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Intentional destruction or damage of objects of plant life as a crime under the law of Ukraine and other European countries: cross-jurisdictional analysis

Умисне знищення або пошкодження об'єктів рослинного світу як злочин за законодавством України та інших європейських країн: міжюрисдикційний аналіз

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Abstract

The key goal of this research paper is to analyze the specific features of legislative construction of Article 245 of the Criminal Code of Ukraine, in particular, the method of statutory reflection of the elements of the subject matter and subjective side of this criminal wrongful act used therein, and also to study the relevant European experience. This will enable to develop proposals aimed at improving the provisions of current national criminal legislation, which are intended to guarantee the protection of flora by means of Ukrainian criminal law.

In the course of relevant comparative legal research and formulation of conclusions, the author used a number of different scientific methods of cognition, in particular: modeling,

Анотація

Метою статті є аналіз особливостей законодавчого конструювання ст. 245 Кримінального кодексу України, зокрема, використаного у ній способу нормативного відображення ознак предмета та суб'єктивної сторони цього кримінально протиправного deliktu, вивчення співставного європейського досвіду, а також розроблення завдяки цьому пропозицій, спрямованих на удосконалення тих положень чинного вітчизняного кримінального законодавства, які покликані гарантувати забезпечення кримінально-правової охорони рослинного світу в Україні. При проведенні відповідного порівняльно-правового дослідження та доведенні висновків було використано низку різноманітних

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comparative, dialectical, systemic as well as statistical methods.

A conclusion has been reached that the newer version of the criminal law norm under study should, firstly, retain criminal liability for trespass to any type of vegetation, and not only violations relating to forests, and secondly, within its framework, liability for a) encroachment not only on green spaces around settlements, along railways, but also on any other green spaces, including those not located in appropriate places; b) destruction/damage of vegetation on lands of any category from among those provided for by the Land Code of Ukraine. In addition, the authors argue that it is necessary to establish penalties for intentional and negligent destruction of flora that differ in severity, which is explained by the significantly different degree of public harmfulness.

Keywords: crime, environment, flora, damage, intent.

Introduction

The Strategy of the State Environmental Policy of Ukraine for the period until 2030 states that, on the one hand, the biosphere of Ukraine includes more than 70 thousand species of flora and fauna, in particular, more than 27 thousand species of flora, and, on the other hand, states that the main threat to biological diversity is human activity and the destruction of the natural habitat of flora (Law of Ukraine No. 2697-VIII, 2019). At the same time, special attention is drawn to the fact that the lack of a system of financing forestry activities, especially in the eastern and southern regions of Ukraine, led to the termination of works on the creation of protective forest plantations on low-productivity and degraded lands and the failure to implement preventive fire-fighting measures in forests, which has increased the risk of forest fires.

Hence, it is not surprising that in recent years, ever more attention has been paid in Ukraine to the issue of increasing the effectiveness of criminal law measures against destruction or damage of objects of the plant world, in particular, the spontaneous burning of vegetation and its remains. The presence of this fact has to be connected both with the reassessment of the

наукових методів пізнання, зокрема: компаративістський, діалектичний, системний, статистичний, метод моделювання.

На підставі проведеного дослідження резюмується, що в новій редакції досліджуваної кримінально-правової норми має, по-перше, бути збережена кримінальна відповідальність за посягання на будь-які види рослинності, а не лише ті делікти, що стосуються лісових масивів, по-друге, у її межах має бути регламентована відповідальність за: а) посягання не лише на зелені насадження навколо населених пунктів, вздовж залізниць, а й будь-які інші зелені насадження, зокрема й ті, які не розташовані у відповідних місцях; б) знищення/пошкодження рослинності на землях будь-якої категорії з числа тих, що передбачені Земельним кодексом України. Крім того, аргументована необхідність встановлення різних за ступенем суворості покарань за умисні та необережні прояви знищення рослинного світу, що пояснюється притаманним цим діянням істотно різним ступенем їхньої суспільної небезпеки.

