



**International public interest environmental law  
organization**

***“Environment-People-Law”***

**Annual report  
2010**

**Lviv - 2010**

## **Statistics:**

Cases handles by EPL – 45

Consultations to citizens and NGOS: 411

Comments to draft laws: 21

Conferences, seminars, workshops organized by EPL: 4

Number of issues of EPL Journal published: one double issue # 6-7 (46-47) and one singular issue # 8 (48).

Other publications - 2

In 2010 EPL continued working in the following three key spheres: environment, people, law.

**Environment:** all legal, educational and scientific activities of EPL were directed at solving the most urgent problems of environmental protection in Ukraine and overcoming global challenged faced by the mankind. Thus, EPL lawyers focused on illegal waste placement, industrial pollution of environment, emissions of toxic waste by industry. The organization puts emphasis on the issues of climate change and global warming with the aim to draw attention of the public and public officials to this issue and raise their awareness in this sphere.

**Law:** EPL lawyers used all possible legal instruments for solution of environmental problems and protection of citizens' rights including litigation, complaining to public authorities, application of international non-litigation bodies and procedures, direct application of international agreements in the sphere of environmental protection to which Ukraine is a Party as well as application of mechanisms of control, monitoring and argument solution developed within these agreements. Moreover, EPL systematically monitored and commented draft laws and by-laws on environment, development and functioning of civil society and realization of human rights.

**People:** common citizens and non-governmental organizations are within special focus of EPL lawyers. EPL provided legal assistance to the public to remedy the following violations: failure of public officials to provide requested information, failure of public authorities to comply with their obligation to disseminate information via electronic means of communication, violation of human right to healthy and safe for life and health environment, violation of citizens' right to participation in the process of decision-making in environmental issues, inadequate response of prosecutor's bodies to EPL complaints. EPL publications, web-site, and educational events were also directed at raising the level of legal awareness of citizens and improvement of their capacity to protect them and the environment with legal tools.

### **1. Advocacy program**

In the reporting period EPL's litigation was focused on the following issues:

- failure of public authorities to provide requested information;
- failure of public authorities to disseminate information through electronic means of communication;
- violations of citizen rights to safe and healthy environment;
- illegal placement of wastes;
- industrial pollution of the environment;
- violation of the right to public participation in environmental decision making;
- inadequate reaction of Prosecutor's bodies to EPL's complaints;

- climate change (access to information on GHG quota trade, public participation in decision-making, Ukraine's non-compliance with national and international obligations, disregard for climate change issues in the process of environmental expertise, lack of control over the activities having impact on the weather and climate, improper functioning of the register of anthropogenic emissions)
- illegal construction works in the coastal areas.

The most vivid court cases are briefly described below:

### ***EPL v. the Ministry of Environmental Protection of Ukraine***

EPL filed a suit with the purpose to declare invalid conclusions №324 of 22.02.2006 and №345 of 19.04.2006 of additional state environmental expertise of the full development working project of the deep water canal *the Danube-the Black Sea*. According to the court decision taken by the Economic Court of Lviv oblast, the suit of EPL was fully satisfied. This decision recognized the fact that the Ministry of Environmental Protection had violated the norms of the Convention on Environmental Impact Assessment in Trans-boundary Context (Espoo (EIA) Convention) in terms of developing environmental impact assessment.

The Ministry filed an appeal and there were two hearings in April and May 2010. The court decided to dismiss the case on the ground that the dispute is not administrative one. EPL filed a cassation complaint.

### ***EPL vs. General Prosecutor's office of Ukraine***

EPL has been working to ensure protection of citizens' rights to proper consideration of their complaints about violations on behalf of public authorities by Prosecutor's bodies. Trying to stop the practice of Prosecutor's bodies when instead of considering the complaints on the merit, they redirect them to the bodies that are objects of the complaints, EPL filed a suit against the General Prosecutor's Office of Ukraine. The court of the first instance ruled in favour of the defendant but the Court of Appeal supported EPL's complaint. We hope that this victory will have impact on the efficiency of work of prosecutor's bodies.

### ***Tashlyk hydro-nuclear power station***

EPL continued litigation on the protection of the river South Bug - the source of drinking water, biodiversity and on prevention of expansion of South Ukrainian Nuclear Power Plant. EPL has initiated two court proceedings against the Cabinet of Ministers of Ukraine, Mykolaiv Regional Council challenging allocation of lands to nuclear industry and withdrawal of land from protected area. EPL initiated strategic lawsuit against nuclear industry challenging their right to use water resources and to discharge polluted water into the river South Bug. In April 2010 the Supreme Administrative Court of Ukraine satisfied EPL's cassation complaint, cancelled all previous decisions of local courts and redirected the case for new consideration. In November the Administrative court of Kyiv satisfied EPL's suit and declared invalid the Resolution of the Cabinet of Ministers of Ukraine authorizing land allocation for nuclear industry. The Cabinet of Ministers filed an appeal and the hearing of the case in the Court of appeal was appointed for January 2011.

