

## ЦИВІЛЬНЕ ПРАВО І ПРОЦЕС

UDC 340: 504

**Iryna Lychenko**

Lviv Polytechnic National University,  
Educational and Scientific Institute of Law,  
psychology and innovative education  
Head of the Civil Law and Procedure Department  
iryna.o.lychenko@lpnu.ua  
ORCID: 0000-0002-4838-3579

**Khrystyna Marych**

Lviv Polytechnic National University,  
Educational and Scientific Institute of Law,  
psychology and innovative education  
Candidate of Jurisprudence,  
Associate Professor of the Department of Civil Law and Procedure  
khrystyna.m.marych@lpnu.ua  
ORCID: 0000-0003-0088-980X

### ENVIRONMENTAL SECURITY IN UKRAINE: ADMINISTRATIVE-LEGAL SUPPORT

<http://doi.org/10.23939/law2022.34.096>

© *Личенко І., Марич Х., 2022*

The article is devoted to the problem of administrative and legal provision of environmental safety, an administrative mechanism, the main purpose of which is to regulate public relations to preserve human health and life, prevent harm to the environment, deteriorate public health.

Particular attention is paid to determining the role of current legislation, modern environmental programs in the structure of administrative and legal support of environmental security.

Today there is a need for a fundamentally new attitude of the state to the problems of environmental protection and environmental security, the transformation of administrative and legal support of environmental security in accordance with modern living conditions society. It was stated that ensuring environmental safety and maintaining ecological balance on the territory of Ukraine is not only a strategic goal, but also a duty of the state. And the peculiarity of the administrative and legal mechanism for environmental safety is that the use of administrative and legal means is the prerogative of the authorities.

It was found that administrative and legal support of environmental security in Ukraine is a set of administrative and legal guarantees and functional (activity) means of maintaining

**the state of protection of environmental and legal opportunities of the population and the state, safe environment, which guarantees the necessary conditions to protect the rights of individuals for a healthy and safe environment.**

**Particular attention is paid to finding ways to transform modern administrative legislation in terms of strengthening the protection of environmental security of Ukraine. The main directions of Improving the efficiency of administrative and legal support of environmental security in Ukraine are clarified.**

**Emphasis was placed on the expediency of adopting the Ecological Code, creation of the ecological police as a law enforcement institution in the field of ecology in the system of the National Police of Ukraine, practical importance of strengthening administrative responsibility for misdemeanors in the ecological sphere.**

**Key words: environmental security, provision of environmental security, administrative-legal support, administrative-legal mechanism, law regulation.**

**Formulation of the problem.** Acute environmental problems for Ukraine today are: air pollution due to excessive emissions from stationary and mobile sources, pollution of water bodies, and consequently low water quality, including drinking water, unsatisfactory maintenance of landfills, reduction of forest area, due to mass illegal logging, loss of biodiversity and natural habitats, degradation of ecosystems, etc. All this in turn leads to an increased risk of environmental catastrophes, with consequences that are already global in nature, both for the environment and for humans. The growing environmental risk to the environment and human life and health due to environmentally hazardous activities is one of the main problems, which requires the development of effective mechanisms to stop, eliminate and prevent the deterioration of the environmental situation in the country.

There is a need for a fundamentally new attitude of the state to the problems of environmental protection and environmental security. Of particular importance for overcoming these problems is the administrative-legal provision of environmental security in Ukraine, as it allows using public law to guarantee the right of everyone to a healthy and safe environment.

**Analysis of the study of the problem.** Problems of administrative-legal support of environmental security in Ukraine were studied by B. Gamalyuk, O. Zarzhytsky, V. Lazarenko, O. Pronevych, L. Yurchenko. Important in the field under study are the works of a number of other domestic scientists, including V. Andreytsev, V. Anikiev, G. Balyuk, V. Gobela, V. Dobrovolsky, V. Dudyuk, P. Zakharova, R. Oliynychuk. However, they do not present a comprehensive analysis of improving the efficiency of administrative-legal support of environmental security in Ukraine.

**The aim** is to determine and analyze the administrative-legal support of ecological safety in Ukraine.

**Presenting main material.** Environmental security is an important legal category, to ensure the practical implementation of which are aimed the norms of various sectors.

