

DEPÓSITO LEGAL ZU2020000153

ISSN 0041-8811

E-ISSN 2665-0428

# Revista de la Universidad del Zulia

Fundada en 1947  
por el Dr. Jesús Enrique Lossada



**Ciencias**  
**Exactas,**  
**Naturales**  
**y de la Salud**

**Año 14 N° 40**

**Mayo - Agosto 2023**

**Tercera Época**

**Maracaibo-Venezuela**

## Methods for the Protection of Environmental Rights and Interests Through Legal Proceedings: Administrative Aspect and Criminal Aspect

Yevhen Leheza \*

Volodymyr Horbalinskiy \*\*

Vasyl Berezniak \*\*\*

Vadym Khashev \*\*\*\*

Volodymyr Oleksenko \*\*\*\*\*

### ABSTRACT

The object of the investigation consists of the disclosure of procedural legislation, through the implementation of effective mechanisms of legal incidence on procedural aspects, which constitute the framework for the protection of the violated environmental rights and interests of citizens or other subjects of environmental legal relationships. Main content. A certain innovation may be the introduction of the institution of group lawsuits (massive, collective) in Ukraine, which will simplify access to justice for citizens, it will increase its quality and, due to the reduction of the burden on the courts, will accelerate the consideration of cases, including those of an environmental nature. Methodology: The methodological basis of the research is the dialectical method of scientific knowledge; Through the application of this method, the legal, functional, organizational and procedural aspects of the protection of environmental rights and interests in the courts were considered. conclusions. The article argues the need for new forms of protection of the rights and interests of a significant number of people; this is absolutely necessary in the context of the specificity of environmental disputes.

KEY WORDS: Administrative tribunals, criminal courts, environmental conservation, environmental legislation, judiciary, law.

\*Professor, Doctor of Science in law, *Professor at the Department of Public And Private Law*, University of Customs and Finance, Ukraine. ORCID ID: <https://orcid.org/0000-0001-9134-8499>. Email: yevhenleheza@gmail.com

\*\*Associate professor of the department of general legal disciplines, Law Faculty, Dnipropetrovsk State University of Internal Affairs, Ukraine. ORCID: <https://orcid.org/0000-0002-6203-6151>. E-mail: Gorbalinskiy@gmail.com

\*\*\*Senior Researcher, Doctor of Science in law, Head at the Department of Criminal Law and Criminology, Dnipropetrovsk State University of Internal Affairs, Ukraine. ORCID ID: <https://orcid.org/0000-0001-5690-4736>. Email: vasilyberezniak@gmail.com

\*\*\*\*Associate Professor, Candidate of Science in law, Associate Professor at the Department of Criminal Law and Criminology, Dnipropetrovsk State University of Internal Affairs, Ukraine. ORCID ID: <https://orcid.org/0000-0002-2240-0713>. Email: khvg7747@gmail.com

\*\*\*\*\*Volodymyr Oleksenko, senior lecturer of the department of operative and investigative activities of the Dnipropetrovsk State University of Internal Affairs, Ukraine. ORCID: <https://orcid.org/0000-0002-5996-7182>. E-mail: vg.oleksenko@gmail.com

Recibido: 16/12/2022

Acceptado: 09/02/2023

# Métodos para la protección de los Derechos e Intereses Ambientales a través de Procesos Judiciales: Aspecto Administrativo y Aspecto Penal

## RESUMEN

El objeto de la investigación consiste en la divulgación de la legislación procesal, a través de la implementación de mecanismos efectivos de incidencia jurídica sobre los aspectos procesales, que constituyen el marco de protección de los derechos e intereses ambientales vulnerados de los ciudadanos u otros sujetos de las relaciones jurídicas ambientales. Contenido principal. Una cierta innovación puede ser la introducción de la institución de demandas grupales (masivas, colectivas) en Ucrania, lo que simplificará el acceso a la justicia para los ciudadanos, aumentará su calidad y, debido a la reducción de la carga de los tribunales, acelerará la consideración de casos, incluidos los de carácter ambiental. Metodología: La base metodológica de la investigación es el método dialéctico del conocimiento científico; mediante la aplicación de este método se consideraron los aspectos jurídicos, funcionales, organizativos y procesales de la protección de los derechos e intereses ambientales en los tribunales. Conclusiones. El artículo argumenta la necesidad de nuevas formas de protección de los derechos e intereses de un número significativo de personas; esto es absolutamente necesario en el contexto de la especificidad de las disputas ambientales.

