

THE HUMAN RIGHT TO AN ENVIRONMENT SAFE FOR
LIFE AND HEALTH: LEGAL REGULATION,
CONTEMPORARY CHALLENGES AND COMPARATIVE
PERSPECTIVES

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Abstrak: Penelitian ini bertujuan untuk mengungkap hak asasi manusia terkait lingkungan yang aman bagi kehidupan dan kesehatan. Artikel ini mengulas hubungan antara konsep "hak asasi manusia" dan "hak warga negara" dalam ranah lingkungan, mencakup "hak ekologis," "tanggung jawab ekologis," dan "hak asasi manusia terhadap lingkungan yang aman bagi kehidupan dan kesehatan." Konflik yang dipicu oleh Rusia menyebabkan kerusakan signifikan pada lingkungan, infrastruktur sosial dan industri, serta flora dan fauna. Dasar metodologi penelitian ini adalah metode dialektika dalam pengetahuan ilmiah. Melalui penerapan metode ini, penelitian ini menyelidiki aspek-aspek hukum, fungsional, organisasional, dan prosedural yang berkaitan dengan hak asasi manusia terhadap lingkungan yang aman bagi kehidupan dan kesehatan. Kesimpulan Penelitian ini adalah bahwa dasar hukum untuk mengkhususkan hak-hak ekologis sebagai lembaga terpisah dalam kerangka hak konstitusional, dengan definisi yang dihasilkan. Ditekankan bahwa warga negara Ukraina dan organisasi non-pemerintah telah melakukan upaya besar untuk mendokumentasikan kerusakan. Secara khusus, organisasi seperti EcoAction dan Environment People Law secara rutin mengumpulkan dan mempublikasikan data relevan. Dengan demikian, platform "EcoZagroza" secara berkala merilis perkiraan kerusakan yang disebabkan oleh kejahatan lingkungan, yang dihitung oleh Inspektorat Lingkungan Hidup Negara Ukraina.

Kata Kunci: Hak asasi manusia, hukum tata negara, pelestarian lingkungan hidup, peraturan perundang-undangan lingkungan hidup, hukum.

Abstract: This research aims to elucidate the human rights associated with a safe environment conducive to life and health. The article explores the interconnection between the concepts of "human rights" and "citizen's rights" within the environmental realm, encompassing "ecological rights," "ecological responsibilities," and "the human right to an environment safe for life and health." The conflict initiated by Russia has resulted in extensive damage to the environment, social and industrial infrastructure, as well as flora and fauna. The methodological foundation of this study lies in the dialectical method of scientific knowledge. Through the application of this method, the research comprehensively examines legal, functional, organizational, and procedural aspects pertaining to the essence of human rights concerning a safe environment for life and health. The conclusions draw attention to the legal basis for designating ecological rights as a distinct institution within the constitutional rights framework, with a derived definition. Emphasis is placed on the considerable efforts undertaken by Ukrainian citizens and non-governmental organizations to document damages. Notably, organizations like Eco Action and Environment People Law consistently gather and disseminate relevant data. The "EcoZagroza" platform routinely releases estimates of damages resulting from environmental crimes, and these assessments are compiled by the State Environmental Inspectorate of Ukraine.

Keywords: Human right, constitutional law, environmental conservation, environmental legislation, law.



INTRODUCTION

The issue of rights and freedoms of a person and a citizen, social origins of such rights and freedoms, their genesis and implementation is one of the most urgent problems of the historical and socio-political development of mankind. It has already been relevant for thousands of years, remaining in the center of research attention of many scientists.

An essential factor in the development of modern society in Ukraine, a means of forming social and legal statehood is presented as the constitutional declaration of individual's rights and freedoms as the content and direction of the state's activity. Among the citizens' rights defined by the Fundamental Law of Ukraine, environmental rights occupy a special place, since their conditionality is determined by the value of a person, the need for his/her protection within the limits of state and non-state institutions, as well as by provision of an opportunity to freely stay and interact with the surrounding natural environment. In this regard, the scientific analysis of the constitutional environmental rights of a person and a citizen acquires a special importance.¹

From the legal point of view, understanding of rights attached to humans and citizens can be approached in various ways. This leads to differences in the definition of the concept of this institution. Without resorting to a discussion about the definition and features of human rights, we should note that in our mind their most justified understanding consists in viewing these rights as certain social opportunities legally enshrined by the state and determined by the social, economic, cultural, and environmental conditions of society.

