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PROBLEMS OF THE CURRENT STATE OF COUNTERACTION CRIMES IN THE SPHERE OF USE AND PROTECTION OF NATURE

Abstract. The article carries out a scientific analysis of the organizational and management factors of crime related to the use of subsoil in Ukraine, and highlights the relevant state policy measures in the specified area. The main criminal offenses in the field of use and protection of subsoil are determined: violation of the rules of protection or use of subsoil, illegal extraction of minerals; illegal extraction, sale, acquisition, transfer, forwarding, transportation, processing of amber; violation of the legislation on the continental shelf of Ukraine. The low quality of combating the investigated criminal offenses, the ineffectiveness of the criminal-legal and criminological policy in the field of subsoil use led to: outlining the shortcomings of the legislative regulation of criminal liability for the commission of the specified illegal acts, as well as organizational and management factors (bureaucracy and corruption obstacles in obtaining special permits for the use of subsoil; deficiencies in legal regulation and implementation of state control over special subsoil use, criminological inefficiency of the moratorium on subsoil use subjects, etc.). It was established that one of the main factors of crime in the field of subsoil use is the lack of sufficient political will for proper legal support of the nature protection sector of criminal-preventive activities, protection of subsoil from intensified criminal threats.

It is summarized that the state policy in the field of protection and rational use of subsoil is a complex of methods and means of a legal, educational, socio-economic nature aimed at ensuring protection, rational use, reproduction and improvement of the natural environment. It is noted that a component of such internal policy of the state is the criminal law policy, that is, a system of measures aimed at determining the nature of the criminal law fight against socially dangerous acts in the field of subsoil use. It is indicated that the sources of criminological policy in the field of protection and rational use of the subsoil are the foundations of specific sub-branches of internal state policy, which regulate the implementation of political-legal, social, economic and legislative decisions aimed at identifying the determinants of criminal illegal activity, as well as the creation of measures and means fight with her. It is emphasized that the appropriate set of national measures should be active, offensive, and anticipatory in nature.
Keywords: use and protection of subsoil, minerals, illegal mining, criminal offenses, legal regulation, state policy, countermeasures.

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ПРОБЛЕМИ СУЧАСНОГО СТАНУ ПРОТИДІЇ ЗЛОЧИННОСТІ У СФЕРІ ВИКОРИСТАННЯ ТА ОХОРОНИ НАДР

Анотація. У статті здійснено науковий аналіз організаційно-управлінських чинників злочинності, пов’язаних з користуванням надрами в Україні, виокремлено відповідні заходи державної політики у зазначеній сфері. Визначено основні кримінальні правопорушення у сфері використання та охорони надр: порушення правил охорони або використання надр, незаконне видобування корисних копалин; незаконне видобування, збут, придбання, передача, пересилання, перевезення, переробка бурштину; порушення законодавства про континентальний шельф України. Низька якість протидії досліджуваним кримінальним правопорушенням, неефективність кримінально-правової та кримінологічної політики у сфері надрокористування спонукали до: окреслення недоліків законодавчої регламентації кримінальної відповідальності за вчинення зазначених протиправних діянь, а також організаційно-управлінських чинників (бюрократія та корупційні перешкоди в отриманні спеціальних дозволів на користування надрами; недоліки правового регулювання і здійснення державного контролю за спеціальним надрокористуванням, кримінологічна неефективність мораторію на перевірки суб’єктів користування надрами та ін.). Констатовано, що одним з головних чинників злочинності у сфері надрокористування є відсутність достатньої політичної волі на належне правове забезпечення природоохоронного сектору кримінально-превентивної діяльності, охорони надр від інтенсифікованих кримінальних загроз. Резомовано, що державна політика сфері охорони та раціонального використання надр є комплексом методів та засобів правового, виховного, соціально-економічного характеру, спрямованих на забезпечення охорони, раціонального використання відтворення й оздоровлення навколишнього природного середовища. Зазначається, що складовою такої внутрішньої політики держави є кримінально-правова політика, тобто система заходів, які мають на меті визначення характеру кримінально-правової боротьби з суспільно небезпечними діяннями у сфері надрокористування. Вказано, що джерелами кримінологічної політики у сфері охорони та раціонального використання надр є основи спеціфічних підгалузей внутрішньої державної
політики, які регулюють реалізацію політико-правових, соціальних, економічних та законодавчих рішень, спрямованих на виявлення детермінантів кримінально протиправної діяльності, а також на створення заходів та засобів боротьби з нею. Підкреслюється, що відповідний комплекс загальнодержавних заходів повинен мати активний, наступальний, випереджувальний характер.

