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ПРАВО KARNE, ROZWÓJ I POLITYKA ŚRODOWISKOWA

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Adnotacja. W artykule ujawniono cechy doktrynalnej analizy procesu kryminalizacji i usystematyzowania działań związanych z polityką środowiskową i zrównoważonym rozwojem. Celem artykułu jest wyjaśnienie istoty, cech, natury prawnej i cech karno-prawnej ochrony przyrody na przykładach tworzenia kompleksu norm prawnych dotyczących przeciwdziałania nielegalnemu wydobyciu kopalin oraz opracowanie szeregu propozycji i zaleceń dotyczących poprawy regulacji karno-politycznych problemu. Na podstawie analizy koncepcji zrównoważonego rozwoju analizuje się nielegalną eksploatację minerałów. W tym celu artykuł określa ekonomiczne, prawne i metodologiczne zasady polityki karnej w zakresie sformalizowania odpowiednich przepisów prawa karnego.

Słowa kluczowe: zrównoważony rozwój, minerały, polityka karna, wykroczenia karne związane z nielegalną eksploatacją minerałów, polityka środowiskowa.

CRIMINAL LAW, DEVELOPMENT AND ENVIRONMENTAL POLICY

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Abstract. The paper reveals the features of doctrinal analysis of the process of criminalization and systematization of deeds related to environmental policy and sustainable development. The purpose of the article is to clarify the nature, features, legal nature and characteristics of criminal law protection of nature on examples of a set of legal regulations formation on combating illegal mining, as well as the development of proposals and recommendations for improving the legal regulation of the problem. Based on the ground of sustainable development analysis an illegal handling of minerals is analysed. To this end, the paper identifies economic, legal and methodological principles for criminal policy on formalizing the relevant provisions of criminal law.

Key words: sustainable development, minerals, criminal policy, criminal offenses related to illegal handling of minerals, environmental policy.

КРИМІНАЛЬНЕ ПРАВО, РОЗВИТОК ТА ЕКОЛОГІЧНА ПОЛІТИКА

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Анотація. У статті розкрито особливості доктринального аналізу процесу криміналізації та систематизації вчинків, пов'язаних з екологічною політикою і сталим розвитком. Метою статті є з'ясування сутності, особливостей, правової природи й характеристик кримінально-правової охорони природи на прикладах комплексу формування правових норм щодо протидії незаконному видобутку корисних копалин, а також розробка деяких пропозицій і рекомендацій щодо вдосконалення кримінально-політичного регулювання проблеми. На основі аналізу концепту сталого розвитку аналізується незаконне поводження з корисними копалинами. Із цією метою в статті визначено економічні, правові та методологічні принципи кримінальної політики щодо формалізації відповідних положень кримінального законодавства.

Ключові слова: сталий розвиток, корисні копалини, кримінальна політика, кримінальні правопорушення, пов'язані з незаконним поводженням з корисними копалинами, екологічна політика.

Introduction. Crimes against the environment are socially dangerous, criminally unlawful intentional or negligent acts committed by the subjects of these crimes with the use of tools, means, sources of crimes, or with the use of the circumstances of their commission, which encroach on the relationship, that ensure the existence of a multi-functional balanced unified system of life and man and cause significant harm to these relations or endanger them

to cause such a harm. Every state must have effective mechanisms for the protection and preservation of the environment, which stimulate compliance, prevent future violations, and compensate for the damage caused. One of the mechanisms to ensure compliance with environmental standards is the institution of legal liability, which can actually occur and which is commensurate and adequate to the damage caused to the environment. This issue analyzes the grounds of environment's criminal law protection as a socially and historically determined phenomenon in a contest of development. The social preconditions for developmental criminalization, the peculiarities of the modern concept of criminal law protection and prospects for improving the relevant rules are analyzed regarding illegal mining example.

Main text. Measures to ensure the security of existing public relations and interests under criminal law protection deter citizens from criminal encroachment by defining offenses harmful to the individual, society, and the state. Everyone depends on the environment to survive. It is the basis of all development and provides opportunities for people and society as a whole to achieve their hopes and aspirations (Zommers and MacDonald, 2012).

