

UDC 343: 349.6

DOI <https://doi.org/10.24144/2788-6018.2024.04.89>

## CURRENT PROBLEMS OF COMBATING ENVIRONMENTAL CRIME IN UKRAINE

**Marko S.I.,**

*candidate of legal sciences, associate professor,  
Professor of the Department of Criminal Procedure  
and Forensics Faculty No. 1 of the Institute  
for Specialist Training for units of the National Police  
Lviv State University of Internal Affairs,  
ORCID: 0000-0002-9778-0570*

### **Marko S.I. Current problems of combating environmental crime in Ukraine.**

The publication is dedicated to the scientific analysis of the problems of identifying and qualifying criminal offenses against the environment in order to develop appropriate countermeasures at the national and international legal levels.

It is noted that an important step towards preserving the environment, ensuring the safety of life and health of people and other living organisms is the development of effective mechanisms for prosecuting criminal offenses against the environment, in particular the expansion of international responsibility for environmental damage, as well as the establishment of cooperation in the prosecution of criminals. It was established that crimes related to environmental pollution and depletion of ecosystems, etc., remain outside the jurisdiction of the International Criminal Court. It is noted that in the practice of the said court and criminal tribunals, there are no court decisions related to damage to the environment.

The expediency of revising the provisions of international legislation and the relevant directive on environmental crimes, creating the operation of the International Registry of Damages was emphasized. In the opinion of the author, the introduction of appropriate changes to international legislation will allow to create a comprehensive system of measures to combat environmental crime, to ensure the unification of national legislative systems in terms of terminology, composition of crimes, as well as sanctions applied for their commission in the conditions of armed conflicts.

Arguments are presented regarding the need for Ukraine to develop a unified state policy to counter ecocide and other war crimes, in particular criminalization of the specified socially dangerous acts, establishment of an effective system for monitoring the state of the environment and fixing the amount of damage caused by the aggressor country, creating a special tribunal for criminals involved in ecocide in conditions of armed conflict.

It is noted that the environmental direction of the National Post-War Recovery Plan should be based on the monitoring of regulatory acts in the field of environmental protection and contain a list of measures to restore and preserve ecosystems.

**Key words:** crimes against the environment, ecocide, war crimes, criminal liability, counteraction, compensation for damage.

### **Марко С.І. Сучасні проблеми протидії злочинності проти довкілля в Україні.**

Публікація присвячена науковому аналізу проблем виявлення так кваліфікації кримінальних правопорушень проти довкілля з метою вироблення відповідних заходів протидії на національному та міжнародно-правовому рівнях.

Зазначається, що важливим кроком до збереження довкілля, забезпечення безпеки життя і здоров'я людей та інших живих організмів є вироблення ефективних механізмів притягнення до відповідальності за кримінальні правопорушення проти довкілля, зокрема розширення міжнародної відповідальності за завдану екологічну шкоду, а також налагодження співпраці у переслідуванні злочинців. Констатовано, що поза юрисдикцією Міжнародного кримінального суду залишаються злочини, які пов'язані із забрудненням навколишнього природного середовища та виснаженням екосистем тощо. Відзначається, що у практиці зазначеної судової інстанції та кримінальних трибуналів відсутні судові рішення, які б стосувалися шкоди довкіллю.

Наголошено на доцільності перегляду положень міжнародного законодавства та відповідної директиви щодо екологічних злочинів, створення функціонування Міжнародного реєстру збитків. На переконання автора, внесення відповідних змін до міжнародного законодавства дозволить створити комплексну систему заходів протидії екологічній злочинності, забезпечити уніфікацію національних законодавчих систем з точки зору термінології, складів злочинів, а також санкцій, які застосовуються за їх учинення в умовах збройних конфліктів.

Наведено аргументи щодо необхідності вироблення Україною єдиної державної політики у протидії екоциду та іншим воєнним злочинам, зокрема криміналізації зазначених суспільно небезпечних діянь, налагодження ефективної системи моніторингу стану довкілля та фіксації розміру збитків, завданих країною-агресором, створення спеціального трибуналу для злочинців, причетних до екоциду в умовах збройного конфлікту. Зазначено, що екологічний напрям Національного плану післявоєнного відновлення має базуватись на моніторингу нормативно-правових актів у сфері охорони навколишнього середовища та містити перелік заходів з відновлення та збереження екосистем.

