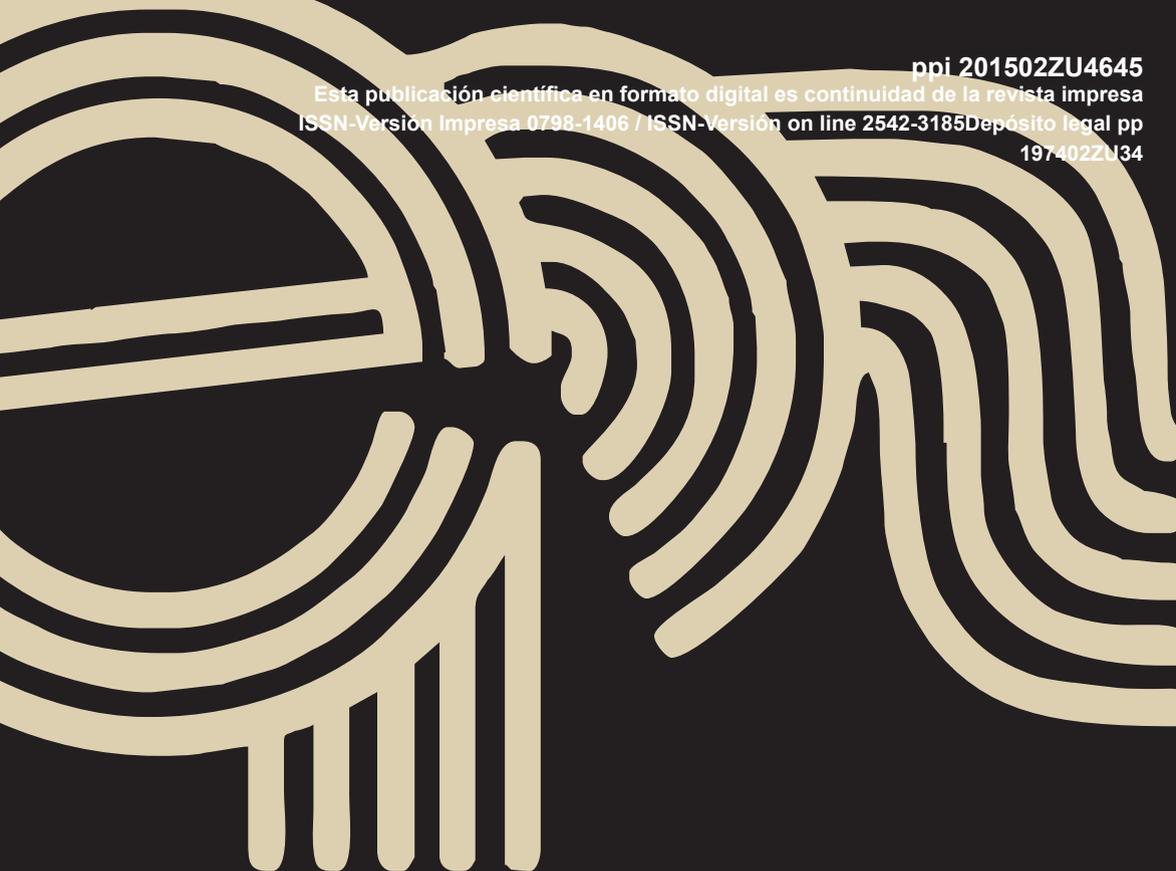


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Environmental Relations in Armed Conflict (War) Conditions: Assessment of Damage to the Environment and People

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Abstract

The purpose of the article was to outline a framework of instructions to determine the amount of damage caused to the environment and people during the armed conflict, and to determine the consequences of such impact on the environment in Ukraine and, internationally. The theoretical and methodological basis of the research is a system of philosophical, general scientific and special methods aimed at obtaining objective and reliable results, in particular: ontological, axiological, integrative and prognostic. It was found that the events of military nature on the territory of Ukraine extremely exacerbated the problem of effectiveness of international and national legal documents. It was established that at the international level since 2014, the state of Ukraine has been defined as an ecological disaster zone. It was determined that there are economic and “environmental” components in the composition of environmental damage. The environmental component is equivalent to moral damage. It is proposed to create (1) special associations for environmental impact assessment after the return of territories under Ukrainian control; (2) an international financial institution to overcome

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the environmental consequences of armed conflict and occupation; (3) to create a comprehensive system of collecting information on the state of the environment.

