

International and legal protection against offenses in a field of ecology of construction

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Abstract. This article explores the legislative and doctrinal foundations of ensuring ecological safety in the allocation and sustainable development of settlements. The study systematically examines a broad range of international treaties and domestic regulatory acts, analysing their integration into the legal framework of Ukraine. At the global level, the paper details the significance of fundamental agreements, including the Stockholm and Rio de Janeiro Declarations, the Aarhus Convention, and the Protocol on Strategic Environmental Assessment. These international instruments establish the core tenets of balanced urban planning, ensuring public participation and mandatory transboundary environmental impact assessments. On a national level, the research evaluates Ukraine's complex and dynamic legislative structure, mapping its transformation from constitutional guarantees down to sectoral land, building, and sanitary codes. A substantial portion of the article is dedicated to assessing Section VIII of the Criminal Code of Ukraine, focusing on offences against the environment committed during construction and urban development activities. The author highlights a conceptual shift in the criminal legal apparatus toward a protective function that actively safeguards individual ecological rights rather than merely enforcing generalised conservation standards. However, the study identifies critical legal lacunae, notably the lack of an unambiguous definition of ecological safety across both international and national legal norms. Furthermore, significant practical challenges remain regarding the insufficient criminal-legal protection of property rights over natural resources and the complex task of distinguishing criminal offences from administrative infractions based on public danger and systemic consequences. The paper concludes by emphasizing the urgent need to refine judicial interpretations and eliminate extrajudicial liability mechanisms.

Keywords: international law, environmental standards, criminal law, building regulations, environmental protection.

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INTRODUCTION

Today, urban planning in Ukraine is characterised by rapid development, which, in turn, requires adequate and timely legislative regulation of social relations in the field of ensuring environmental safety during the siting and development of settlements. The provisions of current legislation governing the planning and development of settlements are characterised by their comprehensiveness and systematic nature; whilst, on the one hand, it is necessary to take into account all economic and social factors, on the other hand, there are requirements to ensure environmental safety during urban planning activities, which in turn entails [1].

The relevance of the topic is driven by the unprecedented scale of the global environmental crisis and the rapid expansion of the construction industry, which remains one of the largest consumers of natural resources and key drivers of anthropogenic pressure on the environment. Construction activities – ranging from raw material extraction to the erection and operation of structures – are frequently accompanied by significant atmospheric pollution, soil degradation, biodiversity loss, and the generation of colossal volumes of waste. Given the transboundary nature of environmental threats, local offences within the construction sector rapidly escalate into international environmental issues, thereby necessitating unified and robust legal regulation at both global and regional levels.

The specific nature of environmental offences in this area lies in their complex character, where the private economic interests of developers, the public interests of states, and the universal human right to a safe and healthy environment intersect. Existing international legal instruments (such as the Aarhus Convention, the Espoo Convention, and UN framework agreements on climate change) establish only general standards for environmental management and environmental impact assessments. Concurrently, mechanisms for enforcing legal liability for specific environmental

offences committed during the design, construction, and demolition of buildings remain fragmented, whilst institutional enforcement levers lack sufficient efficacy.

This issue gains additional urgency due to the imperative of post-war infrastructure and housing reconstruction in countries affected by armed conflicts (most notably, Ukraine). Large-scale rebuilding must be carried out exclusively in accordance with the principles of green building and the circular economy, which precludes sidelining environmental standards for the sake of rapid construction rates. Consequently, there is an acute academic and practical need to rethink current doctrinal approaches, analyse international judicial precedents, and formulate recommendations for harmonising domestic legislation with international legal standards of environmental safety within the construction sector.

Research into the criminal law classification of environmental violations in construction has been carried out by Ukrainian and foreign academics. The works of researchers such as: P. Andrushko, V. Antipov, L. Arkusha, O. Bandurka, M. Bazhanov, O. Bakhurinska, A. Boiko, V. Borisov and many others highlight the main conceptual aspects of this issue. At the same time, the international legal aspects of this issue remain largely unexplored.

The aim of this article is to examine the characteristics of international legal protection against environmental offences during construction; the objective of the article is to identify the defining features of the international legal provisions criminalising the offence under consideration.