### ***EPL vs. the Ministry of Justice of Ukraine, the Cabinet of Ministers of Ukraine, National Agency of Environmental Investments and General Prosecutor's Office of Ukraine***

Being actively involved into commenting legal acts and draft laws, EPL noticed a negative tendency that public authorities of Ukraine do not take into account comments from the public. Because of serious drawbacks in this sphere, EPL addressed the Ministry of

Justice of Ukraine, the Cabinet of Ministers of Ukraine, National Agency of Environmental Investments and General Prosecutor's Office of Ukraine with requests to elaborate a procedure of processing comments from the public and bring such a procedure into compliance with the national legislation of Ukraine. Because of the fact that EPL's requests were ignored, in September 2009 EPL filed a suit to Lviv Circuit Administrative Court challenging the failure of the Ministry of Justice of Ukraine, the Cabinet of Ministers of Ukraine, National Agency of Environmental Investments and General Prosecutor's Office of Ukraine to act towards organizing the work with public comments to draft laws. The court decided to divide this case into four separate cases: EPL vs. the Cabinet of Ministers of Ukraine, EPL vs. the national Agency of Environmental Protection, EPL vs. General Prosecutor's Office and EPL vs. the Ministry of Justice of Ukraine.

In the case EPL vs. General Prosecutor's Office EPL's suit was partially satisfied and the court ordered General Prosecutor's Office to consider EPL's complaint. The defendant filed an appeal and the case is pending in the court of appeal.

In the case EPL vs. the Ministry of Justice of Ukraine EPL's suit was partially satisfied. The defendant filed an appeal complaint and we are waiting for the appeal consideration.

In the case EPL vs. the Cabinet of Ministers of Ukraine EPL's suit was partially satisfied in July 2010. The defendant filed an appeal and the case is pending in the court of appeal.

In the case EPL vs. the National Agency of Environmental Protection the court refused to consider the case on procedural grounds. EPL filed an appeal complaint challenging this resolution of the court.

### ***EPL vs. National Agency of Environmental Investments and the Cabinet of Ministers of Ukraine***

According to Article 17 of the Kyoto Protocol of the United Nations Framework Convention on Climate Change, Ukraine started trade of quotas of greenhouse gases emissions. However, this activity is not legally regulated in Ukraine, that is there is no clear procedure of spending the costs received as a result of quota trade, it is not prescribed what projects will be financed by the costs received as a result of quota trade and who will be responsible for controlling this process.

Ukraine has signed a quota trade agreement with Japan and EPL addressed the Cabinet of Ministers of Ukraine and the National Agency of Environmental Investments with informational inquiries in order to receive information about legal basis of this agreement, responsibilities of the Parties, control over its implementation, priority branches and projects to be financed, and the procedure of costs spending. EPL was answered that this kind of information is a commercial secret. Thus, at the initial stage of implementing the agreement the public was denied access to it and the public has no possibility to control implementation of this kind of agreements.

According to Guideline for Implementing the Green Investment Scheme (GIS), costs received as a result of quota trade should be spent to finance specific environmental measures following clearly defined procedure. The powers to sign, realize and control implementation of the agreement on quota trade cannot be concentrated within one branch of power and one body of state executive authority. Also, quota trade should be performed in a transparent manner when the public has access to information on this activity. Neither of these requirements is fulfilled in Ukraine where the National Agency of Environmental Investments realizes all the functions and there is no control over its activity by other bodies of state authority.

Thus, to address this problem, EPL filed a suit with the Lviv Administrative Court challenging failure of state authority bodies (National Agency of Environmental Investments and the Cabinet of Ministers of Ukraine) to act towards providing information about the signed agreement on quota trade and demanding that the information be provided and the officials guilty of the above mentioned violations be called to account.

Also, EPL sent informational requests to the Accounting Chamber, the National Agency of Environmental Investments and General Prosecutor's Office to find out about measures of controlling the spending of costs received as a result of agreements with Japan and Spain. The General Prosecutor's Office answered that it had started criminal prosecution following the fact of improper spending of the costs.

EPL's suit was partially satisfied and EPL filed an appeal complaint to challenge court's decision because of classifying as secret the information on value of the agreement on quota trade and refusal to disclose the text of the agreement. The case is pending in the court of appeal.

### ***Violation of the legislation on the right to information and public participation in climate change issues by the Ministry of Environmental Protection in Ukraine***

EPL was denied access to information about the Ministry's climate change policy and steps to mitigate climate change consequences and anthropogenic green house gas emissions. Thus, EPL asked the court to oblige the Ministry to take certain actions and impose the penalty on the officials responsible for the violation of the legislation. EPL's claim was not satisfied and we filed an appeal, and the court of the second instance partially satisfied EPL' suit. EPL filed a cassation complaint requesting to satisfy the demands which were not satisfied by the Court of Appeal.

### ***Ukraine's failure to comply with national and international obligations in the sphere of climate change***

Ukraine has signed and ratified the UNFCCC and the Kyoto Protocol. Accordingly, Ukraine undertook to adopt relevant legal acts for implementation of the above mentioned international documents. However, the Ministry of Environmental Protection of Ukraine which is the coordinator of activities aimed at implementation of the UNFCCC and the Kyoto Protocol fails to comply with these obligations. Therefore, EPL initiated a court case and won in the court of the first instance. The defendant filed the appeal complaint and won in the court of the second instance, EPL filed a cassation complaint and is waiting for the court hearing.

### ***Climate Change and Environmental Impact Assessment (EIA) in Ukraine***

Impact of a planned activity on the global climate change in the course of EIA in Ukraine is not being taken into consideration. The impact of the projected objects on the microclimate is considered, but it does not cover global climate change in the context of emissions of green-house gases (GHG). According to the announcement of the public authorities that perform EIA in Ukraine, one, even large enterprise cannot influence the global climate change; that is why during the EIA process the proper accounting of the planned emission of GHG is not conducted.

Such neglect of the issue of influence of a planned activity on the global climate change is inadmissible because it contradicts many principles and norms of national and international legislation about the climate protection for the present and future human generations.

