
ENVIRONMENTAL ENFORCEMENT AND PUBLIC ADVOCACY IN UKRAINE

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SUMMARY

Brief characteristics of the environmental situation in Ukraine are given. An overview of existing environmental legislation in Ukraine, the reasons for its ineffective realization, and enforcement mechanisms are described. The role environmental public advocacy plays in enforcement, and the experiences of the Environmental Public Advocacy Center in Lviv are analyzed.

1 ENVIRONMENTAL SITUATION

The present environmental situation in Ukraine is dangerous and grave. The Parliament of Ukraine declared the whole territory of the country an extraordinary environmental situation zone.

Ukraine, which occupied 27 % of the former Soviet Union territory, produced 20 % of its national product and received a quarter of its industrial pollution. The Ukrainian economy was formed with total disregard for the objective welfare of the Ukrainian people. The result is the formation of one of the most polluted economies in the world, over saturated by chemical, metallurgical and mining production facilities utilizing obsolete technologies.¹

Every year 20 million tons of industrial waste goes into the atmosphere. More than 1 billion cubic meters of harmful substances are ejected into the rivers. Seventeen billion tons of solid wastes are accumulated in the dumps, which continue to grow to more than 1 billion tons annually. Nonrenewable mineral raw stock resources are being exhausted. Soil, water, and atmospheric air gets intensively polluted.

118 million hectares of black soil have been eroded. Such erosion has never previously occurred in the 5 thousand year history of Ukrainian agriculture. Thousands of rivers have perished. The Black Sea and the Sea of Asov suffer degradation due to water pollution. The Carpathian mountains have lost half their forests as a result of intensive cutting for economic purposes. There is a water deficiency in a number of cities. Industrial atmospheric pollution exceeds environmental quality standards up to 10 times.

Unfortunately, Ukrainian's lack of forests, along with a developed metallurgy and thermal power industry, make it one of the countries that burn the planet's oxygen. In 1986-1991, more than 100 million tons of harmful substances were emitted into the air. The main pollution sources are power industries, facilities, metallurgy, coal and chemical industry as well as motor transportation.

In the agricultural arena, an excessive and uncontrolled use of pesticides and fertilizers under the conditions of low technological culture has resulted in an accelerated degradation of soils and an accumulation of many harmful substances in the food chain. Lands have also been polluted with heavy metals and other components of industrial emissions.

In the former Soviet Union concentrated centers of industrial production were established, especially in Donbass and Dnieperside, which have resulted in one of the highest levels of environmental pollution in Europe. In the cities of Zaporizhzhja and Mariupol,

contamination has reached such a harmful level. If it remains unchecked, it will unavoidably result in the physical and intellectual degeneracy of the local population. The incidence of pathologic changes in the blood of the population of this region is three times higher than average for Ukraine.²

The unfavorable economic and ecological situation which has formed in Ukraine in recent years has adversely affected population growth. Today in Ukraine, the average life expectancy is 71 years, putting it in the 53rd place among countries of the world.

Infant mortality in the first year of life is three times higher than in Japan and two times higher than that of other developed countries. In 1989, the natural increase of the population in Ukraine was 1.7 men per population of 1000, but in 1991 this rate decreased to 0.7 per 1000.³ An essential factor in this decline is the unfavorable state of the environment, aggravated by the consequences of the Chernobyl catastrophe.

The accident in Chernobyl in 1986, the first really global environmental catastrophe, has become a great tragedy for the Ukrainian people. According to official statistics, approximately 200 thousand people and more than 2,000 settlements were moved from the contaminated zone.

2.8 million people, including more than half a million children under the age of 14, are now living in areas contaminated by the Chernobyl catastrophe. Particularly alarming is the fact that 150 thousand people, including children, received radiation poisoning to the thyroid, which exceeded the permissible limit. Today the Ukrainian list of Chernobyl's victims consists of 405,576 persons, in addition to 36,000 persons who are on the military-medical list of The Ministry of Internal Affairs and Security Service of Ukraine.⁴

Diseases of the respiratory and digestive systems, as well as the endocrine and blood circulation systems, account for a significant percentage of the mortality rates of children living in contaminated zones. Experts now consider that the Chernobyl disaster has created a new epidemic, called Chernobyl AICD. All children of the Chernobyl zone have reduced immune system.

2 ENVIRONMENTAL LEGISLATION

Environmental legislation plays an important role in the improvement of the environment. Since Ukraine became a sovereign state, the regulation of all questions dealing with environmental protection was transferred to Ukraine. The Parliament and Ministry of Environmental Protection of Ukraine (established in 1991) prepared the Conception of National Environmental Legislation Development. The system of environmental legislation was created and cardinal renewed in 1991-1996 years.

