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THE RIGHT TO A SAFE ENVIRONMENT: ECONOMIC AND LEGAL GUARANTEES OF PROVISION IN UKRAINE

Purpose. Analysis of the theoretical and applied principles and economic and legal status of ensuring guarantees of the right to a favorable environment (GRFE), identification of legal norms in this area that require clarification and development of recommendations for their improvement.

Methodology. The research used the dialectical methods to identify the need to change the conceptual legal basis of the GRFE. The hermeneutic method was used to establish normative links between the right to a safe environment and other human rights; formal and legal method – for provision of an additional GRFE instrument appeal to the International Criminal Court in the matter of environmental crimes in wartime. The systemic-structural method was applied to propose delictual legal links between the norms of environmental law and the norms of other branches of law, where the mechanisms for ensuring the GRFE are formed. The method of analysis and synthesis was to establish the fact that the possibility of implementation of the GRFE should be a component not only of environmental, but also of national security of the state.

Findings. It is proposed to strengthen the imperative character of the legislative GRFE norms; establish regulatory links between the right to a safe environment and other human rights; to establish delictual legal links between the norms of environmental law and the norms of other branches of law, where the mechanisms for ensuring the GRFE are being formed; to strengthen the effectiveness of legal norms in this area. Legal measures are suggested to strengthen the GRFE and mechanisms which ensure the ability of citizens to realize the right to a favorable environment. It is noted that the possibility to implement the GHBD should be a component not only of environmental, but also of national security of the state.

Originality. It is proposed to change the conceptual legal basis of the GRFE, directing it to the maintenance of natural balance, as a prerequisite for ensuring the quality of life.

Practical value. The legal norms related to the GRFE, which can lead to legal conflicts, have been identified and ways of solving these problems have been proposed.

Keywords: *safe environment, environmental rights, economic and legal guarantees, military aggression, ecocide*

Introduction. The right to a safe environment is an integral part of the set of citizen's rights, as it conditions the possibility of realizing other rights, such as the right to life, health care, and others. Ukrainian legislation defines the guarantees of citizens' right to a safe natural environment. At the same time, these guarantees are declarative, not mandatory. The variety of legal acts of different legal force in this area creates a certain legal uncertainty, which complicates their implementation in judicial practice, reduces the ability of the subjects of legal relations to implement guarantees of human rights, in particular; therefore, the legislation in this area needs to be clarified.

The implementation of the guarantees of the citizens' right to a safe environment, specified in the legislation of Ukraine, became much more difficult with the beginning of military aggression, which is accompanied by military environmental crimes. In the conditions of the war, Ukraine faced such a level of environmental and economic dangers that pose threats to other aspects of the security of the state - national, food security, etc. This leads to adverse effects on ecological and economic security, intensifying existing threats and creating new challenges.

Martial law has also reduced opportunities for citizens to obtain information on threats to the environment, which creates a legal conflict with the right to information guaranteed by the Constitution.

Failure of institutional structures to pay due attention to the observance of the guarantees of the right to a safe environment, even under force majeure circumstances, creates an attitude towards the specified guarantees as optional. This, accordingly, affects the formation of legal nihilism in society towards other legal norms.

Literature review. Scientists recognize that the legal sphere of guarantees for a safe environment and other environmental rights of citizens is undergoing radical transformations and is not adequately researched either in practical-legal or even in conceptual aspects [1].

It is determined that, although the field of environmental law is extremely relevant in view of its scientific and social importance and its fundamental influence on the formation of a sustainable economy, significant difficulties arise when extending the general principles of environmental law to a functioning institutional mechanism, even if it is properly equipped in the normative legally [1].

This, in particular, is confirmed in the work by Tolkachova and co-authors [2], where it is stated that the judicial system is the only effective tool for ensuring the right of citizens to a safe environment. Other legally recognized tools for ensuring the specified right, according to the opinion of Tolkachova and co-authors that is substantiated in article [2], are not sufficiently effective.

In a number of scientific works, it is indicated that the guarantee of environmental safety should be based on a system of measures, which is complicated by a significant number of inconsistent legislative acts in areas, spheres of regulation, risk factors, etc. [3]. Their different legal force also leads to a decrease in the effectiveness of the specified set of legal acts [3].

Guarantees of citizens' right to a safe environment in the scientific literature are divided into economic, judicial (legal)

and organizational ones [4]. It is indicated that the transformation of the citizens' right to a safe environment into a fundamental legal basis should take place according to the following stages: recognition of the specified right, formation of the environmental culture of society; registration of procedural mechanisms for the protection of this right [1]. At the same time, the researchers indicate that at the first stage, the state provides guarantees of the specified right [1]. In this way, researchers divide, primarily in time, the granting of the right to a safe environment and the ability to realize it. The authors of the presented study do not agree with this thesis, because the differences in the time of the provision of guarantees and the ability to implement them reduce the value of the declared guarantees and reduce the weight of legal norms.

In the scientific literature, there are different views on the interpretation of the essence of guarantees of the right to a safe environment. Some scientists expand this interpretation and consider these guarantees as a set of economic, political, social and cultural mechanisms [4]. In the opinion of the authors, all the specified mechanisms should be based on the norms of legislation, which will determine their validity, inevitability and effectiveness, and provide the necessary grounds for their legal protection.