**PALABRAS CLAVE:** Tribunales administrativos, juzgados penales, conservación ambiental, legislación ambiental, poder judicial, Derecho.

## Introduction

The right to an environment safe for life and health as well as the right to compensation for damage caused by violation of this right, the right to free access to information about the state of the environment, quality of food products and household items, as well as the right to disseminate such information have the status of constitutional environmental rights. In case of violated rights and freedoms of a person and a citizen, the Constitution of Ukraine established a possibility of direct appeal to the court, it is determined that the jurisdiction of courts extends to any legal dispute (part 2 of Article 124 of the Constitution of Ukraine). At the same time, the following forms of protection of violated environmental rights and interests are distinguished: administrative one, public one and judicial one. The administrative method of protection consists in the activities of bodies (officials) authorized to consider cases of administrative offenses that encroach on ecologically safe state of the environment. While using methods provided by the legislation

public associations also perform the functions concerning protection of the right to a safe environment. In the opinion of Buha Volodymyr administrative and public methods of protection have certain advantages over judicial ones, as they are simpler, more accessible and more efficient (Buha et al., 2022). Most of the European Union countries (Great Britain, the Netherlands, Denmark, etc.) also evaluate court (juridical) proceedings as a last resort, and prefer active participation in development of governmental decisions at the initial stage as well as administrative measures to protect environmental rights. This is often explained by the lack of legal resources and an excessively long process of rule-making at the level of the Union (Halaburda, et al., 2021).

The purpose of the research consists in disclosure of procedural legislation through implementation of effective mechanisms of legal influence on procedural aspects forming the framework for protection of violated environmental rights and interests of citizens or other subjects of environmental legal relations.

### 1. Literature review

However, there are situations when going to court is a real opportunity to protect the violated right to environmental safety. It is, for example, so when it comes to the absence of specifically defined holders of subjective environmental rights, and the fact of causing material or moral damage to an unspecified circle of persons is obvious, which gives grounds to suggest impersonal ecological public interest in the respective case. This publication is devoted to the problematic aspects concerning implementation of the right to appeal to the court for protection of a violated ecological interest and the related subjective environmental right - the right to a safe natural environment. Scientific attention to the issues of protection of environmental rights and interests, including in court, is multifaceted, multidimensional and periodic and it is urgent today as well.

Dynamic development of various spheres of social life requires a quick, accurate and adequate response, including search and implementation of new effective mechanisms of legal influence on certain processes. A certain innovation may be the introduction of the institution of group (mass, collective, class-action) lawsuits in Ukraine, which will simplify access to justice for citizens, increase its quality, and, due to reduced burden on courts it will speed up the consideration of cases, including those of an environmental nature.

According to the procedural legislation of Ukraine, the right to appeal to the court for

protection belongs to every person in case of violation, non-recognition or contestation of his/her rights, freedoms or interests. The list of persons who have the right to apply to court for protection of their rights, freedoms and interests is enshrined in Article 3 of the Civil Code of Ukraine, based on the above mentioned article all persons who have the right to apply to the court for protection can be conditionally divided into three groups: 1) persons who apply to the court for protection of their rights, freedoms or interests; 2) persons and bodies applying to the court for protection of rights, freedoms and interests of other persons; 3) persons and bodies that apply to the court for protection of state and public interests (Kobrusieva et al., 2021).

## 2. Materials and methods

This research is based on works by foreign and Ukrainian researchers concerning disclosure of procedural legislation through implementation of effective mechanisms of legal influence on procedural aspects forming the framework for protection of violated environmental rights and interests of citizens or other subjects of environmental legal relations.

