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### MUTUAL RESPONSIBILITY OF THE STATE AND THE INDIVIDUAL FOR THE ECOLOGICAL STATE OF THE ENVIRONMENT

**Abstract.** The article examines the current state and problematic aspects of liability in the environmental sphere and nature management, which is a "sustainable issue", the solution of which is complicated, firstly by military conflicts, environmental and man-made disasters. It is emphasised that the highest value is a human being, his or her life and well-being, which are inextricably linked and dependent on the quality of the environment. The fact that this issue affects almost all aspects of human activity highlights the importance of finding ways to solve it. Responsibility in the environmental sphere, therefore, should be seen, on the one hand, as the responsibility of the state to the individual, and, on the other hand, as the responsibility of the individual for the damage caused to the environment. The article investigates the peculiarities of positive (ensuring rational use of nature, identifying risks and threats to the environment and preventing them, etc.) and negative responsibility of the State for the ecological state of the environment to a person, which should not be viewed from the standpoint of "guilty without guilt", but as unsatisfactory work of state bodies to prevent environmental threats. The features of positive and negative human responsibility for the ecological state of the environment are also considered. Due to the absence of legislative consolidation, the article offers the author's definition of the understanding of damage to the environment - as negative consequences resulting from irrational or illegal interference. Summarising the experts research, the article concludes that there is an inequality of responsibility between the subjects of environmental law.

In the context of inadequate state environmental control and a high level of environmental violations, it would be correct to introduce public control and give such control broad powers to ensure compliance with environmental legislation, which will serve to preserve the environment and strengthen law and order.



**Keywords:** responsibility, environmental law, environmental sphere, environmental safety, natural environment.

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## ВЗАЄМНА ВІДПОВІДАЛЬНІСТЬ ДЕРЖАВИ ТА ЛЮДИНИ ЗА ЕКОЛОГІЧНИЙ СТАН НАВКОЛИШНЬОГО СЕРЕДОВИЩА

**Анотація.** У статті розглядаються сучасний стан та проблемні аспекти відповідальності в екологічній сфері та природокористування, що відноситься до «сталі проблематики», вирішення якої ускладнено, передусім, військовими конфліктами, екологічними та техногенними катастрофами. Наголошено, що найвища цінність - це людина, її життя та добробут, які нерозривно пов'язані та залежні від якості навколишнього середовища. Приналежно, що дана проблематика охоплює практично всі сфери діяльності людини, демонструє нагальність прийняття шляхів до її вирішення. Відповідальність в екологічній сфері, таким чином, повинна розглядатися з одного боку як відповідальність держави перед людиною, а з іншого – відповідальність людини за заподіяну шкоду навколишньому середовищу. У статті досліджено особливості позитивної (забезпечення раціонального використання природи, виявлення ризиків та загроз екології та їх попередження тощо) та негативної відповідальності держави за екологічний стан навколишнього середовища перед людиною, яка не повинна розглядатися з позиції «винен без вини», а як незадовільна робота державних органів з попередження загроз навколишньому середовищу. Розглянуто також особливості позитивної і негативної відповідальності людини за екологічний стан навколишнього середовища. У зв'язку з відсутністю законодавчого закріплення, у статті пропонується авторське визначення розуміння шкоди, завданої навколишньому природному середовищу, - як негативні наслідки, які отримані внаслідок нераціонального або не законного втручання. Резюмуючи дослідження експертів, у статті робиться висновок про нерівність відповідальності між суб'єктами права у сфері екології.

Доведено, що в умовах неналежного державного екологічного контролю та високого рівня екологічних правопорушень було б правильним запровадження громадського контролю та надання йому широких повноважень щодо дотримання природоохоронного законодавства, що слугуватиме збереженню довкілля та зміцненню правопорядку.

**Ключові слова:** відповідальність, екологічне право, екологічна сфера, екологічна безпека, природне середовище.

**Problem statement.** The concept of ensuring a healthy environment is currently facing a number of legal challenges not only in Ukraine but also around the world. The issue of environmental liability is a "persistent problem", the solution of which is complicated, first of all, by military conflicts, environmental and man-made disasters. The fact that this issue covers virtually all areas of human activity demonstrates the urgency of its solution. The international community is in constant motion to solve the problem of liability in environmental law. Within the framework of a "safe environment" in international documents, the problem of the environment and responsibility for its pollution is becoming increasingly relevant and is being actualised through the prism of educating people in the spirit of "environmental awareness" and "environmental culture".