At the same time, A. Hetman [5] points to the need to narrow the interpretation of the specified guarantees, firstly, to the formation of direct legal norms regarding environmental safety and, secondly, norms that ensure the balance of society's use and reproduction of natural resources. There are scientists who further narrow the right of citizens to a safe environment as one of the main means of ensuring the proper level of public health [6].

Scientists have indicated that guarantees of the rights and freedoms of citizens are interconnected and should form a single system [7]. The systemic nature of these guarantees is the main factor in their provision. At the same time, some scientists indicate that "favorable circumstances" are necessary for the reliable implementation of these guarantees [7]. This thesis shows that among scientists there is a widespread opinion about the declarative nature of the guarantees of the right to a safe environment rather than about its effectiveness. This is confirmed, in particular, by the fact that the current environmental legislation does not even mention the need to compensate the citizen for moral damage as a result of the violation of the specified right against him.

The right to a safe environment is considered by Krasnova [7] as a legal opportunity for citizens to exercise their authority in the field of ecology in the legally defined forms and limits [7]. The view of guarantees of citizens' right to a safe environment as a legal possibility is also supported by other scientists [8]. Also, in Koroleva's article [9], guarantees for a safe environment are considered as opportunities that the state provides to citizens. This contradicts the content of the legal concept of "guarantee" – the directions and tools for ensuring subjective human rights and the procedures for their implementation approved in the regulatory and legal field. At the same time, considering legal guarantees for a safe environment only in terms of administrative law [10], as a mechanism that promotes their practical implementation, in our opinion, will lead to narrowing of the set of legal instruments necessary to ensure the effectiveness of guarantees.

Military aggression indicated the need to consider guarantees for a safe environment in conditions of deliberate destruction of the natural environment as a consequence of military-ecological crimes. The research shows that the system of national law was not ready to guarantee the rights of citizens during the war. Thus, in the article by Kirin, et al. [11] the inconsistency of regulatory documents regarding state environmental policy during martial law (SEP-2030, SEB-2030) is indicated. Moreover, the inconsistency of the specified documents with respect to the guarantees of the right to a safe environment established in other legislative acts is indicated.

References to the need to apply international law are also not fully substantiated. This is confirmed in article [12], where it is indicated that the protection of the right to a safe environment in the conditions of hostilities is still not regulated in international law.

In the opinion of scientists, in the conditions of war, the norms of administrative and criminal law, which determine responsibility for environmental crimes, obstruction of the right of citizens to a safe environment, should be supplemented by the qualification of features that burden responsibility for crimes committed [13]. As such a feature, the legal norm "under time of hostilities" is proposed. In our opinion, the indicated features should distinguish environmental damage that is not comparable to military benefit.

The review of scientific works in the indicated direction shows the need to study the theoretical and applied principles and the existing economic and legal status of ensuring the right to a safe environment and to provide recommendations for solving problematic issues in this area.

The purpose of the article. The purpose of the article is to analyze the theoretical and applied principles and the economic and legal status of ensuring guarantees of the right to a safe environment, to identify legal norms in this area that require clarification and to develop recommendations for their improvement.

The objectives of the research are: establishing the necessary legal measures to strengthen guarantees of the right to a safe environment; proposing mechanisms that will ensure the ability of citizens to implement it; developing proposals to strengthen the effectiveness of legal norms in this area.

Methods. In the course of the research, special and general scientific methods of cognition were applied. The dialectical method made it possible to reveal the need to change the conceptual legal basis of the guarantees of the right to a safe environment, directing it to the maintenance of natural balance as a prerequisite for ensuring the quality of life. The hermeneutic method made it possible to establish normative links between the right to a safe environment and other human rights, first of all, the right to life, which will ensure the possibility of applying to the European Court of Human Rights.

The formal and legal method made it possible to provide an additional instrument for guaranteeing the right to a safe natural environment – an appeal to the International Criminal Court in cases of environmental crimes during the war, and for this to consider the possibility of ratifying the Rome Statute and contributing to the inclusion of ecocide in the list of international crimes in the Rome Statute.

With the help of the system-structural method, the normalization of delictual legal relations between environmental Laws and norms of other branches of law, where the mechanisms of ensuring guarantees of the right to a safe environment are formed. The method of analysis and synthesis made it possible to establish that the possibility of realizing the guarantee of the right to a safe environment should be a component not only of ecological, but also of national security of the state.

Results. Ecological and economic relations form a single system to which the legal field intended to regulate and guarantee the right to a safe environment and social and economic relations related to the specified system must correspond. At the same time, numerous legislative acts in the environmental sphere are mostly inconsistent, have different legal force and are not accompanied by legal mechanisms that ensure their effectiveness. Even in peacetime, the provision of guarantees of the right to a safe environment took place improperly, in particular, as a result of the fact that the current environmental legislation was mainly aimed not at preventing damage to the environment, but at measures to eliminate the consequences of this damage. In this way, the fulfillment of the guarantees was made impossible, due to at least two main factors: the practical impossibility of bringing the environment into a state before damage is caused, and the time required to reduce the level of damage.

