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**PROTECTION OF AGROSPHERE OBJECTS
THROUGH CRIMINAL LAW IN
SUSTAINABLE DEVELOPMENT**

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Abstract

Globalization of environmental and food problems facing now-living mankind generation and the need to preserve the agrosphere potential in order to meet the needs of future generations and to safeguard the natural human right to life and health make the issue of protection of agrosphere objects through criminal law even more relevant. In this connection, the legal doctrine has a high-priority task – to research and propose approaches to improve the mechanism of protection of

JOURNAL OF LAW AND POLITICAL SCIENCES

agrosphere objects through criminal law for the purpose of ensuring its sustainable development. The aim of this article is to develop a concept of protection of agrosphere objects in sustainable development through criminal law. An integrated approach to solving the problem of protection of agrosphere objects through criminal law in sustainable development will enable functioning of a viable mechanism of such protection, safeguarding the natural human rights to life, health, and safe environment. Globalization of mentioned problems calls for developing an effective international legal mechanism of criminal protection of agrosphere objects.

Keywords: agrosphere, sustainable development, human health, protection through criminal law, criminal liability, environmental crimes.

INTRODUCTION

Research Relevance and Problematics.

Agrosphere is a system able to satisfy food needs of the general public and to promote environmental interest because it is a sphere where business activities go with the use of natural resources and objects. Therefore, under current conditions, the problem of legal protection of its objects becomes of particular importance and acuteness. This stems both from the globalization of environmental and food problems facing now-living mankind generation and the need to preserve the agrosphere potential in order to meet the needs of future generations, including to safeguard the natural human right to life pronounced in Art. 3 of the Universal Declaration of Human Rights adopted by the United Nations General Assembly in 1948.

In Ukraine, agrosphere accounts for over 70% of its territory; it is the place of living and working of a considerable number of people (over 30%). Moreover, the agrosphere is the primary source of food for the country's population and of raw materials of plant and animal origin for the industry. In this connection, the legal

doctrine has a high-priority task – to research and propose approaches to improve the mechanism of protection of agrosphere objects through criminal law for the purpose of ensuring its sustainable development. This article becomes even more relevant due to the fact that the issues being analyzed herein taken as a whole have not been the subject of a separate thesis research or a case study. Philosophers, economic and legal scholars (V.I. Danilov-Danil'yan, V.S. Diyesperov, L.H. Melnyk, L. Hens) have dedicated their papers to researching various aspects of sustainable development; certain legal issues of agrosphere development have been addressed by P.F. Kulynych,¹ T.V. Kurman,² O. Radzivil³; issues of criminal liability for some environmental crimes have become the subject matter of scientific inquiries of criminal legal scholars (O.O. Dudorov,⁴ V.V. Loktionova, N.V. Netesa, F.A. Lopushansky, O.Ya. Svyetlov, I.P. Lanovenko, K.M. Orobets, S.B. Havrysh and others). However, no integrated and cross-disciplinary research of problems of criminal law protection of agrosphere objects in sustainable development was conducted.

Hence, insufficient doctrinal working out, apparent lack of clear legislative regulation both nationally and internationally dictate the need for determining approaches to protect agrosphere and its separate objects through criminal law in sustainable development.

Purpose of the Study.

The aim of this article is to develop a concept of protection of agrosphere objects through criminal law in the context of sustainable development. *Object of research* – law enforcement in agrosphere. *Subject of research* – mechanism of protection of agrosphere objects through criminal law.

¹ Kulynych, 2011.

² Kurman, 2018.

³ Radzivil, et. al., 2019.

⁴ Dudorov, et. al., 2014.

JOURNAL OF LAW AND POLITICAL SCIENCES

Research Methodology and Materials.

Methodological basis of this research are the general and special scientific *methods*: dialectical (it has become a foundation of the entire article, which made it possible to analyze a sustainable development of agrosphere in conjunction with other legal phenomena, in particular, with its protection through criminal law, and a relevant array of regulatory instruments – in the dynamics of their development), axiological (establishing a connection between the sustainable development of agrosphere and exercising natural human rights to life, health, and environmental safety, etc.), synergism (elements of agrosphere and sustainable development in the system and in interaction with one another have been selected for this research), historical-legal (formation and chronological development of sustainable development concept and its legal platform), system-structural (it has contributed to analysis of a system of functions and tools of the mechanism of criminal law protection of agrosphere objects), comparative-legal (comparative analysis of criminal law rules and regulations of different countries and international treaties in respect of the protection of agrosphere objects), formal-legal (was applied in order to interpret certain provisions of statutory and international legal instruments relating to sustainable development of agrosphere and criminal liability for crimes committed in the agrosphere) and statistical (processing of statistical data relating to condition of agrosphere objects and criminal liability for environmental crimes).

