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LEGAL PRINCIPLES FOR PUBLIC ACCESS TO THE ENVIRONMENTAL INFORMATION AND PUBLIC PARTICIPATION IN MAKING MANAGEMENT DECISIONS

The article defines the legal principles concerning public access to public information, including environmental information, and outlines the existing problems. The level of effectiveness of informational mechanism in the implementation of public policy in the environmental field is characterized. The problematic issues concerning public participation in making managerial decisions are identified and the relationship between access to information and participation in making managerial decisions is shown. The author proposes the definition of the concept “public environmental information” based on the analysis and taking into account the basic provisions of the Law of Ukraine “On Public Information”. The author concludes that despite the relatively sufficient level of legislative and regulatory framework of issues related to public participation in management decision-making on nature protection, lacking is a systematic approach to the formation of a comprehensive public policy on this issue and the lack of clear effective mechanisms for its implementation. Hence, the author considers an important priority to create an integrated perfect system with clear indication of legal guarantees and freedoms of providing access to public environmental information, direct and real participation of citizens and NGOs in making managerial decisions to ensure ecologically safe environment.

Keywords: *public, access to public information, environmental information, managerial decisions, public participation in decision-making.*

Kozaczenko T. Zabezpieczenie prawne dostępu do publicznej informacji ekologicznej oraz uczestnictwo społeczności w podejmowaniu decyzji administracyjnych

W artykule określono prawne podstawy dostępu społeczności do informacji publicznej, w szczególności w zakresie ekologii, jak również wskazano istniejące problemy w tej materii. Pokazano podstawowe wzajemnie powiązane

elementy określone przez Konwencję z Aarhus. Przeanalizowano określenia istoty pojęcia „informacja ekologiczna” i zaproponowano określenie pojęcia „publiczna informacja ekologiczna”. Scharakteryzowano poziom efektywności mechanizmu informacyjnego w zakresie realizacji polityki państwowej w sferze ekologicznej. Określono sporne kwestie związane z uczestnictwem społeczności w podejmowaniu decyzji administracyjnych i (wstępnie) pokazano wzajemny związek między dostępem do informacji oraz uczestnictwem w podejmowaniu decyzji administracyjnych.

Słowa kluczowe: społeczność, dostęp do informacji publicznej, informacja ekologiczna, decyzje administracyjne, uczestnictwo społeczności w podejmowaniu decyzji administracyjnych

Козаченко Т.П. Правове забезпечення доступу до публічної екологічної інформації та участь громадськості у прийнятті управлінських рішень

В статті визначено правові засади щодо доступу громадськості до публічної інформації, екологічної інформації зокрема, та окреслено існуючі проблеми. Показано основні взаємопов'язані елементи згідно Орхуської Конвенції. Проаналізовано визначення сутності поняття «екологічна інформація» та запропоновано сутність поняття «публічна екологічна інформація». Охарактеризовано рівень результативності інформаційного механізму щодо реалізації державної політики в екологічній сфері. Визначено проблемні питання щодо участі громадськості у прийнятті управлінських рішень та (встановлено) показано взаємозв'язок між доступом до інформації та участю у прийнятті управлінських рішень.

Ключові слова: громадськість, доступ до публічної інформації, екологічна інформація, управлінські рішення, участь громадськості у прийнятті управлінських рішень.

Козаченко Т.П. Правовое обеспечение доступа к публичной экологической информации и участие общественности в принятии управленческих решений

В статье определены правовые основы по доступу общественности к публичной информации, экологической информации в частности, и обозначены существующие проблемы. Показаны основные взаимосвязанные элементы согласно Орхусской Конвенции. Проанализированы определения сущности понятия «экологическая информация» и предложено определение понятия «публичная экологическая информация». Охарактеризован уровень результативности информационного механизма по реализации государственной политики в экологической сфере. Определены проблемные вопросы участия общественности в принятии управленческих решений

и (установлено) показана взаимосвязь между доступом к информации и участием в принятии управленческих решений.