Regulatory harmonization of various branches of law in this area, for example, environmental and tax legislation, could lead to the encouragement of citizens and business entities in preventing environmental damage, investing in technological innovations that reduce environmental risks. For this, in particular, it would be possible to introduce tax benefits for ecological production and increase the level of taxes for products produced at enterprises with a high level of environmental pollution.

The Basic Law (Article 50 of the Constitution of Ukraine) ensures the rights to a safe environment and to compensation for damages in case of non-compliance with this right by other parties. In essence, the legally established guarantees of a citizen's right to a safe environment condition the equality of citizens in ensuring this right. At the same time, risks acting unevenly in a geographical and temporal dimension actually differentiate the level of ensuring this right of citizens, and the level of this differentiation was significant even in peacetime.

Therefore, the strengthening of the specified guarantees in the legal field can be facilitated by the introduction of the norms of the supremacy of the right to a safe environment, as one of the basic human rights, the development of normative provisions regarding the ranking of environmental risks, their geographical and temporal localization, and the prompt determination of measures to ensure guarantees of a safe environment for specified territories. Certain legislative actions in this direction are carried out, in particular, in accordance with the Law of Ukraine No. 2132-IX, according to which amendments are made to legislative acts regarding activities in the field of environment and protection of the population. According to the specified Law, in particular, it is required to determine the territories that require humanitarian demining, their marking, etc. At the same time, the legal practice of the introduction of this norm indicates the absence of a comprehensive legal approach to solving the specified problem, primarily in the legal provision of the allocation of zones with an increased level of environmental risks and, at the same time, an insufficient level of the specified risks for the introduction of an emergency in these zones state.

One of the forms of ensuring the right to a safe environment is the guarantee of applying to the judicial branch of government for compliance with environmental norms and rules. This is confirmed by the Decision of the Constitutional Court of Ukraine dated 12.25.1997 No. 9-zp, according to which Part 1, Article 55 of the Constitution of Ukraine should be interpreted in such a way that every citizen is guaranteed the protection of his rights in court. Also Part 2, Article 55 of the Constitution of Ukraine confirms that the jurisdiction of the courts extends to all legal relations in the country, that is, in particular, to the sphere of guarantees of the citizen's right to a safe natural environment.

Law of Ukraine No. 1264-XII "On Environmental Protection" confirms the guarantees of judicial protection of the right of citizens to a safe environment, in particular, in case of economic damage to a citizen. At the same time, a significant drawback of the specified Law is that most of its provisions are declarative and not imperative in nature, as evidenced by, for example, the norm of Article 68 of the Law of Ukraine No. 1264-XII, according to which in the legal field "responsibility can be established" for violation of laws on environmental protection. The modality of the definition "can" indicates the optionality of the specified norm, and, accordingly, the inadequate level of environmental guarantees for citizens. Modality changes also require other legal norms regarding responsibility for violation of guarantees of the citizen's right to a safe natural environment.

Article 10 of the Law of Ukraine No. 1264-XII lists guarantees of environmental rights. But the specified guarantees have different legal content, which creates a certain uncertainty in the interpretation of responsibility for their violation.

Also Article 293 of the Civil Code of Ukraine (CCU) declares the right to a safe environment, but there are no mandatory norms that should determine responsibility for the violation of the specified right in the specified article of the CCU, which reduces the level of preventive action of Article 293 of the Central Criminal Code, aimed at the prevention of offenses. This also does not correspond to the principle of inevitability of punishment for violation of current legal norms. The increase in the level of damage to the environment during martial law, the deliberate nature of such crimes requires strengthening the imperative of the law, which guarantees the right to a safe environment.

A certain legal problem in providing citizens with a guaranteed right to a safe natural environment is created by the dispersion of Laws in the environmental sphere by hazard factors and individual environments [14]. A number of legislative norms aimed at protecting the environment were formed in view of the need to eliminate damage from economic activity, therefore, accordingly, legal instruments were directed narrowly, sometimes even in a narrowly departmental way, and were not intended to implement guarantees of the right to a safe environment in conditions of threats, which have a wide range of significant environmental consequences.

This is one of the reasons that the legal doctrine, which is based mainly on resource-based or environmental guarantees of the right to a safe environment, should be supplemented with norms aimed at the formation of natural balance as a necessary condition for ensuring the quality of life, and not only on the territory of the country, and, in general, to maintain biosphere diversity.

This should become the conceptual legal basis for ensuring guarantees of the right to a safe environment.

The above is also a reason to believe that an effective, and not just a declarative, guarantee of the right to a safe environment becomes a component not only of ecological security, but also of national security of the state, therefore the norms of the Law of Ukraine No. 2469-VIII "On the Security of the State of Ukraine" in this direction have to be strengthened. This strengthening should go beyond the operational management of the protection of the population from environmental hazards (which is mainly aimed at the environmental regulations of the Law of Ukraine No. 2469-VIII) and form the legal prerequisites for the strategic management of the prevention of long-term negative impacts of a significant level on the environment, to ensure the long-term natural balance.

