

LEGAL PROBLEMS OF ECOLOGICAL INFORMATION SUPPORT IN THE CONDITIONS OF MARTIAL LAW

PROBLEME JURIDICE ALE SUPORTULUI INFORMAȚIONAL ECOLOGIC ÎN CONDIȚIILE LEGII MARȚIALE

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Rezumat. Raportul definește conceptul de lege marțială, dreptul la informații de mediu în înțelegeri obiective și subiective, suport informațional de mediu în condițiile legii marțiale și, de asemenea, descrie pe scurt legislația care este în vigoare în acest domeniu, începând cu normele relevante din Constituție. al Ucrainei. ca norme de acțiune directă, care nu au fost limitate la perioada regimului juridic al legii marțiale prin paragraful 3 din Decretul președintelui Ucrainei „Cu privire la introducerea legii marțiale în Ucraina” din 24 februarie 2022 Nr. 64/2022 pentru îndeplinirea cerințelor Legii Ucrainei „Cu privire la regimul juridic al legii marțiale” din 12 mai 2015 nr. 389-VIII, care nu include printre măsurile regimului juridic al legii marțiale posibilitatea limitarea dreptului de acces liber la informații despre starea mediului. Autorii ridică problema problemelor juridice de implementare a normelor legislației actuale în domeniul suportului informațional de mediu în timpul regimului juridic al legii marțiale din Ucraina, precum și problema calității și adecvării setului de măsuri prevăzute de legislația actuală de mediu a Ucrainei în domeniul suportului informațional de mediu.

Cuvinte-cheie. legislație de mediu, informații de mediu, furnizare de informații de mediu, legislație de mediu, măsuri în domeniul furnizării de informații de mediu, Raport național privind starea mediului natural în Ucraina, regim juridic al legii marțiale, dreptul la informații de mediu, inteligență artificială.

Summary. *The report defines the concept of martial law, the right to environmental information from the objective and subjective points of view, as well as environmental information support in the conditions of martial law, and also briefly describes the legislation that is in force in this area, starting with the relevant norms of the Constitution of Ukraine, as norms of direct effect, which were not limited to the period of the legal regime of martial law by paragraph 3 of the Decree of the President of Ukraine “On the Imposition of Martial Law in Ukraine” dated February 24, 2022 No. 64/2022 to fulfil the requirements of the Law of Ukraine “On the Legal Regime of Martial Law” from No. 389-VIII of May 12, 2015, which does not include among the measures of the legal regime of martial law the possibility of limiting the right to free access to information about the state of the environment. The authors raise the issue of legal problems of implementing the norms of current legislation in the field of environmental information support during the legal regime of martial law in Ukraine, as well as the issue of the quality and adequacy of the set of measures stipulated by the current environmental legislation of Ukraine in the field of environmental information support.*

Keywords. *Environmental legislation, environmental information, environmental information support, environmental law, measures in the field of environmental information support, National report on the state of the natural environment in Ukraine, legal regime of martial law, right to environmental information, artificial intelligence.*

The purpose of this report is to characterize the legislative provision in the field of environmental information support in a number of normative legal acts, citing the definition of the right to environmental information in objective and subjective points of view.

The authors of this report set as the goals of the latter to identify, on the basis of the specified short description, the main modern legal problems of environmental information support in the conditions of martial law.

The research used methods of analysis and synthesis, as well as dialectical, intuitive, formal-legal methods and the method of systemic analysis.

Article 1 of the Law of Ukraine “On the Legal Regime of Martial Law” dated May 12, 2015 No. 389-VIII defines that martial law is a special legal regime introduced in Ukraine or in some of its localities in the event of armed aggression or threat of attack, danger to the state independence of Ukraine, its territorial integrity and provides for the granting to the relevant bodies of state power, military command, military administrations and local self-government bodies of the powers necessary to avert the threat, repulse armed aggression and protect national security, eliminate the threat of danger to the state independence of Ukraine, its territorial integrity, and as well as a temporary restriction of the constitutional rights and freedoms of a person and a citizen, and rights and legal interests of

legal entities, with an indication of the period of validity of these restrictions, caused by a threat.

The right to environmental information in the objective sense is a sub-institute of environmental law as a system of relevant legal norms, while in the subjective sense the right to information is a type and measure of possible permitted behaviour of an authorized person in relations whose object is environmental information as a set of information defined in Art. 25 of the Law of Ukraine “On Environmental Protection”.

