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M. Sirant[*1],
orcid.org/0000-0002-9393-2397,
L. Sheptytska[2],
orcid.org/0000-0003-3070-0131,
S. Tsebenko[1],
orcid.org/0000-0002-9247-1867,
O. Remenyak[2],
orcid.org/0000-0002-5175-1280,
N. Zakharchyn[2],
orcid.org/0000-0003-3000-2595

1 – Lviv Polytechnic National University, Lviv, Ukraine
2 – National Forestry University of Ukraine, Lviv, Ukraine
* Corresponding author e-mail: myroslava.m.sirant@lpnu.ua

THE RIGHT OF ACCESS TO INFORMATION ON THE STATE OF THE ENVIRONMENT: LEGAL SUPPORT IN UKRAINE

Purpose. To identify problematic aspects of protecting the right of access to information on the state of the environment (RAISE), to propose and justify improvements to the norms of the current Legislation of Ukraine. RAISE

Methods. The use of the comparative legal method allowed us to identify discrepancies in the Legislation on the RAISE. Dialectical method – to indicate the signs of environmental information and define them as indicator norms. Formal and legal method – to justify the strengthening of the imperative norms of the RAISE and develop proposals for improving the legal mechanisms of the RAISE. The method of interpreting legal norms is to propose changes to the Legislation to properly ensure the RAISE.

Findings. Problematic aspects of the RAISE are identified, and the insufficiency of their legal support is proven. It is indicated that the use of decisions of the European Court of Human Rights (ECHR) as a precedent does not sufficiently resolve the contradictions of the Legislation due to the subsidiary nature of the role of the ECHR. It is indicated that improper expert assessment of threats of changes in the state of the environment, as a result of which the population is not informed about the threat, requires its definition as an offense. It is proposed to normalize an open information environment, which is based on an integrated database of environmental data of individual institutional structures and comprehensive monitoring of the state of the environment (SE). It is indicated that information about SE is one of the guarantees of the implementation of basic human rights – the right to life and health. It is noted that when the implemented restrictions on the RAISE can have serious consequences for the health and life of citizens, this increases the responsibility for not providing the population with information about SE.

Originality. Discrepancies in the current legislation in the legal sphere of access to information on the state of the environment are identified, measures to improve these legal mechanisms are proposed. The need to strengthen the level of imperativeness of the norms of the Environmental Protection and Environmental Protection Act are substantiated. Measures to regulate discrepancies in the Legislation to avoid legal, social and political consequences and ensure the procedural legal capacity of citizens. For the proper implementation of the RAISE during martial law, it is proposed to conduct permanent monitoring of the SE and promptly publish its results. The signs of environmental information are indicated and their use as indicator norms is proposed.

Practical value. The results of the study and the proposed measures for changes in the Legislation of Ukraine to properly ensure the RAISE can be used by representatives of institutional structures to improve legal norms and in the practical activities of lawyers and research by scientists.

Keywords: *information, legal norms, human rights, state of the environment, legal mechanisms*

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Introduction. If in peacetime Ukrainian scientists based their research mainly on the a priori thesis of the importance of information on the state of the environment for making environmentally significant decisions for society and local communities, then with the risks of outdated technologies significantly increased by the threats of war, the right to access environmental information begins to be identified with the human right to life. In the harsh conditions of large-scale hostilities, when crimes are committed not only against the environment, but also against humanity, even the right to quality-of-life fades into the background, because the level of environmental risks in a short period of time can pose a more important task for a citizen to preserve their own life. Ukrainian scientists focus their attention mainly on the protection of the environmental rights of a citizen and the problems of the right to access information on the state of the environment remained somewhat aside from the main direction of research. This was also facilitated by the fact that the number of lawsuits to protect the right to access information for a long time was insignificant – citizens did not attach due importance to this problem. The proceedings were based on the provisions of the Ukrainian Legislation on the environmental rights of citizens. The said environmental rights are de-

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termined, mainly, by general norms of law, and the right of access to information on the state of the environment is determined, first of all, by special norms of law. At the same time, the environmental rights of a citizen and their right of access to information on the state of the environment are inseparable.

The right to a natural environment safe for the life and health of the population belongs to the category of personal non-property right, which determines the very existence of a person. Access to information on the state of the environment is one of the guarantees of the implementation of this right.

Since Ukraine has declared its accession to the European Union, the integration of national law with EU legislation determines the further development of the Ukrainian legal doctrine on information on the state of the environment in the direction approved in international law, in particular, in the legislation of the European Union.

At the same time, during martial law, representatives of institutional structures that possess information about the state of the environment do not provide proper access to it, citing restrictions on the disclosure of such information, in particular, restrictions due to the legal regime of martial law. In circumstances where these restrictions can have serious consequences for the health and life of citizens, this increases the responsibility for not providing the population with information about the state of the environment. In order to avoid not only legal but also significant social and political consequences, these issues require regulatory and legal regulation.

Literature review. In the scientific community, the issue of the right to information about the state of the environment is beginning to receive more attention. At the same time, scientific works on the right to information about the state of the environment are mainly focused on the use of such information to ensure the participation of citizens in decision-making on environmental issues.

An example of this is the article by Akyüz [1], in which the procedural right of access to the specified category of information is mentioned in the context of the right to make decisions about the environment. The article by Azam [2] also indicates the importance, first of all, of the fact that the implementation of the right of access to information about the state of the environment will contribute to the involvement of the public in the discussion of environmental projects in accordance with Directive 2008/50/EC of the European Parliament of 21.05.2008 (the so-called AEI Directive), that is, it will make these projects more inclusive.