With the help of the epistemological method, the role of the peculiarities of the legal regulation of procedural legislation was clarified by implementing effective mechanisms of legal influence on procedural aspects taken as the basis for protection of violated environmental rights and interests of citizens or other subjects of environmental legal relations, , thanks to the logical-semantic method the conceptual apparatus was deepened, the essence of the concepts of procedural legislation was defined by implementing effective mechanisms of legal influence on procedural aspects forming the framework for protection of violated environmental rights and interests of citizens or other subjects of environmental legal relations. By using the system-structural method, constituent elements of such a mechanism of procedural legislation were investigated through implementation of effective mechanisms of legal influence on procedural aspects forming the framework for protection of violated environmental rights and interests of citizens or other subjects of environmental legal relations. The purpose of the research consists in disclosure of procedural legislation through implementation of effective mechanisms of legal influence on procedural aspects forming the framework for protection of violated environmental rights and interests of

citizens or other subjects of environmental legal relations.

### 3. Results and discussion

The guarantee for implementation of the block of environmental rights defined by the so-called Aarhus Convention is represented as the right to access to justice on environmental issues. An analysis of the legislation and provisions of the Aarhus Convention allows us to distinguish the following forms of access to justice:

- 1) appeal of decisions, actions or inaction of the state authorities, local self-government bodies, officials and officials;
- 2) a lawsuit form of protection (a lawsuit for compensation for damage caused to the health and property of citizens as a result of a negative impact on the natural environment; a lawsuit for the termination of environmentally hazardous activities (legal protection in the form of an injunction).

In addition, in recent years, judicial practice has begun to be formed and this gives an opportunity to represent interests of future generations (acting in the interests of others without a power of attorney) (Kolinko et al., 2019).

In the scientific literature, protection of the right to a safe environment (which is a basic environmental right with other environmental rights and forms of their direct implementation being aimed at an efficient implementation of it) is defined as the activity of competent state bodies, authorized persons and public organizations, aimed at stopping violations, recognition and restoration of this right, as well as at eliminating obstacles in its implementation by means of applying legal liability in appropriate cases (Leheza et al., 2019). Specificity of the subjective right to environmental safety is that its content includes the right to protection, and the basis of this right consists in the interest of ecological well-being of everyone in particular and of all citizens in general (Nalyvaiko et al., 2018).

In practice, there are many problems that prevent legal protection of environmental rights. A striking example is Part 3 of Article 50 of the Law of Ukraine “On Environmental Protection”; it stipulates that activities of individuals and legal entities that cause damage to the natural environment can be stopped by a court decision. A prerequisite for the application of this rule is an ongoing environmental offense that is subject to termination. However, such a norm is imperfect, as it only provides for a possibility to terminate activities if their results have already occurred and are obvious (Leheza, 2022). Environmental rights

and interests are difficult to restore (Nalyvaiko et al., 2022). Taking into account the fact that the rules on environmental responsibility are intended to perform primarily a preventive and, of course, a compensatory and restorative function act as a way to protect property and non-property rights and legitimate environmental needs and interests of citizens one should agree with the opinion of Leheza Yevhen and Pisotska Karina regarding the need to supplement the specified norm with the provision that activities that threaten to violate environmental rights of citizens (i.e. they are actually potentially dangerous) can be stopped by a court decision (Leheza et al., 2022).

Article 3 of the Civil Procedure Code of Ukraine has established the rule of a person's interest in initiating a civil case in court. When defining the scope of persons who can apply to the court for protection of environmental rights and interests, the Aarhus Convention contains a certain innovation not only for Ukrainian legislation, but also for the national legislation of most countries, since it gives a broad interpretation of the "interested public", which has the right to appeal to the court (p.2 Art.5) (Matviichuk et al., 2022). "Interested public" has the following meanings: 1) the public, which is or may be affected by the decision-making process, on issues related to the environment; 2) the public, which has an interest in this process. At the same time, clarification is given: "For the purposes of this definition, non-governmental organizations that contribute to protection of the environment are considered to have an interest." The legal basis for applying to court without proving legal (direct) interest is also presented in clause "ж" of Article 21 of the Law of Ukraine "On Environmental Protection". According to this clause public environmental associations have the right to file lawsuits to the court for compensation of damage caused by violation of legislation on the protection of the natural environment, including damage to health of citizens and property of public associations (Matviichuk et al., 2022). Ukrainian practice of protection performed by environmental protection public organizations has considerable positive experience. Among public human rights environmental organizations, the greatest successes in the protection of human environmental rights have been achieved by "EcoPravo-Kyiv", "EkoPravo-Kharkiv", "EcoPravo-Lviv" (since 2005 EPL - "Environment People Law", Lviv), the Kharkiv Human Rights Protection Group, etc. (Leheza et al., 2020).