Ключові слова: злочин, навколишнє середовище, флора, збиток, умисел.

degree of social danger of this act for the society, and with the ineffectiveness of Art. 245 of the Criminal Code of Ukraine (hereinafter – the CC of Ukraine) “Destruction or damage to objects of plant life”, the prescriptions of which should ensure the above-mentioned countermeasures. At the same time, one should note that domestic criminal law researchers, in particular the authors of this paper (Movchan, 2023a; Movchan, 2023b; Movchan et al., 2024), have previously drawn attention to the inefficiency of Art. 245 of the CC of Ukraine, which is most often explained by numerous flaws in its construction, including in terms of legislative statement of certain objective (in particular, the perpetrator element) and subjective (in particular, guilt) features of the analyzed crime. Therefore, we will elaborate on recommendations aimed at eliminating such shortcomings within this research paper.

Having declared the purpose and scope of the study, we would like to refer to the reasonable remarks by M. Havronyuk. He wrote that to maximize the effectiveness of Ukrainian criminal law, it should incorporate the most successful principles from European and global criminal jurisprudence, as well as insights from foreign

criminal legal systems (Havronyuk, 2013). And it is obvious that such argument, especially given the European integration aspirations of Ukraine, predominantly applies to European countries, whose legislation in the part related to criminal law protection of flora and fauna will be studied in the course of this paper for further use in improving the relevant provisions of national legislation.

The relevance of this comparative study is conditioned by the arguments described above, based on the results of which the authors have developed specific recommendations addressed to Ukrainian parliamentarians and law enforcement officers with the goal of improving the relevant prescriptions of domestic criminal law and the practice of their application, respectively.

Methodology

This study extensively refers to the comparative method with the goal of comparing various approaches to regulating liability for criminal offenses against flora existing in Ukraine and European countries. This key research method is most actively used by Ukrainian scholars in modern scholarship (Kamensky et al., 2023). For the purposes of this study, we have chosen the legislation of thirty European states (except Ukraine) which criminal codes provide for liability for various encroachments on flora. These countries include: Albania, Austria, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Georgia, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Macedonia, Moldova, Montenegro, the Netherlands, Norway, Poland, Portugal, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Hungary, Germany, Hungary, Sweden, Switzerland, and the Czech Republic. The study of the legislation of quite a few countries is explained by the fact that the legal literature has proved that such step allows to increase the effectiveness of comparative study.

In addition to the comparative method, a number of other methods of scientific analyses have proved useful in the course of the study (Myroshnychenko et al., 2024). The philosophical (dialectical) method has allowed, in particular, to divide the latter into two conditional parts, which are devoted to the comparative characterization of the approaches used in the CC of Ukraine and the criminal legislation of European countries to construct features of the subject matter and the subjective side of the criminal offense under consideration,

respectively (Movchan et al., 2023). The systemic method made it possible to use not only criminal law provisions but also domestic regulatory legislation to solve the problems under study, in particular, forestry and land legislation. The statistical method contributed to the analysis and generalization of empirical information, in particular, to the study and critical comprehension of judicial practice in relation to consideration of specific cases, which are referred to in the article. Using the modeling method, the author developed specific proposals, which may be useful for improving provisions of current criminal and administrative legislation, and also formulated proposals aimed at improving the relevant court practice, in particular, regarding the distinction between the modes of criminal and administrative liability, respectively, for destruction or causing damage to flora.

At the same time, when collecting relevant statistical data, information posted in the Unified State Register of Court Decisions was used, as well as relevant software (legal databases).

The carefully chosen methods for the purposes of our legal research have allowed to better analyze various parameters of criminal liability for the intentional destruction or damage of objects of plant life under the law of Ukraine and of other European countries. In particular, the combination of research tools has allowed to propose rational amendments to Article 245 "Destruction or damage to plant life objects" of the Ukrainian Criminal Code.

Literature review

In Ukraine, the most significant contributions to the development of the relevant issues have been made, in particular, by the following scholars: I. Berdnik (Berdnik, 2018), T. Korniyakova (Korniyakova, 2011), V. Matviychuk (Matviychuk, 2011, 2016), and Yu. Turlova (Turlova, 2015).

