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Research Article

THE ROLE AND IMPORTANCE OF COURTS IN ENVIRONMENTAL PROTECTION

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ABSTRACT

Today, due to the development of technology and industry and the increase of human needs for natural resources, as a result of the unwise use of natural resources and the pollution and damage of the environment, there is an ecological crisis. - considering the importance of the decisions issued by the courts established within the framework of international and regional organizations in the regulation of ecologist disputes arising on environmental issues and the importance of the decisions issued by the courts within the economic interests of the parties at the heart of the disputes arising between the parties on environmental issues comes out.

KEYWORDS

Environment, natural resources, ecology, court decisions, UN, UN International Court of Justice, European Union Court, environmental problems, environmental damage.

INTRODUCTION

Today, the environmental problem is considered one of the most urgent problems for mankind, and the dangers arising from it are even more terrible than nuclear danger, and the whole world community is worried.

In recent years, as a result of the development of technology and industry and the increase of human needs for natural resources, as well as improper use of natural resources, illegal cross-border movement of natural resources and environmental pollution, an ecological crisis is observed and the world civilization is in danger.

The importance of the role of judicial authorities in protecting the environment and resolving issues of responsibility for damage caused to it, and the importance of the decisions issued by them, as well as the fulfillment of obligations regarding the elimination of the consequences of violations and the prevention and elimination of possible damages in the future.

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ensuring the right to the environment is one of the important issues.

In order to eliminate the above environmental problems and prevent them in the future, in 1972, the United Nations Conference on Environmental Protection (also known as the Stockholm Conference), i.e. the first international forum, was held, in which the program for environmental problems and their solution was announced [1]. The declaration adopted during this conference contained

26 principles [2] aimed at protecting the environment.

Louis B. Sohn noted that the results of the conference were a breakthrough for international environmental law: "... now diplomats and international lawyers ... can come to a consensus that meets all formal requirements, their work has become easier than before. Now, thanks to the adoption and implementation of the principles of the declaration, they are able to create a new environmental law in the shortest possible time..."[2]

Although this declaration is of a recommendatory nature, many of the provisions contained in this document have subsequently been reflected in international and national legal documents.

The United Nations, established in 1945, is considered the most influential organization, and it works to maintain international peace and security, develop mutual cooperation between countries, respect and protect human rights, and resolve disputes by peaceful means.

We can highlight the International Court of the UN as the most influential international judicial body in solving problems arising in the field of environmental protection.

According to paragraph 1 of Article 36 of the Statute of the International Court of Justice, "The jurisdiction of the Court includes all cases submitted by the parties and all matters provided for in the Charter of the United Nations Organization or in existing treaties and conventions" [5].

According to Article 26, Clause 1 of the Statute of the Court, an environmental chamber was established in 1993 for consideration of environmental disputes [6], but this chamber has not been approached by states for 13 years to resolve environmental disputes, and in 2006 about the fact that judges were not appointed to this chamber in 2008, the chairman of the court, Rosalin Higgins, said that "states consider international environmental law to be a part of international law, and therefore there is no need for a separate chamber for environmental issues" [5].

IMPORTANCE OF DECISIONS ISSUED BY THE INTERNATIONAL COURT OF ENVIRONMENTAL PROTECTION.

Turning to international judicial practice, in the case of United Kingdom v. Iceland [7], within the case of the Federal Republic of Germany v. Iceland [8], in 1948, Iceland adopted the law "On Scientific Conservation of Fisheries on the Continental Shelf" . According to him, Iceland could create protected zones where fishing by foreign countries is prohibited. In 1971, Iceland extended its fishing jurisdiction to 50 nautical miles, as a result of which Great Britain and Germany did not agree, and on April and May, 1972, they filed lawsuits to declare the unilateral expansion of Iceland's fishing jurisdiction as contrary to international law. In its July 25, 1974 decision, the court reiterated that Iceland did not have the right to unilaterally close areas outside the 12-mile zone to German fishing vessels as agreed by the two countries in the 1961 exchange of notes on fishing vessels. Regarding the problem between the

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environmental and economic interests of the states, the court emphasized that fish stocks should be used wisely and that they are economically useful. In addition, the court ordered the parties to monitor the state of fish resources and jointly consider measures for the conservation, development and rational use of these resources, including the limitation of fishing and the allocation of quotas [5].

According to Darya Boklan, the statute of the court should not distinguish between the nature of disputes, because every international dispute arises from not one, but several types of international relations at the same time, so it is not always possible to distinguish only environmental disputes or economic disputes [5].

Turning to another international case law, Argentina v. Uruguay regarding the granting of permission for the construction and commissioning of a pulp mill on the Uruguay River (Pulp Mills on the River Uruguay) [9], Argentina alleges that the construction and commissioning of two pulp mills on the Uruguay River poses a risk of deterioration of water quality in the river and that Argentina has breached its obligations under Article 1 of the Uruguay River Charter [10] regarding the prudent use of the river, as the State of Uruguay disagrees with the measures taken to prevent environmental pollution and accuses them of not taking enough measures to prevent environmental pollution. The Uruguayan state, in turn, emphasizes that, based on Article 36 [10] of the Charter, the necessary measures to prevent changes in the ecological balance in the river, to combat pests and other harmful factors, will be coordinated through the Uruguay River Commission.