Ключові слова: використання та охорона надр, корисні копалини, незаконне видобування, кримінальні правопорушення, правове регулювання, державна політика, протидія.

**Formulation of the problem.** Subsoil use is a specific sphere of human-nature interaction. Extraction and use of natural resources presents governments with the task of regulating these processes in such a way as to ensure sustainable development, protect the environment and guarantee social justice [1, c. 346].

Crime in the field of subsoil use is a type of ecological and economic organized crime, which is expressed in relatively massive, stable institutional, prescribed by criminal law, social practices regarding the use of subsoil and associated with them accessory and accompanying forms of criminal activity in the economic, ecological, political, security spheres [2, p. 208].

The main criminal offenses in the field of subsoil use and protection should include illegal acts provided for in Art. 240 "Violation of the rules of protection or use of subsoil, illegal extraction of minerals", Art. 240¹ "Illegal extraction, sale, acquisition, transfer, forwarding, transportation, processing of amber", Art. 244 "Violation of legislation on the continental shelf of Ukraine" of the Criminal Code of Ukraine (hereinafter - the Criminal Code of Ukraine) [3]. The public danger of the mentioned criminals consists in violation of the established rules of subsoil protection, if this creates a danger to life, health of people or the environment. Irrational use of the subsoil can affect the subsoil and its minerals, adjacent natural objects - water, land, forest, human health and property [4, p. 94].

A significant number of facts of depletion of Ukraine's natural resources through illegal extraction of various types of minerals, as well as a gradual increase in the number of registered facts of committing the specified illegal actions, indicate the low quality of combating criminal offenses of this type, the ineffectiveness of criminal law and criminological policy in the field of subsoil use.

Effective opposition to criminal offenses in this area is possible only on the basis of a detailed analysis of their determinants. This makes it relevant to study the forms of relevant criminal acts, to analyze organizational and management factors affecting the state of crime in order to develop effective countermeasures.

**Analysis of recent research and publications.** There are a number of scientific studies dedicated to the study of problematic issues related to the determination of crime in the field of subsoil use, as well as state control of the use and protection of subsoil. A certain contribution to the study of the mentioned problem was made by such domestic scientists as V.F. Baranivskyi, O.V. Vynogradova,
The purpose of the article is a scientific analysis of the organizational and management factors of crime related to the use of subsoil in Ukraine, the identification of relevant measures of state regulation and control in the specified area.

Presenting main material. Subsoils belong to non-renewable natural resources, the geological rate of formation or accumulation of which is much slower than the rate of their use by people in the production process. They are a collection of various minerals that are widely used in economic activity. Minerals, in turn, are natural mineral formations of organic and inorganic origin, the main location of which is the subsoil, although the legislation of Ukraine is based on a broader definition of their possible location [5, p. 25–26]. There are also anthropogenic mineral deposits.

According to their value, minerals are divided into minerals of national and local importance. Minerals of national importance include combustible substances (coal, oil, natural gas), metals (iron ore, copper, lead), non-metals (clay, sand, limestone), precious metals (gold, iridium, platinum, silver), underground water, inert gases, etc. Minerals of local importance include limestone, gypsum, gravel, clay, pebbles, chalk, sand, gravel, etc. [6].

Among the types of minerals that are illegally mined in Ukraine, raw amber predominates. The presence of significant deposits of amber, the low cost of this type of precious stone in Ukraine and the demand for it provoke an increase in the volume of its illegal mining, which is qualified under Art. 2401 of the Criminal Code of Ukraine. In addition to damage to the environment, the situation with illegal mining of these precious stones has serious social consequences - undermining the authority of local authorities, criminalization of the population, normalization of illegal activities, non-payment of taxes.