In particular, I. Berdnik developed criteria for distinguishing the analyzed criminal act from related administrative offenses (Berdnik, 2018). As for her part, Yu. Turlova carried out a comprehensive analysis of the practice of imposing punishment for committing all environment related criminal offenses, in particular, and the destruction or damage of plants provided by the discussed legal provision (Turlova, 2015).

As for scholars from other countries (except Ukraine), various issues of “plant” ecocide and other “anti-flora” crimes have been explored at length by M. Faure (Faure, 2017), M. Cohen (Cohen, 1992), K. Begiashvili (Begiashvili, 2023), A. Lavorgna (Lavorgna et al., 2018), G. Okuyucu Ergün (Okuyucu Ergün, 2021), F. Campbell (Campbell, 1988) and other scholars.

In particular, K. Begiashvili points out to the necessity of calculating damage caused by the illegal felling of trees and shrubs. In contrast to the clauses imposed on other categories of crimes, the Criminal Code of Georgia, as this author argues, does not impose a specific amount of damage in the event of illegal felling of trees and shrubs, which often creates uncertainty for the involved parties (Begiashvili, 2023).

G. Okuyucu Ergün has, in his turn, analyzed various legal aspects of the protection of environment through means of criminal law statutes in the EU. He wrote that in 2008, the Directive 2008/99/EC on the protection of the environment through criminal law was adopted. This Directive, which is currently the main legal instrument of the EU law on this subject, obliges Member States to provide for criminal penalties in their national legislation in respect of serious infringements of the EU’s environmental legislation (Okuyucu Ergün, 2021). Obviously, this protection regime applies to plant life as well.

A. Lavorgna with a group of European co-authors refer to the important fact that the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) serves as the primary legal structure overseeing the international trade of wildlife. Enacted in 1975, its goal is to safeguard species in the wild by ensuring that international trade doesn’t harm their survival. It mandates that any such trade must be sustainable, following robust biological standards, and lawful, in accordance with relevant national laws. Despite CITES and its principles, endangered species are still illicitly traded. This is an ever growing negative trend in the digital age and Internet commerce (Lavorgna et al., 2018).

Similar line of academic inquiry into international and national environmental criminal law has been conducted by some Ukrainian legal scholars (Lisova & Sharapova, 2020).

And American scholar F. Campbell makes a good point that unlike wild vertebrate animals, legal protection of plants in the United States is limited to “endangered” species only. The U.S. law does not attempt to regulate exploitation of common plant species. Thus, the author supports the argument for the prohibition of collection or destruction of endangered plants on public lands, other than national and state parks (Campbell, 1988).

The authors have also previously commented on some criminal law issues under review (land, subsoil (Movchan *et al.*, 2021; Movchan *et al.*, 2022).

Thus, based on the results of the analysis of the scientific research carried out by the above-mentioned authors, we see that those authors mainly focused their attention either on the issues of complex criminal law counteraction to the commission of environmental torts, or on the problems of criminal liability for encroachment on other than plant life, types of natural resources – land, subsoil, air, animal life, or only on those problems that are characteristic of certain countries without resorting to the properties of criminal law comparative studies.

So, in general, it can be stated that the issue of criminal legal response to encroachments on the environment is covered quite thoroughly in Ukrainian and foreign legal literature. At the same time, it should be noted that neither domestic, nor European scholars have conducted any special studies which would provide a comprehensive comparative analysis of the provisions of the Ukrainian Criminal Code and European countries’ legislation dedicated to criminal law protection of flora, and this is the main reason for the chosen topic’s relevance.

Results and discussion

Forests, green spaces, stubble, dry wild herbs, vegetation and its remains constitute the object of the crime (material element) under Art. 245 of the Criminal Code of Ukraine is. As for such elements as “settlements”, “railways” and “agricultural land”, they should be recognized as a place of destruction or damage to certain items of flora. However, given the respective legislative “merger” of these features, they will be analyzed in a combined mode.

Furthermore, the question arises as to the optimal formulation of certain features of the criminal offense under study. The issues that require

separate consideration as the most controversial include the justification of: a) recognizing not only forests and green spaces, but also other types of vegetation as the object of the discussed offense; b) limiting the subject matter of the criminal offense not to any, but only to certain types of green spaces, which are located outside settlements and along railways, as well as stubble, dry wild-growing grasses, vegetation or its remains, which are located on agricultural land only.

