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SEPARATE ORGANIZATIONAL AND LEGAL ASPECTS OF COMBATING ENVIRONMENTAL CRIME IN UKRAINE

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Marko S.I. Separate organizational and legal aspects of combating environmental crime in Ukraine.

The scientific article is devoted to the analysis of organizational and legal aspects of combating environmental crime in Ukraine. Arguments are presented regarding the relevance in the global, international dimension: criminalization of environmental damage at the level of the European Union and its member states; detailing the shortcomings of international legislation and revising the relevant directive on environmental crimes; establishment of functioning of the International Registry of Losses. It was emphasized that the introduction of appropriate changes to international legislation will allow creating a comprehensive system of measures to combat environmental crime, ensure the unification of national legislative systems in terms of terminology, composition of crimes, as well as sanctions applied for their commission in armed conflicts. The need to take comprehensive measures to combat ecocide at the national level, to develop a unified state policy in this area, to establish an effective system for monitoring the state of the environment and fixing the amount of damages, in particular for the systematic presentation of legal claims for the payment of reparations, is substantiated. In the opinion of the author, the National Post-War Recovery Plan should include measures to restore and preserve ecosystems, in particular, based on the analysis of normative legal acts in the field of environmental protection. It is noted that the relevant mechanisms should be universal and effectively prevent crimes against the environment in the world, be reflected in the relevant resolutions of the General Assembly of the United Nations and other documents of the international law system. The author emphasizes that the need and importance of improving legislation concerns not only countries in a state of military conflict, but also the rest of the world. Taking into account the fact that environmental damage is mainly transboundary in nature, the international community should focus on the formation of a clear understanding of the legal norms dedicated to crimes against the environment.

Key words: crimes against the environment, criminal responsibility, countermeasures, ecocide, compensation for damage.

Марко С.І. Окремі організаційно-правові аспекти протидії екологічній злочинності в Україні.

Наукова стаття присвячена аналізу організаційних та правових аспектів протидії екологічній злочинності в Україні. Наведено аргументи щодо актуальності в глобальному, міждержавному вимірі: криміналізації шкоди довкіллю на рівні Європейського Союзу та його країн-членів; деталізації недоліків міжнародного законодавства та перегляді відповідної директиви щодо екологічних злочинів; створення функціонування Міжнародного реєстру збитків. Наголошено на тому, що внесення відповідних змін до міжнародного законодавства дозволить створити комплексну систему заходів протидії екологічній злочинності, забезпечити уніфікацію національних законодавчих систем з точки зору термінології, складів злочинів, а також санкцій, які застосовуються за їх учинення в умовах збройних конфліктів. Обґрунтовано необхідність вжиття на національному рівні комплексних заходів протидії екоциду, вироблення єдиної державної політики у цій

сфері, налагодження ефективної системи моніторингу стану навколишнього середовища та фіксації розміру збитків, зокрема для системного пред'явлення судових вимог у сплаті репарацій. На переконання автора, Національний план післявоєнного відновлення має включати заходи з відновлення та збереження екосистем, зокрема на основі аналізу нормативно-правових актів у сфері охорони навколишнього природного середовища. Зазначається, що відповідні механізми повинні мати універсальний характер та ефективно запобігати злочинам проти довкілля у світі, бути відображеними у відповідних резолюціях Генеральної асамблеї Організації Об'єднаних Націй та інших документах системи міжнародного права. Автором підкреслюється, що необхідність та важливість удосконалення законодавства стосується не лише країн, що перебувають у стані воєнного конфлікту, а й решти світу. З урахуванням того, що шкода довкіллю носить переважно транскордонний характер, міжнародній спільноті варто сфокусуватись на формуванні чіткого розуміння норм права, присвячених злочинам проти довкілля.

Ключові слова: злочини проти довкілля, кримінальна відповідальність, протидія, екоцид, відшкодування шкоди.

Introduction.

In the conditions of modern global environmental challenges to humanity, ensuring environmental security is one of the most important tasks facing any state. The mentioned issue is one of the priorities for Ukraine. And this is no accident, because anthropogenic and technogenic load on the environment leads to an increase in the occurrence of emergency environmental situations, harms people's health, and causes losses in the economy.