The full-scale Russian-Ukrainian war, which began on 24 February, 2022, caused devastating damage to the human environment, industrial and social infrastructure, and the surroundings of Ukraine. The war has caused and is continuously causing destruction of flora and fauna, soils, lands, subsoil. The nature reserve fund has found itself in the zone of hostilities and occupation.² These negative consequences cause significant violations of the human constitutional right to a safe environment, which actualizes the study of legal possibilities to overcome such negative consequences.

Addresses to the Institute of Environmental Rights of Citizens, the general characteristics of some of them are contained in the works by Y. Leheza, P. M. Rabinovych, Yu. S. Shemshuchenko and others. As noted by P. M. Rabinovych: "... only the category of possibility (freedom) allows the most adequate reflection of the ontological essence of human rights".³ First of all, it is an opportunity to choose an option of behavior, freedom of behavior within the framework established by the rule of law. This possibility should not be considered in isolation, because it always relies on assistance and help from the state and other entities.⁴ And another important aspect of the essence of human rights

¹Halaburda, Nadiia. Leheza, Yevhen, Chalavan, Viktor. Yefimov, Volodymyr. Yefimova, Inna. "Compliance with the principle of the rule of law in guarantees of ensuring the legality of providing public services in Ukraine". *Journal of law and political sciences*. Vol. 29, Issue 4, (2021). 100-121.

² Antonyuk U.V. "Protection of environmental rights in Ukraine in conditions of military aggression. Law and public administration" No. 3. (2022). 42-47. Retrieved from: http://pdu-journal.kpu.zp.ua/archive/3_2022/6.pdf

³ Rabinovych, P. . "Basic human rights: concept, classification, trends". *Ukrainian journal of human rights*". No. 1.. (1995), 14-22.

⁴ Dymko, I., Muradian, A., Manzhula, A., Rudkovskiy, O., Leheza, Ye. "Integrated approach to the development of the effectiveness function of quality control of metal products".. *Eastern European Journal of Enterprise Technologies*. 6/3 (90). (2017). 26-34. doi: 10.15587/1729-4061.2017.119500.

consists in the fact that humans are given not only the possibility of certain active (dynamic) actions, but also the possibility of using and consuming certain social goods.

From the point of view of Yu.S. Shemshuchenko, environmental rights in the system of constitutional rights of humans and citizens, characteristics of their place and role require a preliminary remark and the essence of this remark consists in determining correlation of such notions as “human rights” and “citizen’s rights” (in particular, regarding the system of constitutional rights of humans and citizens in the environmental aspect). If human rights are enshrined in the legislative acts of a specific state, they become the rights of citizens of that state. Therefore, when it comes to rights of a citizen, this view emphasizes connection of this citizen with a specific state as well as consolidation of his/her rights by the respective domestic legislation.⁵

Being directly related to constitutional environmental rights determines the right of everyone to use natural objects of the people’s property rights (Art. 13 of the Constitution of Ukraine), on safe, proper and healthy working conditions (part. 4 of Article 43 of the Constitution of Ukraine), as well as the right of everyone to health care, medical assistance and medical insurance (Art. 49 of the Constitution of Ukraine).⁶ At the same time, the last two rights go beyond purely environmental rights. However, attention of our research will be directed specifically to the constitutional environmental rights enshrined in Article 50 of the Fundamental Law of Ukraine.⁷

The purpose of the research consists in disclosing human rights to an environment safe for life and health.

To achieve the purpose, the author set the following tasks:

1. Reveal interpretation of such legal categories as “environmental rights”, “environmental rights and freedoms of humans and citizens”, “human rights to an environment safe for life and health” as well as contents of these categories.
2. Reveal the mechanism of compensation for damages of human rights to an environment safe for life and health in conditions of war.

METHOD

The methodological basis of the research is represented as a comprehensive approach, which involves the use of general scientific, general scientific, interdisciplinary and special legal methods of studying human rights to an environment safe for life and health in legal doctrine, international law, national legislation and legal practice.