Keywords: political responsibility; human rights; environmental regulation; non-property rights; compensation.

Relaciones ambientales en condiciones de conflicto armado (guerra): evaluación del daño al medio ambiente y a las personas

Resumen

El propósito del artículo fue esbozar un marco de instrucciones para determinar la cantidad de daño causado al medio ambiente y las personas durante el conflicto armado, y determinar las consecuencias de tal impacto en el medio ambiente en Ucrania y, a nivel internacional. La base teórica y metodológica de la investigación es un sistema de métodos filosóficos, científicos generales y especiales destinados a obtener resultados objetivos y confiables, en particular: ontológicos, axiológicos, integradores y pronósticos. Se encontró que los eventos de naturaleza militar en el territorio de Ucrania exacerbaban extremadamente el problema de la efectividad de los documentos legales internacionales y nacionales. Se ha establecido que a nivel internacional desde 2014, el estado de Ucrania se ha definido como una zona de desastre ecológico. Se determinó que existen componentes económicos y “ambientales” en la composición del daño ambiental. El componente ambiental es equivalente al daño moral. Se propone crear (1) asociaciones especiales para la evaluación del impacto ambiental después de la devolución de territorios bajo control ucraniano; (2) una institución financiera internacional para superar las consecuencias ambientales de los conflictos armados y la ocupación; (3) crear un sistema completo de recopilación de información sobre el estado del medio ambiente.

Palabras clave: responsabilidad política; derechos humanos; regulación ambiental; derechos no patrimoniales; compensación.

Introduction

In the conditions of war on the territory of Ukraine, the protection of the rights of individuals and legal entities in the field of environmental protection and the use of natural resources involves the coverage and

consideration of some aspects. The first is the loss of natural resources or the deterioration of their quality due to the action of certain natural phenomena (water or wind erosion, flooding, flooding, soil salinization, fires, etc.), including their depletion as a result of extensive, irrational use.

The second is pollution, clogging of objects of the natural environment, which leads, if not to the loss of property, then makes the normal use of natural resources impossible, requires significant material costs for their restoration, bringing them to a normal state for further safe and effective economic and other use.

The third, no less important, and perhaps even more socially threatening, aspect is related to the protection of property rights of subjects, which is caused by the negative impact of a polluted environment on human life and health. After all, for example, when a citizen consumes polluted water and/or breathes polluted air, he, firstly, is forced to bear financial costs for the purchase of appropriate devices for its purification, and secondly, he bears financial costs for improving his health from the consumption of polluted water and food, breathing polluted air. In addition, an individual or legal entity may suffer significant property losses from harmful emissions into the atmosphere due to the complete loss of the crop or its part, the death of forest, fruit and other green plantations, and the deterioration of product quality.

The purpose of the article is to outline directions for determining the amount of damage caused to the environment and people during the armed conflict, and the consequences of such an impact on the environment in Ukraine and at the international level.

1. Methodology of the study

The article is based on the empirical data of international organizations based on monitoring the state of the environment in the territories controlled and not under the control of the Ukrainian authorities in order to develop directions for assessing the damage caused by the armed conflict (war) in Ukraine.

The theoretical and methodological basis of the research is a system of philosophical, general scientific and special methods designed to obtain objective, reliable results, in particular: ontological, axiological, integrative, prognostic and others. The ontological method was used when determining the essence and forms of assessment of the state of the environment. The integrative method contributed to the study of interdisciplinary and interdisciplinary approaches to understanding legal norms. The prognostic method made it possible to identify directions for assessing the damage caused by the armed conflict (war) in Ukraine.

2. Analysis of recent research

Environmental relations in the conditions of war are studied by researchers of various scientific fields: national law, economics, ecology, international law.

Juan M. Dabezies in the work “Human-environmental relations, planning and conservation. “Doing nothing” and “doing something” in the protection of local knowledge” (2021) emphasizes that the protection of relations between man and the environment is a subject that includes various legal frameworks that cross the sphere of environmental management. At the same time, he talks about the global logic of protecting private property.