The importance of ensuring the right of access to information about the state of the environment for the implementation of public control tasks is also discussed by studies by Ukrainian scientists, for example, the article by Yaroshenko and Holoborodko [3]. This is also indicated in the article by Solodan and Palamarchuk [4], where the facts of restricting access to this information during martial law are also indicated. This gave Solodan and Palamarchuk [4] reason to formulate the choice between prohibiting access to information and transparency of information on the state of the environment as the main dilemma for the period of hostilities.

Pointing out that the right to information on the state of the environment is a component of the constitutional right to access information, Brovko and Tereshchuk [5] primarily focus on the importance of this for the preservation of the natural environment.

The article by Dukhnevych and Karpinska [6] confirms that, while the said right is formally guaranteed by the Legislation of Ukraine, there is a practice of restricting it even in peacetime. It is also indicated that a significant part of these restrictions is not legal, but administrative in nature.

The tendency of deterioration in the quality and timeliness of providing information on the state of the environment during martial law is indicated in the study by Novytska and Novytskyi [7]. The above is a significant feature of environmental information provision; therefore, in our opinion, improper implementation of access to environmental data is a restriction of human rights.

The study by Turlova [8] indicates that only 32 offenses have been recorded in Ukraine since 2001 for concealment or distortion of environmental information, and there is no judicial practice on the application of Article 238 of the Criminal Code of Ukraine (hereinafter – the Criminal Code of Ukraine) according to which this record is kept.

In distinguishing the legal bases of the environmental and information policy of Ukraine, Danyliuk [9], relying on the fact that information and environmental security are components of national security, points to a threat to national security from the dissemination of environmental information. Giving priority to public benefit over fundamental human rights, in particular, the right to access information on the state of the environment raises certain doubts.

In the study of the state of legal regulation of access to environmental information in EU countries, scholars indicate that this regulation is aimed primarily at creating mechanisms to eliminate obstacles to justice. It is also noted that EU courts have already considered 741 cases in accordance with the provisions of Directive 2003/4/EC, aimed at protecting environmental rights, in particular, the right of access to environmental information [10].

Scientists have studied the legal justification for introducing restrictions on access to information on the state of the environment. In particular, Butsmak's article [11] indicates the contradictions in the legal norms on which institutional structures rely when introducing such restrictions. It is noted that even in the Basic Law of the country, different norms – general and special ones – interpret the availability of certain data on the state of the environment for publication differently. At the same time, indicating the legal grounds for introducing restrictions on access to information on the state of the environment under martial law, Lahoida's article [12] indicates that such restrictions were not introduced. This is to some extent a contradiction to the information provided in Lahoida's Article [12] about the suspension of the preparation of the Ministry of Natural Resources and Environment of the annual National Report on the State of the Environment with reference to the martial law regime.

The same contradiction of theses regarding the application of restrictions on the right of access to infor-

mation on the state of the environment during martial law and the study of the process of expanding this right by legislators during wartime by adopting legislative acts aimed at this is also present in some other scientific works [13].

Also, some scientists unreasonably indicate that the provision of information on the state of the environment may be limited by classifying it as a state secret. The article by Diligul and Naumov [14] notes that the lack of regulation of the mechanisms of active (upon request) and passive (in mass media sources) notification of citizens about the state of the environment often becomes an obstacle to providing them with such information by central and local government structures.

The existing discrepancies in scientific works in the interpretation of various aspects of the right of access to information on the state of the environment and the need to improve the legal support for these issues determine the relevance of studying the specified problem.

Purpose. The purpose is to investigate the problematic aspects of protecting the right of access to information on the state of the environment. To properly ensure the right of access to information on the state of the environment, improvements to the norms of the current Legislation are proposed and substantiated. The tasks are: to investigate the level of regulatory support for the right of access to information on the state of the environment, to identify discrepancies in the current legislation in this area, to investigate the adequacy of existing regulatory and legal mechanisms for protecting the right of access to information on the state of the environment, to propose improvements to the named mechanisms.

Methodology. The study used special and general scientific methodological approaches. The use of the comparative legal method allowed identifying discrepancies in the current Legislation in this area of law. The dialectical method allowed the authors to indicate the main features of environmental information and to note that the absence of any of these features in the process of transmitting and receiving information on the state of the environment indicates a violation of the right of access to it. That is, this forms the use of these features as indicator norms.

The formal-legal method allowed us to substantiate the need to strengthen the level of imperativeness of legal norms regarding access to information on the state of the environment. This method also allowed indicating the need to improve legal mechanisms for protecting the right of access to information on the state of the environment and to develop measures for this.

The method of interpretation of legal norms allowed proposing changes to the current Legislation to properly ensure the right of access to information on the state of the environment.

Results. In this study, information on the state of the environment is considered as a component of environmental information, which may also include other components: awareness of measures, means, resources for ensuring this state, conditions of legal restrictions, etc. In the absence of access to a wider range of environmental data, the principle of completeness of information on the state of the environment may be violated.