In addressing these issues, as announced in the introduction to this research paper, we decided to turn to the relevant foreign experience, which in this case seems to be an even more appropriate step for Ukraine given that many European countries, and especially those representing the so-called Western branch of the Romano-Germanic criminal law system, can “boast” of a much longer history of regulating liability for fire-related crimes than the domestic one. After conducting a comparative study, we have identified three main approaches to the construction of the relevant norms, which we will conditionally label as “general”, “forest protective” and “comprehensive environmentally protective”:

- 1) criminal legislation of the countries where the “*general*” (*first*) approach has been implemented provides only for general rules for liability caused by fire, which do not contain any “reference” to the forest or any other natural objects, and the main condition for criminal liability is the creation of public danger, in the sections on which the relevant rules are placed (Articles 169-170 of the Austrian Criminal Code (Criminal Code of Austria, 1974), Articles 180-182 of the Danish Criminal Code (Criminal Code of Denmark No. 976, 2019), Article 355 of the Norwegian Criminal Code (Criminal Code of Norway, 2005); also, Article 284 of the Slovakian (Criminal Code of Slovakia No. 300/2005, 2005), Article 314 of the Slovenian (Criminal Code of Slovenia No. 50/12, 2008), Chapter 13 of the Swedish (Criminal Code of Sweden No. 1962:700, 1962) Criminal Codes, etc.);
- 2) criminal legislation of other countries embodies the “*forest protection*” (*second*) approach, the content of which is to criminalize fires that have led to the destruction or damage of only one type of natural resources – forest (forest areas), for which the punishment is more severe compared to the one provided for an “ordinary” fire (violation of fire safety rules

(Art. 206-b of the Criminal Code of Albania (Criminal Code of Albania No. 7491, 1991), Article 236 of the Criminal Code of Bulgaria (Criminal Code of Bulgaria No. 26, 1968), Article 304 of the Criminal Code of Georgia (Criminal Code of Georgia No. 2287-rs, 1999), Article 423-1 of the Criminal Code of Italy (Criminal Code of Italy No. 1398, 1930), Article 232 of the Criminal Code of Moldova (Criminal Code of the Republic of Moldova No. 985-XV, 2002);

- 3) instead, parliamentarians of the latter group of states support and employ the “*comprehensive environmental protection*” (*or third*) approach, recognizing as criminal only those offenses which had led to fires either in forests or in some other or any other natural areas. At the same time, it should be noted: if in one group of such countries liability for destruction or damage (not exact term) by fire of all natural resources is unified (Article 429(3) of the Criminal Code of the Netherlands (Criminal Code of the Netherlands, 1881) – forest, heather, grass, peatlands; Article 272(1)(a) of the Criminal Code of Portugal (Criminal Code of Portugal No. 48/95, 1995) – forest, trees, wheat fields; Article 306(1)(5) of the Criminal Code of Germany (Criminal Code of Germany, 1998) – forests, fields (meadows and steppes) and peatlands), while in others, more severe penalties are provided for committing forest fires, which are often covered in separate articles (Article 352 (natural objects) and Articles 354-355 of the Estonian Criminal Code (forest) (not only by fire, but also by other means) (Criminal Code of Estonia, 2001); Articles 352-355 (forest), Article 356 (other natural areas planted with plants) of the Spanish Criminal Code (Criminal Code of Spain No. 10/1995, 1995).

Based on the above provisions, we were able to reach the following interim conclusions.

Firstly, in the analyzed provision of the national criminal legislation, it is quite fair and appropriate to recognize as criminal offenses encroachments on any type of vegetation Article 245 of the CC of Ukraine (unlike some of the above-mentioned legislative approaches) (Criminal Code of Ukraine No. 2341-III, 2001).

