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# PROPORTIONAL RESPONSE TO CRIMINAL OFFENCES AGAINST THE ENVIRONMENT

**Purpose.** To create a mechanism for a proportionate response to environmental crimes and to improve criminal legislation in the context of European Union and international standards.

**Methodology.** Among the methods employed, dogmatic, dialectical method, analysis and generalization, methods of formal logic, comparison, synthesis, the method of system-structural analysis, and the case study method were used.

**Findings.** The acts required for criminalization, which are aimed at environmental protection by criminal law means in accordance with the new European Union Directive 2024/1203, were analyzed and correlated with the relevant provisions of the current Criminal Code of Ukraine. The absence of norms that would allow the application of criminal law measures against legal entities for committing environmental crimes was revealed.

**Originality.** For the first time, an original mechanism for a proportionate response to environmental crimes has been proposed, which includes the following components: the establishment of criminal liability for specific individuals who have violated the relevant legislation, the application of criminal law measures against legal entities, compensation for damage, environmental restoration. It is argued that a proportional response to environmental crimes should take into account the needs of all subjects of criminal law relations – the offender, the state, the victim and society as a whole. This authors' approach is reflected in the formulation of proposals for optimizing criminal legislation in accordance with European standards. The idea of considering the right to a safe environment as a fundamental human right is developed. It is proposed to involve public organizations as victims in environmental cases. The necessity of responding to the behavior of legal entities in the context of environmental offenses is substantiated. The high probability of the presence of a corruption component in such cases is argued.

**Practical value.** The results of the study will contribute to the improvement of criminal legislation and the practice of its application. Amendments to the Criminal Code of Ukraine are proposed regarding the application of criminal measures against legal entities in the environmental cases, as well as the expansion of the list of corruption criminal offenses.

**Keywords:** *safe environment, Eurointegration, proportionality, victim, compensation, environmental restoration, criminal liability*

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**Introduction.** Global warming and climate change affect both individuals and ecosystems worldwide. The right to a safe environment has only recently come to be recognized as a fundamental human right. Since 2011, the European Court of Human Rights (hereinafter – ECHR) has been examining such cases in the context of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Notable judgments of the European Court of Human Right include "Hatton and Others v. the United Kingdom" of July 8, 2003, "Moreno Gómez v. Spain" of December 16, 2004, "Dubetska and Others v. Ukraine" of February 10, 2011, "Grimkovska v. Ukraine" of July 21, 2011, and "Dzemuk v. Ukraine" of September 4, 2014.

Moreover, environmental damage constitutes direct harm to human health and a threat to global security.

United Nations General Assembly Resolution No. 70/1 of September 25, 2015, established the global Sustainable Development Goals for 2030. Three of them concern environmental issues, specifically climate, water resources, forests, and land resources (Goals 13, 14, and 15, respectively) [1]. This underscores the global nature of protecting environmental security. Criminal law constitutes one of the key mechanisms for ensuring environmental security.

**Literature review.** Numerous scholars have examined various aspects of environmental criminal liability.

Baik, et al. examined the liability for environmental offenses in Ukraine [2]. Scholars have proposed to expand preventive environmental protection measures more than classic criminal law measures (deprivation of liberty, fines, etc.). It has been proposed to apply tax benefits for persons who comply with environmental legislation and trade quotas for polluting enterprises, etc. [2]. This study supports the view that the way to ensure the profitability of lawful behavior and encourage such behavior is more effective than increasing punishment for violators. Such an approach would also be useful for other groups of criminal offenses.

Dudorov, Movchan, Pysmensky examined the criminal law protection of forests in Ukraine (2023) [3]. Scholars emphasize that, given the limited effectiveness

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of penalties such as restraint of liberty and imprisonment for a fixed term, as well as the growing tendency to expand the use of fines as a form of punishment, there is a need for their systematic coordination with other sanctions provided for in the Criminal Code of Ukraine [3]. This approach appears justified, considering the specific nature of environmental criminal offences, a fine may in many cases constitute a proportionate criminal law measure corresponding to the gravity of the offence, pursuing a legitimate aim, and being adequately perceived by society.

It is important to select response measures that are necessary and proportionate rather than excessively punitive. Otherwise, the intended preventive and restorative objectives cannot be achieved.

Krasnova examined the legal support for the implementation of the principle of environmental justice (2023) [4]. Syroyd reviewed the acts of the European Union (EU) (directives, regulations) in the field of combating environmental crimes (2024) [5]. We support the view that the existing sanctions lack sufficient deterrent effect, especially considering the significant harm that environmental crimes cause to biodiversity and human health.

Snitko and Zolotareva analyzed statistical data on the environmental crimes for 2018–2022 (based on materials from the Office of the Prosecutor General of Ukraine) (2023) [6]. Scholars concluded that for an adequate and effective response to environmental offenses, statistical indicators in terms of sentences for their commission are not enough. It is also necessary to take into account the patterns of their distribution and information on the results and progress of the investigation [6]. To achieve this goal, unified statistics would help, which would create a real idea of the dynamics and patterns of the commission of criminal offenses, the patterns of bringing individuals to criminal liability, the punishments imposed (imprisonment, fines), release from criminal liability, release from punishment (for example, due to the expiration of statutes of limitations), etc.