RESULTS

At the legislative level, the core principles of ensuring ecological safety in the allocation and development of settlements are established in international (interstate) and national (domestic) regulatory legal acts, given that these outlined spheres of society and state life fall

under the joint competence of subjects of international and national law.

At the interstate level, the core principles of ensuring ecological safety in the field of urban planning are reflected in:

The Stockholm Declaration on the Human Environment (16 June 1972), the content of which consists of guiding principles on which states and international organizations should rely in their actions affecting the state of the environment. In particular, regarding the regulation of social relations related to the use of natural resources in urban planning, the Declaration establishes the principle of planning and managing territories "as deemed necessary" (Principle 2), which by its essence should resolve "reconciling conflicts between the needs of development and the need to protect and improve the environment" (Principle 14), as well as avoiding "adverse effects on the environment and obtaining maximum social and economic benefits" (Principle 15) [2].

The World Charter for Nature (28 October 1982), which stipulates that during the planning and implementation of socio-economic development activities, due account shall be taken of the fact that the conservation of nature is an integral part of these activities (Section II, paragraph 7) [3].

The Convention on Environmental Impact Assessment (EIA) in a Transboundary Context (25 February 1991), which establishes requirements for carrying out a particular type of activity within a specific territory, namely: notification of planned activities likely to cause significant adverse transboundary impact; preparation and content of environmental impact assessment documentation; consultation procedures; inquiry procedures; final decision-making; post-project analysis [4].

The Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context (21 May 2003), which stipulates that a strategic environmental assessment shall

be carried out for plans and programmes being prepared, specifically for urban and rural development planning, which set the framework for future development consent of projects. An environmental report is a mandatory annex to such plans and programmes, identifying and evaluating likely significant environmental effects of implementing the plan or programme and reasonable alternatives. Plans and programmes whose sole purpose is to serve national defence or civil emergencies, as well as financial or budget plans and programmes, are excluded from the scope of this Protocol [4].

The Rio Declaration on Environment and Development (14 June 1992), based on the principle of sustainable (balanced) development, incorporating key provisions: humans are at the centre of concerns, holding the right to a healthy and productive life in harmony with nature; environmental protection must constitute an integral part of the development process and cannot be considered in isolation from it; meeting development and environmental needs must extend not only to present but also to future generations; decreasing the gap in living standards between states and eradicating poverty are essential tasks for the global community; to achieve sustainable development, states must eliminate or reduce unsustainable patterns of production [5, p. 10].

Thus, Principle 2 of this Declaration establishes the right of states to exploit their own resources pursuant to their own environmental and developmental policies, alongside the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction [6].

During the Rio Conference, participants also adopted several other documents, among which Agenda 21 (14 June 1992) holds significant importance, becoming an interstate political consensus on cooperation regarding environment and development issues. This document establishes the fundamental principles of

the sustainable development concept within economic and social spheres, as well as the conservation and rational management of natural resources. In the context of settlement allocation and development, key provisions focus on promoting sustainable settlement development and an integrated approach to the planning and rational use of natural resources. Consequently, Agenda 21 prioritizes the task of developing planning and management systems that incorporate environmental components.

The Istanbul Declaration on Human Settlements (Habitat II), which was the outcome of the Second United Nations Conference on Human Settlements, held in Istanbul, Turkey, from 3 to 14 June 1996. As derived from paragraph 25 of the Habitat Agenda, the issue of human settlements must be addressed based on principles of equity, solidarity, partnership, human dignity, respect, and cooperation. Accordingly, participants proclaimed the achievement of sustainable human settlements development in an urbanizing world as a main goal and principle, which, as defined in paragraph 35 of the Habitat Agenda, must be accompanied by concrete measures for international technical cooperation and information exchange [7].

The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) (25 June 1998), the purpose of which is to guarantee the public concerned the right of free access to environmental information, to collect and disseminate such information, to participate in decision-making on specific activities, regulations, plans, programmes, and political documents related to the environment, as well as the right of access to a review procedure before a court of law. Consequently, signatory states are obliged to create the proper conditions required to realize these rights [8].

