

ORGANIZATIONAL AND LEGAL ASPECTS OF COMBATING CRIMES AGAINST THE ENVIRONMENT IN THE CONDITIONS OF WAR IN UKRAINE

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Annotation. The scientific article is devoted to the analysis of organizational and legal aspects of combating crimes against the environment in the conditions of war in Ukraine at the national and international legal levels. Arguments are presented regarding the relevance in the global, international dimension: criminalization of environmental damage at the level of the European Union and its member states; detailing the shortcomings of international legislation and revising the relevant directive on environmental crimes; creation of functioning of the International Registry of Losses. It was emphasized that the introduction of appropriate changes to international legislation will allow creating a comprehensive system of measures to combat environmental crime, ensure the unification of national legislative systems in terms of terminology, composition of crimes, as well as sanctions applied for their commission in armed conflicts. It was concluded that at the national level, it is necessary to take comprehensive measures to combat ecocide, develop a unified state policy in this area, establish an effective system for monitoring the state of the environment and fix the amount of damages, in particular, for the systematic presentation of legal claims for the payment of reparations. The national post-war recovery plan should include measures to restore and preserve ecosystems, in particular based on the analysis of regulatory legal acts in the field of environmental protection. It is justified that the ecological direction should include the development and implementation of a holistic, comprehensive plan for the ecological recovery of Ukraine from the consequences of the war. It is noted that the relevant mechanisms should be universal in nature and effectively prevent crimes against the environment in the world, be reflected in relevant resolutions of the UN General Assembly and other documents of the international law system.

Key words: crimes against the environment, criminal responsibility, countermeasures, ecocide, compensation for damage.

1. Formulation of the problem.

In today's global environmental challenges to humanity, ensuring environmental safety is one of the most important tasks facing any state. This issue is one of the priorities for Ukraine [1, p. 3]. And this is not accidental, because the anthropogenic and technogenic burden on the environment leads to an increase in cases of environmental emergencies, harms human health, causes losses in the economy.

The consequence of any environmental offence is a change in the usefulness of the environment. In the context of armed aggression against Ukraine, the issue of environmental protection becomes particularly acute. Massive forest fires that have arisen as a result of shelling, military equipment, missiles, ammunition, oil products have a detrimental effect on biodiversity, soils and water resources, cause risks of radiation accidents [2; 3], endanger the health of the entire civilization. One of the most severe long-term consequences for ecosystems is chemical pollution of places of mass use of ammunition. As a result of hostilities, we have significant mechanical damage to fields and long-term chemical and biological contamination of fertile soils and groundwater with iron, aluminum, copper, lead, strontium, titanium, cadmium, nickel and other heavy metals and their compounds [4, p. 22; 5,

p. 14]. According to some data, \$1.8 billion is damage from forest fires, \$1.6 billion from grass fires [5, p. 14].

According to official estimates, about 30% of the territory of Ukraine, that is, 174 square kilometers, are contaminated with explosive objects [6]. More than 2.4 million hectares of forests are damaged [6]. Estimated environmental damage from a full-scale invasion is estimated at 55.6 billion euros. At the same time, in conditions of intense hostilities, it grows daily by about 102 million euros. In turn, the damage from the explosion of the Kakhovka hydroelectric station, according to some estimates, is about \$14 billion [7].

These actions of the aggressor country are qualified as war crimes against the environment [8], the fight against which is included in the top ten priorities of the "Formula of Peace," voiced by the President of Ukraine [7]. Effective counteraction to such crimes requires the development of a unified concept, an integrated approach, planned and consistent actions to overcome them [9, p. 143]. This requires, in particular, the provision of criminal and legal protection of these unlawful acts, the development of adequate measures to counter them at the national and international level.

As of the end of 2023 investigated 265 war crimes of the Russian Federation against the environment, of which - 25 on the fact of ecocide, and 14 - started in connection with the armed aggression of the Russian Federation during 2022-2023. [10; 11].

The above-mentioned testifies to the importance of outlining the urgent problems associated with the qualification of crimes against the environment committed under the conditions of war, their documentation, fixation and determination of the amount of damage. In addition, the full-scale invasion of Russia in Ukraine showed the absence of uniform international standards of legal recognition of crimes against the environment, the presence of other shortcomings of an organizational legal nature. The above actualizes the search for effective national and international legal mechanisms for countering these illegal acts.

