existing facilities, planned activities and facilities, for which a decision on the implementation of the planned activities is made or is being considered. Public discussion in the process of environmental impact assessment is conducted with the aim of identifying, collecting and taking into account the comments and suggestions of the public to the planned activity, as stated in article 7: "the public has the right to submit any comments or suggestions that, in its opinion, concern the planned activity, without the need to justify them. Comments and suggestions may be submitted in writing (including electronic form) and orally during public hearings with the entry in the minutes of public hearings. Written comments and suggestions shall be submitted during the public discussion within the time limits defined by part seven of article 5 of this Law and part six of this article". But during the year of monitoring the procedures of the public hearings, there was a sad statistic of ignoring these procedures by the public.

Public environmental monitoring can also be targeted. In due time in the USA, the movement of the so-called "river walkers" – individuals who voluntarily undertook patrolling along the rivers and streams for the purpose of detecting enterprises carried out industrial discharges into water bodies, helped to detect polluting enterprises and to respond to these facts by the public authorities [6]. Such activities are carried out by public organizations in Ukraine, too, for example, by public association for maintenance of public order "Ecological Patrol". Most public organizations that will receive funding from grants deal with various types of environmental monitoring, data collection and data processing. Sometimes these data are mismatched with the official ones; sometimes they show a discrepancy of real value. Therefore, PA MPO "Ecological Patrol" has decided to collect and post all official and unofficial information on all indicators of the state of the environment in Ukraine [8] on its website [7]. The analysis of such information and the development of response mechanisms for SEC by actions on a case-by-case basis may in the future become a mechanism of state environmental monitoring in Ukraine.

The main way to use such information is to transfer it to the authorities responsible for the state of the environment in order to take measures to eliminate violations of environmental legislation. But a more effective mechanism has been developed. Public association for maintenance of public order "Ecological Patrol" due to the powers prescribed in the Law of Ukraine "On Participation of Citizens in Protection of Public Order and the State Border" [9], according to Section III "Basic tasks, rights and duties of public associations and their members for protection of public order and the state border", where article 9 refers to "providing assistance to the National Police bodies in ensuring public order and public security, preventing administrative misconduct and crimes". Article 10 of the Law provides for the granting of the rights to the protection of nature to members of a public association. Members of public associations during performance of their duties on protection of public order according to article 13 of the Law of Ukraine "On Participation of Citizens in Protection of Public Order and the State Border" and the Administrative Code of Ukraine (article 255) have the right to execute protocols on administrative offenses. During work at the territory of Dnipropetrovsk region PA MPO "Ecological Patrol" was engaged in (table 1) opening of criminal proceedings which by that time had not even been considered by police officers as criminal ones.

Ukrainian environmental legislation, despite the large number of regulatory legal acts, does not sufficiently regulate the mechanism of implementation of environmental activities in market economy conditions. Legislative norms, in particular, do not always make it possible to bring to administrative or criminal responsibility of persons engaged in the design or construction of environmentally hazardous facilities with violation of environmental requirements, as well as officials of specially authorized state bodies in the sphere of environmental protection that give permission for carrying out environmentally hazardous activities.

Table 1. Criminal proceedings, which were opened by PA MPO "Ecological Patrol"

Article of the Criminal Code of Ukraine [12]	**Quantity for 2018**	**Recognition of PA MPO "Ecological Patrol" as an affected party**	**Accrued damage by the State Ecological Inspectorate in Dnipropetrovsk region, UAH**	**Court decision or investigator's decision [10, 11]**
Article 246. Illegal felling or illegal transportation, storage, sale of timber	24	20	3 000 000	In 20 cases – the decision of the investigator is pronounced on recognition of PA MPO "Ecological Patrol" as the affected party on behalf of the State
Article 236. Violation of environmental safety rules	10	8	under consideration	The decision of the investigator is pronounced on recognition of PA MPO "Ecological Patrol" as the affected party on behalf of the State
Article 240. Violation of the rules of protection or use of mineral resources	1	1	under consideration	-
Article 356. Arbitrariness	1	1	under consideration	The decision of the investigator is pronounced on recognition of PA MPO "Ecological Patrol" as the affected party on behalf of the State
Article 197-[1]. Unauthorized occupation of land and unauthorized construction	4	No	under consideration	-
Article 364. Abuse of power or official capacity	1	No	under consideration	-
Article 239. Pollution or damage to land	1	No	under consideration	-
Total	41	29	3 000 000	-

As mentioned above, citizens have the right to compensation for harm, but it does not work in practice. The reason for the lack of such judicial practice is grounded on the lack of scientific research and observations of the negative impact of the environment on human health. In Ukraine, only one positive judicial practice on this issue is known [13], when a public organization acted as a plaintiff in a court case because of violation of environmental legislation.