Before evaluating this disputed situation, the Court focused on the Legality of the Threat or Use of Nuclear Weapons, (Advisory Opinion, I.C.J. Reports 1996 (I), p. 242, para. 29) and stated that "the general obligation of states to ensure that activities under their jurisdiction and control do not harm the environment of other states or territories outside national control is now a part of international law [11].

Participants in the Uruguay River Charter are held liable if it is proven that they did not act with due diligence and did not take all necessary measures to ensure compliance with the relevant regulations by public or private entities under their jurisdiction.

In its decision of April 10, 2010, the court reiterated that the parties must carry out an environmental assessment to protect and preserve the aquatic environment when planning activities that may cause transboundary damage in order to properly fulfill their obligations under Articles 41 (a) and (b) of the Uruguay River Charter. He also noted that if the production activity can have a significant negative impact on the environment, in particular, on the common natural resource, it can be considered as an obligation in accordance with international law. The court also emphasized that an environmental assessment should be conducted before the start of economic activity, and that its impact on the environment should be continuously monitored throughout its activity. Thus, in its decision, the court emphasized the need to be careful not to cause transboundary damage to the environment during the implementation of economic activity, and measures to prevent environmental damage should be implemented both before starting economic activity and during its implementation [5].

From the court decisions, we can see that one of the main reasons for the origin of environmental disputes between countries is the type of economic activity and that there are aspects of mutual dependence between them. and emphasized the need to use economic means to prevent them from increasing.

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THE PRACTICE OF THE COURT OF JUSTICE OF THE EUROPEAN UNION IN THE FIELD OF ENVIRONMENTAL PROTECTION.

If we pay attention to regional organizations for environmental protection, the European Union is the largest international economic and political organization in the world, it has institutions that determine the social and economic directions of its member states, so within the framework of this organization, the normative aimed at protecting the environment Article 191 paragraph 1 of the Treaty on the Functioning of the European Union states in the legal document that "preserving, protecting and improving the quality of the environment, protecting human health, rational and reasonable use of natural resources, solving regional or global environmental problems, in particular against climate change we can see that the norms "promoting measures aimed at fighting in the international arena" [12] have been rewritten.

According to Ludwig Krmer, "higher environmental standards of environmental protection should be established within the European Union, because high-level protection measures are better defined and applied at the level of the European Union than the member states" [13].

If we pay attention to the regulatory legal documents of the European Union aimed at protecting the environment, according to Article 2, Clause "a" of Directive 2004/35/EC, "damage to the environment is damage to protected species and natural habitats, i.e. habitats or any damage adversely affecting the achievement and maintenance of a favorable conservation status" [14] and Article 15 of Directive 2008/98/EC states that "if the waste is transferred from the original producer or owner for pre-treatment to one of the natural or legal persons, does not exempt from responsibility for full recovery or destruction" [15] we can see the return of the norms, which means that the disposal of waste should be covered by the previous owners or the manufacturer of the product from which this waste originated.

Article 260 of the Treaty on the Functioning of the European Union stipulates the norms that "if it is determined that the member states have not fulfilled their obligations under the treaties, then that member state must take the necessary measures for the execution of the decisions issued by the Court of the European Union" [12].

If we pay attention to the analysis of court decisions on how important the role of case law is in the formation of the concept of environmental protection in the decisions of the European Union Court and cases of violations of the norms in regulatory legal documents by member states, as well as the decisions issued by the court on their application and interpretation, the European Union case No.

C-188/07 (No. Case C-188/07 Commune de Mesquer v Total France SA and Total International Ltd) [16] considered by the court, the Italian company Enel purchased fuel oil (hydrocarbon) from Total France SA signs a purchase agreement, and Enel agrees with Total International Ltd to supply this product, On December 12, 1999, the sinking of an oil tanker off the Breton coast of France caused damage to the environment, and the question of who should pay for the damage caused to the environment in this case was answered by the Grand Chamber of the European Court of Justice on June 24, 2008, i.e. He points out that fuel oil (hydrocarbon) is sold economically and does not require pretreatment, fuel oil mixes with water and sand to form waste and cannot be used without further treatment.

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In its decision, the court states that the owner of the ship (Total International Ltd) is a waste, and as a result of his actions, fuel oil (hydrocarbon) turned into waste and caused damage to the environment. Also, it is possible to consider Total France SA as the previous owner of the waste, but it is necessary to assess the extent to which Total France SA contributed to environmental pollution as a result of the actions of Total France SA, and to impose responsibility on Total France SA under national law, the company's actions to prevent this situation, i.e. the company's fuel oil (hydrocarbon) it is necessary to evaluate the actions of the ship's condition during transportation.

