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CRIMINAL LIABILITY FOR ILLEGAL ACTS WITH AMBER: LAW-MAKING AND LAW-ENFORCEMENT ISSUES

Purpose. Analyses of problematic issues of qualification and implementation of criminal liability provisions for the crime provided for in Article 240-1 of the Criminal Code of Ukraine, and elaboration on balanced recommendations for improving the current Criminal Code of Ukraine and the practice of applying its individual provisions.

Methodology. A system of methods of scientific knowledge that ensured the achievement of the declared research goal (philosophical (dialectical), statistical, specifically sociological, modeling methods).

Findings. Lawmaking and law enforcement problems have been identified, which significantly reduce the preventive and protective potential of Article 240-1 of the Criminal Code of Ukraine, in particular: recognizing illegal actions with amber as criminal ones independent of its value; lack of differentiation of criminal liability for committing the analyzed crime depending on the forms of complicity, as well as poor quality differentiation depending on the value of amber; lack of references to relevant provisions of regulatory legislation in procedural documents; imperfection of the sanctions provided by the considered criminal law prohibition; lack of proper individualization of criminal liability of convicted persons.

Originality. The authors were the first in criminal law science to carry out a comprehensive study of the practice of applying Article 240-1 of the Criminal Code of Ukraine, which made it possible to identify issues of qualification and implementation of criminal liability for illegal actions with amber and, based on this, to put forward balanced recommendations for improving the current Criminal Code of Ukraine and the practice of applying its individual provisions on the regulation of liability for illegal actions with amber.

Practical value. Based on the results of elaboration on the research piece, specific proposals have been developed which can be considered during further law-making regarding updating relevant provisions of the applicable criminal law and in the course of law enforcement actions. It has been argued that in order to improve the ban under study, it is necessary to strengthen criminal liability regime for the commission of the acts provided for in Part 1 of it in the case of their commission by a group of persons, organized group and on a large scale. It has been justified that the analyzed composition of the crime should be constructed as formal and material. It has been proven that law enforcement bodies should: a) indicate in the relevant procedural documents, firstly, not only the mass of amber, but also its value, secondly, refer to the acts of regulatory legislation, which establish the procedure for mining and circulation of amber; b) pay more attention to the individualization of criminal liability of guilty persons.

Keywords: *amber, minerals, illegal mining, criminal liability, qualification, punishment, complicity, property damage*

Introduction. For two years now, the full-scale invasion of Ukraine by the Russian Federation has been going on, which is essentially a war aimed at destroying the Ukrainian people. During this time, the environment in our country has suffered irreparable damage, the amount of which, according to the latest and, of course, very approximate estimates, reaches UAH 2.2 trillion in monetary terms (as of February 1, 2024).

However, no matter how shameful it is to admit it, during the war, serious damage to the environment is caused not only by the appropriate actions of the aggressor (primarily its war crimes), but also by the criminally illegal actions of some of our compatriots. Thus, according to the information of the Office of the Prosecutor General, among all offenses, the norms of which are consolidated within the limits of Chapter VIII of the Special Part of the Criminal Code of Ukraine (hereinafter – the Criminal Code) "Criminal Offenses Against the Environment", one of the most common during the war years is illegal extraction, sale, acquisition, transfer, forwarding, transportation, processing of amber, prescribed in Article 240-1. Amber is a useful mineral, which is sometimes called the gold of the Ukrainian people [1] and whose illegal extraction is currently among the top ten most profitable criminal businesses in Ukraine [2] with volumes of approximately 120 tons per year [3]. During 2022 alone, 110 criminal proceedings of the relevant category have been opened, the investigation of which was completed in 59 cases with bringing charges, and in another 50 – with the sending of an indictment to the court; in 2023, these indicators were expected to increase – their ratio has already reached 175, 99 and 62 proceedings, respectively.

At the same time, having analyzed the materials of judicial practice, we have become convinced that the existing mechanism of criminal law counteraction to "amber" offenses is, unfortunately, ineffective. This fact is due to both the imperfection of certain provisions of Article 240-1 of the Criminal Code and its incorrect (and often not the one formally violating the requirements of the law) application. The need to address the relevant law-making and law enforcement issues has led to writing this research paper.

Literature review. Certain aspects of the criminal law characteristics of illegal extraction, sale, acquisition, transfer, forwarding, transportation, processing of amber have been highlighted in the works by such Ukrainian scientists as V. Bredykhina, Ya. Vasylchuk, A. Virt, M. Komarnytskyi, M. Maksimentsev, T. Myskevich, L. Mostepanyuk, N. Netesa, A. Pavlovska, M. Plastun, G. Polishchuk, Yu. Turlova, L. Khmurovska, V. Tsymbalyuk, R. Chernysh, and others.

