

КРИМІНАЛЬНЕ ПРАВО ТА КРИМІНАЛЬНИЙ ПРОЦЕС

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PREVENTION OF A DESTRUCTIVE ATTITUDE TOWARDS THE ENVIRONMENT AS A CONDITION OF LIFE SAFETY IN THE ECOSYSTEM: CRIMINOLOGICAL ASPECTS

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Summary. *The article provides a criminological analysis of the current state and trends of environmental crime in Ukraine as well as identifies the structure of environmental crime. The article identifies the most common types of environmental crime, including those that have global and local effect. According to the results of the research, a system of combating environmental crime is proposed supplementing it with the description and characterization of its components. An execution of systematic targeted control over the state of the environment combined with a prevention of environmental crimes by the state, society and individual citizens will become a counterbalance to the destructive attitude towards the environment and, accordingly, the basis for life safety in the ecosystem.*

Keywords: *determinants of crime, crimes against the environment, ecology, environmental policy, judicial statistics*

Introduction.

Today, the processes of transformation in different spheres of public life as well as the demand for a sound approach to sustainable development have increased the priority of environmental protection. Thus, it requires the country, society and citizens to demonstrate a careful and responsible attitude towards the environment and take action to combat environmental crimes. Scientific and technological progress and increasing economic activity have led to an increase in anthropogenic pressure on the environment that causes environmental pollution, particularly water resources and atmospheric air, decreases the size of forested areas and fertile lands, eliminates certain species of plants and animals, and as a consequence created a disbalance in the environment (Deineha, 2019). For a long time the economic development of the country have been accompanied by a heavy exploitation of natural resources and a low priority of environmental issues, which in the conditions of intensive impact on the ecosystem of industrial sites actualizes the problems of environmental protection. Reformation of agriculture, modification of forms of ownership, reorganization of business entities, unwillingness of business leaders and entrepreneurs to incur additional costs for taking environmental protection measures as well as deliberate violation of environmental legislation are among the major factors that have led to an increase in the number of socially dangerous activities against the environment. Improvement of the mechanism for the implementation of environmental responsibility is an important area of criminal law reform, the application of which should play a significant role in the fight against environmental crimes.

Analysis of recent research studies and publications.

In the legal literature, various aspects of the prevention and resistance to environmental crime (crimes against the environment) have been touched upon in the works of famous scientists: V.I. Andreytseva, A.M. Boyko, A.I. Dolgovoyi, O.L. Dubovik, S.B. Gavrisha, V.K. Matviychuk, N.G. Ivanovoyi, S.I. Nezhurbidy, N.R. Malyshevoyi, H. S. Polishchuka, A.M. Pleshakova, V.M. Radnaeva, B.B. Tangieva, Yu.A. Turlovoyi, M.V. Shulgy, Yu.S. Shemshuchenka, V.M. Yermolenka and others.

In the meantime, while recognizing the importance of the studies conducted by those authors, further research on the prevention of a destructive attitude towards the environment as a necessary precondition for life safety in the ecosystem needs to be carried out considering topic's actuality. The purpose of the article is to investigate the criminological and criminal provisions and principles of countering environmental crime in Ukraine as well as to justify proposals aimed at preventing environmental crimes.

Results.

Environmental crime (crimes against the environment) is a socially dangerous phenomenon of irrational, destructive human attitude towards the environment, manifested as a multiplicity of criminal incidents against the environment, which threaten the sustainability of environmental relationships and the integrity of physical and biological resources.

To what extent will the environment be balanced, first of which depends on the extent to which its natural resources are used, then the relationship of man and social groups and communities to the envi-

ronment. In today's stage of development of human society characterized by very rapid progress of science and technology, the introduction of new technologies, the use of new and powerful energy sources, construction of a huge number of industrial facilities and expansion of urban areas, almost impossible to find the environment in which there is complete balance (Ivanović, A. & Aleksandar R., 2010).

The Law of Ukraine «On the Fundamental Principles (Strategy) of the Public Environmental Policy of Ukraine for the period up to 2030» from February 28, 2019 emphasizes that the sustainable environmental use should become a keynote of this strategy.

