

The System of Legal Responsibility in the Environment Protection Area

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Abstract

The problem of environmental protection and responsibility for environmental legislation violations is extremely important under conditions of war in Ukraine and the increased risk of committing environmental crimes on its territory. The purpose was to clarify the main aspects of the legal regulation of environmental relations in Ukraine and in European countries. The main result was the identification of signs of responsibility of individuals and legal entities in the framework of environmental relations, the analysis of the main regulatory legal acts regulating these social relations, the clarification of the distinctive and similar features of responsibility for violations of environmental legislation in Ukraine and in European countries, in particular in France, Denmark and Germany. A number of environmental initiatives aimed at improving the environmental conditions and the regulatory provision within the limits of social relations, etc., have been distinguished.

Keywords: Ecocide, Information Security, Environmental Crimes, Environmental Legislation, European Environmental Initiatives.

Introduction

The system of legal responsibility is a set of measures, means, rules, prohibitions and other elements that ensure compliance with certain regulatory provisions. In the environment protection area, this system includes several responsibility types, the most important of which are criminal and administrative. Sanctions provided by the above mentioned responsibility types include fines, restrictions and imprisonment and are aimed at preventing further violations in the environment protection area. This topic is important in terms of both military activity on the Ukraine territory, caused by the full-scale invasion of the Russian

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Federation, and the increased level of forest areas destruction, ecosystem pollution, etc. For a further understanding of the relevant study topic, it is necessary to distinguish the most thorough works of scientists in this area. For example, Polish authors A. Wyszomirski and M. Olkiewicz (2020) emphasise the high level of corporate responsibility influence on the environmental protection level. In the authors' opinion, the influence of parents, educational system and information on the formation of a pro-environmental world outlook and the prevention of environmental crimes is also important. The participation of large-scale corporations, companies, enterprises, organisations and associations in the environment protection area is important in terms of promoting ecologically oriented life; showing the possibilities of using renewable energy sources (Getmanet al., 2019; Anatoliy, 2021).

Ukrainian author T.I. Sukhorebra (2022) indicates the need to improve the administrative form of legal responsibility for regulatory provisions violations in the environment protection area by increasing the control level of special bodies that are authorised to supervise and prevent this type of violations. Also, the scientist distinguishes the need to increase the amount of fines and supplement the relevant legislation with new provisions that would eliminate anthropogenic, technogenic and other harmful effects caused by human actions on the environmental conditions. The study of the Ukrainian author L.E. Khyzhnya(2020) contains provisions on the need to supplement administrative legislation with a system of bringing to responsibility not only individuals as subjects of offenses, but also legal entities. Also, the introduction of a mechanism for violations the prevention in the environment protection area among legal entities should include the purpose of education, expanding the boundaries of legal culture, and forming legal entities with a high level of understanding of the impact of their activities on the development and proper functioning of the environment (Anisimova, 2020; Komilovaet al., 2021; Kondratenko et al., 2020). The author also suggests supplement administrative sanctions with such concepts as suspension or cancellation of a special license for the use of resources of natural origin.

Another Ukrainian author A.A. Virt (2019) in their scientific work pays attention to the criminal aspects of responsibility in the environment protection area. The researcher also notes to the low control level by the public and law enforcement agencies over violations in the relevant area and notes the need to improve criminal legislation in terms of rules violations of protection and subsoil use. Ukrainian authors M.M. Slyvka and N.V. Lesko(2021)studied the issue of the participation of local government bodies in the prevention of crimes against the environment. In particular, they noted the need to expand the range of powers

granted to relevant bodies to increase the level of their participation in environment protection and ensuring safe environment. The analysis of the abovementioned works allows distinguishing several aspects that Ukrainian scientists do not pay attention to: taking into account international experience in the prevention of environmental crimes, studies on environmental initiatives among “green” countries, such as France, Denmark and others. Therefore, in terms of the relevant shortcomings in this study, it is necessary to take into account all the missing provisions and expand the analysis scope of responsibility in the environmental crimes area; suggest a new approach to improving environmental and related legislation.

