

Report for 2007-2008

Statistics

Cases handled by EPL: 2007 – 47, 2008 – 56
Consultations to citizens and NGOs: 2007 - 479, 2008 - 586
Draft legislation comments: 2007 – 11, 2008 - 14
Clinical students attending EPL clinic: 2007 – 11, 2008 - 10
Seminars, conferences, workshops attended by EPL staff: 2007 – 47, 2008- 25
Conferences, seminars, workshops organized by EPL: 2007 – 4, 2008 - 11
Press coverage of EPL activities: 2007 – 19 times, 2008 – 21 times
EPL journal publications: 4 double issues

Ecology in the context of law

EPL is a non-governmental law organization of and for people who care about the environment in Ukraine and who cannot be indifferent to the mounting environmental dangers we face. As these threats increase, day-to-day environmental protection grows in importance for the health and well-being of all living creatures and even for the future of our planet. EPL contributes to preservation of biodiversity, pollution prevention and control, climate change action, and mitigation of other environmental problems by prosecuting strategic cases. This is difficult work that requires tenacity and endurance – Ukraine's ineffective judicial system often creates insurmountable obstacles. However, as Abraham Lincoln said, "the possibility that we may fail in the struggle ought not to deter us from the support of a cause we believe to be just." This faith in the noble goals of our work combined with high professionalism and much devotion provide the driving force behind EPL.

1. Case: Tashlyk hydro-nuclear power station

Nuclear safety continues to be a high priority issue in Ukraine. 15 Old reactors await decommissioning in the near future, 4 nuclear plants continue operations, and 22 new nuclear reactors are scheduled for construction. EPL continued litigation to protect the South Bug River, a source of drinking water and biodiversity, from the expansion of the South Ukrainian Nuclear Power Plant. EPL has initiated two court proceedings against the Cabinet of Ministers of Ukraine, Mykolaiv Regional Council, to challenge allocation of lands to the nuclear industry and withdrawal of land from protected areas. EPL also started strategic litigation against the nuclear industry challenging its claim to use water

from and to discharge pollution to the South Bug River. At present the case is in cassation .

2. Case: Mykolayiv cement plant

Mykolayiv cement plant, one of the biggest cement plants in Ukraine, plans to introduce new types of fuel in the production process that could lead to emission of dangerous substances into the air and consequently endanger the safety and health of citizens of the city of Mykolayiv. The cement plant is also trying to reduce the size of the sanitary zone, which would exclude numerous neighboring villages currently located within it. To protect citizens' environmental rights and ensure a safe environment, EPL is investigating the case and bringing a lawsuit against the plant.

State environmental protection officials in the Lviv region refused to provide to EPL results of the environmental impacts assessment of the Mykolayiv cement plant reconstruction project. Thus, EPL filed a suit against them in the economic court. In August 2008 the court rejected EPL's claims and EPL appealed.

3. Case: *the Danube-Black Sea deep water canal*

The government of Ukraine has been building the Danube-Black Sea canal to facilitate navigation on the Ukrainian part of the Danube delta. The whole Ukrainian part of the Danube delta lies within the Danube Biosphere Reserve. The construction of the canal endangers biodiversity in the Danube delta. Also, government decision-making concerning the canal has been conducted in violation of Ukrainian and international law about nature protection and public participation.

In November 2007, the Supreme Court of Ukraine reversed decisions of all the lower commercial courts that had allowed withdrawal of 22000 ha of Danube Delta wetlands at the Bystre mouth from the territory of the Danube Biosphere Reserve for construction of the Danube-Black Sea navigation canal. The Supreme Court found violations of land laws, reversing three lower courts, and declared invalid the 2000 State land use certificate allowing canal construction activities in the wetlands. In our first appearance before the Ukraine Supreme Court, EPL represented the Danube Biosphere Reserve. This case was widely covered by the media, including the national TV channel. Also, the Third Meeting of the Compliance Committee of the Aarhus Convention discussed issues arising in this case and provided certain recommendations to the Ukrainian government. .

4. Cases on climate change

EPL initiated the first two strategic cases against the Ministry of Environmental Protection of Ukraine for violations of national and international climate change law and of Ukrainian public information and participation law with respect to government decision-making concerning climate change issues. In the first case, EPL asked the court to declare illegal the inaction of the Ministry of Environmental Protection and to order it to take certain measures to fulfill Ukraine's obligations under the UN Framework Convention on Climate Change, the Kyoto Protocol, and national legislation. In July 2008, the court ruled in favor of EPL. In response to the government's appeal, EPL prepared a notice of objection and now awaits the court hearing.