The method of cognition effectively affects the methodological principles of improving the concept of the human right to an environment safe for life and health; with

⁵ *Shemshuchenko, Yu. S. Legal problems of ecology. 1989. Kyiv. Scientific opinion, 232.*

⁶ Leheza, Ye. O., Filatov, V., Varava, V., Halunko, V., Kartsyhin, D. (2019). “Scientific and practical analysis of administrative jurisdiction in the light of adoption of the new code of administrative procedure of Ukraine.” *Journal of Legal, Ethical and Regulatory Issues*. Vol. 22, Issue 5. 2019. P. 1-8. Retrieved from :<https://www.abacademies.org/articles/scientific-and-practical-analysis-of-administrative-jurisdiction-in-the-light-of-adoption-of-the-new-code-of-administrative-proced-8634.html>

⁷ Leheza, Y., Shcherbyna, Bogdan. Leheza, Yulia. Pushkina, Olena & Marchenko O. (2023). “Features of Applying the Right to Suspension or Complete/ Partial Refusal to Fulfill a Duty in Case of Non-Fulfilment of the Counter Duty by the Other Party According to the Civil Legislation of Ukraine.” *Revista Juridica Portucalense*, 340–359. Retrieved from <https://revistas.rcaap.pt/juridica/article/view/29662>

the help of this method it is possible to characterize all the shortcomings of the latter, as well as to trace its history of formation and development.

The formal-logical method the traditional method for jurisprudence (it is also called dogmatic), and this method consists in the logical processing of legal norms. The formal-logical method requires of the researcher a certain order of knowledge, consistency, persuasiveness and accuracy. Compliance with formal and logical requirements is an important condition for ensuring reliability and scientificity of obtaining information. It makes it possible to reveal inconsistency of certain legal norms with the realities of social life, conflicts of legal acts, etc.

With the help of the formal-logical method, it is possible to interpret the concept of the human right to an environment safe for life and health and to highlight the consequences of such an interpretation. For an effective and deep scientific analysis of a legal phenomenon, the dogmatic method must be used in combination with other methods. The only drawback of using solely this method consists in the lack of complete interpretation of the concept of the human right to an environment safe for life and health.

The dogmatic method is used when interpreting a specific rule of law, in this case it is the Law of Ukraine “On Environmental Protection”. With the help of this method you can turn the result of the interpretation of the concept of the human right to an environment safe for life and health into a logical conclusion. A detailed interpretation of the concept of the human right to an environment safe for life and health gives us an opportunity to analyze all the main elements of this term. It is worth noting that the human right to an environment safe for life and health is detailed enough in the Law of Ukraine “On Environmental Protection” as opposed to the interpretation.

The process of harmonization of environmental law of Ukraine with European and the International law raises the role and significance of the comparative legal method to a new level. This is a method of studying the legal systems of different states by comparing homogeneous legal norms, institutions, principles, etc. and the practice of their application. Comparison is the main logical technique within this method. The specified method makes it possible to identify similarities and differences between the phenomena of constitutional and legal reality, as well as to determine their relations with each other and with other phenomena, common and special aspects in their development; it also helps to establish regularities by comparing objects at different times, comparing their properties in past with the same properties in the present state in order to establish changes or trends of development. For a rational and complete regulation of the concept of the human right to an environment safe for life and health and for systematization of the legal mechanism for implementing access to it, it is advisable to use the comparative legal method. The importance of this method consists in the study of the European experience of the human right to an environment safe for life and health.

The comparative legal method is used to clarify common and distinctive features of the concept of the “human right to an environment safe for life and health” in different legal systems. For a complete and comprehensive study of the above-mentioned concept, two approaches to this concept within the indicated method should be used, in particular, normative approach and functional approach. Application of a normative approach will make it possible to understand developmental patterns of the “human right” concept in different legal systems. In turn, the application of the functional approach will reveal

distinctive and similar features of the concept and contents of the human right to an environment safe for life and health in 50 different legal systems.

RESULTS AND DISCUSSIONS

The human right to a safe environment is the central one to the system of environmental rights, since it is on its basis that the entire system is formed. According to Article 50 of the Constitution of Ukraine, everyone has the right to an environment that is safe for life and health and to compensation for damages inflicted through the violation of this right. Everyone is guaranteed the right of free access to information about the state of the environment, about the quality of food products and household items, as well as the right to dissemination of this information.⁸ Such information cannot be classified (kept in secret) by anyone.

The initial and starting element of environmental rights consists in the ability of a person to use unpolluted natural resources: drinking clean water, breathing clean air, living in an ecologically balanced environment (including using the beneficial properties of natural resources, but in relation to safe, unpolluted, high-quality natural objects). And this is possible only if there is complete and reliable information about the state of the environment and the ability to use information to the full extent while implementing one's environmental interests.

