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SOME ISSUES OF IMPROVEMENT OF CRIMINAL LEGAL PROTECTION OF RELATIONS IN THE FIELD OF ENVIRONMENT

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Марко С.І. Окремі питання удосконалення кримінально правової охорони правовідносин у сфері довкілля.

Наукова стаття присвячена аналізу окремих положень проекту нового Кримінального кодексу України, спрямованих на регулювання правовідносин у сфері протидії кримінальним правопорушенням проти довкілля. На основі аналізу наукових публікацій, що стосуються реформування кримінального законодавства, акцентовано увагу на доцільності вдосконалення системи протидії екологічній злочинності, адаптації вітчизняного Кримінального кодексу України до вимог Європейського Союзу та досягнення відповідності його вимогам та цілям. Здійснено наукове дослідження змістовного наповнення п'ятої та шостої Книг Проекту, які є намаганням унормувати правовідносини у сфері кримінально-правової охорони навколишнього середовища. Наведено аргументи щодо доцільності коригування структури та змісту приписів Проекту у зв'язку з різним місцезнаходженням окремих норм його Особливої частини, об'єднаних спільним родовим об'єктом. Зокрема, розвинуто думку щодо виокремлення Книги про кримінальні правопорушення проти довкілля, до якої слід включити розміщені у інших Книгах Проекту розділи, присвячені кримінальним правопорушенням проти екологічної безпеки та кримінальним правопорушенням проти порядку використання і захисту природних ресурсів. Крім того, за результатами проведеного дослідження обґрунтована необхідність визначення найбільш прийнятної назви відповідного розділу майбутнього кримінального закону, яка б враховувала зміст та значення використаних у ньому термінів «Кримінальні правопорушення проти природи та безпеки довкілля», що характеризують насамперед родовий об'єкт кримінальних правопорушень у досліджуваній сфері. Зазначається, що окремі діяння, передбачені Проектом, носять «комплексний» характер і можуть посягати як на відносини проти безпеки довкілля, так і на порядок використання природних багатств держави, впливаючи при цьому

прямо чи опосередковано на публічне здоров'я. Доведено, що такий підрозділ Особливої частини майбутнього Кримінального кодексу України має містити як кримінальні правопорушення проти безпеки довкілля, так і делікти проти природи (навколишнього природного середовища), що фактично ототожнюються з кримінальними порушеннями проти порядку використання природних ресурсів.

Ключові слова: Кримінальний кодекс, реформування, кримінальні правопорушення, довкілля, навколишнє природне середовище.

Marko S.I. Some issues of improvement of criminal legal protection of relations in the field of environment.

The scientific article is devoted to the analysis of certain provisions of the draft of the new Criminal Code of Ukraine aimed at regulating legal relations in the field of combating criminal offenses against the environment. Based on the analysis of scientific publications related to the reform of criminal legislation, attention is focused on the expediency of improving the system of combating environmental crime, adapting the national Criminal Code of Ukraine to the requirements of the European Union and achieving compliance with its requirements and goals. A scientific study of the content of the fifth and sixth Books of the Project, which are an attempt to normalize legal relations in the field of criminal and legal protection of the environment, was carried out. Arguments are given regarding the expediency of adjusting the structure and content of the Project's prescriptions in connection with the different location of individual norms of its Special Part, united by a common generic object. In particular, an opinion has been developed regarding the separation of the Book on criminal offenses against the environment, which should include the chapters devoted to criminal offenses against environmental safety and criminal offenses against the order of use and protection of natural resources placed in other Books of the Project. In addition, based on the results of the research, the

need to determine the most appropriate name for the corresponding section of the future criminal law, which would take into account the content and meaning of the terms "Criminal offenses against nature and environmental safety" used in it, which characterize primarily the generic object of criminal offenses in the studied sphere. It is noted that certain actions provided for by the Project are of a "complex" nature and may encroach both on relations against environmental safety and on the procedure for using the state's natural resources, while directly or indirectly affecting public health. It has been proven that such a subsection of the Special Part of the future Criminal Code of Ukraine should contain both criminal offenses against environmental safety and torts against nature (the surrounding natural environment), which are actually equated with criminal violations against the order of use of natural resources.

Key words: Criminal Code, reformation, criminal offenses, environment, natural environment.

The actuality of the topic. The reality of the threat to the environment is becoming more and more clearly understood by both society and the state, which finds a manifestation in particular in the state environmental policy, the basic principles of which, in accordance with the Law of Ukraine "On Basic Principles (strategy) of the state environmental policy of Ukraine for the period until 2030, "is to ensure environmental safety and maintain environmental balance in Ukraine, increase the level of environmental safety in the exclusion zone, as well as ensure the inevitability of responsibility for violation of environmental legislation [1]. The component of such a policy is the criminal legal impact on environmental crime, the concept of which covers both the activities to create criminal legal means to combat crime and the practical application of such means, that is, law enforcement activities in the relevant field [2, p. 43; 3, c. 120].