Development is about improving the well-being of people. Raising living standards and improving education, health and equality of opportunity are all essential components of economic development. Ensuring political and civil rights is a broader development goal (Neil Byron (1992), 323).

In September 2015, United Nations adopted "Transforming our world: the 2030 Agenda for Sustainable Development", which includes a set of Sustainable Development Goals (SDGs) for 2015–2030. The SDGs represent the world's complete strategy for social inclusion, environmental sustainability and economic development. The presence of numerous scientific positions, which are sometimes contradictory on certain debatable issues regarding the regulation of criminal law protection of environment under SDG progress, indicates both the urgency of the issue and the significant complications in the process of qualifying crimes that affect the relevant objects.

Hence, adequate living conditions are represented through the system of protection of fundamental rights and freedoms, including in the field of environmental protection by criminal law measures. Illegal wildlife trafficking, encroachment on the sustainable and safe development of social relations in the field of environment refers to crimes related to the human right to sustainable development, exploitation of natural resources, wildlife products or their derivatives, both flora and fauna, throughout the world. International awareness and concern about crimes related to the safe environment, exploitation of natural resources, and wildlife trade need increasing attention. However, the illegal exploitation of natural resources is much more complex, including many species and various markets. This threatens the vulnerable biodiversity of sustainable development (The UN Environmental Programme (2015)).

Due to the transnational nature of organized criminal networks (Tulyakov V. (2001)) involved in environmental encroachment, it is difficult to detect them unless coordinated cross-border investigations are carried out to prosecute higher-level members and lower-level traders. In 1972, the United Nations organized the first international conference on the relationship between the environment and human rights in Stockholm. The Stockholm Declaration states that man has a fundamental right to liberty, equality and adequate living conditions, in a quality environment that allows him to live with dignity and prosperity, and that he is responsible for protecting and improving the environment for future generations (Declaration of the UN Conference of Human Environment (1972)). The Declaration considers concepts that have an obvious connection with civil and political (freedom, equality, dignity), as well as economic, social and cultural rights (adequate living conditions and well-being).

The United Nations Office on Drugs and Crime (UNODC) and its partners are exploring innovative solutions to prevent and combat illicit trafficking in precious metals, including technology-based solutions that strengthen the integrity of the precious metals supply chain. Illegal mining and the illicit trafficking of precious metals constitute a multi-billion-dollar transnational criminal industry that has lasting social, economic and environmental consequences. In many countries around the world, the profit generated by illicit mining and trafficking in precious metals has outgrown the profits associated with other crimes, such as drug trafficking. Transnational environmental crime is big business and will continue to grow until the dilemma of high profits and low risk is called into question. Countries around the world must work to reduce the ease and profitability of trade in natural resources outside of established quotas. Ultimately, this requires a broad and holistic approach. Global illicit environmental industries are not just one network, one country or even one crime. It is for this purpose that crime prevention was initiated through the concept of protection of fundamental rights and freedoms of citizens related to the right to sustainable and safe human development in a safe environment (The UN Economic and Social Council (ECOSOC) 36th Session (2019)).

The United Nations Environment Programme addresses regional and international mechanisms to combat environmental crime, guided by recognized human rights, and appropriate changes to the domestic legal framework. This situation, is an indication that the capacity of most countries in the world to address legal issues in the fight against crime in the field of safe and sustainable environment needs to be strengthened. (The UN Environmental Programme (2015)).

Hence, adequate living conditions are represented through the system of protection of fundamental rights and freedoms, including in the field of environmental protection by criminal law measures.

Illegal trade in minerals, wildlife, encroachment on sustainable and safe development of social relations in the field of environment refers to crimes related to the human right to sustainable development, exploitation of natural resources, wildlife products or their derivatives, both flora and fauna, all over the world. International awareness and concern about crimes related to the safe environment, exploitation of natural resources, and wildlife trade need increasing attention. However, the illegal exploitation of natural resources is much more complex, including many species and various markets. This threatens the vulnerable biodiversity of sustainable development.