Guided by the definition of environmental information provision given in the legal literature [1. p.136], it is possible to define ecological information provision under martial law as a means of implementing state environmental policy, the main purpose of which is to guarantee an ecologically safe natural environment for the life and health of the population under the legal regime of martial law .

Legislation in the field of environmental information provision consists of a whole set of norms contained in a number of normative legal acts.

The Constitution of Ukraine dated June 28, 1991 provides for a number of guarantees of environmental information provision, in particular Article 34 stipulates that Everyone has the right to freely collect, store, use and disseminate information orally, in writing or in another way - at his choice, and Art. 50 provides that everyone is guaranteed the right of free access to information about the state of the environment, about the quality of food products and household items, as well as the right to its distribution. Such information cannot be classified by anyone.

It is worth noting that the norms of the Constitution of Ukraine, as norms of direct effect, which were not limited to the period of validity of the legal regime of martial law by paragraph 3 of the Decree of the President of Ukraine “On the Introduction of Martial Law in Ukraine” dated February 24, 2022 No. 64/2022 to fulfil the requirements of the Law of Ukraine “On the Legal Regime of Martial Law” dated May 12, 2015 No. 389-VIII. The mentioned Decree, which does not include, among the measures of the legal regime of martial law, the restriction of the right to free access to information about the state of the environment, which, in our opinion, is positive, although Article 64 of the Constitution of Ukraine allows for the very possibility of restricting the right to environmental information.

A constituent part of the national legislation of Ukraine is the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, ratified by the Law of Ukraine

“On the Ratification of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters” dated July 6, 1999 No. 832-XIV, as well as the Council of Europe Convention on Access to Official Documents, ratified by the Law of Ukraine dated May 20, 2020 “On the Ratification of the Council of Europe Convention on Access to Official Documents” No. 631-IX, with statements, one of which is the following:

“Ukraine declares that, as a result of the armed aggression of the Russian Federation, Ukraine’s fulfilment of its obligations under the Convention in the temporarily occupied territories in the Donetsk and Luhansk regions, the Autonomous Republic of Crimea and the city of Sevastopol is not guaranteed until the full restoration of the constitutional order of Ukraine in these territories.

Any bodies, their officials and officials in the temporarily occupied territories in the Donetsk and Luhansk regions, the Autonomous Republic of Crimea and the city of Sevastopol and their activities are illegal if these bodies or persons were created, elected or appointed in a manner not provided for by the Constitution and laws of Ukraine, and any of their acts (decisions, documents) are invalid and do not create any legal consequences.”

Article 13 of the Law of Ukraine “On Information” dated October 2, 1992 No. 2657-XII defines the composition of information on the state of the environment (ecological information). According to part 3 of the specified article, information about the state of the environment, except for information about the location of military facilities, cannot be classified as information with limited access.

The normative legal framework in the field of environmental information support undoubtedly includes the Law of Ukraine “On Environmental Protection” of June 25, 1991 (Articles 9, 10, 20, 21, 25, 25-1), as well as the Laws of Ukraine “On National Geospatial Data Infrastructure”, “On Ensuring Transparency in Extractive Industries”, “On Plant Life”, “On Animal Life”, “On Atmospheric Air Protection”, “On Providing Sanitary and Epidemic Well-Being of the Population”, “On Environmental Impact Assessment”, “On Objects of Increased Danger”, “On Protection of Consumer Rights”, “On Access to Public Information” Land, Water, Forest Codes of Ukraine, Code of Ukraine on Subsoil, Code of Civil Protection of Ukraine (Article 31), Code of Ukraine on Administrative Offenses (Articles 53-2, 82-3, 91-4), the Criminal Code of Ukraine (Article 238), etc., as well as a number of relevant subordinate legal acts adopted to implement the aforementioned laws.

In our opinion, in the context of the legal problems of implementing the norms of the current legislation in the field of environmental information provision during the legal regime of martial law in Ukraine, it is worth raising the issue of the quality and adequacy of the set of measures provided for by the current environmental legislation of Ukraine in the field of environmental information provision, namely in spheres of:

a) preparation by the central body of executive power, which implements state policy in the field of environmental protection, and submission to the Verkhovna Rada of Ukraine for consideration of the annual National Report on the state of the environment in Ukraine, and after its consideration by the Verkhovna Rada of Ukraine - publication in a separate publication and placement in Internet;

b) annual informing by the Council of Ministers of the Autonomous Republic of Crimea, regional state administrations, Kyiv and Sevastopol city state administrations of the relevant councils and the population about the state of the natural environment of the respective territories;

c) systematic informing of the population through mass media about the state of the natural environment, the dynamics of its changes, sources of pollution, disposal of waste or other changes in the natural environment and the nature of the impact of environmental factors on people's health;

d) immediate notification of emergency environmental situations;

e) transmission of information obtained as a result of environmental monitoring through information communication channels to bodies authorized to make decisions regarding the received information;

f) provision of free access to environmental information that is not classified and is contained in lists, registers, archives and other sources.