Regulatory documents, in particular, in Article 13 of the Law of Ukraine No. 2657-XII "On Information" as amended on June 14, 2025, provide a definition of environmental information and, moreover, in the Order of the Ministry of Natural Resources of Ukraine No. 561 dated December 22, 2011, its list is provided. At the same time, a characteristic feature of the dynamism of requirements for information on the state of the environment is that the aforementioned list does not include the position "current information on the state of the environment", although it is the Ministry of Natural Resources that should be responsible for obtaining such information during martial law and its immediate publication.

Since the specified Order of the Ministry of Natural Resources and Environment of Ukraine was adopted to implement the Convention on Access to Environmental Information (hereinafter referred to as the Aarhus Convention) ratified by the Law of Ukraine No. 832-XIV of 06.07.1999, in which this norm is also absent, this indicates the need for efforts by international law specialists to supplement international legal documents with this norm.

The indicator norm "right of access to information on the state of the environment" indicates a set of legislative norms that regulate relations between legal entities that collect, process and store environmental information and entities of public relations that need this information to exercise civil rights and fundamental human rights guaranteed by the Constitution of Ukraine and international documents ratified by the Verkhovna Rada of Ukraine.

The right to access information on the state of the environment should be defined as a fundamental procedural right, i.e. one without which a subject of public relations is unable to fully exercise other rights, for example, the right to a safe environment, the right to participate in determining the priorities of budget expenditures for environmental purposes, access to justice in environmental cases, fundamental human rights, etc.

At the same time, the legal disposition of the right to information on the state of the environment indicates its material nature.

The main features of the specified information include:

- transparency, which indicates not only the openness of this information but also that the procedures for providing and receiving information on the state of the environment must be clear and the mechanisms for ensuring transparency must be determined by current regulatory legal acts;
- relevance, which indicates not only that information on the state of the environment is variable over time, but also that the timeliness of its provision will allow avoiding environmental risks, threats to the life and health of citizens, or reducing their consequences;
- adequacy, which indicates ensuring the completeness of the volume of information in accordance with subparagraph "a" of paragraph 2, Part 1, Article 5 of the Aarhus Convention;
- objectivity, which is determined by independence from the views and desires of legal entities that collect, process and store environmental information and entities of public relations that need this information;
- reliability, which is determined by relying on exclusively scientific approaches to its receipt, processing and storage.

The absence of any of these features in the process of transmitting and receiving information on the state of the environment indicates a violation of the right of access to it. The importance of some of these features as categories-indicators of the right of access to the specified information is confirmed in the decisions of the administrative courts of Ukraine. In particular, the need for completeness of environmental information is indicated in the claims in cases No. 826/3969/16, 813/2654/15, 809/179/17, 5015/6097/11.

The problem is that in ensuring some of these features during martial law, a legal dichotomy arises – based on the need for primary protection of national security, information on the state of the environment should be limited. At the same time, limiting this information during a large-scale war may lead to a violation of fundamental human rights, in particular the right to health and the right to life.

The complexity of considering the problem of ensuring the right of access to information on the state of the environment also lies in the significant number of legal branches, the norms of which regulate it: environmental law, information law, constitutional, administrative, criminal law, etc. [15].

Thus, Ukrainian legislators adopted Law No. 2657-XII, which defines the citizen's right to information. The right to access information on the state of the environment is confirmed in clause "e" of Article 9 of Section II of the Law of Ukraine No. 1264-XII "On Environmental Protection" as amended on 08.08.2025 and ratified by the Law of Ukraine No. 832-XIV of 06.07.99. The Aarhus Convention.

Article 50 of the Constitution of Ukraine confirms the citizen's right not only to a natural environment that is safe for life and health, but also the right to compensation for damage caused as a result of an inadequate state of the environment. Article 10 of the Law of Ukraine No. 1264-XII in the version of 08.08.2025 "On Environmental Protection" indicates the environmental rights of the population of Ukraine and guarantees the inevitability of punishment for their violation.

At the same time, although under Article 11 of the Law of Ukraine No. 1264-XII, the restoration of violated rights and their protection must take place through the application of judicial procedures, there is no specification of the legal mechanism in the legislation of Ukraine. Another obstacle to the proper protection of the environmental rights of citizens is the fact that information about the state of the environment, evidence of the violation is often under the control of either the violator himself/herself – a specific enterprise, or state bodies that do not disclose it for one reason or another [16].

Although, the legislation of Ukraine declares free access to information about the state of the environment, for example, for public organizations under clause "d" of Article 9 of the Law of Ukraine No. 1264-XII, at the same time, legislators have introduced restrictions on this access, in particular, under clause "e" of Article 9 of the Law of Ukraine No. 1264-XII. In clause "d" of Article 25-1 of the Law of Ukraine No. 1264-XII it is indicated that the restriction of free access applies to information on the state of the environment, which constitutes a state secret. At the same time, in accordance with part 1 of Article 8 of the Law of Ukraine No. 3855-XII as amended on 27.08.2025 "On State Secrets", information on the state of the environment, the state of health of the population, violations of human and civil rights and freedoms cannot be classified as a state secret. This is confirmed in clause 1 of clause 4 of Article 21 of the Law of Ukraine No. 2657-XII "On Information" as amended on 14.06.2025. According to clause 3 of Article 13 of this Law, restrictions on access to information on the state of the environment are introduced exclusively if it is possible to reveal the location of military facilities, which, according to some researchers, restricts freedom of information [17].

But the problem of ensuring the right of access to information on the state of the environment goes far beyond the principle of freedom of information. In particular, under Part 4 of Article 9 of the Aarhus Convention, it is impossible to ensure proper environmental protection if the right of access to information on the state of the environment is limited, since the provision of such information is one of the legal mechanisms for stopping the infliction of environmental damage.