Unsolved aspects of the problem. Despite the considerable importance of the works published by the aforementioned authors, it is worth noting the absence of comprehensive studies of law-making and law-enforcement problems of criminal li-

ability for the commission of a crime, provided for in Article 240-1 of the Criminal Code.

Purpose. Given the above, the purpose of the paper is to provide a comprehensive study of the practice of application of Article 240-1 of the Criminal Code, to highlight the problematic issues of qualification and implementation of criminal liability for the crime under this Article of the Criminal Code, and to put forward balanced proposals for improving the current Criminal Code and the practice of application of its individual provisions on regulation of liability for illegal actions with amber.

Methods. This study is based on the use of several methods of academic research. The philosophical method made it possible to establish a general idea of the research object, to divide the latter into six conditional blocks devoted to certain aspects of the problem under consideration. Statistical and specific sociological methods contributed to the analysis and generalization of empirical information, in particular, to the study of the prevalence of the crime under consideration, as well as to the study and critical reflection on the case law related to the application of Article 240-1 of the Criminal Code. The modeling method was used in substantiating recommendations aimed at improving provisions of Article 240-1 of the Criminal Code, as well as in formulating proposals aimed at improving the relevant case law, in particular, in terms of sentencing for the analyzed crime.

Results. For the convenience of presentation and perception of the main material, we decided to divide our study into several conditional blocks, within each of which we will analyze a certain problem arising in the application of Article 240-1 of the Criminal Code.

Problem 1: Criminalization of illegal actions with amber under Article 240-1 of the Criminal Code, regardless of its value. Article 240-1 of the Criminal Code does not establish a minimum threshold for the value of amber, the illegal possession or handling of which entails criminal liability. We consider such construction of the criminal law prohibition under study to be unjustified, since it means that it formally covers illegal actions with amber of any (even minimal) value, the degree of public danger of which is hardly sufficient to classify them as criminal offenses. Obviously, there are grounds to appeal to the fact that in some cases Part 2 of Article 11 of the Criminal Code, which refers to the insignificance of an act and thus serves as a normative basis for resolving the issue of inconsistency between formal and material features of a particular criminal offense, may become useful. However, the following circumstances should be taken into account.

Firstly, law enforcement is still "in no hurry" to use the potential of the insignificance rule. Based on the results of the analysis of practice of applying Article 240-1 of the Criminal Code, we were able to identify only one court decision, which had recognized the fact of illegal acquisition and further storage of amber worth UAH 426.6 as insignificant [4]. The low rates of application of Part 2 of Article 11 of the Criminal Code regarding "amber" offenses are obviously due to the traditional assessment of the criminal law concept of insignificance. The following question posed by researchers is indicative: where does the line between criminal and non-criminal (insignificant) behavior in this case lie [5]?

Secondly, it should be borne in mind that such legislative uncertainty may lead to different legal assessments of identical acts. The grounds for such fears are also supported by court practice, which has revealed cases where illegal handling of amber worth UAH 171, UAH 151.76, UAH 135.43, UAH 112.44, UAH 94.08, UAH 31.28 and even UAH 15.15 was not recognized as insignificant and, accordingly, was prosecuted under Part 1 of Article 240-1 of the Criminal Code. And this is despite the fact that, as noted above, other law enforcement officers considered actions with amber of a much higher value (426.6 UAH) to be insignificant.

The foregoing leads to the opinion of the need for a legislative fixation of the minimum value of amber, the illegal handling of which will constitute a crime under Article 240-1 of the Criminal Code. Under conditions of arbitrariness of quantitative indicators characteristic of the current criminal legislation of Ukraine, it is advisable to support experts who assume that the border line between criminal and non-criminal extraction of minerals could be the same as between the criminally illegal theft of someone else's property by theft, fraud, embezzlement (Articles 185, 190, 191 of the Criminal Code) and petty theft in the same way (Article 51 of the Criminal Code) [5]. Today, this limit is set at the level of an indicator of 0.2 of the tax-free minimum income of citizens (hereinafter – TMIC), which could also appear in the improved Article 240-1 of the Criminal Code.