**Ключові слова:** злочини проти довкілля, екоцид, воєнні злочини, кримінальна відповідальність, протидія, відшкодування шкоди.

**The actuality of the topic.** The problem of ensuring environmental safety in the conditions of modern global environmental challenges to humanity is one of the priority issues for any country. The consequence of any environmental offense is a change in the usefulness of the environment. Anthropogenic and technogenic load on the environment leads to an increase in the occurrence of emergency environmental situations, harms people's health, and causes losses in the economy.

Ukraine is not an exception in this aspect, and the problem of environmental protection is becoming particularly acute under the conditions of armed aggression. One of the most severe long-term consequences for ecosystems is the chemical contamination of the sites of mass use of munitions. The result of hostilities is 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, other heavy metals and their compounds [1, p. 22].

Effective counteraction to criminal offenses against the environment, committed in the conditions of armed conflict, requires the development of a single concept, a comprehensive approach, planned and consistent actions to overcome them [2, p. 143]. This requires, in particular, the provision of criminal-law protection of the environment, the implementation of effective countermeasures against the specified socially dangerous acts at the national and international level.

**The analysis of scientific publications.** The work of such scientists as: O.M. Bandurka, Yu.V. Baulin, S.B. Havrysh, V.V. Holina, V.K. Hryshchuk, B.M. Golovkin, O.M. Dzhuzha, O.O. Dudorov, O.G. Kolb, O.M. Kostenko, V.O. Navrotskyi, V.L. Ortynskyi and others. Despite the presence of a certain theoretical justification

of relations in the indicated sphere, in the modern complex conditions of Ukraine, the topic of developing effective mechanisms for combating criminal offenses against the environment, taking into account the challenges of today, has not been sufficiently researched and requires a detailed scientific analysis.

**The purpose of the article** is to clarify the modern problems of detection and qualification of criminal offenses against the environment in order to develop appropriate countermeasures at the national and international legal levels.

**Presenting the main material.** One of the most widespread social points of view is that one of the causes of crime is 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 and social nature in modern Ukraine is first of all military aggression, the manifestations of which also form separate illegal actions 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 ecological safety of society, causes or may cause damage to the environment and human health, undermines the biological foundations of life on Earth.

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 actively defend their interests independently in legal proceedings. However, such illegal actions, causing damage to the environment, destroy the biological basis of life and existence of humans and other living beings.

Environmental crime caused by military actions is recognized as a particularly serious form of ecocide and is aimed at achieving a military and political goal. In the conditions of today's Ukrainian realities, the specified illegal act is expressed primarily in the widespread use by the aggressor country of weapons of mass destruction - modern and potentially indiscriminate weapons that cause serious damage to the environment, which can cause irreversible adverse consequences. Such actions violate a number of international legal norms related to the environment: Art. 55 of the Additional Protocol to the Geneva Conventions of 1949 prohibits the use of methods or means of warfare that are intended or may cause harm to the natural environment and thereby harm the health or survival of the population. The Rome Statute of the International Criminal Court (hereinafter - the ICC) also recognizes the existence of "ecological war crimes", defining the intentionality, large-scale, duration and severity of the damage they cause to the environment [3, p. 730-731].

The current Criminal Code of Ukraine (hereinafter referred to as 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 can cause an ecological catastrophe" [4]. That is, the consequences of such illegal actions must be destructive, large-scale and long-lasting. Less often, criminal offenses against the environment are classified as violations of the laws and customs of war (Article 438 of the Criminal Code of Ukraine), which, unlike ecocide, have a different threshold criterion – an environmental catastrophe, not its threat.

In today's conditions, it is important for Ukraine that the large-scale long-term consequences of war crimes against the environment be recognized by the world community. It is obvious that without the creation of effective international mechanisms to counter ecocide and other war crimes that have a global scale and negative consequences, the very definition of the mentioned negative phenomena in the Criminal Law will not allow to receive reparations from the aggressor country aimed at restoring Ukraine.

