



Supreme
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ENVIRONMENTAL JUSTICE IN UKRAINE (Recent Supreme Court Practice in the European Context)

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AGENDA

1. Environmental justice in Ukrainian administrative case law
2. Prevention and environmental impact assessment
3. Public participation and access to justice
4. Evidence and proportionality in environmental supervision
5. Protection and governance of public natural resources
6. European environmental-law standards as a comparative framework
7. Key conclusions for administrative justice

Environmental Justice through Administrative Case Law

Recent environmental disputes before the Administrative Cassation Court concern not only the legality of final administrative acts, but also the quality of public decision-making that precedes them.

The recurring judicial questions are whether environmental risks were assessed in time, whether administrative intervention rested on evidence, whether remedies remained proportionate, and whether access to court was practical and effective.

The European Context. EU Environmental Law: Prevention, Precaution and Effective Protection

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E191>

Article 191 TFEU places prevention, precaution and the polluter-pays principle at the centre of EU environmental policy.

For Ukrainian courts, these standards currently serve primarily as a framework for comparison and legal approximation rather than as directly applicable EU law.

Environmental Assessment Must Precede Environmental Risk

<https://zakon.rada.gov.ua/laws/show/2059-19#Text>

Environmental impact assessment is preventive by nature: it must take place before a proposed activity or material change capable of producing significant environmental effects.

A later technical assessment cannot fully substitute for prior consideration of risks, alternatives and public participation.

Supreme Court Practice: EIA and Construction Expertise

Case No. 300/2415/23, judgment of 6 May 2024

<https://reyestr.court.gov.ua/Review/118905010>

The dispute concerned a water-protection dam.

The Supreme Court distinguished technical review of construction documentation from environmental impact assessment: construction expertise examines compliance with technical and building requirements, while EIA addresses likely environmental effects, alternatives, public participation and the conditions under which the activity may proceed.

Key point: approval under the construction-review procedure cannot substitute for a legally required environmental impact assessment.

Existing Activities and New Environmental Risks

No Retroactivity – but Material Change Matters

<https://zakon.rada.gov.ua/laws/show/2059-19#Text>

An activity lawfully commenced before the introduction of an EIA requirement should not automatically become unlawful merely because the legislation subsequently changed.

However, reconstruction, expansion or another material alteration may create a new environmental risk and therefore trigger a new assessment obligation.

Public Participation Environmental Decision-Making Is Not Only Administrative

<https://unece.org/environment-policy/public-participation/aarhus-convention/text>

Meaningful public participation is part of the legitimacy of environmental governance.

Citizens and civil society may reveal risks or competing interests that are not evident from the administrative file alone.

Access to Environmental Justice Collective Environmental Interests Must Remain Effectively Protected by Courts

<https://unece.org/environment-policy/public-participation/aarhus-convention/text>

Environmental harm frequently affects communities, ecosystems and future generations rather than one clearly identifiable individual.

Standing rules should therefore be applied in a manner that preserves practical and effective judicial protection where public environmental interests are at stake.

Evidence in Environmental Supervision

Preventive Measures Require a Current Evidentiary Basis

Environmental supervision may legitimately intervene before irreversible damage occurs.

Yet restrictive measures must rest on concrete and current evidence of risk rather than on abstract assumptions or on the mere fact that a violation occurred earlier.

Supreme Court Practice: Suspension and Current Environmental Risk

Case No. 400/2062/23, judgment of 6 June 2025

<https://reyestr.court.gov.ua/Review/128116485>

The case concerned atmospheric emissions. The Supreme Court held that full or partial suspension of operations is an exceptional preventive measure and must respond to an actual, unremedied violation creating a real danger.

Where the violation has been fully remedied, continued suspension may cease to serve a preventive purpose and instead operate as a disproportionate sanction.

Prevention and Proportionality. Strong Environmental Protection Still Requires Proportionality

https://court.gov.ua/storage/portal/supreme/prezentacii_2024/114_principle_of_proportionality_bernaziuk.pdf

Prevention does not eliminate the requirement of proportionality.

The intensity and duration of judicial or administrative intervention should remain connected to the seriousness, immediacy and continuing character of the environmental risk.

Protected Areas and Biodiversity

Nature Protection Requires Assessment before Irreversible Change

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31992L0043>

European nature-protection law illustrates a broader principle relevant to Ukrainian adjudication: potentially irreversible interference requires particularly careful prior assessment.

Courts therefore examine whether the competent authority genuinely evaluated environmental consequences rather than merely completed formal procedural steps.

Public Natural Resources Environmental Litigation Is Also Public Resource Governance

Forests, protected territories, subsoil and other natural resources involve interests extending beyond the immediate parties to litigation.

Administrative courts therefore play an important role in reviewing the legality of the State's management of public natural resources.

Supreme Court Practice: Access to Court and Public Resources

Case No. 320/59106/24, judgment of 31 August 2026

<https://reyestr.court.gov.ua/Review/139392030>

The Supreme Court held that publication of an administrative act does not by itself determine when a prosecutor knew, or objectively could have known, of an alleged defect contained in the underlying administrative file.

The Court placed the procedural issue in the broader context of public natural resources, environmental protection and effective judicial review, referring to the preventive logic reflected in Article 191 TFEU as comparative support.

Subsoil Governance. Legality May Depend on a Chain of Administrative Decisions

Case No. 460/18562/23, judgment of 26 November 2025

<https://reyestr.court.gov.ua/Review/132102672>

The Supreme Court examined whether state appraisal of mineral reserves could lawfully support a later non-auction extraction permit where the applicant had not held the legally required permit for geological study.

A preparatory administrative decision may itself be reviewable where it forms the legal basis for the final permit; otherwise, review confined to the final authorisation may leave the originating defect untouched.

European Standards and Ukrainian Courts

Comparison without Mechanical Transplantation

EU directives and Article 267 TFEU do not presently operate for Ukrainian courts as they do for courts of EU Member States.

By contrast, the Aarhus Convention is binding on Ukraine, while EU environmental law provides a valuable benchmark for legal approximation, interpretation and institutional development.

What the Comparison Shows
Common Judicial Questions across Different Legal Systems
Despite differences in legal status, European and Ukrainian environmental disputes repeatedly raise similar questions:

- Was the risk assessed in time?
- Was the public heard?
- Was the evidence sufficient?
- Was the remedy proportionate?
- Was effective access to court preserved?

KEY CONCLUSIONS

Environmental justice increasingly concerns how public authorities make environmentally significant decisions, not only the formal outcome of those decisions.

Recent Supreme Court practice demonstrates four recurring requirements: prior environmental assessment, evidence-based preventive measures, practical access to court, and legality across successive decisions governing public natural resources.

The European environmental-law framework provides a useful benchmark for Ukraine's legal approximation, while requiring a clear distinction between binding international obligations and comparative EU standards.

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3. Bernaziuk, Ian. The Concept of Public Interest in Administrative Justice. (in Ukrainian) 2021. https://journal-vjhr.sk/wp-content/uploads/2022/02/VJRHR_6_2021_Last.pdf
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7. Bernaziuk, Ian. Environmental Human Rights: Case Law of the Supreme Court, the ECtHR and the Court of Justice of the European Union. (in Ukrainian) 2026. <https://constitutionalist.com.ua/ekolohichni-prava-liudyny-praktyka-verkhovnoho-sudu-iespl-ta-sudu-spravedlyvosti-ies>



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Thank you for your attention!

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