The inadequate level of effectiveness of guarantees of the right to a safe environment forces some scientists [15] to propose turning to international legal structures as an alternative to national justice.

At the international level, intergovernmental and non-governmental organizations are engaged in the protection of environmental rights. For example, specialized structures of the United Nations, in particular, the International Atomic Energy Agency, the United Nations Environment Program (UNEP), the United Nations Development Program (UNDP). Influential non-governmental organizations include the World Alliance for Environmental Law; Center for International Environmental Law, etc. The main acts of international law regarding environmental and economic hazards during wartime are the Convention on the Prohibition of the Military Use of Means of Influence on the Natural Environment, approved by the UN General Assembly on 10.12.76 and the Additional Protocol to the Geneva Conventions. Also, the UN General Assembly Resolution A/HRC/RES/52/23 dated April 4, 2023 states that the right to a safe environment is one of the basic human rights.

Unfortunately, despite a large number of international structures that are supposed to take care of guaranteeing the right to a safe environment, today sufficiently effective binding international legal mechanisms for ensuring people's right to a safe environment and punishment for environmental crimes have not been formed. This gives reason to question the effectiveness of international law as a whole [16].

The level of environmental hazards as a result of such actions of the aggressor, for example, the deliberate destruction of the Kakhovska HPP dam [8], the use of phosphorus shells and chemical weapons, dense minefields, etc. create the prerequisites for filing a lawsuit against eco criminals to other international legal institutions – in particular, to the European Court of human rights and the International Criminal Court.

The rendering of a decision by the International Criminal Court may be hampered by the need for an evidentiary basis to refute the so-called "military necessity" when the aggressor inflicts environmental damage. The presence of such a norm in international law reduces the possibilities of prosecution for committing environmental war crimes. At the same time, the basis for the decision of the International Criminal Court is that the ecological damage to the environment as a result of such actions is not comparable to the military advantages acquired by the aggressor.

These crimes form long-term threats to the environment, both ecological and economic in nature. So, according to experts, it will be necessary to spend, according to experts, about 300 million dollars just to restore the functioning of the irrigation system, which was connected to the reservoir of the Kakhovska HPP [8]. This allows the International Criminal Court to use Article 8(2)(b)(iv) of the Rome Statute.

In order to strengthen the effectiveness of international legal structures regarding the protection of the human right to a safe natural environment and punishment for ecocide as a means of waging war, at the international level, it is necessary to promote the inclusion of ecocide in the list of international crimes in the Rome Statute. It is also necessary to use all the tools available to the state to include large-scale environmental war crimes in the list of crimes against humanity.

It should be noted that since the European Court of Human Rights (ECHR) was created in accordance with Article 19 of the European Convention on Human Rights [17], and the guarantees of environmental rights are not directly stipulated in the Convention, then the submission of a claim to the ECtHR must be justified by the violation of other human rights, in particular, the right to life (Article 2, Section 1 of the European Convention) [17] due to environmental damage.

At the same time, although in accordance with the Convention and its protocols, the jurisdiction of the ECtHR on material grounds extends only to the rights directly stipulated by the specified documents, the existing Decision of Chamber 1 of the European Court of Human Rights in the case "Oneryildiz v. Turkey" [18], which became a precedent for expanding the scope of the state's responsibility for the improper observance of guarantees of the citizen's right to a safe environment, which created a threat to life. Therefore, the formation of a mechanism for the protection of the right to a safe environment in the ECtHR based on the above-mentioned precedent can be significant.

In order to acquire the appropriate level of legality in the ECtHR, it is also necessary to combine the concepts of "citizen's right in the field of environmental relations" and "environmental rights" in the legal field in a legislative manner, which will contribute to the substantiation of claims addressed to the ECtHR.

Also, since the general provisions of the European Convention on Human Rights [17] indicate that it is intended to guarantee the rights proclaimed in the Universal Declaration of Human Rights, then, in accordance with Clause 2, Article 17 of the specified declaration, a citizen cannot be deprived of his/her property. The broad interpretation of this norm extends to the loss of property or the possibility of using property as a result of an environmental disaster. An effective example of such a disaster is the destruction of the Kakhovska HPP dam [8] by an aggressor. This may become a necessary additional basis for consideration of the case at the ECtHR.

At the same time, it should be noted that the effectiveness of the European Court of Human Rights is limited by the fact that the offending state, which is a party to the Convention, has positive obligations to stop illegal actions, which is insufficient in the conditions of military aggression. Inflicting significant damage to the environment as a result of illegal military actions, the consequences of which will be felt not only by Ukraine and neighboring countries, but also by the entire biosphere, may encourage the restoration of the effectiveness of the aforementioned norms of international law. The result of this can be the formation of such an international legal field that will prevent such crimes, which will lead to a significant increase in the weight of the guarantees of the right to a safe environment at all levels, including the national one.