It was enshrined in law for the first time in the Declaration of State Sovereignty of Ukraine of July 16, 1990.

Later, declaring in Art. 16 and 17 of the Constitution of Ukraine [1] ensuring environmental security is an important function of the state; the legislator attributed it to the highest social values of our country.

The legislator in Art. 50 of the Law of Ukraine "On Environmental Protection" also paid attention to the definition of this category, arguing that this is the state of the environment, which provides appropriate prevention of environmental degradation, danger to life, ensuring the implementation of the necessary environmental, political, economic, technical, organizational, state and legal and other measures [2].

The right of everyone to a safe environment for life and health (the right to environmental security), as a subjective right enshrined in both the Constitution of Ukraine [1] and the Law of Ukraine “On Environmental Protection” [2].

First of all, the right to environmental security is a passive right, and ensuring environmental security is primarily the responsibility of the state, including through the implementation of economic, technical, organizational, legal and other measures and determining the legal conditions for implementation, protection and defense of the human right to a safe environment for life and health.

The emphasis in the definition of environmental security on its connection with the protection of human rights is fundamental, correlates with the humanistic content of legal science, human-centered ideals of democratic change in our country. This is fully consistent with the content of the general category of “security”. It is interpreted as a situation when someone or something is not threatened [3, p. 137].

Ensuring environmental security and maintaining ecological balance on the territory of Ukraine is not only a strategic goal, but also a duty of the state. And the peculiarity of the administrative-legal mechanism of environmental security is that the use of administrative-legal means is the prerogative of the authorities. Accordingly, the achievement of the goal of the administrative-legal mechanism to ensure environmental security will contribute to the solution of those tasks identified in the administrative reform, including the formation of effective government at both central and local levels, the formation of a modern system of local self-government, introduction of a new ideology of the functioning of the executive power and local self-government as activities to ensure the realization of the rights and freedoms of citizens. After all, the goal of administrative reform is also the formation of a system of public administration that will be close to the needs and demands of the people, and the main priority of its activities will be to serve the people and national interests.

The formation of the tasks of the mechanism of administrative-legal support of environmental security takes into account the fact that their further implementation is the prerogative of state bodies. Thus, according to the Constitution of Ukraine, ensuring environmental security and maintaining ecological balance on the territory of Ukraine is the duty of the state. However, in order to achieve the ultimate goal – to ensure the state of an ecologically safe environment for human life and health – it is necessary the maximum public participation in the administrative-legal provision of environmental security. After all, the administrative-legal mechanism for ensuring environmental security includes both the activities of state structures and the activities of civic institutions, interconnected by a single goal, but with their own methods and ways. Therefore, another important task of the administrative-legal mechanism of environmental security is to involve and expand public participation in solving problems of environmental security.

In the administrative-legal provision of environmental security, the public participates through: the creation and operation of public environmental organizations; the participation in public hearings and discussions, including participation in discussions and submission of proposals to draft regulations, materials on the location, construction and reconstruction of facilities that may adversely affect the state of the environment, submission of proposals to public authorities and local governments, legal entities involved in decision-making on these issues; the participation in public discussions on the impact of planned activities on the environment; the participation in the process of strategic environmental assessment; the implementation of public environmental control (activities of public environmental inspectors), etc.

The implementation of administrative-legal support of environmental security is carried out through an administrative mechanism, the main purpose of which is to regulate public relations to preserve human health and life, prevent harm to the environment, deteriorating health of the population, legalize and protect the environment.

The content of normative administrative-legal support of ecological security by means of provisions of administrative, jurisdictional, law enforcement character reflects desirable for the state conditions of maintenance of ecologically safe condition of environment. They are enshrined in the Code of

Administrative Offenses, the laws of Ukraine “On Environmental Protection” of June 25, 1991, “On Ensuring Sanitary and Epidemiological Welfare of the Population” of February 24, 1994, “On High-Risk Facilities” of January 18, 2001 and others.

Activities in the field of environmental security are regulated by regulations, both at the legislative level and at the level of bylaws.

