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CONCEPT OF ENVIRONMENTAL CRIME

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In the article, on the basis of comparative analysis, the authors investigated legally defined category of «natural environment», «environmental component», «natural object» «Natural and man-made object» «environmental security», resulting in the necessity of improving the criminal law of the specification and complement the notion of crimes against environmental safety and the environment.

Ecological state of the planet in the XXI century is in a critical condition: rapidly depleting natural resources pollute the environment significantly, damage influence environmental safety which is a consequence of industrial and economic activities of mankind. One of the objectives of the Criminal Code of the Republic of Belarus (hereinafter – CC) enshrined in Art. 2 is the protection of the natural environment. In order to implement this problem in Chapter 26 of the Criminal Code provides for liability for crimes encroaching on environmental safety and the environment.

In a footnote to that chapter defines crimes against environmental safety and the environment as committed will fully or negligently socially dangerous acts that have caused or may cause harm to the land, waters, mineral resources, forests, flora and fauna, air and other natural objects classified such legislation on the protection of the environment, regardless of ownership [1].

Despite the legislative embodiment, the above mentioned concept requires a thorough scientific understanding and improving due to a number of drawbacks. The definition contained in the Criminal Code, identified as one of the subjects of crime natural objects, only lists some components of the environment («land, water, minerals, forests, flora and fauna, air and other natural objects»), identifying them with natural objects. In general, this rule has a blanket character and refers to the law on environmental protection for legal clarification of the term «natural object».

Article 1 of the Law «On Environmental Protection of the Republic of Belarus» [2] (hereinafter - the Law «On Environmental Protection») under natural object understands natural ecological system, natural landscape, habitat and their constituent components of the environment that have retained their natural properties. The above Act also contains an explanation of the term component of the environment under which understands the land (including soil), mineral resources, water, air, flora and fauna as well as the ozone layer and near-Earth space , providing a set of favorable conditions for the existence of life on the Earth.

From the analysis of the terminology laid down in the Law «On Environmental Protection» it follows that a natural object is common concept, which consists of a combination of private concepts of environmental components.

Having defined the legislative definition of «natural object» and «component of natural environment» turn to the definition of crimes against ecological and environmental security enshrined in the Criminal Code. Use of the adjective «other» before the term natural object indicates mixing of the terms «natural object» and «component of natural environment», which generates significant contradictions.

Drawback is the fact that the above definition of a crime against environmental safety and the environment understands only socially dangerous act causing or likely to cause harm to specific natural objects .

However, legally fixed formulation of the group of crimes includes a wider range of subjects: environmental safety and the environment. Under the Act [2] natural environment means a combination of components of the environment, natural environment, natural and man-made objects.

In turn, under the natural man-made objects Law «On Environmental Protection» [2] understands natural objects changed as a result of economic and other activities, and (or) object created by a person having the properties of a natural object and having recreational and protective value.

Thus, the analysis of the concept of crimes against environmental safety and the environment shows that natural man-made objects which are one of the elements of the environment, are left without the protection of the criminal law, which is a major gap in the criminal law.

The situation is similar to the criminal law protection of public relations in the field of environmental safety, which is clearly not limited to the protection of individual natural objects (as can be deduced from the definition of this group of criminal offenses). According to the Law «On Environmental Protection» [2] environmental security – is the state of protection of the environment, human life and health from possible harmful effects of economic and other activities, emergency situations of natural and manmade. As can be seen from this definition, it covers not only the environment, but also provides protection of the environment in general.

At the same time, an analysis of the statutory concept of environmental security has shown that it requires detailed investigation and verification, as formulated in the Act's definition is too generalized and its structural analysis covers a wide range of social relations that goes beyond the environmental sphere. We note that this term provides the state of protection of the environment, not the environment. Environmental legislation means the combination of components of the environment, natural and anthropogenic objects, as well as man-made objects. In other words, environmental safety – is the state of protection of the environment and man-made objects. An anthropogenic object is an object created by man for his social needs and not having the properties of natural objects, is an object of the material world: movable and immovable property. Thus, with this understanding of environmental safety, criminal defense goes beyond the scope of environmental public relations.

