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Conceptual foundations of combating crime against the environment in Ukraine

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Abstract

Within the scope of the scientific article, by means of documentary sources, the main conceptual directions of the fight against environmental crime in Ukraine are highlighted. Special emphasis is placed on the use of social mechanisms to ensure legality in the investigated area; adoption of the Law of Ukraine «On ecological culture of the population»; careful planning of the processes of development and implementation of organizational, legal and other measures aimed at preventing crimes against the environment. It is proposed to increase funding of control and supervisory bodies for the detection and prevention of criminal offenses, other state structures for the protection of nature; development of a unified state policy in the field of combating organized environmental crime, all this, on the basis of a criminological examination of legislation. In the conclusions it is proposed to unify the efforts of law enforcement agencies of various states to stop anti-environmental criminal behavior, neutralize all stages of the implementation of a criminal offense: planning, illegal extraction of resources, transportation, sale and laundering of proceeds obtained through crime against nature.

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Keywords: environment; organized crime; state policy; legislation; prevention.

Fundamentos conceptuales de la lucha contra la delincuencia contra el medio ambiente en Ucrania

Resumen

Dentro del alcance del artículo científico, mediante fuentes documentales, se destacan las principales direcciones conceptuales de la lucha contra el crimen contra el medio ambiente en Ucrania. Se hace énfasis especial al uso de mecanismos sociales para garantizar la legalidad en el área investigada; aprobación de la Ley de Ucrania «Sobre la cultura ecológica de la población»; una cuidadosa planificación de los procesos de desarrollo y aplicación de medidas de carácter organizativo, legal y de otro tipo, destinadas a prevenir los delitos contra el medio ambiente. Se propone mayor financiamiento de los órganos de control y supervisión para la detección y prevención de infracciones penales, otras estructuras estatales de protección de la naturaleza; desarrollo de una política estatal unificada en el campo de la lucha contra el crimen ambiental organizado, todo ello, sobre la base de un examen criminológico de la legislación. En las conclusiones se propone unificar los esfuerzos de las agencias de aplicación de la ley de varios Estados para detener el comportamiento delictivo antiecológico, neutralizar todas las etapas de la implementación de un delito penal: planificación, extracción ilegal de recursos, transporte, venta y lavado de ganancias obtenidas a través del crimen contra la naturaleza.

Palabras clave: medio ambiente; crimen organizado; política estatal; legislación; prevención.

Introduction

Today, environmental protection is one of the most relevant functions of modern Ukraine. At the constitutional level, it is determined that the duty of the state is to ensure environmental safety and maintain ecological balance on the territory of Ukraine, overcome the consequences of the Chernobyl disaster, and preserve the gene pool of the Ukrainian people (CONSTITUTION OF UKRAINE, 1996).

This function is implemented by regulating relations in the field of protection, use and reproduction of natural resources, ensuring

environmental safety, preventing and eliminating the negative impact of economic and other human activities on the environment. For this, the state implements environmental policy and establishes legal, in particular, criminal liability for environmental violations (Revenko, 2017, p. 262-263).

Ukraine aspires to be a part of European society, to have an appropriate standard of living, progressive economic development, so the country must meet the relevant requirements and rules in force in the European Union (Petrova et al, 2017).

In 2014, the Verkhovna Rada of Ukraine ratified the Agreement on the Association of Ukraine with the European Union signed between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand, which recorded Ukraine's obligations in the field of eco-safety. In particular, Art. 360 of the Agreement stipulates that the parties develop and strengthen cooperation on environmental protection issues (Association Agreement Between Ukraine, On The One Hand, And The European Union, The European Atomic Energy Community And Their Member States, On The Other Hand, 2014).

On the one hand, the foundations of legislation aimed at ensuring and protecting the environmental rights of citizens have been formed in Ukraine (Klymchuk, 2023, p. 247), and the need to implement environmental laws is declared at all levels of state power. On the other hand, many norms are not applied in practice, and certain environmental problems that require special attention and legal regulation remain unresolved.

A high negative anthropogenic load on natural resources, which has an extremely adverse effect on the environment, often becomes possible due to violations of environmental legislation, which in some cases acquire such a threatening scale that they require the application of criminal law measures. It is also necessary to take into account the fact that persons who commit criminal offenses in the investigated area have the ability to transform their methods of illegal activity and easily adapt to new socio-economic conditions. Considering this, the slowness of the legislator in the environmental field can have catastrophic consequences.

In recent years, against the background of the aggravation of the environmental situation in Ukraine, including that caused by Russia's worthless methods of waging war on the territory of Ukraine, there has been a rapid increase in crime rates in the field of environmental protection (Kravchuk, 2018, p. 322). Relevant state measures for the prevention, detection and investigation of criminal offenses of this category are ineffective due to their high latency and immeasurable scale, which ultimately makes their detection and further investigation much more difficult, actualizes legislative regulation of issues of prevention (passage

of laws) and compensation for damage caused by ecocide (Borshchevska, 2023, p. 115).

