

DOI <https://doi.org/10.61345/2734-8873.2024.2.7>

CRIMINOLOGY SIGNIFICANT SIGNS OF CRIMINAL OFFENSES RELATED TO THE ILLEGAL USE OF MINERALS

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Annotation. This scientific article is aimed at clarifying the criminologically significant signs of criminal offenses related to the illegal use of minerals (Articles 240, 240¹ of the Criminal Code of Ukraine). It is noted that the complex geopolitical and economic situation, the imperfection of legislation and other factors lead to an increase in the number of cases of illegal amber mining in Ukraine. This indicates that the specified problem needs to be solved in a theoretical and practical aspect. It was concluded that the criminological characteristics of criminal offenses related to the illegal use of minerals should be considered as an information model that displays typical features, that is, those inherent in such an array of criminal offenses, and specific ones that allow them to be separated from other groups illegal acts. Among the main characteristics of criminal offenses related to the illegal use of minerals, the following criminologically significant signs of a criminal offense are singled out: data on preparation for the commission and concealment of a criminal offense; typical techniques; time, place and circumstances of the commission; the subject of criminal encroachment; tools, means, data about the identity of the criminal, the motive and purpose of committing the criminal offense; typical traces of a criminal offense. All methods of illegal mineral extraction are divided into two groups: open method; underground way. The most common method of spontaneous extraction is hydromechanical. The subject of criminal offenses related to the illegal use of minerals can be the subsoil and minerals of national significance (except for common ones). The place of illegal extraction of minerals depends on their location, and the situation is often determined by weather conditions, the specifics of the activity of controlling bodies, and the organization of the work of individual services. The main sources and carriers of traces of committed criminal offenses are people and things. Special devices have been identified as tools for illegal amber mining. The subjects of such illegal actions can be persons both related and unrelated by nature of their professional occupations to amber mining. The usually group method of committing criminal offenses is indicated.

Key words: environment, criminal offenses, minerals, underground, amber, criminological signs.

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Formulation of the problem. The strategy of economic development of any state requires increased attention to the process of accumulation of mineral resources, which involves subsoil use. It is about the mining and processing of metallic, non-metallic and combustible minerals, among which the development of deposits of precious stones is of great importance, in particular raw amber, which, according to the legislation of Ukraine, is included in the category of jewelry raw materials. Commercialization of this field of activity is often accompanied by illegal actions that cause significant damage not only to the state's economy, but also to environmental safety.

It is known that among the crimes against the environment are illegal extraction of minerals of national importance and illegal handling of amber, which are covered by the composition of crimes provided for in Art. Art. 240, 240¹ of the Criminal Code of Ukraine, occupy a special place.

The problems of environmental protection and rational nature management have recently become particularly relevant, since insufficient attention to these problems can have catastrophic consequences [1, p. 14]. The issue of illegal extraction, sale, purchase, transfer, forwarding, transportation, processing of amber is urgent and needs to be solved as soon as possible. As a result of such activities of the prospectors, irreparable damage is caused to the soil (nutrients are washed away and a swampy area is formed on which plants do not grow), to water (in order to ensure the availability of water for hydropumps, the prospectors break through canals, change the course of rivers, which leads to their drying up and disappearance), the health of the diggers themselves (a long stay in cold, wet pits contributes to the development of many diseases, which can lead to a demographic catastrophe in Polissia) [2, p. 106].

Therefore, scientific studies devoted to criminologically significant features of criminal offenses related to the illegal use of minerals are distinguished by their relevance and importance.

The state of development of this problem. Criminal law and criminological studies conducted by such scientists as S.B. Havrysh, O.O. Dudorov, M.V. Komarnytskyi, V.K. Matviychuk, I.I. Mitrofanov, Yu.A. Turlova, V.V. Shablystiy, A.M. Shulga, M.I. Havronyuk et al.