The purpose of the scientific work is to clarify the main features of legal responsibility for environmental legislation violations, as well as to distinguish the positive aspects of the European experience in combating this type of law violations using the example of France, Denmark and other countries.

Materials and Methods

The scientific paper was written using several basic methods of scientific knowledge. Thus, the historical method was used to distinguish the development aspects of environmental protection legislation of Ukraine in the period 1991-2022. It was studied which environmental initiatives were implemented in the relevant period and which results were obtained as a result of their action. The historical study method also helped to find out and outline a number of regulatory legal acts that were adopted from 1991 to 2022, among them, in particular, the Law of Ukraine No. 1264-XII “On environmental protection”(1991), Law of Ukraine No. 2665-III “On oil and gas”(2001), Forest Code of Ukraine (1994), Water Code of Ukraine (1995).

The next method was a systematic one, which was used to analyse legislative acts clarified by using the historical method. Thus, the systematic legislation analysis made it possible to outline its main positive and negative features, attention was paid to the need to improve certain codified acts and special laws. The use of the systematic method of scientific knowledge also made it possible to find out the main positive aspects of cooperation between the public and state authorities in the environmental crime prevention area. Special attention was also paid to environmental crimes committed by the Russian Federation on the territory of Ukraine and the problem of bringing the aggressor to legal responsibility. It is quite important to distinguish one more method of scientific knowledge, the statistical one, which made it possible to highlight the relevance level of the relevant study through the demonstration of crimes indicators that were committed against the environment on the territory of Ukraine in 2019-2022.

The number of convictions, charges and fines against offenders was also shown. In addition, the use of the statistical method helped to find out the level of public awareness of environmental problems in Ukraine. The coverage of statistical data was carried out using open sources of the State Statistics Service of Ukraine (2022), as well as the Ministry of Environmental Protection and Natural Resources of Ukraine (2022).

The comparative method of scientific knowledge made it possible to study and analyse the main aspects of combating crimes in the environmental area by such countries as France, Denmark and other European countries. In particular, attention was paid to the difference issues in the limits of criminal and administrative responsibility in the abovementioned states and in Ukraine; to preventive measures used to prevent environmental crimes in the corresponding countries and in Ukraine, and the main differences between these approaches, their positive and negative aspects. A number of the most successful environmental initiatives, both governmental and international, were distinguished, which were successfully introduced in the area of combating the problems of environmental pollution, water, land resources, and minerals. The issue of corporate responsibility and legal entities responsibility in the abovementioned countries and the possibility of introducing this experience into the legal practice of the Ukrainian state were studied. Aspects of the international environmental protection organisations' participation in the improvement of environmental legislation and the environmental protection area were clarified.

Results

The greatest development of Ukrainian environmental legislation occurred during the period of independence and continues to this day. In particular, in 1991, based on the constitutional provisions connected with the preservation of nature and ecology, a fundamental law was adopted: Law of Ukraine No. 1264-XII "On environmental protection"(1991). This law laid the basis regarding the regulation of environmental relations and their further improvement in the rational and conservative use of the country's natural resources. In the period after Ukraine's independence, a number of laws were adopted that influenced the development of environmental legislation in the country. In 2001, the Law of Ukraine No. 2665-III "On oil and gas" (2001) was adopted, which regulated the extraction, processing, transportation, consumption and storage of oil and gas in Ukraine. In 2019, Law of Ukraine No. 2697-VIII "On the Key Principles (Strategy) of the State Environmental Policy of Ukraine for the period till 2030" (2019) was adopted, which regulated the issue of environmental restoration after harmful human impact. This law took into account the latest

trends in the environmental protection area and was aimed at improving the state of the environment in Ukraine.

Codes that systematise the most important regulatory provisions on environmental protection are also quite important within the framework of environmental legislation, including: Forest Code of Ukraine (1994) and Water Code of Ukraine (1995). Despite the quite developed environmental legislation of Ukraine, the problem of violations in the relevant area and bringing offenders to justice, further prevention of this type of crimes is still significant. During 2020, around 2500 incidents of violations against the forest and nature reserve fund, more than 400 facts of rules violations regarding the subsoil use were recorded. The number of environmental violations in 2022 increased significantly due to the full-scale invasion of the Russian Federation on the territory of Ukraine. Thus, since the beginning of the invasion, more than 2000 crimes have been recorded, the damage from which amounts to 37 billion euros. The objects of the offence are most often air that is polluted due to the burning of forests and oil products; water, soil resources, etc. also suffer (State Statistics..., 2022).