2. Analysis of recent research and publications.

The analysis of doctrinal sources on this issue shows a fairly active and productive development of theoretical or individual practical aspects of the environmental protection of Ukraine, such scientists: V.V. Andreitsev, O.M. Bandurka, Yu.V. Baulin, V.A. Bobkov, S.B. Gavrish, V.V. Golina, V.K. Grishchuk, B.M. Golovkin, O.M. Djuzha, A.A. Dudorov, O.G. Kolb, T.V. Korniyakova, O.M. Kostenko, V.O. Navrotsky, A.V. Savchenko, V.Ya. Tatsiy and others. Despite the existence of a certain theoretical justification of relations in this area, in the current difficult conditions of Ukraine, the subject of developing effective mechanisms for documenting crimes against the environment, effective counteraction to these illegal acts in Ukraine has not been studied enough, it is such that it has theoretical and practical significance.

3. Forming the purpose of the article (setting tasks).

The article is aimed at studying the organizational and legal aspects of combating crimes against the environment in the context of the war in Ukraine at the national and international legal levels.

4. Presentation of the main research material.

In society there is a view that one of the causes of crime are social contradictions inherent in society, which inevitably cause a clash of interests - conflicts. The main reason for the emergence of social contradictions of an economic, political social nature in modern Ukraine is primarily military aggression, the manifestations of which also form separate unlawful acts against the environment. Environmental crime is a socio-legal, socially dangerous phenomenon associated with environmental risk and/or environmental damage, poses a threat to the environmental safety of society, causes or may harm the environment and human health, undermines the biological foundations of life on Earth.

As Yu.V. Orlov notes, it may seem that the extermination of near objects, entire ecosystems is an exclusively ecological problem, even of such a scale that it has a global scale. However, if we perceive the environment as a factor of identity, as a natural area of reproduction of the Ukrainian nation, then there is a conclusion that the influence on these factors is a purposeful obstruction of future social conventions of Ukrainians [12, p. 190-191].

Criminal offenses against the environment are considered to be offenses without a “direct” victim – damage is caused primarily to the environment and its components, which for obvious reasons cannot independently actively defend their interests in litigation. However, such illegal actions, damaging the environment, destroy the biological basis of life and the existence of man and other living beings.

Using the destruction of the environment as a weapon in the war against Ukraine, Russia violated a number of international legal norms relating to the environment: Article 55 of the Additional Protocol to the Geneva Conventions of 1949. prohibits the use of methods or means of warfare that are intended or likely to harm the natural environment and thereby harm the health or survival of the population. The Rome Statute of the International Criminal Court (hereinafter - ICC) also recognizes the existence of “environmental war crimes,” defining the premeditation, scale, duration and seriousness of the damage they cause to the environment [14].

The current Criminal Code of Ukraine (hereinafter - the Criminal Code of Ukraine) in Art. 441 defines “ecocide” as “mass destruction of flora or fauna, poisoning of the atmosphere or water resources, as well as the commission of other actions that may lead to an environmental catastrophe” [15; 16]. That is, the consequences of such illegal actions should be destructive, large-scale and long-term. Also in Ukraine, crimes against the environment are qualified under Art. 438 of the Criminal Code of Ukraine (Violation of laws and customs of war), which, unlike ecocide, has a different threshold criterion - an environmental catastrophe, and not its threat [8].

Ukraine can be called to some extent an innovator in the investigation of criminal offenses against the environment at the national and international levels [17], it became the first country to launch an investigation of ecocide in the context of armed conflict. At the same time, it is important to emphasize that the term “ecocide” is still not considered universal in international legal doctrine, therefore it cannot be considered as a separate part from the concept of genocide [17].

It is important for our country that the large-scale long-term consequences of war crimes against the environment are recognized by the world community. It is obvious that the definition of ecocide in the Criminal Law will not allow receiving reparations from the aggressor country aimed at restoring the Ukrainian state without creating effective international mechanisms to counteract this negative phenomenon, which has a global scale.

The development of effective mechanisms for bringing to justice for criminal offenses against the environment, in particular, expanding international responsibility for environmental damage, as well as establishing cooperation in the prosecution of criminals, is an important step towards preserving the environment, ensuring the safety of life and health of present and future generations.

The necessity and importance of improving the legislation concerns not only Ukraine and other countries in a state of conflict, but also the rest of the world. The international community should focus on forming a clear understanding of the rules of law on crimes against the environment, taking into account the fact that environmental damage is mainly transboundary.

Scientists have repeatedly emphasized that the issue of environmental protection during an armed conflict is practically not regulated in international environmental law. Modern international humanitarian and criminal law does not provide adequate protection to the environment during an armed conflict due to the establishment of a high threshold level, the uncertainty of the criteria for applying the relevant norms; protection of the environment as a civilian object is also not effective due to the possibility of turning it into a military target, and the application of norms regarding collateral damage caused to the environment as a result of hostilities creates problems with the application of the principle of proportionality [18, p. 19].

Reflecting on the possibility of international justice in crimes against the environment, it should be noted that its functioning is carried out within the framework of the provisions of the Rome Statute, which defines the crimes of genocide, crimes against humanity, war crimes and crimes of aggression. Instead, ecocide is not mentioned in the statute, its Article 8 only indicates a deliberate attack, when the party knew that this could lead to lasting, expected damage [19].

