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SOCIO-ECONOMIC AND LEGAL ASPECTS OF ENVIRONMENTAL CRIME IN UKRAINE

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Abstract. The increased danger of environmental crime is primarily determined by an increase in anthropogenic pressure on the natural environment, which, in the conditions of the global environmental crisis, threatens to cause significant, often non-renewable, damage to the vital interests of man, society, and the state. Ukraine belongs to the countries with the worst ecological situation. Pollution of the environment reached unprecedented levels in recent years. *The purpose* of the study is to reveal the essence and causes of environmental crime in Ukraine, socio-economic aspects of the identified phenomenon, analyse the impact of negative consequences of environmental crime on the Ukrainian economy, as well as study legal aspects of criminal liability for environmental crimes and international legal standards on the raised issues. *The subject* of the study is the socio-economic and legal aspects of environmental crime in Ukraine. *Methodology.* In order to achieve the goal, the authors of the study carried out an analysis of the definition of the system of environmental crimes in the scientific literature, various statistical data on the state of the ecological situation and crime in Ukraine, as well as laws and regulations defining the national environmental policy of Ukraine. As a *result* of the study, the essence and causes of environmental crime in Ukraine are highlighted, socio-economic aspects of the phenomenon, the impact of negative consequences of environmental crime on the Ukrainian economy, and legal aspects of criminal liability for environmental crimes and international legal standards on the raised issues are revealed. *Value/originality.* The raised issues repeatedly attracted the attention of many researchers; in the scientific literature, various aspects of environmental crime were given attention in the works of famous scholars in the field of criminal and environmental law, experts in the field of economics of natural resources. However, the value of the research carried out is the lack of coverage in the scientific literature of the socio-economic aspects and legal principles of environmental crime in Ukraine. The authors of the study for the first time emphasized the need to abstract from the outdated orientation and move to global constructive cooperation on the basis of recognition of the priority of universal values, a joint search for effective ways out of the deep crisis that humanity has fallen out of its own life.

Key words: ecological crime, crimes against environment, ecological crisis, socio-economic consequences, criminal liability.

JEL Classification: I1, Q5, K14, K32

1. Introduction

Anthropocentric ideas about relations between man and nature come into conflict with reality, as evidenced by the facts of human impact on the environment. As a result of the irrational and uncontrolled use of natural

resources, the signs of an ecological catastrophe are becoming more and more clearly defined. To our great regret, Ukraine belongs to the countries with the worst ecological situation. Environmental pollution reached unprecedented levels in recent years. Only economic

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losses, without taking into account environmental damage, according to experts, in Ukraine every year account for an amount equal to half of the national income (Mytrofanov, Loktionova, 2010).

Scientific and technological advance and the increase of anthropogenic pressure on the environment inevitably lead to an aggravation of the ecological situation: the environment is polluted, natural resources are depleted, the natural connection between man and nature is lost, and the economic and political struggle for the markets for raw materials, living space intensifies. The technogenic and anthropogenic load on the environment in Ukraine is several times higher than the corresponding indicators in the developed world and continues to grow. Our state has the highest level of land cultivation in Europe, water consumption, deforestation. According to the Concept of the National Environmental Policy of Ukraine for the period up to 2020, approved by the Order of the Cabinet of Ministers of Ukraine on 17 October 2007 No. 880- p, about 15% of the territory of Ukraine with a population of more than 10 million is in a critical ecological state. The density of emissions of pollutants in the atmosphere has lately exceeded 130 kilograms per inhabitant of Ukraine.

The problem is complicated by the fact that the state almost does not take care of problems of environmental pollution and the restoration of natural resources, there are no effective mechanisms of environmental protection, the Ukrainian legislation on environmental protection is inadequate, although it is identified as one of the main forms for ensuring environmental safety and rational use of natural resources. From the point of view of international and domestic criminal liability laws, the facts presented are crimes against the environment – environmental crime, the counteraction of which must be carried out not only through the criminalization of socially dangerous acts against the environment, the implementation of criminal responsibility for their commission, and in combination with economic, political, moral, educational measures, etc. (Mytrofanov, Loktionova, 2010). Another side of the implementation of criminal liability for environmental crimes – compensation for damage to the environment and human health.

