



*ANNUAL REPORT  
OF INTERNATIONAL PUBLIC INTEREST ENVIRONMENTAL LAW ORGANIZATION  
ENVIRONMENT – PEOPLE – LAW*

## **1. KEY RESULTS OF THE ORGANIZATION'S ACTIVITIES**

### **a) strengthening reputational capacity of the organization**

EPL works with public authorities of different levels in the sphere of environmental protection on a regular basis and this work is performed in different forms including information dissemination, awareness raising, requesting documents or calling for actions, initiating litigation etc. It should be noted that over the last year we noticed a tendency of these relationships transforming more into partner-like rather than confrontational. Representatives of the Ministry of Environment and Natural Resources of Ukraine (hereinafter – the Ministry) increasingly address EPL with request for consultations and assistance in different issues. As an example, in April 2011 the Ministry asked EPL to provide proposals as for the Order of the Ministry # 117 of 08.04.2011 aimed at realization of the Resolution of the Cabinet of Ministers of Ukraine “On Approving the Action Plan for Implementation of the Decision of the Parties to the Aarhus Convention III/6f”. EPL’s proposals were carefully considered at the sitting of the Public Council of the Ministry and accepted in full scope. Thus, following EPL’s proposals the Ministry undertook to post on its web-site applications for conducting environmental expertiza and conclusions of environmental expertiza. Moreover, the head of the Department of Communication and Public Relations of the Ministry officially supported the idea of addressing the minister of environment with the request to confirm with the order of the Ministry the obligation of developers of legal acts to hold mandatory open round-table public discussions with involvement of experts of the Ministry, interested physical and legal entities within 10-day period since publication of the draft. Also, it was decided to draw attention of central authorities and regional branches of the Ministry to their law-stipulated obligation to provide to the Department of Communication and Public Relations of the Ministry combined tables with information on proposals accepted/declined and reasons for that to be posted on the web-site of the Ministry.

Also, it should be noted that we feel that our awareness raising and litigation activities have changed attitude of the Ministry, its regional branches and other authorities with whom we work to the issue of access to information and now they are much more responsive and cooperative. This is proved by the fact that our information inquiries sent via e-mail in May and June 2011 after the new stricter Law of Ukraine “On Access to Public Information” came into force were answered within a few days.

It is also important to mention an increased role of EPL in the work of Public Councils of public authorities of different levels including the Ministry of Environment and Natural Resources, the Ministry of Foreign Affairs, State Agency of Environmental Investments, State Committee of Nuclear Regulation, State Administration of Environmental Protection in Lviv region. As an active member of these public councils EPL gained a reputation of being highly proficient in legal issues and is often addressed with requests for legal help.

### **b) Influence gained by litigation**

This year there was adopted the first decision of the European Court of Human Rights in environmental sphere related to Ukraine.

In the Chamber judgment of February 10<sup>th</sup>, 2011 in the case *Dubetska and Others v. Ukraine* (application no. 30499/03), the European Court of Human Rights held, unanimously, that there had been: A violation of Article 8 (right to protection of private and family life) of the European Convention on Human Rights.

The case concerned the applicants’ complaint that they suffered chronic health problems and damage to their homes and living environment as a result of a coal mine and a factory operating nearby.

The applicants were 11 Ukrainian nationals, living in the village of Vilshyna in the Lviv region (Ukraine). They are members of two extended families, the Dubetska-Nayda family and the Gavrylyuk-Vakiv family, and live in two houses, close to each other and built in 1933 and 1959 respectively.

A number of studies by governmental and non-governmental entities found that the operation of the mine and the factory had had adverse environmental effects, including flooding, polluted ground water and air as well as soil subsidence. The reports concluded that people living in the factory's and mine's surrounding area were exposed to a higher risk of cancer and respiratory and kidney diseases.

The applicants complained many times to the authorities about the damage to their health and houses as a result of the pollution. They submitted, in particular, that they had developed chronic health problems including bronchitis, emphysema and carcinoma. In addition, for years they had irregular and insufficient access to drinking water, which had affected relations and communication in the families. Their houses had suffered as a result of the soil subsidence. They could not relocate as they lacked the resources to buy a new home, and their current houses had lost market value because of the pollution.

The authorities considered various ways to remedy the situation. In 1994, they ordered the factory director to provide the applicants with housing in a safe area but without success. Between 2000 and 2003, the authorities contemplated the applicants' resettlement in the immediate future. As there was no improvement in the applicants' situation, each family brought civil proceedings in court seeking resettlement. EPL provided legal consultations and represented plaintiffs in courts. The courts found in favor of the Dubetska-Nayda family in a judgment of December 2005, which was never enforced, and against the Gavrylyuk-Vakiv family in a judgment of 2004, which became final in 2007. In particular, in respect of the Gavrylyuk-Vakiv family, the courts relied on the fact that the authorities had envisaged at some stage to reduce the factory spoil heap, that some studies had suggested that the applicants lived outside the danger zone, and that, according to domestic legislation, the factory owners could be fined but not obliged to provide housing.