The consequence of any environmental offense is a change in the usefulness of the environment. In the conditions of armed aggression against Ukraine, the issue of environmental protection becomes particularly acute. Massive forest fires caused by shelling, military equipment, missiles, ammunition, and oil products have a detrimental effect on biodiversity, soil and water resources, cause risks of radiation accidents [1], and endanger the health of the entire civilization. One of the most severe long-term consequences for ecosystems is the chemical contamination of the sites of mass use of munitions. As a result of hostilities, we have significant mechanical damage to fields and long-term chemical and biological contamination of fertile soils and groundwater with iron, aluminum, copper, lead, strontium, titanium, cadmium, nickel, other heavy metals and their compounds. According to separate data, \$1.8 billion is damage from forest fires, \$1.6 billion from grass fires [2, p. 14].

According to official estimates, about 30% of the territory of Ukraine, i.e. 174 square kilometers, is contaminated with explosive objects. More than 2.4 million hectares of forests were damaged [3]. Estimated damage to the environment due to a full-scale invasion is estimated at 55.6 billion euros. At the same time, in the conditions of intense hostilities, it increases daily by approximately 102 million euros. In turn, damages from the explosion of the Kakhovska Hydroelectric power station, according to separate calculations, amount to about 14 billion dollars [4].

These actions qualify as war crimes against the environment [5], the fight against which is included in the top ten priorities of the "Peace Formula" announced by the President of Ukraine [4]. Effective counteraction to such crimes requires the development of a single concept, a comprehensive approach, planned and consistent actions to overcome them. This requires, in particular, the provision of criminal legal protection of the specified illegal acts, the development of adequate countermeasures at the national and international level.

The above testifies to the importance of outlining urgent problems related to the qualification of crimes against the environment committed in wartime conditions, their documentation, fixation and determination of the amount of damage. In addition, there are currently no uniform international standards for the legal recognition of crimes against the environment, and there are other deficiencies of an organizational and legal nature. The foregoing actualizes the search for effective national and international legal mechanisms for countering the specified illegal acts.

Theoretical framework or Literature Review.

The analysis of doctrinal sources on the specified issues attests to quite active and productive development of theoretical or individual practical aspects of the sphere of environmental protection of Ukraine, such scientists: V.V. Andreytsev, O.M. Bandurka, Yu.V. Baulin, V.A. Bobkov, S.B. Havrysh, V.V. Holina, V.K. Hryshchuk, B.M. Golovkin, O.M. Dzhezha, O.O. Dudorov, O.G. Kolb, T.V. Kornyakova, O.M. Kostenko, V.O. Navrotskyi, V.L. Ortynskyi, A.V. Savchenko, V.Ya. Tatsij and others. Despite the

presence of a certain theoretical justification of relations in the specified area, in the modern complex conditions of Ukraine, the topic of developing effective mechanisms for documenting crimes against the environment, effective countermeasures against the specified illegal acts in Ukraine has not been sufficiently researched, it is one that has theoretical and practical significance.

The purpose of the article is to study the organizational and legal aspects of combating crimes against the environment in the conditions of war in Ukraine at the national and international legal levels.

Results and discussion.

In society, there is a point of view that one of the causes of crime is social contradictions, inherent in society, which inevitably cause a clash of interests - conflicts. The main reason for the emergence of social contradictions of an economic, political and social nature in modern Ukraine is first of all military aggression, the manifestations of which also form separate illegal acts against the environment. Environmental crime is a socio-legal, socially dangerous phenomenon associated with environmental risk and/or environmental damage, poses a threat to the ecological safety of society, causes or may cause damage to the environment and human health, undermines the biological foundations of life on Earth.

As noted by Yu.V. Orlov, it may seem that the destruction of natural objects and entire ecosystems is an exclusively ecological problem, even if it is of a global scale. However, if we perceive the surrounding natural environment as a factor of identity, as a natural habitat for the reproduction of the Ukrainian nation, then there is a conclusion that the influence on these factors is a purposeful obstruction of future social conventions of Ukrainianness [6, p. 190-191].