In Ukraine, the most common types of responsibility for violations on relevant environmental objects are administrative and criminal types. Regarding administrative responsibility, these provisions are contained in the Code of Ukraine on Administrative Offenses (1984), in Chapter 7 “Administrative offenses in the field of environment protection, use of natural resources, protection of cultural heritage”. Considering the different objects of offences, administrative violations also differ in their composition and can be classified depending on those social relations that are harmed by criminal acts. Thus, it is advisable to distinguish several types of criminal violations. For example:

1. Administrative violations that are directed against the legitimate use and protection of land resources (Articles 52, 53, 53-2, 54 and others).
2. Administrative violations connected with subsoil protection (Articles 57, 58 and others).
3. Illegal violations on the water resources protection (Articles 59, 59-1, 60 and others).
4. Illegal activity in the forest use area (Articles 63, 64, 66, 68 and others).
5. Administrative violations connected with air pollution (Articles 79, 80 and others).
6. Administrative violations connected with waste management rules (82, 82-3, 82-4, 83 and others).
7. Administrative violations that violate fauna and flora (Articles 83-1, 85, 86, 87, 91 and others).

Sanctions of the abovementioned articles most often refer to the following types of administrative fines:

- fine;
- warning;
- compensated withdrawal of an object of the offense;
- confiscation of an object, property;
- forfeiture of a special permit for the natural resources use.

These measures of administrative penalties are applied to a certain subject, taking into account damage, socially dangerous consequences, guilt and other mandatory features of the set of the violation. It should be noted that the advantage of applying the measures provided for by administrative legislation to the violator is speed and timeliness, however, they are not always a sufficient factor in re-educating the violator and preventing the recurrence of their criminal actions. This is proved by statistical data of the Ministry of Environmental Protection and Natural Resources of Ukraine (2022), which indicate significant environmental problems: around 50% are related to water use problems and drinking water shortages, almost 46% of problems connected with waste management, and around 40% to atmospheric air pollution due to uncontrolled emissions. Such indicators depend on low fines for environmental legislation violations in Ukraine, in particular, their size can be equal to 7-10 subsistence minimums of citizens' incomes.

It is advisably to analyse the features of administrative responsibility in such ecologically oriented countries as France and Germany. As for France, along with administrative penalties as a preventive measure, certain restrictions have been introduced in the country to improve the environmental situation, for example, entrance to the capital, Paris, is limited on weekdays from 8:00 a.m. to 8:00 p.m. for vehicles, the year of release of which dates back to the 1990s. The classification of categories of harmful transport emissions has also been introduced in the European Union (EU), accordingly in France and other countries there are stickers on the windscreen of the vehicle indicating the level of harmful emissions. For example, for the absence of a corresponding sticker, administrative fines for light vehicles amount to around 70 euros, and around 140 euros for full-size vehicles. In Germany, individuals and legal entities can be held administratively responsibility for environmental regulations violations and causing damage to the environment. Fines for environmental violations in Germany depend on the severity of the violation and the circumstances accompanying it, and can range from a few hundred euros for minor violations to millions of euros for more serious violations. The amount of fines for

environmental violations is determined in each specific case, taking into account the damage caused to the environment, the negligence or intent level, as well as the financial resources of a person or company fined. For example, a fine for construction without a license permit can reach to 50000 euros (Sansyzbayeva et al., 2020).