The second case against the Ministry of Environmental Protection on climate change challenges violations of the right to information and public participation in decision-making. Representatives of government did not appear for an August 2008 preliminary court hearing. The defendant presented information from its web-site claiming that it includes that which EPL requested. EPL argued that the information provided is irrelevant and incomplete. The court of the first instance declined EPL's requests and now we are preparing an appeal.

5. Case Kirnurska spit protected area

EPL represented citizens of Mykolaiv in a court challenge to the decision of the Mykolaiv oblast council changing zoning of the Kirnurska spit protected area and withdrawing a valuable part of its territory. The citizens claimed violation of the right of public participation in decision-making of the local council and in control over the conservation measures in protected areas. The court of the first instance declared this decision illegal. The defendant filed an appeal and the court upheld EPL's favorable result.

6. Case Vydyniv quarry

Residents of the village Vydyniv in the Lviv region asked EPL for legal assistance because they were concerned about the illegal issuance by the Vydyniv village council of a permit for extraction of gravel within village boundaries. They claimed that their rights to safety and a healthy environment has been violated. EPL filed a suit against the village council challenging its decision to provide a land lot for extraction of gravel. The court of first instance declared this decision illegal and

ordered the village council of Vydyniv to cancel it. At present, operation of the quarry has been stopped.

7. Strategic Litigation Case Vilshyna

EPL provided legal assistance to three families seeking resettlement because of injuries to their lives in a sanitary zone and compensation for the harm to their health caused by mining operations. EPL continued litigation for the Gavalko family on resettlement and damages against the state mining company Vizejska (Lviv region). When the administrative appeal process failed to provide relief for the Gavalkos, EPL initiated series of lawsuits against the mining company. The court of first instance denied the family the right to receive an apartment at the company's expense, but the appeals court disagreed and remanded the case for reconsideration. EPL also assisted the Gavalko family in obtaining relief from the court in the form of damages from the mining company for the family's pain and suffering from exposure to noise, water and air pollution. The courts awarded damages of 77,000 UAH (15, 000 USD) against the mining company for this. The court rulings are now being implemented. This is the first successful case in Ukrainian courts to redress environmental damages under environmental statutes. EPL has also filed a claim in the European Court of Human Rights on behalf of the Gavalko family and submitted additional briefing at the Court's request.

Following numerous requests from EPL, the state enterprise *Lvivvuhillia*, owner of the mine, agreed to include costs of resettlement of the Gavalko family in the general costs of liquidating the mine. During follow-up court hearings, it was revealed that the mine management forged the documents for provision of new apartments and, therefore, the apartment meant for the Gavalko family was given to another family. EPL requested that the Prosecutor Office of Sokal district start a criminal case for this forgery.

8. Mariupol Strategic Litigation Case

EPL brought strategic litigation to protect the right to a safe and healthy environment of 5 000 citizens living in the sanitary zone of the Azovstal steel and iron company in Mariupol. Acting on behalf of the citizens, EPL seeks their resettlement from the sanitary zone of the factory as it poses serious hazards to their health and violates their right to safe environment. EPL lawyers are also representing Azovstal workers in claims about violations of legal requirements for health and safety and various

social obligations. We have moved the court to request proof of compliance from the company.

9. Case of *Modul* public corporation

EPL provides legal assistance to residents of Kamianets-Podilskyi in Khmelnytsk region and protects their environmental rights violated by illegal reconstruction of the *Modul* public corporation steelwork facilities. The reconstruction plan would plainly result in considerable additional and dangerous air pollution. The public was excluded from the *Modul* reconstruction decision-making process. Moreover, permission documents contain serious deficiencies that should preclude reconstruction. Therefore, EPL started a wide-scale campaign against *Modul*, state authorities and local government to seek withdrawal of permits for reconstruction works, to declare illegal and unfounded a number of expert conclusions, and to prevent launching of the enterprise. In 2007 EPL sent numerous complaints to the Prosecutor's office that made it take certain actions to stop *Modul's* violations. Representing the citizens' rights in court, EPL obtained a declaration that the actions of the enterprise are illegal and violate the citizens' rights to participate in decision making processes.

EPL climate change activity

1. Participation in international negotiations: work in official delegations, preparation of public position, participation in consultations with the public.
2. Work on the issues of emissions trading.
3. Work towards urging permanent updating of the Register of anthropogenic emissions.
4. Enforcement of consideration of climate change during environmental analysis
5. Legal evaluation of activities which negatively impact the weather and climate in Ukraine
6. Work on the issue of permits and authorizations for activities related to anthropological changes in the atmosphere and atmospheric phenomena.