Thus, outside the jurisdiction of the International Criminal Court there remain crimes related to pollution and depletion of ecosystems, etc., that is, causing climate change. Also, in the practice of this court and criminal tribunals, there are no court decisions that would concern environmental damage. Instead, representatives of the legal community make convincing arguments for the creation of a special tribunal for criminals involved in ecocide in conditions of armed conflict [17].

Fundamental is the understanding of the inevitability of punishing the aggressor country for damage, including to the environment. Facing the climate crisis and the era of mass extinction of biodiversity, Ukraine needs to use all available tools, including legislative ones, to achieve global systemic changes in order to protect and restore the ecosystem. It is necessary to intensify efforts to develop a generally accepted term "ecocide" and its potential inclusion in the new directive of the European Union, and the Rome Statute should be supplemented with such a war crime. The adoption of these measures will have a preventive effect on the behavior of the parties in future armed conflicts, will make it impossible to avoid liability for such illegal actions and compensation for environmental damage.

It is important to understand that the lack of definition of ecocide does not negate the values of the possible administration of justice, which Ukraine seeks in matters of environmental protection. At the same time, the lack of formation of this institution at the international level makes it impossible to carry out international legal proceedings on ecocide based on the data collected in Ukraine caused by military actions.

If we talk about sentencing in absentia in such proceedings, they, in our opinion, are able to create mechanisms for additional pressure on war criminals. In particular, the decision of the court is transferred to all international structures for the delivery of the sentence to the detained convict in the territory of the relevant country and the beginning of the procedure for its execution. Also, due to the availability of such information, it can be a source for the internal procedures of each country. In addition, Ukraine may demand the application of the execution of the sentence or the extradition of the convicted [8].

We believe that in absentia sentences in proceedings on war crimes, in particular, committed against the environment, should become an important component for building the relevant positions of Ukraine in the International Criminal Court, as it is a precedent basis in the investigation of such crimes during the war [8].

An equally important practical aspect of the investigation is the collection of data and evidence, recording the fact of damage, securing reliable data on the basic state of the environment before a full-scale invasion and before causing damage. This requires obtaining expert, technical, organizational, financial and other assistance from international partners.

It should be noted that the recognition of environmental damage before the war in Ukraine was not a priority at the national and international levels. Now Ukraine should take advantage of the historic chance to be involved in creating a precedent for bringing to justice the top political leadership of the aggressor country to environmental destruction. One of the main platforms that allows collecting evidence on the scale of the environmental consequences caused by the war in Ukraine is the official special resource of the Ministry of Environmental Protection, there are other tools and other tools for collecting relevant data [15].

Experts reasonably emphasize the importance of including environmental damage in the mandate and procedures of all international bodies and mechanisms [14]. Currently, Ukraine is developing internal eligibility criteria for recording claims to the International Damage Register, which is one of the three elements of the future International Compensation Mechanism, which will consist of the International Damage Register, the International Compensation Fund and the International Compensation Commission [9].

It is necessary to create effective supranational mechanisms for ensuring environmental safety in order to bring the perpetrators to justice and compensate for the damage caused to the environment. In the context of the ecological catastrophe caused by the insignificant methods of war against Ukraine, relevant are the calls of experts to the fact that "the cohesion of the international community to overcome global ecoproblems and large-scale ecocide in Ukraine should be the same as in terms of support with arms and finances [19].

5. Conclusion.

Set forth in the scientific article indicates numerous problems, inconsistencies, miscalculations primarily organizational and legal nature. Relevant in the global, interstate dimension is: criminalization of environmental damage at the level of the European Union and its member countries; detailing the shortcomings of international law and revising the relevant directive on environmental crimes; creation of the functioning of the International Register of Losses. Introduction of relevant changes to international legislation will create a comprehensive system of measures to combat environmental crime, to ensure the unification of national legislative systems in terms of terminology, the composition of crimes, as well as the sanctions that are applied for their actions in armed conflicts.

At the national level, it is necessary to take comprehensive measures to combat ecocide, to develop a unified state policy in this area, to establish an effective system for monitoring the environment and fixing the amount of damage, in particular for the systematic presentation of legal claims in the payment of reparations. The National Post-War Recovery Plan should include measures to restore and preserve ecosystems, in particular on the basis of an analysis of regulatory legal acts in the field of environmental protection.

The environmental direction should include the development and implementation of a holistic, comprehensive plan for the ecological recovery of Ukraine from the effects of war. The relevant mechanisms should be universal and effectively prevent crimes against the environment in the world, be reflected in the relevant resolutions of the UN General Assembly and other documents of the international law system.

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