By the way, developers of the project of the new Criminal Code of Ukraine (hereinafter – the project) propose to move in a similar way. They recommend that only those manifestations of illegal possession of a useful mineral (in particular, amber), which caused insignificant and significant property damage be recognized as criminally illegal (Article 6.5.11 (misdemeanor) and Article 6.5.4 (crime), respectively). Among the advantages of such approach is the fact that, under condition of its implementation, the main basis for criminal liability for illegal extraction of amber will be not only its value, but in general environmental (albeit expressed in monetary equivalent) damage. The latter should be calculated on the basis of special methods and also should include the fact that as a result of illegal extraction of amber there is an extremely negative and simultaneous (parallel) impact on various natural resources, in particular, soil, vegetation, water and atmospheric air [6]. This is especially relevant for regions where amber is actively mined [7, 8]. In practice, such step will allow the encroachments of persons who have started illegal amber mining (and therefore have already caused environmental damage), but have not yet extracted amber of the appropriate value, to be recognized as complete. We believe that the given approach (construction of crime-establishing and qualifying features depending on the size of the damage, not the value of the amber) could be partially taken into account when improving Article 240-1 of the Criminal Code.

At the same time, we cannot support the initiative of the authors of the prospective criminal law to establish liability for the acquisition or sale of knowingly illegally extracted natural resources (in particular, minerals) regardless of their value (Article 6.5.10 of the draft). The implementation of this proposal will not only fail to remedy the current situation, when criminal liability is imposed on persons who purchase and store amber of frankly negligible value, but also does not take into account the fact that environmental damage is caused not by the purchase and sale of amber (as well as other minerals), but by its illegal extraction, which is why such an act should be recognized as significantly dangerous. The approach proposed in the draft law does not take this important circumstance into account at all, because, on the contrary, illegal mining will be recognized as a criminal act only if certain property damage is caused, while the purchase or sale of illegally extracted minerals will be regarded as criminal no matter what. Thus, provided that criminal liability for illegal actions (except for mining) with amber is preserved, the basis for its occurrence should be the value of the crime object.

An alternative solution to the indicated problem could be the introduction of a differentiated approach, within which criminal liability for illegal amber extraction will be incurred regardless of its value, while for others provided for in Article 240-1 of the Criminal Code illegal actions – only if there is a certain minimum value of amber.

Problem 2. Lack of differentiation of criminal liability for the commission of the crime provided for in Article 240-1 of the Criminal Code, depending on the forms of complicity. Recognizing that it is appropriate to differentiate criminal liability for illegal actions with amber depending on the person (repetition) and the special subject of the offense (official), the value of the object (significant size), as well as the place of the crime

(territories or objects of the nature reserve fund), the legislator in this context somehow ignored the forms of complicity. The consequence of such short-sighted approach was the emergence of an unacceptable situation, when Article 240-1 of the Criminal Code provides for unified liability both for individual actions and for more dangerous behavior of persons who commit "amber" crimes as part of various groups. The increased social danger of such group actions is deemed axiomatic in the legal literature, given a number of factors [9]. In order to illustrate the illogicality of the existing state of affairs, we will use an example from court practice.

The Sarny District Court of the Rivne Region found that Person 1, Person 2 and Person 3, as part of an organized group they had created, used a homemade motor pump and related equipment to illegally mine raw amber stones weighing 4.69394 kg, the market value of which is UAH 11,523.23 [10].

Despite the fact that the crime was committed by an organized group, its criminal adjudication was carried out with reference to Part 1 of Article 240-1 and Part 3 of Article 28 of the Criminal Code, which clearly does not correspond to the social danger of the committed offense.

At the same time, for example, the qualification of illegal actions with amber, committed repeatedly, should take place in accordance with Part 2 of Article 240-1 of the Criminal Code, due to which such offense is a priori punished much more severely compared to similar crimes committed in any form of complicity.

The Volodymyretsk District Court of Rivne Region found Person-1 guilty of violating Part 2 of Article 240-1 of the Criminal Code. The defendant had twice (February 16 and May 24, 2022) violated clauses 2–5 of the "Procedure for granting special permits for the use of subsoil", approved by Resolution No. 615 of the Cabinet of Ministers of Ukraine, dated May 30, 2011, clause 34 of the "Regulations on the Procedure for Granting Mining Deductions", approved by the Resolution of the Cabinet of Ministers of Ukraine of January 27, 1995 No. 59, by illegally mining amber himself [11].

A rather rhetorical question arises here: are the relevant individual (albeit repeated) actions more dangerous compared to the behavior of an organized group of miners?

In this regard, we would like to remind that it has been proven in domestic legal literature that an increase in the number of participants leads to an increase in the public danger of encroachment. As N. Antonyuk notes in this regard, the confirmation of such conclusion is not only the perception of the committed actions by the victim, but the fact that each of the co-participants increases determination of others to commit a criminal offense, encourages other offenders through personal example [12].

At the same time, the scholar draws attention to another important component which must be taken as a basis for assessing public danger of an offense committed by several participants. It is about the coherence of their actions, the stability of ties between members of such group, and the level of mutual support. In the doctrine of criminal law (as well as in criminal law), this element of a group is called stability. Only a stable group acts as a whole in the process of committing a criminal offense. "In view of the above", the researcher summarizes, "it can be concluded that elements of an organized group which indicate an increase in the degree of social danger of both such a group and the offense committed by it include the number of participants and stability" [12].

