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SOCIALLY DANGEROUS CONSEQUENCES OF CRIMES AGAINST ENVIRONMENT: PROBLEMS OF LEGAL EVALUATION

Abstract. *Over extended period a human being negative influence on environment, notable increase of anthropogenic effect has been observed. Purpose of this article is analysis of ecological safety situation in several regions of Ukraine and assessment of socially dangerous consequences in crimes against environment. Dialectic, logic, normative and system analysis methods have been used in this research. A study of ecological safety situation in certain regions of Ukraine has been made. Legal drawbacks concerning possibility of applying of criminal responsibility stipulated by Art. 236 of the Criminal Code of Ukraine have been unmasked. It has been found that effective state regulation of ecological safety on regional level is impossible without studying and maximum applying of positive foreign experience in this sphere, development of measures to adapt state regulation of ecological safety in Ukraine to the European Union standards, mechanisms of ecological safety of countries that are well on way in this direction. To increase effectiveness of application of norms concerning criminal responsibility for crimes against environment it is reasonable to make interpretation of certain socially dangerous consequences in crimes against environment.*

Keywords: *ecological safety, regions, criminal responsibility, environmental protection, socially dangerous consequences.*

Introduction

Execution of the Association Agreement between Ukraine and the European Union in 2014 substantially mainstreamed the issues related to establishment of cooperation in the area of environmental protection, optimization of conservation activity of each party (in particular, the field of environmental management), integration of environmental policy in other spheres of state functioning.

After proclamation of its independence Ukraine as a new state eventually revealed an unfortunate heritage – diverse range of environmental problems. The largest one is the aftermath of the Chornobyl disaster, consequences of which according to experts are of global significance and will keep its impact on the planet's environment for many decades.

Therefore, current generation (together with the coming) must take care and protect the environment in order to minimize the potential negative influence on our children and grandchildren from adverse (or even catastrophic) results of any environmental negligence at the local, regional or global levels, as well as widely implement preventive measures to avoid environmental crimes.

The analysis of certain crime indicators in the environmental area demonstrates that Ukraine is in the top-list of states with the highest level of plowed lands, water resources consumption, deforestation comparing to European countries. Approximately 15% of Ukrainian territory with population of more than 10 million people is currently in critical ecological condition, according to data presented in annual statistical digests "Environment of Ukraine". Emission of pollutants into the atmosphere has recently amounted up to more than 130 kg per each Ukrainian citizen – several times higher than in the developed countries of the world.

All of the abovementioned proves that any available legal prohibitions simply cannot guarantee that constitutional rights of citizens to a safe and healthy environment are fully exercised. Statistical data on the amount of environmental crimes in Ukraine indicate that its share in the overall crime structure is consistently insignificant and reaches approximately 0.3%. Out of all criminal proceedings in this category, considered by Ukrainian courts, almost 57% relate to investigation of illegal logging, 27% - illegal fishing, animal or other aquatic cropping, 11.5% - violation of the rules for the protection of mineral resources, 2.5% - illegal hunting. Only 2% account for crimes connected with the environmental pollution which may potentially put human life and health under extreme risk. Most of the articles contained in section VIII "Environmental Crimes" of the Criminal Code are not applicable in full extent due to the valuating concepts used to indicate the corpus delicti of the analyzed offence types [7].

Taking this into account, *the aim of this article* is to analyze the environmental safety level in selected Ukrainian regions and assess the socially dangerous consequences of crimes against environment.

Environmental safety of Ukrainian regions.

Ukraine's progression towards European integration requires an active participation in the international community's activities aimed to prevent and reduce the negative effects of environmental threats to regional security, introduce a risk-based approach increasing the efficiency and effectiveness of the state system functioning to protect population and territories from any threats and avoid emergency situations, use of best foreign practices in the area of environmental safety.