At the same time, the effectiveness of legal guarantees is determined not only by the declarative norms of the legislation, but also by accompanying the specified norms with clarifications of which a state administration body is responsible for its implementation, what are the terms and instruments of implementation, that is, the reconstruction of the structure of mechanisms for ensuring and implementing guarantees for safe environment. The implementation of the mentioned clarifications should ensure the fulfillment of the principle of general and, at the same time, differentiated legal responsibility.

The specified legal mechanisms should also contribute to the fact that each of the specified guarantees should provide for specific legal consequences for its violation or improper provision. This has already been partially reflected in the current laws of other branches of law, except for environmental law, for example, in Book Two of the Criminal Code of Ukraine (CCU), in Chapter VIII of the Criminal Code of Ukraine (CCU) – "Criminal offenses against the environment".

At the same time, this must be reflected in environmental legislation. So, Article 10 of the Law of Ukraine No. 1264-XII and other legislative acts of the environmental direction must establish delictual legal links, refer to the laws of other branches of law where mechanisms for ensuring and implementing guarantees for a safe environment are formed.

The reliability of providing the specified guarantees must be supported by the legally determined stratification of legal entities, which must introduce specific legal measures for their violation; guarantees of international structures; guarantees of institutional structures; guarantees of local self-government bodies; guarantees of authorized public organizations. The legal basis of the specified stratification can be the Resolution of the Cabinet of Ministers of Ukraine (CMU), approved by the Verkhovna Rada of Ukraine. Changes must also be made to other normative legal acts approved by the CMU. First of all, this concerns the rules for compensation for damages caused by violations of environmental legislation and regulatory acts on environmental control. This is due, in particular, to accumulated problems in the field of application of environmental control [19].

Accordingly, the categories of guarantees must be stratified and specified in the law, with the establishment of correspondence between the specified guarantees and the subjects of the law that must implement them.

Legal measures in compliance with guarantees should also be stratified by purpose. These are: measures aimed at preventing the violation of the right to a safe environment; measures aimed at compensating the consequences of the violation of the specified right due to damage to the environment; measures aimed at stopping illegal activity. All the specified measures must be accompanied by legal norms, differentiated by the level of gravity for punishment in accordance with the level of danger due to the damage caused to the environment. The use of the concept of "environmental rights" in the normative legal field may hinder this, as it narrows the possibilities of punishment. The above is a consequence of the fact that "environmental rights" are often interpreted as intangible rights, which, in particular, limits the use of economic and legal tools to ensure guarantees of the right to a safe environment, primarily, the possibility of full compensation for the material losses of citizens and society as a result of environmental damage, in-

cluding significant damage with prolonged action. Economic guarantees should become an integral part of the legal norms of administrative, criminal, and even international justice, as they can provide the necessary grounds to use economic factors as a means of punishing those who have harmed the environment. For example, in international law – to pay reparations aimed at restoring the state of the environment, which was damaged as a result of military environmental crimes.

As it was indicated above, the effectiveness of legislative norms, which establish guarantees of the right to a safe environment, is largely limited due to the presence of a large number of laws in this area, which have different powers and are not coordinated among themselves. For example, in accordance with Clause 3 of the Decree of the President of Ukraine dated February 24, 2022 No. 64/2022 "On the introduction of martial law in Ukraine", the citizen's right to a safe environment is not limited during martial law. At the same time, since during the war it is impossible to fully ensure the implementation of state guarantees of the citizens' right to a safe environment, this may become a legal conflict in the practice of national and international justice. In view of the above, there is a need to introduce changes to the current laws that would allow avoiding such legal conflicts.

For this, in particular, it is necessary to pay attention to the following, that according to clause 1 of Article 15 of the European Convention on Human Rights during war, the Contracting Party may deviate from its obligations in the specified matter. This provides legal grounds for the country's leadership to reduce the level of guarantees of citizen's rights. But for this, according to clause 2 of Article 15 of the European Convention, the specified Party must, according to the stipulated procedure, confirm the withdrawal from obligations. According to the research carried out by the authors, the deviation from obligations was not applied by the Ukrainian side. Therefore, a properly legally substantiated and procedurally formalized citizen's claim to an inadequate level of state guarantee of the right to a safe environment can make the state a Defendant in the ECtHR. This is also confirmed in the national legislation. According to paragraphs "with" Article 9 of the Law of Ukraine No. 1264-XII, a citizen has the right to file lawsuits against state bodies for compensation for damage to health and/or property due to negative impact on the environment, which is included in the environmental rights of Ukrainian citizens. This requires legal regulation.

In order to simplify the use of international legal structures in national environmental legislation, it is necessary to implement indicator norms to establish legal links between the right to a safe environment and other human rights, primarily the right to life. This will help increase the level of guarantees of the right to a safe environment.

Guarantees for the Defendant in court disputes regarding the violation of environmental legislation are the need for mandatory consideration by the courts of the conditions of liability. Under these conditions, according to the Explanation of the Higher Arbitration Court of Ukraine No. 02-5/744 of 27.06.2001 on the judicial resolution of disputes regarding the guarantees of the environmental rights of citizens, the first thing is proof of a direct connection between the actions or inaction of the Defendant and the damage caused to the Claimant.