The *empirical materials* of this research include theoretical articles of legal and economic science experts, international legal acts (The Universal Declaration of Human Rights, Agenda 21), legislation of Ukraine (Criminal Code of Ukraine (2001), Law of Ukraine On Key Principles (Strategy) of Public Environmental Policy of Ukraine for the Period until 2030 (2019); the Association Agreement between Ukraine, on the one part, and the European Union and the European Atomic Energy Community and their member states, on the other part (2014)), EU

(Council of Europe Convention on the Protection of Environment through Criminal Law (ETS No. 172/1998), Treaty on European Union (1992), France (Environmental Code of France (2000)), Latvia (Criminal Code of Latvia (1998)) and other states which regulate public relations with regard to the criminal protection of agrosphere, statistics from UN, Ukraine, etc.

FINDINGS OF RESEARCH AND DISCUSSIONS

THE FIRST TOPIC: LEGAL FRAMEWORK OF SUSTAINABLE DEVELOPMENT OF AGROSPHERE

One of today's most pressing issues is the conservation, restoration, and rational use of natural resources caused by the predicted global environmental crisis. A constant adverse environmental impact implicates naturally the extinction of some live species, depletion of natural resources, weakening of biosphere resilience, as well as general deterioration of conditions and quality of livelihood of humans as living beings.

There is a myriad of factors that have an adverse impact on environmental conditions. V.I. Borysov rightly points out that crises-related environmental phenomena jeopardize the possibility of evolution of human civilization, and further degradation of natural systems results in destabilization of biosphere, loss of its integrity and ability to sustain an environment safe for human life and health.¹

Adverse effects mentioned above are particularly noticeable in agrosphere. After all, this is where economic, food, environmental, and social interests of the state, its people and members of agrobusiness merge together. Unfortunately, the

¹ Netesa, 2013.

JOURNAL OF LAW AND POLITICAL SCIENCES

economic factor has been predominant for many years. Over the last years, what we observe in Ukraine's agrosphere is the dominance of personal interests and influence of large agrobusiness holding companies aimed at making super-profits alongside rural impoverishment and depopulation, and negligence of environmental problems.

We should agree to the opinion of P.F. Kulynych that intensification of agricultural resources exploitation in general and utilization of agricultural lands in particular, which has become especially noticeable in the second half of XX century, is the major contributor to new problems in agrosphere; it lowers the level of natural resilience and balance of environment and lands as objects of respective social relations, and requires a significant strengthening of the role of law in supporting and sustaining its resilience and balance based on the large-scale and internally harmonized action plan.¹

As you know, agricultural production together with industrial enterprises have a direct impact on human health and life expectancy. As noted by the experts, there is a certain connection between the natural population growth and death ratio, on the one part, and the level of agricultural land use planning and management of territory, ploughness of lands, application of mineral fertilizers, utilization of pesticides and pollutant emissions – on the other.²

As of today, in Ukraine, 72% (in some regions even more than 88%) of agricultural lands are ploughed. Moreover, marginal lands are cultivated as well.³ However, we know that even the slightest deviation of lands quality from the existing standard may carry a threat for people and other living creatures. Main risks that caused the diminishing of soil fertility due to commercial activities of people include erosion processes, dehumification, overconsolidation, flooding,

¹ Kulynych, 2011.

² Melnyk, Shapochka, 2015.

³ Land fund of Ukraine, 2016.

bogging, acidification and pollution of lands with radionuclides, pesticides, and other organic substances, as well as heavy metals. In total, there are more than fifty sources of hazard, the majority of which are anthropogenic.

In recent years, the following degradation processes related to the condition of agricultural lands have become widely spread: (a) erosion has effected 57% of lands,¹ currently 60% of rich black soil is degraded; in general, the area of eroded arable land has increased by almost 1.5 times over the past years; (b) land pollution is observed on about 20% of territory; (c) acidification of soils – acid soils cover 17.7% of Ukraine’s territory; (d) salinization and alcalination of soils; (e) flooding of lands – about 12% of Ukraine’s territory constitute areas of natural and technogenic flooding; (f) landslides, soil disturbance, etc.² A considerable damage was caused to land resources and other nature-made objects as a result of military activities on Donbass territory. In particular, this refers to soil contamination with chemicals because of explosions of ammunition; destruction of cultivated lands and flora due to utilization of military machinery and construction of defense structures; destruction of massive areas of forests due to fires and uncontrolled cuttings triggered by the military activities, etc.³

However, welfare and living conditions of current and future generations depend greatly on the condition of agrosphere. Its utilization in agricultural production by existing and exhausting means of industrial model may cause only the escalation of environmental crisis, ultimate depletion of environmental assets and other extremely negative consequences, including a threat to the survival of mankind itself.

