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Reflections on International Standards and the Experience of Certain Foreign Countries in the Use and Protection of Land

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Abstract:
In the article, the author presents certain reflections on international standards and the experiences of some foreign countries in the field of land use and protection. The author also outlines specific features found in the criminal legislation of foreign countries regarding offenses committed in this area. In particular, the article discusses the relative severity of sanctions for crimes related to land use and protection, the recognition of land as a form of private property in certain countries, and how this classification influences the legal interpretation and regulation of such offenses. Specifically, in Germany, the unauthorized occupation of land, according to the German Criminal Code (Strafgesetzbuch, StGB), is generally classified as “unlawful interference with property” or “unauthorized appropriation of property,” among other similar terms. According to the author, in order to establish liability and impose fair punishment for crimes expressed in the violation of land legislation, and to improve the practice of applying criminal law in this regard, it is necessary to reconsider the structure of criminal offenses in other areas of environmental crime as well. This conclusion is drawn from the observation that, under the current legal framework and its application, a person can only be held criminally liable for acts such as pollution of land plots or violation of land use or protection requirements if the consequences specified in the legal norms have actually occurred. For this reason, it is considered appropriate to revise the first part of the dispositions of Articles 196 and 197 of the Criminal Code, which provide for liability for offenses such as pollution of land plots or violations of land use or protection requirements. It is recommended that these offenses be classified as formal crimes, and that aggravating elements be introduced depending on the severity of the consequences resulting from the offense.
Keywords: *Land, Land Resources, Land Fund, land plot, sale of the right to land, environmental legal consciousness, exemption from criminal liability*

Alongside the rational use of land resources, analyzing advanced foreign experiences in improving liability for crimes committed in the use and protection of land plots holds significant importance.

The experience of foreign countries demonstrates that unresolved issues related to the criminal-legal protection of land plots can deter potential investors. Conversely, the rapid development of the land market and the improvement of legal relations concerning land contribute to the effective legal protection of land plots. This, in turn, promotes socio-economic stability and increases the investment attractiveness of cities, regions, and free economic zones.

According to researcher F. Khudayqulov, the majority of European countries have joined the "Convention on the Protection of the Environment through Criminal Law" (ETS No. 172, Strasbourg, 4 November 1998) [1] & [2].

In the European region, a number of researchers have conducted scientific studies on the criminal-legal protection of land. These studies often focus on the strategic importance of land for the state and society, problems in land law, land protection, and existing issues in legislation and legal relations concerning land degradation.

Research has also been carried out on the illegal occupation of land, land-related crimes, and the effectiveness of criminal-legal mechanisms in addressing such offenses. For instance, Christian Thiemann, in his research, explores the theoretical and practical aspects of the criminal-legal protection of land. His studies focus on the unlawful interference with land and provide a comparative analysis of European legal systems in terms of land protection [3].

Similarly, Joachim Meyer has conducted specialized research on the criminal-legal protection of land, examining offenses such as illegal occupation, land degradation, and various crimes related to land protection. He evaluates the effectiveness of legal norms aimed at safeguarding land from criminal encroachment and analyzes legal relations within both national and international law [4].

In general, it can be observed that scientific research conducted in Europe on the criminal law protection of land [5] has covered the following issues:

The interrelation between land law and criminal law: crimes in the field of land law and the existing legal mechanisms for their punishment.

Combating illegal use and occupation of land: the effectiveness of preventing land-related violations and holding offenders accountable within the framework of criminal codes.

Crime prevention and prophylaxis: the main procedures for the prevention of land-related crimes and the legal measures pertaining to them.

The system of legal norms regulating the diversity of relations related to land ownership and land use in Germany differs significantly from the similar framework in Uzbekistan. First of all, in Germany, these norms are closely interconnected with other legal provisions. In German law, land law (Bodenrecht) is essentially regarded as a specialized concept within the law on land protection (Bodenschutzrecht). The law on land protection, in turn, is considered a branch of environmental law (Umweltschutzrecht), which is defined as the law governing the protection of the natural environment [6].

Chapter 29 of the German Criminal Code (Strafgesetzbuch) is titled "Criminal Offenses Against the Environment". In particular, Article 324a addresses soil (land) contamination. It provides criminal liability of up to five years of imprisonment or a fine for the release, discharge, or allowance of harmful substances into the soil in violation of administrative-legal obligations, if such contamination could harm human health, animals, plants, other objects of significant importance, or bodies of water, or cause serious negative effects.

If the damage is caused through negligence, the punishment is up to three years of imprisonment or a fine [7].

According to Article 187 of the Land Code of Ukraine, state control over the use and protection of land plots is carried out by state authorities, local self-government bodies,

organizations, enterprises, institutions, and citizens to ensure compliance with the land legislation of Ukraine [8].

International ecological cooperation plays a crucial role in the use and protection of land plots. This includes the conclusion of international agreements, treaties, and conventions on environmental protection by all countries of the world, the development of international environmental standards, joint monitoring of their implementation, collaborative resolution of global and regional environmental problems, the conduct of scientific research, and the organization of various international forums and conferences.

