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MODERN PROBLEMS OF THE CAUSATION OF CRIMINAL OFFENSES AGAINST THE ENVIRONMENT

Abstract. *The purpose* of the study is to analyze the problems of causality of criminal offenses against the environment with the aim of formulating recommendations aimed at preventing and minimizing illegal actions in the researched area. Research methods are chosen taking into account the set goal and objectives of the research, its object and subject. *The methodological basis* of the publication was made up of general scientific and special methods, in particular, analysis and synthesis, abstraction and generalization, induction and deduction, description, characterization, especially system-structural, comparative, prognostic methods. **Results.** Classification of the causes of crime against the environment was carried out according to the following criteria: according to the level of their action; by sources; by its content; by nature of occurrence; related to the impact on the natural environment and related to illegal use of nature. The following main determinants of criminal offenses against the environment have been identified and investigated: the predominance of anthropocentric ideas in the social sphere; insufficient level of independence and funding of state nature protection structures; insufficient participation of civil society and its representatives in the process of adoption by state authorities and local self-government bodies of environmentally significant decisions; the predominance of economic interests over environmental interests in human activity; imperfection of the current legislation; high level of corruption; self-determination of environmental crime. **Conclusions.** It has been established that in most cases, a person himself makes the decision to satisfy his interests in a legal or illegal way, to achieve the desired result. It was established that the main determinant of criminal offenses against the environment is low costs for compliance with environmental regulations. It was concluded that a high level of environmental security can be achieved only if the state develops an effective mechanism aimed at eliminating and neutralizing the determinants of committing criminal offenses against the environment.

Key words: criminal offenses, environment, causes, determinants, legislation, counteraction.

1. Introduction

In the modern conditions of social development, among the priorities of the national interests of Ukraine, the provision of ecologically and technogenically safe conditions for the life of citizens and society, preservation and restoration of the natural environment is especially highlighted (Zarzhytskyi, 2020, p. 3). And this is not accidental, 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.

Among the main factors of negative impact on the state of the environment, as before, there are still violations of the current environmen-

tal legislation, which requires, among other things, the implementation of its criminal law protection. This, in turn, creates an ever-increasing environmental threat, both nationally and internationally.

Effective counteraction to 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 publication, the importance and timeliness of research devoted to the nature of criminal offenses against the envi-

ronment and the reasons for their commission, with the aim of developing a system of preventive measures in the researched area.

In domestic criminological science, considerable attention traditionally paid to the issue of defining the conceptual foundations of combating crime. Firstly, we should point out the scientific achievements of such criminologists as O.M. Bandurka, V.V. Golina, O.M. Humin, L.M. Davydenko, I.M. Danshin, A.P. Zakalyuk, O.M. Dzhuzha, O.G. Kelman, T.V. Korniyakova, O.M. Kostenko, O.M. Litvak, O.M. Litvinov and others.

Recognizing the importance of the works of these authors, we consider the study of modern problems of causality of criminal offenses against the environment to be relevant and worthy of in-depth study.

We aim to analyze the problems of causality of criminal offenses against the environment, which will contribute to the development of recommendations aimed at preventing and minimizing illegal actions in the researched area. Scientific and research tasks are defined by the purpose of the scientific article: to characterize theoretical ideas about the causality of crimes in the field of the environment; to carry out a scientific analysis of the main determinants of crime against the environment in Ukraine.

The research methodology is chosen taking into account the set goal and tasks of the research, its object and subject. The methodological basis of the publication was the dialectical method, which contributed to the study of environmental crime and the main reasons that lead to the commission of illegal acts in the field of the environment. Also, in the scientific article, general scientific and special methods were used, which made it possible to optimally take into account the specifics of the object and the subject of research. In particular, analysis and synthesis, abstraction and generalization, induction and deduction, description, characterization, system-structural, comparative and prognostic methods contributed to the development of a classification of the causes of committing crimes against the environment, and the identification of the main ones.