In addition, the definition of «environmental security» as a self- protection object separately allocated state of protection of life and health of citizens, as well as harmful effects provided economic and other activities, as well as emergency situations of natural and manmade. Therefore, any activity, according to this definition, which has a detrimental effect on life or health of citizens, may be regarded as an activity encroaching on environmental safety. Hence a large number of offenses under the Criminal Code is not attributable to crimes against environmental safety and the environment, can in principle be regarded as crimes encroaching on environmental safety.

Analysis of the legislative definition of crimes against environmental safety and the environment shows that it does not allow to fully extend this concept for all types of crimes included in Chapter 26 of the Criminal Code. If the analysis of the qualitative characteristics of the totality of social relations under Chapter 26 of the Criminal Code, which are subject to socially dangerous attacks, it becomes apparent that a number of crimes under this chapter is not subjected to a legally enforceable definition of crimes against environmental safety and the environment in its literal sense. These include the following offenses which are the direct objects:

✓ social relationships underpinning the foundations of ecological security breach of environmental safety requirements (Article 265), taking into operation of environmentally hazardous facilities (Article 266), the failure to eliminate the consequences of violations of environmental legislation (Article 267), violation of safety rules when handling with genetically engineered organisms, environmentally hazardous substances and wastes (Article 278), violation of safety rules when handling microbiological and other biological agents or toxins (Art. 279);

✓ public relations, providing awareness of the state of environmental security: concealment or intentional misrepresentation on environmental pollution (Art. 268).

Summing up the following disadvantages the statutory concept of crimes against environmental safety and the environment:

- 1) mixing the terms «component of the natural environment» and «natural object»;
- 2) exclusion from the concept of the natural environment of one of its constituent elements, namely natural and man-made objects;
- 3) lack of criminal law definition of the subject of a criminal assault as environmental safety.

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CRIMINOLOGICAL CHARACTERISTICS OF ECOLOGICAL CRIME

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The article describes main criminological features of ecological crime - high degree of public danger, negative effects of a continuing character, variety of ecological crime, high latency, a significant influence of the region on the structure and dynamics of ecological crimes, its cross-border nature.

In modern conditions even lawful human activity makes an increasing impact on integrity of ecosystems which provide vital functions in interests of welfare of a person and economic activity. Preservation of favorable environment and rational use of natural resources for satisfaction of requirements of recent and future generations is the highest priority of strategy of a sustainable development. Its realization has to be carried out by development and carrying out the active state ecological policy based on integration of economic, ecological, legal and social aspects of development. Formation of social development of the mechanism of counteraction of the ecological crime adequate to requirements which uninterrupted functioning will be directed on ensuring general observance of the ecological legislation has to become the most important component of this policy.

Today the research of questions of the criminological characteristic of ecological crime gains special relevance. Ecological crime is characterized by a high degree of public danger, negative effects of a continuing character, the variety of ecological crime, high latency, a significant influence of the region on the structure and dynamics of ecological crimes, its cross-border nature.

A high degree of public danger of ecological crime is in doing harm to a wide and various range of objects that undermine the basis of one's activity.

In legal literature there are various opinions concerning understanding of harm of ecological crime. The harm done to the environment by its consequences can be divided into economic and ecological. Economic harm is done to the economic interests of the user of nature: the products losses, the missed benefit, the compelled expenses on restoration of property and the broken condition of environment can be its expression. Harm to environment (ecological) is understood as negative changes and consequences of decrease in quality of natural resources and habitat of an individual, a biological diversity and a bioproductivity of natural components, and as a result – decrease in ecological-resource potential .

Except property and physical harm also marks out moral harm. So, there are situations when property rights aren't influenced at all by adverse surrounding environment, however, the level of quality of human life decreases. For example, if a citizen is deprived of the opportunity to bathe in the river because of a high degree of its impurity industrial, household and other wastes, there is a violation of its concrete subjective personal non-property right to favorable environment. In that case it is possible to speak about compensation of moral harm [1, p. 39].

Public danger of ecological crime can be considered proceeding from division of ecological harm into three components: ecological harm, economic harm and moral harm. Such approach, nevertheless, assumes consideration of only real harm to nature and the society, caused by ecological crimes. However, high public danger of ecological crime is caused by causing not only real, but also "potential", "accumulated" harm which can't be eliminated with methods in use.

Irreversible changes in the nature, disappearance of certain representatives of flora and fauna, mutation of a human body – to that confirmation. Such consideration of public danger of ecological crime legally focuses attention on special complexity of a problem of its prevention.