УКРАЇНА І СВІТ

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FOREIGN EXPERIENCE AND IMPROVEMENT OF ADMINISTRATIVE AND LEGAL PRINCIPLES OF ENVIRONMENTAL PROTECTION

1. Literature review

In the criminal law and criminological literature, such domestic scientists as Bazhanova Marko Ihorovych [2], Melnyk Oleh Viktorovych [14], Selivanov Volodymyr [17], Khrystov Oleksandr [8], Khrystova Yuliia [9], Kremer Ludwig [10], Leheza Yevhen [11; 12], Przestępstwa Przeciwko Środowisku [16] and others in their works paid attention to the study of international practices in criminal law protection of the environment or its individual elements.

Considering the above, comparative studies, for the solution of the tasks of which the comparative method is mainly used, acquire special interest in improving the criminal law standards establishing responsibility for committing environmental crimes. V.M. Selivanov believes that the significance of the comparative method lies not in the discovery of new facts, but in the scientific explanation of those already found, which makes it possible to replace the experimental method in social science [17]. In criminal law, using this method, the most perfect legal formulas are revealed.

In comparative studies, comparison is understood as the process of reflecting and fixing the relationship of identity, similarity in the legal phenomena of different countries, and the singular, particular and general are compared in the phenomena under study. According to M. I. Bazhanov, the use of this method makes it possible to evaluate certain norms of the criminal law of foreign countries for their use in the legislation of our country. Of course, we are not talking about the complete borrowing of foreign law, this is unacceptable, but some of its provisions can be perceived [2].

At the same time, the need to study the legislative practices of some countries of the European Union is due to the need to study the effectiveness of criminal law as a means of protection against actions that cause deterioration in the quality of the natural environment, and to find ways to improve counteraction to such crimes. That is why these problems are relevant and require additional research today [18].

A necessary requirement in assessing such a danger as a criminal offense

should be the reality and evidence of the threat of harm. It is the real threat that reflects the future likely criminal outcome. At the same time, negative consequences do not occur only due to timely actions taken or due to other circumstances that do not depend on the will of the guilty person [14].

2. Materials and Method

Research of materials and methods based on the analysis of documentary sources and regulatory legal acts of foreign countries. The dialectical method of cognizing the social reality facts is the basis on which the formal legal and rather-legal approaches are largely based. The formal-dogmatic method contributed to the development of the authors' explanation of the current state, problems, problems and practical role of legal technologies for the further development and improvement of environmental protection. The formal-legal method made it possible to suggest directions and types of use of legal technologies as perspectives of environmental protection.

3. Results and discussion

One of the main tasks of criminal legislation, defined by Article 1 of the Criminal Code of Ukraine (hereinafter – the Criminal Code), is the legal support of environmental protection. The effectiveness of such protection depends, inter alia, on the scientific substantiation of the relevant legal rules. Particularly important are the problems of the qualitative component of criminal law, which should be ensured by a set of requirements that make up the legislative technique as a system of rules, techniques and means of creating laws, effective in form and perfect in content, formed by theory and practice.

Considering the relevant EU countries criminal law standards, it is worth noting that their allocation in a separate section of the criminal code is characterized by extreme diversity. According to M. I. Khavroniuk classification, groups of criminal acts that encroach on the environment are separated into separate sections (or chapters, paragraphs, etc.). The special part of the criminal codes of many European countries [7].

Thus, in the Criminal Code of Spain dated 1995, there is a section XVI «On crimes related to the management of territories and the protection of historical heritage and the environment», which provides chapters: III «On crimes against natural resources and the environment» and IV «On crimes related to the protection of flora and fauna». An analysis of the relevant standards confirms certain features of their structure: on the one hand, they are formulated in a general way, that is, one standard provides for liability for encroachment on several elements of the environment; on the other hand, the signs of the objective element of these standards are characterized by a high level of detail.

For example, Article 325 criminalizes anyone «who in breach of an environmental rule directly or indirectly causes or makes emissions, spillages, radiation, extractions or excavations, filling with earth, noises, vibrations, injections or deposits, in the atmosphere, the ground, the subsoil or the surface water, ground water or sea water, including the high seas, even those affecting cross-border spaces, as well as the water catchment basins, that may cause a significant imbalance in natural systems» [1].