2. Theoretical ideas about the causality of environmental crimes

Criminal offenses against the environment can be defined as acts prescribed by the criminal law that encroach on the environment and its components, on the ecological safety of the population and territories, and consist in the direct illegal use of natural objects or in the illegal influence on them, which leads to negative changes in the state and environmental qual-

ity. Such criminal offenses have as their generic object social relations that ensure the protection of the natural environment, the protection of the safe ecological state of the biosphere (Murikhin, 2018, p. 53).

Criminal offenses against the environment are usually considered to be offenses without a "direct" victim – damage is caused primarily to the environment and its components, which for obvious reasons cannot independently actively defend their interests 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.

Mass destruction of plant or animal life, poisoning of the atmosphere or water resources, as well as the commission of other actions that can cause an ecological disaster, is defined by the concept of "ecocide". According to international law, facts of purposeful negative impact on the natural environment, including during hostilities, fall under ecocide. A particularly severe form of ecocide is military ecocide - the violation of human habitat ecosystems as a result of hostilities aimed at achieving a military and political goal (Machlis & Hanson, 2008, p. 732). In the context of the commission of such criminal offenses in the conditions of war, O. Stegnii carried out their division according to the criteria of: 1) direct damage to the surrounding natural environment and 2) man-made direction associated with the violation of ecological safety for living nature and humans (Stegnii, 2022, p. 79).

The problem of causation in criminology is important not only for theory, but also for practice, as it makes it possible to fight crime not only by the forces of law enforcement agencies, but also by using economic, social and other levers that society and the state can dispose of (Moiseenko, 2020, p. 50). As noted by A. Zakalyuk, the determination of crime is the whole set of phenomena, processes, facts, manifestations with which it is interconnected and by which it is conditioned (Zakaliuk, 2007, p. 187).

Based on general doctrinal ideas about the classification of the causes of crime, the causes of criminal offenses against the environment can be classified according to their level of action: general causes; causes of certain types of crime (special criminological); reasons for specific criminal offenses; by sources: internal, external (of an international, transnational nature); by content: socio-psychological (most causes of crimes lie in the criminal's psychology); socio-economic; political; ideological; educational; legal; organizational and managerial; by the nature of occurrence: objective, subjective, mixed (most of these reasons have both an objective and a subjective nature).

We can also single out the reasons for committing criminal offenses against the environment: 1) related to the impact on the natural environment; 2) related to illegal use of nature. In our opinion, such a classification, due to its multifaceted nature, requires detailed attention within the limits of a separate scientific article.

In general, we can state that one way or another, most of the causes of criminal offenses against the environment are concentrated in the organizational, technical and legal spheres. The causal complex of crime against the environment in Ukraine is no exception in this regard.

3. Characteristics of the main determinants of environmental crimes

The number of objective and subjective determinants that affect a person is so great that it is hardly possible to fully consider them. A complex of factors determines each offense against the environment. Given the variety of forms of committing such offenses, it is impossible to cover all the causal links of the specified illegal acts and to carry out their in-depth analysis. We describe the main determinants of environmental crime.

1. Beliefs, views, ideals, principles, value orientations. At the worldview level, it is possible to identify general, universal ideas and value attitudes that determine the model of illegal behavior in the environmental sphere, and measures of responsibility applied to offenders.

Many Ukrainians still do not feel their responsibility for the state of the environment; they are characterized by social infantilism. People tend to shift responsibility to government officials at all levels who are empowered to protect the environment.

2. Organizational and managerial causal relationships.

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).

Under such conditions, it is extremely 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 (Zarzhyskyi, 2020, p. 8).

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, in one of the reports of the international analytical center Influence Map, for example, there was evidence of lobbying by the largest oil companies for measures aimed at supporting policies against global warming. Such oil giants as ExxonMobil, Shell, Chevron, BP and Total spend almost 200 million dollars a year, including actively using the possibilities of social networks, to block the adoption of political decisions and their compliance with bills to combat climate change (Laville, 2019).