The raised issues attracted the attention of many researchers. In scientific literature, various aspects of environmental crime were given attention in the works of well-known scholars in the field of criminal and environmental law, experts in the field of economics of natural resources, in particular: V.I. Andreitsev, A.P. Hetman, I.I. Karakash, I.O. Krasnova, N.R. Malysheva, H.S. Polishchuk, A.V. Stepanenko, Yu.A. Turlova, M.A. Khvesyuk, Yu.S. Shemshushenko, and others. However, socio-economic aspects and legal principles of environmental crime in Ukraine require additional research, which determines the relevance of the identified topic.

The purpose of the article is to reveal the essence and causes of environmental crime in Ukraine, socio-economic aspects of the identified phenomenon, analyse the impact of negative consequences of environmental crime on the economy of our state, as well as study legal aspects of criminal liability for environmental crimes and international legal standards on the raised issues.

2. Disclosure of the essence of environmental crime in Ukraine

Environmental crime is a social and legal phenomenon that poses a danger to the biological foundations of the existence of mankind and consists of a combination of criminal acts envisaged by the criminal law that encroach upon the environment or its individual natural resources (land, subsoil, atmospheric air, water, forests, objects of the natural reserve fund, flora and fauna, etc.), as well as constitutional environmental rights of citizens (Polishchuk, 2006).

Although the vast majority of ecological crimes are crimes of low-to-medium severity, on a scale they are not less dangerous to society than others. Consequences of crime in this area are the state of the crisis in Ukraine as a whole and its impact on the health of people (Polishchuk, Melnyk, 2009). In turn, the ecological crisis significantly affects the economy of our state. Thus, according to the Ministry of Ecology and Natural Resources of Ukraine, the average annual GDP losses due to the deterioration of the environment are 10-15%. At the same time, according to the International Institute of Environmental Management (Switzerland), the level of environmental damage in Ukraine is at least 15-20% of GDP and is one of the highest in the world. At the same time, the ecological crisis in Ukraine is by no means an accidental phenomenon isolated from the state of general economic development, but on the contrary – as a regularity and essential attribute of a deep systemic crisis (Khvesyuk, Stepanenko, 2014).

The current ecological situation in Ukraine is largely determined by the existence of large-scale environmental crime, which is not reflected in official statistics. Thus, the analysis of statistical data on the state of ecological crime in Ukraine shows that its share in the overall structure of crime is about 0.3-0.5%. Over the past 14 years, relative indicators of environmental crime have doubled: from 0.28 in 2002 to 0.57 in 2016 (Turlova, 2016).

3. Legal principles of application of criminal liability for environmental crimes in Ukraine

In the system of the mechanism of legal regulation of environmental protection of Ukraine, an important role is paid to criminal-legal rules. State in accordance with Art. 16 of the Constitution of Ukraine takes responsibility for ensuring ecological safety and

maintaining ecological balance on the territory of Ukraine. Ukraine at the present stage of development of our state is forced to use one of the most severe means of influencing criminal responsibility to prevent the negative consequences of unlawful human behaviour in the environment (Mytrofanov, Loktionova, 2010). In the Criminal Code of Ukraine on April 5, 2001 (hereinafter – the CC of Ukraine), punishments for offenses against the environment are stipulated by the articles of Section VIII of the Special Part “Crimes against the Environment”, which contains 21 articles. But at the same time, the legislator regards it as a crime against the security of mankind – an ecocide (mass destruction of flora or fauna, poisoning of the atmosphere or water resources, as well as other actions that could lead to an ecological catastrophe) as a particularly dangerous crime against the environment, including it to Section XX of the Special Part of the CC of Ukraine “Crimes against Peace, Security of Mankind and International Law and Order”.

In the scientific literature in the definition of the system of ecological crimes, the division of crimes against the environment into the following categories is proposed: crimes of an international nature that violate the ecological safety of mankind (Article 441 of the CC of Ukraine); ecological crimes, which consist in violation of the procedure for carrying out ecological examination, rules of environmental safety during production activities, which caused (or created a danger of causing) significant environmental damage (Articles 236, 253 of the CC of Ukraine); crimes in the field of nuclear and radiation safety (Articles 265, 265-1, 267, 267-1, 274 of the CC of Ukraine); crimes in the field of biological safety (Article 326 of the CC of Ukraine); ecological crimes, which lead to ecological danger, namely: failure to take measures to eliminate the consequences of environmental pollution and conceal or distort information about the ecological state or morbidity of the population (Articles 237, 238 of the CC of Ukraine); crimes in the field of waste management (Article 268 of the CC of Ukraine) (Turlova, 2016).