Moreover, the EIA is aimed to predict changes of the environment caused by the planned activity. In view of the fact that the above-mentioned issue is not taken into consideration

in the course of EIA, we can affirm that the examination of the impact of a planned activity on the environment is not carried out in full scope and the implementation of certain climate change obligations by Ukraine according to the UNFCCC and Kyoto Protocol becomes impossible.

Therefore, it is necessary that proper actions meant to influence the decision as for necessity to consider the impact of a planned activity on global climate change in the course of EIA be undertaken in Ukraine and necessary legal regulations be established.

Thus, EPL addressed the Cabinet of Ministers of Ukraine and the Ministry of Environmental Protection of Ukraine with the proposal to undertake the above-mentioned steps. Unfortunately, these requests were ignored and EPL prepared a suit against the Ministry and the Cabinet of Ministers of Ukraine to force them make certain steps to ensure that climate change issues are taken into account in the process of EIA.

EPL undertook to enforce improvement of compliance with industrial pollution standards on behalf of big industrial enterprises as the alternative for zoning approach. Therefore, we performed analysis of compliance of actual emissions with declared standards for three enterprises – Mykolayivcement plant (La Farge), Knauf Insulation plant, Azovstal.

### ***EPL vs. Mykolayivcement plant (La Farge)***

This case shows the complexity of the problem of industrial pollution. The cement plant functions without a project of sanitary-protective zone. According to sanitary regulations the size of the sanitary-protective zone for this plant should be 1000 meters and 5 300 persons reside within this zone. The plant regularly exceeds emission norms but no proper monitoring of emissions is done. Although the plant uses modern dust filters, there have been registered regular cases of the plant functioning with the filters switched off. Also, the plant uses alternative types of fuel, in particular tyres, coal, paper industry waste, plastic and other solid wastes. There are also violations in the sphere of land legislation.

Moreover, the owner of the plant plans to build additional facilities and EPL works on determining what technologies will be used at the new plant and what emission standards will be applied. This case helped EPL realize that the problem of industrial pollution requires new approaches, in particular enforcement of compliance with the national and international emission standards.

Therefore, EPL has been working towards stimulating openness of the information on the current state of compliance with emission standards and conditions of new plant construction through constant consultations with State Administration of Environmental Protection and State Environmental Inspection in Lviv region, Mykolayiv District State Administration, State Sanitary Service in Lviv region. In order to develop expertise in the sphere of impact of alternative fuel on the air, EPL jointly with scientists of State Agrarian University made a research of impact of alternative fuel used by cement plants on the state of the air, environment in general and human health. EPL has been working to determine availability of permit documents for maintenance of wastes used as alternative fuel as well as monitoring compliance of the plant with its obligations to decrease its adverse impact on the environment.

Also, EPL filed a suit against State Administration for Environmental Protection in Lviv region to challenge its refusal to provide conclusions of environmental expertise of the project of reconstruction of Mykolayivcement plant. The court of the first instance and the

court of appeal supported the defendant and currently EPL is waiting for consideration of the case in cassation.

EPL filed another suit against Mykolayivcement plant aimed at forcing it to provide EIA of reconstruction project for the plant, conclusions of environmental expertise of the reconstruction project of the old plant and EIA of the project of the new plant construction. The court obliged the plant to provide requested documents. The defendant filed an appeal and the Court of appeals supported the defendant. EPL filed a cassation and now the case is pending.

Also, EPL lawyers studied the permit for emissions of Mykolayivcement plant, cooperated with US experts in comparing data indicated in the permit with emission standards for cement kilns in US and other countries. As a result, the following violations have been revealed in the permit:

- 1) The permit allows emission of suspended hard particles in amounts that exceed maximum levels allowed by the legislation.
- 2) The permit does not envisage measures towards reducing emissions.
- 3) The permit was issued without proper documentation.
- 4) The permit does not include all the substances that are actually emitted by the plant.
- 5) The process of the permit issuance lacked proper consultations with the public envisaged by the legislation.

Therefore, in August 2010 EPL filed a suit challenging the permit for emissions. Currently, the case is pending in court.

### ***Knauf Insulation plant***

There are plans to build an insulation wool producing plant in Fastiv (Kyiv region). From the very beginning the process of construction was accompanied by violations of citizens' rights to participate in decision-making. The public hearings were held with gross violations, in particular the citizens concerned were not allowed to the public hearings of the construction project and results of the hearings were forged. The citizens addressed the Prosecutor's Office in Kyiv region with the request to investigate these violations but it had no results. EPL filed a suit against Prosecutor's Office in Kyiv region for its failure to investigate violations of Ukrainian legislation. The court ruled in favor of the defendant and EPL filed an appeal. In November 2010 the court satisfied EPL's appeal.

Also, EPL filed a suit against the Ministry of Environmental Protection of Ukraine with the request to declare unlawful and cancel conclusions of environmental expertise. The case is pending.

### ***Azovstal' plant***

This plant producing steel products is one of the biggest industrial polluters in Mariupol'. EPL has been working to obtain and analyze information on emissions and dumping performed by the plant. In particular, EPL requested that Mariupol' city sanitary and epidemiological station provide EPL with results of inspections performed by it on Azovstal' plant and with information on measures towards organizing sanitary-protective zone of the plant. Because the sanitary-epidemiological station failed to provide requested information, EPL appealed to the Prosecutor's Office of the city of Mariupol'. Also, EPL addressed the State environmental inspection of the Azov Sea with the request to provide results of inspections performed by it on the plant. We received three replies to our inquiries from the

inspection which contained results of routine inspections of the plant. According to the State environmental inspection of the Azov Sea, Azovstal plant regularly violates norms of environmental legislation exceeding emission limits for a number of pollutants. It was also revealed that all devices used by the plant to measure emission levels were not officially tested and registered and therefore cannot produce reliable data. Moreover, EPL addressed the State administration of environmental protection of Donetsk region with the request to provide copies of permitting documents, data of monitoring impact on the environment, conclusions of expertise and information on measures towards air protection. Since the State administration failed to provide requested information, EPL complained to the Prosecutor's Office in Donetsk region.