Commercial Court of St. Nazaire and Courts of Appeal in Rennes Despite the environmental damage caused by Total International Ltd, the Commune de Mesquer, which brought a case against Total International Ltd, refused to settle the claims, as France did not have the necessary provisions to allow Total International Ltd to be held liable under French environmental law at the time to compensate for the environmental damage. except for unclaimable human health, property and other damages.

On September 25, 2012, the French Court of Cassation ruled that Total International Ltd was liable for environmental damage caused by its actions [17].

It should be noted that, until the case was reversed, in France, environmental damage was considered only as a cause of damage to human health or property. Until this case was considered in France, damage to the environment from a civil point of view was not considered independently, but only as a cause of damage to human health or property. The decision taken by the French Court of Cassation is dependent on the publication of Law No. 2016-1087 of August 8, 2016, which introduces the concept of "direct damage to the environment" ("prejudice ecologique") [17].

To conclude from the above, the decisions issued by the courts are of great importance in the interpretation of the norms of international and regional regulatory legal documents, in setting standards and in their application in the national legislation of the states aimed at environmental protection, but the disputes that arise on environmental issues in judicial practice Considering that it is not only an environmental dispute, but also includes the ecological and economic interests of the parties (states and individuals), some suggestions can be made:

Proposal: to establish specialized courts on environmental issues under international and regional courts in order to determine the damage caused by such disputes in the future and to issue a fair decision in the hearing of disputes related to environmental damage and have high knowledge and experience in the field of international environmental law should consist of individuals.

REFERENCES

1. Конференция ООН по проблемам окружающей человека среды, 5–16 июня 1972 года, Стокгольм, Швеция // URL: https://www.un.org/ru/conferences/environment/stockholm1972
2. Декларация Конференции Организации Объединенных Наций по проблемам окружающей человека среды, Принята Конференцией Организации Объединенных Наций по проблемам окружающей человека среды, Стокгольм, 1972 год // URL: https://www.un.org/ru/documents/decl_conv/declarations/declarathenv.shtml
3. И.А. Цверианашвили, Вестник Нижегородского университета им. Н. И. Лобачевского, 2016, № 1, с. 89–94.

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4. Статут Международного суда, статья 36, // URL: https://www.un-ilibrary.org/content/books/9789210562294c003/read
5. Дарья Боклан, Практика разрешения Международным Судом ООН споров, вытекающих из международных экологических и международных экономических отношений., Международное правосудие, 2014 // URL: https://cyberleninka.ru/article/n/praktika-razresheniya-mezhdunarodnym-sudom-oon-sporov-vytekayuschih-iz-mezhdunarodnyh-ekologicheskih-i-mezhdunarodnyh
6. Васильева, Е. П. Международный экологический суд // Молодой ученый. - 2022. - № 32 (427). - С. 68-70. / URL: https://moluch.ru/archive/427/94378/
7. Fisheries Jurisdiction (United Kingdom v. Iceland), overview of the case / URL: https://www.icj-cij.org/case/55
8. Fisheries Jurisdiction (Federal Republic of Germany v. Iceland), overview of the case / URL: https://www.icj-cij.org/case/56#:~:text=In%20Judgments%20delivered%20on%202,opposable%20to%20either%20the%20United
9. Pulp Mills on the River Uruguay (Argentina v. Uruguay), overview of the case, / URL: https://www.icj-cij.org/case/135
10. Statute of the River Uruguay, signed at Salto on 26 February 1975, Treaties and international agreements registered or filed and recorded with the Secretariat of the United Nations, volume 1295, 1982 I. Nos. 21378-21426, United Nations, New York, 1990 / URL: https://treaties.un.org/doc/Publication/UNTS/Volume%201295/v1295.pdf
11. Pulp Mills on the River Uruguay (Argentina v. Uruguay) Summary of the Judgment of 20 April 2010, Summary 2010/1 20 April 2010, / URL: https://www.icj-cij.org/sites/default/files/case-related/135/15895.pdf
12. Договор о функционировании Европейского Союза (новая редакция), / URL: https://eulaw.ru/treaties/tfeu/
13. KRAMER, L. EU Environmental Law. Seventh edition. © Sweet & Maxwell 2012, p. 20-21.
14. Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage. Official Journal L 143 , 30/04/2004 P. 0056 – 0075, / URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0035
15. Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (Text with EEA relevance). Official Journal of the European Union. 22.11.2008, p. 3–30, / URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32008L0098
16. Commune de Mesquer v Total France SA and Total International Ltd. Judgment of the Court (Grand Chamber) of 24 June 2008, Case № C-188/07, ECR I-04501. / URL: https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62007CJ0188
17. Данилова Н.В., Гоглов А.П., Экологическая ответственность в праве Франции., Вестник Томского государственного университета. 2019. № 447. С. 232–240., / URL: https://cyberleninka.ru/article/n/ekologicheskaya-otvetstvennost-v-prave-frantsii.