Jay Albanese noted that the criminal markets exploited by organized crime groups (OCGs) are of three types: (a) provision of illicit goods; (b) provision of illicit services; and (c) infiltration of businesses or government. Three kinds of opportunity factors shape this activity: push factors, pull factors, and problems with the rule of law. Clear parallels exist among various cases of organized crime, in which individuals and groups exploit their opportunities to profit from illicit activity (Albanese, 2020: 31).

Due to the transnational nature of organized criminal networks involved in environmental encroachment, it is difficult to detect them unless coordinated cross-border investigations are carried out to prosecute higher-level members and lower-level traders. There are global challenges to the supply of critical infrastructure minerals, as individual countries have concentrated more than 90 percent of their individual minerals. At least 40% of all internal armed conflicts around the world are related to natural resources. These are the results of a study by the UN Counter-Terrorism Administration. International experts have made an unexpected discovery: Al Qaeda, Al-Shabaab, Dias (Islamic State), the Taliban and insurgent groups in the Democratic Republic of the Congo are funded by illicit mining. The exploitation of natural resources, primarily such as gold, minerals, diamonds, oil, and coal, is the most important source of funding for armed conflicts. And that's not all.

Subsoil-related crime is perpetrated by well-organized groups that fully ensure the operation of illegal mining, with corrupt links to law enforcement, border guards and customs. Often, these are the same groups involved in the drug trade and human trafficking. For example, in Peru and Colombia, illegal gold exports have long exceeded cocaine exports. The regions with the highest criminal activity in the field of subsoil use remain: Africa, Latin America and the Middle East. And the minerals that most often fall under illegal mining are: oil – 47%, 28% – gold, 16% – coal, 5% – tin, tantalum, tungsten, 2% – diamonds, 1% – sapphire, 0.5% – titanium and 0.5% – other minerals. Ukraine is also in the ranking of black subsoil users. The share of violations of the rules of protection or use of subsoil in the criminal law structure of crime in the field of subsoil use is 90.5%. In second place (9.4%) – illegal exploration, excavations at archaeological sites, in third place (0.1%) – violations of the legislation on the continental shelf of Ukraine. The largest number of violations is illegal mining of national importance, which accounts for 91% of all other crimes related to subsoil extraction. Most often in Ukraine illegally mined: raw amber (46.2%), in second place – coal (21.5%), then in the range – underground fresh water (14%), sand-gravel mixture – 9, 3%, molding sand – 4.7%, tuff – 1.9%, sandstone – 1.8%. The total category of “other” – which includes mineral water, clay-stone mixture, granite, etc., is 0.6%. Rivne, Zhytomyr and Volyn regions were identified as the most criminogenically disadvantaged regions in 2014–2017.

From 2002 to 2017, 7.926 crimes related to illegal mining were registered in Ukraine.

However, it should be noted that only a third of people were convicted. Which indicates a low fixation of crimes by law enforcement agencies and an even lower level of liability for such crimes.

It is for this purpose that crime prevention was initiated through the concept of protection of fundamental rights and freedoms of citizens related to the right to sustainable and safe human development in a safe environment. This situation is an indication that the capacity of most countries to address legal issues in the fight against crime in the field of safe and sustainable environment needs to be strengthened. We are accustomed to the fact that the criminal law of any state is a reflection of its domestic and foreign policy, respect for fundamental human rights, the system of its basic values, the security of which must be ensured by measures of criminal law. However, today's realities dictate other coordinates, especially in the context of the collision with the result of dangerous knowledge, which resulted from the rapid development of scientific and technological progress: in addition to human rights, prejudice of private over public interests, it is time to think seriously about rights of Nature.

Natural changes in relief and relief-forming sediments are prerequisites for environmental and environmental problems. The most characteristic features of modern mining from the point of view of ecology are the development of raw materials at such a scale and rate that threatens human existence (growth of produced spaces, subsidence, extraction of land under dumps, violation of groundwater and groundwater etc.) and the concentration of mining enterprises and organizations in the complexes. Accordingly, the volume and number of criminal offenses is growing. The level of regulation of the problem consistently acquires more balanced features than in Soviet times. Thus, the task of Ukraine's criminal policy in this direction is to form adequate prohibitions, harmoniously combining the characteristics of different legal families and unification of crimes, and, if possible, punishments in order to adequately respond to criminal challenges against human rights to a safe and sustainable environment.