### ***EPL vs. the Ministry of Environmental Protection of Ukraine (classification of environmental information as state secret)***

EPL initiated a case aimed at canceling unlawful provisions (p. 3.2) of the Resolution of the Ministry of Environmental Protection of Ukraine on the procedure of providing environmental information which holds that inquiry about environmental information should contain not more than three questions on one environmental theme. The p. 3.6 of the Resolution holds that an inquiry about environmental information can be refused if the information is classified as state secret. Both these paragraphs violate norms of Ukrainian legislation and therefore EPL is trying to cancel them with the help of court. The court of the first instance did not support EPL's claim and EPL filed an appeal complaint. Currently we are waiting for the case being appointed for consideration.

### ***Informing through electronic means of communication (web-sites of public authority bodies)***

EPL started a completely new direction in its efforts to make environmental information open and accessible for the public and started studying the situation with public officials' informing the public through electronic means of communication that is through their web-sites and e-mail. Public officials, in particular the Ministry of Environmental Protection of Ukraine, turned out to violate requirements of the Aarhus Convention and other legislation on informing the public through the Internet. In particular, the web-site of the Ministry of Environmental Protection lacks the following information that it should contain according to the legislation:

- description of main tasks of the Ministry, functions of each division as well as e-mail addresses of their directors;
- annotations of all classification rubrics that would allow users to understand what kind of information the rubric contains;
- information on types and amounts of environmental information possessed by the Ministry of the procedure of obtaining this information;
- information on all kinds of services provided by the Ministry;
- notification on emergencies;
- national environmental reports for 2008 and 2009;
- updated information on sources of pollution, waste location, impact of environmental factors on human health;
- information on implementing special environmental programs and plans;
- reports on Ukraine's implementation of international agreements in the sphere of environmental protection;
- free access to all registers of natural resources and electronic database of environmental information;
- texts of permitting documents issued by the Ministry.



EPL filed a suit against the Ministry of Environmental Protection of Ukraine and the court of the first instance partially satisfied EPL's suit. The court declared illegal omissions of the Ministry and obliged it to bring its web-site in compliance with the legislation. Also, the court obliged the defendant within a month to submit a report on implementing the court decision.

The Ministry appealed the court decision, but the Court of Appeal supported decision of the court of the first instance and the decision came into force in November 2010. In order to implement the decision, the Ministry has planned in 2011 to develop the list of environmental information that should be posted on the web-site of the Ministry and web-sites of its regional branches including the regulations on publicizing this information. Such approach will ensure creation of a by-law that will adapt national requirements to web-site functioning to needs of the Ministry of Environment and will promote compliance with the law in this sphere.

It is also important to mention that since September 2010 EPL started systematic monitoring of content of web-sites of all regional branches of the Ministry of Environmental Protection (24 regional branches and branches in the cities of Kyiv, Sevastopol' and Simferopol') in order to detect typical problems and undertake measures towards solving them.

### ***EPL vs. the Ministry of Environmental Protection of Ukraine (access to information)***

EPL challenged in court failure of the Ministry of Environmental Protection to provide information on implementation of the Aarhus Convention and integration of EU environmental legislation and won in the court of the first instance. If the defendant does not file an appeal, we will start implementation of the court decision.

Also, in September 2010 EPL initiated another case meant to ensure public access to conclusions of state environmental expertise through making the Ministry of Environmental Protection publicize this information on its web-site and on web-sites of regional branches of the Ministry. The case proceeding has been started.

### ***Danosha pig farm***

EPL has been consulting residents of the village Sivka-Voynylivska (Ivano-Frankivsk region) concerned about plans of Danish investor (Danosha company) to construct a pig farm in the territory of their village. Since this investor has already constructed two pig farms in their district, the residents know about adverse impact of functioning of the farms (usage of their land lots for waste storage, acrid smell, soil and water pollution). With the help of EPL, residents of the village held a referendum at which 99% of the residents voted against construction of the pig farm. Currently we are working on canceling the agreement on renting the land lot meant for the farm.

### ***The case in the Compliance Committee of the Aarhus Convention***

The goal of the case is to promote Ukraine's compliance with the Aarhus Convention, in particular concerning functioning of the official site of the Ministry of Environmental Protection of Ukraine.

Ukraine has already twice received the warning from the Compliance Committee and in December 2009 the government of Ukraine was obliged to submit full texts of developed legislation in advance before the next Meeting of the Committee. In March EPL lawyer participated in the hearing of the case against Ukraine. Representative of the Ukrainian

mission in Geneva was not able to explain why Ukraine failed to submit the draft legislation which was supposed to be submitted in February. The Committee warned Ukraine that if it did not submit the documents in advance, the Committee would have to issue final statement of non-compliance to Ukraine. EPL lawyer helped the government with elaboration of the legislation and translation.