A separate standard (Article 326) defines the circumstances in the presence of which «the punishment is imposed one level higher, regardless of the punishment that can still be imposed under this code». Such circumstances include: production or activity existing clandestinely without administrative consent and administrative approval for its implementation; failure to comply with the order of the administrative authority to collect or temporarily suspend the activities described in the previous article; falsification or willful non-disclosure of information regard-

ing aspects related to the environment; impeding access for the control activities of the administration; creating a risk of irreversible damage or disaster; carrying out illegal discharge of water during restrictions.

As in Ukrainian legislation, the Criminal Code of Spain provides for punishment for environmental crimes that combine imprisonment with alternative punishments. In particular, for the specified Article 325, this is imprisonment for a term of six months to four years, a fine in the amount of eight to twenty-four monthly salaries and deprivation of the right to engage in a certain profession or activity for a term of one to three years.

Attention is drawn to the establishment of a fairly clear gradation of punishment depending on the form of guilt. By so doing, Article 331 contains an indication of the following content: «The acts foreseen in this Chapter shall be penalised, as appropriate, by the lower degree punishment, in their respective cases, when committed by serious negligence».

As in Ukrainian legislation, the standards establishing responsibility for committing environmental crimes are not concentrated in only one chapter of the Special Part of the Spanish Criminal Code. The standards establishing responsibility for arson or fire in a forest or other flora object (Articles 352-358), placed in section XVII «Crimes against collective security». It also contains standards establishing responsibility for crimes in the field of nuclear, radiation (Articles 341-345) and biological safety (Article 349).

The main source of criminal law of the Federal Republic of Germany (FRG) is the Penal Code or the Criminal Code dated 15.05.1871 as amended on 13.11.1998. The need to criminalize new types of socially dangerous acts, including those of an environmental nature, led to changes in the criminal legislation of the Federal Republic of Germany. Significant changes were made by the laws dated 28.03.1980 "On criminal offences against the environment" and dated 27.06.1994 "On the fight against crime related to offences against environment" to §§ 321-330 of the former section 28 of the Code.

The current version of the Criminal Code of the Federal Republic of Germany contains section 29 «Crimes against the natural environment», which combines 13 paragraphs, of which only 10 (§§ 324-330) are aimed at protecting nature, and three are of a «technical» nature: define the general concepts of section 29, provide for the basis for exemption from liability in connection with active repentance, seizure of objects and means of committing a crime.

Unlike Spanish legislation, the Criminal Code of the Federal Republic of Germany differentiates responsibility for encroachment on certain elements of the environment. In such a way, §§ 324-326 contain corpus delicti related to pollution of water bodies, soil and air. Like similar standards of Ukrainian legislation (as a rule, these are the first parts of the relevant articles), a significant part of the compositions in relation to criminal pollution of the environment are designed as torts of danger, that is, we are talking about creating a threat of dangerous consequences.

At the same time, some corpus delicti are designed as formal ones. Consequently, according to the disposition of § 324 «Pollution of water bodies», punishment is imposed on the one who illegally pollutes the water body or otherwise unfavorably changes its properties. In this standard, water bodies are considered both surface water resources and groundwater, and the sea. To apply the standard, there is no need to prove the damage to water bodies. It is enough to establish the fact of pollution of a water body in violation of the rules enshrined in other environmental laws, in particular the Water Resources Management Act, the Act

on the Procedure for Obtaining Permits for Discharge of Waste Water into Water Bodies. As noted in the specialized literature, the basis of responsibility is systematic (regular) pollution by wastewater [15].

The experience of criminalizing the hazardous environmental impact of noise and vibration in the European Union deserves attention. If liability for such acts in the Criminal Code of Spain is established by a general standard (Article 325), then the Criminal Code of Germany contains a separate standard – § 325a «Causing Noise, Vibrations and Non-ionizing Radiation». Responsibility is borne by the person who, during the operation of the installation, especially the production unit or machine, violating administrative and legal obligations, creates noise that can harm the health of another person in the area adjacent to the installation.

