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The right to an enabling environment in the system of public interests of the territorial community within the implementation of the sustainable development goals

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Abstract

The purpose of the research was to study the essence of the right to an enabling environment in the system of public interests of a territorial society, within the framework of the implementation of the strategy for Sustainable Development in Ukraine. As the main content it is known that the national security strategy of Ukraine identifies corruption among the current and planned threats, which prevents the Ukrainian economy from depressing, makes its sustainable and dynamic growth impossible and, as a result, fuels the criminal environment. The methodological basis of the research is presented as comparative-legal and systematic analysis, formal-legal method, method of interpretation, hermeneutic method, as well as methods of analysis and synthesis. The obtained results allow concluding that, the effectiveness of legal regulation of the implementation and protection of the right to a favorable environment should be directed to the implementation of environmental and economic functions of the state and, fundamentally, to strict adherence to national environmental safety standards.

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Keywords: administrative and legal relations; sustainable development; public interest; right to a favorable environment; social dialogue.

El derecho a un entorno propicio en el sistema de intereses públicos de la comunidad territorial dentro de la implementación de los objetivos de desarrollo sostenible

Resumen

El propósito de la investigación fue estudiar la esencia del derecho a un medio ambiente propicio en el sistema de intereses públicos de una sociedad territorial, en el marco de la implementación de la estrategia para el Desarrollo Sostenible en Ucrania. Como contenido principal se sabe que la estrategia de seguridad nacional de Ucrania identifica la corrupción entre las amenazas actuales y previstas, lo que evita que la economía ucraniana se deprima, imposibilita su crecimiento sostenible y dinámico y, como resultado, alimenta el entorno criminal. La base metodológica de la investigación se presenta como análisis comparativo-legal y sistemático, método formal-legal, método de interpretación, método hermenéutico, así como métodos de análisis y síntesis. Los resultados obtenidos permiten concluir que, la efectividad de la regulación legal de la implementación y protección del derecho a un medio ambiente favorable debe estar dirigida a la implementación de las funciones ambientales y económicas del Estado y, fundamentalmente, al estricto apego a las normas nacionales de seguridad ambiental.

Palabras clave: relaciones administrativas y jurídicas; desarrollo sostenible; interés público; derecho a un medio ambiente propicio; diálogo social.

Introduction

The state policy in the field of environmental protection in Ukraine cannot be assessed as sufficiently effective, as the state of natural resources continues to deteriorate. According to official indicators, the state of the environment on about 20% of the territory of Ukraine is defined as unsatisfactory. As a result, an additional 30,000-35,000 people die annually, and the economic damage reaches 10% of the value of the gross

domestic product. The martial law in Ukraine has led to the creation of emergency environmental situations, the overcoming of the negative manifestations of which, according to the most optimistic forecasts, will be carried out over the next decade.

The system for ensuring a favorable and safe environment includes many components, the leading place among which belongs to the formation of an appropriate mechanism for public administration in this area and the legal foundations for its functioning, optimization of the mechanism for its administrative and legal protection. This mechanism covers the entire process of using natural resources from granting the right to use them to bringing those responsible for its violation to legal responsibility and terminating this right. Suffice it to mention the numerous violations of the procedure for obtaining special permits for the use of natural resources, in particular in the field of subsoil use (spontaneous mining of amber, coal, etc.), forest resources (mass destruction of forests, including protected areas of the Carpathian region), disposal of man-made waste in violation of environmental safety requirements, etc.

These circumstances indicate a very low level of efficiency of the mechanism of public administration in the field of environmental protection. In this regard, it is urgent to develop and improve the system of administrative and legal regulation of public administration in this area, as well as a proper theoretical understanding of its content and ways of improvement.

1. Literature review

The study of the problems of ensuring the effectiveness of the mechanism of administrative and legal protection of the environment at different times is the subject of scientific research by Surilova and Leheza (2019), Pushkina *et al.* (2021), Kolpakov and Kolomoyetz (2020), Zolotukhina *et al.* (2020).

In accordance with Part 4 of Art. 5 of the Aarhus Convention defines the obligation of states to publish national reports on the state of the environment, including information on environmental quality and information on environmental pressures, at least once every three to four years.

On the other hand, according to the current legislation of Ukraine, the concept of the category “environmental quality” is not defined.

The establishment of environmental friendliness should take into account not only the requirements for compliance with established environmental safety standards, but also the relevant indicators of anthropogenic features of the development of society, in particular, determining life expectancy,

cancer incidence, taking into account the latest technologies for introducing innovations in industrial development, etc. Only taking into account such indicators will reliably reflect the interaction of man and the environment, optimizing the system for ensuring his right to its safety.