The current environmental situation in some regions of Ukraine can be characterized with the word "crisis". Emissions of hazardous substances in the ecosystem exceed established standards, production management does not meet domestic and international standards of environmental protection, environmental turbulence adversely affects people's health, workers in particular – it eventually leads to disorganized labor market functioning. Ukraine also suffers from sharp decline in biodiversity, degradation of land resources, woodland destruction, and accumulation of an unprecedented waste amount, lack of water resources and low level of citizens' environmental awareness. The current system of control, according to environmental safety indicators in Ukraine, demonstrates its inefficiency, the methodology used to assess the environmental threats is outdated.

Each region is a complex socio-economic and environmental system – its functioning is characterized by an unstable balance shaped by the influence of a large number of political, economic, and environmental factors. A peculiar feature of this condition is the rapid emergence and development of economic and environmental crises stimulated by external disturbances because of the region's inability to mitigate relevant destabilizing effects. Given that Ukrainian economy is export-oriented with a predominant focus on the extraction and processing of mineral resources in large volumes, which in general leads to significant pollution and deterioration of the air, land, water resources, many regions may potentially slide into unstable state due to the abovementioned environmental influence. As A. Tkachuk [13] notes, in 2016–2018 clear trend for pollutant minimization has been traced. Take as an instance Donetsk region. If the data collected in 2018 and 2016 is compared, then the total volume decreased up to 191,2 thousands of tons. But in two regions – Ivano-Frankivsk and Kyiv – the trend is opposite (2018 compared to 2016-2017). Also researcher presents interesting information on emissions of air pollutants from stationary sources [13].

Table 1. Stationary sources of ambient air contamination (thousands of tons)

	2016	2017	2018
Ukraine	3078,1	2584,9	2508,3
Donetsk region	981,4	784,8	790,2
Dnipropetrovsk region	833,0	657,3	614,3
Ivano-Frankivsk region	196,7	198,3	221,4
Lviv region	103,1	109,1	106,7
Kharkiv region	100,2	45,0	44,7
Kyiv region	98,2	48,2	81,3
Mykolaiv region	13,9	14,2	13,1

Source: Data given in the Chart 1 is provided by [13].

Figures presented above confirm that, despite certain decline in production, the level of air pollution in large cities and industrial centers remains extremely high. As a result, almost 70% of Ukraine's population resides in territories with polluted air which condition does not comply with the hygiene standards. However, the issue of the risk degree in the face of the continuous long-term exposure to harmful environmental factors (with regard to population in large cities with various industrial profiles) remains open.

Another problem is with the land resources. Current processing algorithms and approaches used in Ukraine do not meet the requirements of rational resource management, and the state is close to critical. Water and wind erosion have affected about 57% of Ukraine's territory; more than 12% of the area is flooded. Based on numerous criteria, about 20% of the state's land is contaminated. Almost 23,000 cases of landslides are recorded annually. Abrasion destroys up to 60% of the coast of the seas (Azov and Black) and 41% of the Dnipro reservoirs. More than 150,000 hectares of land have been damaged as a result of mining and other activities. Karstification is intensifying each year both in underground and surface spots (almost 27 000 of cases recorded) [11]. Events occurring in the East of Ukraine have become a particular factor that multiplied the environmental problems. Due to military actions, destroyed infrastructure of environmentally hazardous enterprises, located in the temporarily occupied territories, seriously disturbed the ecological balance which led to dangerous environmental transformations, caused damage to health and put the safety of citizens' lives under risk.

The main current threats identified in some areas of Donetsk and Luhansk regions where state power bodies do not perform, their duties are: flooded mines and risks related to toxic mine waters (surface discharge, mixing with subsoil water, transfer to Siverskyi Donets river and the Sea of Azov; shutdown of treatment facilities and damage inflicted to toxic and radioactive waste storage facilities; ambient air and soil contamination by chemical products due to ammunition explosions; damage to the territories of the nature reserve fund; destruction of landscapes and vegetation due to the excessive use of military equipment and construction of defensive structures; destruction of large woodland areas as a result of fires and uncontrolled deforestation; mining as a key reason of land unusability.