Tuliakov devoted a significant part of his research to the fair treatment of victims, to providing a real mechanism for compensation for the damage caused by the crime [7]. Among the victims of environmental crimes and offenses, it is necessary to single out society as a whole. This is emphasized in modern European legislation as well. In our view fair treatment of victims, should include involving the public in considering relevant issues.

Shumilo examined issues relating to the criminal law response to unlawful conduct by legal entities involving encroachments upon the environment [8]. Nevertheless, a number of problems associated with the application of such measures to legal entities remain unresolved and require further analysis, particularly in light of recent legislative amendments

**Unsolved aspects of the problem.** The adoption of Directive (EU) 2024/1203 on the protection of the environment through criminal law, replacing Directives 2008/99/EC and 2009/123/EC (hereinafter – Directive (EU) 2024/1203) of 11 April 2024 [9], together with the continuing development of legal relations in this field, necessitates the approximation of the Criminal Code of Ukraine to European Union legislation. In particular, this concerns the criminalization of certain acts and the establishment of proportionate criminal law responses to environmental offences capable of addressing contemporary challenges effectively. These issues have not yet received sufficient attention in legal scholarship. Unlike previous studies that merely considered certain provisions of Directive (EU) 2024/1203, the present research proposes specific amendments to the Criminal Code of Ukraine.

For the first time, the study substantiates the necessity of considering the interests of all participants in criminal law relations – including the offender, the state, the victim, the community, and society as a whole – when ensuring a proportionate response to environmental offences.

For the first time, within the criminal law policy in the field of combating environmental crime, the article develops an original understanding of the mechanism of proportionate response, encompassing: the establishment of criminal liability of natural persons; the application of criminal law measures to legal entities; compensation for environmental damage; and environmental restoration measures.

The study also substantiates the necessity of a proportionate, necessary, and sufficient response to unlawful conduct by legal entities in cases involving environmental offences, particularly given the high risk of corruption-related factors in such cases. In contrast to existing scholarship, the article formulates specific proposals for amendments to the Criminal Code of Ukraine.

For the first time in Ukrainian legal scholarship, and in furtherance of Directive (EU) 2024/1203, it is proposed to recognize public organizations as victims in environmental criminal proceedings in order to represent community interests and administer compensated environmental damages.

**The purpose** of the article is to create a mechanism for proportional response to the environmental crimes and to improve criminal legislation in the accordance with European Union and international standards.

To achieve this goal, the following tasks have been identified: 1) to improve criminal legislation with international and European environmental protection standards by: defining nature as an independent object of criminal law protection; criminalizing certain environmentally harmful acts; introducing criminal law measures applicable to legal entities; recognizing public organizations as victims in environmental cases; and substantiating the need for compensation for damage caused by environmental offenses; 2) to identify typical shortcomings in judicial practice; 3) to propose the components of a proportional response to environmental offenses.

**Methodology.** The research methodology is determined by the purpose and objectives of the study. The first part of the article provides an analysis of European, international, and national legislation in the field of environmental protection. The second part examines contemporary Ukrainian judicial practice concerning the prosecution of environmental offenses. Based on the analysis of European legislation and relevant practice, the shortcomings in law enforcement are identified. The concept of a proportional response to environmental crimes is developed.

The following methods were used as the methodological basis of the study: analysis, dogmatic method, generalization, dialectical method, comparative legal analysis, system-structural analysis and case study. The dogmatic method was applied to analyze international treaties regulating responses to environmental offenses, including criminal prosecution, prevention, and compensation for environmental damage, as well as European environmental criminal law legislation. The comparative legal method was used to examine international and European legal standards in order to incorporate foreign approaches to combating environmental offenses, establishing liability, preventing environmental harm, and ensuring compensation for damage. The method of generalization was employed to systematize doctrinal approaches to the issues under consideration.

The article examined the Directive (EU) 2024/1203 [9] and the Convention on the Protection of the Environment through Criminal Law of May 14, 2025 [10] in order to harmonize the current legislation with European and international standards. Inconsistencies of the current criminal legislation with these documents were identified. The necessity of criminalizing certain acts and establish certain criminal law measures was established.

The system-functional method made it possible to analyze domestic scholarly literature concerning liability for environmental offenses, as well as relevant case law relating to marine pollution. Criminal cases registered in the Unified State Register of Court Decisions under Article 243 of the Criminal Code of Ukraine (marine pollution) for the period 2022–2025 were examined. Typical shortcomings were identified and directions for improvement were proposed.

The principle of systematicity ensured the analysis of the internal structural and functional coherence of the mechanism of a proportional response to environmental offenses at both national and international levels.

The legal-dogmatic method and the method of system-structural analysis were additionally used for the interpretation of legal norms and the formulation of legislative proposals.

Kostenko's methodology of "social naturalism" [11] was employed to substantiate the recognition of nature as an independent object of criminal law protection. Proportionality was examined within a humanistic paradigm emphasizing the balanced focus of all subjects of criminal law relations.