At the same time, it is worth making the following remark. Including in the content of environmental rights certain opportunities for citizens to take actions to protect and maintain the appropriate quality of the natural environment does not at all mean turning a right into an obligation. The concept of obligation is most accurately revealed through the category of legal necessity. Therefore, provisions regarding rational nature use, compliance with environmental requirements in the process of any impact on nature, etc., reflect obligations/liabilities of citizens. Those norms that establish provisions regarding public participation in nature conservation activities, in conducting environmental assessments, etc. (which ultimately are also aimed at protecting, maintaining and ensuring the proper quality of the environment) express behavioral possibilities of human and citizen that allow him/her to freely and independently choose the type and extent of such behavior.

Regarding the ratio of environmental rights and obligations Horbalinskiy Volodymyr aptly notes the following: "The specificity of the content of the ecological-procedural legal relationship consists in the fact that such content is most concretely manifested not so much in the presence of subjective rights, legal obligations and powers among its participants, but in the fact that the named structural elements (components) in specific legal relationships are organically interconnected and always correspond to each

⁸ Bonyak, V., Minka, T., & Mysliwa, O. "Origins of the institution of corruption in post-socialist states: economic, legal and institutional aspects." *Economic Annals-XXI*, 177(5-6), 22-33. (2019). doi: <https://doi.org/10.21003/ea.V177-02>

other. An ecological-procedural legal relationship cannot exist outside of such a correlative connection of these components.”⁹

Environmental rights also include certain possibilities of behavior in relation to these natural goods, aimed at maintaining the normal state of the environment, demanding from other subjects the proper performance of their obligations and duties, etc.

It should be noted that in the system of human environmental rights we are interested not in all, but only in the constitutional rights and freedoms of humans and citizens, and namely in those which, in our opinion, form the basis of the entire system of environmental rights. They are enshrined in the norms of the Constitution of Ukraine; they are aimed at meeting environmental (ecological) interests and needs of humans and citizens; they form a qualitatively new group of constitutional opportunities and must be provided by the state and society with the help of a set of existing measures, among which informational and legal ones are becoming increasingly important.¹⁰

Guaranteeing an ecologically safe environment for people's life and health is one of the main principles of environmental protection, in accordance with the Law of Ukraine “On Environmental Protection”.¹¹ According to V. V. Ivanyushenko, the right to an environment safe for life and health is a constitutionally enshrined and governmentally guaranteed set of opportunities for everyone (historically determined by the degree of development of society) to freely use a safe environment, the condition of which meets the established standards of its quality, in order to satisfy one's vital needs and interests.¹² The issue of compensation for damage involves accurate economic calculations, harmonious interaction of general principles laid down in legislation and requirements of civil legislation for compensation for damage caused to the environment, as well as specific conditions reflecting specific circumstances, natural phenomena, complex natural mechanisms, interaction between these natural phenomena and objects, impact on human health, changes in natural conditions.¹³

Compensation for the damage caused and restoration of the right to a safe environment requires special efforts in the conditions of the legal regime of martial law. One of these efforts was the adoption on 15 March, 2022 of the Law of Ukraine “On

⁹ Horbalinskiy, Volodymyr, Leshchenko, Oleksandr. Mashchenko, Olha. Leheza, Yevhen. Prymakov, Kamil. “Ways to protect the rights of individuals in administrative proceedings: legal regulation and international experience international experience: Vías de protección de los derechos de las personas en los procesos administrativos: regulación jurídica y experiencia internacional”. *Cuestiones Políticas*, 41(77), (2023). 324-334 DOI: <https://doi.org/10.46398/cuestpol.4177.22>

¹⁰ Leheza, Y., Shcherbyna, Bogdan. Leheza, Yulia. Pushkina, Olena & Marchenko O. (2023). “Features of Applying the Right to Suspension or Complete/ Partial Refusal to Fulfill a Duty in Case of Non-Fulfillment of the Counter Duty by the Other Party According to the Civil Legislation of Ukraine.” *Revista Jurídica Portucalense*, 340–359. Retrieved from <https://revistas.rcaap.pt/juridica/article/view/29662>

¹¹ Kalyshuk L. A. . “The right of citizens to an environment safe for life and health and the mechanism of its protection in the European Court of Rights a person”. *Legal scientific electronic journal*. No. 1. (2015). 86-89.