A special role in the field of administrative-legal support of environmental security is played by environmental programs aimed at preserving the environment, improving the quality of the environment as a whole and its individual components. In particular, it is possible to set long-term goals and develop a strategy for the relevant period, bringing together all stakeholders and the necessary resources through the development and approval of national environmental programs. Thus, the development of environmental programs is organized by central and local executive bodies, local governments. The public is also involved in the development and preparation of environmental programs, through the publication of draft environmental programs for study by citizens, public preparation of comments and suggestions on proposed projects, public hearings on environmental programs [2; 4].

Administrative-legal support of environmental security in Ukraine serves a single purpose: to form the necessary basis for the development, promotion, improvement of environmental security in Ukraine by improving existing legislation; creation of an effective system of subjects and measures of administrative-legal regulation of ecological security; ensuring effective measures to prevent the negative impact of anthropogenic activities on the environment and human health, as well as assessing the degree of environmental security of economic activity and the environmental situation in certain areas and facilities; prevention of emergencies of ecological, industrial nature and effective elimination of their consequences [5, p. 11]. Administrative-legal support of environmental security in Ukraine is achieved through complete regulation through the rules of administrative law of public relations that arise in the process and for their implementation, as well as providing with these rules appropriate guarantees, which together with other legal and non-legal guarantees create a stable system opportunities to use legal values in the state [6, p. 91]. The most important value in such conditions is environmental security as a state of protection of vital interests of person, society, state and environment, which guarantees the right of everyone to a healthy and safe environment and the necessary conditions for environmental protection, reproduction of natural objects and satisfaction of other rights of citizens and interests of the state [7, p. 109–114]. It should be agreed that through perfect administrative-legal support the unity of normative, institutional, functional and guarantee component of purposeful influence on public relations is achieved [8, p. 124–128].

Administrative-legal support of environmental security in Ukraine is a set of administrative-legal guarantees and functional (active) means of maintaining the state of protection of environmental-legal opportunities of the population and the state, safe environment, which guarantees the necessary conditions to protect the right to health and safe environment.

Administrative-legal guarantee of environmental security is to create a stable basis for ensuring the state of protection of environmental and legal opportunities of the population and the state, environmental security through a system of regulatory administrative-legal support, organizational-legal and procedural guarantees.

Transformation of administrative legislation in terms of strengthening the protection of environmental security of Ukraine requires improving the system of legal measures through which the regulation of the organization and functioning of subjects and objects of management in the field of environmental security, protection of legal opportunities of the person in the environmental sphere [9, p. 186].

Improving the efficiency of administrative-legal support of environmental security in Ukraine concerns several areas: 1) institutional separation of the subjects of environmental security in Ukraine, endowed with the functions of public administration bodies in the environmental sphere; 2) improvement of administrative-legal support for the activities of the subjects of environmental security in Ukraine; 3) systematization of legislation to ensure environmental security; 4) expansion of control powers of

territorial communities in the field of environmental security, delegation of certain powers to territorial communities (supervision of green areas, land littering and hunting, control over compliance with the regime of nature reserves of local importance, etc.); 5) replacement of the system of total planned supervision (control) with the monitoring of offenses in the environmental sphere on the basis of risk-oriented markers (i. e. rejection of the practice of scheduled inspections and response to identified facts of offenses); 6) strengthening of administrative responsibility for environmental misdemeanors, the amount of fines; 7) formation of the administrative-legal basis for the restoration of territories that have suffered environmental damage in connection with the activities of the joint forces operation (anti-terrorist operation).

Systematization of regulations in the field of environmental security is recognized by many scientists as an important prerequisite for environmental security in our country.

The main directions of the state policy of Ukraine in the field of environmental protection, use of natural resources and environmental security of March 5, 1998 № 188-98-VR is recognized the need to systematize environmental legislation [10, p. 248].

Adoption of the Environmental Code is urgently needed today. This legal act could not only become a systematic collection of norms contained in separate legal acts today, but could also reflect new approaches to public administration in the environmental sphere, would be the basis for expanding the control powers of local communities in the field of environmental protection, safety, defined the normative basis for replacing the system of supervision (control) with a system for monitoring violations of environmental legislation on the basis of risk-oriented markers (i. e. rejection of the practice of scheduled inspections and response to identified facts of offenses). It would become the basis for delimiting the functions of specially authorized bodies of state control in the field of nature management, environmental security, etc.