The state and logic of previous scientific research, modern investigative practice, the requirements of the Constitution of Ukraine, the Criminal Procedure Code of Ukraine and international legal acts require new approaches to ensuring a high-quality and rapid investigation of criminal offenses, which is impossible without an analysis of the objective signs of illegal acts provided for in Art. Art. 240, 240¹ of the Criminal Code of Ukraine.

The problems of environmental protection and control over the rational use of minerals have become relevant in recent times for the effective protection of the Ukrainian people's constitutional right to ownership of natural resources. Despite the considerable scientific development in this direction, as before, many aspects of the investigated problem disrupt scientific discussions and cause difficulties in practice.

The purpose of the article is to clarify the criminologically significant signs of criminal offenses related to the illegal use of minerals.

Presenting main material. For success in the investigation of criminal offenses provided for by Art. Art. 240, 240¹ of the Criminal Code of Ukraine, investigators, prosecutors need, among other things, a detailed criminological description of the specified illegal acts. Knowledge of such characteristics is necessary for the organization of fast, comprehensive and objective proceedings. Their main purpose is to inform the investigator with information about features typical for a certain type or group of criminal offenses.

We support the position of A.F. Zelinsky, that the criminological characteristics of crimes are a set of statistically significant indicators of criminality (crimes) and the personality of criminals, which reflect their quantitative and structural state, as well as the degree of their social danger [3, p. 24].

Among the main characteristics of criminal offenses related to the illegal use of minerals, it is necessary to single out the following criminologically significant signs of a criminal offense: data on preparation for the commission and concealment of a criminal offense; typical techniques; time, place and circumstances of the commission; the subject of criminal encroachment; tools, means, data about the identity of the criminal, the motive and purpose of committing the criminal offense; typical traces of a criminal offense.

Preparation for illegal mining includes active actions aimed at ensuring the possibility of carrying out the intended crime. First of all, these are the following actions: determination of the subject of the criminal offense; selection of the place of commission of a criminal offense; selection of accomplices and definition of their roles; selection of tools for committing a criminal offense and checking their technical readiness; bribery of controlling and law enforcement agencies, representatives of local authorities. Concealment of such criminal acts most often consists in hiding or destroying the tools and means of committing a criminal offense, the object of the offense, the products of its processing; in the elimination of traces that testify to the fact of the commission of a crime (disguising the territories where amber was illegally mined in raw materials, using the topography of the area and other natural and artificial shelters); committing a criminal offense at night, in a hard-to-reach area; preparation of an alibi; sales of mined minerals, etc. The sale of illegally mined amber is carried out by way of sale or other paid transfer to “random” buyers in small lots, or to individuals on order (implies one-time sale in large quantities or sale in small lots over a long period of time).

As one of the elements of criminological characteristics, the method of committing the crime is related to the subject of the criminal offense, time, place, circumstances of the crime, the person of the criminal and is reflected in the mechanism of trace formation.

The method of committing a crime is a complex structure that reflects legal, criminal procedural and forensic aspects.

Illegal extraction of minerals of state importance is their extraction without an appropriate permit (without an act of granting a mining concession or

with a deviation from the conditions specified in this document) [4, p. 726]. For example, mining outside the designated subsoil area or using methods and means of mineral extraction that are not permitted for such a deposit.

All ways of committing a violation of the established rules of subsoil protection are divided into two large groups: illegal open mining of minerals; illegal mining of minerals underground. As for the extraction of minerals (amber in raw materials), in almost all cases, criminals extract it in an open way. An open method of illegal mineral extraction consists in extracting them from the upper layers of the deposit.

Depending on the equipment, the method of illegal amber mining can be simple or complex. A simple way is when criminals extract amber from deposits using the simplest tools: picks, shovels, winches, etc. A complex method of amber extraction consists in extracting it from deposits using complex mechanisms, including technological installations (specially mounted compressor, water pump), special equipment (excavators, bulldozers, etc.).