The main principles of modern criminal policy on crimes against the environment in a Developmental context are: minimal interference in the sustainable development of ecosystems (priority of substitution, additivity of impact measures), development of restorative justice (resolution of conflicts between the victim and the offender and society at the personal level), diversification of measures of criminal law influence on individuals and legal entities, the use of punishment, in particular imprisonment, as a last resort, optimization of the upper limit of penalties for crimes against the Environment. Thus, the task of Ukraine's criminal policy in this direction is to form adequate prohibitions, harmoniously combining the characteristics of different legal families and unification of crimes, and, if possible, punishments in order to adequately respond to criminal challenges against human rights to a safe and sustainable environment.

Conclusions. We argue that there is an urgent need to use the term “environmental crimes” instead of “crimes against the environment”, which gives impetus to the use of the UN Sustainable Development Goals methodology in future criminal policy to improve the existing system and legal features of relevant crimes. development of new

corpus delicti and actualization of the issues of application of criminal security measures in the sense of mechanisms for regulating liability for criminal offenses related to illegal handling of minerals.

Thus, an environmental crime can be understood as a socially dangerous, criminally illegal act committed by the subject of crime encroaching on public relations in the field of environmental safety, environmental protection as a set of natural and natural conditions and processes, as well as protection, use, preservation and reproduction of natural resources. Noting the possibility of using the characteristics of the material feature of the crime (danger to the state and society) for the formation of criminal law policy in the field of combating environmental crimes, it should be emphasized that in modern society such crimes are determined by the importance of illicit practices for individuals (social groups), these norms in the subculture, or in society as a whole.

This leads to the inefficiency of the system of criminal law counteraction in general.

At the same time, the position in the Developmental discourse seems to be rational, according to which the understanding of the generic object of these crimes through the prism of public relations in the field of environmental security should be somewhat generalized – it needs a broader interpretation and should cover all areas. Taking this into account, we express own understanding of the generic object of environmental crimes: as a set of legal relations in Ukraine, consisting of the use, distribution, exchange and consumption of goods to ensure the established order of environmental protection, works and services in the context of environmental safety and sustainable development.

It is logical to add that in environmental crimes for greater specification of the features of the common object of certain groups of environmental encroachments, depending on a particular type of activity, we also distinguish specific objects, which determine their system, more or less established classification into relatively autonomous groups of actions.

It is proposed to adopt a new rule on combating illegal handling of minerals, which clearly defines the system of actions in the field of illegal use of minerals, making illegal handling of amber. This corresponds to the temporary principles of effective functioning of norms aimed at counteracting the mechanisms of illegal economic use of Ukraine's natural resources.

Illegal handling of minerals of local significance should be considered a criminal offense after the relevant reform of the Criminal Code of Ukraine.

References:

1. Albanese J.S. Why Organized Crime Seeks New Criminal Markets. *Zabyelina Y., van Uhm D. (eds). Illegal Mining*. Palgrave Macmillan, Cham, 2020. URL: <https://doi.org/10.1007/978-3-030-46327-4>.
2. Byron Neil. The Greening of the World Bank. *The Australian Quarterly*. 1992. Vol. 64. № 3. P. 322–328.
3. Declaration of the UN Conference of Human Environment. *Doc. A/CONF.48/14/Rev.* 1972. URL: <http://www.un-documents.net/aconf48-14r1.pdf>.
4. The UN Environmental Programme (2015) Recognising the Threat of Environmental Crime. URL: <https://www.unenvironment.org/news-and-stories/story/environmental-crime>.
5. The UN Economic and Social Council (ECOSOC) 36th Session (2019) Combating transnational organized crime and its links to illicit trafficking in precious metals and illegal mining, including by enhancing the security of supply chains of precious metals. *Doc E/CN.15/2019/15*. URL: https://www.un.org/ga/search/view_doc.asp?symbol=E/2019/30.
6. Tulyakov V. The dualism of business victimization and organized crime. *Trends in Organized Crime*. 2001. № 6 (3). P. 94–99.
7. Zommers Z., MacDonald D.W. Protected Areas as Frontiers for Human Migration. *Conservation Biology*. 2012. № 26 (3). P. 547–56.