A certain normative dichotomy is also such an aspect of guarantees of the right to a safe environment as, on the one hand, the openness of information about the state of the environment stipulated by national legislation and norms of international law, and, on the other hand, the need for a regime of secrecy, in particular, regarding acts of environmental terrorism, in wartime conditions.

To a large extent, the above-mentioned contradictions in the regulatory provision of guarantees of the citizen's right to a safe environment could be settled by the implementation of appropriate regulatory mechanisms that contributed to the elimination of problematic issues of the implementation of environmental law in judicial practice. Legislation in this direction is being carried out, which is evidenced, in particular, by the Draft Laws developed by legislators on ensuring the constitutional rights of citizens to an environment safe for life and health No. 6004-d and on the prevention, reduction and control of industrial pollution No. 4167. In the same time, the specified Draft Laws confirm that in the conditions of dynamic economic, social, and political changes, a significant time lag, which is accompanied by legislative activity, does not make it possible to promptly implement legal mechanisms for ensuring guarantees of the right to a safe environment.

Therefore, it would be expedient to implement the specified mechanisms based on judicial practice, which would be confirmed by decisions of higher judicial institutions published in official publications. The specified approach would allow operationally casual interpretation of legal norms for mandatory application in similar cases.

The ineffectiveness of guaranteeing the right to a safe environment is also due to the insufficiency of mechanisms for the implementation of court decisions on the specified issues. This is not only a problem of the Ukrainian judiciary, as evidenced by the Recommendations of the Committee of Ministers of the Council of Europe No. Rec (2003) 17 dated 09.09.2003, which indicate the need to strengthen the effectiveness of mechanisms for the enforcement of court decisions.

The level of environmental threats during the war indicated the need to clarify some legal norms that guaranteed the right to a safe environment in peacetime. Thus, in the conditions of war, it is often practically impossible, accordingly, Article 50 of the Constitution of Ukraine, to provide "warning" of deterioration of the ecological situation, which will lead to threats to the health of citizens.

Under martial law, guaranteeing the right to a safe environment in aspects that are formed as a result of hostilities must be based on forecasting threats, evaluating measures to neutralize them, and promoting the formation of an economic and legal regime for the activities of citizens, which reduces the level of environmental hazards that directly threaten their health and life. This does not reduce the need to ensure those guarantees of the right to a safe environment, which are established by legislation in peacetime and should not be adjusted due to the effects of war.

At the same time, failure to define in the legislation the limits of the discretionary powers of the subjects of institutional structures in the insufficiently regulated sphere of environmental law and the limits of judicial control over the exercise of these powers may lead to failure to achieve the goal in consideration of cases on guarantees of citizens' right to a safe environment. A problematic aspect in determining the limits of the discretionary powers of the subjects of institutional structures to ensure guarantees of the citizen's right to a safe environment in the face of dynamic changes in threats to the natural environment of a significant level may be not only the choice between different options for decisions that have a normative basis, but also the choice between non-legislatively regulated options or the "act without acting" option.

The outlined problems made it possible to establish that certain normative legal acts need to be changed. In particular, the norm of Article 68. Law of Ukraine No. 1264-XII needs to be expanded in relation to the subjects of law who should bear responsibility for damage to the environment, primarily damage in the amount that can qualify crimes against the natural environment as particularly dangerous, namely not only "persons", as specified in norms of the law but also "enterprises, organizations, institutions, subjects of international law".

Ukraine's forced withdrawal from obligations regarding guarantees of a citizen's rights under Clause 2 of Article 15 of the European Convention on Human Rights requires proper registration, which will avoid legal conflicts in the future. Given the need to avoid legal conflicts, this also requires changes in national legislation For this purpose, a legal mechanism is

proposed for establishing zones where the level of environmental risks is close to the level of danger of the threat of an environmental emergency. The proper guarantee of the rights to a safe natural environment in such zones is limited by force majeure environmental circumstances.

The legality of the mentioned mechanism is confirmed by Clause 3.2 of the Decision of the Constitutional Court in Case No. 1-14/2020(230/20), which states that restrictions on the rights of citizens may be established during a state of war or emergency. This decision specifies the constitutional grounds for introducing such a restriction. Two of them substantiate this possibility. This is ensuring the interests of national security and ensuring public health. It is also indicated that the restrictions should be introduced proportionally (Clause 4.2 of the Decision of the Constitutional Court in case No. 1-14/2020(230/20), and time limits should be established for them.

In order to comply with the principle of proportionality and the norms of the Constitution and laws of Ukraine, it is proposed to rank the level of environmental risks, and the level of guaranteeing the right to a safe natural environment should be correlated with the level of environmental risks.

The proposed mechanism for establishing zones where the level of environmental risks is close to the level of danger of the threat of an environmental emergency and, corresponding changes to the Legislation of Ukraine for the acquisition of legality of such a mechanism, are not aimed at limiting the rights and freedoms of citizens, do not constitute a waiver of the guarantees of the specified rights provided in the legal field. Moreover, they are aimed at strengthening the significance of the specified guarantees, in particular the right to a safe natural environment, since the introduction of zones of increased ecological danger indicates that the obligation to fulfill the guarantees is enforceable in other territories of the country.

