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THE LEGAL REGULATION OF THE USE OF NATURAL HEALING RESOURCES: THE THEORY AND PRACTICE OF DISPUTES RESOLUTION

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THE LEGAL REGULATION OF THE USE OF NATURAL HEALING RESOURCES: THE THEORY AND PRACTICE OF DISPUTES RESOLUTION

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Abstract The article is devoted to the issue of regulating the use of natural healing resources in Ukraine, the European Union, and other countries. Natural resources have been found to have many functions, but one of the most important is the ability to use them as a means of preserving or maintaining human health. For this reason, natural healing resources are subject to a special legal regime. Public relations arising from the use and protection of natural healing resources are subjected to legal regulation and devoted to the identification and accounting of natural healing resources, ensuring their rational extraction, use, and protection in order to create favourable conditions for treatment, disease prevention, and recreation.

Despite the wide range of healing properties in various natural objects, the environmental legislation of Ukraine contains only a small number of rules on their use. This problem is most fully disclosed in the Water Code of Ukraine, which not only enshrines the procedure for assigning certain water resources to the category of healing but also provides for the adoption of special law statutes and regulations regarding the list of existing water bodies in Ukraine and their inherent healing functions.

These regulations highlight the fact that most of the natural healing resources specified in the list belong to the sphere of subsoil use. However, there are no norms in the Subsoil Code of Ukraine that would regulate the use and protection of such objects. Instead, the Subsoil Code of Ukraine contains general rules on basic requirements in the field of subsoil protection, as well as a special article on the protection of subsoil areas of special scientific or cultural value. Healing resources are not mentioned, which is a glaring omission.

Situation analysis of the national legal system regarding the use of natural healing resources has shown the need to restructure the legislation, with the primary task of protecting and preserving the healing properties of such sources. For this purpose, the existing practice of public relations among developed European countries, as well as the positive experience in this area, should be taken into account to achieve effective improvement of the legislation system of Ukraine.

Studying the issue of prosecution for violation of the rules on the use of natural healing resources or causing damage to them suggests that the national legal system is based on economic interests, without prioritising the preservation of the healing value of such sources. As a result,

Ukraine's policy to preserve the healing properties of natural objects is not characterised by effective methods, significantly reducing the number of such unique and useful resources.

The analysis of court cases is evidence that the practice of effective protection and restoration of healing resources is not common. The number of such cases is currently too small when compared with those regarding damages to such natural resources caused by legal entities and individuals.

Keywords: *the right to use natural resources, the use of natural resources for health and recreational purposes, natural healing resources, the use and protection of natural healing resources, climate as a healing resource*

1 INTRODUCTION: THE LEGAL REGIME FOR USING NATURAL HEALING RESOURCES IN UKRAINE

According to the level of legal regulation, environmental rights are divided into two categories: fundamental and other rights in the field of environmental protection. Thus, the basic constitutional rights are the right to private property and the right of everyone to a favourable environment, reliable information about its condition, and compensation for damage caused to one's health or property through an environmental offence. In addition, everyone has the right to health care and medical assistance. The rights of everyone to a safe environment for life and health and to compensation for damage caused by the violation of this right are enshrined in the Constitution of Ukraine, based on the provisions of such international human rights instruments as the Universal Declaration of Human Rights (1948),¹ the Convention on Human Rights and Fundamental Freedoms (1950),² the European Social Charter (1961),³ etc. Significant attention is paid to human rights and environmental rights protection at the international level. This is evidenced by the works of such scholars as Stephen J. Turner, Sumudu Atapattu, etc., on the history of environmental rights, the relevance of environmental rights standards, and international human rights covenants.⁴

The right to use natural resources (natural healing resources and natural resources for health and recreation purposes) defined in the system of environmental rights is a prerequisite for the realisation of the right of a person and citizen to health care and directly affects its implementation. Natural resources have many functions, but one of the most important is the ability to use them as a means of preserving or maintaining human health. When carrying out economic and other activities, primarily related to the use of natural resources and complexes, the requirements of environmental protection should be observed, and the environmental rights of others should not be violated.

The aim of the research paper is to conduct a comparative study of environmental and legal aspects of using natural healing resources in Ukraine, other countries, and the European Union, as well as to provide grounds for making suggestions to improve the national

1 United Nations General Assembly Resolution 217 A (III) of 10 December 1948 Universal Declaration of Human Rights [1948] UN Docs A/810/71 <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>> accessed 21 March 2021.

2 Council of Europe, *European Convention on Human Rights: As amended by Protocols Nos 11 and 14, supplemented by Protocols Nos 1, 4, 6, 7, 12, 13 and 16* (ECHR 2010) <https://www.echr.coe.int/documents/convention_eng.pdf> accessed 21 March 2021.

3 Council of Europe Treaty No 035 of 18 October 1961 European Social Charter (*Council of Europe*) <<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/035>> accessed 21 March 2021.

4 SJ Turner et al (eds), *Environmental Rights: The Development of Standards* (Cambridge University Press 2019) 1-40 <<https://doi.org/10.1017/9781108612500>> accessed 21 March 2021.

legislation on natural healing resources. The legal basis for the implementation of such rights in Ukraine is the codes, i.e., Land Code,⁵ Water Code,⁶ Forest Code,⁷ and Subsoil Code,⁸ and laws 'On Flora',⁹ 'On Fauna',¹⁰ 'On Nature Reserves',¹¹ and others. A separate kind of right to use natural resources is the right to use healing natural resources.

There are no special laws and regulations in the ecological legislation of Ukraine devoted to the legal regulation of protection, preservation, and use of the whole complex of natural healing resources. The Law of Ukraine 'On Resorts' (Art. 6) provides an exclusive list of natural resources that can be classified as healing ones: 'natural healing resources include mineral and thermal waters, therapeutic mud and ozokerite, brine of estuaries and lakes, seawater, natural resources objects and complexes with favourable climatic conditions for treatment, medical rehabilitation, and prevention of diseases'.¹² Therefore, in our opinion, public relations arising from the use and protection of natural healing resources must be properly regulated. Only certain aspects of identification and accounting of natural healing resources, ensuring their rational extraction, use, and protection in order to create favourable conditions for treatment, disease prevention, and recreation, are subject to legal regulation (Art. 2 of the Law 'On Resorts').

The Law of Ukraine 'On Environmental Protection'¹³ classifies healing and recreational, natural resources as objects subject to special protection. This is because these natural objects have great ecological value as unique and typical natural complexes that maintain a favourable ecological environment and prevent and stabilise negative natural processes and phenomena (section 1 of Art. 60). Legal protection consists of certain restrictions, and they can be applied without exception to all individuals and legal entities without violating the principle of general use of nature. Therefore, within resort and health-improving zones, activities that contradict their purpose or can negatively influence the healing qualities and sanitary condition of the territory subject to special protection are forbidden (section 3 Art. 62). In the territory of recreational zones, the following is forbidden: a) economic and other activities that adversely affect the environment or may prevent their use as intended; b) changes in the natural landscape and other actions that contradict the use of these areas as intended (section 2 Art. 63).