Having in mind that on its 30th meeting the Compliance Committee will review the progress of the Government of Ukraine in implementing MOP decision III/6f, EPL submitted to the Compliance Committee a shadow report to update the Committee on how the situation had changed since EPL presented its view on the state of fulfillment of MOP decision III/6f by Ukraine and implementation of the Action Plan approved by the Decree of Cabinet of Ministers of Ukraine on December 27th, 2008 (Action Plan) in December of 2009 on the 26th Compliance Committee meeting. With the regret EPL had to acknowledge again that the Action Plan adopted by the Government in 2008 has not been implemented and that Ukraine remains in the state of non-compliance with the Convention. The report includes detailed analysis of the implementation of all measures envisaged by the Action Plan showing that the state of implementation is regrettable. In its conclusion the report also states that as of November 2010 not a single piece of domestic legislation has been adopted by the Government of Ukraine in order to improve domestic legal framework of issues identified by the Committee in 2005.

On its 30th meeting (14-17 December 2010) the Compliance Committee considered analytical materials on Ukraine's implementation of MOP decision III/6f and the Action Plan. In its report the Committee indicated that in view of the fact that the government of Ukraine failed to present its report, the Committee expresses gratitude to EPL for provided information and analysis.

These facts show that there is still a lot to be done in order to improve Ukraine's compliance with the provisions of the Aarhus Convention.

In early fall 2010 EPL joined the initiative called Atmospheric Trust Litigation designed to provide a means by which courts can hold governments at the national and sub-national level accountable for reducing carbon emissions. Such litigation rests on the premise that all governments hold natural resources in trust for their citizens and bear the fiduciary obligation to protect such resources for future generations. Atmospheric trust litigation would characterize the atmosphere as one of the assets in the trust, shared as property among all nations of the world as co-tenants. It is perhaps the only macro approach that can empower courts to effectuate the reductions in emissions within the limited time frame afforded to us before critical climate thresholds are exceeded. EPL lawyer participated in the seminar on this approach held in Oregon (USA) and is currently preparing a suit.

## **2. Law drafting**

As mentioned above, according to the results of the 26<sup>th</sup> Meeting of the Compliance Committee of the Aarhus Convention, Ukraine's government was supposed to send to the Committee texts and translations of relevant draft laws. EPL contributed to the process through providing comments to the Law of Ukraine "On Environmental Protection" (concerning definition of environmental information), the Regulation on Dissemination of Environmental Information, the Regulation on Public Participation. Also, EPL prepared and submitted to the Committee the full English translation of the draft Regulation on Dissemination and Provision of Environmental Information and its comments to it.

EPL prepared Action plan of realizing the Espoo Convention and sent it to the Compliance Committee of the Espoo Convention.

Moreover, the following draft laws and documents were commented: the Strategy of national environmental policy of Ukraine until 2020, the law “On Changes to be Introduced to the Law “On the Red Book””, the law “On Basics of Communicative Policy”, the law “On Greenhouse Gases”, the law ‘On Regulating the Amount of Anthropogenic Emissions and Absorption of Greenhouse Gases”, the Resolution on approving the “Procedure of considering, approving and realizing green investment projects envisaged by the Kyoto protocol to the UNFCCC”, the Procedure of taking account of public opinion in the process of decision making in environmental matters, the draft law “On Non-governmental Organizations”, the Law of Ukraine “On Regulation and Management of Emissions and Absorption by Greenhouse Gases Absorbers”, the draft law “On Management in the Sphere of Energy Saving”, “the draft law “On Improving the Permit System in Construction”.

### **3. Clinical program**

According to the curriculum of the clinical program, EPL organized regular lectures for students that focused on the following issues: basic principles of civil society, public interest advocacy, legal background of protective sanitary zones, climate change and its threats.

Students were trained to draft suits, informational requests, analyse replies to informational requests,

Students of the clinical program were actively involved into realization of the project of monitoring courts in Ternopil’ and Lviv regions. They interviewed visitors of courts, analysed questionnaires, analysed court decisions to refuse open proceedings in cases, participated in analysing court decisions in environmental sphere.

### **4. Projects**

#### **USAID Ukraine: Rule of Law Project**

In April 2010 EPL completed the project of monitoring courts in Lviv and Ternopil’ regions. The overall goal of the project was to promote establishment of the rule of law in Ukraine, to improve the realization of the legal reform, strengthen the authority of judges and legal system in Ukraine, to determine preclusions in trial of environmental cases with the purpose to prevent them in future.

#### **The following tasks were accomplished as a result of the project realization:**

1. Development of tools for carrying out public monitoring of courts by experts of the project, in particular development of the questionnaire for the analysis of judicial process, a questionnaire for interviewing judges about their competence in the field of environmental law.
2. Provision of consultations through the telephone hot line.
3. Cooperation with administration of the courts where monitoring was performed - :Zaliznychny and Frankivskiy district courts of Lviv, Zolochiv, Mykolayiv, Pustomyty district courts of Lviv region, Lviv and Ternopil’ circuit administrative courts, the Court of Appeal of Ternopil’ region – was established.
4. Volunteers collected the information on availability of court decisions in cases on protection of environmental rights, access to environmental information, public participation in decision making in environmental matters.