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

The necessity and importance of improving legislation concerns not only Ukraine and other countries in a state of conflict, but also the rest of the world [5]. The international community should focus on the formation of a clear understanding of the legal norms dedicated to crimes against the environment, taking into account the fact that environmental damage is mainly transboundary in nature.

Scientists have repeatedly emphasized that the issue of environmental protection during an armed conflict is practically not regulated in international environmental law [6, p. 143–160; 7]. Modern international humanitarian and criminal law do not provide adequate protection to the environment in the period of armed conflict due to the establishment of a high threshold level, the uncertainty of the criteria for the application of the relevant norms; protection of the environment as a civilian object is also ineffective 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 military actions creates problems with the application of the principle of proportionality [8; 9, p 19].

Formal approaches to the introduction and implementation of the environmental policy of Ukraine for the period up to 2030 are traced, and the current state of implementation and protection of the environmental rights of Ukrainians during large-scale military operations remains imperfect and is limited to notification, establishment and fixation, documentation of violations of national and international environmental legislation, assessment and determination of environmental damage, losses and damages caused as a result of armed aggression (land resources, subsoil, water resources, atmospheric air, forest, nature reserve fund, etc.), as well as preparation of materials for protective measures to bring the perpetrators to justice. At the same time, the organizational and administrative aspect of the implementation of environmental safety and environmental rights remains out of the attention of the state and its relevant bodies.

At the same time, taking into account the peculiarities of the situation that has developed in the occupied territories and zones of active hostilities, the implementation of environmental policy should take place in specific forms. The key factors in the effectiveness of the environmental and legal policy of Ukraine in solving environmental problems should be: carrying out an environmental audit to determine the extent of damage caused to the environment; determination of standards, priorities, goals, which govern state and non-state institutions; creation of a single environmental pollution monitoring center; formation of an effective mechanism of legal regulation of the use of natural resources and means of operational response in case of emergency environmental situations; joining efforts, coordinating the work of the public, scientists, ecologists, state institutions, and international organizations to prevent an environmental disaster in places of active hostilities; organization of international technical cooperation for strategic environmental assessment of the consequences of war; raising the level of legal culture of citizens, professional culture of law enforcement officers and officials whose activities concern the environmental rights of citizens.

As you know, international justice in crimes against the environment is possible within the scope of the provisions of the Rome Statute, which defines crimes of genocide, crimes against humanity, war crimes and crimes of aggression. However, ecocide is not mentioned in the statute, but in Art. 8 only indicates "intentional attack when the party knew that it could lead to long-term, expected damage" [10].

Crimes related to environmental pollution and depletion of ecosystems, etc., i.e. causing climate change, remain outside the jurisdiction

of the International Criminal Court. Also, in the practice of the said court and criminal tribunals, there are no court decisions related to damage to the environment. At the same time, based on the Ukrainian example, we believe that the establishment of a special tribunal for criminals involved in ecocide in the context of armed conflict is undoubtedly expedient.

Faced with a climate crisis and an era of mass biodiversity extinction, Ukraine needs to use all available tools, including legislative ones, to achieve global systemic changes to protect and restore the ecosystem. Intensification of efforts to develop a universally accepted term "ecocide" and its potential inclusion in a new European Union directive is necessary, and the Rome Statute should be supplemented with such a war crime. Taking these measures will have a preventive effect on the behavior of the parties in future armed conflicts, will contribute to the prosecution of such illegal actions and compensation for causing damage to the environment.

We believe that the lack of a legal definition of the definition of ecocide does not negate the value of the possible implementation of justice, which Ukraine seeks in matters of environmental protection. However, the lack of formation of the said institution at the international level makes it impossible to carry out international proceedings regarding such illegal actions based on the data collected in Ukraine, caused by the illegal actions of the aggressor country.

In our opinion, verdicts in absentia in proceedings on war crimes against the environment should be an important component for building appropriate positions of Ukraine at the International Criminal Court, because they can have a precedential character in the investigation of criminal offenses in the investigated area.