**State of research.** Among the latest monographic studies in the field of law, it is worth noting the works of Ukrainian researchers such as V.P. Lykhohliad ("International Legal Protection of Environmental Human Rights", 2021), A.V. Pastukh ("Investigation of Crimes Related to Violation of Environmental Safety Rules", 2023), O.A. Buzunko ("Judicial Protection of Environmental Rights in Ukraine", 2023), D. L. Feloniuk ("Modern Environmental Policy of Ukraine: Legal Principles of Institutional and Functional Support for Formation and Implementation", 2023), A. O. Koshlya ("Administrative and Legal Mechanism for Ensuring National Environmental Safety Requirements in Ukraine", 2023), A. Plyokhova ("Legal Support for Environmental Safety in Coal Mining", 2024), etc. These and other works comprehensively explore the specifics of environmental human rights. However, given the constant changes taking place in the environment, it makes sense to further research and develop new concepts of environmental human rights and their protection in view of the current changes in the natural environment.

The purpose and objective of the article is to study the gaps in the current legislation on legal relations in the field of ecology and to assess the current state of environmental liability in Ukraine.

**Presentation of the main material.** The human right to a safe environment for life and health is established by the Constitution of Ukraine (Article 50), which directly follows from the constitutional provision that human life, health and safety are the highest social value (Article 3). Accordingly, ensuring environmental safety and maintaining ecological balance on the territory of Ukraine (Article 16) is the main duty of the state, which is accountable to the people for the state of the environment (Article 14) [1]. At the level of international law, the human right to an ecological environment is underlined in the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, as well as the Declaration on the Right to Development, Directive 2004/35/EC of the European Parliament and of the Council on Environmental Responsibility for the Prevention and Elimination of Environmental Damage, etc. In other words, every state governed by the rule of law is the main guarantor of human



rights, as it actually emphasises the supreme value of a human being, whose life and well-being are inextricably linked and dependent on the quality of the environment. Accordingly, everyone should take care of and be responsible for the ecological state of the environment.

According to the legislation, the concept of "environment" is recognised as the "surroundings" in which an organisation operates, including air, water, land, natural resources, flora, fauna, as well as people and their interaction [2]. Thus, the categories of "ecology" and "environment" are interrelated and cannot be considered separately.

A review of current legislation suggests that responsibility for the state of the environment (ecological condition) of the environment actually establishes two types of responsibility: that of the state to the individual and that of the individual to society. Accordingly, each of these is divided into positive and negative varieties. Considering the positive state responsibility before a person for the ecological state of the environment, it is worth noting such main types as: ensuring environmental safety; maintenance of ecological balance (Article 16 of the Constitution of Ukraine); reporting on the state of the environment (Article 14 of the Constitution of Ukraine) [1]; assessment of the impact on the environment with the mandatory involvement of the public, public associations and individual citizens; study of public opinion and consideration of public interests (Article 4 of the Law of Ukraine "On Environmental Impact Assessment") [3], prevention and elimination of the consequences of environmental damage; identification of risks; encouraging entrepreneurs to take measures and develop their own practice aimed at minimizing the risks of environmental damage [4]; regulation of pollutant emissions into atmospheric air (Article 11 of the Law of Ukraine "On Atmospheric Air Protection") [5]; protection of territories and objects of special ecological value (Article 6); preservation of territories and objects of the nature reserve fund (Article 8) [6]; ensuring rational use, land protection; approval of the priority of environmental safety (Article 5 of the Land Code of Ukraine) [7]; approval of requirements for construction (including airports) based on ecological findings and environmental impact assessment (Article 76 of the Air Code of Ukraine) [8] and rational use of natural resources (Article 7 of the Law of Ukraine "On Building Regulations" [9], etc. It can be noted that the positive responsibility of the state to a person for the ecological state of the environment is reduced to: ensuring the rational use of nature; identifying risks and threats to the environment and preventing them. At the same time, the "negative responsibility" of the state for the ecological state of the environment to a person does not refer to the "guilty without guilt" position, but should be seen as unsatisfactory work of state bodies (except in cases of natural disasters, catastrophes, etc.) to prevent environmental threats. In addition, the negative liability of the state provides for the elimination of the negative consequences of environmental damage and compensation for damage, if any, caused to a person.

On the other hand, a person's positive responsibility for the "environment" includes: preservation and protection of nature, its rational use; implementation of

activities in compliance with environmental safety requirements, environmental regulations and limits on the use of natural resources; compliance with environmental rights and legitimate interests of other legal entities (Article 1 of the Land Code of Ukraine, Article 12 of the Law of Ukraine "On Environmental Protection"); implementation of organizational, economic, technical and other measures to ensure the fulfillment of environmental safety requirements in the field of atmospheric air protection, taking measures to reduce and control the volume of emissions of pollutants and reduce the impact of physical factors; development of special measures for the protection of atmospheric air in case of man-made and natural emergency situations; taking measures to eliminate the causes and consequences of atmospheric air pollution (Article 10 of the Law of Ukraine "On Atmospheric Air Protection"); participation in the discussion of draft legislative acts on the development of protected affairs, the formation of a nature reserve fund and participation in the development and implementation of measures for their protection and effective use, as well as the prevention of the negative impact of economic activity on them; making proposals to include the most valuable natural territories and objects in the nature reserve fund; familiarization with the territories and objects of the nature reserve fund; implementation of public control over the protection of protected areas and objects (Article 10 of the Law of Ukraine "On the Nature and Protected Fund of Ukraine"), etc. In other words, a person's positive responsibility in this matter is: preservation and protection of nature; rational, careful use of it; carrying out activities that will not cause harm; participation in activities to monitor and discuss draft legislation on environmental issues.

