

PECULIARITIES OF ENSURING ENVIRONMENTAL SAFETY BY TERRITORIAL COMMUNITIES DURING MARTIAL LAW

ОСОБЛИВОСТІ ЗАБЕЗПЕЧЕННЯ ЕКОЛОГІЧНОЇ БЕЗПЕКИ ТЕРИТОРІАЛЬНИМИ ГРОМАДАМИ ПІД ЧАС ДІЇ ВОЄННОГО СТАНУ

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The article examines the issues of legal regulation of the right of communities and their residents to safe environment during the martial law regime. The article analyses the concepts of "environmental safety" and "the right of a territorial community to safe environment", as well as the real possibilities of territorial communities to implement environmental safety measures to protect people and bioresources of the community during the martial law regime. The author of the article analysed the implementation of the right to environmental safety by territorial communities, local public authorities and bodies exercising the powers of local self-government bodies during the martial law regime. The right of a territorial community to a safe environment and environmental safety for the community is reflected in the national legislation of Ukraine rather briefly and superficially, and therefore the purpose of this article is to research the concept of 'the right of a territorial community to a safe environment' through the prism of the concept of 'environmental safety', and also to determine the approaches to implementation by territorial communities of environmental safety measures and measures to protect humans and community bio-resources during the martial law regime based on legal analysis. The article provides the features of proper environmental safety and ensuring the right of a territorial community to a safe environment, and defines the guarantees of environmental safety of a community during the martial law regime in Ukraine. The necessity to improve national legislation on environmental safety and environmental protection for communities during the martial law regime was established by the author of the article. The practical significance of the study is the possibility of using its results by the legislator through amendments to the current legislative acts regarding the implementation of environmental safety measures for communities and the implementation of their right to a safe environment during the martial law regime.

Key words: environmental safety, environmental safety of territorial communities, the right of communities to safe environment, environmental safety measures to protect humans and bioresources, martial law regime.

У статті розглянуто питання правового регулювання реалізації права громад та їх мешканців на безпечне навколишнє середовище під час дії правового режиму воєнного стану. В статті розглядається поняття «екологічна безпека» та «право територіальної громади на безпечне навколишнє середовище», а також реальні можливості територіальних громад здійснювати екологічні безпекові заходи захисту людини і біоресурсів громади під час дії правового режиму воєнного стану. Автором здійснено аналіз реалізації права на екологічну безпеку територіальними громадами, місцевими органами державної влади та органами, що здійснюють повноваження органів місцевого самоврядування під час дії правового режиму воєнного стану. Право територіальної громади на безпечне навколишнє середовище та екологічну безпеку для громади проглядається в національному законодавстві України досить стисло і поверхово, тому метою даної статті є розкриття поняття «право територіальної громади на безпечне навколишнє середовище» через призму поняття «екологічна безпека», а також визначення підходів реалізації територіальними громадами заходів екологічної безпеки та заходів захисту людини і біоресурсів громади під час дії правового режиму воєнного стану на основі правового аналізу. В статті наведено ознаки та підходи щодо визначення екологічної безпеки та захисту довкілля для громад під час дії правового режиму воєнного стану. Практичне значення дослідження полягає в можливості використання його результатів законодавцем через внесення змін до чинних законодавчих актів щодо здійснення заходів екологічної безпеки громад та реалізації їх права на безпечне навколишнє середовище під час дії правового режиму воєнного стану.

Ключові слова: екологічна безпека, екологічна безпека територіальних громад, право громад на безпечне навколишнє природне середовище, екологічні безпекові заходи захисту людини і біоресурсів, правовий режим воєнного стану.

Formulation of the problem. Formulation of the problem. The environmental safety of territorial communities during the martial law regime is a global and state problem in general, as well as a problem for each territorial community separately. After all, each territorial community faces unpredictable challenges not only of catastrophic humanitarian consequences for settlements, but also of environmental hazards for local environmental areas in the future. Therefore, the value of this analytical study is to review and analyze the acute and little-studied issue of environmental safety of communities and to highlight foreign experience in the comparative legal aspect.