The application was lodged with the European Court of Human Rights on 4 September 2003.

The applicants had not had the resources to resettle on their own given that the value of their houses had dropped drastically because of the pollution in the area. They had needed State support in order to relocate and had been expecting such help since 1994.

The authorities had been aware of the adverse environmental effects of the mine and factory but had neither resettled the applicants, nor found a different solution to diminish the pollution to levels that were not harmful to people living in the vicinity of the industrial facilities. Despite attempts to penalize the factory director and to order and bring about the applicants' resettlement, and notwithstanding that a centralized aqueduct was built by 2009 ensuring sufficient supply of fresh drinking water to the applicants, for 12 years the authorities had not found an effective solution to the applicants' situation. There had therefore been a violation of Article 8.

The Court also held that by finding a violation of Article 8 it established the Ukrainian Government's obligation to take appropriate measures to remedy the applicants' situation.

Under Article 41 (just satisfaction) of the Convention, the Court held that Ukraine was to pay to the first five applicants jointly 32,000 euros (EUR) in respect of non-pecuniary damage, and the remaining applicants jointly EUR 33,000 in respect of non-pecuniary damage.

EPL's litigation also helped to give publicity to important issues such as, for example, the issue of greenhouse gas quota trade and conditions of the agreement between Ukraine and Japan. EPL filed a suit against the National Agency of Environmental Investments and the Cabinet of Ministers because they failed to provide information on conditions of the agreement and the sum received. After initiation of the case the issue gained publicity and was widely discussed in media and addressed by relevant authorities. Thus, although through the litigation process we gained only partial information on the agreement and therefore the case is pending in cassation court, the publicity given to the issue made the relevant authorities open this information and also at the beginning of 2011 EPL received a letter from the State Agency of Environmental Investments in which requested information on the sum of the agreement was provided.

Also, court found invalid conclusions of state environmental expertise of construction of mineral wool insulation producing plant in the case *Environment-People-Law vs. the Ministry of Environmental Protection of Ukraine and Knauf Insulation Ukraine plant* (as the third party). The

court established that the conclusion of environmental expertise did not take into account complex impact on the environment of all enterprises belonging to the industrial junction, which violates Ukrainian legislation on air protection. There were also gross violations in the procedure of public hearings on the project of the Knauf plant construction. This victory is important for recovering faith of local residents into justice and stimulating them to fight for their right to live in healthy environment. Those who wanted to participate in the public hearings but were not allowed into the premises were trying to protect their right to participate by addressing different authorities, media but in vain and the court decision raised their spirit.

Also, EPL proved in court the obligation of an enterprise to provide the public with EIA documents. EPL filed a 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 the Higher Court confirmed EPL's right to obtain EIA documents.

Now, having got relevant materials, EPL will be able to properly evaluate them for adequacy and implementation of environmental protection measures stipulated by the project, completeness and conformity of the project with domestic environmental regulations and high European standards that Lafarge is claiming to have implemented in its plant in Ukraine.

This decision of the High Economic Court of Ukraine is the first of its kind. It declares the right of the public to obtain directly from polluters all the information on environmental impact of industrial activities originated and held by polluter-companies. Thus, it opens a new door for first-hand environmental information and enables the public to conduct a better informed post project control over activity adversely impacting the environment. We hope that this precedent will show to other pollutants their obligation to provide EIA documents even more so because now this obligation is clearly stipulated by the new law "On access to public information".

Another case EPL won was aimed at bringing the register of anthropogenic information in compliance with norms of national and international legislation and ensuring public access to information contained in the register. EPL won in the court of the first instance, the defendant did not file an appeal complaints and in January 2011 the court decision came into force.

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 that holds that inquiry about environmental information should contain no 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. Neither the court of the first instance nor the appellate court supported EPL's claim and EPL filed a cassation complaint. Currently the case is pending in the Supreme administrative court of Ukraine.

In March 2011 EPL initiated two litigation proceeding. One is against Mariupol' city sanitary-epidemiological station and Mariupol' interdistrict nature protecting prosecutor's office challenging their refusal to provide results of laboratory tests of emissions and dumps of Azovstal' plant and conclusions of sanitary-epidemiological expertise. The other case is versus State administration of environmental protection in Donetsk region and Donetsk interdistrict nature protecting prosecutor's office challenging refusal to provide copies of permits and omissions. In the first case the court of the first instance supported EPL's request while in the other case the court supported the defendant.