¹² Ivanyushenko V.V. “The right of a person and a citizen to an environment safe for life and health: concept and content”. *Legal Bulletin of "KROK" University...*, Vol. 6. Vol. 1. (2010). 17–23

¹³ Leheza, Ye. Shablysty, V. Aristova, I. V. Kravchenko, I. A. Korniakova, T. (2023). “Foreign Experience in Legal Regulation of Combating Crime in the Sphere of Trafficking of Narcotic Drugs, Psychotropic Substances, their Analogues and Precursors: Administrative and Criminal Aspect.” *Journal of Drug and Alcohol Research*. Vol. 12 . No. 4, 1-8. DOI: <https://doi.org/10.4303/JDAR/236240>

Amendments to Certain Legislative Acts of Ukraine Regarding Activities in the Environmental Sphere and Civil Protection for the Period of Martial Law and the Reconstruction Period”. This legal act is necessary to record the harmful effects of war on the state of the environment.¹⁴

The advantage of this law, according to U.V.Antonyuk, is that it regulates environmental activities not only during the period of martial law, but also during the reconstruction period. The norms of this law are aimed at ensuring the defense capability of the state during martial law; speeding up restoration of the infrastructure and economy of Ukraine during the reconstruction period, returning to normal life activities of citizens after the end of the war. All this will contribute to ensuring protection of everyone’s right to a clean environment safe for life and health and environmental rights derived from it.¹⁵

The Government of Ukraine collects and systematizes materials on threats to the environment as a result of the actions of the Russian army and develops ways to eliminate these threats. The Ministry of Environmental Protection and Natural Resources of Ukraine is working on restoration and reconstruction of natural objects.¹⁶

In addition, in August 2021, the Office of the Prosecutor General established the Specialized Environmental Prosecutor's Office, which is an independent structural unit, and also carries out organization and procedural management of pre-trial investigations, aims to support public prosecution in criminal proceedings about criminal offenses in the sphere of environmental protection.

Prosecutors are already involved in war crimes proceedings that caused damage to the environment, including ecocide, attacks on nuclear power facilities, petroleum storage depots, hydrotechnical structures.¹⁷

The SaveEcoBot resource provides an opportunity to report on pollution of water resources with foreign substances or objects (for example, intentional pollution or pollution occurring due to military actions, dumping or spilling pollutants into lakes, rivers or other water bodies); littering of territories with items of military equipment, biological remains (single placement and/or accumulation of projectiles, missiles, etc.); destruction or damage to industrial facilities (hit by projectiles, destruction and fires at enterprises); damage to objects of radiation danger (hit by ammunition or other impact on sources of ionizing radiation and nuclear installations); causing damage to soils and vegetation on

¹⁴ Matviichuk, Anatolii. Shcherbak, Viktor. Sirko, Viktoriia. Malieieva, Hanna. Leheza, Yevhen.. “Human principles of law as a universal normative framework: Principios humanos del derecho como marco normativo universal.” *Cuestiones Políticas*, 40(75), (2022). 221-231. <https://doi.org/10.46398/cuestpol.4075.14>

¹⁵ Antonyuk U.V. “Protection of environmental rights in Ukraine in conditions of military aggression. Law and public administration” No. 3. (2022). 42–47. Retrieved from: http://pdu-journal.kpu.zp.ua/archive/3_2022/6.pd

¹⁶ Zhukova, Yevheniia. Bryl, Kostyantyn. Svystun, Larysa. Kobrusieva, Yevheniia. Leheza, Yevhen. “Legal regulation of public administration of education and science: Regulación legal de la administración pública de educación y ciencia.” *Cuestiones Políticas*, 41(76), (2023). 336-346. <https://doi.org/10.46398/cuestpol.4176.18>

¹⁷ Zadyraka, Nataliia. Leheza, Yevhen. Bykovskiy, Mykola. Zheliezniak, Yevhenii. Leheza, Yulia. “Correlation of Legal Concepts of Administrative Procedure and Administrative Liability in the Sphere of Urban Planning.” *Jurnal cita hukum indonesian law journal*. Vol. 11 No. 1, (2023). 33-44, DOI: <https://doi.org/10.15408/jch.v11i1.31784>

natural areas and lands of agricultural importance (displacement, destruction of the top layer of soil due to shell explosions, movement of heavy equipment), etc. There are other resources for recording environmental crimes.¹⁸