According to section 1 Art. 62 of the Law of Ukraine 'On Environmental Protection', resorts and health zones are areas that have natural healing factors: mineral springs or climatic and other conditions conducive to the treatment and rehabilitation of people. Recreational areas, in turn, are areas of land and water space designed for organised mass recreation and

- 5 Code of Ukraine No 2768-III of 25 October 2001 Land Code of Ukraine [2002] VVR 3-4/27 <<https://zakon.rada.gov.ua/laws/show/2768-14>> accessed 21 March 2021.
- 6 Code of Ukraine No 213/95-BP of 6 June 1995 Water Code of Ukraine [1995] VVR 24/189 <<https://zakon.rada.gov.ua/laws/show/213/95-%D0%B2%D1%80>> accessed 21 March 2021.
- 7 Code of Ukraine No 3852-XII of 21 January 1994 Forest Code of Ukraine [1994] VVR 17/99 <<https://zakon.rada.gov.ua/laws/show/3852-12>> accessed 21 March 2021.
- 8 Code of Ukraine No 132/94-BP of 27 July 1994 Code of Ukraine On Subsoil [1994] VVR 36/340 <<https://zakon.rada.gov.ua/laws/show/132/94-%D0%B2%D1%80>> accessed 21 March 2021.
- 9 Law of Ukraine No 2026-III of 5 October 2000 On Flora [2000] VVR 50/435 <<https://zakon.rada.gov.ua/laws/show/591-14>> accessed 21 March 2021.
- 10 Law of Ukraine No 2894-III of 12 December 2001 On Fauna [2001] VVR 14/97 <<https://zakon.rada.gov.ua/laws/show/2894-14>> accessed 21 March 2021.
- 11 Law of Ukraine No 2456-XII of 16 June 1992 On Natural and Reserved Fund of Ukraine [1992] VVR 34/502 <<https://zakon.rada.gov.ua/laws/show/2456-12>> accessed 21 March 2021.
- 12 Law of Ukraine No 2026-III of 5 October 2000 On Resorts [2000] VVR 50/435 <<https://zakon.rada.gov.ua/laws/show/2026-14>> accessed 21 March 2021.
- 13 Law of Ukraine No 1264-XII of 25 June 1991 On Environmental Protection [1991] VVR 41/546 <<https://zakon.rada.gov.ua/laws/show/1264-12>> accessed 21 March 2021.

tourism. The criterion for delimitation may also be the subject composition authorised to establish the nature management regime for such resources.

In particular, the Verkhovna Rada of Ukraine and the Verkhovna Rada of the Autonomous Republic of Crimea declare natural territories as resorts and health-improving zones, and the environmental regime is determined by the Cabinet of Ministers of Ukraine and the Council of Ministers of the Autonomous Republic of Crimea according to Ukrainian legislation. At the same time, the regime of using recreational areas is determined by the Verkhovna Rada of the Autonomous Republic of Crimea and local councils in accordance with the legislation of Ukraine (section 3 Art. 63). Thus, the legal regulation of recreational activities, as a set of measures covering health, recreation, tourism, and sports, is provided at the legislative level, and the establishment of the regime of using recreational areas is the responsibility of local governments.¹⁴

As for the last provision, it should be considered justified because, given the diversity of natural and climatic conditions of our country, local governments can determine the features of the legal regulation of using such areas. In our opinion, due to the importance of these areas, it is appropriate that the statutory authorities should make the decisions.

The area of health and wellness is also related to this concept, as it is defined as a natural area with mineral and thermal waters, therapeutic mud, ozokerite, brine from estuaries and lakes, and climatic and other natural conditions conducive to treatment, medical rehabilitation, and disease prevention.

According to Art. 47 of the Land Code of Ukraine, health-improving lands include lands that have natural healing properties, which are used or can be used for disease prevention and people treatment.¹⁵ However, in this case, there is a certain conflict in terminology because, firstly, in the legislation and legal literature, it is noted that the healing properties are not the land itself but its natural healing resources listed above.¹⁶ Secondly, the legislator, distinguishing between the categories of 'healing' and 'health' goals, does not provide substantive disclosure of the criteria for their differences but often combines these properties within a single legal regime of one natural resource. Therefore, given the scientific views on a clear distinction between the purpose of rehabilitation, recreation, and treatment, it is advisable to take them into account at the legislative level. This way, the legal protection of relevant natural resources will be more effective and targeted.

It is noted that:

natural healing resources by their physical and ecological nature are not some separate type of natural resources – they are the same resources of subsoil, land, water bodies, which differ from other similar natural resources by only one essential feature – natural healing quality, namely the suitability of natural resources for treatment, medical rehabilitation and disease prevention.

O.O. Pohribny also indicates that the legal regime of natural healing resources takes precedence over the legal regime of natural recreational resources. Not all natural recreational resources have healing qualities, but most natural healing resources have recreational qualities. This view is also supported by V.Z. Kholyavka et al., who consider this issue through the prism of international tourism. According to them, health tourism (wellness tourism) is a fundamentally new trend, designed for physically and

14 II Karakash, 'Legal regulation of the use and protection of recreational and tourist areas and facilities' (2017) 1/2 *Environmental law of Ukraine* 23.

15 Land Code of Ukraine (n 5).

16 AS Novosad, AI Momot, 'Legal Regulation of Lands of Curative Purpose' (2018) 4 *Legal Novels* 145-6.

mentally healthy people and aimed at maintaining general health and social well-being. This is how it differs from medical tourism (spa-tourism), which aims at overcoming specific diseases, rehabilitation, or body correction.¹⁷

For instance, in the Czech Republic and Slovakia, recreational and health activities are considered separate phenomena. In particular, health activities fall entirely under the category of healing purposes, are the responsibility of the Ministry of Health, and are regulated by health legislation. Thus, the Czech resorts of Karlovy Vary and Mariánské Lázně are based mainly on natural healing resources, which consist of mineral and thermal waters, peloids (humus, peat, and mud), natural gases, and climate. Most Slovak resorts also operate on the basis of natural healing resources (mineral, thermal, and radon waters, peloids, and gases). Currently, Slovakia has about 1,500 natural sources of mineral water (springs, wells) with healing properties.¹⁸ Thus, these countries have a large complex of natural resources like these and use them actively.

The Bulgarian law 'On Tourism' states that a tourist area is a natural and social system with a stable spatial infrastructure and a high degree of natural resources concentration within which a competitive and effective tourism policy is implemented. In addition, the law contains a definition of 'medical services', which means services that involve using natural healing resources – mineral waters or therapeutic mud, procedures that promote human body recovery, etc.¹⁹ Thus, Bulgarian legislation does not explicitly define natural or healing resources, but this country is an example in which the legal regulation regarding the use of such natural objects is covered by tourism.