In 2011 EPL initiated a process called Atmospheric Trust Litigation. On May 10, 2011, Environment-People-Law filed a lawsuit to the District Administrative Court of Kyiv. The subject of the claim is to recognize illegal inactivity of the governmental bodies in implementing climate protection policy in Ukraine and to oblige them to develop the measures for reduction of emissions of the green-house gases, which affect weather and climate.

The defendants in the claim are the Cabinet of Ministers of Ukraine (the Government), the Ministry of Environment and Natural Resources of Ukraine and State Environmental Investment Agency of Ukraine. The main strategic aim of the case is to assure reduction of greenhouse gas emissions in Ukraine.

The main legal basis of the claim is the requirement to protect the atmospheric air on behalf of the people of Ukraine by the state authorities that is envisaged in the Article 13 of the Constitution of Ukraine, according to which «The land, its mineral resources, atmosphere, water and other natural resources within the territory of Ukraine, the natural resources... are objects of the right of property of the Ukrainian people. Ownership rights on behalf of the Ukrainian people are exercised by bodies of state power and bodies of local self-government within the limits determined by this Constitution».

The lawsuit was partially satisfied, in particular concerning the Cabinet of Ministers of Ukraine. The court obliged the Cabinet of Ministers to prepare and in three months after the court decision to release the information on the state of realization of the measures envisaged by the National Action Plan for realization of provisions of the Kyoto Protocol to the UNFCCC pursuant to the requirements of the Decree of the President of Ukraine of 1 August 2002 № 683 “On additional measures to ensure openness of activity of authorities”. Other demands of the lawsuit were declined.

On 10 September 2011, we sent to the court an appeal related to the part of the claim, which was not satisfied.

Another important victory of EPL was in case aimed at protection of the Southern Buh river. The Higher Administrative Court of Ukraine made a judgment canceling the Resolution of the government that sanctioned allocation of 27 ha of protected area for permanent use of the National Nuclear Energy Generating Company “Energoatom”.

The decision of the Higher Administrative Court of Ukraine is of paramount importance for environmental lawyers, environmentalists and the public concerned as it confirmed the right of any person to address the court for protection of objects of national importance and objects of protected areas.

In 2006 after the Cabinet of Ministers of Ukraine adopted the challenged resolution that sanctioned allocation of lands of protected area for creation of a water reservoir, EPL initiated the case and acted as a plaintiff. The procedure of adopting such decisions envisaged by the Land Code and the Law of Ukraine “On Protected Areas” was violated. The mentioned 27 ha of lands then belonged to the regional landscape park “Hranitno-stepove pobuzhzhia” as lands of great natural value and habitats for Red Book species of flora and fauna. However, this fact did not prevent launching of Oleksandrivske water reservoir on the South Buh river needed for operation of Tashlytska hydro power station.

In 2010, the court of the first instance met EPL’s suit and canceled the challenged resolution of the government, but the Appellate Court had an opposite opinion and even challenged EPL’s standing to file such a lawsuit.

On 29 November 2011, the Higher Administrative Court of Ukraine canceled the decision of the Appellate Court and supported the decision of the court of the first instance. In particular, the court stated the following: “Taking into consideration national social importance of protected areas, the challenged legal relations belong to public-legal ones, and therefore, unlimited circle of people have the standing to go to court to protect them”.

Another important court victory EPL got in December 2011. The Administrative court in Ukraine met Environmental-People-Law’s (EPL) claims and declared that failure of the Ministry of Ecology and Natural Resources to publish final EIA decisions was illegal. EPL for many years has strived to improve public access to environmental information among other means by virtue of increasing the amount of the information spread via official governmental web-pages on the Internet. Despite the provisions of the Aarhus Convention and the relevant domestic legislation the Ministry has always been reluctant to facilitate public access to EIA decisions. The only

possibility to get a final EIA decision was to file a request which not always has been fully satisfied.

In October 2010, EPL filed a lawsuit alleging that failure to actively disclose all the final EIA decisions by the Ministry violates international obligations of Ukraine under the Aarhus Convention as well as Ukrainian laws and asking the court to oblige the Ministry to publish all EIA decisions issues since the beginning of 2009. In October 2011 the court rendered its decision obliging the Ministry to post full texts of over one thousand decisions on its official web-page.

Also, important results have been attained through pre-court activities and consultations. For example, EPL was addressed by residents of Fastiv (Kyiv region) complaining about severe pollution of waters in the vicinity of the town. Jointly with the National Environmental Center of Ukraine EPL addressed relevant authorities requesting to stop pollution of waster objects in the territory of Mala Snitynka village council in Kyiv region. Fastiv interdistrict prosecutor's office together with State environmental inspection in Kyiv region revealed violations of water legislation in the work of "Fastivvodokanal" enterprise.