As we remember, exactly these elements were present in the actions of the above-mentioned persons, who, however, due to the decision of the legislator, did not get proper (that is, differentiated) criminal law assessment. To confirm this point, we will provide information from the previously mentioned verdict of the Sarne District Court of the Rivne Region. The court held that according to the plan of criminally illegal actions and the distribution of relevant roles:

1. Person-1, as the head of a sustainable criminal group created and headed by him, coordinated actions of the members of the organized group and took measures to conceal criminal activities of the group. In addition, Person-1 ensured organization of illegal amber mining, by determining the time and place of mining, purchasing and providing appropriate means and tools, motor pumps and equipment for it, distributed money received from illegal activities among members of the organized group. Part of the funds received from the illegal sale of amber was channeled to the purchase of equipment, fuel and lubricants and other materials necessary to ensure further illegal extraction of amber.

2. Person-2, while acting as an executor as part of an organized group, in accordance with a previously developed plan of criminal actions and distribution of roles known and approved by all members of the group, ensured the delivery of relevant equipment to the place of illegal amber mining, personally carried out illegal amber mining, and inspected illegally mined amber to determine its size (fraction), quality and value.

3. Person-3, while acting as an executor in an organized group, in accordance with a previously developed plan of criminal actions and distribution of roles known and approved by all members of the group, ensured the delivery of the relevant equipment to the place of illegal amber mining, personally carried out illegal amber mining, inspected illegally mined amber to determine its size (fraction), quality and value [10].

Even more confusing, with regard to the following circumstances, is the approach implemented within Article 240-1 of the Criminal Code.

First, in the general (compared Article 240-1 of the Criminal Code) provision of Article 240 of the Criminal Code, describing illegal extraction of other (except amber) minerals, provides for increased responsibility for actions committed not only by an organized group (Part 4), but also by a group of persons with prior agreement (Part 3). Such step is logical, when considering the fact that the relevant category of offenses is characterized by the element of complicity [13]. In addition, the strengthening of criminal liability for acts committed by a group of persons in a prior conspiracy is characteristic of the absolute majority (exception – Article 249 of the Criminal Code) of other norms placed in Chapter VIII of the Special Part of the Criminal Code, which refer to the intentional possession of individual types of natural resources (Part 2 of Article 239-1, Part 2 of Article 239-2, Part 2 of Article 246, Part 2 of Article 248 of the Criminal Code).

Secondly, based on the results of the analysis of court practice, it was found that out of 100 % (226 cases) of crimes prosecuted under Article 240-1 of the Criminal Code, criminal proceedings in respect to which resulted in guilty verdicts, 4.9 % (11 cases) were committed by an organized group, and 9.3 % (21 cases) were committed by a group of individuals following a prior conspiracy. Similar observation is voiced by Yu. Turlova, who writes that among all criminal offenses against the environment, the largest share of convicts who committed the discussed offenses as part of a group is characterized by the crime provided for in Article 240-1 of the Criminal Code [14].

The given indicators prove that "amber" torts committed in group forms of complicity, on the one hand, are clearly not isolated in nature, and, on the other hand, are not the norm for most crimes of the considered category. Therefore, the addition of Article 240-1 of the Criminal Code to the list of qualifying features due to the indication of a group of persons and an organized group by prior collusion (Parts 2 and 3, respectively) would meet such basic requirements for the construction of aggravating elements as prevalence (both actual and probable) in practice of a certain more dangerous variant of criminally illegal behavior and at the same time the uncharacteristic nature of such more dangerous types of behavior [13]. Of course, this proposal is not devoid of rationale, provided Article 240-1 of the Criminal Code as a special criminal law provision, arguments against which we have repeatedly expressed in other works [15, 16].

Problem 3. Poor differentiation of criminal liability depending on the value of amber as an object of crime. Part 2 of Article

240-1 of the Criminal Code provides for increased liability for actions committed in a significant amount, when the value of amber is 100 or more times higher than the TMCI. In general, such a step should be welcomed, because usually there is a direct relationship between, on the one hand, the amount and value of illegally mined amber, and, on the other hand, between such indicators and the damage caused to the environment, which the relevant criminal law prohibitions are designed to protect under Article 240-1 of the Criminal Code. However, after analyzing materials of judicial practice, we can state that differentiation of liability carried out within the limits of this article of the Criminal Code is insufficient. The fact is that following the cases when the object of the analyzed crime was amber, the value of which was close to or only several times exceeded the figure of 100 TMCI (UAH 117,138; UAH 134,755; UAH 135,731; UAH 137,000; UAH 154,682, etc.), we found rare cases when such a value reached, for example, UAH 1,506,845; UAH 1,732,546; UAH 1,940,973 and even UAH 3,494,876. Therefore, a question arises: are the appropriate acts, for example, in relation to amber with a value and weight of, on the one hand, UAH 117,138/15.2 kg, and, on the other hand, UAH 3,494,876 UAH/353.6 kg, respectively, can be considered to be the same at least approximately in terms of the degree of social danger? Should such offenses require a different criminal law analyses, i.e. differentiation (rather than individualization) of criminal liability? Negative answers to both questions seem obvious to us.