In exceptional cases, when the company takes responsibility for a violation committed by a senior manager, the fine can reach up to 10 million euros. These limits may be increased to ensure that the punishment exceeds the economic benefit obtained by the offender from the legislative rules violations. Denmark has a similar system of penalties for administrative violations; fines for environmental violations can range from a few hundred euros for minor violations to millions of euros for more serious violations. In addition to fines, in Denmark, for environmental violations, persons can also be sentenced to imprisonment, which can range from several months to two years, depending on the severity of the violation (Nassar and Tvaronavičienė, 2021). It should be also noted that Denmark has a long history of environmental reforms and is considered a leader in environmental protection. The country has taken a number of measures to reduce environmental impact and preserve natural resources for future generations. Some examples of environmental reforms:

1. Renewable energy: Denmark has made significant progress in transitioning to renewable energy sources such as wind and solar energy. In 2020, more than 50% of electricity in the country was produced from such sources.
2. Climate action: Denmark has set ambitious purposes for reducing greenhouse gas emissions and has taken a number of measures to achieve these purposes, including promoting energy efficiency, expanding the use of renewable energy sources and developing carbon capture and storage technologies.
3. The country has also taken a number of measures to promote sustainable agriculture, including the introduction of organic farming methods and the use of environmentally friendly pesticides (Karshalova et al., 2017; Fedoniuk and Skydan, 2023).

Thus, the system of environmental reforms combined with the developed mechanism of punishment for violations against the environment allow Denmark to be recognised as a “green country”. It is quite important to study the main features of criminal responsibility both in Ukraine and in other European countries. In Ukraine, there is a Criminal Code of Ukraine (2001), which in Chapter 8 groups the main types of criminal violations against the environment: the environmental safety area, environmental protection, natural resources use, etc., however, most of the articles and sanctions of this Chapter are hardly applied. In general, criminal responsibility is applied under the condition of an increased

level of public danger of the crime and, accordingly, a higher level of damage to both public safety and the object of the offense. The main punishments applied within the framework of criminal legislation for committing violations against the environment are restrictions, deprivation of freedom, the term varies from 3 to 8 years, in some cases up to 12 years, as well as restriction of freedom and a fine of 1 thousand tax-free minimum incomes of citizens; the sanctions of the articles also provide for public works, deprivation of the right to hold certain positions.

The responsibility of the aggressor country of the Russian Federation for ecocide on the territory of Ukraine remains particularly relevant. To bring international responsibility for these actions against the environment, based on the State Environmental Inspectorate of Ukraine, an Operational Headquarters was created, which includes various specialists: lawyers, representatives of the Ministry of Environmental Protection and Natural Resources of Ukraine, people's deputies and others. Their work is aimed at recording these crimes and taking into account the international practice of bringing the aggressor country to justice through tribunals or other unique institutions (Heckenberg & White, 2020). Regarding the criminal responsibility for environmental legislation violations in other countries, on the example of Germany, it is advisable to indicate that the sanctions of the articles on serious crimes include imprisonment for a period from 2 to 5 years or the payment of a fine. Particularly serious crimes, which, for example, created a threat to public water supply, are punishable by imprisonment for a term from 10 to 15 years. Also, a feature of criminal responsibility for violations against the environment is that only an individual is charged due to the principle of personal guilt and the need for re-education to prevent repeated crimes (Rexhaj et al., 2023).

In France, individuals and legal entities can be held criminally responsible for violating environmental regulations and causing damage to the environment. For example, individuals can be sentenced to imprisonment for up to five years, and companies can be fined. In cases of particularly serious environmental crimes, individuals may be sentenced to imprisonment for up to ten years, and companies may be fined up to 75 million euros. Thus, in 2019, a company in France was sentenced to pay a fine of 350000 euros for illegal discharge of hazardous waste in a nature reserve with compensation for environmental damage (Hasler et al., 2020). Also, in 2020, a man in France was sentenced to 18 months in prison for running an illegal waste incineration plant that caused significant air pollution (Tourangeau & Fitzgerald, 2020). Regarding Denmark, in cases of particularly serious environmental violations, individuals may be sentenced to imprisonment for up to six years, and companies may be fined up to 10 million euros (De Nadai et al., 2020).

The environmental legislation of the abovementioned countries is developed within the framework of the European Green Course(2021), which is defined as a set of initiatives and suggestions put forward by the European Commission, the executive branch of the EU, with the aim of achieving climate neutrality (zero greenhouse gas emissions) by 2050. The Green Deal or Course includes a number of measures aimed at reducing greenhouse gas emissions and promoting the renewable energy sources use such as wind and solar energy; to protect and restore natural habitats and biodiversity, reduce pollution and improve air and water quality; to ensure that the transition to a low-carbon economy is fair and inclusive, supporting those most affected by the transition and eliminating social and regional inequalities.