The Criminal Code of Ukraine (hereinafter - the Criminal Code of Ukraine), on the one hand, should really provide each person with the right to respect for his dignity, freedom and free development of the individual, on the other - not allow anyone to violate the rights and freedoms, honor and dignity of other people, the legal order as a whole (see. Articles 19, 28, 23, 68 of the Constitution of Ukraine) [4]. At the same time, the provisions of the Criminal Code of Ukraine should be sufficiently defined so that the authorities do not have the temptation and opportunities to use them arbitrarily, and each person in advance could compare the planned actions or inactions with the criminally punishable ones and refrain from committing them. Ukraine's European integration efforts require that the Criminal Code of Ukraine, like other laws, exactly

comply with international obligations and its provisions are adapted to directives and other acts of the European Union [5].

During the validity of the Criminal Code of Ukraine, its fundamental provisions were destroyed by shaft-like, unsystematic and often unreasonable changes and additions [6]. It has been repeatedly noted among scientists that the current Criminal Code of Ukraine: has not formulated guidelines on which all its provisions should be developed and applied; established criminal liability for dozens of acts for which the Code of Ukraine on Administrative Offenses and other laws provide for administrative liability; did not provide law enforcers with instruments of legal qualification of criminal offenses; did not define the vast majority of concepts used in the Criminal Code, allowed the use of numerous synonyms, leaving the dominance of "terminological chaos" [7; 8].

In such circumstances, it is important to prevent further frivolous and disorderly development of the provisions of the Criminal Code of Ukraine, which will result in their arbitrary application [7]. These problems also concern the protection of the environment, which in the system of global challenges of our time is characterized by the highest degree of complexity of external and internal interrelations [9, p. 5]. Among the priorities that stand out in this context is the development of effective mechanisms for criminal legal protection of the environment.

Indeed, environmental protection is one of the most pressing issues of our time. In this regard, to prevent negative consequences, the state should use such leverage as criminal liability for committing environmental offenses.

The main feature of environmental offenses is a high degree of public danger of this type of crime, due to the fact that their objects are environmental safety, environmental quality, environmental rights of citizens. As a result of these torts, damage or threat to human life and health, as well as natural ecological systems, atmospheric air, land, its subsoil, waters, forests, fauna and flora, etc. is caused [10].

Within the framework of the scientific article, we see the expediency of dwelling on the study of the wording of the prescriptions of one of the projects of the new Criminal Code of Ukraine proposed by the working group in 2023, which are designed to regulate legal relations in the field of environmental safety, but are controversial in nature and design, ambiguously perceived by scientists and practitioners.

The analysis of scientific publications. Some aspects of the study of theoretical and applied problems of criminal legal protection of the environment have become the subject of research by such scientists as P.P. Andrushko, Yu.V. Baulin, V.M.

Buridin, A.A. Voznyuk, A.P. Gorokh, N.O. Gutorova, T.V. Kornyakova, V.K. Matviychuk V.A. Navrotsky, G.S. Polishchuk, Yu.A. Ponomarenko, V.Ya. Tatsiy, Yu.A. Turlova, P.L. Fris, M.I. Khavronyuk, Yu.S. Shemshuchenko, A.M. Shulga and others.

Legislative initiatives in the field of criminal law related to European integration processes in Ukraine, as well as modern understanding of new environmental anomalies, encourage the use, and sometimes rethinking, of certain positions of scientists on the criminal law protection of the environment, in particular in the context of assessing the form (structure) and content of the provisions of the draft new Criminal Code of Ukraine.

The article is aimed at analyzing the content of the provisions of the relevant sections of the draft new Criminal Code of Ukraine, which cover crimes and offenses against environmental safety, to propose ways to improve it in order to ensure effective deterrence of crime in the field of the natural environment of Ukraine.

Achieving the goal is possible by finding out to what extent the developers of the Project of the Criminal Code of Ukraine take into account the achievements of the criminal legal doctrine, the development of judicial practice, relevant foreign experience, and what impact the project, if adopted as a law, will have on law enforcement, the development of other legislation and the life of society as a whole (for example, in terms of ensuring effective containment of environmental crime).

Presenting the main material. The Law «On Scientific and Scientific-Technical Activity» (Article 1) provides that the result of applied scientific research is new knowledge, designed to create new or improve existing methods, systems, technologies, specific proposals for the implementation of relevant social tasks, and its form can be not only a monograph, an article or scientific discovery, but also a draft regulatory act, if its preparation requires scientific research or contains a scientific component [11]. The basis for the creation and adoption of a new Criminal Code of Ukraine should be a systematic analysis of the formation of the law on criminal liability [12, p. 2], in particular, taking into account the threats to the country's environmental safety.