Environmental damage is damage to the surrounding natural environment, which is formed by natural resources and the relationships between them, i.e. an environment where

objects of private and public property, as well as objects that do not belong to anyone, are considered in their inseparable totality (Tylchyk et al., 2022). Hence, the right to safety and quality of these objects has a pronounced public meaning. Public principles of this right are manifested, first of all, in the characteristics of its object, which is represented by the environment as a special material good for public use, which is not directly related to the personality of the right holder and which does not serve the purpose of individualizing the personality (Pryimachenko et al., 2018). The unique essence of the right to a favorable environment creates a situation where protection of the subjective right to a favorable environment is satisfied not only by the interest of one person who applied for protection, but also by protection of the public environmental interest - environmental protection (Villasmil-Espinoza et al., 2022). In the context of the above, it seems necessary to use such an important means of protecting the environmental rights of large groups of citizens as the possibility of filing group (collective, mass) lawsuits (Lata et al., 2022).. This institute is not reflected in the currently active procedural codes as an independent procedural institution. However, in accordance with Part 2 of Article 5 of the Civil Procedure Code of Ukraine, in the event that the law or contract does not determine an effective way of protecting violated, unrecognized or disputed rights, freedoms or interests of the person who appealed to the court, the court, in accordance with the requirements set out in the lawsuit of this person can determine by its decision such a method of protection that does not contradict the law (Matviichuk et al., 2022).

A group lawsuit allows one or several members of this group to protect the interests of a large group of people without special authorization from people who are a part of the group although its personal composition may be unknown at the time of filing the lawsuit.

The following features of a lawsuit for protection of an indefinite scope of persons are distinguished (they reflect specificity of this scope of people):

- large number or uncertainty of personal composition of the group on the side of the plaintiff, which does not allow, as a rule, to involve all the victims as co-plaintiffs;
- identity of claims of all persons whose interests are protected by a collective lawsuit;
- sameness of factual and legal grounds of lawsuit claims;
- availability of a general method of legal protection (for example, prohibition of specific actions by the defendant, or, on the contrary, obliging the defendant to a certain

option of actions);

- obtaining a general positive result by the group members in the event of court's satisfaction of the class-action lawsuit (Leheza et al., 2022).

The procedure for resolving cases regarding protection of rights and interests of an unspecified group (scope) of persons must be enshrined in legislation by introducing the relevant procedural regulations in the CPC of Ukraine.

One of the factors that ensure an efficient implementation of the right to environmental protection in the USA is presented as public control over compliance with environmental legislation, which is manifested in the institution of "citizen lawsuits". The peculiarity of this legal institution within the framework of the US environmental law and the US legal system is that it acts as a means that ensures compliance with legislation in the sphere of environmental protection. With its help, the range of entities that monitor compliance with environmental legislation has been expanded. The essence of "citizen lawsuits" institution is that any subject can file a lawsuit against any body or department, including the United States, for non-compliance with the norms of environmental legislation. Defendants may also include direct subjects of nature management. That is, any person who has become aware of any facts of violation of environmental legislation has the right to apply measures leading to liquidation of such a violation, including filing lawsuits to the court. In case of a successful resolution of the case, the plaintiff within the framework of the "citizen lawsuits" institution can receive (according to the court's decision) a payment corresponding to the attorney's fee from the state treasury (Matviichuk et al., 2022). Therefore, the following proposal is essential

It is advisable to establish the institution of "citizen lawsuits" in Ukrainian legislation. This would make it much easier for citizens to address the court, and it would relieve them of the need to prove legal interest, violation of their right to a safe environment, and would contribute to strengthening public control over compliance with environmental legislation (Matviichuk et al., 2022).