As the professional literature states, agricultural activities associated with transformation of natural landscapes into cultivated lands go hand in hand with

¹ Law of Ukraine, 2019.

² CMU, 2005.

³ Law of Ukraine, 2019.

the drop in biological diversity and environmental sustainability of the latter. Therefore, the solution of issues regarding the rationale for the structure of use of agricultural lands in the systems of cultivated land farming shall be based on the application of social-nature approach that allows for factoring in the change in the condition of key components of a landscape as a result of agricultural activities, as well as principles of environmental management.¹ This may explain the fact that protection of agrosphere has become of particular relevance, which, in its turn, requires sustainable development of agricultural production which must be ensured by respective legal remedies.

Government regulation of exploitation of agrosphere resources in agricultural production, especially of agricultural lands, becomes relevant also due to the fact that in Ukraine agricultural activities on the main territory of these lands are done not by the owners but by the tenant farmers, who aim first of all at making profits from such activities and not at careful and environmentally sound use and preservation of both land plots, which do not belong to them, and environment. The implementation of urgent market of agricultural lands which has not been thought through and scientifically grounded may also create certain threats in this sphere.

Public policy aimed at protecting agrosphere was adopted in the majority of developed countries. Strategy that is based on the paradigm of sustainable development of agrosphere is marked by especially positive results. Therefore, currently, there is a critical need to determine the strategy of agrosphere development, which shall certainly be based on the principles of sustainable development and find its way into legislation both at the domestic and international levels.

¹ Melnyk, 2014, pp. 219-222.

There is all the more reason for this as the mankind faces another global problem – a food one, and its solution shapes humanity’s future existence. Safeguarding national food security and providing people with sufficient amount of high-quality and safe plant and animal products and aquaculture, and industry – with necessary raw materials, has always been and remains a priority in the agriculture development. Ukraine, as it is fairly emphasized in the professional literature, is among the countries which have the highest-rated potential reserves of agrosphere. This is due to a high concentration of rich black soils (up to 30% of the world reserves), advantageous geographical location, favorable natural climatic conditions for the cultivation of the majority of agricultural crops of strategic importance, well established transportation infrastructure, etc.

Hence, Ukraine has a great potential to become one of the global leaders in the production of grain and other types of agricultural products. A proper development of agrosphere under the conditions of sustainability is able to pave the way to forming agro-ecological image of the state and boosting the competitiveness of agricultural products of national producers both at the domestic and international markets.

Moreover, it makes sense to agree to the opinion of P.F. Kulynych that the values which cannot always be quantified or cost-estimated are being restored due to agrosphere. Although these values have not become imperatives of social development up to this day, their beneficial effect is doubtless. In particular, this refers to a significant contribution to: a) wildlife preservation; b) conservation of cultivated lands and agrarian biological diversity; c) supporting of life-sustaining activities on the considerable territory of the country, namely in rural localities; d) recovery and support of human health; e) development of recreational objects, etc. The above-mentioned functions of agrosphere are extremely important. In their

entirety, they carry out some sort of non-food “mission” of agricultural production.¹

Currently, their importance is not understood by our society sufficiently, therefore it remains not enough regulated by the legislation.

A concept of sustainable development as a foundation of economics of growth or “green economics” is becoming predominant in the world nowadays. Sustainable development becomes a key area of both international legal and domestic regulation in all spheres of human life and activities, including in the agrosphere. A sustainable development concept being in harmony with production, environmental and social aspects, as it appears, is able to help solving pressing issues of agrosphere and ensure natural human rights to life and health.

At the same time, ensuring sustainable development of agrosphere through legal means becomes especially relevant both for Ukraine and other countries of the world. Since under globalization conditions, national economies become interdependent and interactive components of global economic system with common development factors. It has to do with forecasted global problems of food, ecological, and energy nature, and is driven by the need for: (a) ensuring food security; (b) sustainable development of rural localities, as well as (c) preservation of environment in the course of agricultural production activities, minimization of their adverse, anthropogenic and technogenic impact on the environment.²

The problematics stated above have become especially relevant in the context of Ukraine’s opportunities for European integration.