In view of the above, we propose to provide for stricter liability in Part 3 of Article 240-1 of the Criminal Code at least for actions committed on a large scale, i.e. to introduce a model similar to that embodied in Articles 246 and 254 of the Criminal Code. As for the parameters of large amounts, taking into account similar coefficients in other provisions of the Special Part of the Criminal Code, it could be an indicator of 500 TMCI. It is clear, however, that professional solution to this problem will require special criminological research.

We would also like to draw attention to the fact that in the practice of application of Part 1 of Article 240-1 of the Criminal Code there are quite common cases (we have found 28 of them), when the relevant procedural documents indicate only the weight of amber and do not indicate its value.

For example, in finding Person-1 guilty of committing a crime under Part 1 of Article 240-1 of the Criminal Code, the Korosten City District Court of Zhytomyr Region in its verdict has limited itself to mentioning that the mass of the substance which, according to the conclusion of the forensic homology examination No. 74 of September 15, 2020 is amber in the state of raw material and amber in decorative elements, which was illegally stored and seized by the Security Service of Ukraine in Zhytomyr region during a search of the household belonging to Person 1, constitutes 20,326.4 grams [17].

Given that the relevant value could affect the qualification of the offense (to cause prosecution under Part 2 of Article 240-1 of the Criminal Code based on the "significant amount"), such approach by law enforcement officers is unacceptable.

Problem 4. Absence of references to relevant provisions of regulatory legislation in procedural documents. Having discussed materials of the generalization of judicial practice, the Plenum of the Supreme Court of Ukraine clearly indicated back in 2004 that, since the majority of norms that provide for liability for criminal and administrative offenses against the environment are of referral ("outsourced") nature, the courts must carefully determine, which legal act regulates relations related to the use and protection of a specific component of the environment (plant and animal life, atmospheric air, land, subsoil, water, etc.). Based on this, as we later stated, in order to establish the mentioned elements of criminal offenses against the environment, one should refer to the provisions of a certain normative act in the field of environmental protection, which is not a criminal law [18].

If we are talking about the crime provided for in Article 240-1 of the Criminal Code, one should, when applying it, refer to the provisions of one or more of the following normative acts which regulate the procedure for mining and circulation of amber: the Code of Ukraine on Subsoil, Land Code of Ukraine, Law of Ukraine dated November 18, 1997 "On state regulation of mining, production and use of precious metals and precious stones and control over operations with them", List of minerals of national and local importance (approved by the resolution of the Cabinet of Ministers of Ukraine dated December 12, 1994 No. 827), Procedure for accounting, storage and disposal of precious metals and precious stones, organogenic formation precious stones and semi-precious stones that become state property (approved by order of the Ministry of Finance of Ukraine dated November 4, 2004 No. 692), Procedure for sale of amber from the State Fund of Precious Metals and Precious Stones (approved by the Resolution of the Cabinet of Ministers of Ukraine of May 7, 1998 No. 653 (as amended by the Resolution of the Cabinet of Ministers of Ukraine of November 28, 2012 No. 1096), Rules of Trade in Precious Metals (except Bank Metals) and Precious stones, precious stones of organic formation and semi-precious stones in raw and processed form and products from them, belonging to economic entities with the right of ownership (Resolution of the Cabinet of Ministers of Ukraine of June 4, 1998 No. 802 (as amended by Cabinet of Ministers of Ukraine Resolution of January 25, 2017 No. 41), Regulations on the procedure for the formation and storage of the State Fund of Precious Metals and Precious Stones of Ukraine (approved by the Cabinet of Ministers of Ukraine Resolution of March 30, 1998 No. 387), and others.

After analyzing materials of court practice under Article 240-1 of the Criminal Code, we, however, have found numerous cases when representatives of the Themis (following the pre-trial investigation authorities) in their verdicts did not point to any of the above acts of regulatory law related to the blanket disposition of the criminal law prohibition under study, but instead limited themselves to banal and clearly insufficient instructions: either *"the absence of documents confirming the legitimacy of the origin of amber"*, without specifying which documents are meant; or *"amber is a precious stone of organogenic formation of natural origin"*, without referring to any of the above regulatory acts. Such rather a "simplified" approach is unacceptable, as it means a blatant disregard for the rules of qualification of criminal offenses under the articles of the Criminal Code with blanket dispositions established in the criminal law of Ukraine.