The inspection performed by the prosecutor's office and environmental inspection revealed excessive dumping of polluting substances into the water object with reverse waters. The letter from the prosecutor says the following: "Acting beyond their authorities, officials of Fastivvodokanal made a decision to stop the air blowing station with the aim to decrease electricity consumption ignoring the requirement that the functioning of mechanisms, equipment and measuring devices of waste water treatment plants should be uninterrupted. As a result, the active mud in the air tanks of waste water treatment plants of Fastivvodokanal performing biological purification of waste waters perished. "This lead to pollution of surface waters of the Snitka river (tributary of the Unava river) and created an environmental threat".

According to the calculations made by the Inspection, the total environmental damage is worth 2 045.5 thousand UAH.

Following the results of the inspection, the prosecutor's office initiated a criminal prosecution of violations envisaged by p. 1 Art. 242, p. 3 Art. 365 of the Criminal Code of Ukraine. Currently the case is at the stage of pretrial prosecution.

We would like to mention also the practical result we managed to attain thanks to cooperation with our clients from the village Sivka-Voynylivska (Ivano-Frankivsk region). Residents of this village addressed EPL with the request to help them stop plans of a foreign investor to construct a pig farm on their land lots. This investor has already constructed 2 pig farms in this district, so people know about negative consequences like acrid smell, uncontrolled pollution of soil and water.

EPL helped the residents of the village to hold a local referendum and 99% of people voted against construction of the pig farm. Also, EPL provided any possible legal help and the residents addressed many authorities including the Administration of environmental protection, State committee of land resources, district administration, nature protecting prosecutor's office in Ivano-Frankivsk region, regional administration of Ivano-Frankivsk region. Such active position of residents of the village resulted in the fact that in January 2011 the investor sent to EPL a letter saying about their plans to build the pig farm in some other place. We are happy to have helped the residents of Sivka-Voynylivska to protect their right to live in healthy environment.

### **c) Improvement of legal environment for environmental protection**

As one of authors of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention) EPL is especially concerned about Ukraine's compliance with provisions of the Convention related to issues of access to environmental information and public participation in decision-making process. In order to stimulate the government to make steps towards bringing Ukrainian legislation and policy in compliance with the Convention, EPL filed a complaint to the Compliance

Committee of the Aarhus Convention. Twice, in 2005 and 2008 Ukraine was found in non-compliance with the Convention and received warnings. In 2008 the Cabinet of Ministers of Ukraine approved the Action Plan for realizing the decision of the Meeting of the Parties to the Aarhus Convention III/6f which obliged the Ministry of Environmental Protection to develop and amend a number of legal acts and also ensure regular publication of statements and conclusions of state environmental expertiza on the web-site of the Ministry. EPL has been stimulating the Ministry to realize the Action Plan and has been providing any possible assistance like consultations in developing draft legal acts, communication with the Compliance Committee, translation of documents etc. Also, within the project of the European Commission aimed at helping Ukraine in implementing the Aarhus Convention and the Espoo Convention some documents and conclusions were developed.

Especially actively EPL worked on developing and promoting the Provision on Public Participation in the Process of Decision-Making in Environmental Matters. EPL prepared comments and presented them at the coordination meeting in the Ministry of Environment and Natural Resources, which accepted the comments. The draft of the Provision has been approved by all relevant Ministries and EPL helped the Ministry of Environment and Natural Resources to persuade Ministries that had certain reservations – the Ministry of Regional Development and Construction and the Ministry of Fuel and Energy – that adoption of this Provision is absolutely vital. On June 29, 2011, the Provision was approved by the Ministry of Justice of Ukraine. At the 4<sup>th</sup> Meeting of Parties to the Aarhus Convention in Chisinau (Moldova) held on 26 June – 1 July 2011 the adoption of this provision was declared the only effective step of Ukraine towards realization of the country's obligations towards compliance with the provisions of the Aarhus Convention. However, as it turned out later, the adopted text of the Provision seriously differs from the one developed by experts and submitted for approval and this version seriously limits possibilities of the public to participate in the process of decision-making. Currently EPL is investigating how this could happen and considering options of remedying the situation.

EPL also 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. 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. Still, the efforts made but the Ukrainian government were far from being sufficient in order to comply with the provisions of the Aarhus Convention. At the Fourth Meeting of the Parties to the Aarhus Convention (4 members of EPL were present there) EPL lawyer made a speech in which presented actual situation with realization of the Action Plan.

The decision of the Fourth Meeting of the Parties for the third time confirmed Ukraine's failure to fulfill recommendations towards implementation of provisions of the Aarhus Convention of independent experts of the Compliance Committee. In view of this, MOP4 issued a *caution* to the government of Ukraine.