The proportionality test methodology was applied.

Finally, the case-study method was used in the analysis of the accident on the oil tanker "Meshka".

**Findings.**

***European and international legal standards of providing the right to a safe environment.***

*Nature as an independent object of protection*. On July 3, 2025, the Inter-American Court of Human Rights issued Advisory Opinion OC-32/25, recognizing nature and its components as subjects of rights. This approach may significantly strengthen the protection of ecosystem integrity and functionality in the future [12].

We believe that this approach will make it possible to consider the right to a safe environment as a fundamental human right. Not only a component of the right to respect for private and family life guaranteed under Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Accordingly, environmental harm should not be viewed exclusively through the prism of damage to individual human health. In this context, creating a mechanism for community to participate as an independent victim in environmental cases may contribute to achieving these goals and strengthening environmental protection.

In his scholarly works, Kostenko develops the concept of the "principle of social naturalism", according to which nature occupies a fundamental and priority position in all spheres of social life [11]. Applying this methodology to the problems of environmental criminal law suggests that environmental offenses constitute violations of the principles of social naturalism. Their violation creates imbalances in the ecosystem.

The effective realization of fundamental human rights – including the rights to life, privacy, and development – is impossible without access to clean water, safe food, and unpolluted air. Nevertheless, environmental resources are often perceived as inexhaustible and self-evident. Although, global environmental challenges, including climate change and global warming, demonstrate the urgent need to restore ecosystems, reconsider patterns of social and economic behavior, and ensure environmental justice.

Environmental justice is generally understood as the fair treatment and meaningful participation of all individuals, regardless of social status, income, or other characteristics, in the implementation and enforcement of environmental legislation [13]. Achieving environmental justice requires the state to guarantee both effective protection against environmental risks and equal participation in environmental decision-making processes [4].

Moreover, the human right to a clean, healthy, and sustainable environment should be implemented through existing human rights mechanisms. This demonstrates the close interrelationship between environmental rights and other fundamental human rights.

The concept of the right to a safe environment constitutes an element of the broader concept of environmental justice. Ukrainian legislation primarily employs the term "environmental safety," which is reflected, in particular, in Articles 16 and 50 of the Constitution of Ukraine and Article 293 of the Civil Code of Ukraine.

This concept may be understood as the maintenance of a balanced relationship within the "environment-economy-society" triad [14]. Environmental offenses disrupt this balance and pose risks not only to ecosystems, but also to individual and public health, and long-term economic stability. Consequently, environmental justice presupposes a harmonious relationship between human beings and nature. At the same time, the full realization of environmental justice may be difficult to achieve in practice. Therefore, legal regulation may be oriented toward the more pragmatic and operational concept of environmental security as one of the structural elements of environmental justice.

In the sphere of criminal law, this approach requires ensuring environmental security through a balanced consideration of the interests of all subjects of criminal law relations, including the offender, the victim, the state, and third parties. It also necessitates a proportion-

ate response to environmental crimes in light of the interests and rights of all these subjects.

The principle of proportionality is implemented at all levels of criminal law policy, particularly in the processes of criminalization and penalization. Penalization, understood in a broad sense, includes not only the imposition of punishment but also the application of other criminal law measures.

*The necessity of criminalizing certain offenses against the environment.* Pursuantto Directive (EU) 2024/1203, adopted on April 11, 2024, the Criminal Code of Ukraine have to criminalize certain environmental offences committed through serious negligence, rather than limiting criminal liability exclusively to intentional conduct. This approach reflects both the significant environmental risks associated with negligent conduct and existing evidence concerning the scale of environmental harm already caused by such activities. As a result, the use of criminal law mechanisms in response to certain negligent environmental offences may be regarded as proportionate.

Among the acts that may be committed in the form of serious negligence, Directive (EU) 2024/1203 (Part 4, Article 3) provides those related to the collection, transportation, and treatment of waste [9]. Among the serious consequences, human death, serious harm to human health, damage to the quality of natural resources, the ecosystem, fauna or flora, etc. are distinguished.

Other provisions of Article 3 of the Directive (EU) 2024/1203 are likewise formulated as material offences requiring establishing environmental harm. Potential harm often includes significant deterioration in the quality of air, soil or water, as well as substantial damage to ecosystem, animals or plants. Article 3(2)(c) of the Directive refers to several EU Regulations, the violation of which should be criminalized in cases involving both intentional conduct and serious negligent.

Directive (EU) 2024/1203 employs the concept of "serious negligence". At the same time, the Criminal Code of Ukraine does not distinguish offenses that can be committed only through negligence. It turns out that the Directive does not require States to criminalize acts committed through criminal self-confidence as a type of negligent form of fault.

Scholarly literature has already examined certain provisions of Directive (EU) 2024/1203, highlighting the problems of a large number of blanket provisions and cross-references to EU legislation [15, 16]. A similar approach is reflected in the Draft of the new Criminal Code of Ukraine, which formulates certain environmental offences through blanket dispositions referring to relevant EU Regulations and international conventions (Articles 5.3.18, 5.3.19, 5.3.20) [17]. However, several provisions contained in Directive (EU) 2024/1203 remain absent from the current draft.