The consequences of damage and toxic pollution caused by military actions are particularly severe, given that Ukraine contains 35 percent of Europe's biodiversity and about a quarter of the Earth's black earth ("chernozem"), a rich, highly fertile soil type. Hundreds of nature conservation areas are or were under occupation, including up to 23 national parks, natural and biosphere reserves. The large carbon footprint of war also causes significant damage.¹⁹

As of 18 January, 2023, the EcoZagroza platform of the Ministry of Environmental Protection and Natural Resources of Ukraine claimed to have verified 2,215 reports of alleged environmental crimes performed by the Russian occupiers since the beginning of the war; that has been done based on the work of more than 16,000 Ukrainian citizens, together with environmental experts, non-governmental organizations and other structures.²⁰

EcoZagroza platform also provides estimates of damages from these environmental crimes, these estimates are calculated by the State Environmental Inspection and expressed in the Ukrainian currency.

The Ministry of Environment has developed and approved special methods for calculating damages. Calculations based on these methods are carried out by the State Environmental Inspectorate. The total estimate of damage to the environment already exceeds 1.9 trillion hryvnias or more than 52.2 billion dollars.²¹

Thus, the Ministry of Environmental Protection and Natural Resources approved the relevant Methods for calculating the amount of damage caused, namely: Methodology for determining the amount of damage caused to land and soil as a result of emergency situations and/or armed aggression and hostilities during martial law, approved by the Order No. 167 of the Ministry of Environmental Protection and Natural Resources dated 4 April, 2022; Methodology for calculating unorganized emissions of polluting substances or a mixture of such substances into atmospheric air as a result of emergency situations and/or during martial law and determining the amount of damage caused, approved by the Order No 175 of the Ministry of Environmental Protection and Natural Resources

¹⁸ Kobrusieva, Yevheniia. Leheza, Yevhen. Rudoi, Kateryna. Shamara, Oleksandr. Chalavan, Viktor. "International standards of social protection of internally displaced persons: administrative and criminal aspects". *Jurnal cita hukum indonesian law journal*. Vol 9, No 3, (2021). 461-484. DOI: <https://doi.org/10.15408/jch.v9i3.23752>

¹⁹ Leheza, Yevhen. Pisotska, Karina. Dubenko, Oleksandr. Dakhno, Oleksandr. Sotskyi, Artur "The Essence of the Principles of Ukrainian Law in Modern Jurisprudence." *Revista Jurídica Portucalense, December*, (2022). 342-363. DOI: [https://doi.org/10.34625/issn.2183-2705\(32\)2022.ic-15](https://doi.org/10.34625/issn.2183-2705(32)2022.ic-15)

²⁰ Korneyev, M., Zolotukhina, L., Hryhorash, T., Leheza Ye., Hryhorash O., "The development of small business as a source of formation of local budget revenues in Ukraine." *Investment. Management and Financial Innovations*. 15 (1). (2018). 132-140. DOI:10.21511/imfi.15(1).2018.12

²¹ Environmental accountability, justice and reconstruction in the Russian war on Ukraine. Retrieved from <https://www.sipri.org/commentary/topical-backgrounder/2023/environmental-accountability-justice-and-reconstruction-russian-war-ukraine#:~:text=Since%202001%20the%20Ukrainian%20criminal,disaster%2C%20punishable%20by%20imprisonment>

dated 13 April, 2022; Methodology for determining damages caused as a result of water pollution and/or clogging, arbitrary use of water resources, approved by the Order No 252 of the Ministry of Environmental Protection and Natural Resources dated 21 July, 2022; Methodology for determining damage caused to the surrounding natural environment within the territorial sea, exclusive maritime (economic) zone and internal sea waters of Ukraine in the Azov Sea and Black Sea, approved by the Order No 309 of the Ministry of Environmental Protection and Natural Resources dated 19 August, 2022; Methodology of determining damage and losses caused to the territories and objects of the nature reserve fund as a result of the armed aggression of the Russian Federation, approved by the Order No 366 of the Ministry of Environmental Protection and Natural Resources dated 15 September, 2022; Methodology for determining the amount of compensation for damages caused to the state as a result of arbitrary use of subsoil, approved by the Order No 424 of the Ministry of Environmental Protection and Natural Resources dated 13 October, 2022. However, even presence of the specified documents does not allow to calculate the damages in full. For example, in the USA and some European countries such a concept as “ecosystem services” has been introduced.²²

It is worth paying attention to international cooperation for the purpose of solving the problem. Thus, on 17 May, 2023, the European Union and 43 other countries signed an agreement to create a Register of Damage caused by the aggression of the Russian Federation against Ukraine.

