



Верховний
Суд

FACILITATING JUDICIAL PROCEEDINGS RELATED TO THE PUBLIC INTERESTS IN ENVIRONMENTAL PROTECTION

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Judges of the Supreme Court, Ukraine

Problem:

- ✓ Low level of legal education of citizens in the context of opportunities of public to appeal in the court against violation of environmental law and to file complaints on protection of environmental interests
- ✓ Controversial application by courts of the provisions of the Aarhus Convention in part of the right of citizens and NGOs to apply to the court, namely: the prevailing of the principle of procedural interests in environmental matters

FORMS OF ACCESS TO JUSTICE IN UKRAINE:

- ✓ Appealing against decisions, actions (inaction) of public authorities and other entities, which break national environmental law
- ✓ Lawsuit as a legal remedy, which is enforced by means of filing claims to halt environmentally hazardous activities, compensate for damages, etc.

Analysis of research results

Caselaw of the Supreme Court

Judgment of the Supreme Court of 02.10.2019 in case No. 826/9432/17 on the claim of Volodymyr Rashko against the Ministry of Ecology and Natural Resources of Ukraine, the Ministry of Agrarian Policy and Food of Ukraine, and the State Forest Resources Agency of Ukraine and the I.I. Schmalhausen Institute of Zoology (third parties), on recognition of unlawful actions, inactivity, recognition of agreed restrictions for animals hunting, cancellation of the order and the obligation to take certain actions

Analysis of research results

Caselaw of the Supreme Court

- ✓ It is unacceptable to restrict interpretation of existing legislation of Ukraine (as it incorporates the Aarhus Convention) concerning the right to apply to the court for protection of a legally guaranteed interest in the area of ecological safety
- ✓ Everyone has the right for protection against violation of constitutional right to a safe environment, which can be realized by citizens individually or collectively - through the association of citizens (community)

Judgment of the Supreme Court of 29.10.2020 in case No. 373/239/18:

- ✓ In the case on appealing against conclusions of an environmental inspection during the construction of a biomass power plant, the courts, having found an infringement of environmental law and of the rights of the applicant, but in view of incorrect application of substantive law as to the methods of judicial protection and having violated the rules of procedural law, came to the early conclusion to dismiss the claim due to her choice of ineffective legal remedy
- ✓ The courts confirmed the applicant's right to apply to the court according to Part 2 of Article 9 of the Aarhus Convention

Judgment of the Supreme Court of 01.10.2020 in case No. 904/4470/19:

In the case on termination of the lease for land, which is covered by environmental fund under the claim of an environmental protection organization, the court concluded the following: the applicant's right to environmental protection must be adequate and shall not violate another person's right for peaceful possession of the property. In this case, it does not appear that the consequences of the defendant's violations (destruction of part of the leased land area of environmental protection value) cannot be eliminated in any other legally way and manner, that is, not otherwise than by the satisfaction of the claim. Satisfaction of the claim will deprive the defendant of the right to use lands for which there are no violations of the law as well

**Resolutions of the Supreme Court
of 21.10.2019 in case No. 826/3820/18
of 25.06.2020 in case No. 826/11374/15
of 11.08.2020 in case No.821/837/17**

- ✓ The courts confirmed the public's right to apply directly to the court for protection of environmental rights

Measures promoting access to justice

- ✓ Increasing citizens and judges' awareness of the importance of environmental protection, boundaries of citizens' environmental rights and direct connection between environmental rights and fundamental human right to life
- ✓ Improving the practical skills and knowledge of judges on application of environmental legislation in the court proceedings
- ✓ Creation of legislative prerequisites for removing barriers to access to justice in environmental protection and environmental human rights

TAKE CARE OF the environment!

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