Compensation for environmental damage as a condition for ensuring the economic security of the state is discussed in the work of the same name by Kireeva (2020). She emphasizes that, among other damages, unearned profits for the time necessary to restore the quality of the natural environment, to restore natural resources to a state suitable for their intended use, should be subject to compensation.

The Ukrainian Helsinki Union for Human Rights (Blaha and Zahorodnyuk, 2017) made a comprehensive analysis of the state of the natural environment in conditions of armed conflict. She characterized the international legal obligations of states to protect the environment during armed conflict. The specifics of prosecution for environmental damage caused during the war were outlined.

A number of researchers talk about the protection of human rights in case of environmental pollution in Ukraine, which is, first of all, a constitutional right of a person and a citizen. R. Stefanchuk (2007) in the monograph “Personal non-property rights of natural persons (concept, content, system, features of implementation and protection)” outlines the range of personal non-property rights that require primary protection. Kostruba (2020) also talks about similar aspects in his work “Personal non-property rights” and also Orel in hers work “Personal non-property rights of legal persons” (2021).

3. Results and discussion

3.1. Assessment of the impact of unstable situations on the environment

After gaining independence, Ukraine had the highest indicator of negative anthropogenic loads on the environment among European countries in almost its entire territory. Moreover, in two-thirds of the regions, the

ecological situation and the quality of the environment were characterized as acutely critical and unfavorable for human health. According to the data provided in the report “The most polluted places in the world - 2013” of the Swiss organization “Green Cross” (Shpet, 2013), the fourth place was given to Ukraine (a 30-kilometer exclusion zone around the Chernobyl reactor).

At the same time, the third and tenth steps are occupied by the Russian Federation (the city of Dzerzhinsk as a center of the chemical industry and the city of Norilsk, where almost 500 tons of copper and nickel oxide are emitted into the air every year, as well as two million tons of sulfur oxides).

After the annexation of the Crimean Peninsula, the seizure of part of Donbas and the full-scale invasion of Ukraine, the Russian Federation does not care about environmental protection of the occupied territories. This issue has been kept quiet for quite a long time in Ukraine and the world (Grozovsky, 1997). Only recently, some experts began to warn that environmental pollution could cause a new wave of refugees from the occupied territories, and the future reintegration of the territories affected by military actions should take place taking into account the ecological component. The need to solve these and other environmental problems was determined in the legislation of Ukraine at one time.

In particular, it was determined that in order to solve the problems of technogenic and environmental safety, it is necessary to carry out a number of measures that are relevant even after the end of the war.

In our opinion, overcoming the consequences of armed aggression on the territory of Ukraine should be guided by the same Main directions of the policy of Ukraine in the field of environmental protection, use of natural resources and ensuring environmental safety, since they have not lost their relevance.

Currently, the strategic goal of Ukraine is the development of comprehensive cooperation with Western and Central European states with the acquisition of full membership in the European Union, and therefore it is necessary to reach European standards in both political and legal, socio-economic, and environmental aspects. At the current stage, the environmental factor is becoming more and more relevant and one of the priorities in international relations, economic and scientific and technical cooperation of almost all countries of the world.

Hence the conclusion - Ukraine should move towards the harmonization of national environmental protection legislation, requirements and standards of environmental safety of economic activity and comprehensive adaptation of them to the Western European ecological space. Along with this, the ecological state of the environment, the level and nature of nature use and nature protection measures, the ecological safety of technologies must also meet Western European standards and regulations to the maximum extent.

At the international level, the status of our country has been determined as an “ecological disaster” zone (Blaha and Zahorodnyuk, 2017). Only a consistent policy of state authorities in cooperation with local authorities, as well as other interested persons of private and public law, will help to prevent and eliminate the enormous impact of armed aggression on the ratio of all components of the environment.