The newest process of reforming the domestic criminal legislation is associated with the Decree of the President of Ukraine No. 584/2019 of August 7, 2019, in which paragraph 28 of Part 1 of Article 106 determines the expediency of creating by the President of Ukraine within the limits of the funds provided for in the State Budget of Ukraine for the exercise of his powers advisory, advisory and other auxiliary bodies and services [13]. In addition, the Regulation on the Commission on Legal Reform was

approved, one of the tasks of which is to ensure the development and submission to the President of Ukraine of agreed proposals on improving the legal system of Ukraine, taking into account the current challenges and needs of a democratic society [13].

In the Draft of the Criminal Code of Ukraine (hereinafter - the Draft) proposed by the working group, all criminal offenses provided for by Section VIII of the Special Part of the current Criminal Code of Ukraine are divided into two separate groups of offenses, which are most often mentioned in scientific and arising from the provisions of the Law of Ukraine «On Environmental Protection,» definitions of the generic object of criminal offenses against the environment: against environmental safety; against the order of use of natural resources [14].

However, both from a theoretical and from a practical point of view, it is ambiguous to perceive the initiative concerning the fact that the Project not only «divides» all the articles defined in section VIII of the Special Part of the current Criminal Code into two groups, but also places the corresponding sections in different books of the Special Part: criminal offenses against environmental safety (section 5.3) are reflected in Book Five «Criminal offenses against public health,» and criminal offenses against the use of natural resources (section 6.5) are reflected in Book Six «Criminal offenses against the economy,» respectively [14].

In this regard, we consider reasonable the position of individual experts in the field of criminal law, who see no reason for referring criminal offenses against the use and protection of natural resources (section 6.5) in general, and, for example, such varieties as the destruction or damage of plant or animal natural resources, to encroachments on the economy. A pertinent question is raised: is it justified to recognize as an economic criminal offense the widespread in practice behavior of the owner of the land plot, who, without legal permission, removes the soil cover of the lands located on it, that is, commits actions that qualify under Art. 254 of the Criminal Code of Ukraine, and subject to the adoption of the Project as a law, will be considered either as «illegal acquisition» (Art. 6.5.4), or as «depletion» of the natural resource (Art. 6.5.7)? [15]. In addition, there is a dilemma as to which block of encroachments envisaged by the Special Part of the Draft should include the provision on criminal offenses against the use and protection of natural resources if their assignment to the economic block does not correspond to its content?

Similar doubts about the location of the relevant provisions are caused by articles on criminal offenses against environmental safety. After all, the correctness of the title of Book Five «Criminal offenses against public health,» which

contains section 5.3 on criminal offenses against environmental safety [14], seems doubtful [15]. With this location, environmental safety is seen as a component of public health and in its context. The link between a safe environment and the state of public health is indisputable, since the preservation of life and health of the population depends in particular on the creation of a safe environment in the environmental sphere.

At the same time, scientists, in the Conclusion on the Draft Criminal Code of Ukraine, assessing its provisions, note that criminal offenses against environmental safety can cause harm not only to public health, but also to many other values, which does not allow putting them in one row and excludes the relationship of subordination. For example, does a person who, according to Art. 5.3.12 of the Project, illegally imported secondary raw materials into the territory of Ukraine without proper permission commit a criminal offense against public health, which created a real danger of causing serious property damage? Hardly [14; 15].

Therefore, taking into account the above, and also taking into account the structure of the Project, we state the expediency of regulating responsibility for criminal offenses against the environment in the Project by forming a separate Book on criminal offenses against the environment, which should include sections currently placed in other Books of the Project devoted to criminal offenses against environmental safety and criminal offenses against the use and protection of natural resources. This approach makes it possible to take into account the specifics of criminal offenses against the environment as much as possible.

It is axiomatic that the stability of information and legal support, including in the environmental sphere, is possible on condition of unification of legislative terms, clear normative consolidation of their content. This will contribute to the correct understanding of legal regulations and ensure their proper application.

In order to obtain a balanced answer to the question regarding the title of the relevant Project Book and the optimal location of articles on criminal offenses against the environment, which under the Project are divided into criminal offences against environmental safety and criminal offences against the use of natural resources, we will explore the etymology of individual terminology systems used by scientists and developers of draft laws in the studied sphere, in particular «natural environment,» «environment» and «environment.»