A similar standard is contained in the Austrian Criminal Code (§ 181a «Severe injury caused by noise generation») [1].

It should be noted that in the Ukrainian criminal legislation there are no analogies to these standards.

The attitude to the criminalization of negligent environmental crimes is significantly different from the Ukrainian legislation. In the Criminal Code of Ukraine, criminal law standards of this category are built on the principle of parification (equalization, comparison) of intent and negligence, which reflects the conceptual approach of domestic legislation on which the theory of responsibility for intentional and negligent crimes is mainly built. According to this principle, the legislation does not contain special provisions on limiting liability for acts committed through negligence, and it itself is fundamentally permissible without special instructions in the law (excluding, of course, cases when this crime cannot be committed by negligence) [14].

At the same time, the Criminal Code of Spain contains a standard (Article 12), according to which actions or omissions committed through negligence are punished only in cases specially provided for by law. The meaning of § 15 of the Criminal Code of the Federal Republic of Germany is similar, where it is noted that only intentional activity is punished if the law does not explicitly provide for negligent action punishment. In section 29 of the Criminal Code of Germany, negligence is highlighted in a separate part of each article, and the punishment for it is less severe (p. 3 § 324, cl. 2 p. 1 § 324A, p. 3 § 325, p. 3 § 325a, p. 5 § 326, p. 3 § 327, p. 5 § 328, p. 4 § 329).

Criminal law sanctions of section 29 of the Criminal Code of the Federal Republic of Germany, as a rule, provide for punishment in the form of imprisonment for up to five years, and for negligent crimes – up to three years. In accordance with § 330, the punishment is increased for especially grave intentional encroachments on nature – up to ten years in prison. If intentional pollution of nature has resulted in the death of a person, then the punishment will be up to 10 years in prison (cl. *2* p. 4 § 330).

In addition to section 29, criminal law standards of an environmental nature are also contained in other chapters of the Criminal Code of the Federal Republic of Germany. Thus, § 292 «Poaching» and § 293 «Fish poaching» are placed in section 25 «Acquisitive crimes». These standards punish the violation of someone else's right to hunt or fish. In addition, § 294 establishes the possibility of criminal prosecution of persons who have committed unqualified types of poaching attacks, only at the request of the victim, if it was committed by a relative or in the area where the person had the right to hunt or fish in a limited amount.

Also, the content of paragraph 2 of § 292 draws attention to the list of circumstances aggravating the punishment. One of them is the commission of the acts provided for in paragraph 1

of § 292, in the form of business or regularly.

As in the Criminal Code of Spain, offenses related to radioactive and ionizing radiation are removed from section 29 (§§ 307,309-312). These articles establish responsibility for the creation of an explosion hazard when using nuclear energy, the manufacture of a nuclear technical installation with the admission of error, abuse, release of ionizing radiation and are placed in section 28 «Generally Dangerous Criminal Acts». At the same time, section 29 includes standards that provide for liability for illegal operation of structures (nuclear technical installation) – § 327, as well as illegal handling of radioactive substances and other hazardous substances and resources – § 328. In the Austrian Criminal Code, along with other environmental standards, there are standards that establish responsibility for crimes in the field of nuclear and radiation safety, they are located in the section «Generally Dangerous Criminal Acts and Criminal Acts against the Environment».

In addition to analyzing the relevant provisions of national legislation, it is worth paying attention to model criminal law standards as a factor leading to the unification and universalization of the criminal legislation of the EU countries in the field of environmental protection. As can be seen from the above, among the treaties providing for the adoption of model standards as a tool for the coordination and approximation of national legislation, the EU Council Framework Decision 2003/80/JHA dated January 27, 2003 «On the Protection of the Environment through Criminal Law», which was adopted taking into account the Convention of the Council of Europe dated November 04, 1998 «On the Protection of Environment through Criminal Law».