Why is recognition of PA MPO "Ecological Patrol" as the affected party on behalf of the State an important issue? Because in Ukraine there are a lot of lands, forests, forest belts, which property status

is not defined, and they are not on the balance of communities, state institutions or bodies of self-government, which makes the law unable to pass a sentence. Then most cases are closed by the police in the absence of a natural or legal person who has been affected or injured. Also, the police ignore the principle of calculation of damage to the environment and do not address to the State Environmental Inspectorate for its calculation. In case of recognition of PA MPO "Ecological Patrol" as the affected party on behalf of the State, the lawyer can write a request for involvement, for example, of any materials and parties, such as the State Environmental Inspectorate. This can be considered as an example of public environmental control.

Traditionally, the role of public organizations in our country was defined as supplementary, in relation to the activities of state authorities and management at various levels. Public organizations were also endowed with such functions in the sphere of environmental protection. It is characteristic that the right of public organizations to somehow control the state control (supervisory) bodies and criticize them was not even stipulated, since these organizations themselves were considered only as an adjunct of the latter. However, in the course of their activities and self-understanding, citizens and public organizations have come to understanding that they should not remain as an adjunct of state bodies and carry out their instructions. This understanding, in the context of the gradual democratization of the society, led to the first conflicts between public organizations and state bodies.

In other countries, such as the USA, an important role in ensuring the effective implementation of environmental law is the control of individuals and their organizations over compliance with environmental legislation, which is also called "private enforcement of environmental law". The legal form of this control is private claims. For the first time the possibility of filing private claims as a tool for monitoring the implementation of the provisions of the legislation was provided in the Federal Law of the USA "On Clean Air" in 1970. Since then, similar rules have been included in almost all new and already existing federal laws governing the anthropogenic impact on the environment. Such rules exist in the Ukrainian legislation, too, but they do not work and the lack of judicial practice contributes to this. In Ukraine, only two public organizations are engaged in such judicial practice aimed at protecting the rights of people to a clean environment: public organization "Ecology-Rights-Human" and public association for maintenance of public order "Ecological Patrol".

In recent years, a lot of public environmental organizations, which work for account of European funds financing, have emerged in Ukraine. The work of such organizations is more focused on the study and analysis of the system of state control and education in the sphere of ecology. It is this environmental movement in Ukraine that provides an opportunity to learn more about their right to a clean environment and focus on compliance with environmental standards.

CONCLUSIONS

Having considered the concept, elements and types of environmental and legal status of a person and citizen, we can conclude that the formation of this legal category in Ukraine has almost been completed at the legislative level but is not performed at the local level. Environmental control in Ukraine is being developed and reformed very rapidly. But the country still does not have a judicial system as for environmental crimes and there is no final component of environmental control – responsibility for the crime committed and harm caused to the environment, compensation for harm caused to human health.

As of 2019 in Ukraine a citizen can exercise the following environmental rights:

- the right of citizens to a life and health friendly environment;
- the right to full and accurate information on the state of the environment and its impact on human health;
- the right to participate in public discussions of the planned activities of enterprises;

- the right to participate in the development and implementation of measures to protect the environment and the rational use of natural resources;
- the right to the general and special use of natural resources;
- the right to participate in the discussion of draft legislative acts and making suggestions to state and economic bodies, institutions and organizations;
- the right to receive environmental education; the right to unite in public environmental associations;
- the right to submit claims to the court against state bodies, enterprises, institutions, organizations and citizens for compensation for harm caused to their health and material damage as a result of the negative impact on the environment.

Returning to the issue of the environmental obligations of citizens in Ukraine, which are assigned in article 66 of the Constitution of Ukraine and article 12 of the Law of Ukraine "On Protection of Environment", it should be noted that in most cases of violation of these obligations the state control and responsibility are absent.

Thus, if we assess the environmental status of Ukraine from the point of view of the implementation of the environmental and legal status of a citizen of Ukraine, a citizen's environmental rights are assigned in the current legislation, but, unfortunately, do not have proper implementation in practice. This fact entails the absence of judicial practice of compensation for harm to human health and the environment.

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