Furthermore, legislative foundations for ensuring ecological safety in settlement allocation and development are contained

in European Union acts, including: Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme; Council Directive 85/337/EEC of 27 June 1985 (as amended by Directive 97/11/EC of 3 March 1997) on the assessment of the effects of certain public and private projects on the environment; Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment; Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information; Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances; Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control); the Charter of European Cities & Towns Towards Sustainability (Aalborg Charter), approved by participants of the European Conference on Sustainable Cities & Towns on 27 May 1994 (Aalborg, Denmark); Green and White Papers of the European Commission, etc [1].

At the domestic level, legislative enforcement of ecological safety in Ukrainian urban planning is characterized by its extensive, complex, and dynamic nature, driven by continuous amendments to laws and secondary legislation. The leading position among these acts belongs to the Constitution of Ukraine (28 June 1996), which possesses supreme legal force and defines the priorities of state-legal construction and development. While the provisions of the Basic Law do not contain separate clauses regarding ecological safety in settlement allocation and development, this does not indicate an absence of corresponding constitutional-legal regulation. The latter is exercised by establishing constitutional principles of ownership rights over natural resources, the legal regime of possession, use, disposal, and protection of land (Art. 13, 14), the right

to an environment that is safe for life and health, and free access to environmental information (Art. 50). According to V. Andreytsev, this consolidation subsequently transforms "into sectoral legislation, without explaining the content and nature of the latter..." [9, p. 106]. Let us examine the sectoral legislation detailing the provisions of the Basic Law regarding ecological safety during urban planning activities. Based on the subject of legal regulation, laws and secondary legislation are categorized into [1]:

(1) acts establishing the procedure for planning the allocation and development of settlement territories, incorporating the concept of sustainable development (Laws of Ukraine "On State Forecasting and Development of Programmes for Economic and Social Development of Ukraine" of 23 March 2000, "On State Targeted Programmes" of 18 March 2004, "On the General Scheme of Planning the Territory of Ukraine" of 7 February 2002, "On the Fundamentals of Urban Planning" of 16 November 1992, "On Regulation of Urban Planning Activity" of 17 February 2011, Resolution of the Verkhovna Rada of Ukraine "On the Concept of Sustainable Development of Settlements" of 24 December 1999, No. 1359-XIV, Order of the State Committee of Ukraine for Urban Planning and Architecture (currently the Ministry of Regional Development, Construction, and Housing and Communal Services of Ukraine) DBN 360-92 "Urban Planning. Planning and Development of Urban and Rural Settlements" of 17 April 1992, No. 44, Order of the Ministry of Ukraine for Construction and Architecture DBN B.2.4-1-94 "Planning and Development of Rural Settlements" of 5 January 1994, No. 6, etc.);

(2) acts regulating relations concerning the provision of ecological safety in settlement allocation and development (Laws of Ukraine "On the Main Fundamentals (Strategy) of the State Environmental Policy of Ukraine for the Period until 2020" of 21 December 2010, "On Environmental Protection" of 25 June

1991, "On Building Regulations" of 5 November 2009, as well as Resolution of the Cabinet of Ministers of Ukraine "On Approval of the State Strategy for Regional Development for the Period until 2015" of 21 July 2006, No. 1001, Order of the Ministry of Health of Ukraine "On Approval of State Sanitary Rules for the Planning and Development of Settlements" of 19 June 1996, No. 173, etc.);

(3) acts defining organizational and legal support in the sphere of ensuring ecological safety in settlement allocation and development (Laws of Ukraine "On the Cabinet of Ministers of Ukraine" of 27 February 2014, "On the Prosecutor's Office" of 5 November 1991, "On Local Self-Government in Ukraine" of 21 May 1997, "On Local State Administrations" of 9 April 1999, "On State Control over Land Use and Protection" of 19 June 2003, Decree of the President of Ukraine "On Optimization of Central Executive Authorities" of 9 December 2010, No. 1085/2010, Resolution of the Cabinet of Ministers of Ukraine "On Optimization of the System of Central Executive Authorities" of 10 September 2014, No. 442, etc.);