Ключевые слова: общественность, доступ к публичной информации, экологическая информация, управленческие решения, участие общественности в принятии управленческих решений.

Introduction

The rights of every person to a safe life and access to information on the state of environment are enshrined in the Article 50 of the Constitution of Ukraine. It in particular states, "Everyone has the right to a safe and healthy environment and to compensation for a damage because of a violation of this right. Everyone has the right to free access to information on state of the environment, quality of food and consumer goods, as well as the right to disseminate it. Such information no one shall make secret "[4]. This provision is developed in a number of laws and regulations that recognize that the implementation of environmental human needs is an important and fundamental task of the state, because creating the necessary conditions of human habitation, their state of health depends on it. In addition, the public should be informed about the state of the environment, be able to influence decision making concerning their improvement. In particular, such Laws of Ukraine were adopted as "On Protection of Natural Environment", "On Ecological Expertise", "On Appeals of Citizens", "On Information", "On Access to Public Information", "On Ratification of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters". Besides that, Verkhovna Rada of Ukraine adopted the Resolution "On Informing the Public on Matters Relating to the Environment"; the Regulation on public inspectors of environmental protection was approved and so on. However, despite a number of adopted laws and regulations the human right concerning access to environmental information is beforehand ignored. In addition, the level of reliability of the information is of great doubt. Public participation in environmental decision-making in most cases remains a formality.

Analysis of recent research

The question of public participation in decision-making on environmental protection is formulated and reflected in scientific and theoretical works by V. Krysachenko and M. Khylo. V. Studnytskyy paid attention to public opinion research. Citizen participation in society transformation is an object of scientific interest of scholars such as V. Bebik, V. Martynenko, and A. Jakubowski. The problems of participation of citizens in decision-making at the local level are investigated by V. Alexeev, E. Hruhachova and others. The conceptual framework

for the adoption of state management decisions is reflected in scientific works of A. Degtyar.

Statement of research objectives

The issues of access to information and public participation in decision-making are almost always researched by scientists one without another. Therefore, the aim of this study is to determine the legal principles that ensure public access to environmental information, to note the important role of the public in decision-making on ensuring ecological safety and to show the relationship between these components.

Results

An important milestone in consolidation of the rights of access to environmental information was the adoption of the Convention “On Access to Information, Public Participation in Decision-making and Access to Justice on Matters relating to the Environment” (The Aarhus Convention)) by unanimous vote during the Fourth Conference of Ministers of Ecology “The Environment for Europe” in June 25, 1998 in the city of Aarhus (Denmark) [13; 3]. This international document gives opportunities to the representatives of the public of a more open access to environmental information held by the authorities, envisages participation of citizens in making environmentally important decisions and provides access to justice for violations of their environmental rights. That means it combines two main components - access to information and participation in decision-making. The mechanism of international control over its implementation is envisaged in that Convention. Thus, the Aarhus Convention was seen as a potentially effective tool for greening public policy. The aim of this Convention is to ensure rights to access to environmental information, public participation in decision-making, access to justice. In other words, the Convention consists of three interrelated elements (see Figure 1).

The right to know means the possibility for every person to receive information about the environment. Openness and accessibility of information for citizens is the foundation of a democratic society. Under the Aarhus Convention, people have a special right to obtain environmental information [5, p.324].

The Aarhus Convention defined public participation in decision-making in the form of public hearings, public meetings, participation in the environmental assessment and environmental impact assessments, development of environmental programs, plans, policies, legislative and other regulatory acts and so on. Formally, a citizen, based on the provisions of the Aarhus Convention may apply to the courts to challenge a specific decision or restoration of the violated right.