Effective counteraction of environmental crime is impossible without successive planned and coordinated actions united by one concept, since phenomena that have signs of systemic nature, including environmental crime, require a systematic approach to overcome them (Turlova, 2017, p. 143). The above testifies to the relevance of the chosen topic of the scientific article, the importance and timeliness of research devoted to the development of a system of preventive measures in the field of the environment.

1. Methodology of the study

The methodological basis of the research is a set of methods and techniques of scientific knowledge. As a general scientific method, a systematic approach was used, which allowed to identify problematic issues in the field of the environment, in particular, in the system of turnover of forest wood of Ukraine, taking into account international experience. Documentary analysis made it possible to characterize the problems of regulatory and legal support in the field of wood circulation.

With the help of the logical-semantic method, the need to increase control over the use and circulation of wood, as well as to improve issues of responsibility for violations in this area, was formed. Methods of legal statistics were used in the process of determining indicators of offenses in the field of environment. Comparatively, the legal method was applied during the analysis of the regulatory regulation of wood circulation in Ukraine and in other countries of the world.

2. Analysis of recent research

In criminological and criminal law science, considerable attention is traditionally paid to the issues of defining the conceptual foundations of crime prevention. Recognizing the importance of the works of well-known scientists, we consider it relevant and worthy of an in-depth study of modern problems of combating criminal offenses against the environment.

The purpose of the study is a general theoretical analysis of the problems of combating crime against the environment in Ukraine.

3. Results and discussion

Criminal offenses against the environment are a constantly progressive form of criminal activity that often does not recognize state borders, while its public danger is underestimated. This statement is true for all countries without exception. Leading lawyers point out that despite the fact that in the European Union, environmental criminal offenses are not given due importance and the amount of punishment imposed by the courts for their commission is minimal, even in the presence of stricter measures of criminal responsibility in the legislation of the member states of the European Union, such criminal offenses should be recognized as a serious form of encroachment on the interests of modern society, and they should be given an appropriate legal assessment by judicial authorities.

A characteristic feature of this type of criminal offense is the global nature of criminal activity with the use of international criminal networks. Both countries of origin of objects of criminal offenses and countries of transit, in which fake documentation (declarations, certificates) are produced and packaging changed, and even countries where there are end consumers of illegally trafficked items, participate in this process.

Bringing all members of a criminal group to justice for the commission of criminal offenses requires serious efforts and specialization specifically in the investigation of organized forms of criminal activity. The participants of the first stage, who did not manage to escape in time, are mostly held accountable. In our opinion, in order to improve the effectiveness of law enforcement, the norms of criminal liability, which provide for punishment for illegal logging, in relation to the activities of criminal groups, need significant modernization.

We believe that in order to achieve the goals of criminal law protection of social relations and prevention of criminal offenses, the actual content of criminal law prohibitions enshrined in the Criminal Code of Ukraine is not so important as the perception of these prohibitions by the population to which they are addressed, as well as the cooperation of law enforcement agencies. The danger of a specific act from the point of view of the legislator should be supplemented by the awareness of the presence of such danger by the individual - the potential addressee of criminal law norms.

Criminal law prohibitions must correspond to general moral prohibitions rooted in society. In the presence of data that some criminal law prohibitions are not perceived by society as justified and fair, it is necessary to intensify explanatory and educational work in this direction. And the leading role here should be performed not by legal mechanisms for ensuring legality, but by social ones, which can be understood as, for example, the introduction of educational programs in mass media.

In order to form the foundations of ecological culture in society, the mass media are able to participate in solving the tasks of environmental education, spreading ecological knowledge, information about the state of the environment, natural resources, and environmental safety. It should be especially noted the role that mass media can play in environmental education of the population, demonstrating the implementation in the state of the principle of inevitability of responsibility for committing offenses. They perform the function of establishing an information link between the inevitability of the state's response to criminal offenses against the environment and the consciousness of each addressee of prevention.

If a person doubts the inevitability or is sure of his impunity, even a perfect state response system will be completely powerless. In order to form the individual's subjective confidence in the inevitability of the negative consequences of his criminal acts in the field of ecology, an important condition is the coverage in the mass media of information about committed criminal offenses at the same time as information about criminal responsibility and punishment of criminals. It is advisable to familiarize the population with criminal law prohibitions by broadcasting not educational programs due to their low popularity, but documentaries that demonstrate the adverse and dangerous consequences of relevant actions in the field of the environment prohibited by criminal law.

The formation in public consciousness of ecological knowledge, norms, values and standards that direct any human activity to the preservation of the environment is a rather long and time-consuming process that requires coherence and consistency of actions of social institutions (family, education, public organizations, mass media information, etc.) and the state, which is obliged to coordinate it, performing an environmental function.