In arguing our demonstrated position, we must, on the one hand, point out the undeniable harmfulness of such actions for the Ukrainian environment, while, on the other hand, point to the fact that provisions of the national criminal

law other than Article 245 of the CC of Ukraine (Criminal Code of Ukraine No. 2341-III, 2001) do not allow for a proper legal assessment of such encroachments. After all: a) Art. 194 of the CC of Ukraine provides for response to cases of destruction or damage only to “property”, which does not include vegetation, and “other’s” property, which makes it impossible to recognize arson of one’s own property as a crime; b) Art. 270 of the CC of Ukraine (Criminal Code of Ukraine No. 2341-III, 2001) can be applied only to persons whose attitude to the consequences was negligent and provided that actions of such persons caused harm to human health or property damage on a large scale (300 or more non-taxable minimum incomes).

Secondly, encroachments (destruction/damage) should be recognized as criminal offenses not only on green spaces around settlements and along railways, as provided for in the current version of the criminal law prohibition under study, but also on any other green spaces, including those not located in appropriate places, because, as practice shows, arson can cause extremely great environmental damage. And that is why the updated version of the relevant provision should remove the relevant restriction on the place of commission of a criminal offense. The relevant European experience also serves as an additional argument in favor of such recommendations. Thus, I would like to point out that: within Art. 236 of the Criminal Code of Bulgaria (Criminal Code of Bulgaria No. 26, 1968), the object/place of crime is recognized as forest trees, seedlings, forest crops, forest nursery, undergrowth; in Art. 304 of the Criminal Code of Georgia (Criminal Code of Georgia No. 2287-rs, 1999) – as forests and plantations; in Art. 354-355 of the Criminal Code of Estonia (Criminal Code of Estonia, 2001)– as trees and shrubs in forests and other plantations; in Art. 356 of the Criminal Code of Spain – as plants in non-forest areas (along with the provisions on forests and forest areas); in Art. 423-1 of the Criminal Code of Italy (Criminal Code of Italy No. 1398, 1930) – as forest, grove, forest nurseries; in Art. 272 of the Criminal Code of Portugal – as forests and trees not located in them. The criminal legislation of all these countries either explicitly states that the relevant crime covers those trees that are not part of the forest fund, or uses the general wording “trees” (“vegetation”), without indicating that such trees are included in the forest fund.

We recommend harmonizing the specified provisions of criminal and forestry legislation by

defining the object of the crime under Article 245 of the CC of Ukraine (Criminal Code of Ukraine No. 2341-III, 2001) as “forests and green spaces”. This, on the one hand, will make it possible to cover green spaces within settlements and along highways, and, on the other hand, will allow not to extend its provisions to individual trees and groups of trees, shrubs on agricultural land, private and garden plots (as well as self-forested plots within settlements with trees of average age less than 30 years, and self-forested plots within the protection zones of energy facilities, main heating networks, main pipelines and other linear infrastructure facilities), which should be recognized as “other types of vegetation”.

Similarly to Ukraine, in some other European countries, the relevant provisions only mention “forest” and/or forest areas” (Articles 107–108 of the Criminal Code of Latvia (Criminal Code of Latvia, 1998), Article 232 of the Criminal Code of Moldova (Criminal Code of the Republic of Moldova No. 985-XV, 2002). At the same time, in the course of our research, no examples were found where these norms protect, as provided for in Article 245 of the Criminal Code of Ukraine, only those types of vegetation (as well as its residues) located on agricultural land. We found no reason for such restriction. In addition to agricultural lands, Ukraine also distinguishes the following: residential and public development lands; lands of nature reserves and other environmental protection purposes; lands of health improvement purposes; lands of recreational purposes; lands of historical and cultural purposes; lands of forestry purposes; lands of the water fund; lands of industry, transport, electronic communications, energy, defense and other purposes (Land Code of Ukraine, 2001).

This raises the question, which can obviously be deemed as rhetorical: is the burning of vegetation or its residues on lands with natural healing (recreational) purposes, used for organizing recreation, tourism and sports events (recreational purposes), where cultural heritage monuments are located, etc. less dangerous than similar actions committed on agricultural lands? The question also arises whether the danger of burning fallen leaves (vegetation residues) depends on where such actions took place (Oliynychuk, 2021).