Mining methods can be classified into three groups: 1) mechanical; 2) hydraulic; 3) hydromechanical.

The most common method of spontaneous mining is hydromechanical. This method leads to impoverishment and deterioration of deposits, causes negative ecological consequences, and also leads to a decrease in the conditional content of graded amber in the amber-bearing layer, which, in turn, causes the loss of the industrial value of these deposits.

The outlined method of illegal extraction is that the criminals lower the fire hoses of the pump into a channel with water or a pond. Water is supplied under high pressure, which washes the ground to a depth of 6-9 meters. Amber is lighter than water, so it floats to the surface. It is caught with a net or net. They take only what is of value to the jewelers, and leave the rest. If the water turns white, it means that the clay that lies under the deposits of amber has been reached. The density of amber deposits is uneven, from 5–10 to 150 grams per cubic meter of rock. Criminals do not cover the pits after such procedures, they are quickly filled with groundwater.

The subject of illegal encroachment is interconnected with the method and circumstances of committing a criminal offense.

According to the current legislation, the subject of the criminal offense provided for in Art. 240 of the Criminal Code of Ukraine, may be subsoil and minerals of national significance (except for common ones).

The subject of the criminal offense provided for in Art. 240¹ of the Criminal Code of Ukraine, there is amber. According to the Resolution of the Cabinet of Ministers of Ukraine dated December 12, 1994 No. 827 “On approval of lists of minerals of national and local importance”, amber is a type of non-metallic minerals of national importance, namely, jewelry raw materials (precious stones) [5].

The subsoil is a part of the earth’s crust that is located below the surface of the land and the bottom of reservoirs and extends to the depths available for geological study and development (Article 1 of the Code of Ukraine on Subsoil) [6].

By value, minerals are divided into minerals of national and local importance, which are classified as minerals of national and local importance by the Cabinet of Ministers of Ukraine at the request of the central body of executive power, which ensures the formation of state policy in the field of environmental protection (Article 6 of the Code of Ukraine about the subsoil) [6].

The problem related to the subject of illegal extraction, sale, acquisition, transfer, forwarding, transportation, processing of amber is that in Part 1 of Art. 240¹ of the Criminal Code of Ukraine, the legislator did not specify how many persons must extract useful minerals in the form of amber in order for their actions to be recognized as a crime. This means that formally under the elements of the crime described in Part 1 of Art. 240¹ of the Criminal Code, the extraction of 10 grams of amber is also covered.

On the territory of Ukraine, there are a number of enterprises that develop amber deposits on the basis of a special permit for the use of subsoil. Extraction of minerals involves the removal of minerals from deposits by any means (pumping, construction of mines, quarries, etc.).

Illegal extraction, which is a mandatory condition for the recognition of a person's actions as criminal, means that the extraction of minerals is carried out without a properly issued permit - an act of granting a mining concession or with a deviation from the conditions specified in this document (for example, mining outside the allocated areas of the subsoil or with the use of methods and means of mineral extraction that are not permitted for this deposit). A crime will also occur if the permit is forged or expired.

Territories where unauthorized mining takes place are assigned to official nature users (forestry enterprises), subsoil users (mineral extraction and processing enterprises), land users (agricultural enterprises), who, according to nature protection and land legislation, are responsible for the use of these lands for purpose or are located on the reserve lands of village and settlement councils, under the competence of which, in accordance with Clause 4 of Art. 10 of the Code of Ukraine on Subsoil, includes the implementation of control over the use and protection of subsoil on their territory [6].

The scene of the crime, as well as the situation, is an extremely important source of information, because it contains a large number of traces and physical evidence that determine the direction of the investigation and the presentation of investigative versions.

The place of illegal extraction of minerals depends on their location. When choosing the place of committing a criminal offense, criminals take into account the following factors: the location of the plot in places where it is difficult for the control bodies to reach (forests, plantations, swampy areas); occurrence of amber at a slight depth; in conditions easily accessible for extraction, spreading far beyond the boundaries of explored deposits and areas provided for use; preference is given to areas explored by geologists.