A vivid example of judicial protection of the right to a safe environment of a large group of people is the decision of the Court of Appeal of the Kyiv region dated 19 May, 2017 in the case of compensation for moral damage in the lawsuits against defendants from "Pobutrembudmateriali" Limited Liability Company, filed by "BRSM - Nafta" Limited

Liability Company. The matter is about compensation for moral damage caused by a fire at the oil depot that occurred in the summer of 2015. In support of the claims, the plaintiffs noted that on 08 June, 2015, a fire broke out at the oil depot of “Pobutrembudmateriali” LLC, and it lasted for more than 10 days. The result of the fire was damage to the natural environment with created danger to life and health of people. The plaintiffs, as residents of the specified region, suffered moral damage in the form of a number of psycho-traumatic factors related to health damage, destruction of plaintiffs’ property (namely, the vegetables that the plaintiffs grew, consumed and partially sold for receiving a certain income). The plaintiffs asked to collect moral damages in the amount of UAH 263,088 from the defendants. The appeal was partially satisfied (Bezpalova et al., 2021). This decision is notable in terms of the detailed and comprehensive approach of the appellate court to the analysis of all factual circumstances and those of legal significance in the case, realizing the territory of the damage, which creates presence of non-personalized public interest in the case. Despite the specific procedural participation of persons on the side of the plaintiff in each specific case, in general, disputed relations may indicate protection of rights of an undefined scope of persons (Leheza et al., 2018).

## Conclusions

So, speaking about the introduction of a mass lawsuit into domestic legislation, Nataliya Kuznetsova noted that the best option would be to supplement the Civil Procedure Code of Ukraine with a separate chapter “Class-action lawsuits”. However, the prospect of introducing such lawsuits exists not only in the sphere of private legal relations, but also in the public sphere (administrative lawsuits), when challenged are adopted acts of state authorities and local self-government bodies that cause damage to an unlimited number of people.

Taking into account the scientific investigations of class-action (mass) lawsuits, as well as individual examples of judicial practice, we can conclude about the admissibility and even the necessity of implementing such a method of protecting violated environmental rights and interests of individuals as a Class-action lawsuit. This will contribute to the efficient consideration of court cases, relieve the courts and reduce costs, and most importantly this will allow to objectively resolve disputes (even if it is not always possible to establish an individually violated right) in view of the importance of the specific case for the

society, that is, based on the presence of public interest in the case, the situation will be decided in favor of an indefinite scope of persons - all in general and everyone in particular.

## References

Australian Government (2022). Digital Marketplace. URL: <https://marketplace.service.gov.au/>.

Government of Canada (2022). Canada Open Government Portal. URL: <https://search.open.canada.ca/en/sd/>.

Gov.co. (2022). Urna de Cristal. URL: <https://www.urnadecristal.gov.co/>.

Lata, Natalya; Martyniuk, Serhii; Minka, Tetiana; Ilchyshyn, Nadiya; Yurakh, Vitalii (2022). Administrative and legal security of public information services in the activities of bodies of legislative and judicial power: Seguridad administrativa y jurídica de los servicios de información pública en las actividades de los órganos del poder legislativo y judicial. *Cuestiones Políticas*, 40(72), 656-669. <https://doi.org/10.46398/cuestpol.4072.38>

Law of Australia (2017). Australian Government Digital Transformation Agenda. URL: <https://www.dta.gov.au/digital-transformation-strategy>

Leheza, Yevhen; Tiutchenko, Svitlana; Stanina, Olha; Shatrava, Serhii; Rezanov Serhii (2021). Uso y protección del suelo: regulación legal y experiencia extranjera. *Revista De La Universidad Del Zulia*, 12(33), 70-81. <https://doi.org/10.46925//rdluz.33.06>

Leheza, Yevhen; Dorokhina, Yuliia; Shamara, Oleksandr; Miroshnychenko, Serhii; Moroz, Vita (2021). Citizens 'participation in the fight against criminal offences: political and legal aspects. *Cuestiones Políticas*, 39(69), 212-224. DOI: <https://doi.org/10.46398/cuestpol.3969.12>

Leheza, Yevhen; Nalyvaiko, Larysa Sachko; Oleksandr Shcherbyna, Victor; Chepik-Trehubenko, Olha (2022). Principles of law: Methodological approaches to understanding in the context of modern globalization transformations. *Ius Humani. Law Journal*, 11(2), 55-79. <https://doi.org/https://doi.org/10.31207/ih.v11i2.312>