EPL consultations

In 2007 EPL provided 479 consultations, to citizens and NGOs on issues of climate change, nuclear safety, access to information, illegal construction works and usage of

natural resources and in 2008 586 such consultations. In 2007 EPL sent 52 informational inquiries to different state authority. It has sent a number of complaints to relevant state bodies demanding actions to protect environmental rights of citizens. EPL first tries to solve environmental problems and to protect environmental rights of citizens through administrative mechanisms. If these attempts fail, EPL goes to court.

PEOPLE as object and subject of EPL activity

The effective functioning of civic society is crucial to the functioning of a state. Citizen action very often becomes decisive for resolution of environmental problems. Citizens' awareness of their rights and freedoms is a key to the effectiveness of civic society. A great part of EPL's work aims to inform citizens about their rights, in particular in the environmental sphere, and to empower them in realization of these rights. EPL does this by providing consultations, conducting seminars and conferences, litigating, and publishing the EPL Journal. Many of EPL court cases attempt to protect people whose rights were violated in some way. Also, EPL endeavours to raise a new generation of environmental lawyers who realize the great importance of environmental protection and have effective tools to accomplish it. EPL's cooperation with NGOs in Ukraine and abroad grows every year, and provides EPL opportunities to widen its experience and raise its professional capacities.

a) Environment-People-Law Journal

For 2007-2008 EPL published 4 double issues of the Journal *Environment-People-Law* (№ 32-33, № 34-35, №36-37 i № 38-39), which covered access to information, including environmental information, and legal practice in this sphere, access to justice as well as the most important meetings and events related to environmental protection. EPL lawyers wrote Journal pieces about sanitary and protected zones around industrial facilities, nuclear safety, the influence of climate change on human rights, and Ukraine's activities for compliance with international obligations in the realm of climate change. EPL widely disseminates the Journal in Ukraine and abroad, sending it to non-governmental organizations, public authorities and higher educational institutions in Ukraine.

b) international and national cooperation of EPL

EPL has been recognized as a valuable partner of numerous national and international institutions. To widen cooperation and partnership with other environmental organizations, foreign states and also to deepen and widen its own experience, EPL has participated in various national and international events including the following:

- International conference on the introduction in Ukraine of free legal aid;
- Meeting of experts devoted to the issues of access to justice organized within the Meeting of Parties to the Aarhus Convention;
- Meeting of Working group of the Parties to the Aarhus Convention and strategic meeting of Ecoforum for discussion of the issues needing consideration during the Third meeting of the Parties to the Aarhus Convention in Riga in 2008;
- National conference devoted to the topic *Formation of free legal aid in Ukraine: first results and next steps*;
- International conference of the Eurasian Federation of the Greens *Europe-Asia: cooperation for stable development*;
- International conference on the development of the European network of oil extraction (Croatia).
- Interuniversity student academic and technical conference entitled *Application of informational technologies on the way to reaching sustainable development*;
- *Conference of Ecoforum in Riga*;
- International meeting of experts in advocacy (Poland);
- International Union for Conservation of Nature – IUCN (Spain);
- International Summit of Climate Change Network (India);
- Meeting of the Parties to the UN Framework Convention on Climate Change (Poland);
- On December 20-21, 2007, EPL organized and chaired the international conference *Protection of the right to information in Ukraine* supported by the Renaissance Foundation (Ukraine). During the conference, attended by more than 50 representatives of NGOs and state agencies, EPL presented our own experience in fostering access to information and protection of the right to information in Ukraine, thus spreading the results of the previous and current

projects funded by OSI on improvement of the access to information in Ukraine.;

- During 1-4 March, 2008, EPL organized 2 seminars: *Access to environmental information in Ukraine for NGOs representatives and journalists: experience and recommendations*, *Access to environmental information for representatives of public bodies: current problems* in cooperation with the International organization "Article 19" (Great Britain) and supported by the European Union and International Fund "International Media Support" (Denmark). The goals of the seminars were to analyze problems in the sphere of access to environmental information and elaborate effective ways of overcoming them; to promote development and strengthen relations between international and national NGOs to intensify cooperation among NGOs and share positive experience in the sphere of realization and protection of the right to environmental information; to elaborate proposals and recommendations as for improvement of current legislation and practice with the aim of improving the access to environmental information in Ukraine; to increase effective role of NGOs and mass media, as well as public bodies, in developing the freedom of information in Ukraine and applying legal mechanisms in the sphere of access to environmental information and public participation in decision making. The seminars were attended by 60 participants.

EPL organized 2 days seminar dedicated to the implementation of the Carpathian convention in Ukraine. In partnership with REC and EURAC, and together with UNEP, EPL raised the awareness of officials of local and regional bodies and the public on the Carpathian Convention implementation at local and regional levels. More than 20 participants attended.