Often, the place where a criminal offense was committed depends on how exactly it will be used. Hydraulic and hydromechanical methods require the presence of significant water reserves relatively close to the site (pond, river, drainage or melioration channel).

The time of committing the criminal offense provided for in Part 1 of Art. 240 of the Criminal Code of Ukraine depends on a number of factors: directly on the process of illegal mining and on the activities of control bodies. Usually, illegal mining takes place in the warm season, at night. The circumstances of committing illegal mining are often determined by weather conditions, the specifics of the activities of control bodies, the organization of the work of individual services, in particular their shortcomings, as well as the time and place of the commission of the analyzed crime.

Tools for illegal amber mining can be household tools: crowbar, shovel, pickaxe, saw, hammer, as well as special devices: electric pumps, transfer pumping stations, for the purpose of connecting which to electric current, portable diesel or gasoline generators are used; water motor pumps of factory or home-made production, intended for supplying water under pressure, and equipment for them.

Means used by criminals: heavy vehicles, cars and trucks, motorcycles (often, instead of a stroller, a motor pump is installed in a tricycle, consisting of an engine from a Volkswagen or Mercedes car and fire hoses), lighting equipment, night vision devices, binoculars, means of communication, other technical means. In some cases, criminals may have weapons with them.

The person of the criminal is a very important object of criminological research. The person of the criminal is characterized by physical, socio-demographic and other data.

Subjects of illegal actions provided for in Art. Art. 240, 240¹ of the Criminal Code of Ukraine, there may be persons both related and not related by the nature of their professional activities to amber extraction (individual citizens, private entrepreneurs, ordinary employees of mining and other enterprises).

As for the sex of the criminal, it should be emphasized that in most cases, physical force must be used for the illegal extraction of amber, so it is logical that almost 90% of such criminal offenses are committed by men. Women and minors are often involved in reporting the approach of law enforcement or enforcement officers.

It should be noted that the specified criminal offenses are often committed by a group of persons. This is primarily due to the great danger involved in amber mining. There are cases of landslides and landslides, people who are at the bottom of the "pit" are buried. Also, the presence of several people is due to the technological process of illegal mining. So, for example, two people carry a motor pump from pit to pit, others fish amber with dippers, wash it. Several people, often with walkie-talkies and binoculars, are involved to notify the approaching control services.

People who extract amber should be divided into two groups. The first, most dangerous, group includes persons whose target orientation is amber extraction on an industrial scale. It can be both local residents and visitors. To identify traits that have forensic significance, it is necessary to pay attention to the level of criminal experience and professionalism of members of such a group, their position in the group structure. Such groups are dominated by men aged 20 to 40, unemployed, with incomplete secondary and secondary

education. Organized criminal groups can be formed on the basis of such groups. Such criminal groups are characterized by such features as relatively small numbers, narrow specialization and a local-object zone of committing criminal offenses.

The second group includes the so-called situational amateur criminals. These are usually people with incomplete secondary education who do not have a permanent place of work or have been previously convicted of similar crimes. They lead a parasitic lifestyle, abuse alcoholic beverages. The main activity of the analyzed group of persons is mainly limited to collecting amber that remains on the surface of the soil after "professional diggers" or river banks, extracting it using primitive tools. In the future, they are sold to persons who buy amber. The majority of such criminals live in the settlement, not far from the places where the deposits are located.

At the same time, the analysis of the mechanism of illegal amber mining shows that among the participants, roles are often divided not only in relation to extraction, but also in relation to sales: some are involved in extraction, others look for buyers, still others sell directly, and the rest carry out its transportation. This also testifies to the organized nature of the commission of the specified criminal offenses.