Criminal offenses against the environment are considered to be offenses without a “direct” victim - damage is caused primarily to the environment and its components, which for obvious reasons cannot actively defend their interests independently in legal proceedings. However, such illegal actions, causing damage to the environment, destroy the biological basis of life and existence of humans and other living beings.

Environmental crime caused by military actions has a slightly different legal nature, which is recognized as a particularly serious form of ecocide and is aimed at achieving a military and political goal [7, c. 732]. In the conditions of today's Ukrainian realities, ecocide as an illegal act is expressed primarily in the wide use of weapons of mass destruction by the aggressor country - modern and potentially indiscriminate weapons that cause serious damage to the environment, which can cause irreversible adverse consequences.

By using the destruction of the environment as a weapon in the war against Ukraine, the Russian Federation violated a number of international legal norms related to the environment: Art. 55 of the Additional Protocol to the Geneva Conventions of 1949 prohibits the use of methods or means of warfare that are intended or may cause harm to the natural environment and thereby harm the health or survival of the population. The Rome Statute of the International Criminal Court (hereinafter - the ICC) also recognizes the existence of “environmental war crimes”, defining the intentionality, large-scale, duration and severity of the damage they cause to the environment [8].

The Criminal Code of Ukraine (hereinafter referred to as the Criminal Code of Ukraine) in Art. 441 defines “ecocide” as “mass destruction of flora or fauna, poisoning of the atmosphere or water resources, as well as the commission of other actions that can cause an ecological disaster” [7; 9]. That is, the consequences of such illegal actions must be destructive, large-scale and long-lasting. Also, in Ukraine, crimes against the environment are qualified under Art. 438 of the Criminal Code of Ukraine (Violation of the Laws and Customs of War), which, in contrast to ecocide, has a different threshold criterion - an ecological catastrophe, not its threat [8].

To some extent, Ukraine can be called an innovator in the investigation of criminal offenses against the environment at the national and international levels [10], it became the first country to start investigating ecocide in the context of armed conflict. At the same time, it is important to emphasize that the term “ecocide” is still not considered universal in international legal doctrine, so it cannot be considered as a separate part of the concept of genocide [10].

It is important for our country that the large-scale long-term consequences of war crimes against the environment are recognized by the world community. It is obvious that the definition of ecocide in the Criminal Law will not allow to receive reparations from the aggressor country, aimed at the restoration of the Ukrainian state without creating effective international mechanisms to counter this negative phenomenon, which has a global scale.

The development of effective prosecution mechanisms for criminal offenses against the environment, in particular the expansion of international responsibility for environmental damage, as well as the establishment of cooperation in the prosecution of criminals, is an important step towards preserving the environment, ensuring the safety of life and health of current and future generations.

The necessity and importance of improving legislation concerns not only Ukraine and other countries in a state of conflict, but also the rest of the world. The international community should focus on the formation of a clear understanding of the legal norms dedicated to crimes against the environment, taking into account the fact that environmental damage is mainly transboundary in nature.

Scientists have repeatedly emphasized that the issue of environmental protection during an armed conflict is practically not regulated in international environmental law. Modern international humanitarian and criminal law do not provide adequate protection to the environment in the period of armed conflict due to the establishment of a high threshold level, the uncertainty of the criteria for the application of the relevant norms; protection of the environment as a civilian object is also not effective due to the possibility of turning it into a military target, and the application of norms regarding collateral damage caused to the environment as a result of military actions creates problems with the application of the principle of proportionality [11, p. 19].

Considering the possibility of international justice in crimes against the environment, it should be noted that its functioning is carried out within the framework of the provisions of the Rome Statute, which defines crimes of genocide, crimes against humanity, war crimes and crimes of aggression. On the other hand, there is no mention of ecocide in the statute, its Art. 8 only indicates an intentional attack where the party knew that it would result in lasting, foreseeable harm [12].

Therefore, crimes related to environmental pollution and depletion of ecosystems, etc., i.e. causing climate change, remain outside the jurisdiction of the International Criminal Court. Also, in the practice of the said court and criminal tribunals, there are no court decisions related to damage to the environment. Instead, representatives of the legal community make convincing arguments for the creation of a special tribunal for criminals involved in ecocide in armed conflict [10].