However, the most surprising part in this analyses is that under Art. 245 of the CC of Ukraine, destruction or damage to vegetation

committed even on the lands of the protected areas (lands which have special environmental, ecological, scientific, aesthetic, recreational and other value, which are granted the status of territories and objects of the protected areas by law), i.e. actions which legal assessment should be carried out with reference only to part 2 of Art. 77-1 of the Code of Administrative Offenses (Code of Ukraine on Administrative offenses, 1984), which, on the contrary, gives this fact an aggravating feature in comparison with similar behavior on agricultural lands (part 1).

Here we could mention Art. 252 of the CC of Ukraine, which provides for liability for the encroachments against territories under state protection and also protected areas. However, this provision, despite reasonable proposals by scholars (Kovtun, 2010), still provides for the possibility of recognizing only intentional manifestations of the relevant acts, the percentage of which (compared to negligent ones) is traditionally much lower. So where is the logic and common sense here?

Yet another issue that does not contribute to the effective criminal law protection of flora is the problem of distinguishing the crime under Article 245 of the CC of Ukraine (Criminal Code of Ukraine No. 2341-III, 2001) from administrative offenses under Part 2 of Article 77 and Article 77-1 of the Code of Administrative Offenses (Code of Ukraine on Administrative offenses, 1984).

One should begin the analyses of this issue with the mention that the guilt element of this crime is quite specific. This refers to the fact recognized by most researchers that, in addition to direct intent, this crime also implies the presence of both indirect intent and negligence (Dudorov *et al.*, 2014; Criminal Code of Ukraine No. 2341-III, 2001). We are convinced that such “versatility” is not an advantage but rather a disadvantage of the analyzed criminal law prohibition. This, in turn, gives rise to a number of negative consequences, with the main ones being as follows.

Firstly, the impossibility of using the form of guilt to distinguish between related criminal and administrative offenses. The academic literature suggests using the form of guilt (intent or negligence) to distinguish between the elements of the discussed crime (in case of destruction or damage to the forest by fire) and administrative offense of destruction or damage to the forest due to careless handling of fire, as well as violation of fire safety requirements in forests, which has

led to the outbreak of a forest fire or its spread over a large area. Here negligence is characteristic of an administrative offense, while intent – that of a crime. This recommendation is perceived ambiguously, because formally the negligent destruction or damage to flora simultaneously meets both elements of a crime under Article 245 of the CC of Ukraine (Criminal Code of Ukraine, 2001) and elements of relevant administrative offenses. Obviously, this issue can be partially solved by improving the legislative wording of the elements of the criminal destruction or damage to flora.

Secondly, it is the existing unification of liability for the destruction or damage of flora *committed with any form of guilt*. In other words, today there is a situation where the form of guilt does not actually affect the legal (criminal law, in particular) analyses of the violation.

We have already drawn attention to the differentiated approach toward the regulation of criminal liability for intentional and negligent damage to other (not forest) environmental elements. For example, while the Austrian Criminal Code (Criminal Code of Austria, 1974) provides for up to 3 years imprisonment for intentional pollution of the environment (Art. 180), the penalty for negligent pollution is only up to 1 year (Art. 181). In German penal legislation, the sanction for intentional soil pollution is also more severe than for negligent acts. Such significant difference in punishment is inherent in the sanctions provided for, in particular, pollution of water bodies, air pollution, noise, vibration and non-ionizing radiation, unauthorized waste management, unauthorized handling of radioactive substances and other dangerous goods and cargo, threats to areas in need of protection (Articles 324, 325, 325a, 326, 328, 329 of the German Criminal Code, respectively). In addition to other countries of the so-called “Germanic” group of criminal law (Estonia, Liechtenstein, Switzerland), this approach has been adopted by parliamentarians of Lithuania, the Netherlands, Portugal, Turkey, most Central European countries (Bulgaria, Poland, Slovakia, Hungary, Czech Republic), as well as countries of the “Yugoslav” group of the continental family of criminal law systems (Macedonia, Serbia, Slovenia, Croatia, Montenegro) (Dudorov & Movchan, 2020; Movchan, 2021).