According to the assessment of the I. I. Schmalhausen Institute of Zoology of the National Academy of Sciences of Ukraine (Vasylyuk, 2017), the main consequences of the armed conflict for the state of the environment and the health of living beings today are (1) the destruction of unique landscapes, including significant steppe areas; (2) destruction of populations of red-listed animal species; (3) large-scale burning and felling of large forest areas, mostly purposefully planted around large industrial centers to partially neutralize the negative impact of enterprises (in particular, the Regional Landscape Park “Donetsk Kryaz” and the National Nature Park “Holy Mountains”); (4) the results of chemical processes specific to the zone of armed conflict (the concentration of harmful substances – explosion products (Sulphur oxides, nitrogen, etc.) in the air increases sharply, exceeding the maximum permissible values by 5-8 times); (5) accumulation in the soil of not only metal, but also sulfur, etc.; (6) damage to sewage treatment plants and flooding of mines, causing the formation of salty shallow water unfit for human habitation, and part of the population of the region will be forced to become ecological refugees; (7) pollution of the environment by leaks from mines of radioactive substances that require special chemical treatment; (8) ingress of toxins – the results of decomposition of unburied bodies.

According to OSCE reports, the military conflict in eastern Ukraine has led to a number of dangerous impacts on soils and landscapes, surface and underground water, vegetation and wildlife, and the hostilities have significantly increased the risks of emergency situations at industrial enterprises and infrastructure facilities (Denisov and Averin, 2017). The armed conflict practically paralyzed many aspects of environmental protection activities in the east of Ukraine. The consequences of the destruction of the environmental protection system in the conflict zone will be significant.

In 2017, the Cabinet of Ministers of Ukraine approved the program for the restoration and building of peace in the eastern regions of Ukraine (Resolution CMU No. 1071, 2017), but environmental issues are represented there by only 2 items out of 44. This program is a vivid example of Ukraine’s work for the future. Trust funds of many partners formed in accordance with the Memorandum of Understanding on cooperation between the Cabinet of Ministers of Ukraine, the UN and the World Bank became an additional source of funding for the tasks and activities of this Program.

According to the proposals of the OSCE, it is necessary to implement political measures to prevent hostilities in areas where sources of increased ecological danger are located, to carry out international monitoring of the situation, and also to carry out possible preventive measures in relation to sources of increased danger.

In our opinion, in addition to what was proposed above, the Law of Ukraine “On Environmental Impact Assessment” should be applied as widely as possible in this area, which will provide an opportunity to identify any impact on the environment, alternative options for eliminating such impact, and the connection between the use of natural resources and maintaining (improving) productivity for the future (even in the occupied territories).

3.2. Environmental and derivative rights of citizens

In the Constitution of Ukraine and the norms of environmental legislation, the protection and protection of human health have only a declarative nature, it is more related to the object of this right. Constitutional requirements for an environment safe for life and health are fully reproduced in the Civil Code of Ukraine.

Today, the prevailing opinion is that the object of the right to health is the non-property good “health of an individual” (Stefanchuk, 2007). At the same time, despite the apparent simplicity of this issue, it should be noted that today there is actually no clear and legally applicable concept of “health”, i.e., the concept of “health of a natural person” precisely as a non-property good. In addition to such a general understanding, the concept of “health” also has its own special legal meaning, in which it acts as a certain object of relevant legal relations. This is necessary under several basic circumstances.

First of all, such an understanding will provide an opportunity to consider “health” not simply as a general philosophical substrate, but, first of all, as a special object of relevant social relations. Secondly, such an approach will provide an opportunity to consider health as a certain social value, which, despite its general nature, has a specific legal nature.

Thirdly, the specified value of health will also determine its special-branch (civil-law) belonging to the category of personal non-property goods, which makes the specified category acquire signs of legal indifference (Orel, 2021). Agreeing with the first two theses, we believe that the third thesis is debatable.

When one or another producer, as a result of his production activities, using outdated, inefficient, high-waste technologies, pollutes and depletes land, water, forest resources, subsoil, atmospheric air, plant and animal

life, belonging to a citizen by right of ownership, general or special use, he pollutes the environment, thereby violating the rights of this citizen to safe natural resources and health care.

We emphasize once again that every person bears significant financial costs for the restoration of impaired health, and it is practically impossible to prove in court that the deterioration of health is connected with one or another case of environmental pollution. And in the event of an armed conflict, the subject has almost no chance to defend his right to compensation for loss of health (except for obvious physical losses).

Scientists, analyzing various circumstances regarding the definition of the concept of human health, often note that if such a good as health can undergo dynamic changes and differentiate depending on the factors that affect the state of vital activity of the organism, then it, accordingly, can also be measured (estimates) according to various indicators (Kostruba, 2020). In our opinion, this very correct and relevant topic deserves further in-depth study in relation to environmental protection and rethinking the concept of “non-property” and “property” law in this area in relation to human health.