It refers to a prioritization of a non-repressive, humanitarian, preventative course to address environmental issues. Therefore, every entity with a protective and preventive functions must determine the basic criminological principles of their activities.

In terms of their essential characteristics, environmental crime is in many respects both *economic* (illegal use of natural resources), *violent* (linked to a direct harm to human health) or *mercenary* (illegal hunting, illegal fishing, illegal logging, illegal mining etc.) crime. Committing environmental crimes causes not only material harm but also harm to public health. In Ukraine, this happens through contamination of water bodies and subsoil by radionuclides, which contributes to a spread of cancer; poor drinking water causes the diseases of the internal organs, polluted air results in the diseases of the lungs, consumption of poor food leads to other diseases.

Ecological jurisprudence consists in a traditional set of actions – bringing to justice for the illegal deforestation, illegal hunting and illegal fishing or other aquatic mining and much more rarely for polluting water bodies or atmospheric air.

According to official data, in 2019, 3769 criminal offenses were recorded, among which 718 persons were granted reports of suspicion and 648 criminal offenses were issued indictments and sent to court (Report on Criminal Offenses for the period 2013–2019). Among the crimes against the environment, the crimes of low gravity prevail taking up 55 % of the overall rate, whereas the crimes of medium gravity constitute 43 % and only a small part of 2 % falls on the serious crimes. A particular attention should be paid to the dramatic difference in the indicator of certain types of crimes in the overall structure of crimes against the environment. Those are indicators between recorded proceedings and the number of proceedings brought to court with the indictments concerning illegal fishing, animal hunting or other aquatic mining (Article 249 of the Criminal Code of Ukraine).

Thus, in the general structure of crimes against the environmental crimes (according to the recorded criminal proceedings) a considerable share belongs to the illegal logging of the forest that is Article 246 of the Criminal Code of Ukraine takes up around 52 %; illegal fishing, animal hunting or other aquatic mining that is Art. 249 of the Criminal Code of Ukraine takes up 17 %; violation of the rules of protection or use of subsoil that is Art. 240 of the Criminal Code of Ukraine takes up 16 %; pollution or destruction of lands that is Art. 239 of the Criminal Code of Ukraine takes up 5 %. Whereas, in terms of the number of proceedings brought to the court with the indictments, illegal engagement into fishing, animal hunting or other aquatic mining industries hold the first place with 55 %, the illegal logging of forest is 30 %, violation of the rules of protection or the use of subsoil is 11

% and pollution or destruction of land is only 0.8 %. It is important to note that a vast majority of individuals who were granted reports of suspicion and cases brought to courts with the indictments were convicted. Thus, as of 2019, 507 persons were convicted of environmental crimes and 4 persons were acquitted (Form 6 (annual), 2019). The first three crimes include: illegal fishing, animal hunting or other aquatic mining (Art. 249 of the Criminal Code of Ukraine) – 45 %, illegal logging of forest (Art. 246 of the Criminal Code of Ukraine) – 32 % and violation of the rules for the protection or use of subsoil (Art. 240 of the Criminal Code of Ukraine) is 16 %.

Criminal and judicial statistics show that the most vulnerable components of the environment become objects for criminal activity. In particular, illegal deforestation is an evidence of a destructive attitude to the environment. Thus, by a verdict of the Starosambirsky District Court of Lviv region of 04.01.2019 a person was convicted for being in the forest during the night in August 2017 near the village called Stream of Starosambirsky district of Lviv region, violating the procedure of logging timber, in quarter № 6 of section № 1 of Spassky forestry of SE «Starosambirskoye forestry economy», where regional Verkhny-Dnistrovsky Beskid Landscape Park is located that belongs to the natural reserve fund, intentionally, without a corresponding permission, made an unauthorized logging of two dry trees of the pine and fir tree, with a total cubic mass of 3.47 m³, costing 5656 UAH, 50 cents (The verdict of the Starosambirsky District Court of Lviv region, 2019). Another example is from the Novosanzhar District Court of Poltava Region where on 18 January 2019 a person N. was convicted for having a