An example of a sector-specific regulation devoted to this sphere of public relations is the Resolution of the Council of Ministers of the Republic of Belarus 'On approval of the concept of sanatorium treatment and rehabilitation of the population of the Republic of Belarus and repeal of certain resolutions of the Council of Ministers'. This regulation contains a definition of 'rehabilitation', which means a set of measures aimed at increasing resilience to physical, biological, psychological, and social factors of the environment in order to promote the health of citizens. In addition, Chapter 3 sets priorities in the field of state regulation of the resort system, including the development and implementation of measures aimed at rational, efficient use of natural healing resources and tourist resources and the creation and development of resorts in the Republic of Belarus.²⁰

Therefore, some authors provide their own classification of natural healing resources and divide them into three categories: 1) particularly valuable; 2) unique; 3) common. Valuable and unique natural healing resources are resources that are not common in Ukraine, have limited distribution or small reserves in deposits, and are particularly favourable and effective for treatment, medical rehabilitation of patients, and disease prevention. Common natural healing resources are resources that are found in different regions of Ukraine, have

17 VZ Kholyavka et al, 'Modern Aspects of Influence Factors and Prospects of Development of Medical and Health-Improvement Tourism in Ukraine' (2019) 1 Bulletin of Social Hygiene and Health Protection Organization of Ukraine 25.

18 *Health and Wellness Tourism: A Focus on the Global Spa Experience* (Routledge 2014) 113-22 <https://www.routledge.com/rsc/downloads/Health_Wellness_Tourism_FB_final.pdf> accessed 21 March 2021.

19 Law of the Republic of Bulgaria of 12 March 2013 'On Tourism' [2013] DV 30 <<https://www.tourism.government.bg/bg/kategorii/zakoni/zakon-za-turizma>> accessed 21 March 2021.

20 Resolution of the Council of Ministers of the Republic of Belarus No 1478 of 4 November 2006 'The concept of sanatorium treatment and health improvement of the population of the Republic of Belarus [1006] National Register of Legal Acts of the Republic of Belarus 5/24175 <[https://www.pravo.by/document/?guid=2012&oldDoc=2006-186/2006-186\(018-036\).pdf&oldDocPage=14](https://www.pravo.by/document/?guid=2012&oldDoc=2006-186/2006-186(018-036).pdf&oldDocPage=14)> accessed 21 March 2021.

significant reserves, and are suitable for treatment, medical rehabilitation of patients, and disease prevention.²¹

Given these characteristics, namely, the fact that valuable and unique resources are particularly favourable and effective in the first case, and common ones are suitable, as rightly pointed out by experts in the field of balneology, it would be justified to establish different legal regimes of use and protection for these groups of healing resources. The introduction of these legal regimes should take into account the special value and quantitative limitations of these resources and establish mandatory legal rules of conduct for public relations entities. Their legal regulation features must be reflected in a special legal act.

Thus, if we consider the environmental legislation of Ukraine, then, despite the wide range of medicinal properties in various natural objects, a small number of rules are devoted to this area of their use. The lack of appropriate regulations in this area can have negative consequences for the interaction of society and nature. This problematic issue is disclosed to some extent in the Water Code of Ukraine, which not only establishes the procedure for classifying certain water resources as healing but also provides the adoption of a special law with a list of existing water bodies in Ukraine and their inherent healing functions. The Water Code of Ukraine has established that places with water used for health, recreation, and sports purposes are determined by the relevant councils in the manner prescribed by the law and may be prohibited or restricted in accordance with the law.²² Water bodies that have natural healing properties belong to the category of healing if they are included in a special list and are used exclusively for healing and health purposes. The list of water bodies classified as healing, indicating the water reserves and their medicinal properties, as well as other favourable conditions for treatment and disease prevention, is approved by the Cabinet of Ministers of Ukraine at the request of relevant state bodies specified in the legislation (Arts. 62, 63 of the CrPC).

It is worth emphasising that most of the list of natural healing resources provided by the legislator belongs to the subsoil sphere. In addition, some authors note that attention is usually paid to mineral waters and therapeutic muds.²³ However, the Subsoil Code of Ukraine currently does not contain rules that would regulate the use and protection of such facilities for healing purposes. Instead, the Code²⁴ contains general rules on the basic requirements in the field of subsoil protection (Section VI), as well as a special article on the protection of subsoil areas of special scientific or cultural value (Art. 59), where resources are not mentioned, which cannot be considered correct. However, issuing permits for development and extraction, including natural healing resources, are covered in the procedure for issuing special permits for subsoil use, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 165. In accordance with this regulation, such permits are granted by the State Service of Geology and Subsoil of Ukraine to the winners of auctions for their sale and without holding auctions in the cases provided (para. 2).²⁵

This situation requires an update of the current national environmental legislation in order to improve the legal regulation on the use and protection of various types of healing natural resources. In particular, as noted by O.A. Hrytsan, the necessary measures for regulation

21 SM Malakhova, OO Cherepok, NG Volokh (eds), *Balneology and Resorts of Ukraine: Textbook* (Zaporizhzhia State Medical University 2019) 9.

22 Water Code of Ukraine (n 6).

23 LI Fisenko, VV Kovaljsjka, 'Natural Healing Resources of Ukraine and Their Use in Sanatorium Practice' (2005) 3 (3) *Medical Hydrology and Rehabilitation* 55.

24 Subsoil Code of Ukraine (n 8)

25 Resolution of the Cabinet of Ministers of Ukraine No 615 of May 30, 2011 'On Approval of the Procedure for Granting Special Permits for Subsoil Use' [2011] *Official Gazette of Ukraine* 45/1832 <<https://zakon.rada.gov.ua/laws/show/615-2011-%D0%BF>> accessed 21 March 2021.

are the consolidation of regulatory requirements for the use and protection of healing resources of the geological environment (healing geological microclimate); provision in post-resource laws of its own provisions, and instructions on other regulations with the use and protection of appropriate medical resources; introduction of a special protection regime for those healing and health-improving areas where deposits with healing resources have been discovered, but a resort has not been organised.²⁶

According to the author, the key problem of current environmental legislation that needs to be addressed is the issue of healing microclimate. The need to dedicate certain norms to the use and protection of such resources is explained by the fact that like other natural healing objects, underground salt mines, and karst caves have long been used to treat various diseases, especially respiratory diseases. However, there are no requirements for the protection of such subsoil areas, leading to their deterioration and even complete destruction due to harmful activities using their healing properties and to irresponsible use of nature (flooding by groundwater, salt extraction, etc.).²⁷ Taking into account the need to address the problems of improving legal regulation regarding the use and protection of these resources, there is the question of defining and implementing improvements in existing legislation in this area.

Therefore, a positive aspect of the legal regulation regarding the use of water for health, recreational, and healing purposes in Ukraine recognises them as natural resources that require special legal protection, which, of course, contributes to the preservation of their useful properties. However, a number of issues remain unclear, in particular, the legal regime for the use and protection of groundwater. Firstly, water and subsoil legislation have different approaches to the very understanding of this natural resource. The Water Code of Ukraine considers groundwater as water bodies of national or local importance, and therefore, in accordance with Art. 48, water abstraction is a kind of special water use and must be carried out on the basis of a water use permit.²⁸ Alternately, the Subsoil Code of Ukraine includes mineral (including healing, therapeutic-table) waters in the list of minerals of national importance, and it is necessary to get special subsoil use permit for their extraction.²⁹ Secondly, according to the norms of national environmental law, the extraction of groundwater resources requires two special permits at a time (for water use and subsoil use), which not only creates a number of difficulties for groundwater extraction entities but also significantly complicates the legal protection mechanism of such objects. According to the decision of the Administrative Court of Cassation in the Supreme Court, fresh groundwater is recognised as a natural resource with a dual legal regime, and therefore, using groundwater should be guided by both water legislation and subsoil legislation.³⁰ For these reasons, it is advisable to enshrine in national legislation the provision recognising groundwater as a natural resource with a dual legal regime while harmonising the rules of water legislation and subsoil legislation.