At the same time, numerous restrictions have been imposed on the application of the norms of the Laws of Ukraine No. 2657-XII and No. 1264-XII, in particular those specified in paragraphs 3, 4, 5 of Article 4 of the Aarhus Convention. It is also characteristic of the specified convention and a significant number of international documents intended to fulfill this task that they are aimed not at the legal formalization of general norms of information relations, but at the regulation of the circulation of information on the state of the environment [18].

In addition to direct legislative restrictions on the environmental rights of citizens, in particular compensation for the violation of these rights, there are also indirect restrictions. For example, according to the Law of Ukraine No. 2711-IV as amended on October 21, 2019 "On measures aimed at ensuring the sustainable functioning of fuel and energy complex enterprises (hereinafter referred to as the fuel and energy complex)", enforcement proceedings for debt collection against fuel and energy complex enterprises should be suspended if they have debts due to non-payments for energy carriers. A significant problem is not only that fuel and energy complex enterprises are one of the main sources of environmental pollution, but also that the range of these enterprises is extremely wide [19]. According to the Law of Ukraine No. 2711-IV, these are not only enterprises that produce, transport and supply electricity. These are also enterprises that extract, transport and supply energy carriers. The specified range of enterprises includes, in particular, coal mines and quarries. Therefore, this issue must be regulated legally.

In Article 50 of the Law of Ukraine No. 1264-XII regulates the legal category "Environmental Safety" and indicates that the norm-indicator of a safe state of the environment is the mandatory warning of the public about the deterioration of environmental indicators. Thus, failure to inform about the improper state of the environment is a threat to the life and health of people and, at the same time, there are no imperative norms in the legislation of Ukraine that form the mechanisms of punishment for this offense.

Also, although Article 65-11, Section XIII of the Law of Ukraine No. 1264-XII unambiguously indicates

the need for the relevant institutional structures to declare an emergency environmental situation in the event of large-scale environmental threats to life and health in certain territories, this norm of the Law was not implemented in territories close to the combat zone. This limits both the application of the norms of international environmental law (Article 17 of the Law of Ukraine No. 1908-III "On the Zone of Emergency Environmental Situation" as amended on March 31, 2023), and the norms of national law, in particular, on compensation for damage in accordance with the Law of Ukraine No. 1908-III. At the same time, the absence in the Law of Ukraine No. 1908-III of norms on informing the population about risk factors creates an additional level of threat to the life and health of citizens. At the national level, the problem in implementing the right of access to information on the state of the environment is primarily that the Laws of Ukraine No. 2657-XII, No. 1264-XII and a significant number of special legislative acts, where this right is specified, are characterized by an insufficiently specified, generalized structure. Also, the mechanisms for controlling this right are formulated in such a way that their implementation in a significant number of cases must be ensured by the same institutional structures that are responsible for its provision, and those structures whose effectiveness is limited by deregulatory measures [20]. This limits the effectiveness of the norms of the Laws in the field of protection of the right of access to information on the state of the environment.

Also, the implementation of the right of access to information on the state of the environment is complicated by circumstances caused by martial law. At the same time, in accordance with the principle of *pacta sunt servanda* (contracts must be fulfilled), all legal norms, even in a special period, must be implemented, and deviation from the specified norms with reference to the principle of derogation must be regulated in the regulatory and legal field.

This is confirmed by the ratified Law of Ukraine No. 995272 as amended on 04.06.2004 of the Convention on Environmental Impact Assessment, according to which military actions are not a legal justification for the violation of environmental rights. This is confirmed by paragraphs 1 and 2 of Article 20 of the Law of Ukraine No. 389-VIII "On the Legal Regime of Martial Law" as amended on 14.05.2025 and Articles 3 and 27 of the Constitution of Ukraine, which guarantees the right to life, the condition of which during war, in particular, is access to information about the state of the environment. The aforementioned Article 50 of the Constitution of Ukraine guarantees the right of access to information about the state of the environment and the right to disseminate it. This article also indicates that this information cannot be categorised as classified information.

The observance of the right of access to environmental information is also complicated by a multi-level system of legal norms, in which the norms of the Laws of Ukraine are detailed by sectoral and narrowly departmental documents. For example, structural units of the Ministry of Natural Resources and Environment, relying on the Law of Ukraine No. 393/96-BP "On Citizens' Appeals" as amended on 12/31/2023, implement an order of a specific unit, in accordance with which access to information about the state of the environment is provided. That is, in fact, the right of access is not implemented directly under the norms of the Laws of Ukraine, but by order of a department of the ministry, which can constantly change and be revised in accordance with the needs of this department. This leads to legal conflicts. In particular, based on the non-compliance of the request for information on the state of the environment with the norms of the Order of the Ministry of Nature Protection No. 169 of 18.12.2003, the Ivano-Frankivsk District Court in its Resolution on case No. 809/179/17 of 21.02.2017 refused to satisfy the claims.

The fragmented and unsystematic nature of the legislation in this area also complicates the implementation of the right of citizens to access information on the state of the environment; there are contradictions in legal norms. With a significant number of legislative environmental acts, they are declarative and do not properly regulate access to information on the state of the environment, and do not form appropriate mechanisms for the implementation of this right.