The necessity of criminal law responses to certain environmental offences (and negligent ones) is also reflected in other EU directives and acts. Under Article 4 of Directive 2005/35/EC of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements (hereinafter – Directive (EC) 2005/35), discharges of polluting substances from ships in any of the areas referred to in Article 3(1) shall be considered as infringements if they are committed intentionally, recklessly or with serious negligence [18]. Under the conditions established by Framework Decision 2005/667/JHA, such conduct may qualify as criminal offences.

On 14 May 2025, the Council of Europe adopted the Convention on the Protection of the Environment through Criminal Law during the *134th* Session of the Committee of Ministers [10]. The Convention has been open for signature since December 2025. Among the offences recommended for criminalization are illegal pollution (Article 12), illegal ship dismantling (Article 22), and unlawful discharges of polluting substances from ships (Article 23).

Article 31 of the Convention proposes that offences committed intentionally and causing destruction or irreversible, widespread, and substantial environmental damage. This includes long-term and widespread damage to ecosystems of significant ecological value, protected habitats, or the quality of air, soil, and water. Arguably, this provision establishes substantive limits for criminalization and indicates that such conduct should not be classified merely as minor offences or criminal misdemeanors under Ukrainian criminal law. It is also important to note that the gravity of the offence is determined, inter alia, by the extent of environmental harm caused. This approach should be reflected in the current Criminal Code of Ukraine. By contrast, the draft of the new Criminal Code follows a different logic, according to which the extent of harm caused determines the classification of the offence and, consequently, the severity of punishment. Importantly, the Convention directly links the gravity of the offence to the scale of environmental damage caused.

Directive EU 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the criminal protection of the environment makes almost no mention of transposition. And in principle, the peculiarities of the relations regulated therein cannot be taken into account by all Member States through transposition, taking into account their specifics. Although Ukrainian lawmakers here also follow the transposition method (i.e. literal borrowing). Taking into account the specifics of this Directive, it is necessary to decide whether to take into account the provisions of the Regulations.

It is necessary to develop approaches to the provisions of EU Directive 2024/1203 that need to be approximated and which ones need to be transposed (in particular, which acts must be criminalized, which acts are already provided for by the current Criminal Code, but require changes, etc. However, consideration of this issue requires a more systematic approach. It is necessary to develop approaches to the delimitation of criminal and administrative offenses against the environment. In connection with the approximation of European legislation to national law, it seems that the consolidation of individual offenses against the environment in the Code of Ukraine on Administrative Offenses is sufficient to criminalize the acts provided for in Article 3 of the Directive, which refers to numerous regulations on environmental protection. Not all violations provided for in the Regulations should be considered criminal offences, since according to the provisions of the ultima ratio principle, criminal law should be a last resort in responding to criminal offences.

In contrast, EU Directive 2026/1021 on combating corruption of 26 April 2026 explicitly states the need for transposition of many provisions, in particular certain elements of corruption criminal offences, etc.

European legislation also emphasizes the corruption-related dimension of environmental offences. Paragraph 10 of the Preamble to Directive (EU) 2024/1203 addresses situations in which formally authorized activities remain unlawful because the relevant permits or authorizations were obtained through fraud or corruption. Such risks are particularly relevant in cases involving large corporations connected to politically or economically influential actors (in particular oligarchs). The public controversy surrounding the Kronospan woodworking plant and the Kolor S.I.M. enterprise in the Rivne region illustrates these concerns [19].

In this regard, the approach proposed in the Draft Criminal Code of Ukraine, according to which certain environmental offences may be classified as corruption-related offences when committed through the abuse of official authority or professional duties (paragraph 21, Part 2, Article 1.1.1), appears justified [17]. The General Part of the Draft Criminal Code sets out specific legal consequences applicable to corruption-related criminal offences.

The provisions of Article 45 of the current Criminal Code of Ukraine do not provide an exhaustive list of corruption offenses. It may therefore be argued that all criminal offenses committed by an official should be defined as corruption related offences. Such approach would contribute to ensuring a proportionate criminal law response to environmental crimes.

*Approximation of criminal law measures to environmental offenses*. The broad scope of European legislation and the emphasis on proportionate and effective criminal law responses are further confirmed by the case law of the Court of Justice of the European Union (hereinafter – CJEU). Pursuant to Article 37 of the Charter of Fundamental Rights of the European Union, a high level of environmental protection and the improvement of environmental quality must be integrated into the policies of the European Union.

Case law of the CJEU illustrates such violations. On 11 February 2015, a fishing vessel operating within the Irish exclusive economic zone was found to be equipped with devices enabling the sorting of fish by size, including mackerel, horse mackerel, and herring. Such equipment facilitated the illegal practice of "high grading", whereby only fish of the highest commercial value were retained while the remaining catch was discarded at sea. The vessel's captain was fined EUR 500, while the catch valued at EUR 344,000 and fishing equipment valued at EUR 55,000 were confiscated [20]. Such conduct was prohibited under Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms. This Regulation was subsequently repealed by Regulation (EU) 2019/1241 on the conservation of fisheries resources and the protection of marine ecosystems through technical measures. At the same time, the CJEU used legal framework according to the law in force at the time the offence was committed. This demonstrates the Court's careful approach to the temporal applicability of environmental legislation.