As is well known, the EU framework decisions are adopted with the aim of convergence of legislative and regulatory provisions established by the member states as instruments for the harmonization of criminal law and related sectors. An important advantage of such standards is that they are designed for advanced regulation, because they regulate issues that are not fully developed in national legislation. Therefore, model standards can be used not only to unify national legislation, but also to improve it. As global standards or tools for their creation, model standards help to identify deformations of the current national legislation, as well as create a means of counteracting the influence of conservative and short-term factors.

In this context, the EU Council Framework Decision «On the Protection of the Environment through Criminal Law» defines the following premeditated crimes:

—release, emission or distribution of large quantities of substances or ionizing radiation into the air, soil or water that has caused death or serious harm to human health;

—unlawful release, emission or distribution of large quantities of substances or ionizing radiation into the air, soil or water, which caused their significant deterioration or created conditions for such deterioration, or caused death or serious harm to human health or protected objects (including cultural monuments), property, animals or plants;

—illegal disposal, processing, storage, transportation, export or import of waste, which caused death or serious harm to human health or significant damage to the state of air, soil, water, fauna or flora;

—unlawful commissioning of factories carrying out hazardous activities, regardless of their commissioning, causes or creates a threat of death or serious harm to human health or significant damage to the state of air, soil, water, fauna or flora;

—unlawful production, processing, storage, use, transportation, export or import of degradable or other hazardous radioactive substances, which has

cause or is capable of causing death or serious harm to human health or significant damage to the state of air, soil, water, fauna or flora;

—unlawful retention, capture, harm, killing or trade in species of wild flora and fauna or their part, protected by national law in order to prevent their extinction;

—illegal trade in ozone-destroying substances.

Article 3 of the Decision imposes on the state the obligation to recognize as crimes the same acts committed by negligence.

Another step towards improving criminal law standards at the level of the EU and its member states was made thanks to the adoption of the Directive of the European Parliament and of the Council dated November 19, 2008 «On the Protection of the Environment through Criminal Law». Member states have committed themselves to a number of changes to their national legislation. These changes concern the criminal liability of legal entities, liability for incitement and aiding, the introduction of new offenses (including for trade in specimens of protected species of flora and fauna, their parts and products, behavior that leads to the destruction of natural habitats in protected areas, production, import, export, introduction or use of substances that destroy the ozone layer) and clarification of already existing penal prohibitions concerning the handling of waste, hazardous substances, etc. [6].

At the same time, preambular paragraph 12 of the Directive indicates that it provides for minimum rules and that member states are free to adopt and maintain stricter rules regarding effective criminal law environmental protection (for example, the design of the compositions of the relevant standards not as material, but as formal, or as torts of danger).

In the Criminal Code of the Republic of Lithuania, in a separate section 38 «Crimes against the environment and human health», the group of environmental crimes includes «Violation of the rules for the protection of the environment or the use of natural resources, as well as the maintenance or use of structures containing hazardous materials or potentially dangerous equipment or potentially hazardous work» (Article 270), «Unlawful Possession of Ozone-Depleting Substances and Mixtures Thereof» (Article 271-1), «Unlawful Transportation of Waste across the State Border» (Article 270-2), «Marine Pollution from Ships» (Article 270-3), «Destruction or Devastation of Protected Areas or Objects of Natural Heritage»(Article 271), «Unlawful Hunting or Fishing or Other Use of Wild Fauna Resources» (Article 272), «Unauthorised Forest Logging or Destruction of Marshes» (Article 273), «Unlawful Picking, Destruction, Handling or Other Possession of Protected Wild Flora, Fungi or Parts Thereof» (Article 274) [13].

It is interesting to note that the content of Section 38 of the Criminal Code of the Republic of Lithuania includes crimes that harm human health due to violation of the regime not only for the use of natural resources, but also in the case of criminal encroachment on the procedure for the circulation of chemicals, the circulation of food, pharmaceutical products, doping substances. In addition, the components of environmental protection include liability for «Infringement of Provisions of Legal Acts Regulating Construction» (Article 271-1) [13].