Leheza, Yevhen; Filipenko, Tatiana; Sokolenko, Olha; Darahan, Valerii; Kucherenko, Oleksii (2020). Ensuring human rights in Ukraine: problematic issues and ways of their solution in the social and legal sphere. *Cuestiones Políticas*, Vol. 37 Nº 64 (enero-junio 2020). P. 123-136. DOI: <https://doi.org/10.46398/cuestpol.3764.10>

Leheza, Yevhen; Odyntsova, Iryna; Dmytrenko, Natalia (2021). Teoría y regulación legal del apoyo informativo de los procedimientos administrativos en Ucrania. *Ratio Juris UNAULA*, 16 (32). P. 291-306. DOI: <https://doi.org/10.24142/raju.v16n32a12>

Leheza, Yevhen; Savielieva, Maryna; Dzhafarova, Olena (2018). Structural and legal analysis of scientific activity regulation in developed countries. *Baltic Journal of Economic Studies*. 4(3), 147-157. DOI: <https://doi.org/10.30525/2256-0742/2018-4-3-147-157>

Leheza, Yevhen; Prymachenko, Dmytro; Moroz, Vita; Pakulova, Tetiana; Salo, Oleh (2022). Legal status of the territory of Crimea after the accession of Russia. *Revista do Curso de Direito do UNIFOR*. v. 13, n. 2, p. 28-37, DOI: <https://doi.org/10.24862/rcdu.v13i2.1632>

Nalyvaiko, Larysa; Chanysheva, Galiya; Kozin, Serhii (2018). Remuneration of Public Servants in the Federal Republic of Germany. *Baltic Journal of Economic Studies*. Vol. 4, №. 5. December. P. 228-232. <https://doi.org/10.30525/2256-0742/2018-4-5-228-232>

Nalyvaiko, Larysa; Ilkov, Vasyl; Verba, Iryna; Kulinich, Olha; Korovaiko, Oleksandr (2022). Specific features of the legal regulation of prosecution for contempt of court: judicial rules established in different countries: Características específicas de la regulación legal del enjuiciamiento por manifestación de desacato a los tribunales: normas judiciales establecidas en diferentes países. *Cuestiones Políticas*, 40 (74), 393-409. <https://doi.org/10.46398/cuestpol.4074.21>

OECD Digital Government Index (DGI) (2019). URL: <http://www.oecd.org/gov/digital-government/oecd-digital-government-index-2019.htm>

Prymachenko, Dmytro; Minka, Tetiana; Marchenko, Volodymyr (2018). Legal regulation of liability for offenses in the financial sphere in the EU countries and Ukraine: comparative analysis. *Baltic Journal of Economic Studies*, Vol 4 № 5. 276-282. DOI: <https://doi.org/10.30525/2256-0742/2018-4-5-276-282>.

Republika Slovenja (2022). eUPRAVA. URL: <https://e-uprava.gov.si/>.

Trece. Open Data Initiative (2022). URL: <https://canaltrece.com.co/programas/el-dato-datos-abiertos-open-data/>

Villasmil-Espinoza , Jorge J.; Leheza, Yevhen; Holovii, Liudmyla (2022). Reflections for the interdisciplinary study of the Russian Federation's invasion of Ukraine in 2022: Reflexiones para el estudio interdisciplinario de la invasión de Ucrania por parte de la Federación Rusa en 2022. *Cuestiones Políticas*, 40(73), 16-24. <https://doi.org/10.46398/cuestpol.4073.00>

Yaroshenko, Oleh; Sereda, Olena; Sereda, Grigory; Yakovlyev, Oleksandr (2021). Labour migration from ukraine: economic and legal ways of countering. *Financial and Credit Activity Problems of Theory and Practice*. 1, 32 (Jan. 2021), 556-563. DOI: <https://doi.org/10.18371/fcaptp.vli32.200828>.

Yaroshenko, Oleh. Steshenko, Volodymyr. Anisimova, Hanna. Yakovleva, Galina. Nabrusko, Mariia. (2021). The impact of the European court of human rights on the development of rights in health care. *International Journal of Human Rights in Healthcare*, Vol. ahead-of-print No. ahead-of-print. DOI: <https://doi.org/10.1108/IJHRH-03-2021-0078>