Moreover, MOP4 warned Ukraine that in case of Ukraine's failure to realize the decision of the Second Meeting of the Parties and recommendations of the Compliance Committee, next MOP can *suspend rights and privileges* accorded to Ukraine under the Convention. In its decision concerning Ukraine the MOP4 stated that if Ukraine fully realizes all recommendations of the Committee and provides proof of this by April 2012, the Committee would lift the caution issued on June 29, 2011. Thus, a lot of work is to be done, and EPL as usually is ready to provide any possible assistance.

In January - February 2011 EPL lawyer prepared a communication for the 31<sup>st</sup> meeting of the Compliance Committee of the Aarhus Convention in view of adoption of amended law “On Information” and the law “On Access to Environmental Information”. She also presented results of the survey on access to justice in Ukraine at the meeting of Working group on access to justice within the Aarhus Convention. EPL also prepared and disseminated an alternative report on Ukraine's implementation of the Aarhus Convention and developed a draft Provision on Public Council at the State Agency of Environmental Investments of Ukraine.

An outstanding event related to ensuring better access to information was entry into force of the new Law of Ukraine "On Access to Public Information". This law means changes in access to environmental information. One important change, which EPL had enforced, is identical use of the terms "information on the state of environment" and "environmental information". It solves the problem of correlation of the constitutional norm of openness of information on the state of environment and norms of the Law of Ukraine "On Environmental Protection" that define legal regime of environmental information. Another positive aspect is that the Law uses correct definition of environmental information from the Aarhus Convention and states that information on the state of environment cannot be regarded as information with limited access.

In order to ensure realization of the Law of Ukraine "On Access to Public Information" it is important to bring national legislation in compliance with provisions of the new law. To this end in spring 2011 EPL commented the following legal acts:

1. Draft Resolution of the Cabinet of Ministers of Ukraine "On the procedure of dissemination through the Internet of public information owned by executive authorities";
2. Draft Resolution of the Cabinet of Ministers of Ukraine «On maximum norms of expenses on copying and printing documents provided in response to information request»;
3. Draft changes to the Code of Ukraine on administrative violations, the Criminal Code of Ukraine, Civil Code of Ukraine, the Code on Administrative Court Proceeding, the Laws of Ukraine "On National Security Service of Ukraine", "On Printed Media in Ukraine", "On State Secret", "On Informational Agents";
4. Draft Order of Lviv Regional State Administration "On primary organizational measures related to ensuring citizens' right to access to public information".
5. Draft Resolution of Lviv city council on introducing changes to Resolution of 11.11.2010 on ensuring the right to access to public information".

Also, in October 2011 in Kyiv EPL held a training for staff of the Ministry of Environment and Natural Resources and the State Environmental Inspection of Ukraine on practical aspects of applying the Law of Ukraine "On Access to Public Information". It was aimed at giving practical tips for effective considering information requests from the public by public officials. Because of this very practical nature of the training, the participants highly appreciated it and since then EPL has been regularly receiving calls and messages from public officials asking for legal consultations.

Moreover, in the period of June-December 2011 EPL held a public expertise of Lviv regional office of the Ministry of Environment and Natural Resources of Ukraine and Lviv State Environmental Inspection to analyse their compliance with the Law of Ukraine "On Access to Public Information". We analysed information requests received by these bodies and answers provided and no serious violations were detected. However, there have been found certain drawbacks in active provision of information by these bodies through their web-sites. Results of the expertise and relevant recommendations were submitted in the form of expert conclusions submitted to these bodies.

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: amendments to the law 'On Information', draft law "On Access to Public Information", the Strategy of national environmental policy of Ukraine until 2020, draft law "On charity and charitable organizations", draft Resolution of the Cabinet of Ministers on amending the Resolution of the Cabinet of Ministers # 553 "On Activities and Objects of Higher Environmental Threat. EPL submitted to the Ministry of Environment and Natural Resources proposals as for necessary changes to the Code of administrative violations related to fines for violations concerning Red Book animals and plants. We received from the Ministry a reply stating that our proposals have been accepted.

EPL also commented the draft law "On Regulating Municipal Construction Activities", which came into force in March 2011. Instead of ecological, sanitary, fire-safety and energy-efficiency



expertizas the new law envisages one expertiza of construction projects. This expertiza will be carried out by institutions (including private) that received licenses from the Ministry of Regional Development and Construction. This new expertiza will involve experts in the field of environment to assess Environmental Impact Assessment (EIA) but no officials from the Ministry of Environment and Natural Resources. The law does not envisage any procedure of public participation in this process either. Although EPL pointed to these drawbacks in its comments, the law was adopted as it is.

