

II. ПРОБЛЕМИ КРИМІНАЛЬНОГО ПРАВА



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ПРОБЛЕМИ ВИЗНАЧЕННЯ СИТУАЦІЇ ВЧИНЕННЯ ЗЛОЧИНІВ ПРОТИ ДОВКІЛЛЯ ЯК ОЗНАКИ ОБ'ЄКТИВНОЇ СТОРОНИ ЇХ СКЛАДУ

Стаття присвячена визначенню ситуації вчинення злочинів проти довкілля у юридичних конструкціях складів злочинів, передбачених розділом VIII Особливої частини Кримінального кодексу України. Обґрунтовується, що у змісті такої ситуації мають місце різні варіанти поєднання місця, часу й обставини вчинення конкретного злочину. У статті звертається окрема увага на особливості безпосереднього визначення в нормах вказаного розділу Особливої частини КК України ознак зазначених компонентів ситуації, а також розглядаються такі варіанти поєднання місця, часу й обставини вчинення конкретного злочину, що визначаються шляхом тлумачення певних формулювань у кримінально-правовій нормі.

Автором формулюються висновки, у яких відображаються зазначені варіанти поєднання місця, часу й обставини вчинення злочинів проти довкілля, а також обґрунтовується підвищення ступеня суспільної небезпеки таких злочинів у зв'язку з наявністю в конкретній ситуації різних варіантів поєднання місця, часу й обставини, які оточують суспільно небезпечне діяння.

Ключові слова: злочин, ситуація вчинення злочину, місце, час, обстановка, довкілля, об'єктивна сторона складу злочину.

Статья посвящена определению ситуации совершения преступлений против окружающей среды в юридических конструкциях составов преступлений, предусмотренных разделом VIII Особенной части Уголовного кодекса Украины. Обосновывается, что в содержании такой ситуации выделяются разные варианты соединения места, времени и обстановки совершения конкретного преступления. В статье обращается отдельное внимание на особенности непосредственного определения в нормах указанного раздела Особенной части УК Украины признаков определенных выше компонентов ситуации, а также рассматриваются такие варианты соединения места, времени и обстановки совершения конкретного преступления, которые определяются путем толкования определенных формулировок в уголовно-правовой норме.

Автором формулируются выводы, в которых отображаются указанные варианты соединения места, времени и обстановки совершения преступлений против окружающей среды, а также обосновывается повышение степени общественной опасности таких преступлений в связи с наличием в конкретной ситуации разных вариантов соединения места, времени и обстановки, окружающих общественно опасное деяние.

Ключевые слова: преступление, ситуация совершения преступления, место, время, обстановка, окружающая среда, объективная сторона состава преступления.

The situation of committing of a crime is a distinctive combination of its place, time and circumstances of its committing, in particular, in such cases when its content means presence of events that have social importance [1, p. 148]. However, concretization of the content of a situation of committing of a crime of separate (some) types is carried out not sufficiently in the modern criminal science, and first of all because there is not taken into account making of quantity and quality side of a situation by a place, time and circumstances in different combinations [1, p. 148]. Moreover, as a rule there is not opened the content of such a sign in study literature in the General part of the criminal law of Ukraine [2, p. 214–215].

Y. V. Fesenko, who made a significant contribution to research of this sign of the objective part of a body of a crime, states that presence of at least two of such components as a place, time and circumstances is permanent for the content of the quantity side of a situation. At the same time the quality side of a situation depends on what exact components it covers. Moreover, such components supplement each other and cause brand new content of the external environment of a criminal action, increase or reduce a complex of norms that restrict some actions or require some certain behaviour, influence on the level of public danger of committed actions [1, p. 148–149]. According to the statement of O. O. Dudorov in case of perception of the mentioned approach of Y. V. Fesenko it is possible to consider, for example, that a situation as a sign of the objective side of a felonious homicide by her mother of a newly-born baby (article 117 of the Criminal Code of Ukraine, hereinafter – the CC) is characterised by a combination of time (a crime is committed during childbirth and straight away after it) and circumstances (being of a woman in a special psychophysiological state – «under the effect of childbirth», that reduces her ability to realize her actions and control them) [2, p. 214–215].