The criminal law legislation of the Republic of Lithuania contains such a system of punishments for individuals defined in section 7: community service, restriction of freedom, arrest, imprisonment, life imprisonment. A separate system of penalties is provided for legal entities, which include a fine; restriction of operation of the legal entity; liquidation of a legal entity. The decision on the application of measures of criminal liability to legal entities is announced through the media (Article 43 of the

Criminal Code of the Republic of Lithuania) (Lietuvos Respublikos baudžiamasis kodeksas. 2020). It is noted that only one penalty may be imposed upon a legal entity for one criminal act (part 3 of Article 43 of the Criminal Code of the Republic of Lithuania) [3]. The system of penalties, which is most often used for committing crimes against environmental protection in the Republic of Lithuania, includes a fine, community service, restriction of freedom, imprisonment.

A fine is understood (according to Article 47 of the Criminal Code of the Republic of Lithuania) [3] as a pecuniary penalty imposed by a court in the cases provided for in the Special Part of this Code. A fine shall be calculated in the amounts of minimum standard of living. The minimum and maximum limit of fines is not foreseen directly by the sanction of the article of the norm of the special part of the Criminal Code of the Republic of Lithuania.

Where a person does not possess sufficient funds to pay a fine, the court may subject to the convict's consent, replace this penalty with community service. Where a person evades voluntary payment of a fine, it may be replaced by imprisonment in the appropriate ratio, determined by Articles 48 and 65 of the Criminal Code of the Republic of Lithuania [3].

The current criminal law of the Republic of Lithuania determines that dispositions of crimes against environmental protection can be applied not only to individuals, but also to legal entities. For example, in accordance with part 5 of Article 272 of the Criminal Code of the Republic of Lithuania, it is determined that liability for illegal hunting or fishing or other illegal use of wildlife resources can also be applied to legal entities.

According to the Criminal Code of the Republic of Lithuania, the severity of the crime is determined depending on the possible term for the application of the restriction or imprisonment. In particular, in accordance with Article 11 of the Criminal Code of the Republic of Lithuania, it is determined that if the sanction of the article of the criminal law provides for the sanction of a term of restriction of freedom of up to six months, then such a crime is classified as a crime of minor gravity. The overwhelming majority of environmental crimes are crimes of average gravity of public danger.

Consequently, among the features of criminal law regulation in the field of environmental protection in the Republic of Lithuania should be attributed the possibility of applying criminal liability measures to legal entities; granting the court the right to choose the size of the penalty at its own discretion, taking into account the classification of crimes and criminal offenses defined by the legislation; referring to the generic object of understanding the environment not only the use of natural resources, but also the anthropogenic urban environment; the allocation of criminal offenses in the system of unlawful socially dangerous acts; the dominance of penalties in the system of criminal penalties for environmental crimes, in the event of an individual's insolvency, such penalties can be replaced by community service or restraint of freedom.

The Criminal Code of the Republic of Kazakhstan contains 19 corpus delicti in the field of environmental protection. In such a way, according to the criminal law legislation, it is determined that the measures of criminal law are applied for «Violation of environmental requirements to the economic or other activity» (Article 324), «Violation of environmental requirements upon handling with environmentally potentially dangerous chemical or biological substances» (Article 325), «Violation of environmental requirements upon handling with microbiological or other biological agents or toxins» (Article 326), «Violation of veterinary rules or rules, established for disease control and plant pests» (Article 327),

«Pollution, clogging or depletion of waters» (Article 328), «Pollution of the atmosphere» (Article 329), «Pollution of the marine environment» (Article 330), «Violation of the legislation on continental shelf of the Republic of Kazakhstan and exclusive economic zone of the Republic of Kazakhstan» (Article 331), «Spoilage of land» (Article 332), «Violation of rules of protection and use of subsoil» (Article 333), «Unauthorized subsoil use» (Article 334), «Illegal extraction of fish resources, other aquatic animals or plants» (Article 335), «Violation of the rules for the protection of the animal world» (Article 336), «Violation of rules of protection of fishery resources» (Article 337), «Illegal hunting» (Article 338), «Violation of rules of protection of animal life» (Article 339), «Illegal handling with rare and endangered, as well prohibited to use the species of plants or animals, their parts or derivatives» (Article 340), «Destruction or damaging of forests» (Article 341), «Violation of the regime of specially protected natural sites» (Article 342), «Failure to take measures on elimination of the consequences of environmental pollution» (Article 343) [4].