It should be also noted that not only in Article 245 of the Ukrainian CC, but also in other provisions of Section VIII (Articles 239, 241-244) (Criminal Code of Ukraine No. 2341-III,

2001), the provisions of which also do not provide for the possibility of grading liability for pollution of certain elements of the environment (land, air, water, flora) depending on the form of guilt. According to S. Havrysh, in crimes against the environment, especially in the field of environmental safety, where grave and especially grave inevitable consequences may occur, the preservation of parity of forms of guilt is quite reasonable (Gavrysh, 2002). V. Matviychuk comments in a similar manner (Matviychuk, 2016).

Despite the existence of the argument about the need to comply with the principle of parity, we are inclined to associate the motives of the analyzed legislative decision on pollution of natural resources with the fact that the development and adoption of the Criminal Code of Ukraine was mainly based not on the above-mentioned European experience, but on the experience of the countries of the so-called Commonwealth of Independent States (CIS) group. In many cases, the Model Criminal Code for the CIS countries, approved by the Interparliamentary Assembly of the CIS member states on February 17, 1996, was taken as a model, which unifies liability for pollution of natural resources (Articles 222-226) (Model Criminal Code, 1996), just as in the active Criminal Code of Ukraine. It should be noted that differentiation of liability for destruction/damage of forests, on the one hand, committed by arson, and, on the other hand, those, which resulted from careless handling of fire, was provided even in the aforementioned recommendation document (Article 232(1) and (2)).

We can continue to cite various axiomatic provisions, which show the failure of Ukrainian legislator's decision to unify liability for intentional and negligent encroachments on specific environmental areas. Of course, if desired, certain terminological differences can be noticed in the above statements of scholars, but for the purpose of solving pragmatic tasks of improving the Criminal Code of Ukraine, we do not consider them fundamental. We proceed from the established approach, based on which public danger as a feature of the concept of a criminal offense is both an objective and subjective category determined, in particular, by the importance of social relations that are placed under criminal law protection, the severity of consequences, the method of action, the stage of the act, and the form of guilt.

By extrapolating the above to the subject of this study, it can be argued that there are hardly any grounds to consider as even approximately harmful the same assessments in practice under Article 245 of the CC of Ukraine:

- actions of persons which demonstrate a negligent attitude even toward the act (for example, throwing a cigarette butt that caused a forest fire), and persons who, although intentional about the act, are careless about the consequences (usually it is a small grass fire which grows into a large-scale fire);
- actions of persons who, while guided by various motives (revenge, concealment of other illegal actions, etc.), intentionally destroy flora not by careless handling of fire, but by deliberate arson.

In order to demonstrate the above points more clearly, let us turn to the materials of judicial practice. We will refer to several court decisions rendered under Art. 245 of the CC of Ukraine, when actions were qualified under it:

- 1) *Person-1, who, in order to collect straw, went to his mother-in-law's land plot, where, having smoked a cigarette, negligently in the form of criminal negligence, which was expressed by throwing away a cigarette butt, set fire to the stubble and part of the straw on the land plot, as a result of which the fire has spread in the direction of the nearby agricultural land plot of 56 hectares belonging to the private enterprise "Zakhidnyi Buh", with wheat plants on it. The fire burned the stubble and part of the straw on the land plot, as well as completely destroyed the wheat plants on the said land plot with a total area of 43.5 hectares (Case No. 1317/1852/2012, 2012);*
- 2) *Person-2, who deliberately set fire to dry grass at his place of residence, which started a fire that spread from the territory of Person-3's farm to block 4 (section 4) of the "Vyzhnytsia" enterprise, thus resulting in the destruction of forest litter over an area of 1.49 hectares and damage to 158 trees of various species to the point of growth cessation (Case No. 713/1215/22, 2022);*
- 3) *Person-3, who, while being near the cemetery, on the basis of hostile relations with employees of the State Enterprise "Polissya Forestry", decided to destroy flora (forests) by fire. While realizing his criminal intent, acting intentionally, intending to destroy flora, realizing the*

unlawful and socially dangerous nature of his actions, foreseeing harmful consequences and consciously wishing for such consequences to occur, Person-3 set fire to dry wild grass on the side of the road. As a result of the deliberate actions of Person-3, the grass caught fire, and the fire spread in the direction of the wind through the dry grass cover to the forest area corresponding to land allotments 12, 15, 17, 22, 23 of block No. 148 of the Dytiatkyi Forestry, in particular, an uncontrolled process of destruction and damage by fire of flora in the forest area has started, during which factors hazardous to wildlife and the environment have occurred, harmful chemical compounds have been released into the atmosphere, and the fire has damaged and destroyed forest vegetation, the natural state of soil cover, and microorganisms on a total area of 14 hectares (Case No. 366/2908/19, 2022).