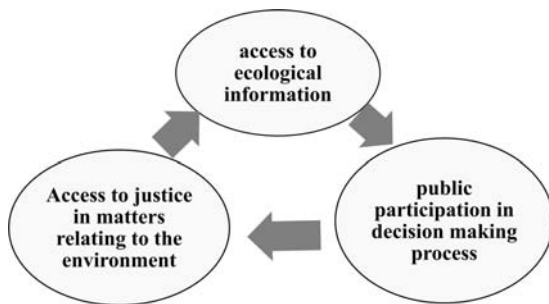


Figure 1. Main interrelated elements of the Aarhus Convention

In addition, countries that have signed the Convention, promise: to make government documents available on the environmental situation today; to allow the public to participate in decision making processes and to make the process transparent; to give the public the right to bring public or private enterprises to responsibility in the court.

It is also worth noting that the Aarhus Convention is by far the most democratic international document that establishes the right of citizens to defend their rights in court. Ukraine ratified the Aarhus Convention among the first in Europe.

It was necessary to adopt or to amend many laws of Ukraine in order to harmonize Ukrainian legislation with the International Convention, in particular, to include such basic provisions as improving access to environmental information; providing of information at an early stage; ensuring public participation in drafting regulations; promoting the mechanisms of consideration of proposals, recommendations and public comments expressed during the public hearings.

One of the basic laws, which establishes the right of citizens to receive information, is the Law of Ukraine "On Information" [9]. In particular, it states that everyone has the right to freely receive, use, distribute, store and protect information necessary to exercise his or her rights, freedoms and legal interests. The information is understood as any information and / or data that may be stored on material carriers or displayed electronically. The law establishes the basic principles of information relations, namely guaranteed right to information; openness, access to information, freedom of information exchange; the accuracy and completeness of information; freedom of expression; legitimacy of receipt, use, distribution, storage and protection of information; protection of individual from interfering in his or her personal and family life.

Since, according to the Law, the right to information is protected by the law and the state guarantees all the subjects of information relationships equal

rights and access to information, no one can restrict the rights of the individual in choosing forms and sources of information, except as required by law.

The Law of Ukraine “On Access to Public Information” defines the order of executing and ensuring that everyone has the right to access to information in the possession of government agencies and other subjects of public information, provided by this Law, and the information of public interest [6]. The public information means reflected and documented by any means and in any carriers information that was obtained or created during the execution of subjects of power authorities of their duties under the applicable law or which is owned by subjects of power, other subjects of public information provided by this Law.

Furthermore, the 7 of Part 1 of Article 3 of the Code of Administrative Justice of Ukraine gives the definition of the subject of authority – it is a state body, local authority, their official or officer, another entity in the exercise of their administrative duties on the basis of legislation, including the exercise of delegated powers [2].

Let us note that the aforementioned Laws and the Law of Ukraine “On Citizens’ Appeals” guarantee every person the transparency, availability of information in the possession of subjects of authority through its free reception (through appeal or through a request for information) to ensure their needs and legitimate interests. In addition, the exercise of the right of access to information is regarded as one of the fundamental means of participating in the management of the state and public affairs for their improvement.

In 2004, the Ministry of Justice of Ukraine accepted and registered the “Regulations on Public Participation in Decision-making in the Field of Environmental Protection” [12] due to orders of the Ministry of Environment of Ukraine. The Ministry of Environment of Ukraine believes that they are the mechanisms of application of the Aarhus Convention, but, as the detailed analysis show, the Regulations do not fully meet the letter and spirit of the Aarhus Convention.

The Resolution of the Verkhovna Rada of Ukraine “On Informing the Public on Matters Relating to the Environment” [10] was adopted to implement the provisions of the Aarhus Convention. This Resolution recommends the Cabinet of Ministers of Ukraine and regional administrations to ensure: annual informing the public about 100 objects that are major polluters of the environment through the media; quarterly informing the public about ten objects that are the biggest polluters of the environment at the national level for the previous quarter; the development and approval of provisions on the network of nationwide computerized information and analytical system for ensuring access to environmental information and local environmental automated information and analytical systems until January 1, 2005.

Table 1.