There is no doubt that the main potential of activities for the prevention of environmental crime is not concentrated in criminal legal measures, but in the adequate effectiveness of the influence on public consciousness, in the formation of environmental culture. This long multi-stage and multi-level process needs an appropriate legal basis. The Law of Ukraine «On Protection of the Natural Environment» only indirectly concerns this issue, establishing brief general provisions on the education system in the field of environmental protection and environmental education.

We believe that in order to improve the system of measures to prevent crime against the environment, the issue of the formation of ecological culture and ecological education of the population in modern conditions should be reflected in a special legislative act. In our opinion, it would be appropriate to adopt the Law of Ukraine «On the Ecological Culture of the Population», which would propose systematic regulation of the formation of ecological culture, including issues of environmental education and upbringing.

State regulation provides for the implementation of comprehensive measures in the field of environmental policy with the aim of streamlining them, establishing general norms and rules of social behavior for the protection of living and non-living nature of the environment, protecting the health and life of the population, organizing and maintaining the rational use and reproduction of natural resources. Under the condition of effective functioning of state regulation, the need for direct intervention of the state and its institutions in the activities of environmental structures is included (Lazor, 2004, p. 8-9).

At the same time, it is important that the adoption and implementation of the state environmental policy is carried out in compliance with the ecological, social, humanitarian, ecological and legal principles of preservation, reproduction and improvement of the natural environment, safe and favorable for the health and life of the citizens of Ukraine (Zarzytskyi, 2012, p. 8).

In order to increase the effectiveness of combating violations of legislation in the field of the environment, it is considered necessary to carefully plan the processes of development and application of measures of an organizational, legal and other nature aimed at preventing environmental crime, with mandatory consideration of the results of previous analytical activities regarding the results of law enforcement practice in the field of combating criminal violations against the environment.

The insufficient level of financing of state nature protection structures can lead to significant negative consequences for the environment. The problem of ensuring the independence of the activities of state environmental protection structures, which guarantee the interests of society, is relevant in all countries. In states with democratic regimes and free market relations, the probability of lobbying by large corporations and high-ranking representatives of elites remains quite high.

In many countries, wealthy and influential groups prevent the adoption of legislation that would meet higher environmental standards, in particular in terms of granting additional control powers to environmental protection structures. Thus, one of the reports of the international analytical center InfluenceMap, for example, cited evidence of lobbying by the largest oil companies for measures aimed at supporting policies against global warming. Oil giants such as ExxonMobil, Shell, Chevron, BP, and Total spend almost \$200 million a year, including actively using social media, to block political decisions and their compliance with climate change bills (Laville, 2019).

Among other measures, it should be noted the need to develop a unified state policy in the field of combating organized environmental crime, as well as conducting a criminological examination in the field of environmental

protection of regulatory and legal acts, designed to identify the possibility of using gaps in the legislation in order to legalize schemes of criminal behavior. The activity of control and supervisory bodies for the detection and prevention of criminal offenses of this category needs improvement.

Summarizing, we note that environmental crime at the current stage has a clearly expressed organized, transnational character due to the systemic connections of environmental crimes with other actions (Orlovska, 2022, p. 46). The effectiveness of combating it directly depends on efforts to neutralize it at all stages of committed criminal offenses. An important role is played by the unification of efforts of law enforcement agencies and law enforcement agencies of various states to stop ecologically criminal behavior, neutralization of all stages of implementation of a criminal offense: planning, illegal extraction of resources, transportation, sale, laundering of proceeds obtained through crime.

The elimination of the economic basis of the activities of criminal groups, the reduction of their profitability is the key to success in the fight against them. The improvement of international legislation in this area will allow to create at the level of individual states a complex system of measures against organized environmental crime and to unify national legislative systems (terminology, compositions, as well as sanctions applied for the commission of criminal offenses against the environment by organized groups).

Conclusions

According to the results of the scientific article, the main conceptual directions of combating crime against the environment in Ukraine are highlighted:

- The use of social mechanisms for ensuring legality in the researched area, in particular, the activation of explanatory and educational work, the introduction of educational programs in mass media on information about the state of the environment, natural resources, and environmental safety;
- Reflection in the corresponding profile legal act - the Law of Ukraine «On the ecological culture of the population» provisions aimed at the formation of ecological culture, education and upbringing of the population in modern conditions;
- Careful planning of the processes of development and application of measures of an organizational, legal and other nature, aimed at preventing crime against the environment, with mandatory consideration of the results of previous analytical activities regarding the results of law enforcement practice in the specified area;

- Improving the activities of control and supervisory bodies for the detection and prevention of criminal offenses, other state nature protection structures, increasing their funding;
- Development of a unified state policy in the field of combating organized environmental crime, carrying out a criminological examination in the field of environmental protection of normative legal acts, aimed at identifying gaps in the legislation;
- Uniting the efforts of law enforcement agencies and law enforcement agencies of various states to stop ecologically criminal behavior, neutralize all stages of the implementation of a criminal offense: planning, illegal extraction of resources, transportation, sales, laundering of proceeds obtained through crime.

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