Results of research launched by M. Naumova and D. Plekhatskyi to study the environmental condition in Ukrainian regions allowed authors to divide these into four groups – in particular, the first group included Kharkiv, Donetsk, Lviv regions; these territories are characterized with relative environmental balance between the pollution level and countermeasures to minimize the hazardous effect. Second group comprises Rivne, Luhansk, Volyn, Chernivtsi, Kyiv, Zaporizhia, Khmelnytskyi, Ivano-Frankivsk, Zakarpattia, Zhytomyr, and Kherson: measures applied to ensure adequate environmental protection simply cannot provide full coverage of the total pollution volume but situation is still not considered to be critical. Ternopil, Odessa, Mykolaiv, Vinnytsia and Cherkasy regions are in the third group; level of damage inflicted to ecosystem considerably exceeds the number of measures aimed to establish the environmental balance in the region; therefore, these require expansion. Fourth group includes regions on the verge of ecological crisis, striving for the prioritized intervention due to insufficient number of protective measures capable of stabilizing the regional environment [9, pp. 98-99].

In order to conclude it must be noted that regional differences in social and economic development process lead to uneven environmental footprint. For any developed state implementation of relevant environmental stimuli system is a crucial component of ecological safety. The most popular ones currently are compulsive (fee-based) and contractual models of such stimuli. The former is widely used in the USA, based on fines, orders on activity termination and other administrative measures. All accumulated funds are spent on environmental needs – it allows to reach balance in the «pollution – punishment - remedy» system [3, p. 148]. Accordingly, it is feasible to study the peculiarities of criminal liability for crimes against environment, namely to analyze the socially dangerous consequences.

Socially dangerous consequences in crimes against environment as a result of damage inflicted to environmental safety.

Taking into account the extreme importance of environmental influence on development and existence of a healthy society, the Constitution of Ukraine guarantees the right of citizens to environmental safety, ensured by a complex of legal, economic, technological and humanitarian factors. The backbone standards of environmental behavior are enshrined by the state in legislative acts and become binding for implementation and observance by legal norms.

The need to enshrine legal protection of environment in domestic criminal legislation is also stipulated by commitments taken by Ukraine as a party of international legal relations aimed at protection of global environmental safety. These commitments arise, for example, from the Vienna Convention for the Protection of the Ozone Layer of March 22, 1985, Protocol concerning the

Control of Emissions of Nitrogen Oxides or their Transboundary Fluxes to Convention on Long-Range Transboundary Air Pollution (1979) which was joined by Ukraine on March 3, 1989, Convention on the Conservation of Migratory Species of Wild Animals joined by Ukraine on March 19, 1999, Convention on Biological Diversity, ratified by the Law of Ukraine on November 29, 1994 etc.

Chapter VIII of the Special Part of Criminal Code of Ukraine contains provisions related to crimes against environment. Criminal law theory rightfully defines this phenomenon as «ecological» crime – the aggregate of crimes and persons committing it and violating the rules and legal norms aimed to protect the environment [2, p. 111]. This refers to illegal use of natural objects or any negative influence on them which causes damage to environmental safety.

Crimes against environment create real threat not only to nature but also to national security. These crimes may be characterized by the following basic features: 1) creating real and imminent threat to natural resources, human life and health; 2) present an aggregate of criminal manifestations with negative impact on environment and specific ecological areas; 3) are a result of irrational and uncontrolled use of natural resources; 4) are reflected as degraded environmental awareness.

It must be noted that there is a truly small number of provisions in the Special Part of the Criminal Code of Ukraine indicating the consequences clearly; sometimes it is absolutely impossible to envisage all of them in legal norms of criminal legislation. At the same time norms regulating the punishment for crimes against environment are one of the most complicated legal constructions – its dispositions usually stipulate a couple of alternative actions and consequences in the body of crime with additional classifying features, embracing its practical application.

Generic object of crimes under Articles 236-254 of the Criminal Code of Ukraine is presented by social relations arising in the course of utilization of certain resource types, natural objects, maintaining order while affecting the environment in specific way, ensuring the environmental safety of population and territories in the process of infrastructure operation (industrial and other enterprises, installations, facilities and other types of manufacturing activity).