Protection of human rights in case of environmental pollution in Ukraine is, first of all, a constitutional right of a person and a citizen. Article 50 of the Constitution of Ukraine clearly defines that everyone has the right to an environment safe for life and health and to compensation for damage caused by violation of this right. Article 116 of the Constitution of Ukraine obliges the Government of the country to ensure the implementation of policies in the field of nature protection, environmental safety and nature management.

In accordance with Part 4 of Art. 68 of the Law of Ukraine “On the Protection of the Natural Environment”, enterprises, institutions, organizations and citizens are obliged to compensate the damage caused by them as a result of the violation of the legislation on the protection of the natural environment, in the manner and in the amounts established by the legislation of Ukraine. At the same time, the legislation of Ukraine does not have a clearly defined punishment for environmental damage caused by the aggressor state. Such issues can be settled only at the level of international legislation by filing lawsuits in international courts.

But when the occupied territories are returned to the control of Ukraine, it will also be possible to apply civil liability. Its feature is that the damage caused as a result of the violation of the legislation on environmental protection is subject to compensation in full (Law of Ukraine No.1264-XII, 1991: art. 69), i.e., without applying the rules for reducing the amount of fines and regardless of the fee for pollution of the natural environment and deterioration of the quality of natural resources. Persons who have suffered

such damage have the right to compensation for lost profits for the time necessary to restore health, the quality of the natural environment, and the reproduction of natural resources to a state suitable for their intended use.

Persons owning sources of increased ecological danger are obliged to compensate for the damage caused to citizens and legal entities, unless they prove that the damage occurred as a result of spontaneous natural phenomena or intentional actions of the victims. Damage caused to the environment in connection with the implementation of the agreement on product distribution is subject to compensation in accordance with the requirements of Art. 29 of the Law of Ukraine “On Product Distribution Agreements”. In particular, such damage is subject to compensation (compensation) in full at the expense of the investor, regardless of fees for environmental pollution and deterioration of the quality of natural resources.

The investor is released from compensation for damage caused to the environment only if he proves that the damage was caused as a result of spontaneous natural phenomena or intentional actions of the victims.

Article 394 of the Civil Code of Ukraine stipulates that the owner of a plot of land, a residential building, or other buildings has the right to compensation in connection with a decrease in the value of these objects as a result of activities that led to a decrease in the level of ecological and noise protection of the territory, deterioration of the natural properties of the land.

As a general rule, applying criminal or administrative liability to guilty persons does not exempt them from compensation for damage caused by violation of environmental protection legislation. This damage is characterized by both general signs of “damage” and special ones that are characteristic only of environmental damage. The general definition of damage comes down to attributing to it any depreciation, deterioration, reduction, destruction of a good protected by law, or to understanding it as adverse consequences arising from the violation of property or personal non-property rights of the victim.

In accordance with this, environmental damage is defined as a set of negative changes in the quality and structure of the natural environment or its individual elements: deterioration, destruction, destruction of natural objects, disruption of ecological relationships and systems, general deterioration of the natural environment, etc.

According to scientists, one of the most controversial issues is the structure of environmental damage (Komarnytskyi *et al.*, 2006). Yes, there is an idea that damage caused to natural objects is divided into two independent parts (Muntyan, 1982). The first part consists of the cost of material and monetary costs for nature protection measures to restore the disturbed state of nature.

The second part of the damage includes losses in the natural environment that resulted from the exclusion of vital functions of its individual elements or complexes. Such losses, being non-recoverable, relatively non-recoverable or difficult to recover, do not have a monetary value. This damage was called ecological, as opposed to economic, which can be expressed in monetary value.

In the development of this idea, it is considered that the damage caused by the violation of environmental legislation is divided into economic and ecological. The economic one manifests itself in the death, damage, destruction of material values, in the failure to receive income from the use of a natural object, and the ecological one - in the depletion of the natural environment, violation of its ecological connections.