If it is borrowed for Ukrainian legislation, it will be possible to more accurately calculate the damage caused by the destruction of, for example, one tree. In such a case, the damage assessment will include the time required to restore such a tree. It will be taken into account how much greenhouse gases are absorbed by this tree, how much it affects human life and the environment as a whole, etc.

Constitutional environmental rights occupy one of the important places in the system of constitutional human and a citizen’s rights and freedoms in Ukraine. The peculiarity of their place is determined by the fact that they constitute an independent group of the basic subjective rights of humans and a citizens and satisfy the needs related to human life and health; they can be separated into a separate legal institution. The constitutional enshrining of a number of environmental rights indicates their importance and, in connection with this, the need for proper provision.

Recognizing a human personality, his/her rights and freedoms as the highest social value means (from a political and legal point of view) a change in approaches to the relationship between the state and the individual. Taking into account the principle of coherence of actions performed by legislative and judicial authorities in a state governed by the rule of law, it should be noted that the main value guide during the adoption of laws, by-laws and individual decisions should not be the interests of the state, its bodies and officials, but the natural inalienable environmental rights of humans. Having recognized the environmental rights of a person at the constitutional level, Ukraine has taken a step towards creating a legal state governed by the rule of law and confirmed its

²² Volobuieva, O. Leheza, Ye. Pervii, V. Plokhuta, Ye. Pichko, R. “Criminal and Administrative Legal Characteristics of Offenses in The Field of Countering Drug Trafficking: Insights from Ukraine.” *Yustisia*. Vol 12, No 3. (2023). 262-277. DOI: <https://doi.org/10.20961/yustisia.v12i3.79443>

intention to build such a state. Constitutional regulation of environmental rights will contribute to strengthening the authority of the state, its entry into the international arena, and its entry into the European and world legal space.

The Ecodozor platform, developed by the Zoï Environment Network in collaboration with the United Nations Environment Program (UNEP), the Organization for Security and Co-operation in Europe (OSCE) and the REACH humanitarian initiative, recorded more than 29,000 registered cases of “war damage” between February and December 2022, which affected critical infrastructure, industrial facilities, agricultural land and settlements. Local non-governmental organizations such as EcoAction and Environment People Law are also leaders in data collection, complementing the efforts made by the Ukrainian authorities.

The International Register of Damages Caused by the Aggression of the Russian Federation Against Ukraine launched the future international compensation mechanism, which is designed to compensate for the damages caused by the Russian Federation’s aggression against Ukraine and this Register has been created as a legal entity for an initial period of three years with the possibility of extending its operation. Physically, the Registry will be located in the Hague (the Netherlands), but a subsidiary office in Ukraine is also planned for better communication with the government and the general public. The main purpose of the Register is to record evidence and claims about losses, damages or injuries caused by Russia. Also, the Statute of the Registry establishes the criteria for the admissibility of such evidence, in particular, statements must be submitted regarding damages, losses or damage that have been caused: on 24 February, 2022 or later; on the territory of Ukraine within its internationally recognized borders, including territorial waters; by internationally illegal actions of the Russian Federation in Ukraine or against Ukraine.

CONCLUSION

Therefore, the Russian military aggression caused a violation of the constitutional human right to a safe environment. The challenge for Ukraine consisted in creation of a mechanism for ensuring the right to a safe environment and compensation for damage caused to the natural environment as a result of hostilities. Although the first steps regarding the regulatory provision of the specified compensations have already been taken, the legal regulation needs further improvement.

Taking into account the performed analysis of the essence of environmental rights and taking into account the constitutional nature of these rights, the basic constitutional environmental rights and freedoms of humans and citizens can be defined as a set of opportunities and means established by the norms of the Constitution of Ukraine aimed at meeting environmental needs and interests, ensuring environmental safety and protecting the natural environment. Attention is drawn to the fact that when using the SaveEcoBot resource in Telegram or Viber messengers citizens of Ukraine can inform the Ministry of Environmental Protection and Natural Resources of Ukraine about the facts of committing environmental crimes, and in the future this will become the basis for lawsuits filed to the International Court of Justice of the United Nations in order to obtain

compensation for damages from the aggressor state.

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