Analysis of recent research and publications. Practical and theoretical problems of environmental safety have been paid attention to by Ukrainian and foreign scientists in many aspects and directions at different times, in particular: Y. S. Shemshuchenko, V. I. Andreitsev, V. V. Nosik, V. V. Ladjchenko, Y. A. Krasnova, M. V. Krasnova, V. M. Yermolenko, M. V. Sarapina, L. O. Golovko, G. V. Anisimova, as well as such scientists as R. Glicksman, W. Woosby, E. Regbinder, J. Bernard, and others.

This study was carried out taking into account the basic national, foreign and international legal acts, including: Law of Ukraine "On Environmental Protection" [1], Law of Ukraine "On Local Self-Government in Ukraine" [2],

the Law of Ukraine "On the Legal Regime of Martial Law" [3], the Law of Ukraine "On Environmental Impact Assessment" [4], the Law of Ukraine "On Strategic Environmental Assessment" [5], the Law of Ukraine "On Environmental Protection" [6], the Law of Ukraine "On Waste Management" [6], the Law of Ukraine "On the Environmental Emergency Zone" [7], the Law of Ukraine "On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the Period up to 2030" [8], Decree of the President of Ukraine No. 111/2021 "On the Decision of the National Security and Defense Council of Ukraine of March 23, 2021 'On Challenges and Threats to the National Security of Ukraine in the Environmental Sphere and Priority Measures to Neutralize Them' [9], Decree of the President of Ukraine "On the Decision of the National Security and Defense Council of Ukraine of March 'On Measures to Improve Chemical Safety in the Territory of Ukraine' [10], Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous, or Other Gases, and of Bacteriological Methods of Warfare (1925) [11]; the Paris Pact (Briand-Kellogg Pact) (1928) [12]; the Universal Declaration of Human Rights (1948)) on the Recognition of War as an International Crime [12]; Universal Declaration of Human Rights (1948) [13], Convention on the Prohibition of Military or Any Hostile Use of Environmental Modification

Techniques (ENMOD) (adopted on 18. 05.1977, in Geneva (Switzerland), ratified by Ukraine on 13.06.1978) [14], the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) (adopted on 25.06.1998, in Aarhus (Denmark), ratified by Ukraine on 06.07.1999) [15], etc.

A general analysis of the causes and specifics of environmental problems in Ukraine was carried out by V. V. Ladychenko and L. O. Golovko [16]. The scholars emphasized the current problematic issues of harmonization of Ukraine's environmental legislation with the requirements and principles of the EU environmental policy, and the prospects for improving the legal liability of business entities whose activities are particularly hazardous.

The environmental rights of citizens, in particular, the right to environmental safety during martial law, are also emphasized by Ukrainian practitioners M. I. Pypiak and Y. A. Kokarcha [17] in their article on the protection of the rights and interests of citizens during hostilities. The scientists emphasize "... the need to introduce clear legal mechanisms for the protection of environmental rights of citizens under martial law, ... the creation of effective legal guarantees for ensuring environmental safety, use, reproduction (restoration) and protection of natural resources".

In one of the studies by G. V. Anisimova [18, p. 101], which is devoted to the environmental and legal problems of environmental safety and the realization of environmental rights under martial law, an original definition of the state environmental policy under martial law is formulated.

Given the vital activity of the State under martial law, Ukrainian researchers [19] state the uncertainty of environmental security as such, in particular in regions where hostilities have been or are being conducted or in territories or communities bordering such regions, and where environmental disasters and negative consequences from them have already occurred.

At the same time, the subject of environmental safety in territorial communities during the legal regime of martial law is still poorly researched. In particular, the approaches of foreign experience are not used to regulate this issue in communities and territories of local importance.

That is why **the purpose of this article** is to reveal the concept of "the right of a territorial community to a safe environment" through the prism of the concept of "environmental safety", as well as to determine the approaches to the implementation of environmental safety measures by territorial communities and measures to protect human beings and community bioresources during the legal regime of martial law.