Problem 5. Imperfect sanctions of Article 240-1 of the Criminal Code. Having analyzed the trends in the imposition of punishments for the commission of criminal offenses against the environment, we at one time recommended instead of the approach characteristic of the current Criminal Code:

- *firstly,* when in the sanctions of parts of the first relevant articles of the Criminal Code next to fine, punishments in the form of restriction of freedom and deprivation of liberty for a certain period of time, which are absolutely ineffective in this case, are usually mentioned as an alternative, to establish a single non-alternative basic type of punishment – a fine – in sanctions, application of which will be the most adequate reaction to the commission of unqualified various types of encroachments on the environment;

- *secondly*, when sanctions of the norms that provide for liability for relevant qualified acts (parts two, three, etc.) mention either only deprivation of liberty for a certain period, or also only restriction of liberty, to indicate two alternative main types of punishment in them – deprivation of liberty for a certain period and a fine, which would make it possible to implement the principle of individualization of criminal liability, in particular, taking into account the nature of the socially dangerous consequences caused [19, 20].

Instead, the legislator chose a repeatedly manifested, albeit ineffective, way of providing, despite the expressed reser-

vations, in the sanction of Part 1 of Article 240-1 of the Criminal Code not only for a fine, but also for restriction of liberty and deprivation of liberty for a certain period of time, and in the sanctions of Parts 2 and 3 of this article – for the single basic non-alternative punishment in the form of deprivation of liberty for a certain period of time (from 4 to 7 years and from 5 to 8 years, respectively). Evidently, in this way, people's deputies of Ukraine intended to achieve the proposed strengthening of liability for illegal amber mining and related actions proposed by individual researchers [21, 22]. However, such legislative decision has led to predicted negative consequences.

Based on the results of the study of 226 guilty verdicts issued during the almost 5-year history of the existence of Article 240-1 of the Criminal Code, it has been established that:

a) out of 185 (100 %) cases considered by the courts under Part 1 of Article 240-1 of the Criminal Code:

- 82 (44.3 %) resulted in the imposition of a punishment in the form of restraint of liberty, from serving which in 81 (98.8 %) cases the guilty persons were released on the basis of Articles 75 and 76 of the Criminal Code; regarding the actual serving of the prescribed punishment, it took place only in one case (1.3 %);
- 46 (24.8 %) – the imposing of imprisonment for a certain period, from which all convicts were released on the basis of Articles 75 and 76 of the Criminal Code;
- 57 (30.9 %) – "real" punishment in the form of a fine. By the way, considering the given data, the information of individual researchers that based on the result of application of Article 240-1 of the Criminal Code, a fine is usually imposed [23];

b) out of 40 (100 %) of the cases considered by the courts under Part 2 of Article 240-1 of the Criminal Code:

- 34 (85 %) ended with the imposition of a punishment in the form of imprisonment for a certain period, from serving which in 33 (97 %) cases the guilty persons were released on the basis of articles 75, 76 of the Criminal Code; regarding actual serving the prescribed punishment, it took place in just one case (3 %);
- 2 (5 %) – imposing a sanction of freedom limitation, not provided for by the sanction of Part 2 of Article 240-1 of the Criminal Code, from which all convicts were released based on Articles 75 and 76 of the Criminal Code;
- 4 (10 %) – the appointment of a fine, also not provided for by the sanction of Part 2 of Article 240-1 of the Criminal Code, in different amounts (4,705 TMCI, 5,883 TMCI, 6,000 TMCI and 8,824 TMCI, respectively);

c) regarding Part 3 of Article 240-1 of the Criminal Code, it was applied only once, when the guilty person was sentenced to the non-alternative punishment in the form of deprivation of liberty provided for in the sanction of this norm, from which he was released with reference to Articles 75, 76 of the Criminal Code.

Summarizing these trends of judicial practice, it is possible to draw a disappointing conclusion that, as a result of the unsuccessful construction of sanctions of Article 240-1 of the Criminal Code, out of 226 persons convicted for the crime stipulated by this article of the Criminal Code, only 63 offenders received "real" punishment. At the same time, in 61 cases such "real" punishment was a fine; as for restriction of liberty and deprivation of liberty for a certain period, each of these types of punishments was actually applied ... only once (!). Such situation leaves no doubt about the need to adjust the sanctions of Article 240-1 of the Criminal Code, considering the recommendations outlined at the beginning of this section.