Current Ukrainian legislation does not provide an effective mechanism for the special confiscation of illegally caught fish. The given example illustrates the necessity of introducing such measures as proportionate and effective criminal law responses. Furthermore, the issue of managing perishable confiscated property remains unresolved. From the perspective of environmental justice, where confiscated fish cannot be returned to the marine ecosystem, the law should provide mechanisms for their immediate sale or transfer for charitable purposes in accordance with established legal procedures. Similar approaches should also be considered in relation to other environmentally sensitive objects subject to confiscation.

The European Union has also established specialized institutions aimed at ensuring the effective implementation of environmental legislation. Within this framework, Regulation (EU) 2025/2434 [21] of 26 November 2025 assigns a supporting role in assisting States through the development of the provision of monitoring services. The European Maritime Safety Agency (EMSA) cooperates with Member States in developing technical solutions and providing assistance for the detection and monitoring of illegal discharges, including through satellite surveillance systems.

That is, the State must ensure the effective implementation and practical enforceability of these rules. To this end, separate Regulations have been adopted, which likewise require approximation to national legislation.

Pursuant to Article 3 of Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS), a specialized Committee was created to assist the European Commission in matters relating to maritime safety and the prevention of ship-source pollution.

Particular attention should also be paid to Council Framework Decision 2005/667/JHA of 12 July 2005 [22] on strengthening the criminal-law framework for the enforcement of the law against ship-source pollution. The Framework Decision emphasizes the need for penalties that are proportionate, effective and dissuasive, taking into account both the degree of fault and the extent of environmental damage caused (Article 4).

Sanctions must be proportionate, effective and dissuasive, while also reflecting the gravity of the offences committed. Such an approach is enshrined in the majority of EU Directives concerning criminal liability and enforcement mechanisms.

The articles recommended both the types of penalties and their minimum and/or maximum limits. Article 5 places particular emphasis on liability for legal persons whose activities result in the most serious forms of environmental harm. Furthermore, the possibility of holding natural persons criminally liable for specific environmental offences is expressly preserved (Article 5(3)).

Article 6 establishes the possible levels of fines, which are particularly substantial in the case of legal persons. The amount of the fine is determined according to the extent of the damage caused. For instance, in the most serious cases, the maximum fine may reach 1,500,000 EUR. Such offences must be committed intentionally and result in significant and widespread

damage to water quality, animal or plant species or their habitats, or cause death or serious bodily injury to individuals. Liability is likewise aggravated where the offence is committed within the framework of a criminal organization.

Additional sanctions applicable to legal persons include deprivation of access to public funding or other state benefits, withdrawal or temporary suspension of the right to conduct business activities, liquidation of the legal entity, and the imposition of obligations aimed at remedying the consequences of the offence [22]. Most of these measures are not currently provided for under Ukrainian criminal law. However, they appear to be effective instruments, particularly in terms of terminating unlawful activities, preventing future offences, and ensuring environmental restoration.

An interesting proposal is the introduction of fines proportionate to the turnover of the legal entity or to the actual or anticipated financial benefit derived from the offence, provided that such a system allows for sufficiently high maximum penalties. It is a positive development that this approach has been taken into account by the drafters of the new Criminal Code of Ukraine.

The 2025 Convention on the Protection of the Environment through Criminal Law [10] likewise establishes mechanisms for responding to unlawful conduct committed by legal persons (Article 34). At the same time, criminal liability of a specific natural person may also arise in connection with the same offence. The measures applicable to legal entities under the Convention are largely similar to those provided for in the Directive. However, the Convention also introduces additional instruments, including exclusion from participation in public procurement procedures, withdrawal of permits and authorizations, and the obligation to implement due diligence mechanisms aimed at strengthening compliance with environmental standards.

On 4 December 2024, the Law of Ukraine No. 4111-IX introduced significant amendments to the section of the Criminal Code governing criminal law measures applicable to legal entities. The new Article 96-10-1 provides for additional non-financial criminal law measures. Nevertheless, these provisions cannot currently be applied to legal entities that commit environmental offences, since Article 96-3 of the Criminal Code contains an exhaustive list of criminal offences that may give rise to the application of criminal law measures against legal persons. This approach is inconsistent with European standards and hinders the possibility of ensuring an effective and proportionate response to environmental offences, contrary to Article 35 of the Convention.

This approach is inconsistent with European standards and hinders the possibility of ensuring an effective and proportionate response to environmental offences, contrary to Article 35 of the Convention [10]. Moreover, the purpose of punishment extends beyond retribution alone and also encompasses the correction of the offender and the prevention of future offences. In this context, priority should be given to safeguarding public safety and ensuring effective compensation for environmental harm caused.

The specific nature of harm caused by corruption-related criminal offences (as discussed in Section 1.2) likewise necessitates the possibility of holding legal entities liable for such conduct.