The Law of Ukraine dated 16 September 2014 has ratified the Association Agreement between Ukraine, on the one part, and the European Union and the European Atomic Energy Community and their member states, on the other part

¹ Kulynych, 2011.

² Kurman, 2018.

entered into in Brussels.¹ Chapter 17 of the Association Agreement deals with agricultural development. It sets forth that the parties shall cooperate to promote agricultural and rural development, in particular, through gradual approximation of policies and legislation (Art. 403).

Pursuant to Art. 404 of this Agreement, the cooperation between the parties in the field of agriculture and rural development shall cover, *inter alia*, the following areas: a) promoting modern and sustainable agricultural production, respectful of the environment and of animal welfare; b) improving the competitiveness of the agricultural sector and the efficiency and transparency of the markets as well as conditions for investment; c) favoring innovation and promoting consultancy system to agricultural producers; d) promoting the policy of quality of agricultural products in the areas of product standards, production requirements and quality schemes; e) sharing knowledge and best practices of rural development policies to promote economic well-being for rural communities.

Provisions on sustainable development of agrosphere are laid down in the Law of Ukraine *On Key Principles of Public Agricultural Policy for a Period until 2015* dated 18 October 2005,² pursuant to Art. 1 whereof a public agricultural policy is aimed at sustainable development of the agricultural sector of national economy, systemic and integrated approach to measures for implementation of a public agricultural policy by all government and local authorities. It shall be based on the national priorities and incorporate the need of Ukraine's integration into the European Union and global economic area.

Therefore, transformation processes in the agricultural sector of economy must be implemented with due regard for environmental imperative, while the concept of sustainable development, in particular, the sustainable development of agrosphere, shall become a conceptual framework of public regulation of

¹ VRU, 2014.

² Law of Ukraine, 2005.

JOURNAL OF LAW AND POLITICAL SCIENCES

agriculture. Provisions of Art. 294, Chapter XIII of the Instruction (Nakaz) of Empress Catherine the Great, which she gave to the Legislative Commission for composing a New Code of Laws: “*There can be neither skillful Handicraftsmen, nor a firmly-established Commerce, where Agriculture is neglected, or carried on with Supineness and Negligence...*” seem quite well-founded in this regard.¹

Sustainable development concept is not new in general. Its underlying ideas are known to the world since ancient times as they are based on universal human values. At the international level, the concept of sustainable development was first disclosed in the Report “Our Common Future” (1987) developed by the UN World Commission on Environment and Development. It was enshrined in legislation at the international level in 1992, when at the UN World Conference on Environment and Development in Rio de Janeiro (so called “The Earth Summit” participated by 179 countries, including Ukraine) the sustainable development was determined as the strategy of mankind existence for XXI century, and *Agenda 21* was approved as well.² The Conference has also adopted the Rio Declaration on Environment and Development and the Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests. At the Brazil Summit, the sustainable development was defined as a development that meets the needs of the present without compromising the interests and the ability of future generations to meet their own needs. After the Rio Conference (1992), the concept of sustainable development has become a fundamental pillar of national strategies and programmes. The principles of sustainable development in the context of environmental prosperity and well-being were incorporated in the legislation of each and all European countries.³

¹ Aksyonov, 2001.

² United Nations Conference on Environment & Development Rio de Janeiro, 1992.

³ Ermolina, 2013, pp.110-112.

At international scale, this problem has always been on the agenda. The need to propagate ideas of sustainable development was further declared at other UN summits and conferences. In particular, at the Earth Summit + 5 (Rio de Janeiro, 1997) the Programme for the Further Implementation of Agenda 21 was adopted, where it was stated that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development.

In 2002, the Declaration on Sustainable Development was adopted at the World Summit on Sustainable Development in Johannesburg. This Declaration encompassed recommendations as to the priorities and further steps to enforce provisions of documents which were previously adopted, and the need for certain countries to adopt national strategies to develop their economies in that regard was substantiated.

At the next UN Conference on Sustainable Development (Rio + 20, Rio de Janeiro, 2012), the outcome document named “The Future We Want” was adopted, where a direction towards creating “green economy” in order to achieve sustainable development, poverty eradication and improving international coordination to support such development was determined.

The Resolution adopted by the United Nations General Assembly on 25 September 2015 “Transforming our world: the 2030 Agenda for Sustainable Development”¹ has reaffirmed the urge of a global community to end hunger, guarantee and protect human rights, and preserve the planet and its natural resources.