Having analyzed Chapter VIII of Special Part of the Criminal Code of Ukraine, it is possible to state that legislator outlines the following consequences:

- loss of human's life – Articles 236, 237, Article 238 (2), Article 239-1 (3), Article 240 (4), Article 241 (2), Article 245 (2), Article 252 (2) of the Criminal Code of Ukraine;
- loss of human's life or disease – Article 242 (2), Article 243 (2) of the Criminal Code of Ukraine;
- posing a threat to human life/health or environment – Article 239 (1, 2), Article 241 (1), Article 242 (1) of the Criminal Code of Ukraine;
- posing threat to existence of living sea growth or human life/health – Article 244 (1) of the Criminal Code of Ukraine;
- threat of extreme technological emergencies or environmental disasters – Article 253 (2) of the Criminal Code of Ukraine;
- threat to human life/health or living sea growth or obstructing the legal activities related to use of sea resources – Article 243 (1) of the Criminal Code of Ukraine;
- epizootic distribution – Article 251 of the Criminal Code of Ukraine;
- environmental pollution (vast territories) – Article 236 of the Criminal Code of Ukraine;

- mass diseases – Article 239 (2), Article 240 (4) of the Criminal Code of Ukraine;
- mass mortality of animals or plants – Article 239-1 (3), Article 240 (3), Article 242 (2), Article 243 (2) of the Criminal Code of Ukraine;
- mass animal mortality – Article 245 (2) of the Criminal Code of Ukraine;
- mass human fatality or disease – Article 253 (2) of the Criminal Code of Ukraine;
- continued reduction or loss of fertility by the soil, its decreased agricultural value, humus layer erosion, soil structure disturbance – Article 254 (1) of the Criminal Code of Ukraine;
- considerable damage – Article 244 (1), Article 246 (1), Article 248 (1), Article 249 (1),
- large-scale material damage – Article 239-1 (2) of the Criminal Code of Ukraine;
- grave consequences – Article 239-2 (3), Article 246 (4), Article 247, Article 254 (4) of the Criminal Code of Ukraine;
- other grave consequences – Articles 236, 237, Article 239 (2), Article 239-1 (3), Article 240 (4), Article 241 (2), Article 242 (2), Article 243 (2), Article 245 (2), Article 251, Article 252 (2), Article 253 (2) of the Criminal Code of Ukraine.

Concluding the abovementioned, it is possible to assume that the mandatory feature of two essential (Articles 236 and 237 of the Criminal Code of Ukraine), nine classifying (part 2 of Articles 238, 239, 240-243, 245, 253 of the Criminal Code of Ukraine) and one specially classifying aggravations (Article 239-1 (3) of the Criminal Code of Ukraine), according to the law, is loss of human life, four essential (Article 244 (1), Article 246 (1), Article 248 (1), Article 249 (1) of the Criminal Code of Ukraine) – considerable damage, four essential (Articles 236, 237, 247, 251) and nine qualifying (part 2 of Articles 238-243, 245, 252, 253 of the Criminal Code of Ukraine) – other grave consequences, one specially classifying (Article 239-2 (3) of the Criminal Code of Ukraine) – grave consequences, seven essential (Articles 239, 239-1, 240-244, 253 of the Criminal Code of Ukraine) – posing threat to human life and health [6, p. 47]. It must be stressed that Article 240-1 «Illegal extraction, sale, purchase, transfer, transportation, processing of amber» and Article 250 «Carrying out explosive works with violation of rules regarding fish protection» of the Criminal Code of Ukraine do not stipulate any socially dangerous consequences resulting from socially dangerous actions. If a socially dangerous consequence of environmental crime itself poses real threat (for example, causing any harm to human life or health, material (property) harm or harm to environmental objects), the law enforcement is able to determine the scale and characteristics of such consequences. Instead, in case of socially dangerous consequences presented in the form of a threat (danger) to inflict harm to the object of criminal defence there is only a possibility that such object may be harmed. Still certain doubts exist concerning whether it is reasonable to consider the consequences of threat (danger) posing if in practice there are certain difficulties in the process of identifying such consequences. To answer this question, at least in general terms, turn to the theoretical background. Criminal law theory does not present a unified opinion regarding this problem. Some scholars think that crimes with potential damage inflicted only to the object of criminal defence are identified as inchoate crimes [10].