Currently, a number of registries and cadastres have been closed due to blocking of Internet access in accordance with the Resolution of the Cabinet of Ministers of Ukraine dated March 12, 2022 No. 263 "Some Issues of Providing the Functioning of Information and Communication Systems, Electronic Communication Systems, and Public Electronic Registries under Martial Law". However, in our opinion, state bodies should be sensitive to the informational environmental needs of civil society in the conditions of martial law and should find a certain balance of the respective interests of the state, territorial communities and people, citizens and legal entities as participants in environmental legal relations. In this context, in the conditions of martial law, we support the call of a number of Ukrainian NGOs and media, which demand the authorities to open state registers and re-

new access to public information in accordance with the requirements of the Resolution of the Cabinet of Ministers of Ukraine “On Approval of the Regulation on Data Sets that are Subject to Publication in the form of Open Data” dated October 21, 2015 No. 835 regarding the release of public information in the form of open data by administrators.

In our opinion, the analysis of the condition of the current legislation in the field of environmental information support in regulatory and legal and institutional and functional aspects allows us to make a number of proposals regarding:

a) the need for the existence of a normatively established parity of communication (at the level of clause “b” of part 2 of Article 25-1 of the Law of Ukraine “On Protection of Environment” dated June 25, 1991 No. 1264-XII), information exchange in terms of feedback by the relevant territorial communities as represented by the relevant councils to the Council of Ministers of the Autonomous Republic of Crimea, Regional State Administrations, Kyiv and Sevastopol City State Administrations and to the population - about the state of the natural environment of the respective territories;

b) the objectively necessary revision of the terms of the specified informing (in the direction of reduction) provided for in clause “a” of part 2 of Article 25-1 of the abovementioned law, in connection with the rapid change in the state of the natural environment during the operation of the legal regime of martial law, as well as the similar revision of the norm - which has not been systematically implemented for several years in a row – namely the period of 1 year for preparation by the central executive body implementing state policy in the field of environmental protection, and submission to the Verkhovna Rada of Ukraine for consideration of the annual National Report on the State of Environment in Ukraine, and after its consideration by the Verkhovna Rada of Ukraine - publication in a separate publication and posting on the Internet within that period;

c) the need to expand the possible sources of information specified in point “g” of part 2 of Article 25-1 of the Law of Ukraine “On Protection of Environment” (unreasonably limited only to the information obtained as a result of the exercise of powers within the scope of the implementation of such a management function as environmental monitoring) by information obtained as a result of the implementation of other management functions, for example, such as: distribution and redistribution (provision and withdrawal) of natural resources, organization and implementation

of strategic environmental assessment, environmental impact assessment, environmental audit, planning (forecasting) in the field of ecology, implementation of spatial and territorial organization of natural objects (organization of resource management), as well as control in the fields of use of natural resources, protection of the natural environment and ensuring environmental safety;

d) the necessary expansion of the set of measures that mould the content of environmental information support, such as informing about the state of the natural environment as a result of the military actions and operations of the Armed Forces of Ukraine.

We believe that from the point of view of guaranteeing the relevant rights of subjects of environmental legal relations, in the context of possible malicious (including terrorist and aggressor state) access and use of environmental information, it is worth raising the issue of the objectively overdue need for legal regulation at the national and transnational levels of the use of artificial intelligence, and to secure the national system of environmental and information security against malicious access by artificial intelligence, the problem of protecting personal data of participants in environmental legal relations, especially in the conditions of the legal regime of martial law, and possible wartime. We agree with the opinions either on complete ban or a balanced and safe detailed regulation of training artificial intelligence based on the data of environmental information that is freely available and that does not constitute a state secret and is contained in lists, registers, archives and other sources, and we also offer in the specified context, think about the appropriate strengthening of systems for protecting information contained in cadastres and registers, etc., the owner of which is the state, in order to provide the environmental and information security of the functioning of the specified sources of environmental information in the context of existing certain sparks of the general consciousness of artificial intelligence, and the possibility of writing its own algorithms, which can overcome systems for protecting environmental and legal information.

References:

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