At the same time, due to the increase in the level of environmental risks in certain localities, the state authorities should be given certain powers to eliminate environmental hazards. Regulatory implementation of zones of increased danger should be accompanied by ensuring transparency and responsibility, which can be helped by special legal mechanisms, defined in particular in the articles by Kalina, et al. [20], Sokolenko [21], Perevozova, et al. [22] and Havrysh, et al. [23].

The Law of Ukraine No. 2469-VIII "On the Security of the State of Ukraine" Article 3 Chapter 2 states that the state's policy regarding national security and defense is aimed, in particular, at protecting the right to safe living conditions. In accordance with the specified norm of the law and, also, in accordance with Article 4 of Section II of the Law of Ukraine No. 2469-VIII, according to which environmental safety is specified in the sphere of national security, Article 13 of Section IV, according to which certain localities are defined as zones of an environmental emergency, is proposed to be supplemented with the words "and entrusts the Cabinet of Ministers of Ukraine with subsequent approval by the Verkhovna Rada of Ukraine to establish, change and cancel the level of guaranteeing citizens' right to a safe environment for individual localities".

The Law of Ukraine No. 1264-XII "On Environmental Protection" does not specify the spheres of control over the fulfillment of guarantees of the citizens' right to a safe environment, does not specify the directions of actions and powers of state administration bodies in the event of significant environmental hazards, and the mechanisms for avoiding violations of the citizens' right to a safe environment. This needs to be corrected, which will strengthen the level of the specified guarantees.

Other provisions of the Law of Ukraine No. 1264-XII require changes, in particular:

- in Article 68 of the Law of Ukraine No. 1264-XII, according to which in the right field "responsibility may be established" for violation of laws on environmental protection, the word "may" is replaced by the word "must";

- to supplement Article 17 with subparagraph "k": "takes a decision on establishing the level of danger of the threat of an environmental emergency in the zones for which this threat exists, and on the implementation of the necessary mechanisms for eliminating the threat or reducing its level";

- to supplement Article 65 with the norm "In the event of a threat of an environmental emergency, the Cabinet of Ministers of Ukraine, with subsequent approval by the Verkhovna Rada of Ukraine, is granted the right to establish the level of danger in zones for which this threat exists and implement the necessary mechanisms to eliminate the threat or reduce its level" and introduce changes to the normative definition of the term "negative changes in the environment" under Article 65 of the following content "as a result of military operations";

- to introduce the norm to Article 65 of the Law of Ukraine No. 1264-XII that "the legal regulation of relations, the use of organizational, economic and other mechanisms to eliminate the threat or reduce its level in zones for which there is a threat of an environmental emergency is determined by the Decree of the Cabinet of Ministers of Ukraine and approved by the Verkhovna Rada of Ukraine no later than two days after the publication of the Decree of the Cabinet of Ministers of Ukraine". This corresponds to Clause 3.2 of the decision of the Constitutional Court in case No. 1-14/2020(230/20), which states that the restriction of a citizen's right can be established only by law, that is, by an act adopted by the Verkhovna Rada.

The following changes are proposed in the Criminal Code of Ukraine:

- to supplement Article 441 of the Civil Code "Ecocide" by the following indicative norm: "Deliberate impact on the environment, in particular, as a method for conducting military operations, which led to significant and/or long-term environmental damage, which resulted in the violation of basic human rights".

The following changes are proposed in the Law of Ukraine No. 2059-VIII "On Environmental Impact Assessment":

- to Clause 1 of Article 1 regarding the definition of impact on the environment, after the word "planned" "malicious or negligent" should be added, and after the word "activity" "or inaction" should be added;

- to Article 1 paragraph 3-prim "malicious purposeful activity, in particular, the activity of military units or paramilitary structures of the aggressor state in terms of causing damage to the environment or hindering the implementation of guarantees of the right of a citizen of Ukraine to a safe environment" should be added.

Certain changes are needed in the regulatory and legal acts that establish the mechanisms of economic and environmental responsibility not only during the war, but also in peacetime. In particular, the state of affairs needs to be changed, when for violation of environmental norms and, accordingly, the rights of citizens to a safe environment, without filing a lawsuit in court of the citizen himself, whose rights were violated by the subject of economic activity, the specified subject must pay a fine for pollution the environment The specified payment is directed to the budget fund, and the protection of the rights of citizens in the affected area not only fails to take place, but may even be extended, if the amount of the fine is not comparable to the costs of enterprises to eliminate the damage caused.

These additions to the legislative acts will contribute to the formation of a proactive approach to countering environmental threats and ensuring the appropriate level of effectiveness of the guarantees of the right to a safe environment.