It should be emphasized that in accordance with the current legislation of the Republic of Kazakhstan, the classification of socially dangerous acts into criminal offenses and criminal infractions is provided. The implementation of criminal law measures for committing criminal offenses provides for the application of one of these types of criminal legal sanctions: a fine, corrective labors, assignment to community service, arrest [4].

For the commission of criminal offenses and criminal infractions, in accordance with Article 41 of the Criminal Code of the Republic of Kazakhstan, the possibility of applying such types of criminal-legal penalties is determined: confiscation of property, deprivation of special, military or honorary title, class rank, diplomatic rank, qualified class and the state awards; deprivation of right to hold specific position or engage in defined activity; deportation outside of the Republic of Kazakhstan of the foreigner or stateless person [4].

Most often, penalties are applied for the commission of environmental crimes and infractions in accordance with the current legislation of the Republic of Kazakhstan. The amount of penalties in the studied country is determined in monthly calculation indices. The size of the monthly calculation index is revised once every two years and is determined by the relevant law on the state budget of the Republic of Kazakhstan. In particular, the size of the monthly calculated indicator for 2019-2021 in accordance with the Law of the Republic of Kazakhstan «On the Republican Budget» for the corresponding period is 2525 tenge, which is about 6 dollars in equivalent to the US dollar. For example, the maximum amount of the penalty for illegal hunting (part 1 of Article 337 of the Criminal Code of the Republic of Kazakhstan) is set up to 160 monthly calculation indices (that is, up to about 1000 US dollars), repeated committing of this crime is punishable by a fine of 160 to 200 monthly calculated indices. That is, from 1000 to 1290 US dollars.

The term of deprivation of the right to hold certain positions is applied up to one year, two years, three years, five years.

Community service is applied for up to 180 hours, up to 240 hours, up to 300 hours. The approach to the calculation of corrective labors is unique, which consists in determining not in a temporary sense, but in relation to monthly calculated indicators. The amount of corrective labors corresponds to the size of the fine, which is an alternative sanction for performing corrective labors. In fact, corrective labors is a way of paying an amount equivalent to the amount of the fine. Arrests are applied for up to 60 days, up to 75 days, up to 90 days. Restrictions of freedom are applied for up to

five years. Imprisonment is applied for up to 7 years. The maximum term of imprisonment is applied in the event of the onset of especially grave consequences of the commission of an environmental crime – death of a person, death of animals [4].

It is worth paying attention to the experience of applying criminal sanctions for committing environmental crimes in certain countries of Western and Eastern Europe, members of the European Union, in particular, the Republic of Poland.

The Criminal Code of the Republic of Poland of June 06, 1997 (Criminal code of the Republic of Poland, 1997), which contains a separate Chapter XXII «Offences against the Environment», which establishes responsibility for the following crimes: «Destruction or damage of plant or animal life» (Article 181), «Air pollution» (Article 182), «Violation of the rules for transportation, storage, disposal of waste» (Article 183), «Violation of the mode of use, storage, transportation and others forms of operation of nuclear power facilities and ionizing substances» (Article 184), «Failure to take measures to ensure environmental safety requirements for the operation of natural objects, as well as violation of environmental safety in the implementation of urban planning activities» (Article 186), «Damage or destruction of a protected natural area (deliberately or through negligence)» (Article 187), «Construction real estate object in violation of the requirements of landscape, spatial criteria for environmental protection» (Article 188).

The corpus delicti provided for by Article 185 of the Criminal Code of the Republic of Poland is highlighted, which provides for the qualifying elements of the corpus delicti defined by Articles 182 and 183, which include a significant amount of environmental damage, as well as a significant amount of damage to human life and health, and causing death of a person or other serious bodily harm to human health [5].

Consequently, the generic object of environmental crimes in accordance with the criminal law of the Republic of Poland is the protection of the natural and anthropogenic environment. It should be emphasized that violations of the landscape and spatial criteria for ensuring environmental protection stand out among the direct objects of criminal encroachments (Article 188) [5].