The realization of the purpose of this study includes:

- 1) to highlight the origins and legal regulation of the issue of environmental safety in territorial communities during the legal regime of martial law;
- 2) to determine the current state of realization of the right of territorial communities to environmental safety during the legal regime of martial law
- 3) to outline the peculiarities of legal regulation and the ways in which Ukrainian communities exercise their right to environmental safety;
- 4) to study foreign practices of realization of the right of communities to environmental safety during the legal regime of martial law.

Presenting the main material. Environmental law scholars and environmental experts have paid considerable attention to and carried out comprehensive measures (environmental missions) to assess the damage caused by the aggressor state to the territory of Ukraine and Ukrainian communities during the current martial law regime in Ukraine. Since the beginning of the martial law regime, tens of thousands of tons of polluting materials and substances have been released into the water bodies of communities, forest resources are contaminated with explosives and need to be demined, and numerous fires and air explosions continue to occur in territorial communities.

To overcome the environmental consequences and prevent further threats to the environmental safety of the territorial communities of Ukraine during the legal regime of martial law, it is necessary, among other things, to improve national legislation in the field of ecology and environmental protection for communities, to direct efforts and empower territorial communities to implement guarantees of environmental safety of biological resources of the community and its residents.

The research of many scholars is based on the international definition of the human right to a safe environment for life and health, which is a collective right, as it belongs to a collective of people who form a people or a nation, and cannot be realized exclusively by an individual. Environmental rights are regarded as collective rights, which, according to M. A. Baimuratov, are not natural rights, since they are formed and crystallized as the interests of a particular community or collective are formed, ... they cannot be considered a set of individual rights of a person, they are qualitatively new properties determined by the goals and interests of a collective entity, ... collective rights cannot be ranked higher than individual rights, but must be in harmony and interaction with them [20]. According to Y. A. Krasnova [21], in legal science, the concept of "environmental safety" is most fully studied by the science of environmental law according to the following scientific approaches 1) the term "environmental safety" is considered as an independent legal phenomenon in the form of: a) the basic principle of environmental law; b) a separate type of environmental legal relations related to the protection of human life and health from the polluted environment; 2) the existence of a separate legal direction of regulation of environmental safety is denied.

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At the same time, in the legal literature, environmental researchers theoretically apply the "right to environmental safety". In particular, V. I. Andreitsev [22, p. 116] considers the right to environmental safety as an integrated legal category that synthesizes a number of sectoral rights to a stable environmental situation, environmental well-being, high-quality, favorable, healthy environment, use of useful properties of nature to meet the necessary vital physiological and spiritual needs, protection of life and health from adverse environmental conditions and natural and anthropogenic factors. Moreover, the human right to environmental safety, according to V. I. Andreitsev, is genetically linked to the right to life, freedom, health care, and participation in the management of public affairs and is normatively ensured by a set of environmental, civil, political, social, and economic rights and freedoms of man and citizen provided for by the Constitution of Ukraine.

Scientists [23, p. 223, 224] also underline that a number of other rights are adjacent to environmental rights, which can

only partially be attributed to environmental rights, but they are very important for humans and citizens, as they reveal some aspects of fundamental environmental rights (the right to life, health, proper and safe working conditions, etc.).

Among foreign legal scholars, Z. Madar [24] draws attention to the interdisciplinarity of environmental problems in the context of research on environmental law and environmental protection. "...It is, in fact, about integrating into legal research, as well as in the creation of legal norms relating to environmental protection, ...economic concepts, ...inclusion of sociological aspects relating to the attitude of individuals to environmental problems, in particular from the point of view of the behavior of these people as individuals and members of collectives (communities), and from the point of view of their behavior as people who perform a certain function in the decision-making process..."

The Constitution of Ukraine [25] consistently enshrines the foundations of environmental policy and environmental safety in Ukraine. Article 3 of the Constitution of Ukraine stipulates that a person, his or her life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value. Pursuant to Article 16, it is the duty of the state to ensure environmental safety and maintain ecological balance on the territory of Ukraine, overcome the consequences of the Chornobyl disaster, a global catastrophe, and preserve the gene pool of the Ukrainian people. According to Article 15(1) of the European Convention on Human Rights [26], in time of war or other public danger threatening the life of the nation, any High Contracting Party (signed by the governments of the member states of the Council of Europe) may take measures derogating from its obligations under the Convention only to the extent required by the exigencies of the situation and provided that such measures are not inconsistent with its other obligations under international law.