It is known that these crimes are the ones where the completion moment is transferred to the stage of preparation or attempt. Therefore, any posed threat must not be considered as a socially dangerous consequence.

Other authors note that any threat of inflicting damage to the object of criminal defence is a fact and it requires mandatory identification as a mandatory feature of the crime objective aspect [1; 4] and offer to distinguish between «criminal harm» and «criminal consequence» [5]. In the latter case criminal consequence is an actual moment of crime completion and at the same time – objective form of criminal harm manifestation. Consequently, posing any threat itself may not be taken purely as socially dangerous consequence. The most grounded and complete opinion is expressed by the authors who claim that creating a threat of harm infliction to the object of criminal defence is a fact. But it also requires clarification. Creating a threat of harm infliction to a criminal defence object can only be recognized as a socially dangerous consequence when such a threat is real and imminent. In tortuous acts characterized with danger the presence of an abstract possibility to inflict real harm to object of criminal defence may not be a sufficient reason to hold a person criminally liable [12]. It should be noted that, despite the available theoretical evidence proving the existence of two types of socially dangerous consequences in the form of actual harm and the threat of causing such harm, in practice there is a problem of establishing the second type consequences within the framework of a specific criminal case. The solution to this problem will approximate theory and practice and streamline the process of criminal proceedings investigation not only for environmental crimes.

Let us analyze more thoroughly such criminal consequence as causing the human life loss which is defined by legislator as a major or additional consequence in environmental crimes. For all components of environmental crimes with human life loss as consequence it is characterized as negligence, i.e. person dies as a result of criminal negligence or criminal overconfidence.

However, loss of human life is a typical feature of a homicide by negligence (Article 119 of the Criminal Code of Ukraine). While applying the criminal law provisions, in case if any cross lining occurs between them, crime is classified with a special rule. But is this always appropriate? Yes, Article 236 of the Criminal Code of Ukraine mentions criminalization of human life loss caused by violation of ecological examination procedure, rules and guidelines of ecological safety in the course of activities related to designing, placement, construction, reconstruction, putting into operation, operational service and dissolution of enterprises, facilities, mobile items/means and other objects. In addition, the list of consequences of this crime includes environmental contamination of large areas or other grave consequences. The human life loss, as noted by the Plenum of the Supreme Court of Ukraine, means at least one death as a result of committing crimes with liability established under Articles 236, 237, Part 2 of Articles 238-243, 245, 253 of the Criminal Code of Ukraine, and other serious consequences include death or mass disease; significant deterioration of the environmental situation in a particular region (locality); extinction, mass mortality or serious illness of wildlife; inability to reproduce certain natural objects or use natural resources in a particular region for an extended period of time; genetic transformation of certain natural objects; particularly substantial damage to property, etc. [8].

Summarizing the issues discussed, it is worth to mention that in any case only harm inflicted to the main object of criminal defence may be taken as consequences of committing crimes against the environment – object is understood as social relations arising from the use of certain types of natural resources, natural objects, ensuring enforcement of laws in the process of environmental impact exerting, ensuring the ecological safety of the population and territories in the process of infrastructure operation (industrial and other enterprises, installations, facilities and other types of manufacturing activity).

Conclusions.

Therefore, results of the research made give rightful grounds to argue that it is necessary to study and take as much as possible into account positive foreign experience for efficient execution of state regulation of ecological safety on regional level and to develop measures for adaptation of state regulation of ecological safety in Ukraine to the European Union standards, mechanisms of ecological safety of countries that are well on way in this direction.

Criminal responsibility for crimes against environment is one of the leading measures in the field of regulation of ecological safety. Socially dangerous consequences in crimes against environment are instantiated by adverse changes in environment that are reflected in causing or in threat of causing of physical, material or other damage to it stipulated by the relevant norm of Chapter VIII of Special part of the Criminal Code of Ukraine. Moreover, it is reasonable to make an interpretation of certain socially dangerous consequences in crimes against environment for improvement of the effectiveness of application of the norms on criminal responsibility for these crimes.

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