direct intent for the illegal logging of pine trees on the territory of the Zachepilovsky Landscape Reserve, which is a part of a natural reserve fund, using pre-positioned tools (two-hand metal saw on a tree), carried out illegal logging of plantations, namely thirteen damp-growing pine trees, which were further divided into parts. By committing such actions, N. caused material damage to the Novosanzhar Forestry in a total amount of 11294 UAH (The verdict of Novosanzhar district court of Poltava region, 2019). Content analysis of sentences under Art. 246 of the Criminal Code of Ukraine, testifies that, a vast majority of individuals commit crimes during the night. This fact should be taken into account when designing targeted preventative measures to ensure a life safety in the ecosystem.

Forestry takes up 15.9 % of the overall territory of Ukraine. Forests are unevenly distributed around the territories of the country, from 3.7 percent in Zaporizhzhya region to 51.4 percent in Transcarpathian region. Optimally, according to European recommendations forest cover should be around 20 %, which requires more than two million hectares of new forests to be planted. At the same time, the plantation of new forests should not be done by foresting of unique steppe areas.

Also, it is impossible to exclude such indicator of environmental crime as its latency (concealment or failure to detect a certain part of environmental crimes), the price (the damage it causes, and the expenses on counteracting it), etc. Besides, official statistics show only a small proportion of environmental crimes committed.

The major threat for a biological diversity is human activity and a destruction of natural habitat of flora and

fauna. There is a devastating decrease in the area of wetlands, steppe ecosystems, natural forests, which occurs as a result of land plowing, deforestation with a subsequent change of lands' purpose, drainage or watering of territories as well as industrial, residential and holiday construction etc. Thus, Velikolepetynskyi District Court of Kherson region on January 8, 2019 convicted an individual who around 2 a.m. while staying in the Bay of the Bulgarian Beam in the Kakhovka reservoir in the territory of Velikolepetynskyi district of the Kherson region, in the southern part of the beam, where according to the order № 23 of 07 April 2016 the use and reproduction of water biological resources and regulation of fisheries in Kherson Oblast are deliberately measured by establishing, maintaining and protecting artificial breeding grounds, acting deliberately, without the permission prescribed by the law, with the use of prohibited means of catching – a 72 meter long net, 80 meters long net and rubber boat «BARK» caught fish: bream, walleye, silver pole, silver carp. These actions caused significant damage to the state in the person of the Department of Conservation, Use and Reproduction of Water Biological Resources and Fisheries Regulation in the total amount of 7157 UAH (Verdict of the Velykolepetynskyi District Court of Kherson Region, 2019).

It should be noted that increasing risk of ecological crimes mainly appears due to the anthropogenic pressure on the environment, which in the circumstances of ecological crisis may cause significant, often non-renewable, damage to the vital interests of man, society and the state, such as a depletion of natural resources; a pollution of the environment, a loss of an innate

connection between man and nature, a demise in aesthetic values. Ecological crisis does not only threaten a dignified existence of people but also endangers life in general. As for the state, the environmental crisis is related to a reduction of freedom of political choice, which is caused by the transboundary nature of environmental problems; exacerbation of the ecological situation in different regions of the world causes social and political instability, interstate conflicts and violent confrontations.

A special section of the Criminal Code of Ukraine contains 22 articles that establish a responsibility for environmental crimes (Articles 236–254 of the Criminal Code of Ukraine). Its main function is to protect the environment and ensure environmental safety as a condition of ensuring life safety in the ecosystem. It is not a coincidence that one of the tasks enshrined in the Art. 1 of the Criminal Code of Ukraine, is an environmental protection. This underlines the importance of the environmental field and the need to prevent crimes in this area.

The prevention of destructive environmental attitude is inextricably linked to a determination of criminal, negligent and indifferent treatment of the environment.

The prevalence of crime in this area is adversely affected by the unfavorable socio-economic situation in the country, which is caused by the economic and financial crisis and is accompanied by a significant decline in production, bankruptcy of enterprises, increased unemployment and poverty.