(4) acts establishing functional and legal support for ecological safety in settlement allocation and development (Land Code of Ukraine of 25 October 2001, Laws of Ukraine "On Environmental Protection", "On Regulation of Urban Planning Activity", "On Ecological Expertise" of 9 February 1995, "On Conformity Assessment" of 17 May 2001, "On Standardization" of 17 May 2001, "On State Expertise of Land Management Documentation" of 17 June 2004, "On Improvement of Settlements" of 6 September 2005, Resolutions of the Cabinet of Ministers of Ukraine "On Approval of the Procedure for Conducting Agro-environmental, Ecological-economic, Anti-erosion, and Other Types of Land Zoning" of 26 May 2004, No. 681, "On Approval of the Procedure for Approving Construction Projects and Conducting Their Expertise and Recognizing Certain Resolutions of the Cabinet of Ministers of Ukraine as Having

Lost Effect" of 11 May 2011, No. 560, Order of Derzhbud of Ukraine DBN A.2.2-1-2003 "Design. Structure and Content of Environmental Impact Assessment (EIA) Materials in the Design and Construction of Enterprises, Buildings, and Structures" of 15 December 2003, Order of the Ministry of Construction, Architecture, and Housing and Communal Services of Ukraine "On Approval of Rules for the Maintenance of Green Spaces in Settlements of Ukraine" of 10 April 2006, No. 105, etc.);

(5) acts establishing legal liability for violations of ecological safety requirements in settlement allocation and development (Laws of Ukraine "On Environmental Protection", "On Liability for Offences in the Sphere of Urban Planning Activity" of 14 October 1994, Civil Code of Ukraine of 6 January 2003, Commercial Code of Ukraine of 16 January 2003, Code of Ukraine on Administrative Offences of 7 December 1984, Criminal Code of Ukraine of 5 April 2001, Labour Code of Ukraine of 10 December 1971, etc.).

Concurrently, for researching the criminal-legal foundations of regulating liability for environmental norm violations during construction, the Criminal Code of Ukraine holds pivotal significance. Criminal liability for natural resource and environmental offences is provided in Section VIII of the Criminal Code of Ukraine of 5 April 2001 [10], which is entirely dedicated to crimes against the environment. This section of the current Criminal Code outlines a specific list of the most hazardous criminal offences in natural resource use and environmental protection. These include: violation of ecological safety rules (Art. 236); failure to take measures to liquidate the consequences of environmental pollution (Art. 237); concealment or distortion of information about environmental conditions or public morbidity (Art. 238); pollution or degradation of land (Art. 239); violation of subsoil protection rules (Art. 240); atmospheric air pollution (Art. 241); violation of water protection rules (Art. 242); marine pollution (Art. 243);

violation of legislation on the continental shelf of Ukraine (Art. 244); destruction or damage of forest massifs (Art. 245); illegal logging (Art. 246); violation of plant protection legislation (Art. 247); illegal hunting (Art. 248); conducting blasting operations in violation of fish stock protection rules (Art. 250); intentional destruction or damage of territories protected by the state and objects of the natural reserve fund (Art. 252); designing or operating structures without environmental protection systems (Art. 253); mismanagement of land (Art. 254).

The primary advantage of the updated components of crimes concerning environmental norm violations in construction lies in the fact that, unlike previous criminal-legal norms of an environmental nature, they inherently possess protective characteristics. This conclusion stems directly from analysing the content of these criminal-legal norms, suggesting a conceptual shift in the legal regulation system of environment-protective relations, not only via environmental but also criminal legislation. Furthermore, specific articles of the criminal law display targeted protection of citizens' ecological rights and the national community through criminal-legal means, rather than generalized environmental protection requirements. This is characteristic of Article 236 – violation of ecological safety rules, Article 237 – failure to take measures to liquidate the consequences of environmental pollution, Article 238 – concealment or distortion of information about environmental conditions or public morbidity, Article 241 – atmospheric air pollution, Article 242 – violation of water protection rules, Article 243 – marine pollution, and several other norms within this section of the criminal law.

In paragraph 8 of the Resolution of the Plenary Session of the Supreme Court of Ukraine "On Judicial Practice in Cases of Crimes and Other Offences Against the Environment" of 10 December 2004, No. 17,

it is clarified that liability for violating ecological safety rules arises, *inter alia*, provided it caused environmental pollution over significant territories. Such pollution is understood as a substantial deterioration of the ecological situation resulting from major dust, smoke, emissions of radioactive, chemical, bacteriological, or other substances posing a danger to humans, the environment, material values, etc. When determining whether a polluted territory is significant, data regarding its area, ecological uniqueness, and whether it belongs to the natural reserve fund or another object of national significance must be considered [11, p. 824-826].