3. Insufficient participation of civil society and its representatives in the process of adoption of environmentally significant decisions by state authorities and local self-government bodies. Despite the fact that this kind of public participation is declared, unfortunately, in many countries, citizens do not actually feel involved in the decisions made at the state and municipal levels that affect the environment. On the one hand, this is due to the lack of desire to take an active civic position on environmental issues, on the other hand, in some cases, citizens are deliberately prevented from participating in consideration of environmentally significant issues.

The development of the Internet and its widespread distribution are becoming important factors that ensure that citizens receive environmentally relevant information.

In 1998 was adopted the Convention of the European Economic Commission of the United Nations "On access to information, public participation in decision-making and access to justice in matters related to the environment" (Konventsiia Yevropeiskoi Ekonomichnoi Komisiï OON "Pro dostup do informatsii, uchasti hromadskosti u pryiniatti rishen ta dostup do pravosudiva z pytan, shcho stosuetsia navkolyshnoho seredovyshcha"). Participating states undertook to guarantee a responsible approach and transparency in

the process of making environmentally significant decisions. The mentioned convention contains a significant potential for novelty, and the perception of its approaches by national legal systems requires not only the adoption of new laws, but also, which is much more difficult, the revision of a number of established legal concepts, the internal conviction of law enforcement officers, whose competence includes making environmentally significant decisions.

4. Economic causal relationships. The main cause of environmental criminal offenses is the predominance of economic interests over ecological ones. Most of the world's economy is based on the exploitation of natural resources. Unfortunately, legislative measures do not sufficiently provide the necessary balance. There is a direct relationship between the strictness of legislation in the field of environmental protection and economic benefits for violators.

In Ukraine, the costs associated with the risk of prosecution are lower than the costs of compliance with environmental regulations. In addition, this, in our opinion, is the main factor determining offenses against the environment. Legal costs and fines imposed on large corporations, which are found guilty of the most large-scale and "resonant" environmental pollution, are usually incomparable to their profits.

At the same time, it should be noted that the ecological crisis can be overcome only when an ecological reform is carried out along with an economic one, when ecological requirements are introduced into all links of the economic reform, and the protection of nature is perceived as an opportunity to further increase the economic power of the state. Natural resources should be considered as national economic resources used in production. In addition, they have a corresponding cost that needs to be compensated. This approach of the state will allow balancing the policy of use and reproduction of natural resources (Kruk, 2006, p. 268–269).

5. Imperfect legislation.

The object of environmental offenses is social relations related to the preservation and provision of the proper state of the environment, available at this stage of the development of society, which meets modern requirements, their legal forms and material and resource basis. These social relations are regulated by the norms of environmental law (Zarzhyskyi, 2020, p. 100).

On the one hand, the foundations of legislation aimed at ensuring and protecting the environmental rights of citizens have been formed in Ukraine; the need to implement environmental protection laws is declared at all levels of state power. On the other hand, many norms are not applied in practice, and some environmental

problems that require separate legal regulation are generally ignored.

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.

6. A high level of corruption is the basis for the growth of environmental crime. The generally recognized connection between corruption and other types of crimes, in particular those committed in the field of the environment.

Corruption in the environmental sphere can manifest itself in various forms: the use of forged or illegally issued permits, licenses and certificates; approval of project documentation for potentially dangerous objects or a risky type of activity, which contains information that does not correspond to reality; illegal trade in various types of flora and fauna; environmental protection structures ignoring illegal activities that harm the environment, etc.

I. Horodetska singled out the following main groups of reasons for the unsatisfactory level of functioning of the state control system in the field of environmental protection: structural and functional in nature (imperfect organizational structure of control subjects, duplication of supervisory (control) functions by central executive authorities, lack of proper coordination of their activities regarding monitoring environment and harmonization of legislation); of an information nature (lack of effective state monitoring of the state of the environment, unified electronic registers of natural resources, unsatisfactory level of information exchange and access to information about the state of the environment and its objects); resource-providing nature (low level of financial, technical and personnel potential) (Horodetska, 2019, p. 196).