It is evident that the determinants of environmental crime are related to public relations, which determine the nature, character and process of interaction between man and environment that refers to a process of environmental management.

The reasons and conditions for committing crimes in the field of environmental protection at the individual level include the following: antisocial views on the environment among certain categories of people, the external circumstances that have shaped and continue to shape their views, the presence of different life situations that after being combined with particular personalities of offenders may cause criminal acts.

Preventive measures in the field of ensuring the life safety in the ecosystem and combating environmental crime should be based on the principles of reality, scientific validity, the combination of criminological and environmental knowledge, coordination of political and legal actions of the authorities at the different levels, clear and highly professional cooperation of bodies in the field of ecology, a conformity with general social and special criminological measures for the prevention of environmental crime within a basic concept of development of the world community and state environmental policy of Ukraine. That is why the foundation for solving environmental problems in Ukraine should be a long-term state environmental policy that combines measures of general legal and special criminological nature of combating crimes in the environmental field.

Responding to environmental crime and harm also entails learning from – or endeavoring to understand – previous mistakes and omissions, as well as anticipating future risks and threats. This, in turn, requires preventing or attempting to thwart environmental crime and harm before it occurs (Brisman & South, 2018).

The main directions on ecological safety of Ukraine according to Andreytsev are a prevention and minimization of the consequences of emergencies, taking into account the risk of such situ-

ations. This is especially relevant today when environmental emergencies occur very often. It is important to switch to new sources of raw materials and energy that allow to reduce an environmental impact. Besides, matters of a great importance are a scientific research in the field of nature protection, a waiver of those kinds of production that pollute nature as well as an introduction of new safe technologies (Andreytsev, 2002).

Law is an effective regulator of a social development of all social relations, including those that are designed to prevent crime against the environment. At the general social level of preventing environmental crimes those measures play an important role that are related to an improvement of technologies of industrial production (metallurgical and mining) of industries that may harmfully affect environment, rising culture of farming, modernization of vehicles, introduction of waste-free technologies, enhancing the legal and environmental culture of citizens. Since people observe culture as a social object, its functional environment, as well as a regulatory side, will form social regulators that provide a basis for social order, which binds society members, regulates their interaction and identify ways of interacting and treating the objects (Kachur, 2019).

Preventive effect has a dualistic combination of educational and awareness-raising functions of law. They are expressed in terms of the impact of criminal, administrative, civil and disciplinary means on people's consciousness. Also, they contribute to the formation of the respect towards the law, the habit of adhering to its requirements and responsible attitude to the environment. The role of law in relation to social life is also lies in the fact that it normatively establishes the optimal, appropriate to

social needs and interests procedure for the implementation of crime prevention measures at special-criminological and individual levels.

It should be noted that it is very important to constantly raise environmental and legal awareness at both public and individual levels. The main potential of all environmental prevention activities lies down in this task. This is where a real possibility of overcoming such deformation of consciousness as inertia and stereotypical thinking, incompetence, irresponsibility, protectionism, careerism etc. arises. Furthermore, the organization of preventive activities is impossible without its comprehensive and high-quality information and personnel support (external and internal).

The major scientific tasks concerning a prevention of environmental crime can be conditionally clustered into three groups: identification and examination of social phenomenon, processes and factors that determine the destructive attitude towards the environment; investigation of the factors and circumstances that lead to the formation of destructive motivation among individuals who commit crimes against the environment; limitation and, if possible, elimination of the effects of social phenomena, processes and factors that determine the commission of crimes against the environment and minimization of the consequences of destructive resource management. Besides, a set of measures for the prevention of environmental crime at the national and regional levels provides a basis for life safety in the ecosystem.

Conclusions and prospects.

Summarizing above-stated information, it should be noted that scientifically grounded state environmental policy,

which is combined with raising the level of environmental education and formation of public environmental awareness and responsible attitude to biological resources, will provide proper conditions for the introduction in peoples' everyday lives patters of sustainable consumption and use of natural resources. An execution of systematic targeted control over the state of the environment combined with a prevention of environmental crimes by the state, society and individual citizens will become a counterbalance to the destructive attitude towards the environment and, accordingly, the basis for life safety in the ecosystem.