The Parliament has adopted a Law on Protection of the Natural Environment (1991), a Land Code (1992), Forest Code (1994), Water Code (1995), Code of Entrails (1994), Law on the Animal World (1993), Law on the Protection of Atmospheric Air (1992), Law on Nature, The Heritage Fund (1992), Law on Environmental Examination (1995), Law on the Sanitary and Epidemiological Prosperity of Population (1993) as well as other laws and regulations.

The Law on Protection of the Natural Environment is the main, basic act. It consists of many really new principles and rules. Environmental protection, rational usage of natural resources, and the safeguarding of environmental security for human activity are regarded to be general conditions of sustainable economic and social development in Ukraine.

The law declares the priority of environmental security requirements and the compulsory observance of environmental standards and limits, while realizing economic, executive, legislative and other activities. Until now, economic purposes have had priority. Very often economic problems were solved through methods which damaged nature. The law consolidates the validity of concordance between environmental, economic and social interests.

2.1 Economic instruments

The law fixes payment for environmental pollution and usage of natural resources as well as compensation for damages inflicted by a breach of environmental legislation. The law grants tax privileges for enterprises, organizations and citizens measures of environmental protection. Privilege credits are also given to environmental measures realization.

The aim of these principles is the perfection of economic mechanisms of environmental protection and natural resources use optimization. The combination of stimulation and responsibility methods should promote a concordance between environment and development.

2.2 Public role

For the first time, the Law on Protection of the Natural Environment confirms the right of citizens to a safe human life and healthy environment, and a compensation for damages inflicted on them and/or their property by environmental transgressions.

This right is guaranteed by public participation in decision making and by citizens' right to get true information about the state of the environment. Citizens have got the right to know how proposed industrial projects would impact the environment, and the health of the population. They also have the right to participate in environmental impact assessments, state environmental examinations, and to organize independent public environmental examinations. The law confirms the court's defense of the right to a safe environment for life and health.

2.3 Sanctions

The law prohibits putting into operation enterprises, constructions and other facilities which do not meet environmental standards. The activity of enterprises which breach environmental legislation can be temporarily stopped and canceled by the Cabinet of Ministers or by the Environmental Protection Ministry, regardless of the form of the property.

2.4 Standards

Environmental standards regulate the protection of vegetation, the use of mineral fertilizers and toxic substances, and the location and development of military facilities.

It is for the first time that law is defined and given for environmental catastrophes and extraordinary environmental situation zones. The law introduces a procedure for declaration and legal regime of such zones. More detailed regulation of legal status of these zones is foreseen in a separate law. The draft of this law is currently under work.

2.5 Potential violators

The Law on Protection of the Natural Environment envisages administrative, criminal, civil and disciplinary responsibility for the following transgressions:

- Breach of an individual's right to a safe life and healthy environment.
- Breach of environmental safety.
- Breach of environmental limits and standards.
- Special usage of natural resources without permits.
- Violation of fulfillment of state environmental examination requirements.
- Neglecting to execute an order of state environmental control bodies.
- Breach of environmental requirements regarding the keeping, transportation, usage and utilization of mineral fertilizers, toxic and radioactive substances, industrial and communal wastes.
- Breach of the requirements of natural heritage areas.
- Neglecting to provide full and trustworthy information about an environmental situation.
- Falsification of, or holding back, any information about the state of the environment and diseases of the population, etc.

3 EFFECTIVENESS OF ENVIRONMENTAL ENFORCEMENT

Ukrainian legislation in the sphere of environmental protection contains also many other significant and vital principles and rules. However, the citizens and decision makers frequently break environmental laws. There are many reasons for this. Let us analyze the main reasons for the low effectiveness of environmental enforcement in Ukraine.

3.1 Economic situation.

The present economic situation in Ukraine could be characterized as an economic crisis. The financing of environmental protection measures, which up until now was insufficient, was reduced this year to 0.2 % of the gross national product of Ukraine. This is in stark contrast to the USA, which spends between 4 and 5% of gross national product (GNP).

Environmental protection measures are not profitable because they are expensive and do not provide quick revenue. Ukraine needs big investments for the reconstruction of one of the most "dirty" economies and for changing obsolete technologies.

Implementation of radical rules, which have been defined by new legislation, about payment for pollution of the environment or compensation for the damages inflicted by environmental transgressions, is impossible because many polluting enterprises have gone bankrupt.