Thus, the current criminal legislation of Ukraine requires further approximation to Directive (EU) 2024/1203, the case law of the Court of Justice of the European Union (CJEU), and relevant international conventions, especially with regard to introducing mechanisms for responding to criminal and unlawful conduct of legal entities that are presently absent from the Criminal Code of Ukraine. In addition, there is a need to criminalize certain forms of conduct, especially negligent environmental offences resulting in serious harm, as well as to approximate approaches to responding to corruption-related criminal offences that cause environmental damage.

***Analysis of case law***. The shortcomings of the current legislation are confirmed by case law. A search of the Unified State Register of Court Decisions (USSR), using the keywords "criminal proceedings from 2019" and "marine pollution" identified 11 cases. Most of these proceedings were terminated due to the expiration of the statutory limitation period.

One such case concerned the discharge of sewage into the NT-20 pressure drainage collector on September 28, 2017, which resulted in water pollution in the Dzharylhach Bay. By the decision of the Velykooleksandrivskyi District Court of the Kherson Region dated 31 December 2024 (Case No. 650/6650/24), the criminal proceedings were terminated due to the expiration of the limitation period for criminal liability and the failure to identify the perpetrator [23]. Another criminal proceeding was closed on similar grounds [24]. That case concerned individuals who, in 2018, polluted an estuary and a coastal land plot near the Sea of Azov by dumping construction waste.

On April 30, 2020, more than eight tons of palm oil were discharged from the vessel m/v Stavanger (flag of Tuvalu, IMO No. 9278507) into the waters of the Pivdennyi Commercial Sea Port. These actions resulted in serious environmental consequences. Following the incident, measures were undertaken to eliminate the pollution, including the removal of the discharged substance from the sea. The substance was placed into fifty-four 200-litre barrels, which were subsequently seized and transferred for storage [25]. As of 12 June 2025, the issue of holding the responsible persons liable had not been finally resolved.

Regarding the same fact of marine pollution, the tanker Stavanger was arrested in 2020. According to calculations provided by the State Environmental Inspectorate of the Crimean-Black Sea District, the vessel discharged 8,449.5 kg of pollutants into the sea. As a result, environmental damage amounting to USD 2,416,557 was caused [26].

On 11 July 2022, the Commercial Court of the Odesa Region (Case No. 916/1287/20) ordered MARINO SHIPPING CO PTE LTD to compensate Ukraine for environmental damage in the amount of UAH 64,808,433.90. The extent of the damage was established on the basis of an expert examination. The Supreme Court dismissed the cassation appeal in its ruling of 19 January 2023 [27].

Journalistic reports published in January 2025 indicated that the judgment had been partially enforced and

that UAH 28.2 million had been recovered from the responsible parties [28]. Laboratory analyses conducted after the discharge confirmed that the concentration of fats and oils in seawater exceeded the permissible limits by up to 77 mg/dm$^3$. The captain of the STAVANGER vessel was found guilty under Part 1 of Article 59-1 of the Code of Ukraine on Administrative Offences. Since the ship-owner refused to compensate for the damage voluntarily, the State sought judicial recovery of losses amounting to approximately 2.417 million USD. In 2022, 36.5 million UAH was recovered from MARINO SHIPPING CO PTE LTD.

Following the information published by Ukrinform, with reference to the Office of the Prosecutor General, a pre-trial investigation was initiated in December 2024 concerning the actions of the captain of the Russian oil tanker Meshka in relation to marine pollution caused by a fuel oil spill. The estimated environmental damage resulting from these actions amounts to approximately 20 billion UAH (Part 2 of Article 243 of the Criminal Code of Ukraine) [29]. The tanker was transporting 4,000 tons of M-100 fuel oil through the territorial waters of Ukraine. Investigators emphasized that the accident occurred as a result of the failure to take adverse weather conditions into account. Approximately 1,500 tons of fuel oil entered the territorial and internal waters of Ukraine. At present, no information is available regarding compensation for the damage caused or measures aimed at environmental restoration.

Typical shortcomings of Ukrainian case law include the absence of clear information concerning compensation for environmental damage and the implementation of restoration measures. Moreover, Ukrainian environmental legislation does not establish a comprehensive mechanism for environmental restoration by persons responsible for committing environmental criminal offences. However, criminal law measures applicable to legal entities cannot currently be imposed in such cases, as the Criminal Code of Ukraine does not provide for their application in relation to environmental offences.

A significant number of criminal proceedings are terminated due to the expiration of the statutory limitation period. Although this does not, in itself, constitute a violation of the law, from the perspective of environmental justice such widespread termination of proceedings demonstrates the limited effectiveness of justice mechanisms in this sphere and undermines the principle of the inevitability of legal response.

This situation also creates substantial corruption risks. The officially reported offences are not formally classified as corruption-related, and judicial decisions generally do not reflect possible corruption links that may have facilitated the commission of such offences.

Environmental harm of such magnitude necessarily requires effective restoration measures. Accordingly, there is a need to develop a mechanism for environmental restoration financed through fines imposed for environmental crimes and through compensation for damage in accordance with the "polluter pays" principle.