References

1. Andreytsev, V. (2002). Environmental Safety Law: Educational and scientific-practical guide. Kyiv: Knowledge-Press, 332 (in Ukrainian).
2. Brisman, A. & South, N. (2019). Green Criminology and Environmental Crimes and Harms. *Sociology Compass*, 13. Available at: <https://doi.org/10.1111/soc4.12650> (in English).
3. Deineha, M. (2019). The use and conservation of water resources in Ukraine: current state of implementation of European Union Law. *Law. Human. Environment*, 10(4): 62–71. [hps://doi.org/10.31548/law2019.04.008](https://doi.org/10.31548/law2019.04.008) (in Ukrainian).
4. Form 6 (annual) (2019). Reports on the number of people convicted, acquitted, closed cases, non-convicts to whom compulsory medical measures and types of criminal penalties were applied for 2019 (Form 6 (annual): approved by the Order of the State Judicial Administration of Ukraine dated August 22, 2007 No. 88 for agreement with the State Statistics Committee of Ukraine and the Supreme Court of Ukraine). Available at: <http://www.court.gov.ua> (accessed 28.07.2020) (in Ukrainian).

5. Ivanović, A. & Aleksandar R. (2010). Environmental crime as a factor of endangering national security, Conference proceedings: 11th Slovenian Days of criminal justice and security – a modern criminal justice and security guidelines, ISBN 978-961-6821-05-6, University of Maribor, Faculty of Criminal Justice and Security, Ljubljana (SLO). Available at: <https://www.researchgate.net/publication> (accessed 12.07.2020) (in English).
6. Kachur, V. (2019). To the question about the structure of legal culture. Law. Human. Environment, 10(2): 6–11. <https://doi.org/10.31548/law2019.02.001> (in Ukrainian).
7. The basic principles (strategy) of the state environmental policy of Ukraine for the period up to 2030: The Law of Ukraine of 28 February 2019. Available at: <https://zakon.rada.gov.ua/laws/show/2697-19> (accessed 28.07.2020) (in Ukrainian).
8. The Uniform Report on Criminal Offenses for the period 2013–2019. Form № 1 was approved by the order of the GPU of Ukraine from October 23, 2012 № 100 on the approval of the State Statistics Committee of Ukraine. Official site of the Prosecutor General's Office of Ukraine. Available at: <https://old.gp.gov.ua/ua/stst2011> (accessed 06.08.2020) (in Ukrainian).
9. The verdict of Novosanzhar district court of Poltava region (2019). The proceedings № 1-KP/649/11/19. Available at: <http://www.reyestr.court.gov.ua/Review/79018886> (accessed 09.08.2020) (in Ukrainian).
10. The verdict of the Starosambirsky District Court of Lviv region (2019). The proceedings № 1-KP/455/26/2019. Available at: <http://www.reyestr.court.gov.ua/Review/79018886> (accessed 09.08.2020) (in Ukrainian).
11. The verdict of the Velykolepetskiy District Court of Kherson Region (2019). The proceedings № 1-KP/649/11/19. Available at: <http://www.reyestr.court.gov.ua/Review/79018886> (accessed 09.08.2020) (in Ukrainian).

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Анотація. У статті здійснено кримінологічний аналіз сучасного стану і тенденцій екологічної злочинності в Україні, з'ясовано структуру екологічної злочинності. Встановлено найпоширеніші види екологічних злочинів, які посягають на довкілля в цілому, та злочинів, що мають локальний об'єкт посягання. За результатами дослідження запропоновано систему протидії екологічній злочинності, надано опис і характеристику її складових. Здійснення системного адресного контролю за станом навколишнього природного середовища, запобігання злочинам проти довкілля з боку держави, суспільства та окремих громадян буде противагою деструктивному ставленню до навколишнього природного середовища, а відповідно підґрунтям безпеки життєдіяльності у екосистемі.

Ключові слова: детермінанти злочинності, злочини проти довкілля, екологія, екологічна політика, судово статистика