Also, in our opinion, one of the main problems of legal regulation of water use is the insufficient attention paid to the objects that have healing or health properties. The main theoretical and practical issues of the use and protection of these objects are determined

- 26 OO Hrytsan, 'Separate Questions of Legal Regulation of Subsoil Healing Resources Use and Protection' (2017) 45 Actual Problems of Improving of Current Legislation of Ukraine 41.
- 27 OO Hrytsan, 'The Legal Regime of Subsoil Healing Resources: Some Aspects' (2011) Current Issues of Legal Science: The Tenth Autumn Legal Readings (Khmelnyskiy, 18-19 November) 57.
- 28 Water Code of Ukraine (n 6).
- 29 Subsoil Code of Ukraine (n 8).
- 30 Decision of the Administrative Court of Cassation in the Supreme Court in Case No 815 / 5254/16 (proceedings No K/ 9901/18965/18) of 9 April 2019, in *Judicial Practice Digest of the Supreme Court in Disputes Regarding Environmental Protection and Environmental Rights* (Supreme Court 2019) 114 <https://supreme.court.gov.ua/userfiles/media/Daidjest_Ekologia.pdf> accessed 21 March 2021.

primarily by their actual condition. In this case, we are not talking about a system of such resources that together meet the needs of the population but about specific species, types, and categories of phenomena and objects that are elements of nature and directly have their own useful features.

Regarding the latter, it should be emphasised that the territory of Ukraine is rich in estuaries, which provide for the vital needs of the population regarding treatment, recreation, and health. Thus, the most famous estuaries (Kuialnyk, Khajibey, and Tylihul) have rare and unique flora and fauna, as well as exceptional medicinal properties. However, their status has not yet been determined at the state level. In particular, as noted by I.I. Karakash, the Kuialnyk estuary was significantly affected by the uncertainty of the legal regime of the Kuialnyk resort and the legal regime of the Kuialnyk estuary and surrounding areas is even less certain, without which this resort cannot exist.³¹ The legal regulation of the protection of these water bodies is either defined only in certain specific issues at the level or decisions of the local regulation or in general environmental laws, which cannot be considered correct.

Referring to the practice of European countries regarding the legal regulation of water use for health, recreational, and healing purposes, thermal water centres in Europe are very popular. As mentioned above, according to the legislation of Ukraine, thermal waters belong to natural healing resources, and, as a rule, the regulation of their use is determined by the legal regime of the resorts within which they are located. Examining the legislation of European countries in terms of thermal water use, we can highlight as a positive point a normatively defined concept or criteria for classifying water as thermal. Thus, the Slovenian Law 'On Water' Art. 7 stipulates that groundwater from a well, spring, or catchment that is heated due to geothermal processes in the earth's crust is thermal, and the temperature in the source must be at least 20°C.³² In the Hungarian Law on Water Resources Management, thermal water is all groundwater (from the aquifer) with an outlet temperature (surface) of 30°C or higher.³³ In Hungary, in addition, the law emphasises the features of healing thermal waters. Thus, the main difference between mineral and healing water is that healing water is a type of mineral water with medically proven therapeutic healing effects. Thermal water is any water that comes from a natural source at a temperature above 30°C. According to experts, medical tourism in the country relies mainly on the use of thermal waters, as most of them do not meet modern health standards recognising their healing effects.³⁴

A thorough study on the legal regulation considering the use of thermal waters under the laws of the European Union and Ukraine was conducted by N.M. Obijkyh. The author concludes that in EU countries such as Slovenia, Austria, and Hungary, the right to extract thermal water is mostly exercised through the subsoil use rights. Permission for thermal water extraction is determined by the type of geological works and the depth of the field. In some cases, such a right requires an appropriate permit for water use, for example, by concession, when the use of thermal water involves the abstraction of water from a well. Thus, thermal water extraction is a special type of subsoil use, which is closely related to water use, as thermal waters are not only a component of the subsoil but also a water body that is protected by water legislation. It is also quite appropriate to propose ways to extract

31 II Karakash, 'On Establishing the Legal Regime of the Kuialnyk Estuary and the Resort of Kuialnyk' (2015) Natural Resource Potential of the Kuialnyk and Khajibey Estuaries, Inter-estuary Territories: Current State, Development Prospects (Odesa, 11-12 November) 56.

32 Zakon Republika Slovenija (ZV-1-NPB7) sprejetja 12.07.2002 Zakon o Vodah [2002] Uradni list RS 67/02 <<https://zakonodaja.com/zakon/zv-1/>> accessed 21 March 2021.

33 Magyarország törvény 1995. évi LVII Törvény a vízgazdálkodásról (Nemzeti Jogszabálytár) <http://njt.hu/cgi_bin/njt_doc.cgi?docid=23855.417346> accessed 21 March 2021.

34 K Medvene, Dr. Szabad, 'Wellness and Spa Tourism in Hungary Now and in the Future 2009-2011' (2010) 1 (69) Herald of Kyiv National University of Trade and Economics 17.

thermal groundwater and the conditions for granting permission to use such deposits and to determine the deposit depth to understand when thermal water can be extracted and add this information to the Subsoil Code of Ukraine. It is necessary to provide separate legal norms regulating the establishment of restrictions on the use of thermal waters among the districts of mining and sanitary protection and also to establish limits on their extraction depending on the purpose of use.³⁵

The Order of the Ministry of Health of Ukraine (hereinafter, the Ministry of Health) 'On approval of the procedure for medical-biological evaluation of the quality and value of natural healing resources, determining methods of their use' is of great importance in the study. This regulation not only provides a definition and characterisation of the material composition of such natural healing resources as mineral waters, mud, ozokerite, brine, bischofite, seawater, etc., but also regulates the research of such objects to identify the level of their healing properties, clinical tests, control of their structure stability, and the entities authorised to carry out these activities. Therefore, the organisation and implementation of complex medical-biological, climatological, geological-hydrological, balneological, and other research papers of natural healing resources, providing a medical (balneological) opinion on the medical-biological evaluation of quality and value of natural healing resources on behalf of the Ministry of Health are performed by the Ukrainian Research Institute of Medical Rehabilitation and Balneology of the Ministry of Health of Ukraine, which is certified and accredited in the prescribed manner for the right to conduct research on natural healing resources and preformed drugs (para. 3.1).³⁶

Thus, the legal regulation considering the use of natural healing resources in Ukraine is currently reduced in two directions: 1) resorts management as natural areas on health-improving lands that have natural healing resources and are used for treatment, medical rehabilitation, and recreation; 2) procedure regulation for assigning subsoil resources and water bodies to the category of healing and the procedure for issuing permits for their extraction and use.

Situation analysis characterises the national legal system in terms of regulating the use of natural healing resources, showing the need to restructure the legislation to protect and preserve the healing properties of such sources. The study of existing practice in the public relations area of advanced European countries and their positive experience in this area will bring effective results in improving the legislation of Ukraine.