Provisions of these international legal instruments were further detailed in domestic laws of many countries – in the Germany's National Sustainable Development Strategy, the USA Sustainable Development Strategy, China's

¹ United Nations General Assembly, 2015.

JOURNAL OF LAW AND POLITICAL SCIENCES

Programme on Sustainable Development (“China’s Agenda 21 – White Paper on China’s Population, Environment and Development in the 21st century”), the National Strategy of Sustainable Social and Economic Development of the Republic of Belarus for a period until 2020, etc. These provisions have also been reflected in the Treaty on European Union. In particular, Art. 2 thereof sets forth that the Union seeks to promote economic and social progress and a high level of employment and to achieve harmonized, balanced and sustainable development, sustainable and non-inflationary growth, high level of competitiveness of economies, high level of protection and improvement of environment, rising standard of living, etc.¹

Therefore, the legal science has a challenging task: to propose new and innovative approaches to the legal mechanism of ensuring sustainable development of agrosphere, which would consolidate organic and optimal combination of production of agricultural products and environmentally sound use of natural resources and sustainable development of rural localities. However, criminal protection of agrosphere and its separate objects, in particular, agricultural lands as the primary tool for agricultural production, shall become one of the elements of the above-mentioned mechanism. This is because criminal protection of agrosphere objects guarantee unavailability of liability for environmental law violations in agrosphere.

THE SECOND TOPIC: INSTRUMENTS OF AGROSPHERE PROTECTION THROUGH CRIMINAL LAW

It should be noted that *Key Principles (Strategy) of Public Environmental Policy of Ukraine for the Period until 2030*, as approved by the Law of Ukraine on 28 February 2019, say that processes of globalization and social transformations have raised the priority of conservation of environment, and therefore call for urgent

¹ Treaty on European Union, 1992.

actions by the state. Ukraine's economic development has long been accompanied by the unbalanced exploitation of natural resources and low priority of issues associated with environmental protection, which made achievement of balanced (sustainable) development impossible. Therefore, a strategic goal of public environmental policy, including in agrosphere, is mitigating environmental risks in order to minimize their impact on public health, social and economic development of people, and ecosystems. The above-mentioned Law names the following primary causes of Ukraine's environmental problems: dominance of economic feasibility over environmental priorities; unsatisfactory level of compliance with environmental laws; unsatisfactory control over compliance with environmental laws, and failure to procure unavailability of liability for their violations, etc.¹

Increased number of sick people and death rate, disbalance of agro-ecosystems, degradation of nation's gene pool is a logical and inevitable consequence of accelerated rates of degradation of natural objects. Therefore, Ukraine seeks not only to implement public programmes of environmental protection, but also to establish and improve mechanisms of legal influence, including through criminal law, on those who violate environmental laws, since interaction of humans (society) with nature cannot happen under conditions of absolute freedom and shall be restricted by laws.

Legal foundation of Ukraine's environmental policy in agrosphere is laid down in the Constitution of Ukraine, which declares the state's obligation to guarantee a right of its citizens to the environment safe for life and health and environmental security.

Pursuant to Art. 16 of the Constitution, to ensure ecological safety and to maintain the ecological balance, and to preserve the gene pool of the Ukrainian people, is the duty of the State. Article 50 stipulates that everyone has the right to

¹ Law of Ukraine, 2019.

JOURNAL OF LAW AND POLITICAL SCIENCES

an environment that is safe for life and health, and to compensation for damages inflicted through the violation of this right, and that everyone is guaranteed the right of free access to information about the environmental situation. In its turn, the Constitution imposes an obligation on the citizens not to harm nature and to compensate for any damage he or she inflicted (Art. 66).¹

Duties of citizens to take care of nature, to protect and rationally utilize its wealth in conformity with the requirements of the legislation on environmental protection and to refund losses caused by pollution or other adverse impact on the environment are set forth in the Law of Ukraine *On Environmental Protection* dated 25 June 1991 (Art. 12). Pursuant to Art. 70 of this Law, elements of environmental offences and crimes and the procedure for the prosecution of those responsible for such crimes under administrative and criminal laws shall be determined in the Code on Administrative Offences of Ukraine and the Criminal Code of Ukraine.