At the same time it is necessary to take into account that ignoring of the present approaches, that were formulated by Y. V. Fesenko, creates *significant difficulties* while determination of the general content of the stated sign of the objective side of a body of a crime. A worse situation is observed in determination of the concrete content of this sign in bodies of crimes of such types that are characterized by a high «blanket level». One of them is bodies of crimes against environment that are fixed in section VIII of the Special part of the CC. And to my opinion because of that there is not paid enough attention to problems of determination of the content of a situation of committing of a crime against environment with dependence on a «level» of influence of blanket level of the criminal norm of section VIII of the Special part of the CC in the level of theoretical and practical comments to the CC of Ukraine, as well as in study literature in the Special part of the criminal law. Therefore, the research that is presented in this article is well-timed and urgent.

Taking this into account the author defined the following *main tasks* of the present research: a) determination of such types of crimes against environment, bodies of which have such a sign of their objective side as a situation; b) characteristics of such a sign of a body of a concrete crime with taking into account of blanket content.

1. Referring to the abovementioned main tasks, it is necessary to pay attention to the fact that there exist cases when a situation of committing of crimes against environment is directly fixed in a text of disposition of the criminal norm in section VIII of the Special part of the CC. The most typical are the following:

1) in article 236 of the CC in the formula «... during projecting, placing, building, reconstruction, putting into exploitation, exploitation and liquidation of enterprises, movable means and other objects» there takes place combination of certain characteristics of time and circumstances of breach of rules of ecological safety. Such signs are, in particular, projecting, plac-

ing, building, reconstruction, putting into exploitation, exploitation and liquidation of objects that are stated in article 236 of the CC. Projecting means working out and approval of documentation (project) that consists of drawings, graphic and text materials, engineering and budget calculations, and that determines planning, architecture, engineering or/and technological solutions and constructional peculiarities of the stated objects, their main parameters (place of construction, space-and-planning, constructional and etc.), cost figures and organization of construction, placing, building, reconstruction, putting into exploitation, exploitation and/or liquidation of these objects. Placing of an enterprise, buildings, movable means and other objects are carrying out of all procedures for their providing (sale, lease) for exploitation in a place that is provided according to a project documentation and that is safe during long time. The concept of building covers building of a new object, reconstruction, expansion, completion, restoration and repair of objects and carrying out of mounting, and reconstruction covers re-equipment of existing production capacity that is connected with improvement of production and increase of its technical and economical level on the basis of scientific and technical progress. This reconstruction is carried out according to a complex project of an enterprise with a purpose to increase of production capacity, quality improvement and change of product mix, improvement of working conditions and protection of natural environment. Putting into exploitation is economic operations that present use of new (built, constructed) and/or reconstructed enterprises, buildings, movable means and other objects. Exploitation is to be considered as use of an enterprise, building, movable means and other objects according to their functional purpose and providing of necessary measures for maintenance of the construction, while which they can carry out given functions with parameters that are stipulated by the requirements of technical documentation [3, p. 13–14].

Under such conditions circumstances of committing of this crime during projecting, placing and building can indicate the presence of only projected (in other words objectively absent) objects, their main parameters, indicators, special conditions of further construction, placing, building, reconstruction, putting into exploitation and exploitation. In other words a situation as a sign of a body of this crime is characterized by a combination of time, about which it is directly mentioned in disposition to article 236 of the CC, and circumstances – presence of a) so to say «imagined» objects, that are «realized» in projecting, process of construction and reconstruction, and b) constructed (built) objects, for which there is carried out their putting into exploitation, exploitation or liquidation. Dependently on a concrete type of such objects the present legislation establishes different rules of ecological safety, that influence on conditions (specifics) of work of such objects;

2) in article 237 of the CC in the formula «... carrying out in a territory that underwent pollution with dangerous substances or emissions», where there are fixed signs of a place and time of committing of a crime. By a territory that underwent pollution with dangerous substances or emissions in the literature there is understood a territory of Ukraine that underwent negative influence of emissions, substances, materials, goods or waste products of production or other activity, which in a result of features that are characteristic for them and under some certain factors can cause some damage to environment, as well as to bring to death, injury, poisoning of humans and animals or to extermination of plants. At the same time as dangerous there are considered the following substances: gases; highly inflammable solutions; highly inflammable solids; substances that can cause spontaneous fire; substances that release highly inflammable gases while joining with water; substances that oxidize; organic peroxides, toxic substances; infection substances, corrosive substances, other dangerous substances and products.