A problematic issue of transmitting and receiving information on the state of the environment in Ukraine in the process is also the dispersion of institutional structures that possess this information, and the division of their functions into regulatory, protective, etc. This causes uncertainty among citizens regarding the formation of requests about the state of the environment and provides grounds for denying them information, in particular, referring to the above-mentioned separation of functions. Citizens apply for environmental information even to the office of the Commissioner for Human Rights of the Verkhovna Rada of Ukraine (Ombudsman) referring to Article 50 of the Constitution of Ukraine, which guarantees the right of access to such information, and the number of such applications has been growing recently [21].

This indicates both the absence of appropriate integrated structures, the function of which includes providing information about the state of the environment, and the lack of regulation of the mechanism for ensuring the right of access to it. An example of the legal regulation of this problem is the European Union, which has formed the European Environment Agency, authorized to provide access to the specified information using the EU's "Shared Environmental Information System" [22].

The legal basis for the activities of this Agency is provided by Regulation of the European Parliament and of the Council No. 401/2009 of 23.04.2009. There have been attempts to form such a structure in Ukraine. Thus, according to the Order of the Ministry of Environmental Protection No. 169 of 18.12.2003, access to information on the state of the environment was to be provided by a specialized information fund. At the same time, the specified Order did not regulate the mechanism and procedure for access to environmental information, therefore its effectiveness was insignificant and in 2012 Order No. 169 lost its validity.

Since regulatory structures often use the fact that they are not the administrator of such information as a basis for not providing access to information on the state of the environment [23], it is advisable to create an open information environment that is based on an integrated

database of environmental data of individual institutional structures and a system of comprehensive state monitoring of the state of the environment.

The insufficiency of mechanisms for ensuring the right of a citizen of Ukraine to environmental information is evidenced by numerous facts of reviewing decisions of courts of first instance, on appeal, regarding claims of the organization "Ecology. Law. Man" [23]. These claims show an attempt to introduce sectoral restrictions on the right to environmental information. Thus, the claim to cancel the norms of the "Regulations on the Procedure for Providing Environmental Information" introduced by Order No. z0156-04 of the Ministry of Environmental Protection and Natural Resources of Ukraine was partially satisfied. The legal inconsistency of this order is evidenced by its cancellation by Order No. 217 dated 02.04.2012. This is due to the fact that under clause 3.2. of this Regulation, the provision of information upon one request was limited to more than three issues on one environmental issue and clause 3.6, according to which environmental information classified as a state secret is not provided. As noted above, this contradicts Part 1 of Article 8 of the Law of Ukraine No. 3855-XII, according to which environmental information cannot be classified as a state secret.

The review of the decisions of the courts of first instance regarding the claims of the organization "Ecology. Law. Man" is a significant transaction, since the decision of the District Administrative Court of Kyiv in case No. 826/13710/13-a established the identity of the legal categories "information on the state of the environment", "information on the state of the natural environment".

Protection of the right to access information on the state of the environment using the example of the claims of the organization "Ecology. Law. Man" indicated that this is not a simple task, since the cases even reached the cassation instance. At the same time, the constitutional right of citizens regarding the claims of the organization "Ecology. Law. Man" was confirmed in the decision of the Supreme Economic Court of Ukraine in case No. 5015/6097/11 dated 08.05.2012 and in the decision of the Lviv District Administrative Court in case No. 813/2654/15 dated 02.11.2015.

A means of eliminating inconsistencies in the regulatory legal acts of Ukraine in the consideration of claims on the specified issues by the courts of first instance is that, in accordance with the Legislation of Ukraine, the decisions of the European Court of Human Rights (ECHR) become a precedent for Ukrainian courts. As noted by legal scholars [24], in addition to eliminating discrepancies in the Legislation of Ukraine, this should ensure the procedural legal capacity of citizens.

At the same time, the ECHR indicated that the complexity of environmental issues has the consequence that the role of the European Court of Human Rights is predominantly subsidiary in nature. The ECHR also pointed to the insufficient level of implementation of the right of access to information on the state of the environment as a reason for the violation not only of the right to life under Article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the Convention) ratified by the Law of Ukraine No. 475/97-VR or the right to physical integrity under Article 8 of the Convention, but also of other rights, in particular, the right to property ownership (Article 1, Protocol 1 of the Convention), the right to freedom of expression (Article 10 of the Convention), etc.

Indicative of access to information about the state of the natural environment as a violation of the right to life is the decision of the ECHR of 19.02.1998 on application No. 14967/89 "Case of Guerra and Others v. Italy". This decision becomes a precedent for the judicial practice of Ukraine because, in particular, it determines that the right to access environmental information has both an active component (at the request of the interested person) and a passive component – when institutional structures must control harmful industrial emissions, and must inform the population in open sources of mass information about the damage that citizens have already suffered, but also about the damage that may be caused to them.

According to the above decision of the ECHR, national institutional structures are obliged to collect, process and, importantly, publish information about the state of the environment that a citizen is unable to obtain in any other way.

It is worth emphasizing that this applies to all the above-mentioned features of environmental information, including its completeness and timeliness, therefore this confirms the above thesis that in conditions of significant dynamic threats, environmental monitoring should be permanent, and its results should be promptly published.