**The legal definition of the essence
of the concept of “ecological information”**

the Aarhus Convention [3]	The Law of Ukraine “On Environmental Protection” [11]	The Law of Ukraine “On Information” [9]
<p>Ecological information - is information on: a) the state of elements of the environment such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements; b) factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, agreements on environmental policies, legislation, plans and programs, affecting or likely to affect elements of the environment mentioned above in point a) and the analysis of cost-benefit and other economic analyzes and assumptions used in decision making processes on matters concerning environment; c) conditions of health and security of people, conditions of human life, the state of cultural objects and buildings to the extent that they are affected or may be affected by the state of elements of the environment or, through these elements, factors, activities or measures referred to above in point b).</p>	<p>Information about the state of the natural environment (environmental information) is information about: the state of natural environment or its objects - land, water, minerals, air, flora and fauna and their levels of pollution; biological diversity and its components, including genetically modified organisms and their interaction with the objects of the natural environment; sources, factors, materials, substances, products, energy, physical factors (noise, vibration, electromagnetic radiation, radiation), which affect or may affect the state of natural environment and human health; the menace of appearing and the reason for emergency ecological situations, the results of elimination of these effects, recommendations for measures to reduce their negative impact on natural objects and human health; environmental forecasts, plans and programs, measures, including administrative, state environmental policy, legislation on environmental protection; costs associated with the implementation of environmental activities with funds of environmental protection and other sources of financing, economic analysis conducted in decision making process on matters relating to the environment.</p>	<p>Information on the state of the environment (environmental information) - is information about: the state of elements of the environment and its components, including genetically modified organisms, and the interaction among these elements; factors that affect or may affect the elements of the environment (substances, energy, noise and radiation), and activities or measures, including administrative ones, agreements on the environment, policies, legislation, plans and programs); the state of health and security of people, conditions of human life, the state of cultural objects and buildings to the extent that they are affected or may be affected by the state of environmental components; other information and / or data.</p>

Despite the fact that it has been a long time from the date fixed for the implementation of the Resolution's recommendations, it can be argued that they in no way are satisfied. We can also state about the widespread disregard by local administrations of the Order of the Ministry of Environmental Protection from 01.11.2005 № 397 "On Approval of Regulations on Quarterly Informing of Population through the Media about the Objects that are Major Polluters of the Environment" [8]. It states that the State Committee for Television and Radio Broadcasting, regional and city administrations should contribute in the disclosure of environmental information.

Current legislation of Ukraine determines the information about the state of the environment, the information about the state of the natural environment and the ecological information by several identical terms. However, legislative definitions of these terms are somewhat different: in some cases, definitions do not cover certain types of environmental information; certain definitions are more detailed than others (Table 1). In the conditions of differences of definitions contained in the two laws and the Aarhus Convention, the most accepted definition would apply. That would be the one provided in the Convention, as the provisions of the international treaties ratified by Ukraine, have higher legal force compared with the laws of Ukraine in case of discrepancies between their regulations

Thus, based on the analysis and taking into account the basic provisions of the Law of Ukraine "On Public Information", we believe that public environmental information must be understood as reflected and documented by any means and in any carriers information that was obtained or created during the execution of subjects of power authorities of their duties under current legislation or that is in the possession of subjects of authority and other managers public information on:

a) the state of elements of the environment such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

b) factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, agreements on environmental policies, legislation, plans and programs, affecting or likely to affect elements of the environment mentioned above in point a) and the analysis of cost-benefit and other economic analyzes and assumptions used in decision making processes on matters concerning environment;

c) the state of health and security of people, conditions of human life, the state of cultural objects and buildings to the extent that they are affected or may be affected by the state of elements of the environment or, through these elements, factors, activities or measures referred to above in point b).

The issue of public access to environmental information is one of the reasons for acquisition of numerous conflicts between NGOs and representatives of the authorities not only at national but also at local level. Moreover, the public, as it is known, is an indicator of the reliability of any information to which the access is opened. Significant institutional barriers exist in the implementation of community initiatives at the local level also because today the majority of local communities do not have adopted statutes, where forms of interaction with public authorities are regulated. Lack of statutes adversely affects the practical application of the local mechanism of initiatives that, in turn, even hypothetically limits the ability of citizens to influence the decisions of local councils in a legal way. It is worth mentioning that the statutes of local communities do not contain detailed procedures for the use of participatory mechanisms of the members of local community in solving local problems.