2. Materials and methods

The study is based on the work of foreign and Ukrainian scientists regarding methodological approaches to understanding the right to a favorable natural environment as a component of the Sustainable Development Strategy.

The ontological method of scientific knowledge is used to determine the system of methodological approaches to understanding the category of the right to a favorable natural environment as an integral element of the Sustainable Development Strategy and satisfying the public interest of the territorial community.

The logical-structural method made it possible to develop conceptual principles for the implementation and protection of the right to a favorable natural environment. The use of the system analysis method made it possible to determine the normative principles for ensuring the right to a favorable natural environment as an integral part of the Sustainable Development Strategy.

3. Results and discussion

The purpose of studying the essence of the right to a conducive environment in the system of public interests of a territorial society in the framework of the implementation of the Strategy for Sustainable Development in Ukraine.

The creation of conditions for the functioning of a person, which determine the characteristics of a favorable external environment, indicates the implementation by the state of the function assigned to it - the ecological function.

Ensuring the effectiveness of the implementation of the ecological function of the state is of particular relevance, starting from the second half of the twentieth century. The ecological function of the state is understood as the direction of activity of state authorities and local self-government, which consists in ensuring environmental safety, rational use of natural resources, their protection and protection, which results in the formation of a favorable natural environment (Leheza, 2012).

The Association Agreement between Ukraine and the European Union 2014 is a kind of conceptual document, the content of which determines the totality of public interests, the achievement of which is a priority task of the national public administration system. It is necessary to single out such normatively defined public interests, which are priority goals for the development of Ukraine.

In particular, according to the Association Agreement between Ukraine and the European Union, the sphere of public interests in modern conditions should include: the gradual associative approach of Ukraine to the European community; intensification of political dialogue with the countries of the European Union; introduction of universally recognized democratic standards for the implementation of human rights and freedoms, including the improvement of the national justice system and ensuring the rule of law and respect for the individual; establishing close economic and trade relations in order to integrate Ukraine into the internal market of the European Union in the legal doctrine of the European Union "acquis Communautaire"; ensuring environmental protection standards, including the introduction of a system for assessing negative environmental impacts in accordance with Western European standards.

In accordance with the content of the Association Agreement between Ukraine and the European Union, the introduction of educational standards, standards for the provision of medical services and assistance is attributed to the public interests of the development of Ukrainian society. It is necessary to determine that the priority public interest for Ukraine in modern conditions is to ensure the success of the European integration process.

The Association Agreement between Ukraine and the European Union 2014 is a kind of conceptual document, the content of which determines the totality of public interests, the achievement of which is a priority task of the national public administration system. In particular, according to the Association Agreement between Ukraine and the EU, the sphere of public interests in the field of social security includes ensuring environmental protection standards, including the introduction of a system for assessing negative environmental impacts in accordance with Western European standards.

Despite the absence of a legislative definition of the concept of "environment" (or its synonymous category "environment"), research is constantly being carried out in the scientific community aimed at finding author's approaches to its understanding. In addition, noteworthy is the establishment of an encyclopedic understanding of its essence. In particular, the group of authors of the "Big Encyclopedic Legal Dictionary" under the general supervision of Yurii Shemshuchenko argues for the expediency of understanding the "environment" ("environment") as a set of

natural and natural-anthropogenic conditions (land, water, forests, subsoil, atmospheric air, flora and fauna) that surround a person and are necessary for his life and activities (Shemshuchenko, 2007).

This approach to the definition of the natural environment (environment) is correlated with the approach of its time, justified by Valery Matviychuk, as nature accessible to man (both inviolable and modified or created by man) (Matviychuk, 2011). An adherent of a broad interpretation of the concept of "environment" is Victor Ivanyushenko, which substantiated the expediency of its understanding as the identity of the environment and the environment, which is a set of objects of the natural environment, other social factors (in particular, living conditions, nutrition, education, recreation, etc., that is, factors reflecting the impact on life and health) of a person, on the effectiveness of his life (Ivanyushenko, 2009).

The absence of a legislative definition of the category "environment" complicates the problems of its application, but at the same time it is the basis for determining the essence of the generic object of environmental crimes (section VIII of the Criminal Code of Ukraine (Law of Ukraine, 2001). The absence of a legislative definition of the category "environment" complicates the problems of its application, but at the same time it is the basis for determining the essence of the generic object of environmental crimes (section VIII of the Criminal Code of Ukraine (Mykolenko *et al.*, 2010).

It should be noted that since September 2019, the relevant public administration body in Ukraine has also been called the Ministry of Energy and Environmental Protection of Ukraine, which was implemented in accordance with the provisions of the Decree of the Cabinet of Ministers of Ukraine dated September 2, 2019 No. 829 "Some issues of optimizing the system of central authorities' executive power" (Law of Ukraine, 2019). In the course of such reform changes, in fact, the recognition of the "environment" as an object of public administration, as an object of administrative legal relations, as a special object in need of protection and protection took place (Matviichuk *et al.*, 2022).