The issue of integrating Ukrainian legislation with the legislation of the European Union (EU Water Framework Directive),³⁷ in particular, the harmonisation of quality standards of drinking water used by the population, has become of great importance.³⁸ In addition, it should be noted that the EU has adopted a Directive on the water quality intended for bathing.³⁹ This document provides a concept formulation for these waters and standards for pollutants and other substances that cannot be exceeded.

35 NM Obijukh, 'Legal Regulation of Use of Thermal Waters by Legislation of European Union Countries and Ukraine' (2015) 35 (2/2) Scientific Bulletin of Uzhhorod National University Law Series 53.

36 Order of the Ministry of Health of Ukraine No 243 of 2 June 2003 'On approval of the procedure for medical-biological evaluation of the quality and value of natural healing resources, determining methods of their use' [2003] Official Gazette of Ukraine 36/1970 <<https://zakon.rada.gov.ua/laws/show/z0752-03>> accessed 21 March 2021.

37 C Hatton et al, "Prevention of Water Deterioration" Duties under the European Community Water Framework Directive (2000/60/EC): Position Paper' (WWF 2003) <<https://elaw.org/es/system/files/WWF%20position%20WFD%20no-deterioration%20FINAL.pdf>> accessed 21 March 2021.

38 Yu Vystavna, M Cherkashyna, MR van der Valk, 'Water Laws of Georgia, Moldova and Ukraine: Current Problems and Integration with EU Legislation' (2018) 43 (3) Water International 424 <<https://doi.org/10.1080/02508060.2018.1447897>> accessed 21 March 2021.

39 European Parliament and Council Directive 2006/7/EC of 15 February 2006 Concerning the Management of Bathing Water Quality and Repealing Directive 76/160/EEC [2006] OJ L 64/37 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006L0007>> accessed 21 March 2021.

As stated above, in European countries, natural healing resources are used mainly for health and medical tourism. For example, healing resources in Romania consist of climate resources (relief, hydrology, and vegetation), including salt mines, caves, and microclimates; mineral and thermal waters; mud, peat, and gases. The competent authorities in the medical sphere are the Ministry of Health and its decentralised services, the National House of Health Insurance (CNAS) and the district health centres, and the College of Physicians of Romania (CMR). The main subjects of tourist medical activity are the Ministry of Regional Development and Tourism (MDRT), the Organization of Resort Owners in Romania (OPTBR), and the National Association of Travel Agencies (ANAT).⁴⁰

Many European countries regulate the use and protection of water resources regarding health, healing, and recreational purposes, based on the level of special regulations and often through the criteria for their assignment to a particular resort. For example, the Law of the Czech Republic 'On Natural Healing Sources, Natural Mineral Water Sources, Natural Resorts and Spas, as well as Amendments to Certain Relevant Laws (SPA Laws)' of 13 April 2001 deals with the requirements for the authorisation of natural healing resources, their protection, and conditions creating resorts. Under a natural healing source, the law means natural mineral waters, natural gas, and peloids, which have properties intended for healing use and are certified in accordance with this law. It is important that Czech law does not consider natural healing springs as a part of the land or territory on which they are located but as an independent ecological and legal object with unique specific features.

It is significant that in accordance with section 5 of the law, the fact of obtaining the status of a natural source or source of mineral water by a natural source is confirmed by a relevant certificate containing information on its location, composition, properties, and use. This certificate is issued by the Ministry of Health of the Czech Republic on its own initiative, at the request of the owner of the land where the natural object is located or at the request of the municipality of the territory. The ground for obtaining a certificate is the assessment of the source for its useful properties, the composition of internal components, and suitability for use, as well as the availability of conditions for its protection and defence.⁴¹

According to the Romanian Technical Regulations, natural healing resources are mineral water sources, healing lakes, rocks, beaches and sea, coastal and lake waters, therapeutic muds, natural gases, and climatic conditions, including salt mines.⁴² Qualitative assessment and study of the healing properties of natural healing resources are carried out based on the comprehensive research to determine medical indications and contraindications to use (performed by the National Institute of Medical Sparehabilitation, Physical Medicine and Balneoclimatology).⁴³

40 O Surdu et al, 'Current State of Balneotherapy/Thermalisme in Romania: Main Actors, Reglementation and Problems to Solve' (2012) 5 (2) *Anales de Hidrologia Medica* 137.

41 Zákon České Republiky č 164/2001 ze dne 13 dubna 2001 O přírodních léčivých zdrojích, zdrojích přírodních minerálních vod, přírodních léčebných lázních a lázeňských místech a o změně některých souvisejících zákonů (lázeňský zákon) [2001] Sb 437 <<https://www.zakonyprolidi.cz/cs/2001-164>> accessed 21 March 2021.

42 Hotarare Guvernul României Nr 1154 din 23 iulie 2004 Normelor tehnice unitare pentru realizarea documentațiilor complexe de atestare a funcționarii stațiilor balneare, climatice și balneoclimatice și de organizare a întregii activități de utilizare a factorilor naturali [2004] *Monitorul oficial* 752 <<http://www.namr.ro/wp-content/uploads/2013/02/hotararea1154din04.pdf>> accessed 21 March 2021.

43 Hotarare Guvernul României Nr 1154 din 23 iulie 2004 Normelor tehnice unitare pentru realizarea documentațiilor complexe de atestare a funcționarii stațiilor balneare, climatice și balneoclimatice și de organizare a întregii activități de utilizare a factorilor naturali [2004] *Monitorul oficial* 752 <<http://www.namr.ro/wp-content/uploads/2013/02/hotararea1154din04.pdf>> accessed 21 March 2021.

The provisions of the Hungarian Law on Natural Climatic Sources can be useful for the national law, as they emphasise medical caves as objects of cave therapy.⁴⁴ Under this specific resource, the law means a properly organised and equipped natural cave formation or other underground formation (mine, reservoir) with identified and tested health and healing properties and special atmospheric and climatic conditions, which is used for disease prevention and treatment. A special approach has been developed in Hungary to the procedure for granting certain territories the status of a sanatorium-resort zone and to their further protection. In particular, a certain area may be recognised as a sanatorium if it includes natural healing springs that have been recognised as such in the prescribed manner, characterised by environmental conditions that guarantee the peace and well-being of visitors (clean air, proper noise, green planting). Within its limits, the provision of medical services related to the use of healing resources is organised, and the recreational infrastructure (utilities, transport, communications, supply services, etc.) is established. In the presence of all the above criteria, the relevant area is recognised as a sanatorium and is therefore subject to special legal protection. Thus, the resort areas of Hungary are characterised by high quality and organisation, and the state of natural healing springs in their territories is effectively protected by the state and interested private entities.