3.2 Environmental consciousness

Social-legal studies show a low level of environmental and legal consciousness and culture of the population of Ukraine. Eighty-eight percent of respondents do not know of environmental legislation at all. Moreover, they do not respect it. Decision makers very often ignore environmental laws because they do not understand the importance and priority of environmental problems or do not have the economic possibilities for environmental law compliance.

Even professional lawyers (judges, prosecutors, attorneys) do not have excellent knowledge of new environmental legislation because of its novelty and complication. For instance, court practice in the protection of the environmental rights of citizens is only now being formulated in Ukraine because citizens very often do not know about the possibility of suing for compensation for damages inflicted by environmental transgressions. If they know, they do not trust that it is a reality.

3.3 Enforcement mechanisms

Now there are many state bodies which control the state of the environment and environmental legislation compliance. The most important of these is the Ministry of Environmental Protection and Nuclear Safety, and its regional bodies. A few Ministries deal with protection of different natural resources, such as water, forests, soil, minerals and others. These ministries control the protection and usage of the resources according to current legislation. The Cabinet of Ministers and local government also have authority to enforce compliance with environmental legislation.

However, the Inspectorate of the Environmental Protection Ministry consists of 850 inspectors for 100,000 industrial and other enterprises. It is insufficient. It is capable of controlling only 20-25 % of natural resource users and polluters⁵. Effectiveness of control activity could be improved through development of financial and technical support of this Inspectorate.

The Prosecutor General and its regional bodies carry out prosecutorial supervision for environmental compliance. Special Departments for the supervision of environmental legislation compliance were created a few years ago.

The court system includes civil and criminal as well as arbitration courts. All of them deal with environmental enforcement. However, they usually defend state interests in the sphere of environmental protection on cases regarding such issues as illegal cutting of timber, illegal hunting or fishing, and pollution of the environment. There is almost no practice in court regarding the protection of environmental rights of citizens.

These kinds of cases are rather new and difficult. Especially in cases with requests for compensation of damages inflicted on health and property by environmental transgressions, a judge must prove causation between the fact of the pollution of the environment and damages, in order to calculate the compensation. This requires special expert knowledge.

Citizens, as a rule, do not know how to collect evidence, or how to sue through the court system. Attorneys or lawyers who specialize in the sphere of environmental law are usually absent; however, special environmental law firms are beginning to appear now in Ukraine (CEELI) program.

4 THE ROLE OF ENVIRONMENTAL PUBLIC ADVOCACY IN ENFORCEMENT

The first environmental law firm, "EcoPravo", was organized in Kyiv in 1992. Following this, the charitable foundation, "EcoPravo-Lviv", was founded in 1993. In 1994 a similar organization appeared in Kharkiv. The first Environmental Public Advocacy Center in Ukraine was organized in 1994 on the foundation of EcoPravo-Lviv. It is a pilot joint project with The American Bar Association's Central and East European Law Initiative.

The Environmental Public Advocacy Center, as well as other "EcoPravo" non-governmental organizations, provide the following free of charge services:

- Consultations on environmental law issues.
- Representation of citizens' and non-governmental organizations (NGO) interests in state and prosecutor bodies as well as in the courts.

- Organizing training programs on environmental law and enforcement issues for environmental NGOs, professional lawyers such as judges, prosecutors, attorneys and others.
- Developing a network of environmental lawyers interested in environmental law and public advocacy throughout Ukraine.
- Creating a data base of environmental legislation of Ukraine and other countries.
- Providing accurate information on environmental and legal issues.
- Taking part in the drafting of new environmental laws and regulations in Ukraine.

It must be noted that the Center works closely with the Law Faculty at Lviv State University. Students are involved in the EPAC clinical program. It supports the growth of a new generation of environmental lawyers and provides a practical education with a high level of professionalism in the public interest and an equally high level of environmental consciousness.

The Center increases the awareness of lawyers and judges about environmental issues and environmental enforcement. The center raises the level of environmental and legal culture of citizens and NGOs, and their readiness to use legal tools in environmental protection and protection of citizens' environmental rights. The activity of Center also raises the level of responsibility of governmental administrators, increases the transparency of governmental actions and governmental provisions and thus access to environmental information.

REFERENCES

1. Ukrainian National Report. UN Conference on Environment and Development. Brazil-92. Kyiv. 1992.
2. Ibid.
3. Ibid.
4. National Report About the State of Environment in Ukraine in 1993. Kyiv. 1994 (in Ukrainian).
5. Ibid.