Public participation in making managerial decisions in the public sphere plays an important role, particularly in addressing environmental issues as they are important to each citizen and require active inclusion of them in decision-making process by relevant public authorities. Public discussion involves organizing and conducting conferences, round tables, forums, public hearings, meetings, public meetings; TV and radio debates, Internet conferences, electronic consultations.

Modern science defines public participation as one of the principles of functioning of civil democratic society. The most effective public participation is at the level of open partnership between public authorities and citizens if there is a productive public control over public authorities' activity.

The public concerned is informed in adequate, timely and effective manner, depending on circumstances, either by public notice or individually at the initial stage of the decision making process on matters relating to the environment (about a project or process, or opportunities for public participation, public hearing). Public hearing is a meeting of the public, the project developer and those who take decisions. At the public hearing, citizens can ask questions and express opinions.

The study of public opinion is carried out by: sociological studies and observations (surveys, questionnaires, content analysis of information materials, focus groups, etc.); the establishment of telephone "hot lines", monitoring comments, reviews, interviews and other materials in print and electronic media to determine the positions of various social groups and stakeholders; processing and summarizing citizens' suggestions raised in the appeals and comments on issues that require study of public opinion.

In Ukraine, there are the arrangements to implement the consultation by the body of executive power, which include tentative plan for consultations; choice of forms and methods of counseling; action plan; informing the interested public;

analysis and summary based on the results of consultation; publication of results of consultation, etc. The abovementioned is determined in the Resolution of the Cabinet of Ministers of Ukraine “On Ensuring Public Participation in the Formulation and Implementation of Public Policy” [7].

Based on the analysis and the interpretation of the experts such as P.Kravts, S.Rozvod, A. Stankiewicz and others [1], we can determine the three phases of the relationship between public access to environmental information, public participation in making decisions about nature protection and the impact on managerial decision making (see Figure 2). That is, the first step is to ensure an effective system of informing the public and to establish feedback during the transformation of comments and proposals on environmental protection after their analysis and generalization into the projects in managerial decisions.

The second phase provides for setting up of such procedures for involving the public in drafting managerial decisions as counseling, namely, obtaining tools of the involvement of the public in the drafting of administrative decisions. The third stage requires the introduction of a mechanism to incorporate the interests and needs of the public. That is such procedures that can affect the management decision are added.

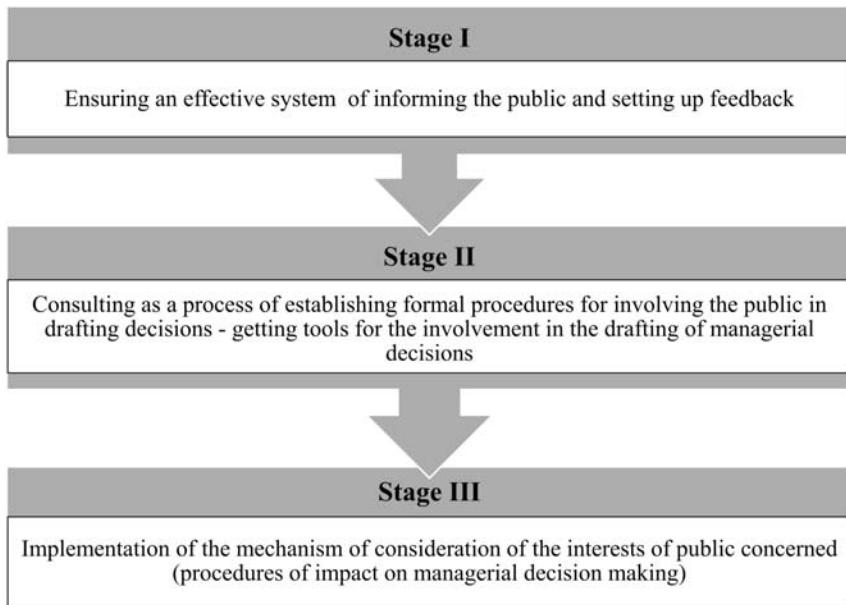


Figure 2. Stages of public participation in making managerial on nature protection