State supervision and monitoring of compliance with the rules and regulations of using natural healing resources in Ukraine is carried out by central executive bodies implementing state policy in the field of health care and state supervision (monitoring) in terms of labour, geological study, and rational use of subsoil, environment, and other executive bodies in accordance with the law. The State Cadastre of Natural Medical Resources of Ukraine is a system of information on quantity, quality, and other important characteristics of all natural healing resources identified and calculated in Ukraine with regard to the treatment and prevention of human diseases, as well as possible volumes, methods, and modes of their use. The State Cadastre of Natural Medical Resources of Ukraine is created and maintained in accordance with the procedure established by the central executive body, which ensures the formation of state healthcare policy.⁴⁵ Cadastral data are used, among other things, to create favourable conditions for the treatment and prevention of diseases and for recreation.⁴⁶

The right to use nature for health and recreational purposes may be exercised based on the common right to use: 1) objects of fauna to meet vital needs: health and recreational; 2) flora resources for health and recreational purposes; 3) useful properties of forests regarding their cultural and health purposes, etc.; 4) water for health and recreational purposes, etc. For example, water use for health, recreational, and sports purposes is carried out according to general and special water use. Places with water used for health, recreational, and sports purposes are set by the relevant councils specified by the law and may be prohibited or restricted in accordance with Art. 45 of this Code (Art. 64 of the Criminal Code of Ukraine).⁴⁷

Thus, according to the legislation of Ukraine, citizens can use natural resources for health and recreational purposes, as well as use natural healing resources, which with other natural resources are one of the components of the natural environment. This follows from the legal norm of Art. 5 of the Law 'On Environmental Protection',⁴⁸ which stipulates that:

44 EüM rendeleje 74/1999. (XII 25.) A természetes gyógytényezőkről [1999] Magyar Közlöny 122/8352 <http://njt.hu/cgi_bin/njt_doc.cgi?docid=41039.360014> accessed 21 March 2021.

45 Law of Ukraine 'On Resorts' (n 12).

46 Order of the Ministry of Health of Ukraine No 687 of 23 September 2009 'On approving instructions for creating and maintaining the State Cadastre of natural healing resources' [2009] Official Gazette of Ukraine 12/586 <<https://zakon.rada.gov.ua/laws/show/z0154-10>> accessed 21 March 2021.

47 Code of Ukraine No 2341-III of 5 April 2001 Criminal Code of Ukraine [2001] VVR 25-26/131 <<https://zakon.rada.gov.ua/laws/show/2341-14>> accessed 21 March 2021.

48 Law of Ukraine 'On Environmental Protection' (n 13).

the environment as a set of natural and natural-social conditions and processes, natural resources, both involved in economic circulation and unused in the economy in this period (land, subsoil, water, air, forest and other vegetation, wildlife), landscapes and other natural complexes are subject to the state protection and regulation of use in Ukraine.

As a result, natural healing resources have a special legal regime due to their natural properties, namely the ability to improve human health. The law must ensure the preservation and maintenance of a safe state of the environment for human life and health.

In this regard, there is a need to identify areas for improvement of national environmental legislation on the right to use natural healing resources and formulate appropriate proposals. It should be taken into account that the current codes of Ukraine – Subsoil,⁴⁹ Water,⁵⁰ and Forest⁵¹ – as well as the Laws of Ukraine, contain certain provisions that can be used in implementing this right, subject to their improvement. It would be expedient to develop and adopt the Law of Ukraine 'On Protection, Conservation and Use of Natural Healing Resources' and also to propose the creation of a separate Department within the Ministry of Environmental Protection and Natural Resources of Ukraine or a department in the Department of Nature Reserves of Ukraine, responsible for monitoring the effective and efficient use of natural healing resources and natural resources for health and recreation.

2 CLIMATE AS A HEALING RESOURCE

In recent years, the policies of many European countries have been actively aimed at solving the main global problem – climate change. In general, the condition of natural objects depends entirely on the environmental conditions of their location. This issue is especially important for natural resources used for health and medical purposes, as any impact on their specific properties can significantly reduce their value and ability to perform their functions. The negative effects of climate change on natural resources have already been proven and studied by scientists around the world. Prominent examples of climate change that are already actively occurring around the world are the massive drying of stands, increasing fire risk, reducing the amount of usable surface and groundwater resources, reducing surface runoff and infiltration of groundwater, and so on. For example, as a result of increasing concentrations of pollutants during dehydration periods, the quality of therapeutic waters deteriorates, and extreme weather conditions can cause water pollution as a result of storm water flows and flooding of contaminated areas or lead to undesirable fluctuations in water temperature, which can be too high for use in thermal power equipment with water cooling or too low for specific ecosystems.⁵²

As a result of prolonged rains and a warm climate, water runoff contaminates water used for recreation, which accumulates bacteria and increases the risk of human disease.⁵³ Most often, this situation can be seen within the beach areas along the rivers, so this problem is relevant for many countries whose economies are based on resort and recreational activities.

49 Code of Ukraine 'On Subsoil' (n 8).

50 Water Code of Ukraine (n 6).

51 Forest Code of Ukraine (n 7).

52 United Nations Economic Commission for Europe and International Network of Basin Organizations, *Water and Climate Change Adaptation in Transboundary Basins: Lessons Learned and Good Practices* (UN 2015) 36 <https://www.riob.org/sites/default/files/HB-Climate_Change_RU.pdf> accessed 21 March 2021.

53 B Bates et al (eds), 'Climate Change and Water: IPCC Technical Paper VI' (IPCC 2008) <<https://www.ipcc.ch/site/assets/uploads/2018/03/climate-change-water-en.pdf>> accessed 21 March 2021.

This situation forces states to focus their policies on solving problems in terms of adapting natural medical, health, and recreational resources to climate change, as this direction will further ensure the right of citizens to healthcare through using proper nature. Therefore, the current legal system of many European countries is characterised by active attempts to resolve this issue, as evidenced not only by special national regulations but also by the number of organisations created to address climate issues.

Finland can serve as a good example of an approach to tackling climate change, namely, in the context of its impact on natural recreational and health resources. In 2004, the government launched the national research program 'Assessing the adaptive capacity of the Finnish environment and society under a changing climate, FINADAPT'. This program, coordinated by the Finnish Ministry of the Environment, was implemented by 11 institutions, including universities, government agencies (hydrometeorology, forestry, environmental protection), and research centres studying the best way to adapt to the potential effects of climate change.⁵⁴ One of the main institutions carrying out the tasks of this program is the Finnish Institute of the Environment (SYKE), which deals with the most important issues related to the interaction of society and nature in the context of existing climate problems. Thus, one of the activities of the Institute is the development of methods for restoration and rational use of natural resources considering research and knowledge about the impact of adverse weather changes.⁵⁵ As a result of such activities, as well as active partnership and social dialogue with citizens, Finnish policy effectively implements the ecosystem approach to solving the global climate problem, combining the principles of conservation and reproduction of natural objects and ensuring the right to healthcare.