Some scientists in their works justify the feasibility of creating an environmental police as a law enforcement institution in the field of environment in the system of the National Police of Ukraine [11, p. 150–161; 12, p. 6–15]. Due to the availability of a wide range of preventive and coercive means of influence, the activities of such a unit of the National Police can have a positive impact on environmental security. The activities of such an entity to ensure environmental security in the areas affected by the joint force operation would be particularly valuable.

According to O. Pronevych, such reforms are needed in the context of municipalization of policing in the field of environmental protection, the introduction of state-private partnership in the protection of natural resources, establishing partnerships between police and the public in combating environmental delinquency, etc. [12, p. 10].

Interestingly, such experience exists in France, where since 1992 the function of ensuring environmental security has been performed by the gendarmerie, which includes a special department for coordination of actions in the field of environmental security.

It is important to strengthen administrative liability for misdemeanors in the environmental sphere. V. Pytz rightly notes that increasing the size of sanctions in the form of fines will help reduce the number of violations in the environmental sphere. When increasing the size of fines, it should be borne in mind that sanctions for administrative offenses in the environmental sphere should not be equal to or significantly exceed the maximum amount of similar punishment for criminal acts in the field of ecology, i. e. exceed criminal liability, as it violates the logic of construction and punishment system in the articles of the Special Part of the Criminal Code of Ukraine and penalties for committing administrative offenses in the Code of Administrative Offenses and other legislative acts [13, p. 11].

**Conclusions.** The implementation of administrative-legal support of environmental security is carried out through an administrative mechanism, the main purpose of which is to regulate public relations to preserve human health and life, prevent harm to the environment, deteriorating health of the population, legalize and protect the environment. Administrative norms are the basis for the formation of

organizational, legal and procedural guarantees of environmental security. The role of administrative-legal support of environmental security in Ukraine is growing every year. Determining the main directions of improving the efficiency of administrative-legal support of environmental security in Ukraine requires taking into account new challenges and threats to environmental security. They must be taken into account when forming a strategic program for reforming this area. Means of administrative law are crucial for overcoming a number of administrative and law enforcement problems in the field of environmental security, capable of accumulating the strength of public administration bodies in the environmental sphere, law enforcement agencies, local communities, and the public to ensure the right to a healthy and safe environment.

#### СПИСОК ВИКОРИСТАНИХ ДЖЕРЕЛ

1. Конституція України від 28 червня 1996 року № 254к/96-ВР. *Відомості Верховної Ради України*. 1996. № 30. Ст. 141.
2. Про охорону навколишнього природного середовища : Закон України від 25 червня 1991 року № 1264-ХІІ. *Відомості Верховної Ради України*. 1991. № 41. Ст. 546.
3. Словник української мови : в 11 т. / за ред. П. Й. Горещького, А. А. Бурячок та ін. Київ, 1970–1980. Т. 1. Київ, 1970. 799 с.
4. Про державні цільові програми : Закон України від 18 березня 2004 року № 1621-ІV. *Відомості Верховної Ради України*. 2004. № 25 Ст. 352.
5. Лазаренко В. А. Адміністративно-правове регулювання екологічної безпеки в Україні : автореф. дис. ... канд. юрид. наук: спец. 12.00.07. Київ, 2010. 20 с.
6. Адміністративно-правове забезпечення прав і свобод людини та громадянина : [навч. посіб.] / Ієрусалімова І. О., Ієрусалімов І. О., Павлик П. М., Удовенко Ж. В. Київ : Знання, 2007. 223 с.
7. Бригадир І. В. Щодо визначення екологічної безпеки як правової категорії. *Форум права*. 2010. № 4. С. 109–114.
8. Тиліпська О. Ю. Поняття і зміст адміністративно-правового забезпечення права на мирні зібрання в Україні. *Актуальні проблеми вітчизняної юриспруденції*. 2016. Вип. 3. С. 124–128.
9. Комарницький В. М., Сабіров Р. Ф. Механізм адміністративно-правового забезпечення екологічної безпеки: поняття та складові. *Вісник Луганського державного університету внутрішніх справ імені Е. О. Дідоренка*. 2015. Вип. 1. С. 179–188.
10. Основні напрямки державної політики України в галузі охорони довкілля, використання природних ресурсів та забезпечення екологічної безпеки : Постанова Верховної Ради України від 5 березня 1998 року. № 188-98-ВР. *Відомості Верховної Ради України*. 1998. № 38. С. 248.
11. Гамалюк Б. М. Діяльність Національної поліції України з дотримання державних екологічних гарантій: теоретико-методологічний аспект. *Науковий вісник Львівського державного університету внутрішніх справ : Серія юридична*. 2016. № 3. С. 150–161.
12. Проневич О. С. Інституціоналізація екологічної поліції: стан адміністративно-правового дискурсу. *Журнал східноєвропейського права*. 2018. № 47. С. 6–15.
13. Пиць В. М. Адміністративно-правові засади забезпечення екологічного правопорядку : автореф. дис. ... канд. юрид. наук: 12.00.07. Львів, 2015. 21 с.