According to scientists, a large part of the criminal law setting liability for committing these crimes is practically “dead” (Turlova, 2016). Yes, at no time were accounted crimes under Art. 441 of the CC of Ukraine “Ecocide”. In June 2015, the criminal proceedings under this article on the fact of a fire at a petroleum station near Kyiv were later closed in part 1 of Art. 284 of the CPC of Ukraine. Separate articles establishing liability for crimes in the field of nuclear and radiation safety are not in practice applicable. Only three times during 2005–2015 there were signs of violation of the rules of nuclear or radiation safety (Article 274 of the CC of Ukraine) (Prosecutor General’s Office of Ukraine, 2005). At no time in the days of independent Ukraine, criminal cases were not instituted under Art. 237 “Failure to take measures to eliminate consequences of environmental pollution”,

244 “Violation of legislation on the continental shelf of Ukraine” of the CC of Ukraine. Single cases of registration of such crimes as “Concealing or distorting the information on the ecological state or morbidity of the population” (Article 238 of the CC of Ukraine) – 1, “Explosive work in violation of rules for the protection of fish stocks” (Article 250 of the CC of Ukraine) – 2, “Designing or operating facilities without environmental protection systems” (Article 253 of the CC of Ukraine) – 2, “Marine pollution” (Article 243 of the CC of Ukraine) – 4 (Polishchuk, 2006).

According to experts, the state of ecological crime in Ukraine is characterized as critical. During January–May 2017, 6626 environmental crimes were registered in Ukraine. The data of the statistical information of the Prosecutor General’s Office of Ukraine allowed to determine that the greatest number of crimes against the environment was registered for: illegal felling of the forest (Article 246 of the CC of Ukraine) – 4339; illegal occupation of fish, beasts or other aquaculture (Article 249 of the CC of Ukraine) – 806; violation of rules of protection or use of subsoil objects (Article 240 of the CC of Ukraine) – 638; contamination or damage to land (Article 239 of the CC of Ukraine) – 278; illegal hunting (Article 248 of the CC of Ukraine) – 141 (Prosecutor General’s Office of Ukraine, 2017). At the same time, the share of registered environmental crimes of low gravity was 54.1%, medium gravity – 45.6%, severe – 0.2%, especially severe – 0.1%.

According to the statistics of the State Judicial Administration of Ukraine in 2016, according to legally enforceable sentences, the courts applied a fine of up to 807 persons for the amount of 204 312 UAH as the main type of punishment for environmental crimes (Articles 236–254 of the CC of Ukraine) (State Judicial Administration of Ukraine, 2016). It should be noted that it is a criminal law fine as a form of punishment established in the vast majority of sanctions applied for environmental crimes.

The purpose of applying this type of punishment as a fine is the impact on the consciousness of the perpetrator through the encumbrances of the economic nature, as well as the change in his negative unlawful behaviour of confirmation of economic disadvantage of committing a crime. As a result of ecological crimes, qualitative properties of the natural environment, natural resources as an economic category deteriorate, and their value as an object of management decreases. In this regard, it can be argued that the imposition of a fine as the main penalty for committing environmental crimes under the CC of Ukraine is appropriate but it would be advisable to increase their size (Karakash, 2015).

At the same time, it should be emphasized that for the crimes against the environment, the legislator must nevertheless provide such restrictions on the rights and freedoms of guilty persons (penalties) that would reliably prevent the commission of crimes in this area.

The study of world experience is of great importance for the establishment of optimal criminal responsibility.