Taking into account the above considerations, it is necessary to draw several conclusions that will form the basis of further research. First of all, the author's understanding of the category "environment" is based on the need to single out as its component of human life and health, to determine as criteria for the favorable environment not only compliance with the requirements established by the current legislation on compliance with environmental pollution limits, but also to determine the relationship between human life expectancy and the corresponding state of the environment in a particular area (Villasmil Espinoza *et al.*, 2022).

In addition, the quality of environmental protection is also determined by the appropriate level of provision of standards for the improvement of settlements, which determines, among other things, the conditions of human life. Given this approach, it is necessary to abandon the use of the term "environment", which in its lexical and semantic understanding is an unsuccessful attempt to translate the term "environment", which corresponds to the Ukrainian word "environment".

The environment as an object of administrative and legal protection is understood as a set of natural and natural-anthropogenic objects, which is a forming set of factors influencing human life and health, while ensuring its favorableness has a functional direction of activity of public authorities and local self-government (Pushkina *et al*., 2021).

The basis of the administrative and legal regulation of ensuring the safety and favorable environment should be based on the regional concept of the integrated use of resources, which allows real effective measures, monitoring and evaluation of all types of resources that provide a certain territorial entity.

Increasing the efficiency of legal regulation of public administration in the field of environmental protection should be directed in the following areas. In particular, firstly, it is necessary to resolve the issue that the establishment of forms of ownership of natural resources. The ambiguity of approaches regarding the expediency of expanding the right of private ownership of natural resources entails numerous public discussions (Tylchyk *et al*., 2022).

In Ukraine, the institution of private ownership of natural resources is involved to a very small extent. There is an urgent need to expand the segment of private ownership of some of them (land, forest, individual water bodies), as well as collective, in particular municipal property, in order to enhance the possibilities of market self-regulation of nature management processes and achieve the optimal ratio of state, communal and private ownership of resources This will contribute to the formation of a market for natural resources (Kobrusieva *et al*., 2021).

Another direction of creating a market for natural resources is the transition to free market circulation of permits (limits, quotas) for the use of natural resources, by a certain analogy with the proven foreign practice of circulation of permits (quotas) for emissions into the atmosphere, discharges into water basins. The introduction of the practice of creating a market for permits (quotas) for the use of natural resources should be combined with a revision of their standards, a revision of the components of the mechanism for paying for the use of natural resources.

The amounts of payments for the use of natural resources levied in Ukraine are lower than similar payments in neighboring countries.

Therefore, it is necessary to increase the amount of collection of natural resource payments in Ukraine, which will strengthen their eco-efficient function and increase their role in the formation of tax revenues and financing of environmental activities (Halaburda *et al*., 2021).

These problems can be overcome by strengthening the environmental orientation of the tax legislation and the pricing system, expanding the possibilities of credit and financial support and helping business entities in the implementation of measures for rational environmental management through targeted special budget funds (Leheza *et al*., 2022).

Conclusions

The priority direction in the legal regulation of determining the right to a favorable environment at the present stage should be a combination of organizational and legal mechanisms with economic incentives for the use, protection and reproduction of natural resource potential, which is manifested in the differentiation of payments for the use and pollution of resources; in tax and credit benefits; insurance in the field of protection and reproduction of resources; replacement, on a necessary and reasonable scale, of direct, administrative management, indirect, organizational and legal market regulation.

There is a need for legal differentiation of social standards, taking into account the possibilities of regions for the use of natural resource potential. An important element of the regulatory mechanism is the market comparison of supply and demand, which can take place in the presence and development of an appropriate legal framework. The transformation of forms of ownership and mechanisms for regulating economic activity is an incentive to search for new methods and means of organizational and legal regulation of the favorable environment.

Therefore, it is necessary to create a fundamentally new organizational and legal regulatory mechanism based on a combination of the traditional prohibition, coercion, obligation with encouragement, stimulation. This mechanism, based on monitoring and control, will ensure the implementation of joint efforts of executive authorities, local self-government in the use, protection and reproduction of natural resource potential. According to the structure of legal relations, legislation should also develop through general and special norms.

The effectiveness of legal regulation of the implementation and protection of the right to a favorable environment should be aimed at the implementation of the environmental and economic functions of the state and strict adherence to national environmental safety standards. It provides

responsibility for the implementation of state programs; stabilization of policy in taxation, financing, lending and budgeting, that is, it acts as a real mechanism for incorporating environmental policy into the functioning of economic systems.

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