5. Ninety (90) participants of judicial processes were interviewed by volunteers about access to justice in environmental matters.
6. Eight court hearings on access to justice, equality, impartiality and completeness of judicial procedures in particular concerning cases of administrative jurisdiction were observed by consultants and volunteers of the project.
7. There were analysed 200 decisions about refusing to open court proceeding in order to reveal reasons for such refusals and factors that can facilitate the decrease in the number of such refusals.
8. Fifteen (15) court decisions in the sphere of protection of environmental rights of citizens were analysed in order to reveal possible drawbacks when decisions are taken in the sphere of material law including the analysis of effectiveness of executing court decisions.
9. The seminar for trainees of the Academy of Judges of Ukraine was held in order to present the results of the monitoring and the analysis of court decisions to show typical problems and drawbacks and prevent them in future.
10. The round-table discussion was held where experts of Environment-People-Law presented the compendium, results of the monitoring and discussed them with participants of the round-table, journalists, experts from other NGOs involved into the USAID Ukraine Rule of Law Project.
11. The compendium devoted to the results of the monitoring of courts, analysis of court decisions and the resolution adopted at the seminar was published with the participation of the Rector of the Academy of Judges and a judge of the Constitutional Court of Ukraine.
12. Two (2) articles on aspects of legal protection of environmental rights of citizens were published in Environment. People. Law Journal.
13. Analytical report on the project results was published.

Within USAID Rule of Law project EPL provided consultations to citizens who called to the hot line or came to EPL office. Totally 58 consultations were given over telephone, 4 in written form and 16 consultations were provided during personal visits of citizens to EPL office. The consultations touched upon the following issues: the ways of appealing denials to provide environmental information by state executive authorities, protection of citizens' right to safe for life and health environment in cases of exposure to harmful wastes of enterprises, protection of land rights of citizens in the process of privatization of land lots, ensuring by local self-governance bodies proper legal regime for local water objects, unlawful permits for construction works, territorial jurisdiction of complaints, illegal logging, procedures of challenging unlawful acts of public authorities etc.

### **The seminar for judges**

With the aim to raise the level of qualification of judges in the sphere of environmental law, to reveal procedural hindrances in consideration of environmental cases for their further elimination, and also to present the compendium on access to justice in environmental matters, on 21 March 2010 experts of international public interest environmental law organization *Environment-People-Law* held the seminar and round-table discussion for judges, journalists, representatives of other NGOs that participated in realization of the Project.

Prior the event considerable work had been done in order to involve experts of the Academy of Judges of Ukraine, the Constitutional Court of Ukraine, international experts of the Compliance Committee of the Aarhus Convention (the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters), to involve judges from the courts monitored within the project and to prepare materials for realization of the seminar.

We also decided to involve to preparation of the seminar volunteers who are trainees of EPL legal clinical program and at the same time students of Ivan Franko National University of Lviv.

Totally, there were 53 participants of the seminar, including 13 representatives of the organization, 2 international experts, the rector of the Academy of Judges of Ukraine and a judge of the Constitutional Court of Ukraine as presenters, 24 judges from Lviv region and 11 representatives of NGOs and journalists.

The participants of the seminar were provided with informational materials including the agenda of the seminar, paper versions of all presentations, CD with the compendium devoted to urgent issues of access to justice in environmental matters, Environment. People. Law Journal (#4-5 (44-45), the compendium *Access to Environmental Information*, the compendium *Access to Justice in Environmental Matters*, the compendium *Jurisprudence of the Aarhus Committee, 2004-2008*, the Decisions II/b and III/f of the Compliance Committee concerning Ukraine's non-compliance with requirements of implementing the Aarhus Convention.

In their presentations the experts covered the results of the performed public monitoring and analysis of EPL jurisprudence. Below you may find the description of the content of the seminar according to its agenda.

The agenda included the following points:

1. *Registration of the participants. Greetings from the organizers. Introduction of participants of the seminar, expression of expectations.*

The president of EPL Svitlana Kravchenko presented the organization, spoke about its directions of work, the aim of the seminar and the round-table discussion. The project director Taras Zhyravetskyi made the introduction of participants and asked each participant to express his/her expectations of the seminar.

2. *International legal regulation of access to justice in environmental matters.*

*Moderator of the panel - Jerzy Jendrośka, international expert, member of the Compliance Committee.*

At this panel Yelyzaveta Alekseyeva spoke about international standards of access to justice in environmental matters, Svitlana Kravchenko drew attention to jurisprudence of the Compliance Committee in the sphere of access to justice, and Petro Stetsiuk stressed that the Constitutional Court of Ukraine should also play more important role in ensuring legal protection of the environment. Iryna Voytiuk, rector of the Academy of Judges of Ukraine, in her presentation focused on the importance of the functioning of the Academy of Judges for legal capacity building to improve access to justice.

3. *Access to justice in environmental matters in Ukraine. Moderator of the panel – Prof. Svitlana Kravchenko*

At this panel *Jerzy Jendrośka* spoke about urgent issues and practice of access to justice in the EU countries. Taras Zhyravetskyi and Dmytro Srylnikov devoted their presentations to guarantees, possibilities and conditions of access to courts in Ukraine. Andriy Petriv focused on EPL jurisprudence, in particular the cases on access to environmental information. Olha Melen considered problematic moments in litigation on challenging acts or omissions in the sphere of environmental protection. Maryana Bulgakova focused on problems appearing in litigation on cases related to public participation in decision-making.

4. *Round-table discussion "Ways of overcoming the problem of access to justice". Moderator – the project director Taras Zhyravetskyi*

Taras Zhyravetskyi presented the problem of access to justice from the point of view of the public. Leonid Tarasenko and Andriy Buryi made a short presentation of their projects within USAID Ukraine Rule of Law Project. Dmytro Skrylnikov presented different views on the problem of access to justice in Ukrainian media.

*5. Development of conclusions and recommendations. Answers to questions.  
Dissemination of questionnaires among the seminar participants.*

After the seminar and the round-table discussion there were developed Recommendations as for improvement of access to justice in environmental matters. Participants of the seminar were also interviewed with questionnaires in order to analyse organization and content of the seminar.