This decision is also indicative of the fact that it determines the need to comply with the principle of subsidiarity. This principle is that [25] the obligation to ensure the right of access to environmental information rests with the state, and not with the offending organization. Also, the precedent set by the ECHR decision in case No. 14967/89 is that the institutional structures in this case did not legally determine the procedures for obtaining information and did not regulate the mechanism for compensation for damage in the event of an accident. This is an important confirmation of the need to specify the mechanisms for implementing citizens' environmental rights in the Legislation. The assertions of representatives of institutional structures about the lack of evidence of negative impact on the environment are not grounds for an independent assessment of this impact, and the reference to the lack of information on the state of the environment for any area of activity does not justify the right not to provide it. This is indicated by the decision of the ECHR of 04.12.2014 on application No. 42488/02 "Dzemyuk v. Ukraine".

The ECHR also applies an assessment of the integrity of decisions of national institutional, in particular, judicial structures (the decision of the ECHR of 10.05.2011 "Dubetska and Others v. Ukraine" on application No. 30499/03). Legal incompatibility or contradiction of the grounds of these decisions is the reason why they are not taken into account in the decisions of the ECHR.

The ECHR also indicates that complaints with reference to the responsibility of the state under Article 8 of the Convention are unfounded in the case of suddenly arising force majeure circumstances. Therefore, the

court session assessed the importance of timely detection of environmental threats and notification of their level and causes to the population.

Also, the decisions of the ECHR substantiate the right to apply to the European Court of Human Rights. This is not only an individual whose rights were directly violated in the event of failure to provide information on the state of the environment. The ECHR refers to Article 34 of the Convention, according to which a "victim" is considered a person who has a significant, well-founded personal interest in the cessation of an environmental offense, that is, this person does not necessarily have to be directly harmed. Therefore, Ukrainian legislation should regulate the expansion of the circle of plaintiffs regarding the right to access information on the state of the environment.

In order to resolve legal conflicts regarding restrictions on the right to information on the state of the environment, the disclosure of which harms national security and violates fundamental human rights, defined in particular in the Convention for the Protection of Human Rights and Fundamental Freedoms, the ECHR decision of 08.01.2013 "Case of Bucur and Tota v. Romania" under application No. 40238/02 and of 12.02.2008 "Case of Guja v. Moldova", under application No. 14277/04 should be taken into account. The aforementioned decisions set a precedent for the publication of even information with limited access, if it is of public importance. In these decisions, the ECHR relies on Article 10 of the Convention. Therefore, in the judicial implementation of such cases, there is an assessment of the proportionality of the harm from the publication of such information and the harm in the event of a violation of the right to receive it (the so-called "three-component test").

This is confirmed in clause 4 of Article 13 of the Law of Ukraine No. 2939-VI as amended on 08.08.2025 "On Access to Public Information", regarding the obligation to disclose information on the state of the environment, on the ecological consequences of disasters, and publicly significant information. However, in accordance with the above-mentioned decisions of the ECHR, the problem of interpreting the norm of the Law on "publicly significant information" and the proportionality of the harm to its publication arises. The legal conflict is exacerbated by the inconsistency of the provision of clause 4 of Article 4 of the Aarhus Convention, according to which this access may be limited if the "confidentiality of the activities of state bodies" is violated, and the provision of point "c" of clause 1 of Article 5, on the urgency and obligation to provide information on the state of the environment in the event of an immediate threat to the health of an individual. Also, the practical implementation of legal proceedings regarding the right of access to information relating to the environment is complicated by the restrictions of paragraph 2 of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, regarding the need to reconcile this right with the interests of national security, etc. There are also indirect restrictions on citizens' access to information on the state of the environment. Thus, in Part 16 of the Resolution of the Cabinet of Ministers of Ukraine No. 684 of 13.07. 2024 on the functioning of the environmental monitoring system, the procedure for publishing data available in the Eco-System is entrusted to the Ministry of Environment. This creates the prerequisites for sectoral restrictions on the right to access information on the state of the environment. Therefore, the following addition to this paragraph is proposed: "The procedure for publishing information on the state of the environment is established by the legislation of Ukraine or by court decision".

Legal uncertainty regarding the proportionality of harm from the publication of information on the state of the environment and harm in the event of a violation of the right to receive it makes it difficult for citizens to receive compensation even for violations of their fundamental rights to health and life. This requires the formation of a legal mechanism to establish a direct connection between the right to receive environmental information and the right to receive compensation as a result of a violation of the right to access information on the state of the environment. The basis for this is the Resolution of the Supreme Court of 14. 02.2025 in case No. 420/20384/23, which provides detailed interpretations of Part 2 of Article 6 of the Law of Ukraine No. 2939-VI on Restricting Access to Information. The specified Resolution of the Supreme Court confirmed the presumption of openness of public information, and restrictions on access to it are justified exclusively by the "three-component test".

At the same time, the mechanisms of administrative liability for violations of the right to access information on the state of the environment need to be improved. Thus, in particular, due to the workload of the State Ecological Inspectorate of Ukraine and its structures, there is a delay in their provision of information to the courts on the specified cases. Since the terms of their consideration are limited by Article 38 and Article 247 of the Code of Ukraine on Administrative Offenses (hereinafter – the Code of Administrative Offenses), the proceedings in the cases are terminated. Accordingly, the above requires the regulation of the Law of Ukraine No. 2939-VI as amended on 08.08.2025 "On Access to Public Information", regarding the obligation to disclose information on the state of the environment, on the ecological consequences of disasters, and socially significant information.