However, as previously, criminal-legal means for protecting specific natural objects and their resources have received insufficient attention in the current Criminal Code, let alone the protection of subjective rights of physical and legal entities regarding their use, primarily on the basis of property rights. The composition of components of crimes established in Section VI of the Criminal Code – crimes against property – indicates that it contains no article specifically dedicated to protecting natural objects and safeguarding ownership rights over them. Even the traditionally rigid protection of state ownership over natural resources is left without proper protection by criminal-legal means [12, p. 439].

A characteristic practice of committing crimes also includes the destruction or damage of forest massifs via arson to acquire construction sites, illegal logging or misappropriation of specific forest resource components, violation of plant protection legislation by harvesting "Red Book" or "Green Book" plant resources, illegal hunting or illegal fishing, trapping, or other aquatic harvesting activities to misappropriate wildlife objects, or conducting blasting operations in violation of fish stock protection rules causing them significant harm, or intentional destruction or damage of territories protected by the state and objects of the natural reserve fund, etc.

Strictly speaking, however, such instances constitute crimes against the established legal order of natural wealth use and environmental protection, rather than crimes against property.

Among the features of criminal liability for violations of natural resource and environmental legislation in construction is that it applies exclusively through judicial proceedings based on the examination of investigated criminal case materials. Extrajudicial criminal liability, including for natural resource and environmental offences, cannot be applied.

The greatest theoretical and practical difficulty lies in distinguishing between unlawful actions in natural resource use and environmental protection as either criminal offences or administrative infractions. Most frequently, the exact same violations of natural resource use rules or environmental protection requirements entail criminal liability in some instances and administrative liability in others [12, p. 441].

CONCLUSIONS

The analysis of international and national legislation demonstrates the formation of a comprehensive legal framework aimed at ensuring ecological safety within the sphere of urban planning. International doctrinal documents, such as the Stockholm and Rio de Janeiro declarations, have established the fundamental principle of sustainable development for settlements, which demands a careful balance between infrastructure expansion and environmental protection. In Ukraine, these core tenets are further detailed through an extensive system of regulatory acts – ranging from constitutional guarantees to sectoral building and sanitary regulations – which govern spatial planning while mandating the integration of environmental components. However, the current environmental legislation does not contain an unambiguous definition in either international or national legal norms, creating preconditions for certain legal

conflicts. For instance, Article 70 of the Law "On Environmental Protection" indicates that the definition of the components of environmental offences and criminal crimes committed in construction, as well as the procedure for bringing the perpetrators to administrative and criminal liability, are established by the Code of Ukraine on Administrative Offences and the Criminal Code of Ukraine.

The evolution of Ukraine's criminal legislation reflects a qualitative shift in approaches toward environmental protection during construction activities, placing a stronger emphasis on the protective function of legal norms. The updated components of crimes set out in Section VIII of the Criminal Code of Ukraine are now targeted not merely at generalised biosphere preservation, but at the genuine enforcement of citizens' ecological rights, notably through liability for violating ecological safety rules or concealing environmental data. The traditional criterion for distinguishing criminal crimes from administrative offences in these branches of legislation is the degree of public danger of the infraction and the specific circumstance of its commission. Facultative circumstances may include the

scale of the damage caused to the environment, the severity of the economic consequences that have ensued, and other similar factors. Concurrently, law enforcement and judicial practices require a rigorous assessment of the scale of environmental damage, the uniqueness of affected territories, and the specific context of offences committed during the development process.

Despite these positive trends, the legal regulation of environment-protective relations in construction still faces substantial theoretical and practical lacunae. Key unresolved issues include the insufficient protection of property rights over natural assets by criminal-legal means, alongside the persistent difficulty in distinguishing between unlawful actions in natural resource management as either criminal offences or administrative infractions. To enhance the effectiveness of ecological safety in settlements, further refinement of judicial interpretation is required, ensuring the absolute exclusion of extrajudicial criminal liability and aligning criminal-legal remedies with the contemporary challenges of unlawful land exploitation for construction purposes.

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