Considering the active European position of Ukraine and the reforming of all areas of the country on the way to membership in the (EU), the improvement of the environmental situation in the state should not be an exception, taking into account the European Green Deal, as well as the experience of environmental reforms in France, Germany and Denmark. It is important to improve the administrative and criminal legislation in the violations section against the environment, namely the increase of fines and the limits of imprisonment or restriction of freedom. It is also necessary to educate about saving and rational use of natural resources; introduction of subsidies, grants for the transition of companies and private consumers to renewable energy sources; reforestation initiatives should also be carried out at all levels: the increase of protected areas, the legislative regulation of wild forests, restrictive measures regarding the distraction of forest capacity.

Discussion

For further analysis of the relevant topic, it is also necessary to analyse the works of other authors on the relevant study subject. Thus, for example, Dutch authors D.P. van Uhm and R.C. Nijman (2022) paid attention to the transnational crime development, which provokes a shortage of natural resources at the global international level. They pointed to the need to consolidate countries' efforts to improve environmental legislation and mutual assistance in the search area, investigation and bringing violators to legal responsibility.

The team of Spanish authors E. Aceves-Bueno et al. (2021) in their scientific work paid attention to the issue of illegal fishing of marine animal species and its destructive effect on the ecosystem functioning. They also analysed the issue of illegal trade in endangered species and suggested strengthening criminal responsibility for these crimes, as well as increasing fines to prevent repeated misconduct. The conclusions also indicate the need to involve society

and local authorities in the combat. The study results of the team of authors from Spain only partially correspond to the results of this work, in particular, in terms of strengthening criminal and administrative responsibility for violations against the environment, as well as the need for educational activities and public participation in the fight for the improvement of the environment and the prevention of environmental violations.

American authors R. Thomson et al. (2020) focused on the causes of environmental crime, which are characterised by such factors as weak local government, low development level and lack of efficiency in law enforcement agencies activities. Attention was also paid to the responsibility issues as the main factor in preventing the recurrence of environmental violations and the need to establish higher limits of fines. Another American author M.J. Lynch (2020) studied a number of environmental crimes in scientific work, including pollution, illegal wildlife trade, and illegal logging. They also pointed to a wide range of impacts of violations against the environment, which affect both the life and health of the population, as well as the environment in general. That is why the author notes the need to strengthen legal responsibility for criminal behaviour that interferes with the environment, and conduct educational activities to prevent this type of violations. The authors' results correspond with this study. Indeed, as it was already mentioned, it is the low level of administrative fines, as well as ineffective criminal sanctions, that are the reasons for a number of environmental violations and their recurrence on the territory of Ukraine.

British authors G. Kitteringham and L.J. Fennelly (2019) focused on the fight against environmental crime, which involves measures to prevent, detect and punish these crimes. Such measures, according to the authors, may include improving the regulatory frameworks, increasing the level of awareness of environment among the public. The researchers also pointed to some specific strategies to combat environmental crime: increasing funding and resources for environmental protection and regulatory agencies, increasing penalties for environmental crimes and coordinating them through jurisdictions, expanding international cooperation to combat transnational environmental crime, providing incentives for businesses to apply environmentally responsible practices, participate in educational work to raise awareness of environmental crimes and encourage people to report them. The results of the scientific work of the authors only partially coincide with the results of this work, however, it is advisable to take into account the developments of the scientists, in particular, in terms of specific strategies for combating environmental crime. It should be also added that it is important in the environmental crimes areas to take into account the

experience of European countries in implementing environmental initiatives to improve environment (Vystavna et al., 2018).