Thus, in 2006, Ukraine signed the Convention on Protection of Environment through Criminal Law CETS No. 172 on 4 November 1998, with the requirement of further ratification. Part 1 of Art. 2 of the Convention defines a list of intentional criminal offenses to be classified as crimes in accordance with national law: 1) the release, emission or introduction of substances or ionizing radiation into air, soil or water that causes death or damage to the health of any person, poses a significant risk of causing death or harm to the health of any person; 2) illegal discharges or emissions of substances or ionizing radiation into the air, soil or water that cause or are capable of causing serious damage to the life or health of any person, cause or are capable of causing harmful effects on the air, water, soil, fauna or flora; 3) illegal emissions, processing, storage, transportation, export or import of hazardous wastes that cause or are likely to cause death or cause serious damage to the health of any person, cause harmful effects on the air, soil, water, fauna or flora; 4) illegal hazardous activity of an enterprise that cause death or is capable of causing death or serious harm to any person's health, cause harmful effects on atmospheric air, soil, water, fauna or flora; 5) the illicit manufacture, circulation, storage, transportation, export or import of nuclear substances or other harmful radioactive substances that cause or may cause death, cause or may cause serious damage to the health of any person, the quality of air, soil, water, animals or plants in the event that such actions are committed intentionally.

According to Article 6 of the Convention, sanctions for environmental crimes should include imprisonment and monetary sanctions and may include an obligation to restore the environment. Article 7 of the Convention provides for the possibility of confiscation for environmental offenses. Thus, the Convention provides for four types of punishment for offenses against the environment: imprisonment, monetary sanctions, confiscation, environmental restoration. At the same time, an important lever for environmental law and order is the restoration of the environment. Unfortunately, this kind of punishment is not foreseen in the Ukrainian criminal law.

In the scientific literature, one can find suggestions on the establishment of such a type of punishment as imposing on a guilty person the duty to compensate for the harm done in kind, that is, to restore the environment. Thus, scientists emphasize that the primary purpose of punishment for environmental crimes must be real (in kind) reimbursement of damage to the natural environment, and everything else should be considered as additional (Fatkulyn, 2009). That is, fulfilment of the duty to eliminate the harm caused to the natural environment, natural objects should occur in kind. The form of eliminating such damage should be

determined by the court. Such an offer is interesting and promising.

Regarding monetary sanctions (fines) as a type of punishment for environmental crimes, despite their role as a powerful stimulus element, a means of preventing further offenses, world practice (primarily the USA) proved the exceptional stability of the business, especially the large, capable of paying multimillion fines without tangible consequences. Instead, imprisonment is in this case precisely the kind of punishment that not only performs educational function more efficiently but also does not allow transferring environmental costs of subjects-polluters to consumers through the pricing policy (Krasnova, 1992).

Unprecedented in its nature and importance in the process of determining the legal framework for the application of criminal liability for environmental crimes in EU law is the EU Council Framework Decision 2003/80 on 27 January 2003 on criminal-law protection of the environment. The Framework Decision is a regulatory act of the EU in the field of harmonization of criminal, criminal-procedural, and criminal-enforcement law. In the introductory part of the Framework Decision, the EU is concerned about the increase in environmental crime and its consequences, which are increasingly spread beyond the borders of the state, in which the crime was committed (paragraph 1). In addition, the Decision states that environmental crimes are a problem that the Member States unleash together and after the resolution of which must be taken concerted environmental actions based on criminal law (paragraph 3). The Framework Decision also states that each Member State should take the necessary measures to ensure that criminal offenses are punishable by effective, proportionate criminal measures, including imprisonment in serious cases (paragraph 1, Article 5).

4. Conclusions

The process of harmonizing the ecological and legal principles of Ukraine with standards in force in the EU is expedient and necessary for harmonization of rules and provisions in the acts of environmental legislation, further harmonization with acts in other branches of legislation, including criminal, requirements of provisions of international agreements of Ukraine through the overcoming of certain gaps, which create legal conflicts.

Environmental crime – a phenomenon that manifests itself and is exacerbated in different countries of the world, has a truly global character and makes the attention of scientists and practitioners from many countries in the world to find ways to solve the above problems. In the second half of the XX – early XXI century, the state of the environment deteriorated significantly, reaching a level dangerous to life and health. And not only through the global

integration of efforts of all countries of the world but also, according to Vernadskyi's noosphere doctrine, the integration of philosophical, legal, political, natural, and technical and economic knowledge (Vernadskyi, 1977). Therefore, it is necessary to move away from

the outdated orientation and to move on to a global constructive cooperation on the basis of recognition of the priority of universal values, to jointly find effective ways out of the deep crisis that mankind has fallen out of its own life activity.

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