Negative human responsibility for the "environment" implies the application of disciplinary, civil, administrative and criminal sanctions to the violator. Such negative liability may include: fines for environmental offences (Section 7 of the Code of Administrative Offences, Article 12(d) of the Law of Ukraine "On Environmental Protection"); compensation for damage caused by pollution and other negative impact on the environment (Article 12(e) of the Law of Ukraine "On Environmental Protection"); imprisonment (Section VIII of the Criminal Code of Ukraine).

Within the framework of "negative liability", an interesting aspect is the concept and determination of the amount of compensation or reimbursement for damage caused by an individual or legal entity. Accordingly, the civil legislation of Ukraine does not contain the concept of damage, nor does the Framework Convention on Climate Change, UN FCCC contain such concepts as "harm" and "loss". It should be noted that other EU private law acts also do not define damage to the environment, although based on national civil law, it is possible to understand damage as "negative consequences". In relation to the understanding of damage to the environment, it is possible to speak of negative consequences resulting from irrational or illegal interference with the environment. Thus, the state's liability for damage to the natural environment is related to the use of natural resources, security and environmental protection.



It should be noted that the case law on environmental disputes shows numerous violations of environmental rights in almost all areas of the environment: atmospheric air; water use; land and forest use; flora and fauna [10], [11, p.7-8]. At the same time, damage is caused in various ways: as a result of negligent protection or criminal use of the natural environment; unreasonable or criminal waste generation, collection or disposal; poor environmental assessment, poor environmental inspections by regulatory authorities; violations in mining, infrastructure, construction, reconstruction; violations in the area of access to environmental information and environmental information, etc. [10]. This is evidenced by the review of the Supreme Court's case law in disputes arising in the field of environmental protection and environmental rights, and accordingly, it can be emphasised that liability for damage should be borne not only by individuals and legal entities, but also by public authorities (the state).

The problem of this issue is unfolding not only in the field of military operations in Ukraine (this is the subject of a separate study), but also in the context of public involvement in the protection of the natural environment. Despite the provisions of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), which is part of Ukrainian legislation, its provisions are not applied or applied incorrectly, in particular, the proclaimed right of each individual or community to protect and improve the environment "for the benefit of present and future generations" is ignored [12]. This is also stated in the Guidelines for Ensuring Access to Environmental Information and Public Participation in Environmental Decision-Making [13].

For example, various rallies and protests that were widespread in different regions of Ukraine among the population to protect the environment before martial law in some cases received a positive resolution from the authorities. In addition, citizens are less and less likely to take the initiative to protect their environmental rights. According to experts, this is due to the following factors: low level of public trust in government agencies and courts; difficulties in preparing relevant claims and a significant amount of court fees [11, p.23]. This state of affairs occurs regardless of the fact that, for example, the panel of judges of the Administrative Court of Cassation of the Supreme Court (2019), having considered an administrative case on the claim of an individual against the Ministry of Ecology and Natural Resources of Ukraine, noted that the right to appeal against a regulatory act related to the constitutional right to environmental safety belongs to everyone and can be exercised by citizens personally or jointly through citizens' associations. It also emphasises that the state is obliged to ensure public access to procedures for appealing against actions and omissions of state bodies and private individuals that violate the requirements of national environmental legislation. Representatives of the public have the right to challenge violations of national environmental legislation, regardless of whether such violations relate to the rights to information and public participation in decision-making guaranteed by the Aarhus Convention or not [10], [11, p.28].

All of this leads to the conclusion that there is an inequality of responsibility between the subjects of environmental law.

**Conclusions.** Overcoming environmental problems is possible only through a system of improving legislation, which should clearly establish the relationship of mutual responsibility between the state and the individual. A review of the current legislation suggests that the state's positive responsibility to the individual for the ecological state of the environment is to ensure the rational use of nature; identify risks and threats to the environment and prevent them. Negative state responsibility should be seen as the unsatisfactory work of state bodies (except in cases of natural disasters, catastrophes, etc.) to prevent environmental threats. In addition, the negative liability of the state provides for the elimination of the negative consequences of environmental damage and compensation for damage, if any, caused to a person.

In the context of inadequate state environmental control and a high level of environmental violations, it would be correct to introduce public control and give such control broad powers to ensure compliance with environmental legislation, which will serve to preserve the environment and strengthen law and order.

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