The termination of criminal proceedings due to the expiration of limitation periods does not, in itself, contradict the principles of proportionality or legality, provided that no procedural abuses or deliberate delays occurred during the proceedings. However, intentional delays may indicate the existence of a corruption component and therefore require an appropriate and proportionate legal response.

The analysis of legislation and judicial practice confirms the necessity of applying proportionate measures in response to environmental crimes. This includes ensuring effective compensation for environmental damage, achieving the maximum possible restoration of the environment, and guaranteeing proportionate protection of the rights and interests of victims of such offences.

***Proportional response with due regard to the needs of all subjects of criminal law relations.*** A proportionate response should take into account the interests and needs of all subjects of criminal law relations, including the offender, the victim, and third parties affected by the offence.

The proportionality test requires that punishment or other measures of legal response correspond to the gravity of the offence and the extent of the harm caused, pursue a legitimate aim, and remain necessary.

The offender must be guaranteed humane treatment, fair trial standards, and respect for fundamental rights, while, in the event that guilt is established, the response imposed should be sufficient, proportionate, and justified. Victims, including third parties affected by the offence, must likewise be ensured respectful and humane treatment, the possibility of effective participation in criminal proceedings, compensation for the harm suffered, and, where possible, restoration of violated rights and interests.

Nevertheless, insufficient attention is still paid to the role of the victim within criminal justice systems. A broader understanding of the concept of the victim, encompassing individuals, legal entities, society as a whole, and the environment itself. The environment cannot independently represent its interests during judicial proceedings or pre-trial investigations. For this reason, interested public organizations, acting as representatives of the public concerned, should be granted the opportunity to protect environmental interests within criminal proceedings.

At the same time, the concepts of "representatives of the public concerned" and "victims" within the meaning of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 should remain distinct. Accordingly, Member States are not obliged to extend all victims' rights to representatives of the public concerned. Directive (EU) 2024/1203 does not require Member States to grant such representatives the same procedural rights that are afforded to categories of persons other than representatives of the public concerned (points 57–58 of the Preamble). Nevertheless, the Directive requires the development of procedural mechanisms enabling civil society organizations to participate in proceedings as representatives of the relevant community and of environmental interests.

Tuliakov emphasizes the necessity of rethinking the principles of equality, legal certainty, proportionality, predictability, and subsidiarity in the context of human rights protection and victim safety. In his opinion, the key objective is to "establish a balance between coercion and compensation, restitution, rehabilitation, and the

prevention of future harm to victims" [7]. The development of the European Criminal Justice Strategy (Committee of Ministers of the Council of Europe, 2023) likewise highlights the importance of combating, inter alia, environmental crimes and corruption-related offences, strengthening judicial cooperation through mutual recognition mechanisms, and ensuring the protection of victims' rights. That is, the necessity of compensation for harm should also be addressed in the context of environmental criminal offences. Such protection should extend not only to individual victims, but also to the affected community as a whole.

A positive example in this regard is the appeal submitted by the organization "Ecoclub" to the Aarhus Convention Compliance Committee concerning the situation involving "Kronospan" [19].

***Compensation for damage.*** Regarding the harm caused to the environment by the Russian Federation, the Eco-Threat platform was created to document and record the relevant damage.

The resolution of the Cassation Administrative Court within the Supreme Court in Case No. K/9901/29048/20 dated 5 April 2023 emphasized the necessity of restoring violated rights in the field of environmental protection.

Considering definition of the nature as an independent object of criminal law protection, a proportionate response mechanism should also encompass measures aimed at *environmental restoration*.

Until 2014, a Resolution of the Verkhovna Rada of Ukraine remained in force, approving the procedure for restricting the activities of enterprises that committed environmental offences [30]. Following its repeal, no equivalent regulatory act has been adopted. Currently, such sanctions – including restrictions, temporary suspensions, and termination of activities – are applied to legal entities primarily within the framework of economic and commercial regulation.

Global warming and climate change demonstrate that insufficient attention to environmental protection may gradually lead to large-scale ecological crises. Examples include the wildfires in Los Angeles on 9 January 2025, which caused the deaths of at least sixteen people; the severe rainfall in Odesa on 30 September 2025, which resulted in eleven fatalities; and the storm in the Kherson region on 28 September 2020, which damaged thirty-two private houses and destroyed hundreds of trees.

In order to strengthen environmental awareness and develop coordinated strategies for environmental protection, dialogue-based practices involving local communities, business representatives, public authorities, and other stakeholders are essential. International experience, together with support from international and civil society organizations (such as Greenpeace, UNICEF, and others), as well as the contribution of individual environmental activists, should be utilized in a balanced and effective manner.

**Conclusions.** 1. The mechanism of proportional response to environmental crimes should include the following components: 1) proper legal qualification of the detected offence; 2) the imposition of sanctions proportionate to the harm caused; 3) the application of criminal law measures to legal entities; 4) compensation for environmental damage in line with the "polluter pays" principle; 5) restoration of the environment, combined with balanced and meaningful participation of all interested parties in the decision-making and adjudication process.