By emission it is to be understood evolution of electromagnetic or corpuscular rays [3, p. 13–14]. In the same time it means that a legislator in such a way takes into account signs of a place of committing of a crime – a «territory that underwent pollution», as well as its time – a period of hazardous (negative) influence of such pollution on the mentioned territories in a result of especially dangerous external factors – dangerous substances and emissions in article 237 of the CC;

3) *in part 2 of article 238 of the CC in the formula «... committed ... in a territory that is declared as a zone of an emergent ecological situation»* there are combined signs of a place, time and circumstances of committing of a crime. In such a case a zone of an emergent ecological situation is a separate territory of Ukraine where there occurred an emergent ecological situation, it means the situation while which there occurred negative changes in the natural environment in a separate territory that require emergent measures from the state. At the same time under negative changes in natural environment it is to be considered loss, exhaustion or extermination of separate natural complexes and resources in a result of extreme pollution of natural environment, destructive influence of elemental forces and other factors that limit or rule out the possibility of life activity of humans and providing of economical activity in these conditions (article 1 of the Law «Of a zone of an emergent ecological situation» of the 13th of July, 2000). Under such conditions a place of committing of a crime relate to a territory that is declared in the proper way as a zone of an emergent ecological situation, and time of committing is connected with a period during which there takes place such an emergent ecological situation. Thereafter, circumstances of committing of a crime are characterized by negative (hazardous) changes in environment that can serve as a reason for providing of an emergent ecological situation.

4) *in part 2 of article 240 of the CC in the formula «illegal mining operations»*,

that means breach of the established order and relates to specific circumstances of mining and place of its «location» – its mines (beds). Such signs in literature are connected with the fact that mining is carried out without a special permission for use of subsoil, as well as without an act that certifies mining lease, and without approved project of mining works, geological research and subsoil protection, and a project of land providing that is approved in the way that is stipulated by the law; exploitation of mineral deposits with non-meeting of ecological requirements for mining projects and plans without passing of obligatory ecological examination; unauthorized expansion of mining territories; industrial mining etc. under the pretext of research and industrial development of mineral resources [3, p. 28];

5) *in part 1 of article 248 of the CC in the formula «illegal hunting in nature reserves or in other territories and objects of the nature reserve fund»*, that indicates that illegal hunting is carried out during the time for which in a certain territory there exists a «status» of the nature reserve fund, as a type of which there are recognized nature reserves, biosphere reserves, national nature parks, regional landscape parks, wildlife preserves, nature sanctuary, hole reserves (it means that there are combined signs of a place, time and circumstances of committing);

6) *in part 1 of article 252 of the CC in the formula «... territories that are taken under protection of the state»* there are combined in a certain way signs of a place and time (a period of staying of the stated territories under protection of the state) of committing of a crime. It means that an action in the form of destruction and causing of damage is carried out in the territories that have the status of objects of national value. In fact to signs of a place and time there are added signs of circumstances that relate to expansion of the stated status to the stated territories during their staying under protection of the state.

2. In some norms of section VIII of the Special part of the CC the content of a situa-

tion of committing of a crime is determined by means of interpreting of certain concepts that are fixed in dispositions of such norms. In particular, the most typical of them are the following:

1) *«illegal taking»* (part 1 of article 239–1, part 1 of article 239–2 of the CC) defines removal and movement of a soil cover of a plot of land (its surface layer) as signs of a place under specific circumstances – without a permission of specially authorized bodies that carry out the state control of use and protection of lands, or with the presence of such a permission, however, with breach of the existing order (rules) of removal and movement of a soil cover of a plot of land [4; 5; 6, p. 413; 7, p. 715–716];

2) *«breach of established rules ...»* (article 240 of the CC) defines non-meeting of protection rules that relate to a certain place of location of mineral deposits, mineral resources during a period of application of such rules;

3) *«breach of protection rules ...»* (article 242 of the CC) means non-meeting of ecological standards and norms that are stipulated by normative legal acts in the sphere of protection of water objects as circumstances of committed action, and presence of relevant places to which there are extended such standards and norms, – of water resources;

4) *«breach of the legislation ...»* (article 244 of the CC) indicates circumstances in the form of non-execution of obligations that were provided for a person and that relate to protection of some certain territory (place) – continental shelf – during any activity in it;

5) *«breach of rules ...»* (part 1 of article 248 of the CC) defines circumstances of carrying out of actions that make hunting and a certain place of its carrying out that is determined in the measures of hunting territories, including field and forest roads (except roads of common use), with any small arms or traps and other tools for catching of wild animals and birds, or with dogs of hunting breeds or hunting wild animals and birds, or with products of hunting; with hunting

products or with any assembled unsheathed small arms in the roads of common use;

6) *«illegal carrying out of ...»* (part 1 of article 249 of the CC) defines circumstances of carrying out of actions: a) in conditions of time of breach of established rules of use of a special permission (that is with presence of a license, however, with no meeting of requirements that are stipulated by it), when actions are carried out during specially established norms in measures of places of fishing and conditions of such fishing; b) with presence of restricted time in the territory in which there are located water live resources, when their catching is defined as restricted.