A considerable number of regulations of European countries recognise climate as an important healing resource, as evidenced by the rules on its useful properties and their protection. Thus, the Polish Law on Sanatorium Treatment, Sanatoriums and Health Zones, as well as Spa Communes under Natural Healing Resources, specifies medicinal gases and minerals, including mineral waters and peloids, the medicinal properties of which are confirmed in the manner prescribed by this law. This document defines the category of healing properties of climate – atmospheric factors that contribute to the maintenance of health and the treatment or reduction of the consequences or symptoms of diseases (para. 9 of Art. 2).⁵⁶

The Slovak Law 'On natural healing waters, natural healing baths, spas and natural mineral waters and on amendments to certain laws' defines climatic conditions suitable for treatment, meaning external climatic indicators, air quality, and microclimatic conditions of natural underground spaces, which cause favourable changes in reactivity or other physiological and biological functions of the human body, recognised by the law (Art. 2). An interesting example for Ukraine is another provision of this law, which regulates the procedure for monitoring the state of natural healing resources. Thus, the monitoring system for natural healing resources and natural mineral resources is a system that carries out the monitoring regime of hydrogeological, chemical, physical, microbiological, and biological indicators of natural healing resources, natural mineral resources, wells, other objects of observation, and meteorological indicators of the territory in the amount specified in the permit for the use of a natural healing resource or a natural mineral resource. The monitoring system for natural

54 SP Ivanjuta et al, 'Climate Change: Consequences and Adaptation Measures: Analytical Report' (NISS 2020) 52-3 <https://niss.gov.ua/sites/default/files/2020-10/dop-climate-final-5_sait.pdf> accessed 21 March 2021.

55 P Ahlroth, E Furman, 'Reliable Information on Nature and Ecosystem Services' (SYKE) <https://www.syke.fi/en-US/Research_Development/Nature> accessed 21 March 2021.

56 Ustawa Rzeczypospolitej Polskiej z dnia 28 lipca 2005 r. O lecznictwie uzdrowiskowym, uzdrowiskach i obszarach ochrony uzdrowiskowej oraz o gminach uzdrowiskowych [2005] DzU 167/1399 <<https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20051671399>> accessed 21 March 2021.

healing resources and natural mineral resources is a separate unit of the environmental monitoring system.⁵⁷

As an independent component that has a therapeutic effect on human health within the sanatorium areas, the Law of the Czech Republic 'On natural healing springs, natural mineral water springs, natural resorts and spas, as well as amendments to some relevant laws (SPA Law)' considers climatic conditions. Art. 27 of the law states that responsible persons who provide medical services within the sanatorium treatment must periodically (every five years) submit a report based on measurements and indicators of climatic conditions within the area of natural health resorts, as well as an assessment of further use these conditions for climatic spa treatment.⁵⁸

The Hungarian Law 'On natural climatic sources' deals separately with the concept of a climatic sanatorium – an institution which location corresponds to specific climatic factors (air quality, temperature, humidity, sunlight, etc.) that contribute to healing and rehabilitation treatment (section 5 of Art. 24). In addition, the law establishes the criteria for recognising the climate as healing: a conclusion of experts on climate made on the basis of climate station measurements and a medical opinion based on observations of the climate therapeutic effect (section 4 of Art. 24).⁵⁹

The practice of the above countries is a good example for Ukraine regarding the legal regulation of climate impact as a separate object on human health. In our opinion, such a point should be added to the legislative list of natural healing resources of Ukraine, as national law considers climatic conditions as an element of their healing properties, but it does not take into account the independence of this phenomenon in the possible therapeutic effect. This view has long been prevalent in doctrine. Thus, healing climates are considered one of the main natural resources that are directly used in balneotherapy for non-drug treatment at resorts and in out-of-resort conditions and determine a location's spa specialisation and profiling.⁶⁰

In addition, many Ukrainian research papers are devoted to the so-called climatotherapy – the use of various climatic factors and features of a particular climate for therapeutic purposes. A striking example is the Carpathian region of Ukraine, which has all kinds of natural healing resources: huge reserves of almost all known types of mineral waters, deposits of more than 800 springs and wells, freshwater and low-mineralised peat mud, the only deposits in Ukraine ozokerite and salt with unique microclimatic conditions, and also a mild climate with mountain features that allows or the creation of climatic resorts in various landscape conditions. Thus, the therapeutic and prophylactic effects of climate on the body are due to a number of natural factors, the most important of which are: the location above sea level, atmospheric pressure, temperature, circulation, and humidity, and intensity of solar radiation, including ultraviolet.⁶¹

In general, the influence of natural and climatic conditions on the condition and properties of healing resources is substantial. Thus, OH Shevchenko notes that climatic conditions are

57 Zákón Slovenskej Republiky č 538/2005 27 októbra 2005 O prírodných liečivých vodách, prírodných liečebných kúpeľoch, kúpeľných miestach a prírodných minerálnych vodách a o zmene a doplnení niektorých zákonov [2005] ZZ 219 <<https://www.zakonypreludi.sk/zz/2005-538>> accessed 21 March 2021.

58 Lážeňský zákon (n 40).

59 EüM rendelete a természetes gyógytényezőkről (n 42).

60 OYe Gharbera, Lecture notes on the discipline Organization of Recreational Services (Ternopil National Economic University 2013) 26 <<http://dspace.wunu.edu.ua/retrieve/17883>> accessed 21 March 2021.

61 VS Kravciv (ed), 'Carpathian Region: Current Problems and Prospects for Development. Ecological Safety and Natural Resource Potential' (2013) 1 (89) Institute of Regional Research of NAS of Ukraine 106 <<http://ird.gov.ua/irdp/p20130001.pdf>> accessed 21 March 2021.

one of the determining factors for health tourism, primarily for its emergence and development in a particular region. Other types of tourism depend on the climate of a particular area to a lesser extent but are still significantly dependent on specific weather conditions observed 'here and now'.⁶² This statement suggests that it is important to understand and distinguish between a specific object affected by weather and climate. Climate plays an important role regarding the use of healing resources as a part or basis of a certain resort or tourist complex, but it cannot influence the healing properties of any resources. This is because the resource itself has therapeutic features with many interdependent factors, among which climate conditions play an important role. This is reflected in the national environmental legislation, and therefore, following systematisation principles, it is necessary to study the climate and natural resources inseparably within the complex natural object used for therapeutic purposes.

Comparing the level of climatotherapy in Ukraine and Central Europe, it should be noted that the natural conditions and resources of the country are not inferior to those of the studied countries and should be used rationally for the development of resorts and tourist infrastructure. In addition, the largest percentage of climatotherapy regions in Central Europe is mountainous rather than plains and coastal. In turn, the orographic diversity of Ukraine, namely, the favourable temperate continental climate of forests, forest-steppe and steppe, mountainous, and coastal areas and the unique microclimate of salt mines create more ideal conditions for climatotherapy.⁶³

3 LEGAL RESPONSIBILITY AND JUDICIAL PRACTICE FOR USING NATURAL HEALING RESOURCES

The issue of criminal responsibility for deterioration or other damage to natural healing resources is considered in the national legal system through the prism of general environmental responsibility. An exception can be considered by the legislator regarding incurring property costs by violators of the legal regime for using therapeutic waters since such situations are directly reflected in the criminal law. Thus, Art. 242 of the Criminal Code of Ukraine states that violation of legal regulation on water (water objects) protection causing pollution of surface or underground waters and aquifers, sources of drinking, or therapeutic waters, change of their natural properties, or depletion of water sources and creating danger to life, health, or environment, is liable to a fine, deprivation of the right to hold certain positions or engage in certain activities, or restriction of freedoms.⁶⁴

In addition, the methodology for determining the amount of compensation for damages caused to the state as a result of unauthorised subsoil use is in force, which sets the base rate of losses as a share of the minimum wage in cases of unauthorised use of mineral resources, including therapeutic mud.⁶⁵ The methodology for calculating the amount of compensation for damages caused to the state as a result of law violation on protection and rational use

62 OH Shevchenko, 'Influence of Weather and Climatic Factors on the Tourism Industry' (2012) 23 *Geography and Tourism* 20.