Very important was EPL's participation in commenting a draft law "On Non-governmental Organizations". EPL commented the draft law in view of the Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organizations in Europe. As described in the Recommendation, Ukraine was found guilty of violating the right of citizens to free association of citizens in the case "Koretskyi and others vs. Ukraine". There is other evidence proving that Ukrainian legislation on non-governmental organizations needs considerable improvement. The Recommendation provides key principles of shaping national legislation of member-states. Since Ukraine declared European aspirations, we believe it is important to take into account this Recommendation, so EPL submitted comprehensive comments on correspondence of the draft law to the key points of the Recommendation.

EPL was an active participant of shaping the National Action Plan of realizing the Strategy of national environmental policy of Ukraine until 2020. EPL was a regional coordinator of the project "Conducting dialogues between the public and authorities in urgent issues of reforming environmental policy of Ukraine within the framework of Ukraine-EU cooperation". Within this project in January 2011 EPL organized a round-table discussion for the public from Western Regions of Ukraine (Lviv, Chernivtsi, Zakarpattia, Volyn', Rivne regions) to collect and summarize public comments to the draft National Action Plan. EPL also enforced acceptance of collected comments at the final discussion of all comments from the public in Kyiv. Though unfortunately not all important comments were taken into account, still we managed to persuade the Ministry to include some really important ones.

Besides provision of proposals to draft laws, EPL make efforts to prevent adoption of laws that may deteriorate legal conditions for environmental protection. Thus, In June-July 2011 EPL and National Environmental Center of Ukraine demanded that the President of Ukraine veto the law that would allow seizing lands of nature reserve for development of peat. The draft law proposed to allow withdrawal of especially valuable lands for extraction of peat, including lands of nature reserves, which is contrary to the governmental priorities of Ukraine in the field of protection of the environment and international obligations of Ukraine. In addition, the draft law "On amendments to the Land Code of Ukraine concerning compliance with the Code of Ukraine on Mineral Resources" did not pass environmental impact assessment procedure envisaged by Article 14 of the Law of Ukraine "On environmental expertise" as a draft legislative act, implementation of which could lead to negative impact on the environment. Even at the stage of the draft law, it was not supported by the Ministry of Environment and Natural Resources because of the fact that its implementation may cause irreparable losses to the environment. Such position is stipulated by the fact that peats perform important environmental functions, accumulating products of photosynthesis and performing important role for the formation of the hydrological regime of a territory. Peat deposits are often located on lands covered with forest vegetation, bordering on or belonging to territories and objects of nature reserves and are among the most important areas for conservation of natural biodiversity. As a result, on July 30, 2011 the President vetoed the draft law .

#### **d) national and international networking**

EPL continues effective cooperation with Environmental Law Alliance Worldwide (ELAW). Therefore, at the beginning of 2011 EPL executive director went through a three-month internship at the Environmental Law Alliance Worldwide (Eugene, Oregon) and an intensive

English course in American English Institute at the University of Oregon. At ELAW she gained some experience in strategic planning, communication strategies, and litigation.

EPL is also strengthening its capacity and impact of its activities through participation in various national and international networks, including Climate Action Network (CAN), Working group of NGOs working on climate change issues, Ecoint network, Working group 3 (Environment, Energy) of Civil Society Eastern Partnership, European Ecoforum. EPL is active participant of the Working group of NGOs working on climate change issues and participated in meetings and skype-conferences where different issues were discussed including results of participation of official and non-official delegations of Ukraine in climate negotiations in Cancun, drafting action plan for the Working group for 2011 etc.

EPL participated in the 3<sup>rd</sup> coordination meeting of Danube NGO Network project held in Eisenstaedt (Austria). The Forum serves as a platform for networking, coordination and cooperation within the EU Strategy for the Danube Region and covers more than 130 NGOs, institutions and individual members from 14 countries of the Danube region and was formed to unite all existing organizations from all parts of the Danube basin to improve and intensify cooperation on national and international levels.

The main objectives of the Forum:

- to support and promote the Danube Strategy following the principles of respect for democracy and human rights, the rule of law, good governance, principles of market economy and social and environmental sustainable development.
- to support existing non-governmental, non-profit organizations and their works, the creation of independent and autonomous non-governmental organizations, to strengthen the capacity of civil society and to support, assist and coordinate the efforts of its members;
- to promote a culture dialogue and cooperation between civil society organizations and between civil society and public and private actors in the Danube Basin;
- to promote dialogue and solidarity between peoples and cultures.

EPL member was elected vice-president of the Forum. Also, EPL commented statutory documents of DCSF and prepared the memorandum of understanding between DCSF and Foster Europe.