A proportionate response should take into account the interests and needs of all subjects of criminal law relations. This may be achieved, in particular, through recognition of the right to a safe environment as a fundamental human right (within the framework of Kostenko's concept of "social naturalism"), the involvement of public organizations as representatives of victims – including society and the environment itself – and ensuring their effective participation in proceedings aimed at securing genuine compensation and environmental restoration.

2. The concept of the policy of implementing European legislation into national law includes approaches to approximation and transposition of relevant provisions. Each Directive has its own specifics regarding the scope of provisions that must be approximated, and which can be approximated in a certain part, taking into account national specifics.

The optimization of criminal legislation in light of European standards and the concept of a proportionate response to environmental crimes should incorporate the measures outlined in paragraph 1, as these measures ensure the approximation of the Criminal Code of Ukraine to Directive (EU) 2024/1203.

For this purpose, several amendments to the Criminal Code of Ukraine are required. Article 45 of the Criminal Code of Ukraine should expressly include all criminal offences committed by public officials, including environmental criminal offences. Article 96-3 of the Criminal Code of Ukraine should provide for the possibility of applying criminal law measures to legal entities in cases involving environmental offences. Furthermore, Article 96-10-1 of the Criminal Code of Ukraine should include measures applicable to legal entities such as deprivation of the right to engage in economic activities, deprivation of access to state aid or public payments, the establishment of judicial supervision, and the imposition of obligations aimed at eliminating the consequences of the offence, as provided for under European legislation. In addition, the conduct defined in Article 3 of Directive (EU) 2024/1203 should be expressly criminalized within the Criminal Code of Ukraine.

In addition, it should be taken into account that transposition and approximation involve not only the implementation of the acquis communautaire into national legislation, but also their implementation in law enforcement practice and at the execution stage (serving the imposed sentence, applying criminal law measures, etc.).

3. The typical shortcomings of judicial practice identified through the analysis of cases under Article 243 of the Criminal Code of Ukraine (marine pollution) include the termination of proceedings due to the expiration of limitation periods, the absence of effective mechanisms for environmental restoration, and the failure to identify or record corruption-related elements, thereby necessitating verification of possible procedural abuses and a proportionate response to the actions of responsible officials.

In this regard, it is necessary to develop effective mechanisms for environmental restoration financed

through fines imposed for environmental crimes, as well as through compensation for environmental harm in accordance with the "polluter pays" principle.

Courts should also examine the possible existence of a corruption component in proceedings terminated based on the expiration of statutory limitation periods. For instance, attention should be paid to possible procedural abuses, deliberate delays in proceedings, or other actions aimed at avoiding liability. Such circumstances require a proportionate legal response not only to persons who committed environmental offences, but also to officials who facilitated or enabled such conduct.

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## Пропорційне реагування на кримінальні правопорушення проти довкілля


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**Мета.** Створення механізму пропорційного реагування на кримінальні правопорушення проти довкілля й удосконалення кримінального законодавства в контексті стандартів Євросоюзу та міжнародних стандартів.

**Методика.** Серед методів застосовувались догматичний, діалектичний метод, методи аналізу й узагальнення, формальної логіки, порівняння, синтезу, системно-структурний і метод кейс-стаді.

**Результати.** Проаналізовані необхідні до криміналізації діяння, спрямовані на охорону довкілля кримінально-правовими засобами згідно із Директивою (ЄС) 2024/1203 Європейського Парламенту й Ради від 11 квітня 2024 року про кримінально-правову охорону довкілля та співвіднесені з відповідними положеннями чинного Кримінального кодексу України. Виявлена відсутність норм, які б давали можливість застосування заходів кримінально-правового характеру щодо юридичних осіб за вчинення кримінальних правопорушень проти довкілля.

**Наукова новизна.** Уперше запропоновано оригінальний механізм пропорційного реагування на кримінальні правопорушення проти довкілля, що включає такі складові: встановлення кримінальної відповідальності щодо конкретних осіб, які порушили відповідне законодавство; застосування заходів кримінально-правового характеру щодо юридичних осіб; відшкодування шкоди; відновлення довкілля. Аргументовано, що пропорційне реагування на правопорушення проти довкілля має враховувати потреби всіх суб'єктів кримінально-правових відносин – особи, яка вчинила кримінальне правопорушення, держави, потерпілої особи й суспільства в цілому. Такий авторський підхід ураховано у формулюванні пропозицій щодо оптимізації кримінального законодавства з урахуванням європейських норм. Розвинута ідея розгляду права на безпечне довкілля як фундаментального права людини. Запропоновано залучати громадські організації як потерпілих у справах проти довкілля. Обґрунтована необхідність реагування на поведінку юридичних осіб у контексті правопорушень проти довкілля. Аргументована висока вірогідність наявності корупційної складової у таких справах.

**Практична значимість.** Результати дослідження сприятимуть удосконаленню кримінального законодавства та практики його застосування. Запропоновані зміни до КК України щодо застосування заходів кримінально-правового характеру до юридичних осіб у справах проти довкілля, а також розширення переліку корупційних кримінальних правопорушень.

**Ключові слова:** *безпечне довкілля, євроінтеграція, пропорційність, потерпілий, відшкодування, відновлення довкілля, кримінальна відповідальність*