In contrast to economic damage, which is manifested in the cost of losses of material values and expected income, environmental damage is a complex structural entity that has two independent parts: the cost of material and monetary costs used to protect the natural object that was damaged, costs for restoring the disturbed state of the natural environment, etc.; the cost of ecological losses of the natural environment, which occurred as a result of the complete or partial exclusion of life-sustaining functions performed by the environment or a separate component of it.

Such losses are divided into recoverable as a result of economic activity, relatively recoverable when the restoration of natural objects is associated with long periods (restoration of forest vegetation), and non-recoverable. Environmental damage and anthropological damage, as well as economic damage caused to the material interests of nature users, are also distinguished.

Often attention is focused on the consequences of damage, which combines different types of damage - nature, people, economic structures (Havrysh, 2002). Accordingly, biological damage (damage to ecosystems, the natural environment) is distinguished, which is primary, as well as personal damage (damage to human life and health), economic damage (to the material sphere of people's lives).

In fact, all the mentioned estimates of damage caused to the surrounding natural environment differ among themselves, mainly, in the degree of differentiation of the consequences of this damage. At the same time, they all agree that the assessment of this type of damage must be comprehensive, taking into account all aspects of its impact on the state of the environment, people directly, and the material interests of nature users.

Given the above, the following key points of assessment and compensation for damage caused by violations of environmental legislation can be identified. The most significant are the ecological consequences of damage to the natural environment. For example, the destruction or

damage of forest crops on large areas of the forest has a negative impact on forest ecosystems, on the performance of climate-regulating, water-saving and other functions by forests. As a result, the environmental conditions of human life may deteriorate, and the condition of other natural objects may deteriorate.

Only damage that can be calculated and expressed either in kind or in value is subject to compensation. Taking into account the circumstances of the case, the court, at the choice of the victim, may oblige the person who caused the damage to compensate it in kind (hand over an item of the same type and quality, repair the damaged item, etc.) or to compensate the damage in full (Civil Code of Ukraine No. 435-IV, 2003: p. 1 art. 1192).

Compensation in kind consists in the fact that the guilty person is obliged to eliminate the negative consequences of the damage (reforestation, land reclamation, etc.) by his own efforts and means. However, imposing on the offender the obligation to indemnify the damage in kind is possible only in the case when he has the appropriate qualifications, experience, material and technical base for carrying out the relevant nature restoration works, or the specified conditions are irrelevant in certain cases (for example, when restoring forestry signs).

If the offender cannot be obliged to compensate the damage in kind, then he is responsible for full compensation (damage compensation). When calculating the amount of compensation, the following should be taken into account: unused costs of material resources and labor previously invested in a natural object (land plot, forest, water body), costs of reproduction of natural resources (fish, forest, water supply sources, etc.), and also the incomes not received by nature users.

An important role in calculating the amount of compensation is performed by special taxes, their use is due to the complexity of calculating losses caused by the destruction or damage of forests and other natural resources, the need to ensure uniformity of compensation for damage in typical cases.

As a rule, such fees are approved by resolutions of the Cabinet of Ministers of Ukraine in accordance with objects (1) forest; (2) plants from the number of species listed in the Red Book of Ukraine, the European Red List of animals and plants under threat of extinction on a global scale; (3) territorial and internal sea waters of Ukraine; (4) territories and objects of the Nature Reserve Fund of Ukraine; (5) green spaces within cities and other settlements and others.

Conclusions

Summarizing the presented material, it should be noted that the territory of Ukraine has long been subjected to external intervention and aggression, which caused negative consequences in the field of ecology and caused economic losses. With the development of technology, such influence becomes more significant and transboundary. Direct assessment of the impact on the environment in armed conflict can only be carried out by international organizations, and the state suffering from aggression can only indirectly assess the impact and calculate damages from environmental damage.

At the same time, when the territories are returned to the control of Ukraine, the national legislation provides an opportunity to determine the amount of damage to the environment and individuals caused during the armed conflict, and the consequences of such an impact on the environment within Ukraine and at the international level.

To do this, it is necessary to (1) initiate at the regional and/or international levels the creation of an association that will have the authority and access to the occupied territories in order to assess the impact on the environment; (2) create an international financial institution to overcome the environmental consequences of armed conflict and occupation; (3) create a system that will ensure the collection of information for indirect (cross-border) strategic assessment of damage to the environment and people.

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