On 7-9 November 2011 EPL participated in the International conference on climate change adaptation held in Moscow. The conference gathered over 600 participants who worked in the following thematic directions: assessment of climate change impact on sustainable development, sensitivity, risks, damage and benefits, possibilities for adaptation to current and expected climate changes, large-scale weather abnormalities, development of new approaches that can contribute to preservation of sustainable climate.

At the end of December 2011, EPL organized a round-table discussion "Joint work as precondition of success" attended by representatives of other environmental NGOs (National Environmental Centre of Ukraine, Ecoclub, Pechenihy, Bureau of Environmental Investigation). The aim of the round-table discussion was to discuss challenges faced by environmental activists and determine the spheres of environmental protection where joint efforts are most needed. As a result, a joint campaign against construction of mini hydro power stations in the Carpathians was planned and started.

## **Projects**

### ***New legal tools for effective control of pollution emissions***

In realizing the goal of the project of reducing the level of industrial emissions in Ukraine EPL worked in three directions: 1) researched the problem and foreign experience and approaches to solving it; 2) worked on concrete cases aimed at reducing actual emissions or preventing potential pollution by certain industrial objects; 3) urged the public to pay more attention to environmental issues and undertake remedy action by means of awareness-raising activities.

The research was both theoretical including the analysis of Ukrainian legislation on industrial pollution as well as practice-oriented needed for handling specific cases. EPL did theoretical research in order to provide comprehensive legal background of the problem of industrial air pollution and suggest remedy actions. Results of the theoretical research, including results of analysis of laws, bylaws, norms and standards, formed the basis of the compendium. Thanks to this research EPL revealed a number of legislative collisions, which have to be eliminated. For example, a number of discrepancies were found in the Law of Ukraine "On Air Protection" and EPL feels a strong need to continue working in this direction and decided to make an academic commentary of the law with elaborations on legislative collisions and proposals as for legislative changes to be made to eliminate them.

Practice-oriented research was connected to specific cases. In particular, when analyzing the permit for emissions of Mykolayivcement plant, EPL asked for assistance from Environmental Law Alliance Worldwide and members of amigos mailing list. Moreover, EPL cooperated with researchers from Lviv universities in analyzing potential impact of using alternative fuels in the process of cement production on the air and environment in general as well as on human health. Having compared foreign emission norms and standards to the data in the permit, EPL revealed a number of discrepancies in the permit for emissions, in particular the fact that the permit allows emissions exceeding legislative norms by 15 times and lacks a number of substances that are emitted when using alternative fuels. Therefore, EPL filed a suit against the State Administration of Environmental Protection in Lviv region that issued the permit. Also, practical research included studies of technological processes of cement production in order to predict potential negative effect of the new cement plant, which is going to be constructed near the old Mykolayivcement plant.

One of important directions of Mykolayivcement case is stimulation of openness of environmental information. EPL consulted State Administration of Environmental Protection in Lviv region, State Environmental Inspection, State Sanitary Service and local authorities with the purposes to gain profound information on the plant's compliance with emission norms and standards. Since Mykolayivcement refused to provide EPL with EIA of the project of the plant reconstruction and conclusions of state environmental expertise of the project of the plant reconstruction and construction of the new plant, EPL filed a suit against the plant and won in the Supreme Economic Court of Ukraine (January 2011). The plant has already executed the court decision and provided us with the requested information, which will allow EPL to gain better understanding of the conditions under which the old plant operates and what has been planned for the new plant.

As stated above in this report, in the case of Knauf Insulation plant EPL challenged in court conclusions of state environmental expertise and won in the court of the first instance.

Working on the case of Azovstal plant, EPL submitted a number of information inquiries to Sanitary-Epidemiological Service, State Environmental Inspection of the Azov Sea, State Administration for Environmental Protection in Donetsk region in order to obtain permit documents and results of environmental inspections of the plant. Since many of EPL's requests were ignored, EPL complained to the Prosecutor's Office in Mariupol' and Prosecutor's Office in Donetsk region. Since these complaints were not effective either, EPL initiated two new cases described above in this report.

Within the project EPL realized a wide information campaign, which included the following measures:

- a TV clip on industrial pollution caused by Mykolayivcement was made (a CD with the clip is attached to the report) ;
- 9 press-releases were issued;
- 8 articles were published;
- 4 radio programs were devoted to the issues of industrial pollution (1<sup>st</sup> program was broadcast by Nezalezhnist' radio on 15.12.2010, 2<sup>nd</sup> – 22.12.2010, the 3<sup>rd</sup> – 29.12.2010, the 4<sup>th</sup> – 5. 01.2011) ;
- 1 press-conference was held.

Results of theoretical research mentioned above and elaborations of the project were presented in the compendium on legal aspects of industrial air pollution. The circulation of the compendium is 1000 copies.