7. Self-determination of environmental crime. Crime as a relatively separate social system (subsystem), characterized by self-determination and self-reproduction (Dromin, 2010, p. 13).

Environmental crime is traditionally recognized as one of the most latent types of crime. People rarely report environmental crimes to the police. This can be explained by the spe-

cifics of victimization and the specifics of subjects who commit illegal environmental offenses that cause significant damage. The high level of impunity for acts that cause significant damage to the environment, as well as the inconsistency and inadequacy of punishment measures, determine the commission of new criminal offenses against the environment.

The determination of environmental crime is not limited to the considered reasons. In most cases, a person himself makes the decision to satisfy his interests, to achieve the desired result, in a legal or illegal way.

4. Conclusions

The causes of crime against the environment can be classified according to the level of their action; by sources; by its content; by nature of occurrence; related to the impact on the natural environment and related to illegal use of nature.

The main determinants of criminal offenses against the environment include: predominance of anthropocentric views in the social sphere; insufficient level of independence and funding of state nature protection structures; the inertness of civil society in the process of making ecologically significant decisions by state authorities and local self-government bodies; the predominance of economic interests over environmental interests in human activity; imperfection of the current legislation; high level of corruption; self-determination of environmental crime.

The main factor determining criminal offenses against the environment is that the costs associated with the risk of prosecution in Ukraine are significantly lower than the costs of compliance with environmental regulations. An adequate level of environmental security can be achieved only if the state develops an effective mechanism aimed at eliminating and neutralizing the determinants of committing criminal offenses against the environment.

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СУЧАСНІ ПРОБЛЕМИ ПРИЧИННОСТІ КРИМІНАЛЬНИХ ПРАВОПОРУШЕНЬ ПРОТИ ДОВКІЛЛЯ

Анотація. Мета дослідження полягає в аналізі проблем причинності кримінальних правопорушень проти довкілля для формулювання рекомендацій, спрямованих на недопущення, мінімізацію протиправних дій у досліджуваній сфері. **Методи дослідження** обрані з урахуванням поставленої мети і завдань дослідження, його об'єкта та предмета. Методологічне підґрунтя публікації становили загальнонаукові та спеціальні методи, зокрема аналіз і синтез, абстрагування й узагальнення, індукція і дедукція, опис, характеристика, спеціально системно-структурний, порівняльний, прогностичний методи. **Результати.** Здійснено класифікацію причин злочинності проти довкілля за такими критеріями: за рівнем їх дії; за джерелами; за змістом; за природою виникнення; пов'язані з впливом на природне середовище та пов'язані з незаконним природокористуванням. Виокремлено та досліджено такі основні детермінанти кримінальних правопорушень проти довкілля: переважання антропоцентричних ідей у соціальній сфері; недостатній рівень незалежності та фінансування державних природоохоронних структур; недостатня участь громадянського суспільства і його представників у процесі прийняття органами державної влади та місцевого самоврядування екологічно значимих рішень; переважання в діяльності людини економічних інтересів над екологічними; недосконалість чинного законодавства; високий рівень корупції; самодетермінація екологічної злочинності. **Висновки.** Встановлено, що в більшості випадків особа сама приймає рішення, законним або протиправним способом задовольнити свої інтереси, досягти бажаного результату. Констатовано, що основним детермінантом кримінальних правопорушень проти довкілля є низькі витрати на дотримання екологічних нормативів. Зроблено висновок, що високого рівня екологічної безпеки можна досягти лише в разі вироблення державою ефективного механізму, спрямованого на усунення та нейтралізацію детермінант учинення кримінальних правопорушень проти довкілля.

Ключові слова: кримінальні правопорушення, довкілля, причини, детермінанти, законодавство, протидія.

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