63 AYu Parfynenko, II Volkova, VI Sherbyna, 'Problems and Prospects of Spa Tourism Development in Ukraine (in Comparison with Central European Countries)' (2018) 7 *The Journal of VN Karazin Kharkiv National University Series International Relations Economics Country Studies Tourism* 132.

64 Code of Ukraine No 2341-III of 5 April 2001 Criminal Code of Ukraine [2001] VVR 25-26/131 <<https://zakon.rada.gov.ua/laws/show/2341-14>> accessed 21 March 2021.

65 Order of the Ministry of Ecology and Natural Resources of Ukraine No 303 of 29 August 2011 'On approving the Methodology for determining the amounts of compensation for damages caused as a result of unauthorized subsoil use' [2011] Official Gazette of Ukraine 73/2766 <<https://zakon.rada.gov.ua/laws/show/z1097-11>> accessed 21 March 2021.

of water resources⁶⁶ enshrines that one must pay compensation for damages caused by surface and ground waters without allocating therapeutic waters separately. Therefore, it is expedient to include appropriate norms in this methodology that would establish the amount of compensation for damages caused to therapeutic waters. The increase also requires legal liability (in particular, civil liability) for legislation violations regarding the use and protection of natural healing resources and defining fees to calculate the amount of damage caused to such natural resources.

Analysing the issue of prosecution for violating the rules on the use of natural healing resources or causing damage to them allows us to conclude that at present, the national legal system is based on economic interests, without prioritising the preservation of the healing value of such sources. As a result, Ukraine's policy to preserve the healing properties of natural objects is not characterised by effective methods, which significantly reduces the number of such unique and beneficial resources for public health.

The non-prevalence of effective protection and restoration of healing resources is evidenced by the analysis of court cases, as their number is currently very small when compared with the actual number of instances of damage to such natural resources by legal entities and individuals. In particular, most cases concern violations of the procedure for special use of nature established by the law. An example is Case No. 1-433/11 of 19 March 2012, according to which the entity illegally, without obtaining permits, used the subsoil and carried out special water use by water intake from an artesian well, which was subsequently used to provide utilities, thereby violating the established rules of subsoil protection, which led to the illegal extraction of minerals of national importance (fresh groundwater).⁶⁷ As a result, the offender illegally supplied water to the population, thereby endangering their health due to non-compliance with the requirements for assessing the quality of such water established by the law.

In another case, when making a decision in favour of the defendant, thus leaving the refusal to grant permission standing, the court gave the following argument. According to the provisions of Art. 48 of the Land Code districts and zones of sanitary (mining and sanitary) protection are established in the territories of recreational and health areas and resorts. Within the district of sanitary (mining and sanitary) protection, the transfer of land ownership and provision for use by enterprises, institutions, organisations, and citizens for activities incompatible with the protection of natural healing properties and recreation of the population is prohibited. On the basis of the documents submitted to the court, it was established that the disputed land plot was located in the first zone of sanitary protection regarding mineral springs of mineral waters. Therefore, the court took into account the defendant's arguments that the activities of the plaintiff, by definition, were not related to the protection of natural healing properties. In addition, at the time of the contested decision, the plaintiff carried out construction work in the first zone of sanitary protection of mineral springs of mineral waters without any permits and approvals. In these circumstances, the court concluded that the defendant had a statutory legal basis for the decision to refuse permission to develop a land-use plan allocating land for the maintenance of an apartment building.⁶⁸

66 Order of the Ministry of Environmental Protection of Ukraine No 389 of 20 July 2009 'On approving the Methodology for calculating the amount of compensation for damages caused to the state as a result of law violation on protection and rational use of water resources' [2009] Official Gazette of Ukraine 63/2242 <<https://zakon.rada.gov.ua/laws/show/z0767-09>> accessed 21 March 2021.

67 Case No 1-433/1 Sentence of the Vinnytskyi Raion Court of Vinnytsia Oblast of 19 March 2012 (Unified State Register of Court Decisions) <<https://reyestr.court.gov.ua/Review/21948471>> accessed 21 March 2021.

68 Case No 813/2140/18 Judgment of the Lviv Circuit Administrative Court of 18 December 2018 (Unified State Register of Court Decisions) <<https://reyestr.court.gov.ua/Review/78920892>> accessed 21 March 2021.

4 CONCLUDING REMARKS

As a result of a study of regulations regarding the use of natural healing resources, we conclude that there is an urgent need to restructure the legislation system prioritising protection and preservation of healing properties of such natural resources. Given the scientific views on the need to clearly delineate the purpose of rehabilitation, recreation, and treatment, they should also be taken into account at the legislative level, as this way, the legal protection of relevant natural resources will be more effective and targeted. It is appropriate to provide the laws on their own provisions and instructions considering the norms of other regulations related to the use and protection of relevant natural healing resources in terms of the right to use nature.

It has been determined that using certain natural resources for recreational or health purposes does not mean that natural objects have special properties. In regulating this area of public relations, the legislator only establishes the possibility of using natural objects for appropriate purposes, which further changes, to some extent, the details of the legal regime of their use. This conclusion clearly illustrates the difference between such legal regulations for recreational or health resources from the legal regime for using natural healing resources, as the latter are clearly defined by the legislator as having special properties. Given the work of specialists in the field of balneology and analysis of current legislation, it would be justified to establish appropriate legal regimes for certain categories of natural healing resources. Features of legal regulation in relation to certain categories must be reflected in a special legal act. Legislative recognition, consolidation, and concretisation of natural healing resources are theoretically justified and practically necessary.

It was proposed to adopt such a normative act in science,⁶⁹ but some authors noted the following definition as the task of legislation in this area, namely: lists of particularly valuable, unique, and common natural healing resources, mechanisms for collecting fees for deterioration of natural healing resources related to their ownership or use (this norm has become invalid), development of the statistical reporting for the account of deposits of natural healing resources which are operated, and the recording of the enterprises and the organisations who use them. However, in our opinion, in the current conditions of increased anthropogenic pressure on natural health facilities, we should first of all talk about the proper legal provision regarding protection, conservation, and use of these resources, providing for appropriate legislation norms.

Thus, we propose to develop and adopt the Law of Ukraine 'On Protection, Conservation And Use Of Natural Healing Resources'. It clearly defines the concepts, signs, healing properties, and lists of natural healing resources, as well as specific species, types, categories of phenomena, and objects that are elements of nature and directly have their own healing properties, to establish a special legal regime for them, to be manifested in a special legal regime regarding their use and protection, in particular, defining special measures for their protection and enhanced legal liability for offences in this area. We propose to include climate as a natural healing resource, establishing criteria for recognising it as a healing resource.

It is also expedient to create a separate department in the Department of Nature Reserve Fund of Ukraine within the Ministry of Environment and Natural Resources of Ukraine, which is responsible for monitoring the efficient and rational use of natural healing resources and natural resources for health and recreation.

69 OP Savosta, 'Improvement Mechanisms of State Regulation for Resort Development in Ukraine' (2017) 1 *Theory and Practice of Public Administration* 158.

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