According to official data, the total production volume of raw amber in Ukraine is quite significant in our country - up to 300 tons per year [7]. However, it is very difficult to establish the real situation with the extraction of this unique natural mineral, because in our country only certain companies have an official permit for extraction [8]. Much more raw amber is mined by prospectors in illegal fisheries, which cannot be controlled by the state, since the main extraction of raw amber in our country is illegal [9, p. 17].

Subjects that carry out state management in the field of geological study, use and protection of subsoil include: the central body of executive power, which ensures the formation of state policy in the field of environmental protection; the central body of executive power, which implements state policy in the field of
geological study and rational use of subsoil; the central body of the executive power, which implements the state policy in the field of labor protection; authorities of the Autonomous Republic of Crimea, local executive bodies, other state bodies and local self-government bodies [10].

In 2019, the Verkhovna Rada of Ukraine adopted a law on the regulation of amber mining, the purpose of which was the legal regulation of relations regarding the use of subsoil for the purpose of amber mining, the cessation of its illegal mining, as well as the creation of favorable conditions for the development of the economy in Ukraine, involvement in this industry investments and new technologies, increasing the standard of living of the population in the place of amber mining, ensuring environmental protection during amber mining and reclamation of disturbed lands [11]. It provides for the issuance of mining permits on certain land plots, and also makes changes to the Land Code, which provide for the exploration of amber deposits. At the same time, the law introduces criminal liability for illegal extraction and liability for non-compliance with reclamation requirements [12].

Among the shortcomings of the legislative regulation of criminal liability for the commission of criminal offenses in the field of subsoil use should be attributed: the lack of an appropriate material and legal basis for the functioning of inter-branch legal relations; lack of differentiation of criminal liability for illegal extraction of minerals of national significance on the basis of group criminal activity.

At the same time, the inefficiency of the management of state-owned mining enterprises is observed, which consists in the lack of innovative approaches, unprofitability, high cost of extracting minerals, reduction of wages of employees, weakening of social protection.

To organizational and management factors in the field of subsoil use M.G. Maksimentsev also attributes: disorganization, dispersion of geological information, lack of free access to it; lack of criminological support of the Institute of Strategic Environmental Assessment; underdevelopment of the accounting system and infrastructural support of archeology monuments; lack of proper procedure for conducting archaeological work, procedure for handling found objects, artifacts, their cataloging, transfer to state ownership, etc. [13, p. 22].

The analysis of relevant criminal offenses made it possible to single out the following organizational and management factors of crime in the specified area: bureaucracy in the procedures for issuing (extending the validity of) permits for special subsoil use; the presence of corruption obstacles in obtaining special permits for subsoil use; shortcomings of legal regulation and implementation of state control over special subsoil use, criminological ineffectiveness of the moratorium on inspections of subjects of subsoil use.

In addition, we have identified certain shortcomings in the management system of law enforcement agencies, such as: a decrease in the level of detection and prevention of criminal offenses that are of a group nature in the field of subsoil use; weakening of the competence component in the organization and implementation of
operational and investigative activities of the National Police; non-settlement of hemological examination by units of the expert service of the Ministry of Internal Affairs.

Regarding the negative factors affecting the operational situation, Yu.A. Ermakov attributes: the lack of a normatively regulated procedure for notifying law enforcement agencies when an offense is detected; permanent practice of resolving the issue by corrupt methods; an uncorrected system of interaction for detecting offenses and responding to them; application of self-rights methods to violators by controlling entities and legal subsoil users [14, p. 20].

In our opinion, the most important factor in crime in the field of subsoil use is the lack of sufficient political will for proper legal support of the nature protection sector of criminal and preventive activities, protection of the subsoil from intensified criminal threats, which requires the development of an appropriate policy at the state level.

State administration in Ukraine in the field of use and protection of subsoil is a type and component of nature management and environmental protection, which constitutes a coherent and effective system of general and special management. The absence of state regulation can lead to irrational use, damage to the subsoil, premature decommissioning of mineral deposits as a result of selective extraction of deposits rich in useful components or gross violation of current requirements and norms during the development of these deposits.