Problem 6. Lack of proper individualization of criminal liability of persons convicted under Article 240-1 of the Criminal Code. The low effectiveness of the criminal law counteraction to "amber" offenses is caused not only by the legislator's miscalculations (lawmaking factor), but also by the mistakes often made by courts when imposing punishment (law enforcement factor). One of the most common mistakes is the lack of proper individualization of criminal liability of perpetrators, which, by the way, is also typical for the practice of applying other provisions contained in Section VIII of the Special Part of the Criminal Code [24].

We emphasize once again that, in our opinion, the fine is the most effective punishment for committing both encroachments against the environment in general and acts provided for in Article 240-1 of the Criminal Code in particular. Therefore, conceptually, we support decisions of the courts, which have imposed fines on defendants convicted of "amber" torts. At the same time, the positive effect of this step is largely neutralized by the fact that, when justifiably imposing fines, judges almost always (53 out of 57 cases identified by us or 93 %) stopped at the minimum amount of the fine provided for by the sanction of Part 1 of Article 240-1 of the Criminal Code (3 thousand TMCI). At the same time, such an important factor, which directly affects the degree of public danger, as the value of amber, which became the subject of a specific offense, and its amplitude (value) in various cases in which a fine in the amount of 3,000 TMCI, varied from, for example, only UAH 151.76 or UAH 31.28 and up to UAH 41,614.61; UAH 54,054; UAH 62,706.43; UAH 75,357.19; UAH 77,379 UAH; UAH 88,844.93 and, in some cases, even UAH 89,260.32. At the same time, we should note that even in those isolated (four) situations, when the culprits were fined more than 3,000 TMCI, its amount was still close to the sanction provided for in part 1 of Article 240-1 minimum (for example, 3,500 MCI [25]).

Another manifestation of the mentioned negative trend is the lack of individualization of criminal liability of persons who played different roles in the crime committed in complicity (perpetrator, instigator, accomplice, organizer), and therefore, the degree of social danger of their actions is also different. With the exception of two cases, when the organizer was given a more severe punishment than the perpetrators (3,500 and 3,000 TMCI [26], and restriction of freedom and a fine [27], respectively), in other criminal proceedings the exactly same punishment was imposed on all co-conspirators, regardless of their role [28, 29], or even a somewhat different (differentiated) punishment, from which they were all exempted from serving anyway.

For example, in one of the cases of the discussed category, the Dubrovytsia District Court of Rivne Region found Person 1, Person 2 and Person 3 guilty of illegal acquisition of raw amber, storing, processing and further selling it to other persons as part of an organized group (Part 2 of Article 27, Part 3 of Article 28, Part 2 of Article 240-1 of the Criminal Code). When defining the role of each accomplice, representatives of the judicial core noted that:

1. Person-1, acting as an organizer and executor of an organized criminal group, developed a single plan of criminal activity, known and approved by all members of the association, according to which he distributed functions aimed at achieving a common criminal goal of obtaining illegal income from illegal acquisition, storage, processing and sale of raw amber. According to the unified plan of criminal activity developed by Person-1, known and approved by all members of the association, he, acting as an organizer and executor of an organized criminal group, determined directions of criminal activity and the roles of co-participants, exercised control over their activities and coordinated their activities. While being a private entrepreneur since 2013, on August 27, 2020, he, after having received permission to purchase, process precious stones, manufacture products from them and trade them, personally searched for persons engaged in illegal extraction of raw amber and its sale, bought this amber without appropriate supporting documents regarding its origin and ensured its hidden movement to specially adapted premises in the city of Dubrovitsa, for further storage, sorting and processing on special equipment. He distributed the funds received from the illegal acquisition, processing and sale of raw amber among members of the group. During communication with other participants, he used conditional terms, conducted conversations in a veiled form.

2. Person-2, while acting as an executor, as part of an organized group, personally searched for persons engaged in illegal extraction of raw amber and its sale, bought such amber without appropriate documents regarding its origin and ensured covert transportation to specially adapted premises in the city of Dubrovitsa, for further storage, sorting and processing on special equipment, and also carried out its illegal sale. He took measures to hide their criminal and illegal activities. In particular, during communication with other participants, he used conditional terms, conversations were conducted in a veiled form. He received the money obtained from the illegal sale of raw amber.

3. Person-3, acting as a perpetrator, as part of an organized group, purchased, stored, sorted and processed illegally acquired amber using special equipment, including cutting, grinding and polishing. Depending on the amount of amber purchased and sold by the mentioned organized group, he received money in the amount specified by Person-1. When communicating with other participants, he used conditional terms and conducted conversations in a veiled manner.