To sum up, with this project EPL tried to change perception of the problem of air pollution by the public and environmental lawyers in order to shift the focus from eliminating consequences of the problem (e.g. resettlement of people residing within sanitary-protective zones) to combating roots of the problem, that is setting high air quality standards and enforcing their compliance.

The main problem we encountered in the course of the project realization was hindered access to environmental information. This was true about Mykolayivcement plant that refused to provide the conclusions of state environmental expertise as well as about Azovstal plant and a number of authorities in Donetsk region, which failed to answer our information inquiries in this way violating the legislation on access to information. Consequently, EPL had to look for other ways of obtaining the needed information (complaints to authorities, litigation), which considerably slowed down the process.

In addition, while we were on the final stage of drafting the compendium on legal aspects of air pollution, there was adopted the Law of Ukraine "On Municipal Construction", which canceled the notion of state environmental expertise while introducing other kinds of expert analysis. These changes greatly affected the content of the compendium and it had to be updated in this regard, which also delayed the publication.

### ***Improvement of access to environmental information through stimulating the openness of relevant public authorities***

Within this project EPL analyzed the state of informing the public by the Ministry of Environment and Natural Resources of Ukraine and its territorial branches through their web-sites. Since we noticed certain drawbacks in this kind of information activity, we analyzed web-sites of the Ministry and 25 territorial branches, detected the most vivid problems and sent our recommendations as for changes to be made. Also, EPL analyzed information request sent by EPL since mid 2009 and until the end of 2010 and answers to them. Results of these analyses were presented in the analytical report.

### ***Information and activation of public participation in developing the National Action Plan for the EU Strategy for the Danube Region***

EPL jointly with Expert public council at the Ukrainian part of the Committee on EU-Ukraine cooperation and Black Sea regional division of the Ukrainian environmental academy of science, the Center of regional studies of South-Ukrainian coalition of civil society institutes held public hearings in Izmail (Odessa region) and Chernivtsi. The goal of the hearings was to inform the public about provisions of the EU Danube Strategy and build the ground for developing regional and national action plans. The participants worked on defining directions of regional development, the role, possibilities, resources and mechanisms of involving wider circles from the Danube region into the common system of sustainable development of the region. At the hearings the EU Action Plan was discussed as well as involvement of local authorities and the public into realization of the EU Danube Strategy in Ukraine, key regional problems of the Ukrainian part of the Danube region.

Also, within this project EPL launched a web-site for Civil Society of the Danube region <http://danube-region.org/> which is a platform for discussing Danube region issues.

In summer 2011 EPL started realization of the project "Improvement of legal preconditions and activation of the public for protection of environmental rights of citizens" supported by the United Nations Development Program. Within this project EPL focused on the issue of nuclear safety, in particular commented the draft Energy Strategy of Ukraine for the period until 2030 and initiated a litigation aimed at challenging the Resolution adopted by the State Committee of Nuclear Regulation of Ukraine on prolongation of the period of exploitation of blocks 1 and 2 at Rivne

nuclear station. This was done without any consultations with the public and the Ministry of Environmental Protection of Ukraine. The blocks were constructed using the technology of 1960s-70s and prolongation of their exploitation can pose serious threats for human safety. Unfortunately, the court of the first instance did not support EPL's claim and we filed an appeal. Furthermore, within this project EPL promoted removal of obsolete pesticides from the village Hnizdychiv in Lviv region. The pesticides have been removed and currently we are working on removal of concrete cases where pesticides used to be stored.

#### **e) Publication of *EPL Journal***

During the year of 2011 three issues of *Environment-People-Law Journal* were published. The issue # 9-10 (49-50) focused mostly on different aspects of access to environmental information including Ukraine's compliance with the provisions of the Aarhus Convention, Pollution and Release Transfer Register (PRTR), protection of the right to environmental information by prosecutor's bodies and court, new provisions on access to information etc. The issue # 11-12 (51-52)) speaks about outcomes of international climate change negotiations held in Cancun (Mexico), preserving biodiversity, in particular certain species of animals and plants. Very important is the article analyzing provisions of the new Law of Ukraine "On Municipal Construction", which actually abolished state environmental expertise. The issue # 13-14 (53-54) focused on different aspects of climate change (climate change and human rights, impact of climate change on biodiversity, position of Ukrainian, Russian and Belorussian NGOs at the negotiations in Durban etc.).

#### **Statistics:**

Cases handles by EPL – 43

Consultations to citizens and NGOS: 383

Comments to draft laws: 14

Clinical students attending EPL clinic: 9

Conferences, seminars, workshops organized by EPL: 5

Number of issues of EPL Journal published: three double issue # 9-10 (49-50), #11-12 (51-52), #13-14 (53-54).

<b>Revenues</b>	<b>169,455 USD</b>
<b>Expenses</b>	<b>172,205 USD</b>