State regulation of relations in the specified sphere is carried out through: management; granting of permits; accounting; control; supervision. It includes: determining the volume of production in Ukraine of the main types of minerals for the current period and for the future as a whole and by region; provision of geological study of the territory of Ukraine; establishment of quotas for the supply of mined mineral raw materials; introduction of payments related to the use of subsoil, as well as regulated prices for certain types of mineral raw materials; establishment of standards (norms, rules) in the field of geological study, use and protection of subsoil, safe conduct of work related to the use of subsoil, as well as rational use and protection of subsoil [14, p. 16].

If we talk about combating crime in the field of subsoil exploitation, then the organizational and management component of the state mechanism should include: general management of the system, ensuring interaction and coordination of the activities of all key actors in the fight against crime; monitoring the effectiveness of combating crime; informational and analytical, scientific, methodical, financial and personnel support for combating crime.

The criminological activity of state bodies is complex in nature, a willful, continuous and sustainable activity of the state to counteract criminal manifestations of illegal behavior. The criminological policy of the state in this direction consists in the specific activities of all state, in particular, authorized bodies, to counter criminogenic phenomena in the field of subsoil use, which exist in society and create
all the necessary and favorable conditions for the growth of crime in the specified segment. As a component of the state's internal policy, such a policy is implemented through the study and implementation of the relevant arsenal of knowledge, determination of the nature and selection of methods of criminal legal countermeasures, development of means of prevention of these criminal offenses.

In the fair opinion of V.K. Hryshchuk, in the conditions of humanization of society, the concept of the criminal law policy of the state should be based on: unconditional use of the arsenal of scientific knowledge; constant concern for strengthening its moral and ethical origins; harmonious combination of all civilized methods in the implementation of penal policy; priority is given to combating the causes that give rise to crimes; creative use of domestic and foreign criminal and political experience; development of a rational system of law enforcement bodies; reconciliation of current legislation with the requirements of humanization of society [15, p. 158-165].

To ensure the criminal law policy in the field of environmental protection, such criminal law means as: administrative prejudice, punishment, criminalization and decriminalization should be applied. Ethnocultural aspects of politics - legal awareness - are an important means. Without taking into account the forms of people's actual behavior, their value orientations and attitudes in the researched field, norms-prohibitions will not be effective [16, p. 128].

We believe that today it is necessary to reform the entire system of the national economy, to create appropriate legal conditions for the functional integration of criminological and ecological and economic policies of the state. Among the main priority directions of the state environmental policy in Ukraine, scientists identify the following: a comprehensive approach in the development of environmental and other environmental legislation, including criminal legislation related to the environment; increase in costs for environmental protection and construction of environmental protection facilities; prohibition of any deviations from projects that harm the environment; unconditional compliance with environmental standards created by the international community; mandatory environmental examinations for the purpose of drawing up an environmental forecast; intensifying the activities of law enforcement agencies against violators of environmental legislation; improvement of environmental education; minimization of anthropogenic changes; phased elimination of negative consequences; a selective approach to the implementation of environmental protection measures in order to increase their effectiveness; payment for the use of natural resources [16, p. 115-116].

Conclusions. A necessary condition for the functioning of the mechanism of state regulation of the state's legal relations in the field of subsoil use is the organizational management, law-making, law enforcement and law enforcement activities of state bodies. State policy in the field of protection and rational use of subsoil is a set of methods and means of a legal, educational, socio-economic nature, which are aimed at ensuring the protection, rational use, reproduction and
improvement of the natural environment. A component of such internal state policy is the criminal law policy, that is, a system of measures aimed at determining the nature of the criminal law fight against socially dangerous acts in the field of subsoil use. The sources of criminological policy in the field of protection and rational use of subsoil are the foundations of specific sub-branches of internal state policy, which regulate the implementation of political-legal, social, economic and legislative decisions aimed at identifying the determinants of criminal illegal activity, as well as creating measures and means of combating it. The appropriate set of national measures should be active, offensive, and anticipatory in nature.

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