Conclusions. On summing up the carried out research of a situation of committing of crimes against environment it is necessary to pay attention to the following conclusions, which reveal the main content of its quantity and quality sides, which are pointed out above.

1. In certain cases the content of a situation of committing of crimes against environment in the norms of section VIII of the Special part of the CC is constructed with dependence on a combination of signs of a place and different events that take place during some certain time and that in fact «accompany» a relevant action. For example, a legislator combines these characteristics (components) of a situation of non-taking of measures for liquidation of effects of ecological pollution in article 237 of the CC in the following way: a place of committing of a crime is determined as a «territory that underwent some pollution», and time of committing is determined as a term during which a person is authorized to carry out renovation measures for liquidation or elimination of effects of ecological pollution.

2. In separate cases norms of section VIII of the Special part of the CC include signs of circumstances and time of committing of an action to the content of a situation of committing of a concrete crime. For example, the place of committing of a crime is concretized as an «area that is declared as

a zone of emergent ecological situation» in part 2 of article 238 of the CC, and the content of circumstances that are stated in part 1 of this article of the CC covers presence of ecological (including radiation) state that from one side relates to pollution of lands, water resources, atmosphere air, food and food raw materials, and from the other side that relates to negative influence of such and ecological state on human health, plants and animals world (that is in fact that such circumstances of committing of a crime are characterized by combination of two groups of signs of an ecological state: 1) those ones that characterize a level (amount) of its pollution, and 2) those ones that present a level (amount) of its negative influence on human health, plants and animals world).

3. In some cases norms of section VIII of the Special part of the CC stipulate a situation of committing of a crime and cover signs of circumstances and place of committing of a crime. In such a way in parts 1, 2 of article 240 of the CC circumstances of breaking of rules of protection and use of mineral resources are characterized by such its signs with alternatively determined content as «creating of danger for life, human health or environment», in particular, in such cases, when there are observed mining operations by special means from special mines, ability of mineral resources for further storage, use and etc.

4. In some cases norms of section VIII of the Special part of the CC stipulate a situation as a combination of a place, circumstances and time of committing of a certain crime. Specific is a situation of breaking of rules of ecological safety (article 236 of the CC), when the time of committing of such a breach is determined in this article of the CC in respect to a period of projecting, placing, building, reconstruction, putting into exploitation, exploitation and liquidation, its place is concretized in respect to buildings, movable means and other objects, and the circumstances are connected with projecting, placing, building, reconstruction, putting into exploitation, exploitation and liquidation of the stated objects.

5. Increase of a level of public danger of crimes against environment, bodied of which have such a sign as a situation, can be grounded by a «new content of external surroundings» [7, p. 149], which are obtained by an action that is carried out by a person. Such a situation is formed by means of different variants of combination (complex) of a place, time and circumstances of carrying out of a certain action in the content of the determined situation (such variants have combinations of certain signs-components of a situation and can be put to the following unions of: a) a place and time; b) a place and circumstances; c) time and circumstances; d) a place, time and circumstances of carrying out of an action).

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Volynets R. Problems of determination of a situation of committing of crimes against environment as signs of the objective side of their body.

The article is dedicated to determination of a situation of committing of crimes against environment in legal constructions of crimes bodies that are stipulated by section VIII of the Special part of the Criminal Code of Ukraine. It is grounded that there are different variants of combination of a place, time and circumstances of committing of a certain crime in the content of such a situation. There is paid individual attention to specifics of direct determination of signs of the stated components of the situation in norms of the stated section of the Special part of the Criminal Code of Ukraine in the article, and there are also observed such variants of combination of a place, time and circumstances of committing of a certain crime, that are determined by means of interpretation of certain wordings in the criminal norm.

The author formulates conclusions in which there are presented the stated variants of combination of a place, time and circumstances of committing of crimes against environment, and there are also grounded the increase of the level of public danger of such crimes in connection with presence of different variants of combination of a place, time and circumstances in a certain situation that surround actions that are dangerous for public.

Keywords: *crime, situation of committing of a crime, place, time, circumstances, environment, objective side of a body a crime.*

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