### **Compendium on access to justice**

One of the project tasks was to summarize the jurisprudence of Environment-People-Law and to write a compendium for judges which would cover problematic aspects of access to justice in environmental matters and indicate certain ways of overcoming these problems. The compendium was written during the second reporting period. Below you may find the content of this edition:

Introduction

Chapter 1. International legal regulation of access to justice in environmental matters

1.1. International standards of access to justice in environmental matters

1.2. The unique compliance mechanism of the Aarhus Convention and its jurisprudence in access to justice

Chapter 2. Access to justice in environmental matters in Ukraine

2.1. Guarantees, possibilities and conditions of applying to court. Barriers in access to justice.

2.2. Overcoming barriers and ensuring conditions for enforcement of environmental laws by citizens: international experience

2.3. Litigation in cases concerning provision of environmental information

2.4. Litigation in cases on public participation in decision-making process

2.5. Litigation in cases on challenging acts or omissions of public authorities

Conclusions and recommendations

Sources

### **The project “Stimulating realization of the right to access to information owned by state authorities”**

During the reporting period EPL continued realization of the project aimed at stimulating openness of information owned by public authorities. The project includes litigation with the purpose to overturn the stamp “For official use only” used for environmental information and promote openness of information, all-Ukrainian seminar for public officials, publication of the compendium for public officials.

### **The seminar on access to information**

The seminar was held in May 2010 and hosted representatives of State Administrations for Environmental Protection from all regions of Ukraine (33 persons). Our goal was to show the public officials what information they can and have to provide and which information shouldn't be provided according to the legislation, show them typical mistakes made by public officials with regard to access to environmental information, and build constructive cooperation with them. Since majority of the seminar participants are not lawyers by education, we really believe the information provided during the seminar will be useful for them.

Presentation delivered at the seminar covered the following themes:

- The notion of environmental information;

- Types of information that belongs to environmental information, sources of environmental information;
- Citizen access to environmental information: regimes of access to information, limitation of access to environmental information;
- Dissemination of environmental information by public authorities: the duty of active dissemination of environmental information by public authorities. Challenges and ways of overcoming them;
- Passive dissemination of environmental information. Handling informational requests: information analysis, timing of consideration. Reasons for refusals to provide information.
- Legal responsibility for violations of the legislation on access to information.

The same issues were covered in the compendium on access to information entitled *Dissemination and Provision of Environmental Information: Legal Aspects Compendium for Public Officials*. It has been prepared by 6 EPL lawyers, volume - 50 pages, circulation – 1000 copies.

### **Content of the compendium:**

Introduction

#### **CHAPTER 1. THE NOTION OF ENVIRONMENTAL INFORMATION**

- 1.1. Terms used in the Ukrainian legislation to determine the notion of environmental information and their correlation.
- 1.2. Data classified as environmental information.
- 1.3. Sources of environmental information.

#### **CHAPTER 2. CITIZEN ACCESS TO ENVIRONMENTAL INFORMATION**

- 1.1. Regimes of access to information.
- 1.2. Limitations of access to environmental information.

#### **CHAPTER 3. THE DUTY OF ACTIVE DISSEMINATION OF ENVIRONMENTAL INFORMATION**

- 3.1. The duty of active dissemination of environmental information as one of the guarantees of the right to information.
- 3.2. Bodies responsible for active dissemination of environmental information.
- 3.3. Types of environmental information subject to mandatory release to the public.
- 3.4. Ways of active dissemination of environmental information

#### **CHAPTER 4. PASSIVE DISSEMINATION OF ENVIRONMENTAL INFORMATION**

- 4.1. Legal regulation of passive dissemination of environmental information. General provisions of the right to request and obtain environmental information.
- 4.2. Subjects of passive dissemination of environmental information.
- 4.3. Subjects of the right to obtain environmental information
- 4.4. The notion and form of a request for environmental information
- 4.5. Timing of consideration of informational requests and characteristics of the consideration.
- 4.6. Delay in complying with informational requests.
- 4.7. Costs of complying with informational requests.
- 4.8. Refusals to provide information, reasons for refusals, the procedure of challenging the refusals.

#### **CHAPTER 5. LEGAL RESPONSIBILITY FOR VIOLATIONS OF THE LEGISLATION ON ACCESS TO ENVIRONMENTAL INFORMATION**

- 5.1. The notion of legal responsibility
- 5.2. Violations of the legislation on access to information and responsibility for the violations.
- 5.3. Types of legal responsibility for violations of the legislation on access to environmental information.

## **The Danube Strategy project**

The European Commission started the process of forming the EU Strategy for the Danube region which is supposed to help realize economic potential of the longest European river and improve the environment in the whole Danube region. Ukraine's government failed to get involved into the process of commenting the Strategy and efforts of the public turned out to be dispersed. EPL sent its comments of the Strategy to the European Commission and decided to take measures to make initiatives from the public more organized and therefore more effective. Thus, in May EPL started a new project aimed to create the Working group of Ukrainian environmental NGOs to comment the draft Strategy and develop Action plan of projects that may be realized by Ukraine within the Danube Strategy. The Working group includes representatives of the following organizations and institutions: the Black Sea Regional Branch of the Ukrainian Academy of Science, the Center for Regional Research, Tatarbunary district environmental NGO "Vidrodzhennia", NGO "Dobra volia" (Izmail), the State Research and Technical Center for Regional Problems of Environmental Security and Resource Saving, NGO "Mama-86".