In 2008, EPL started a big joint project with the State Administration of Environmental Protection in the Lviv region, Ukraine State Environmental Inspection, and Lublin Foundation of Environmental protection (Poland), sponsored by the European Commission: "Utilization of Toxic Pesticides on the Territory of Lviv Oblast in the Transboundary Basin of Rivers Syan and Western Buh.". The project is to identify and eliminate old stores of banned pesticides in the Lviv region. In total, the project resulted in removal and transportation for incineration to Hamburg,

Germany, of 134 tons of dangerous, banned pesticides. EPL was responsible for financial and legal management of the project, involvement of relevant experts, and interviewing people on issues of pesticide dangers.

The pesticide project also involved organization of seminars for representatives of authorities from 20 districts of the Lviv region and 5 other regions of Ukraine to learn more about existing problems in these areas, share positive experiences about disposal of pesticides, and develop common ways to solve the problems. EPL organized 10 regional seminars and participated in 1 international seminar with a combined total of 410 participants. EPL also participated in dissemination and analysis of questionnaires on the issues of pesticide dangers and management, and more than 500 interviews were conducted.

EPL's web-site has new sections devoted to issues of protecting environmental rights of citizens and climate change issues. EPL lawyers organized a large-scale campaign of cooperation with mass media and during 2007-2008 gave 19 interviews on environmental issues on local radio and TV channels, and participated in a number of TV presentations, a number of those devoted to discussion of Ukraine's Kyoto Protocol obligations and opportunities, the flexibility mechanisms introduced by this Protocol and their effectiveness, as well as climate change's influence on the environment and human rights. EPL lawyers gave 40 interviews to national and local printed mass media and provided regular updates through electronic mailing lists.

Cooperation with public authorities

In 2007 EPL was elected a member of the Public Council under the National Agency of Environmental Investments in Ukraine. Therefore, EPL lawyers actively participate in activities of the Public Council, including all its sittings, discussions of climate change legislation and activity, and efforts concerning fulfilment of requirements of the Kyoto Protocol and the Framework Convention on Climate Change. Also, EPL defends citizens' right to participation in decision-making processes in discussions of draft legislation related to environmental rights and free access to environmental information.

2) Legal clinic

EPL's legal clinic is very important to raise awareness among law students about environmental rights of citizens and mechanisms of their protection. In 2007 eleven students were involved into the legal clinic; in 2008 ten law students had internships under supervision of EPL lawyers.

3) Library

EPL's library provides a valuable contribution to our goal of environmental protection through dissemination of information. EPL's library is a source of materials for researchers and law students. EPL actively updates informational resources of the library to provide its users with topical and interesting literature on environmental protection and environmental rights of citizens. EPL lawyers help library users find the most useful materials and information sources. Every year the number of the library users grows: in 2007 there were 486 of them and 491 in 2008. Recently, EPL started a video library that includes the best environmental movies.

LAW as an instrument of environmental protection

The utmost goal of EPL's activity is to establish in Ukraine the rule of law in the environmental sphere in particular and also more generally. Our organization works towards this goal working through several avenues. The first is to enforce the law in court and to provide citizens and legal bodies with legal tools of protecting their rights. EPL also actively participates in the development of new legislation, developing proposals and comments for draft laws and legal acts of Ukraine and analysing international legal tools for environmental protection. By participating in meetings, seminars and conferences on urgent legal issues and organizing such events, EPL makes a great contribution to development of legal discourse and practice.

Law drafting

During the reporting period EPL provided comments on draft laws, draft by-laws and reports on the implementation of international treaties on access to information and public participation ratified by Ukraine.

EPL commented on the draft of the Administrative Procedural Code of Ukraine, which stipulates the procedure of access to information and administrative appeal of any actions (or inaction) of state bodies or other entities. EPL also provided its vision and concept ideas for a new law on information.

EPL provided comments to the Ministry of Environmental Protection of Ukraine on its draft of recommendations on public participation in decision-making on planning activities concerning construction of environmentally dangerous objects.

EPL commented on first and second drafts of the National Implementation Report of Ukraine on the Aarhus Convention on access to information, public participation and access to justice in environmental matters. EPL contributed to the report on implementation of access to environmental information norms in Ukraine, on public participation during decision-making, and access to justice in the recent years.

EPL provided comments on the draft of National Action Plan on Climate Change, pointing to the absence of measures to foster public participation during decision-making on climate change and law drafting.

EPL commented on the draft Law on GHG emission and absorption, draft decision of the government on the green investment scheme and on the registry of emissions, draft decision on the coordination of the activities on implementation of Kyoto Protocol and Climate Change Convention. EPL also commented on the draft decision on the priorities of the central governmental bodies for 2008.