In addition, the subjective right to environmental safety is objectively included as an integral part of global and national security. This approach was applied by the Law of Ukraine "On the Fundamentals of National Security of Ukraine" [27], which defined national security as the protection of the vital interests of a person and citizen, society and the state, which ensures sustainable development of society, timely detection, prevention and neutralization of real and potential threats to national interests. At the same time, national interests are recognized as vital material, intellectual and spiritual values of the Ukrainian people as the bearer of sovereignty, the defining needs of society and the state, the realization of which guarantees the state sovereignty of Ukraine and its progressive development. According to Art. 6 of the Law, ensuring environmentally and technologically safe conditions for the life of society is proclaimed a priority of Ukraine's national interests. And the Law of Ukraine "On National Security of Ukraine" [28] distinguished the principle of protecting safe living conditions for human and citizen from the principle of protecting the territory and the environment from emergencies [29, p. 29].

The local level of the institutional system of environmental protection and environmental safety includes local governments, local state administrations and territorial subdivisions of the relevant central executive authorities. All these institutions have different statuses, which affects their powers in the field of environmental protection and, accordingly, their ability to ensure the implementation of the state policy in the field of environmental protection, use of natural resources and environmental safety. According to Article 33 of the Law of Ukraine "On Local Self-Government in Ukraine", executive bodies of village, town and city councils are authorized to exercise control over compliance with environmental legislation, use and protection of natural resources of national and local importance, and forest reproduction; – activities of business entities in the field of waste management; – compliance by legal entities and individuals with requirements in the field of household and industrial waste management

and consideration of cases of administrative offenses or submission of their materials for consideration by other state bodies in case of violation of waste legislation.

At the same time, a system of permanent commissions on technogenic and environmental safety and emergencies operates at the local level [30]. Commissions of territorial communities are formed by the executive body of a city, district in a city, settlement and village council to coordinate the activities of local governments and organizations related to ensuring technogenic and environmental safety, protecting the population and territories of communities from the consequences of preventing emergencies.

The definition of the concept of "environmental safety" is one of the most pressing issues of theoretical and practical importance in Ukraine and the world. The issue of defining and interpreting the concept of "environmental safety", its nature, genesis, use and perception in modern conditions is gaining new significance in the context of environmental safety risks for territorial communities during the legal regime of martial law.

The concept of environmental safety is considered by scientists and practitioners through different approaches and sectoral methodological dimensions. Environmental safety, as defined by the Encyclopedia of Modern Ukraine [31], is the level of protection of vital human interests, as well as society, the environment and the state from real or potential threats caused by anthropogenic or natural factors. The environmental security system of any country is a set of governmental measures (legal, economic, technical, humanitarian and medical) aimed at maintaining a balance between its ecosystems and natural pressure, developing mechanisms for improving and preventing environmental degradation, and taking care of people's health. It depends on the availability of natural resources and geopolitical factors. The definition of the basic principles of environmental safety and environmental improvement policy should be based on the results of interdisciplinary research into the relationship between nature and society and the possibility of a comprehensive solution to the problem of preserving and protecting the environment. Today, the problem of security of the population of each state, as well as civilization as a whole, is one of the most important criteria for social development. The principle of equal environmental security for every person and state is conditioned by the impossibility of creating environmental security by restricting the environmental rights of other groups of people within and outside the ecosystem. The global interconnection of social and natural phenomena and processes does not give any nation, state, or group of people an advantage in solving environmental problems at the expense of others. Environmental security can be considered in global, regional, local and point-scale terms, including within communities or administrative units. In fact, it characterizes geosystems (eco-systems) of different types and importance. The functioning of such geosystems (eco-systems) in Ukraine is carried out by the Operational Headquarters for the Recording of Environmental Crimes in Ukraine under the State Environmental Inspectorate through a special website [32].