The current level of development of communication systems and technologies allows effectively forming an appropriate public opinion in the environmental field. In this system, “public relations” should take an important place. Public relations, according to scientists, serves as the science of managing public opinion. In addition, public relations is seen as a management function that establishes and maintains mutually beneficial relationships between the organization and the public, which determines success or failure. Therefore, it is important to build PR-politics in a way to receive the consent of the public to do something without being subject to the attack in the implementation of practical measures. After all, the dialogue between the government, including environmental agencies, on the one hand, and the public, on the other hand, is the key to effective cooperation in the implementation of practical actions in the field of environmental protection and ensuring ecologically safe existence of society.

It should be noted that the problem of the adopting of high quality, balanced and effective state-management decisions in the field of environmental protection and ensuring environmental safety remains relevant because the procedure itself, the effectiveness of managerial decision-making and their implementation are controversial. Hence, there is the need to strengthen the mechanism of influence of non-governmental environmental organizations in decision-making, realization and implementation of public environmental policy. The key issues that need to be addressed relate to decision-making procedures, their effectiveness and efficiency, as well as the responsibility of subjects for decisions and actions. The success of public environmental policy and optimal decisions balance between maximum achievement of stated tasks and support from citizens. After all the interaction between civil society and government (in the form of creating public hearings on draft laws and decisions, conducting public information campaigns (events) to support government decisions) contributes to the credibility of the government and provides opportunities for citizens’ mobilization for the general public affairs.

However, despite the relatively sufficient level of legislative and regulatory framework of issues related to public participation in management decision-making on nature protection, lacking is a systematic approach to the formation of a comprehensive public policy on this issue and the lack of clear effective mechanisms for its implementation: legal - taking into account the legitimate interests of citizens; informational - providing accurate information, which is guaranteed by the state, determination of procedure access to information of restricted access of the public council members; motivational - increasing public interest to existing environmental problems; moral and ethical - raising environmental awareness and ecological culture of society and so on.

Moreover, given the significant changes in the legislative and institutional field, an important issue today is the training of highly qualified specialists able to implement and execute all the tasks that arise today in the state.

Structural and personnel reform (changes) are needed to achieve this goal and to develop efficient and effective mechanisms for implementation of the new laws. An open transparent public access to information on legislative and institutional changes, discussion, and identification of gaps, problem issues and consideration of promising ideas will make it possible to adjust and to make informed managerial decisions. Such decisions are ultimately aimed at improving the lives and welfare of citizens, ensuring ecologically safe environment, which is guaranteed for them by the Constitution (the state).

Conclusions

Hence we consider an important priority to create an integrated perfect system with clear indication of legal guarantees and freedoms of providing access to public environmental information, direct and real participation of citizens and NGOs in making managerial decisions to ensure ecologically safe environment based on the results of this research and given the numerous gaps concerning effective mechanisms to ensure citizens' rights and freedoms defined by the Aarhus Convention.

We consider it necessary to involve the public in all decision-making processes in public administration, in the environmental field, in particular, to enhance the level of efficiency and effectiveness of nature conservation management decisions: to ensure full and qualitative feedback; to determine criteria and to develop possible scenarios - offers of own ideas about draft decisions; to evaluate scenarios according to defined criteria; to increase the level of public control over the transparency and openness of discussions about solutions; monitoring and evaluating results during the implementation of decisions.

Subsequently it is planned to conduct the study on the justification of the need to involve the public in discussing the results of the strategic environmental assessment and in managerial decision making during the design stage of plans and programs.

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