Based on the above, one of the principles of Ukraine's environmental policy in agrosphere is to ensure unavoidability of liability for environmental law violations. Having proclaimed these principles, Ukraine paves the way for a rule-of-law state, which based on the Constitution guarantees not only rights but also a viable mechanism of implementing constitutional provisions. One of the effective elements of such mechanism is criminal remedies, which envisage imposing liability for offences committed against environment safe for people's life and health.

In support of importance of object of the offence being analyzed, we should refer to foreign criminal legislation.

Thus, for example, in the Criminal Code of Latvia (1998) the chapter dedicated to offences against environment (XI) precedes the chapter on liability for crimes

¹ Constitution of Ukraine, 1996.

against person (XII).¹ This is explained by the fact that without favourable living environment humans are unable to survive as biological species, therefore protection of amenities created by civilization (public and social interests, property, etc.) loses its meaning. Similar thoughts concerning introduction of the same changes in the structure of the Criminal Code of Ukraine, namely as regards the placement of chapter on environmental crimes after the chapter on liability for crimes against human life and health, have been expressed in the domestic criminal law science reasoned by the fact that this way it would help recognizing the priority of human values when addressing environment-oriented tasks.²

It should be noted that lately an intensive development of environmental protection legislation through criminal law can be noticed internationally. Thus, respective reforms of national criminal codes aimed at the improvement of provisions on liability for environmental crimes took place. It's worth noting that environmental criminal laws are reformed in a similar way in the countries which differ substantially by their social and political traditions and social and economic development.³

The Convention on the Protection of the Environment through Criminal Law⁴ adopted on 4 November 1998 in Strasbourg and ratified by Ukraine on 24 January 2006 is of great importance in this regard. This Convention plays a pivotal role in reformation of environmental criminal laws practically all over the world. Analysis of recommendations laid down in the legal instrument under review allows placing greater focus on such key aspects as: widening the scope of environmental objects and values; broadening types of criminally punishable acts; more vigorous use of structures of endangerment elements and their substantiated combination with

¹ Criminal Law. Law of the Republic of Latvia.

² Lopushansky, Svyetlov, Lanovenko, 1994.

³ Luneev, 2010.

⁴ Convention on the Protection of the Environment through Criminal Law, 1998, ETS No. 172.

materially defined and formally defined crimes to enhance preventive potential of criminal prohibitions; more vigorous application of pecuniary penalties with simultaneous increase in their amount; introduction of criminal liability of legal entities for environmental crimes associated with entrepreneurial, production, and other activities.

Moreover, the Resolution “Actions against transnational and organized crime, and the role of criminal law in the protection of environment: national experiences and international cooperation” adopted by the Ninth United Nations Congress on the Prevention of Crime and Treatment of Offenders (Cairo, 29 April – 8 May 1995) deals with promoting the inclusion of a discipline about the role of criminal law in environmental protection in the programs for studying criminal law and training of law enforcement officers and in the criminal justice system.¹ All stated above attest to attempts to form a mechanism of environment protection, including in agrosphere, through criminal law both nationally and internationally.

The Criminal Code of Ukraine envisages liability for environmental offences, including offences against environment’s separate elements, in Chapter VIII of the Special Section “Crimes Against Environment”. The Criminal Code of Ukraine establishes liability for the most socially-dangerous offences in environmental protection. Protection of environment, as stated above, is one of the state’s functions. That is why Part 1 of Article 1 of the Criminal Code of Ukraine says that the objective of the Criminal Code of Ukraine is to provide legal protection of the environment, among other objects, which highlights special significance both of this object and of criminal remedies aimed at its protection.²

Analysis of foreign laws shows that standalone chapters (sections) similar to Chapter VIII of the Special Section of the Criminal Code of Ukraine with identical

¹ Dudorov, et al., 2014.

² Criminal codeks of Ukraine, 2001.

or analogues titles are incorporated into criminal codes of Albania, Mongolia, Poland, Germany, Spain, all CIS countries and Baltic states, Vietnam, Columbia, Salvador, Paraguay, Mexico. Environment, ecological security and natural resources, respectively, are recognized as the objects of offences in these countries.