An effective tool for this can be environmental reforms: changes to laws, policies and practices aimed at protecting the environment and solving environmental problems. These reforms can be implemented at the local, national or international levels and may include a range of measures, including regulatory frameworks, business incentives, public education and public outreach, and other measures. Some examples of environmental reforms that could be applied in Ukraine: reducing greenhouse gas emissions by increasing carbon penalties or constraint systems; protection of natural areas and biodiversity by creating conservation areas or conservation programs; promoting the use of renewable energy sources and energy efficiency measures to reduce dependence on fossil fuels; strengthening the rules for the use and disposal of hazardous chemicals; introduction of water quality standards to protect rivers, lakes and other reservoirs; development of sustainable land use practices to protect soil, water and other natural resources (Kazak, 2017; 2018; Sannikov, 2017; Stankevičius et al., 2020).

The work of American authors M.J. Greife and M.O. Maume (2020) regarding the responsibility of companies for environmental violations is also interesting for analysis and comparison. The specific consequences that a company may face in connection with an environmental crime can vary depending on the nature of the crime, the jurisdiction in which it was committed, and other factors. Some of the potential consequences of criminal penalties for corporate offenders include the following:

- companies can be obligated to pay fines as punishment for environmental crimes;
- deprive it of the licensing necessary for its activity;
- reputational damage and, as a result, reduced sales and revenues;
- sentencing to community service.

Although the results of the researchers do not coincide with the results of this study, it should be agreed with the authors' opinions and state that the responsibility of legal entities is an extremely important demonstrative practice and the main measure for the prevention of environmental violations. As Ukraine does not provide for the personal responsibility of legal entities in both administrative and criminal law areas, legislators should pay attention to this aspect and to the experience of such country as Germany, for example.

Italian authors L. Segato et al. (2020) studied the problem of water crimes, in particular, illegal discharge of harmful substances into reservoirs, unauthorised water withdrawal from a source, illegal destruction of wetlands or

other aquatic habitats, illegal trade in endangered aquatic species. The authors also indicated that water crimes can have serious consequences for the environment and human health. They can pollute drinking water sources, harm aquatic fauna and ecosystems, provoke their depletion and economic problems within the boundaries of water management. The results of the group of researchers coincide with the results of this work, because, as already mentioned earlier, one of the most common environmental problems in Ukraine is the pollution of water resources and the access restriction to drinking water (Kazak and Hotsuliak, 2020). Preventive measures in this area may include:

- raising awareness of the importance of water protection and the consequences of water-related crimes that include public education campaigns, work with schools and community groups, and other measures to involve the public in water protection efforts;

- encouraging enterprises and individuals to use water resources protection methods through financial subsidies, grants, additional benefits, simplified procedures for obtaining permits for enterprises that implement water saving practices.

Conclusions

As a result of the scientific work, a number of important issues in the responsibility area for environmental violations were clarified and analysed. Thus, the development of Ukrainian environmental legislation dates back to 1991, the main regulatory legal act is the Law of Ukraine No. 1264-XII “On environmental protection”, which is the basis for the development and implementation of other laws and by-laws. A number of the most common environmental problems on the territory of Ukraine were also distinguished: water pollution, forest areas destruction, waste management problem, etc. The main aspects connected with administrative and criminal responsibility for violations against the environment were clarified. Regarding administrative sanctions, the low amount of fines, which cannot ensure effective prevention of environmental violations, remains as a problem. Regarding criminal responsibility, although there are various types of crimes against the environment, there is no mechanism for bringing offenders to justice for most of the relevant types.

The administrative and criminal legislation of such European countries as France, Germany and Denmark were analysed. The corresponding countries are “green countries”, therefore, using their experience can be effective for Ukraine as well. It was studied that the main common feature in the mentioned countries is the high limits of fines that can reach millions euros, as well as the strict limits of deprivation, restriction of freedom and the established institution of legal entities

responsibility. A number of environmental initiatives adopted by Denmark were also distinguished, in particular, they related to the improvement of atmospheric air, soil, etc. The need to adopt this experience and carry out environmental reforms within Ukraine was indicated. This issue became especially relevant against the background of the Russian full-scale invasion, because all ecosystem elements should be restored through the planting of forest areas, legalisation of wild forests, increase measures of both administrative and criminal responsibility, and educational activities. For further studies, it is suggested to consider the following topics: ecocide as a consequence of the war on the territory of Ukraine; the responsibility problem of legal entities for committing environmental violations; monitoring of environmental initiatives among “green” countries.

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