People and things are the main sources of traces of committed criminal offenses. These traces allow us to form an idea about the method of commission, the object of the criminal offense, the personal qualities of the criminal or the members of the criminal group, reflect the situation in which the criminal offense was committed.

The presence of traces of specific persons at the location of the specified objects or on the objects themselves may indicate the involvement of a person in a criminal offense.

Footprints are formed at the scene of a criminal offense and are especially noticeable on soil areas of the area. The direction of movement to the place of illegal mining, its characteristic features, and the quantitative composition of persons can be determined by the footprints of shoes. The presence of accomplices is evidenced by the formation of other shoe traces in the shape and size, located at a short distance from each other and directed in the same direction.

Traces of transportation of tools of a criminal offense are formed both at the place of commission of the illegal act and outside its borders. These include traces of bicycle wheels, mass transport, vehicles, and wheelbarrows. In many cases, the criminal uses them to facilitate the transportation of heavy items. These traces make it possible to establish the model of the vehicle, identify it, determine the stopping place, direction and speed of movement;

According to the investigated criminal proceedings, the tools or means of criminal offenses included: shovel, pickaxe, crowbar, ax, saw, etc. Physical evidence (motor pumps, hoses), remains of fuel and lubricants were discovered.

Unfortunately, the scope of the article does not allow to investigate in more detail the criminologically significant signs of sales, acquisition,

transfer, forwarding, transportation and processing of amber, which requires a separate scientific analysis.

Conclusions. The complex geopolitical and economic situation, the imperfection of the legislation and other factors lead to an increase in the number of cases of illegal amber mining. This indicates that, in the theoretical and practical aspect, more attention should be paid to this problem.

The criminological characteristics of criminal offenses related to the illegal use of minerals should be considered as an information model that displays typical features, i.e. those inherent in such an array of criminal offenses, and specific ones that allow them to be separated from other groups of illegal acts. Among the main characteristics of criminal offenses related to the illegal use of minerals, the following criminologically significant signs of a criminal offense are singled out: data on preparation for the commission and concealment of a criminal offense; typical techniques; time, place and circumstances of the commission; the subject of criminal encroachment; tools, means, data on the identity of the criminal, the motive and purpose of committing the criminal offense; typical traces of a criminal offense.

References:

1. Virt A.O. (2021) Kryminalno-pravova protydiia zlochynam, poviazanym z nezakonnym vykorystanniam korysnykh kopalyn: dys. ... kand. yuryd. nauk: 12.00.08. Odesa. 225 s. [in Ukrainian]
2. Zhovneruk A. (2017) Nezakonnyi vydobutok burshtynu yak peredumova ekolohichnoi katastrofy. Pidpriemnytstvo, hospodarstvo i pravo. Ekolohichne pravo. URL: <http://pgp-journal.kiev.ua/archive/2017/11/22>
3. Zelinskyi A.F. (2000) Kryminolohiia : navch. posib. Kh. 239 s. [in Ukrainian]
4. Kryminalnyi kodeks Ukrainy: naukovo-praktychnyi komentar (2003) / Yu.V. Baulin, V. I. Borysov, S.B. Havrysh ta in.; za zah. red. V.V. Stashysa, V.Ya. Tatsiia. K.: In Yure. 1196 s. [in Ukrainian]
5. Perelik korysnykh kopalyn zahalnodержavnoho znachennia: Postanova Kabinetu Ministriv vid 12 hrudnia 1994 roku № 827. Zibrannia postanov Uriadu Ukrainy. 1995. № 2. St. 92.
6. Kodeks Ukrainy pro nadra: Zakon Ukrainy vid 27 lypnia 1994 roku № 132/94-VR. Vidomosti Verkhovnoi Rady Ukrainy. 1994. № 2. St. 36.
7. Saltevskyi M.V. (2001) Kryminalistyka: pidruchnyk: u 2 ch. Kh.: Konsum. Ch. 2. 528 s. [in Ukrainian]