Criminal codes of other countries such as Italy, France, Andorra, Sweden, Argentina, Hungary, Afghanistan, Belgium, Norway, Brazil, Bulgaria, Japan, Bolivia, Israel, Sudan, Uruguay, Switzerland, Philippines, Chile, Finland, Tunisia, India, Denmark, Indonesia, and Iraq do not contain special chapters (sections) establishing liability for environmental crimes.¹ This fact can be explained either by the lack of attention to relevant crimes or by their definition in certain laws or regulatory instruments accepted within interstate associations.² In these countries, considering indisputable blanket nature of criminal law rules, they are incorporated not in the criminal codes but in the integrated legislative instruments on environmental protection (for example, in the Environmental Code of France (2000)). Similarly, criminal prohibitions for committing environmental crimes stipulated in the laws of some states in the USA, as a rule, are incorporated not in the criminal codes but in other legislative instruments – on health care, shipping and navigation, water, fishing, etc. Singapore, India, Finland, Sweden, Belgium, and Japan have solved this issue in a similar way: elements of environmental crimes are scattered in numerous environmental protection laws and other legislative instruments.

Crimes against environment (ecological offences) are understood as culpable socially-dangerous acts (actions or omissions to act) covered by criminal law which encroach on environment and its components, sustainable use and protection whereof ensure human livelihood and environmental security of people and territory, and consist in direct unlawful utilization of natural objects or in the

¹ Dodonov, Kapinys, Shcherba, 2010.

² Khavronyuk, 2006.

illicit impact on them which results in adverse changes in the condition and quality of environment.¹

Generic object of environmental crimes is such condition of environment and separate elements thereof which exclude hazard to human life or health; when protection, rational exploitation and restoration of natural resources are procured; proper ecological condition of biosphere is maintained.² Direct objects of environmental crimes include various elements of functioning of environment, which forms the basis for a system of mentioned crimes.

Additional objects of crime in question include human life and health, public health, and property. It is also important to note that specific nature of environmental crimes is that in many cases when defining elements of crime, a lawmaker stipulates criminal liability for actions resulting not only in damage to human life and health (actual injury) but also for a threat of such damage. Moreover, almost all actions punishable under Chapter VIII of the Special Section of the Criminal Code of Ukraine are criminalized due to consequences that arise in the form of damage to human life and health maintained.³

According to above classification of environmental crimes (by direct object), one of the types of crimes is crimes against established procedure for utilization of lands, mineral resources, territories and objects protected by the state (Articles 239, 239¹, 239², 240, 252 and 254 of the Criminal Code of Ukraine).⁴

We should note that the Constitution of Ukraine (Art. 14) declares the land as the fundamental national wealth that is under special state protection. This constitutional provision refers first of all to agricultural lands. This is due to the fact that Ukraine is a great agricultural state, which has the most valuable

¹ Luneev, 2010.

² Dudorov, et. al., 2014.

³ Zinchenko, Volodina, 2019.

⁴ Criminal code of Ukraine, 2001.

benchmark soils in the world. Enforcement of this constitutional provision depends, first of all, on the state's ability to ensure a proper land protection.¹

As the land is of special importance for absolutely all aspects of mankind living, we have solid reasons to acknowledge that this natural resource plays a critical role among other environmental objects. Pollution, deterioration or other illicit treatment of lands, which represent space for human living and a basic and fundamental resource for agricultural production, trigger both substantial problems in production process and considerable deterioration of living conditions for humans in general, public health impairment, and loss of recreational attractiveness of territories. There are therefor currently all grounds to acknowledge the fact that pollution, deterioration and other offences against agricultural lands is an escalating and threatening environmental, economic and legal problem both for our state and for the whole world.

To strengthen criminal protection of agrosphere objects, the Concept of Public Target Programme of Development of Land Matters in Ukraine for a Period until 2020² approved by the Resolution of the Cabinet of Ministers of Ukraine dated 17 June 2009 focuses on the fact that situation around ownership, use and disposal of lands remains challenging and calls for immediate improvement.

To support the above, analysis of statistical data on the number of environmental crimes in Ukraine shows that their share in the general picture of criminality is small and amount to about 0.2%. We should note that the majority of articles of the Section of the Criminal Code of Ukraine that we have analyzed does not apply. However, latency of environmental crimes is 95-98%.³

¹ Constitution of Ukraine, 1996.

² CMU, 2009.

³ Loktionova, 2013.

CONCLUSIONS

Existing environmental and food problems become crucial and require immediate solution and legal protection of agrosphere objects. Enforcement of constitutional provisions aimed at environmental protection depends greatly on the state's ability to create and implement an effective and powerful mechanism to counter environmental offences, in particular, in agrosphere. Provisions on criminal protection of agrosphere objects are incorporated mostly in the national criminal and administrative legislation, therefore, environmental criminal law of Ukraine does not possess a united arsenal of means and measures able to influence environmental offenders. Globalization of problems listed above calls for joining together efforts of global community and developing effective international legal mechanism of criminal protection of agrosphere objects. Therefore, we may state the following:

1. Maintaining the ecological balance in the environment, establishing the procedure for the use of natural resources, and protection of agrosphere objects are key areas of the state environmental security.