#### REFERENCES

1. *Konstytutsiia Ukrainy* [Constitution of Ukraine]. Vidomosti Verkhovnoi Rady Ukrainy. 1996. No 30. P. 141.
2. *Pro okhoronu navkolyshnoho pryrodnoho seredovishcha* [On environmental protection]. Zakon Ukrainy vid 25 chervnia 1991 No. 1264-XII. Vidomosti Verkhovnoi Rady. 1991. No. 41. P. 546.
3. Horetskoho P. Y., Buriachok, A. A. ta in. (1970). *Slovyk ukrainskoi movy : v 11 t.* [Dictionary of the Ukrainian language: in 11 volumes]. Kyiv, 1970–1980. T. 1. Kyiv. 799 p.
4. *Pro derzhavni tsilovi prohramy* [About state target programs]: Zakon Ukrainy vid 18 bereznia 2004 roku No. 1621-IV. Vidomosti Verkhovnoi Rady Ukrainy. 2004. No. 25. P. 352.
5. Lazarenko V. A. (2010). *Administratyvno-pravove rehuliuвання ekolohichnoi bezpeky v Ukraini* [Administrative and legal regulation of environmental safety in Ukraine]: avtoref. dys. ... kand. yuryd. nauk : 12.00.07. Kyiv. 20 p.

6. Ierusalimova I. O., Ierusalimov I. O., Pavlyk, P. M., Udovenko Zh. V. (2007). *Administratyvno-pravove zabezpechennia prav i svobod liudyny ta hromadianyna* [Administrative and legal support of human and civil rights and freedoms]. Kyiv: Znannia. 223 p.
7. Bryhadyr I. V. (2010). *Shchodo vyznachennia ekolohichnoi bezpeky yak pravovoi katehorii* [Regarding the definition of environmental safety as a legal category]. Forum prava. No. 4. P. 109–114.
8. Tylipska O. Yu. (2016). *Poniattia i zmist administratyvno-pravovoho zabezpechennia prava na myrni zibrannia v Ukraini* [The concept and content of administrative and legal support of the right to peaceful assembly in Ukraine]. Aktualni problemy vitchyznianoï yurysprudentsii. Vyp. 3. P. 124–128.
9. Komarnytskyi V. M., Sabirov R. F. (2015). *Mekhanizm administratyvno-pravovoho zabezpechennia ekolohichnoi bezpeky: poniattia ta skladovi* [The mechanism of administrative and legal support of environmental safety: concepts and components]. Visnyk Luhanskoho derzhavnogo universytetu vnutrishnikh sprav imeni E. O. Didorenka. 2015. Vyp. 1. P. 179–188.
10. *Osnovni napriamky derzhavnoi polityky Ukrainy v haluzi okhorony dovkillia, vykorystannia pryrodnykh resursiv ta zabezpechennia ekolohichnoi bezpeky* [The main directions of the state policy of Ukraine in the field of environmental protection, use of natural resources and ensuring environmental safety]: Postanova Verkhovnoi Rady Ukrainy vid 5 bereznia 1998 r. No. 188-98-VR. Vidomosti Verkhovnoi Rady Ukrainy. 1998. No. 38. P. 248.
11. Hamaliuk B. M. (2016). *Diialnist Natsionalnoi politsii Ukrainy z dotrymanna derzhavnykh ekolohichnykh harantii: teoretyko-metodolohichnyi aspekt* [Activities of the National Police of Ukraine on compliance with state environmental guarantees]. Naukovyi visnyk Lvivskoho derzhavnogo universytetu vnutrishnikh sprav : Seriiia yurydychna. No. 3. P. 150–161.
12. Pronevych O. S. (2018). *Instytutsionalizatsiia ekolohichnoi politsii: stan administratyvno-pravovoho dyskursu* [Institutionalization of environmental police: the state of administrative and legal discourse]. Zhurnal skhidnoievropeiskoho prava. No. 47. P. 6–15.
13. Pyts V. M. (2015). *Administratyvno-pravovi zasady zabezpechennia ekolohichnoho pravoporiadku* [Administrative and legal principles of ensuring environmental law and order]: avtoref. dys. ... kand. yuryd. nauk: 12.00.07. Lviv. 21 p.