The mechanisms of compensation for damage resulting from violations of the right to access information on the state of the environment also need regulatory improvement. The existing norms of Article 22, Article 1166 of the Civil Code of Ukraine (CC of Ukraine), Article 82-3, Article 91-4 of the Code of Administrative Offenses, Article 239 of the Criminal Code of Ukraine formally provide such an opportunity, but its practical implementation is complicated by the need to prove a causal connection between the improper provision of such information and the harm caused to the citizen in court.

The subjectivity of the offense under Part 1 of Article 238 of the Criminal Code of Ukraine is determined by its intent, and for the occurrence of serious consequences, the specified crime is punishable under Part 2 of Article 238 of the Criminal Code of Ukraine. Therefore, a certain problem for considering cases under the specified articles is the introduction of indicator norms regarding direct intent and, in particular, the use of the

category of "intentionality" in the text of the mentioned article. At the same time, the possibility of unintentional actions of the offender should not be excluded. To form a mechanism for the inevitability of punishment for deprivation of the right to access information about the state of the environment, which caused serious consequences, it is necessary to increase the level of imperativeness of the specified article and strengthen liability for an intentionally committed crime while simultaneously isolating unintentional circumstances of the offense.

Therefore, it is proposed to add:

- to Article 238 of the Criminal Code of Ukraine, paragraphs 1-1: "Intentional acts aimed at depriving the right of access to information on the state of the environment, which caused the death of people, are punishable by restriction of liberty for a term of three to seven years", and paragraph 3: "Failure to provide information about changes in environmental indicators in the zone of an environmental emergency by a person authorized for this purpose is punishable by a term of up to one year, and in the case of significant harm to the health of a group of people or loss of life by a person – by a term of up to 7 years";

- to paragraph 1 of Article 367 of the Criminal Code of Ukraine "Official negligence" – "unconscionable attitude towards them, disregard for fundamental human rights...";

- to Article 12. "The Procedure for Settlements for Environmental Damage" of the Law of Ukraine No. 2711-IV - clause 1: "In the event of environmental damage to the environment, settlements for its consequences are of primary importance and are not subject to restrictions under this Law";

- to Artile 1 of the Law of Ukraine No. 1264-XII – "The task of legislation ... is to guarantee the right of citizens to comprehensive and complete information about the state of the environment and, in the event of an inadequate state of the natural environment, about the level of threats and their causes";

- to Article 3 of the Law of Ukraine No. 1264-XII "Basic Principles..." – "g) publicity ... and as a mechanism for ensuring this - the publication of information about the state of the natural environment";

- to clause "d" of Article 20-4 of the Law of Ukraine No. 1264-XII – "issuance of permits for emissions of harmful substances with their mandatory publication in the media";

- to clause "e" of Article 25-1 of the Law of Ukraine No. 1264-XII – "immediately informing the population about a significant increase in environmental risks", since notification only about emergency environmental situations without specifying the category of recipients of information is not sufficient to exercise the right of citizens to access environmental information, which is justified by the above-mentioned features of information on the state of the environment. A slight deviation in environmental indicators, not harmful to some citizens, may pose a significant threat to others, therefore the population has the right to know about it;

- to clause "l" of Article 68 of Section XV of the Law of Ukraine No. 1264-XII – "refusal to provide timely, complete and reliable information about the state of the environmental situation contrary to clauses a, b, c, d, d of Article 25-11 of this Law or improper expert assessment of the risks of changes in the state of the environment, as a result of which the population did not receive timely warning of the threat, is punishable by a term of up to one year, and in the case of significant harm to the health of a group of persons or loss of life by an individual – by a term of up to 7 years";

- to clause 1, clause 2 of Article 22 of the Civil Code of Ukraine "Damages are.... losses incurred by an individual to restore health as a result of the harm caused";

- to Article 38 of the Code of Administrative Offenses: "Administrative penalties for deprivation of the right to access information about the state of the environment, which resulted in a deterioration in the health and quality of life of citizens, are considered taking into account the delay in providing information about the offense by the regulatory structures, in particular the State Environmental Inspectorate of Ukraine or its territorial bodies. If this unlawful delay has led to a deterioration in the health and quality of life of citizens, then the representatives of the specified instructional structures whose functional duties include providing such information are responsible for this";

- it is proposed to introduce the norm "current information on the state of the environment" to the List of types of environmental information in accordance with the Order of the Ministry of Ecology and Natural Resources of Ukraine No. 561 dated 12/22/2011.

It is also proposed to rename Article 11 of the Law of Ukraine No. 1908-III "Observation and publication of information on the state of the environment ..." and add to it "To ensure the collection, processing, storage, analysis and publication of information... determination and publication of information on the degree of influence of dangerous factors that caused the emergence and led to an emergency environmental situation; forecasting negative changes and publishing the results of the forecast".

The above-mentioned proposals for improving the norms of the current Legislation will contribute to the formation of mechanisms for ensuring the rights of citizens to access information on the state of the environment and their rights to life and health even in emergency situations.

Conclusions. It is indicated that information on the state of the environment is one of the guarantees of the implementation of fundamental human rights - the right to life and health.