2. In order to protect the environment, we consider that an integrated and cross-disciplinary approach to solving the problem of protection of agrosphere objects through criminal law is the most effective. It will enable functioning of a viable mechanism of such protection, act as a guarantee that the natural human rights to safe environment, life, and health are observed. Through criminal protection of agrosphere objects unavailability of liability for environmental law violations in agrosphere will be ensured.

3. The mechanism of criminal law protection of agrosphere objects is meant to perform the following functions: protective (protection of social relations in the agrosphere from criminal offences); preventive (prevention of violations in the agrosphere); motivating (implementation of measures of criminal law protection of

agrosphere objects at the legislative level will motivate entities and individuals to comply with the laws in the agrosphere); axiological (settling the value of human rights to life, health, environmental and food safety, etc.), and security (creating conditions for sustainable development of agrosphere).

4. In sustainable development, the agrosphere as a system that combines production, social and ecological elements, will allow for meeting food needs in harmony with conservation and growth of agricultural resources potential. This, consequently, will contribute not only to achieving strategic objectives of agricultural and environmental policy at the national level but also to solving global environmental and food problems internationally.

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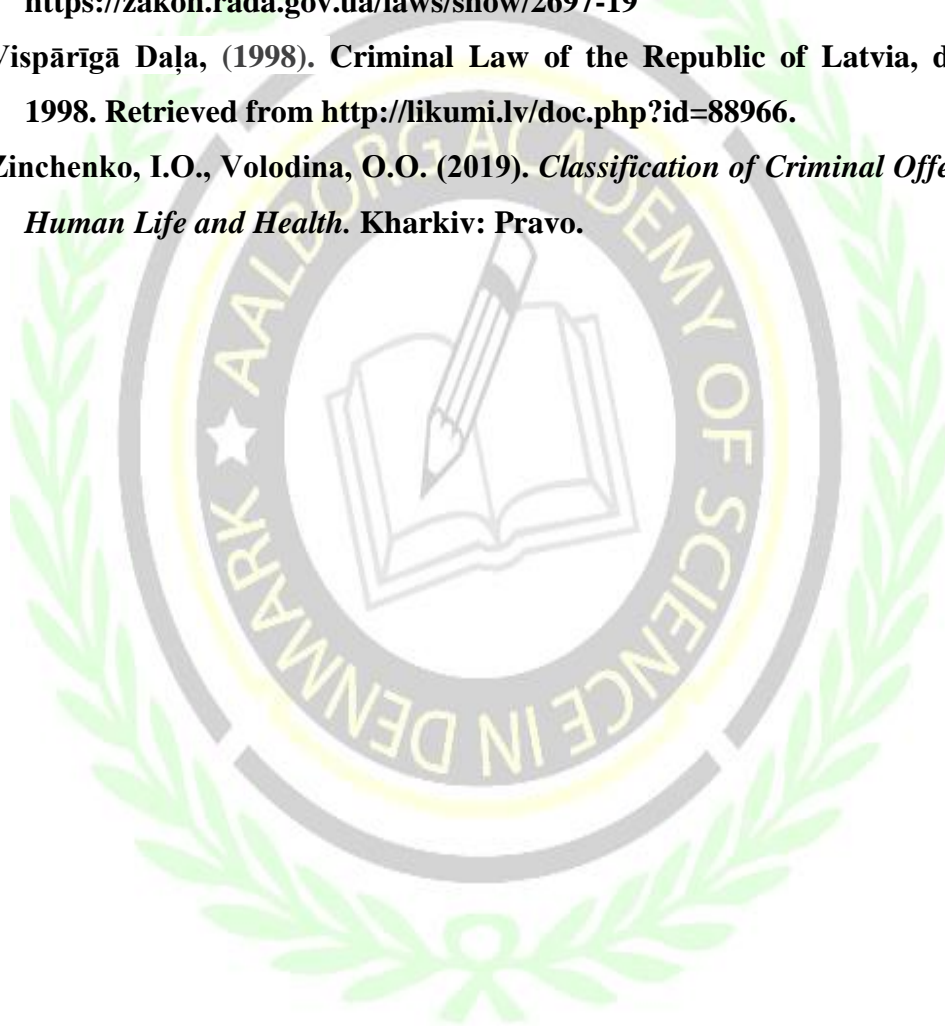
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