An important practical aspect of combating the investigated criminal offenses against the environment is the collection of evidentiary information, recording the fact of damage, providing reliable data on the state of the environment before the armed conflict and before the damage was caused. This requires receiving organizational, expert, technical, and financial assistance from international partners.

It must be stated that the recognition of environmental damage before the military conflict in Ukraine was not a priority at the national and international levels. Currently, 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 for environmental destruction. We believe that, under such conditions, it is appropriate to create a special resource of the Ministry of Environmental Protection, which should become

one of the main platforms that will consolidate the available evidence on the scale of environmental consequences caused by the war in Ukraine.

It is necessary to create effective supranational mechanisms for ensuring environmental safety in order to bring the guilty to responsibility and compensate for the damage caused to the environment.

**Conclusions.** We come to the conclusion that in today's conditions, crime against the environment undeservedly "remains in the shadow" of more serious crimes against the life and health of a person and other socially dangerous acts. The ecological direction of combating crime should include the development and implementation of a holistic, comprehensive plan for ecological post-war recovery of Ukraine from the consequences caused to its environment. Appropriate mechanisms should be universal and effectively prevent crimes against the environment in the world, be reflected in relevant resolutions of the General Assembly of the United Nations and other documents of the international law system.

At the international level, changes should be made to the provisions of the legislation and the relevant directive on environmental crimes, to create and ensure the functioning of the International Registry of Damages. This will allow creating a comprehensive system of measures to combat environmental crime, will 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.

Ukraine should implement a unified state policy against ecocide and other criminal offenses against the environment. First of all, an effective system for monitoring the state of the environment and regulatory legal acts in the field of its protection should be established, a list of measures for the restoration and preservation of ecosystems should be defined, and a clear algorithm for fixing the amount of damage caused during military operations should be defined.

#### REFERENCES:

1. Angurets O., Khazan P., Kolesnikova K., Kush M., Chernokhova M., Havranek M. (2022). Ukraine, damage to the environment, ecological consequences of war.
2. Turlova Yu.A. (2017). Combating environmental crime: concept, purpose and tasks. Actual problems of domestic jurisprudence. No. 6. 1. P. 143–147.
3. Machlis G., Hanson T. (2008). Warfare Ecology. *BioScience*, vol. 58, 3. P. 729–736.
4. The Criminal Code of Ukraine. Bulletin of the Verkhovna Rada of Ukraine (VVR), 2001, No. 25-26, Art. 131.

5. Schillinger J., Özerol G., Güven-Griemert Ş., Heldeweg M. (2020). Water in war: Understanding the impacts of armed conflict on water resources and their management. *WIREs Water*. 7. URL: <https://doi.org/10.1002/wat2.1480> (30.06.2024).
6. Balyuk G., Shompol O. (2015). National and international legal problems of regulating environmental protection and ensuring environmental safety during armed conflicts. *Administrative law and process*. 2 (12). P. 143–160. URL: [http://www.library.univ.kiev.ua/ukr/host/viking/db/ftp/univ/apip/apip\\_2015\\_12.pdf](http://www.library.univ.kiev.ua/ukr/host/viking/db/ftp/univ/apip/apip_2015_12.pdf) (30.06.2024).
7. Grubinko A., Kucher A. (2019). Legal provision of environmental security in conditions of military conflict: international experience and domestic realities. Ternopil: TNPU Publishing House named after V. Hnatyuk
8. Golovach A. (2022). Global level of international environmental security in modern international environmental law/ *Scientific Bulletin of the Uzhhorod National University. Series: Law Volume 2, No. 73*. URL: <http://visnyk-pravo.uzhnu.edu.ua/article/view/269007> (30.06.2024).
9. Blaga A., Zagorodnyuk I., Korotkyi T., Martynenko O., Medvedeva M., Parkhomenko V. (2017). On the edge of survival: destruction of the environment during the armed conflict in eastern Ukraine. K.
10. Rome Statute of the International Criminal Court of July 17, 1998. URL: [https://zakon.rada.gov.ua/laws/show/995\\_588#n761](https://zakon.rada.gov.ua/laws/show/995_588#n761) (30.06.2024).