Conclusions. Inconsistencies and gaps in the legislation of Ukraine regarding guaranteeing the right of citizens to a safe natural environment are indicated. The following inconsistencies are identified as the main ones: a declarative rather than imperative nature of legal norms in this area; different legal content of guarantees, which creates a certain uncertainty in the interpretation of responsibility for their violation; violation of the principle of inevitability of punishment for environmental crimes; dispersal of Laws in the environmental sphere by

hazard factors or by individual environments. This became the basis for the conclusion about the need to change the direction of the legal doctrine, which is based mainly on resource-based or environmental guarantees of the right to a safe environment, on the possibility of achieving natural balance, as a necessary condition for ensuring the quality of life. This should become the conceptual legal basis for guaranteeing the right to a safe environment. The above is also a reason to believe that effective, and not just declarative, guaranteeing the right to a safe environment becomes a component not only of ecological security, but also of national security of the state, therefore the norms of Law of Ukraine No. 2469-VIII in this direction should be strengthened. The specified strengthening should go beyond the operational management of the protection of the population from environmental hazards, which is mainly aimed at the specified norms.

As a result of the conducted research, it is also proposed:

1. To ensure the possibility of applying to the International Criminal Court in cases of environmental crimes during the war, which is an additional instrument for guaranteeing the right to a safe natural environment, Ukraine needs to consider the possibility of ratifying the Rome Statute. The above will allow the use of Article 8(2)(b)(iv) of the Rome Statute.

2. To strengthen the effectiveness of international legal structures regarding the protection of the human right to a safe natural environment and punishment for ecocide as a means of waging war, at the international level, it is necessary to promote the inclusion of ecocide in the list of international crimes in the Rome Statute.

3. In order to acquire the appropriate level of legality, it is necessary to legally combine the concepts of "a citizen's right in the field of environmental relations" and "environmental rights" in the legal field, which will contribute to the substantiation of claims addressed to the ECtHR.

4. Indicator norms should be introduced into environmental legislation to establish legal links between the right to a safe environment and other human rights, primarily the right to life.

5. To establish delictual legal links between the norms of environmental law and the norms of other branches of law, where the mechanisms for ensuring and implementing guarantees of the right to a safe environment are formed.

6. Strengthening the reliability of guaranteeing the right of citizens to a safe natural environment by the legally defined stratification of legal entities that must implement specific legal measures for violations of the guarantees of: international structures; state structures of Ukraine; local self-government bodies; authorized public organizations. Accordingly, the categories of guarantees must be stratified and specified in the law, with the establishment of correspondence between the specified guarantees and the subjects of the law that must implement them.

7. In order to resolve the legal inconsistency in providing guarantees for a safe environment, a legal mechanism is to be introduced for establishing zones where the level of environmental risks is close to the level of danger of an environmental emergency. In order to comply with the principle of proportionality and the norms of the Constitution and laws of Ukraine, when establishing the specified zones, it is suggested to rank the level of environmental risks.

8. In order to implement the specified proposals and eliminate inconsistencies and gaps in the legislation of Ukraine, changes to the current Laws of Ukraine are proposed.

The perspective of further research consists in the analysis of the legislative norms of the Legislation of Ukraine in the field of protection of the right of citizens to a safe environment in the conditions of dynamic changes of external challenges, the provision of guarantees of the specified right and the ability to implement them by all subjects of legal relations in this area, and, on the basis of the specified analysis, substantiation of changes in the regulatory field.

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Право на безпечне навколишнє середовище: економіко-правові гарантії забезпечення в Україні

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Мета. Аналіз теоретико-прикладних засад та економіко-правового стану забезпечення гарантій права на безпечне довкілля (ГПБД), виявлення правових норм у цій сфері, що потребують уточнення, та розроблення рекомендацій щодо їх удосконалення.

Методика. У дослідженні використано діалектичний метод для виявлення необхідності змінити теоретико-правову основу забезпечення ГПБД. Герменевтичний метод використано для встановлення нормативних зв'язків права на безпечне довкілля з іншими правами людини. Формально-юридичний – забезпечення додаткового інструменту ГПБД – звернення до Міжнародного кримінального суду у справах про екологічні злочини під час війни. Системно-структурний метод використано для пропонування деліктних правових зв'язків між нормами екологічного права й нормами інших галузей права, де формуються механізми забезпечення ГПБД. Метод аналізу й синтезу – для встановлення, що можливість реалізації ГПБД має бути складовою не тільки екологічної, але й національної безпеки держави.

Результати. Запропоновано: посилити імперативний характер законодавчих норм ГПБД; встановити нормативні зв'язки права на безпечне довкілля з іншими правами людини; встановити деліктні правові зв'язки між нормами екологічного права й нормами інших галузей права, де формуються механізми забезпечення ГПБД; пропозиції щодо посилення дієвості правових норм у цій сфері. Запропоновані правові заходи посилення ГПБД і механізми, що забезпечують здатність громадян реалізувати право на безпечне довкілля. Зазначено, що можливість реалізації ГПБД має бути складовою не тільки екологічної, але й національної безпеки держави

Наукова новизна. Запропоновано змінити теоретико-правову основу забезпечення ГПБД, спрямувавши її на підтримання природної рівноваги, як передумови забезпечення якості життя.

Практична значимість. Виявлені правові норми щодо ГПБД, які здатні призвести до правових колізій, та запропоновані шляхи вирішення цих проблем.

Ключові слова: *безпечне довкілля, екологічні права, економіко-правові гарантії, військова агресія, екоцид*

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