Under the «natural environment» in literature, it is customary to understand that part of the earth's nature that is directly related to human life and economic activity, adapted to its vital needs. The natural environment forms the material basis of the

existence of human society [16, p. 15]. Along with the concept of widely used generally identical in its etymological meaning of the terms «environment» and «environment.» The environment is a set of natural and natural-anthropogenic conditions (land, water, forests, subsoil, atmospheric air, flora and fauna) surrounding a person, interacting with him in the process of production and non-production activities, and is necessary for his life and activity [16, p. 15]. Adding the word «natural» to the term «environment,» it emphasizes the presence of an important component of the environment - untouched and man-made nature as an object of legal protection [17, p. 68].

The environment is the natural environment, the conditions of everyday existence, the quality of food, in other words, everything that a person encounters in the process of his natural existence. It consists of individual objects of nature, natural resources, landscapes and other natural complexes, ecological systems, mechanisms of interaction of its components, as well as the conditions of existence of everything on Earth. The environment includes, in addition to the natural environment, artificially created by man material components, phenomena and processes [16, p. 15]. Any negative impact on the part of man on individual components of the environment disrupts the normal course of natural processes and existing objective natural connections. This, in turn, negatively affects the person, his life, health, his well-being and the environment as a whole [16, p. 22-23].

It is necessary to state that the identification of the terms «environment» and «environment» leads to not always correct interpretation of these concepts, because the basis of the term «environment» is the environment and an inexhaustible number of components, but «environment» is actually nature in its pure form.

Also, the fifth Book of the Project contains section 5.3, entitled «Criminal offenses against environmental safety,» which requires clarification of the essence of the concept of «environmental safety.» Modern Ukrainian science is dominated by the approach according to which security is interpreted as «the level of protection of the vital interests of man, as well as society, the state, the environment from real or potential threats posed by anthropogenic or natural factors» [18, p. 21]. In essence, the phenomenon of safety is a subjective reflexive definition (design) of existence, mediated by the absence of danger [19, p. 9-10]. Therefore, the safety of the environment is the state of its optimal functioning and development. In turn, ecological danger may arise in connection with the action of natural forces (natural disasters) and natural phenomena, a sharp violation of relationships in natural systems under the influence of anthropogenic factors, etc. [20, p. 14].

Analyzing the provisions of the Project regulating legal relations in the studied sphere, we come to the conclusion that their division into criminal offenses against environmental safety and criminal offenses against the use of natural resources is not the only possible and indisputable (see, for example, scientific intelligence V.K. Matviychuk, V.O. Navrotsky, A.M. Shulga, Yu.A. Turlova and others [9; 8; 21; 16; 2, p. 42-51]), because individual acts are «complex» in nature and can encroach both on relations against environmental safety and on the order of use of the state's natural resources, while directly or indirectly affecting public health.

Therefore, returning to the problem raised by us regarding the optimal naming of the relevant section (Book) of the future criminal law, which would take into account the content and meaning of the terms used in it, characterizing primarily the generic object of criminal offenses in the studied sphere, the most acceptable is the name «Criminal offenses against nature and environmental safety.» In our opinion, such a structural unit of the Special Part of the Future Criminal Code of Ukraine will contain criminal offenses against environmental safety and torts against nature (the environment), which are actually identified with criminal violations against the use of natural resources.

Conclusions. According to the results of the scientific analysis of the provisions of the Draft Criminal Code of Ukraine, it was concluded that it is advisable to regulate responsibility for criminal offenses against the environment by allocating the Book on criminal offenses against the environment, which should include sections in other Books of the Draft devoted to criminal offenses against environmental safety and criminal offenses against the use and protection of natural resources. Using this approach will allow maximum consideration of the specifics of criminal offenses against the environment.

We see that the most acceptable title of the relevant section (Book) of the future criminal law, which would take into account the content and meaning of the terms used in it, characterizing primarily the generic object of criminal offenses in the studied area, is the name «Criminal offenses against nature and environmental safety.» Such a structural unit of the Special Part of the Future Criminal Code of Ukraine should contain both (1) criminal offenses against environmental safety and (2) torts against nature (the environment), which are actually identified with criminal violations against the use of natural resources. After all, individual acts envisaged by the Project are «complex» in nature and can encroach both on relations against environmental safety and on the order of use of the state's natural resources, while directly or indirectly affecting public health.

Of course, the analysis of the provisions of the Draft concerning the criminal-legal protection of the environment cannot be called a «full-fledged» scientific analysis of all the norms that relate to this sphere. After all, the essential interpretation of criminal law prescriptions, united by one generic object, requires taking into account all systemic connections between them, a comprehensive analysis and mastery of the proposed consolidated criminal law fabric. The positions expressed in the study are the author's attempt to introduce useful doubts to certain provisions of the Draft Criminal Code of Ukraine regarding the regulation of the boundaries of permitted and prohibited behavior in the field of criminal legal environmental protection with a view to their further final normalization in the relevant regulatory legal act.

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