Also, environmental security is considered by domestic researchers [33] as a component of national security, as a process of managing the national security system, in which state and non-state institutions ensure environmental balance and guarantee the protection of the habitat of the country's population and the biosphere as a whole, the atmosphere, hydrosphere, lithosphere and outer space, species composition of flora and fauna, natural resources, preservation of human health and life, and exclude the long-term consequences of this impact on the present and future.

It is worth agreeing with the Ukrainian scientist Y. S. Shemshuchenko [34, p. 12] who in his work [34] draws attention to the inefficiency of the organization of the mechanism of state environmental control, which, according to the scientist, was

eliminated without sufficient grounds by abandoning the system of environmental prosecutorial supervision. At present, during martial law and hostilities, when amalgamated territorial communities have to solve environmental safety issues on their own or with the help of the state, environmental safety as a right of communities should be protected through the relevant powers of the territorial communities themselves or authorized controlling or supervisory bodies (special bodies).

As already mentioned, Ukrainian researchers [19] emphasize the uncertainty of the state of environmental safety in Ukraine under martial law, as no resident or region of the country is immune from possible environmental disasters and their negative consequences, including air pollution by combustion products, groundwater pollution, as well as all water bodies, soil pollution and degradation, possible significant deterioration of the radiation background, etc. Among the foreign practices of realizing the right of communities to environmental safety during martial law, the closest analog is the military intervention of the Russian Federation in the Syrian Arab Republic since 2015 [35].

The most significant losses were the environmental consequences for the country. As a result of hostilities and intensive carpet bombing of large cities and towns in Syria, where oil refining facilities were located, about a third of the housing stock was destroyed. It is noteworthy that before the conflict began, industrial enterprises had already been among the main polluters of the environment, and later, the lack of proper management, assessment and regulation of environmental safety at the central and local levels led to the devastation of cities and towns throughout Syria. And the collapse of the urban management system caused severe problems with waste collection and storage, which led to an outbreak of infectious diseases.

Conclusions. To summarise the issues discussed in the study, it can be concluded that the scientific direction of environmental safety should also be considered not only at the global or national level, but also at the level of administrative units, which, through their bodies, actually realize the right of the territorial community to environmental safety. According to the general description and justification of the existing threats, risks, and challenges to the environmental safety of territorial communities in Ukraine, the author concludes that each community has the right to environmental safety. It is determined that environmental safety in territo-

rial communities depends on the exercise of self-governing functions and powers by communities; environmental safety measures can be implemented by local public authorities, local self-government bodies, as well as by bodies established and performing the functions of local self-government bodies for the duration of the legal regime of martial law.

The issue of environmental safety of the community and its implementation is particularly acute in the context of martial law, when delay or improper implementation of safety measures for both community residents and the community's bioresources and environment is a natural right of the community, as is the right to safe living conditions in a particular territorial community. Therefore, within the framework of the current legislation, the possibility of approving targeted programs by village, town and city councils, as provided for in clause 22, part 1, Article 26 of the Law of Ukraine "On Local Self-Government in Ukraine", may be expediently transformed from a discretionary to a mandatory norm regarding the limits of duration of such targeted programs during the legal regime of martial law. Since local self-government bodies can influence environmental safety indirectly through their executive committees of councils, which is directly within their powers, or through special commissions, it would be advisable to establish an obligation for territorial communities to adopt special programs for the organization and implementation of measures for territories (designated localities) that are in particular need of them, with the establishment of deadlines for their implementation in martial law, by village, town and city councils or bodies that replace them, during the period of martial law.

Also, based on the legal analysis and modeling of the implementation by territorial communities of environmental safety measures and measures to protect human beings and community bioresources during the legal regime of martial law, in our opinion, it may be advisable to grant the relevant state controlling or supervisory authorities the authority to control the availability of measures to prevent environmental safety risks in communities during the legal regime of martial law. Expansion of the scientific general theoretical value and scope of the definition of environmental safety in the context of its application as a right to territorial communities may form the basis of legislative innovations for the exercise of their powers during the martial law regime.

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