Speaking from the perspective of establishing the objective side of environmental crimes, it should be understood as a violation of certain standards of environmental safety. The qualifying signs of environmental crimes in accordance with the legislation of the Republic of Poland include the creation of a threat to human life and health, human death, grievous bodily harm, mass death of animals, destruction of plants over a large area.

Criminal liability for committing environmental crimes can be applied to persons who have reached the age of 17, the age of criminal responsibility (clause 1 of Article 10 of the Criminal Code of the Republic of Poland) [5]. The amount of criminal penalties for committing environmental crimes depends on the form of guilt of the perpetrator – deliberate or negligent.

According to official statistical reports, the most common are the offenses provided for in Articles 181, 182, 183 of the Criminal Code of the Republic of Poland [3].

The system of punishments defined in Sections IV, V of the Criminal Code of the Republic of Poland consists of basic punishments (fine, restriction of liberty, imprisonment, 25-year imprisonment, life imprisonment) (Article 34) and additional punishments (deprivation of public rights; interdiction preventing the occupation of specific posts, the exercise of specific professions or to engage in specific economic activities; disqualification from activities involving raising, treating and educating minors, and taking care of

them; a prohibition on being in certain communities and locations, a prohibition on contacting certain individuals or on leaving a specific place of residence without the court's consent; a prohibition on participation in mass events; a ban on entering gaming centres or participating in games of chance; an order to leave premises jointly occupied with the aggrieved party; disqualification from driving; monetary compensation for damage caused; notification of it through the media (Article 39) [5].

The system of punishments that can be applied for committing environmental crimes include a fine, restriction of freedom, and imprisonment. For certain crimes, imprisonment for a period of up to 12 years (Article 185 of the Criminal Code of the Republic of Poland) can be applied – in the case of an environmental crime, as a result of which the death of a person was caused.

The amount of the fine is determined by the court depending on the severity of the consequences of the crime, the form of the offender's guilt and other significant factual circumstances of the criminal case. Fines are imposed in terms of daily units, setting out the amount of a unit and the number of daily units to be charged; the lowest number of daily units is 10, and the highest is 540. The imposition of a fine can be combined with the imposition of imprisonment (Article 33 of the Criminal Code of the Republic of Poland) [5].

Conclusion

1. The analysis of the legislative practices of criminal legal environmental protection in some countries of the European Union was based on a study of the standards that determine responsibility for committing environmental crimes in the national legislation of Spain, the Federal Republic of Germany and Austria, as well as model criminal law standards of the European Union. The rather-legal analysis carried out in the paper makes it possible to assume that the process of improving the relevant standards of domestic legislation, including through the criminalization of new socially dangerous encroachments on the environment, will not be limited.

2. A comparative study of the system of criminal penalties for environmental crimes in individual countries indicates the absence of common approaches to its unification and practical application. Attention should be paid to the attempts of individual countries (the Republic of Poland, the Republic of Lithuania) to determine the criteria for the correlation of main and additional punishments, to establish criteria for the equivalent application of sanctions related to isolation and without isolation, and also to expand the boundaries of judicial review in the field of setting the degree and type of measures of criminal liability, depending on the factual and legal circumstances of the criminal case. It is worth to remark that the introduction of mechanisms for bringing to justice for committing environmental crimes should be attributed to the peculiarities of the application of measures of criminal law.

An analysis of the ecological situation in Ukraine indicates that the crisis developments that have been observed in the field of environmental protection in recent decades, not only have not been overcome, but are also aggravated in spite of the action taken. An increasing danger in connection with the environmental crisis is posed by crimes that cause significant harm to the environment, destabilizing the already tense environmental situation.

The most important tasks that should be identified in this context include the development of areas of environment criminal law protection. In order to effectively improve modern Ukrainian criminal legislation, which regulates responsibility in the field of environmental protection, it is necessary to constantly monitor and conduct a comparative analysis of environmental protection foreign legislation.

In the current context, the international community and individual states in connection with the deterioration of the world ecology condition are changing their attitude towards environmental protection. This is manifested primarily in the search for the most effective legal instruments, the use of which would help to optimize the prevention of criminal manifestations in the field of environmental safety.