Those court decisions (among many other) have led to the question: is the degree of social danger of the mentioned options of behavior the same and such that does not require differentiation of liability for their commission? In our opinion, the negative answer to this question is more than obvious.

The need to improve relevant provisions of domestic criminal law is eloquently confirmed by relevant foreign experience. Once again, we have seen that parliamentarians of other European countries take a unanimous position on the need to differentiate liability for, on the one hand, destruction or damage to forests (or flora in general) resulting from careless handling of fire or other sources of increased danger, and, on the other hand, for the destruction or damage to flora committed by arson alone, or by explosion or other generally dangerous means.

At the same time, by differentiating liability for destruction or damage to flora by arson and careless handling of fire, parliamentarians of the respective countries demonstrate different attitudes toward criminality of such acts: some believe that both elements should be material; others believe that both acts are so dangerous that they should be criminalized regardless of their consequences; while legislators of a conditionally third group of countries propose a differentiated approach by criminalizing arson regardless of its consequences, when careless handling of fire is punishable only if it caused damage.

After analyzing the above discussed options, we are inclined to believe that the most acceptable is the position of the third group of parliamentarians, who, given the extremely high risk of arson or other intentional publicly dangerous acts, recognize such behavior as criminal, regardless of the amount of damage caused by it (formal structure). The latter, while not affecting criminalization, is recognized as a factor in the differentiation of criminal liability. With regard to careless handling of fire, given the objectively lower degree of public danger of such acts, criminal liability for their commission is provided only if certain consequences occur (Art. 352 of the Spanish Criminal Code, Articles 107–108 of the Latvian Criminal Code). We consider criminalization of any form of negligent destruction or damage to forests (flora) by legislators of certain states to be unjustified (part 1 of Art. 304 of the Criminal Code of Georgia).

Conclusion

Having conducted our comprehensive criminal law analyses, we have grounds to conclude that the improved version of Article 245 of the Criminal Code of Ukraine should:

- 1) preserve liability for criminal actions against any type of vegetation, not only those torts related to forests;
- 2) within its framework, liability should be regulated for:
 - a) encroachment not only on green areas around settlements, along railways, but also on any other green areas, including those not located in appropriate places;
 - b) destruction of vegetation on the lands of any category from among those provided for by the Land Code of Ukraine (its Article 19).

In addition, we recommend that within the same Art. 245 of the CC of Ukraine (or two separate provisions) criminal liability for, on the one hand, intentional destruction/damage of flora committed by arson, and, on the other hand, destruction/damage of flora resulting from careless handling of fire or other sources of increased danger should be differentiated. Sanctions contained in such criminal prohibitions should be differentiated as well.

Due to the volume limitations for this paper, it was not possible to discuss and solve a number of other pressing issues of criminal liability or the destruction/damage of plant life within the scope of the research. In particular, this related to the: absence of Art. 245 of the Criminal Code of

Ukraine on the differentiation of criminal liability depending on the consequences of the relevant actions; assessment of the concept of “other serious consequences” provided for in Part 2, which leads to the absence of a unified approach to its interpretation in practice; imperfection of the sanctions provided for in the criminal law under consideration, as well as numerous defects inherent in the practice of implementing punishments established within its limits. In addition, it is worth recalling that a Working Group on Criminal Law Reform has been established in Ukraine, which has almost completed its work on the creation of the draft of the new Criminal Code of Ukraine. Familiarization with this document has proved that it proposed a fundamentally different approach to the regulation of liability for the destruction and damage (both intentional and careless) of various plant life objects compared to those provided for by the current Criminal Code of Ukraine.

Therefore, we are convinced that analysis of the relevant provisions of the projected criminal law, as well as those marked by a few above paragraphs of the unresolved criminal law issues in this article, should become the object of future scientific investigations (research) in this vital area of legal regulation.

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