In May the first meeting of the Working group took place and draft Action plan was developed. After thorough discussion it was sent to the European Commission. In order to facilitate communication of members of the Working group the mailing list was created.

At the beginning of June, four representatives of the Working group went to the conference in Constanza (Romania) devoted to discussion of the EU Strategy of the Danube region. During the presentation of the environmental protection pillar the Working group presented its comments to the Strategy.

In June EPL jointly with the Working group of the Public Expert Council at the Ukrainian branch of the Committee of the EU-Ukraine Cooperation held public hearings in Izmail (Odessa region) to discuss the vision of the Danube region development with representatives of NGOs and general public.

The following issues were discussed during the hearings:

- perspectives of development of the Danube region on the local level and in the context of macro region in the sphere of transport and communication, environmental protection, social and economic development security etc.;
- regional problems and ways of overcoming them; specific proposals and projects to be implemented in the region;
- the EU initiatives towards adoption of the EU Strategy.

In October EPL jointly with the Public expert council at the Ukrainian part of the Committee on Ukraine-EU cooperation held the seminar "The role of Ukraine in development of the EU Strategy for the Danube region".

Final outcome of the project was development and submission to the European Commission of the Public vision of Ukraine's participation in the EU Strategy for the Danube region.

## **The project of implementing the EU-Ukraine cooperation policy**

Within the project "Stirring up Ukrainian environmental NGOs participation in the implementation of the Ukraine-EU cooperation policy" initiated by environmental NGO "Mama-86" EPL started working in the Working group of environmental European integration of Ukraine aimed to develop and present the position of Ukrainian



environmental NGOs as environmental protection in the context of approximation of environmental policy and legislation of Ukraine to the EU legislation, to facilitate participation of Ukrainian environmental NGOs in implementation of the environmental part of the EU-Ukraine Association Agenda.

Although the EU-Ukraine Association Agenda for European integration in the sphere of environment was adopted on 23 November 2009, there is not sufficient information on the strategies, mechanisms and tools to be used by public authorities to implement the Agenda. In order to get more profound information in this sphere, EPL prepared and sent informational requests to the Committee of the European Integration of the Supreme Rada of Ukraine, State Department of Adaptation of Legislation at the Ministry of Justice of Ukraine, the Department of International Cooperation and European Integration of the Ministry of Environmental Protection of Ukraine and National Agency of Environmental Investments. We requested the information on planned activities to develop draft laws towards adaptation of the Ukrainian legislation to *acquis communautaire*, in particular towards further development and adaptation of national legislation in the sphere of environmental impact assessment, access to information and participation in environmental decision making. EPL emphasized the necessity to develop such legislation according to the Aarhus Convention.

Unfortunately, EPL has not received replies to the above-mentioned information requests within time frames envisaged by law.

## **PRTR**

The Kiev Protocol to the Aarhus Convention on Pollution Release and Transfer Register opens great possibilities for the public to have access to wide range of environmental information. However, Ukraine has not ratified the protocol yet. With this regards EPL submitted to the Ministry of Environmental Protection of Ukraine information requests to find out about plans and timing of ratification and implementation of the Protocol and its provisions in Ukraine.

## **5. Research**

Each EPL lawyer has specific field of academic interests and conducts research in this specific field. Currently EPL researches the following issues:

- access to information;
- state environmental expertise;
- climate change;
- afforestation of steppe areas;
- European integration of Ukraine in the sphere of environment;
- access to justice;
- waste management;
- industrial pollution ;
- European standards of NGO development in Europe.

## **6. Cooperation with media**

EPL worked on intensifying its communication strategy which resulted in increase of media coverage of EPL's environment protecting activities. We cooperate on a regular basis with newspapers *Ratusha*, *Den'*, *Hazeta po Lvivsky* , radio "Nezalezhnis't". The topics of newspaper publications and radio programs were focused on the issues of climate change, access to information, air pollution and air protection, biodiversity preservation

etc. Also, EPL produced a TV film on Mykolayivcement plant to attract general attention to environmental problems caused by the plant.

EPL lawyer participated in the 16<sup>th</sup> Conference of the Parties to the UNFCCC held in Cancun. In particular she participated in meetings of the group focusing on climate change and human rights that worked on defining in the text of the negotiation document the impact of climate change on realization of basic human rights. She also participated in meetings of Climate Action Network and meetings of the public from East Europe and Central Asia, Climate action Network for legal issues, side-events devoted to implementation the green investment scheme, official presentations of representatives of delegations from different countries.

## **7. Publication of *EPL Journal***

In May 2010, the issue # 6-7 (46-47) of *Environment-People-Law Journal* came out. Its rubric "Court Practice of EPL" contains 3 articles on certain aspects of legal protection of citizens' environmental rights. The articles "The Lviv administrative court of appeal does not recognize the omissions of the Ministry of Environmental Protection of Ukraine in the sphere of anti climate change obligations", "The court believes that General prosecutor's office unlawfully refuses to consider complaints from the public about violations of legislation by public authorities" and "Public participation in decision making in the process of construction of the plant for producing mineral wool insulation Knauf insulation Ukraine" cover the issue of public participation in making environmentally important decisions, the issue of protecting the right to safe and healthy environment.

In December 2010, next issue of *Environment-People-Law Journal* was released. It is mostly devoted to analytical review of hot problems of the Danube region. It also includes bilingual version of Public vision of Ukraine's participation in the EU Strategy for the Danube region.

### **Financial statement 2010**

Revenues	158,996 USD
Expenses	163,991 USD