Considering the different roles of the mentioned subjects, in the end the court:

- sentenced Person-1 to imprisonment for 4 years and 6 months;

- instead, Person-2 and Person-3 were sentenced to a less severe punishment in the form of imprisonment for a term of 4 years.

However, being guided by Articles 75–76 of the Criminal Code, in the future Person-1, Person-2 and Person-3 were released from the imposed punishment assigned to them (4 years and 6 months and 4 years of imprisonment, respectively) with probation [30].

Conclusions. The conducted research allows us to summarize that the effectiveness of criminal law countermeasures against "amber" violations of law in Ukraine needs to be increased by solving certain law-making and law-enforcement issues. Accordingly, we recommend:

1) *the legislator:*

- to construct analyzed crime as the one with a formal-material structure, providing as a criterion of the criminal illegality of illegal extraction of amber a normatively established indicator of the damage caused by such an act, while for other illegal actions provided for in Article 240-1 of the Criminal Code of with amber – its certain value;

- to strengthen criminal liability for the actions described in 240-1 of the Criminal Code in case they are committed by a prior conspiracy by a group of persons (Part 2), an organized group and on a large scale (option: in case of causing serious damage during mining) (Part 3);

- to improve sanctions of Article 240-1 of the Criminal Code, indicating in its Part 1 the non-alternative main punishment in the form of a fine, and in Parts 2 and 3 of this article – alternative punishments in the form of a fine and imprisonment for a certain period;

2) *law enforcement agencies:*

- to indicate in the relevant procedural documents, firstly, not only the weight of amber, but also its value, and secondly, refer to regulatory legal acts related to the blanket disposition of Article 240-1 of the Criminal Code, which establishes procedure for the extraction and circulation of amber;

- to pay more attention to individualization of criminal liability of perpetrators, which could be realized by considering in the course of imposing punishment, in particular, the value of amber, which becomes the subject of a particular crime, as well as different roles of persons committing it in complicity.

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Кримінальна відповідальність за незаконні дії з бурштином: правотворчі та правозастосовні проблеми

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Мета. Висвітлення проблемних питань кваліфікації та реалізації кримінальної відповідальності за злочин, передбачений Статті 240-1 Кримінального кодексу України (ККУ), і висунення виважених рекомендацій щодо вдосконалення чинного ККУ та практики застосування його окремих положень.

Методика. Система методів наукового пізнання, що забезпечили досягнення задекларованої мети дослідження (філософський (діалектичний), статистичний, конкретно-соціологічний методи моделювання).

Результати. Виявлені правотворчі та правозастосовні проблеми, що істотно знижують запобіжний та охоронний потенціал Статті 240-1 Кримінального кодексу України, зокрема: визнання кримінально протиправними незаконних дій із бурштином у незалежності від його вартості; відсутність диференціації кримінальної відповідальності за вчинення аналізованого злочину залежно від форм співучасті, а також неякісна диференціація залежно від вартості бурштину; відсутність у процесуальних документах посилань на релевантні положення регулятивного законодавства; недосконаліть санкцій розглядуваної кримінально-правової заборони; відсутність належної індивідуалізації кримінальної відповідальності засуджених осіб.

Наукова новизна. Автори першими у кримінально-правовій науці здійснили всебічне вивчення практики застосування Статті 240-1 Кримінального кодексу України, що дало змогу з'ясувати проблеми кваліфікації й реалізації кримінальної відповідальності за незаконні дії з бурштином і, на підставі цього, висунути виважені рекомендації щодо вдосконалення чинного ККУ та практики застосування його окремих положень, присвячених регламентації відповідальності за незаконні дії з бурштином.

Практична значимість. За результатами роботи розроблені конкретні пропозиції, що можуть стати в нагоді в подальшій нормотворчій діяльності парламенту щодо вдосконалення розглядуваних положень чинного кримінального законодавства та під час правозастосування. Аргументовано, що в порядку вдосконалення досліджуваної заборони необхідно посилити кримінальну відповідальність за вчинення передбачених її частини 1 діянь у разі їх скоєння за попередньою змовою групою осіб, організованою групою та у великому розмірі. Обґрунтовано, що аналізований склад злочину варто сконструювати як формально-матеріальний. Доведено, що правозастосовним органам слід: а) вказувати у відповідних процесуальних документах, по-перше, не тільки масу бурштину, але й його вартість, по-друге, посилатись на акти регулятивного законодавства, якими встановлено порядок видобування та обігу бурштину; б) більшу увагу звертати на індивідуалізацію кримінальної відповідальності винних.

Ключові слова: *бурштин, корисні копалини, незаконне видобування, кримінальна відповідальність, кваліфікація, покарання, співучасть, майнова шкода*

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