Responsibility for criminal offenses is provided in accordance with the legislation of most countries of the world, including the countries of the European Union, the United States of America, countries of the post-Soviet territory. It is criminal liability as the most severe type of legal liability that is determined by its most effective manifestation (Kremer, 2004.).

In the prevention of environmental crime, criminal sanctions as a means of influencing the violator are essential. However, now, the world community does not have a unified approach to assessing the degree of public danger of the investigated acts. This is due to several factors: legal traditions, the degree of importance of a particular natural resource for the state, and the like. However, within the framework of one legal system, certain tendencies are observed towards determining the unity of the implementation of the state policy of preventing environmental crime.

Taking into account Ukraine's belonging to the Romano-Germanic law system, as well as taking into account the desire to gain membership in the European Union, we can conclude that comparative studies of the experience of legal regulation of criminal sanctions for environmental crimes will have the greatest legal efficiency.

The purpose of the research is to reveal international practices, criminal law protection and the system of punishments for environmental crimes in the field of environmental protection.

Key words: administrative and legal regulation environmental protection, environmental policy, environmental protection, international practices, pollution control.

Тильчик В., Легеза Є. Зарубіжний досвід та удосконалення адміністративно-правових засад охорони навколишнього середовища

Метою дослідження є виявлення міжнародної практики, кримінально-правової охорони та системи покарань за екологічні злочини у сфері охорони навколишнього природного середовища.

Аналіз екологічної ситуації в Україні свідчить про те, що кризові явища, які спостерігаються у сфері охорони навколишнього природного середовища протягом останніх десятиліть, не тільки не подолані, а й загострюються, незважаючи на вжиті заходи. Все більшу небезпеку у зв'язку з екологічною кризою становлять злочини, які завдають значної шкоди навколишньому середовищу, дестабілізуючи і без того напружену екологічну ситуацію.

До найважливіших завдань, які слід виділити в цьому контексті, можна віднести розвиток напрямків кримінально-правової охорони довкілля. Для ефективного удосконалення сучасного українського кримінального законодавства, яке регулює відповідальність у сфері охорони навколишнього природного середовища, необхідний постійний моніторинг та проведення порівняльного аналізу природоохоронного законодавства іноземних держав.

У нинішньому контексті міжнародне співтовариство та окремі держави у зв'язку з погіршенням світового екологічного стану змінюють своє ставлення до охорони навколишнього середовища. Це проявляється насамперед у пошуку

найбільш ефективних правових інструментів, використання яких сприяло б оптимізації запобігання злочинним проявам у сфері екологічної безпеки.

У профілактиці екологічних злочинів суттєве значення має кримінальна відповідальність як засіб впливу на порушника. Однак наразі світова спільнота не має єдиного підходу до оцінки ступеня суспільної небезпеки розслідуваних діянь. Це зумовлено кількома факторами: правовими традиціями, ступенем важливості того чи іншого природного ресурсу для держави тощо. Проте в рамках однієї правової системи спостерігаються певні тенденції щодо визначення єдності реалізації державної політики запобігання екологічній злочинності.

Враховуючи приналежність України до романо-германської системи права, а також враховуючи прагнення стати членом Європейського Союзу, можна зробити висновок, що порівняльні дослідження досвіду правового регулювання кримінально-правових санкцій за екологічні злочини матимуть важливе значення. найбільша юридична ефективність. Висновки. Встановлено відсутність розроблених єдиних підходів до її уніфікації та практичного застосування в країнах Європи та Азії. Акцентовано увагу на спробі окремих країн (Польська Республіка, Литовська Республіка) визначити критерії співвідношення основних і додаткових покарань, встановити критерії рівноцінного застосування санкцій, пов'язаних із ізоляцією та без ізоляції, та також розширити межі судового розгляду у сфері встановлення ступеня та виду заходів кримінальної відповідальності залежно від фактичних та юридичних обставин кримінальної справи.

Ключові слова: адміністративно-правове регулювання охорони навколишнього середовища, екологічна політика, охорона навколишнього середовища, міжнародний досвід, контроль забруднення.

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