It is fundamental to understand the inevitability of punishing the aggressor country for damage, including to the environment. Faced with a climate crisis and an era of mass biodiversity extinction, Ukraine needs to use all available tools, including legislative ones, to achieve global systemic changes to protect and restore the ecosystem. Intensification of efforts to develop a universally accepted term “ecocide” and its potential inclusion in a new European Union directive is necessary, and the Rome Statute should be supplemented with such a war crime. Taking these measures will have a preventive effect on the behavior of the parties in future armed conflicts, will make it impossible to avoid responsibility for committing such illegal actions and compensation for causing damage to the environment.

It is important to understand that the lack of a definition of ecocide does not negate the value of possible justice, which Ukraine seeks in matters of environmental protection. At the same time, the lack of formation of the said institution at the international level makes it impossible to carry out international legal proceedings regarding ecocide based on the data collected in Ukraine, caused by military actions.

If we talk about sentencing in absentia in such proceedings, we believe that they are capable of creating mechanisms of additional pressure on war criminals. In particular, the court’s decision is transferred to all international structures for the delivery of the sentence to the detained convict on the territory of the respective country and the initiation of the procedure for its execution. Also, due to the availability of such information, it can be a source for the internal procedures of each country. In addition, Ukraine may demand the execution of the sentence or the extradition of the convicted person [5].

We believe that verdicts in absentia in proceedings on war crimes, in particular, committed against the environment, should become an important component for building the relevant positions of Ukraine at the International Criminal Court, because it is a precedent basis for the investigation of such crimes during the war [5].

An equally important practical aspect of the investigation is the collection of data and evidence, recording the fact of damage, providing reliable data on the basic state of the environment before a full-scale invasion and before the damage is caused. This requires obtaining expert, technical, organizational, financial and other assistance from international partners.

It must be stated that recognition of environmental damage before the war in Ukraine was not a priority at the national and international levels. Currently, Ukraine should take advantage of the historic chance to be involved in creating a precedent for bringing to justice the top political leadership of the

aggressor country for environmental destruction. One of the main platforms that makes it possible to collect evidence about the scale of environmental consequences caused by the war in Ukraine is the official special resource of the Ministry of Environmental Protection, other tools and other tools for collecting relevant data are also active [7].

Experts reasonably emphasize the importance of including environmental damage in the mandate and procedures of all international bodies and mechanisms [8]. Currently, Ukraine is developing internal eligibility criteria for registering claims to the International Register of Damages, which is one of the three elements of the future International Compensation Mechanism, which will consist of the International Register of Damages, the International Compensation Fund and the International Compensation Commission. It is necessary to create effective supranational mechanisms for ensuring environmental safety in order to bring the guilty to responsibility and compensate for the damage caused to the environment.

Conclusions.

What is stated in the scientific article points to numerous problems, inconsistencies, and miscalculations, primarily of an organizational and legal nature. Relevant in the global, international dimension are: criminalization of damage to the environment at the level of the European Union and its member states; detailing the shortcomings of international legislation and revising the relevant directive on environmental crimes; establishment of functioning of the International Registry of Losses. Making appropriate changes to international legislation will allow creating a comprehensive system of measures to combat environmental crime, ensure unification of national legislative systems in terms of terminology, composition of crimes, as well as sanctions applied for their commission in armed conflicts.

At the national level, it is necessary to take comprehensive measures to combat ecocide, develop a unified state policy in this area, establish an effective system for monitoring the state of the environment and fix the amount of damages, in particular for the systematic presentation of legal claims for the payment of reparations. The national post-war recovery plan should include measures to restore and preserve ecosystems, in particular based on the analysis of regulatory legal acts in the field of environmental protection.

The ecological direction should include the development and implementation of a holistic, comprehensive plan for the ecological recovery of Ukraine from the consequences of the war. Appropriate mechanisms should be universal and effectively prevent crimes against the environment in the world, be reflected in relevant resolutions of the UN General Assembly and other documents of the international law system.

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