Дата надходження: 01.04.2022 р.

**Ірина Личенко**

Національний університет “Львівська політехніка”,  
доктор юридичних наук, професор,  
завідувач кафедри цивільного права та процесу  
Навчально-наукового інституту  
права, психології та інноваційної освіти  
iryana.o.lychenko@lpnu.ua  
ORCID: 0000-0002-4838-3579

**Христина Марич**

Національний університет “Львівська політехніка”,  
кандидат юридичних наук,  
доцент кафедри цивільного права та процесу  
Навчально-наукового інституту  
права, психології та інноваційної освіти  
khrystyna.m.marych@lpnu.ua  
ORCID: 0000-0003-0088-980X

## **ЕКОЛОГІЧНА БЕЗПЕКА В УКРАЇНІ: АДМІНІСТРАТИВНО-ПРАВОВЕ ЗАБЕЗПЕЧЕННЯ**

**Розглянуто проблему адміністративно-правового забезпечення екологічної безпеки, адміністративний механізм, основною метою якого є регулювання суспільних відносин**

щодо збереження здоров'я та життя людей, запобігання заподіяння шкоди навколишньому середовищу, погіршення здоров'я населення.

Особливу увагу приділено визначенню ролі чинного законодавства, сучасних екологічних програм у структурі адміністративно-правового забезпечення екологічної безпеки.

Зауважено, що на сьогодні назріла потреба принципово нового ставлення держави до проблем охорони навколишнього середовища та екологічної безпеки, трансформація адміністративно-правового забезпечення екологічної безпеки відповідно до сучасних умов життя суспільства. Констатовано, що забезпечення екологічної безпеки і підтримання екологічної рівноваги на території України є не лише стратегічною ціллю, але і обов'язком держави. А особливістю адміністративно-правового механізму забезпечення екологічної безпеки є і те, що застосування засобів адміністративно-правового спрямування є прерогативою владних органів.

З'ясовано, що адміністративно-правове забезпечення екологічної безпеки в Україні є сукупністю адміністративно-правових гарантій і функціональних (діяльних) засобів підтримання стану захищеності еколого-правових можливостей населення та держави, безпечного стану довкілля, за якого гарантуються необхідні умови для захисту права окремого індивіда на здорове та безпечне навколишнє середовище.

Особливу увагу присвячено пошуку шляхів трансформації сучасного адміністративного законодавства в умовах посилення захисту екологічної безпеки України. З'ясовано основні напрями підвищення ефективності адміністративно-правового забезпечення екологічної безпеки в Україні.

Наголошено на доцільності прийняття Екологічного кодексу, створення екологічної поліції як правоохоронної інституції в сфері екології в системі Національної поліції України, практичній значущості посилення адміністративної відповідальності за проступки в екологічній сфері.

Ключові слова: екологічна безпека, забезпечення екологічної безпеки, адміністративно-правове забезпечення, адміністративно-правовий механізм, правове регулювання.