The discrepancies of the current legislation in the field of the right of access to information on the state of the environment are identified. It is indicated that the use of ECHR decisions as a precedent for Ukrainian courts does not sufficiently compensate for the contradictions of the norms of Ukrainian Legislation due to the subsidiary nature of the role of the ECHR. It is indicated that an improper expert assessment of the threats of changes in the state of the environment, as a result of which the population did not receive timely warning about the threat, requires its definition as an offense. The significance of the discrepancies of those legal norms by which restrictions on access to environmental information are established and regulated is established. It is indicated that with a significant number of legal environmental acts, they are mostly declarative and do not

properly regulate access to information on the state of the environment, and do not form appropriate mechanisms for the implementation of this right. It is indicated that the regulatory legal acts regulating the right of access to information on the state of the environment, both special legislative acts and the Laws of Ukraine, are characterized by an insufficiently specified, generalized structure. It is established that the mechanisms for controlling this right are formulated in such a way that their implementation in a significant number of cases should be ensured by the same institutional structures that are responsible for its provision, and those structures whose effectiveness is limited by deregulatory measures.

The introduction of restrictions on access to environmental information for the period of martial law contradicts the principle according to which all legal norms, even in a special period, must be implemented, and a deviation from the specified norms with reference to the principle of derogation must be regulated in the regulatory legal field. It is indicated that compliance with the right of access to information on the state of the environment is complicated by a multi-level system of legal norms, according to which the norms of the Laws of Ukraine are detailed by sectoral and narrowly departmental documents.

It is indicated that this leads to legal conflicts in court proceedings on cases of violation of the right of access to information on the state of the environment. The fragmented and non-systematic nature of the legislation in this area also complicates the implementation of the right of citizens to access information on the state of the environment.

A problematic issue in the process of transmitting and receiving information on the state of the environment in Ukraine is also the dispersion of institutional structures that possess this information, and the division of their functions into regulatory ones, protective ones, etc. Therefore, given the level of threats to the environment during wartime, the significant pace of their changes, and the nature of the threats, it is proposed to regulate by law the implementation of an open information environment, which should use an integrated environmental database of all institutional structures and rely on a system of comprehensive state monitoring of the state of the environment. It is noted that for the effective implementation of the right of access to information on the state of the environment in conditions of martial law, this monitoring should be permanent, and its results should be immediately made public. This will enable people with health problems to assess trends in environmental changes that are insignificant for others but dangerous for them. This will increase the level of guarantees of basic human rights – the right to life and health.

The main features of environmental information are indicated and it is noted that the absence of any of these features in the process of transmitting and receiving information about the state of the environment indicates a violation of the right to access it.

Proposals to improve the norms of the current Legislation, which will contribute to the formation of mechanisms for ensuring the right of citizens to access information about the state of the environment and their rights to life and health, have been developed.

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Право доступу до інформації про стан довкілля: правове забезпечення в Україні

М. М. Сірант[*1], *Л. Б. Шептицька*[2], *С. Б. Цебенко*[1], *О. В. Ременяк*[2], *Н. Г. Захарчин*[2]

1 – Національний університет «Львівська політехніка», м. Львів, Україна
2 – Національний лісотехнічний університет України, м. Львів, Україна
[*] Автор-кореспондент e-mail: myroslava.m.sirant@lpnu.ua

Мета. Встановити проблемні аспекти захисту права доступу до інформації про стан довкілля (ПДІПД), запропонувати й обґрунтувати вдосконалення норм чинного Законодавства України.

Методика. Використання порівняльно-правового методу дозволило виявити розбіжності Законодавства щодо ПДІПД. Діалектичний метод – вказати ознаки екологічної інформації та означити їх як норми-індикатори. Формально-юридичний метод – обґрунтувати посилення імперативності норм ПДІПД і розробити пропозиції вдосконалення правових механізмів ПДІПД. Метод тлумачення правових норм – запропонувати зміни Законодавства для належного забезпечення ПДІПД.

Результати. Виявлені проблемні аспекти ПДІПД, доведена недостатність їх правового забезпечення. Вказано, шо використання рішень Європейського суду із прав людини (ЄСПЛ) як прецеденту не достатньо вирішує суперечливості Законодавства через субсидіарний характер ролі ЄСПЛ. Відмічено, що неналежна експертна оцінка загроз змін стану довкілля, унаслідок чого населення не інформоване про загрозу, потребує її визначення як правопорушення. Запропоноване унормування відкритого інформаційного середовища, що спирається на інтегровану базу екологічних даних окремих інституційних структур і комплексний моніторинг стану довкілля (СД). Вказано, що інформація про СД є однією з гарантій реалізації основних прав людини – права на життя та здоров'я. Зазначено, що коли впровадженні обмеження ПДІПД можуть мати тяжкі наслідки для здоров'я й життя громадян, це посилює відповідальність за не надання населенню інформації про СД.

Наукова новизна. Виявлені розбіжності чинного Законодавства у правовій сфері доступу до інформації про стан довкілля, запропоновані заходи вдосконалення цих правових механізмів. Обґрунтована необхідність посилення рівня імперативності норм ПДІПД. Запропоновані заходи врегулювання розбіжностей Законодавства для уникнення правових, соціальних і політичних наслідків й забезпечення процесуальної правоздатності громадян. Для належної реалізації ПДІПД за військового стану запропоновано провадити перманентний моніторинг СД та оперативне оприлюднення його результатів. Вказані ознаки екологічної інформації й запропоноване їх використання як норм-індикаторів.

Практичназначимість. Результатидослідженняйзапропоновані заходи щодо змін Законодавства України для належного забезпечення ПДІПД можуть бути використані представниками інституційних структур для вдосконалення правових норм і в практичній діяльності правників і дослідженнях науковців.

Ключові слова: *інформація, правові норми, права людини, стан довкілля, юридичні механізми*