Currently, nearly half–six out of fourteen–of the United Nations' specialized agencies are involved in the protection of the natural environment. Among them, UNESCO, the organization dealing with education, science, and culture, considers one of its main areas of activity to be environmental protection. This includes promoting education in the field, preparing qualified personnel, expanding the use of advanced practices in the rational use of land resources, conducting scientific research, and encouraging such initiatives.

It is well known that FAO is an organization for food and agriculture, and it deals with the comprehensive use of land, water, plants, and animals, as well as the problems of increasing their productivity [9]. It should be noted that among the 17 national goals and tasks in the field of Sustainable Development until 2030 defined by the UN, goals 13, 14, and 15 directly address the protection of the environment. In particular, Goal 15 focuses on the protection of land ecosystems: rational use of land plots belonging to the forest fund, combating desertification, halting the process of land erosion, restoring degraded lands, and preventing the loss of biological diversity.

In the legal systems of European countries, the unauthorized occupation of land plots–i.e., the illegal appropriation of land–is considered a criminal offense in many states. Scholarly research in this area examines the strategic importance of land for both the state and society, as well as the legal mechanisms for combating the unlawful use and occupation of land. Although the laws and enforcement practices concerning criminal liability for the illegal occupation of land may vary across European nations, all states include provisions in their legislation aimed at protecting state-owned and privately owned land registers.

The main procedures for combating unlawful land occupation in European legislation are reflected in criminal law, although the general principles for establishing criminal liability may vary from one country to another. For instance, in Germany, according to the German Criminal Code (Strafgesetzbuch, StGB), crimes related to the unlawful occupation of land are primarily referred to as "unauthorized interference with property" or "unlawful appropriation of property." That is, according to Article 123 of the German Criminal Code, anyone who unlawfully interferes with another person's property or engages in activities related to it is considered to have committed a crime and is subject to punishment of up to two years of imprisonment or a fine [10].German legal scholars explain that in this provision, cases of unauthorized land occupation are not specified separately as land plots, but rather are included under the general provision establishing liability for unauthorized appropriation of property [11].

In France as well, the unlawful occupation of land plots is considered a criminal offense. According to French legal scholars, Article 222-6 of the French Criminal Code establishes the unlawful appropriation of land as a criminal offense. Under these provisions, individuals who commit the crime of land occupation may be punished with a fine or a relatively short term of imprisonment (up to two years) [12]. According to Article 222-6 of the French Criminal Code (Code pénal), "unlawful interference with property" or "unauthorized appropriation of property" is recognized as a criminal offense.

According to academic researchers, under Article 633 of the Italian Criminal Code (Codice Penale), a person who unlawfully occupies another person's property is subject to criminal penalties, which are noted to be similar to the provisions found in German criminal legislation [13].

Under Spanish legislation, the unauthorized occupation of land is considered a criminal offense and is subject to strict punitive measures.

In particular, Article 245 of the Spanish Criminal Code (Código Penal) establishes criminal liability for the unlawful occupation of land [14].

In European countries, criminal liability for the unlawful occupation of land is primarily based on each state's criminal code, with significant attention given to the protection of public property. Criminal liability is enforced through various criminal codes, and the differences among countries are related to these legislative distinctions. Research on the unlawful occupation of land and the corresponding criminal liability in European countries highlights the interrelation between property law and criminal law, as well as the effectiveness of national legislation.

In most developed countries, special attention is given to preventing the unlawful expropriation of land plots for state and public needs during the implementation of government programs aimed at altering the architectural appearance of cities and districts. For instance, the legislation of the Russian Federation, Belarus, Kazakhstan, Georgia, and several other countries contains provisions whereby "officials may be held liable–depending on the degree of severity of the offense–for causing harm to property owners as a result of the unlawful expropriation of land plots, or due to disputes over the types of compensation for expropriated land plots or the failure to provide compensation in a timely manner" [15].

Within the framework of the Presidential Decree of the Republic of Uzbekistan dated October 30, 2019, "On the Approval of the Concept of Environmental Protection of the Republic of Uzbekistan for the Period Until 2030," the Concept outlines several key tasks, including the protection and preservation of environmental objects–particularly the conservation and safeguarding of land resources, among others.

Since 1993, Uzbekistan has been a member of the United Nations Framework Convention on Climate Change (UNFCCC), which was signed in May 1992 in New York, United States. In 1998, Uzbekistan signed the Kyoto Protocol to the Convention and ratified it in 1999. The country also signed the Paris Agreement in 2017 and ratified it in 2018. In addition, the Republic of Uzbekistan is an equal member of the Interstate Ecological Council of the CIS, which was signed in 1992.

As noted in the previous paragraph, a study of the legislation of certain foreign countries that establishes criminal liability for offenses related to the use and protection of land plots demonstrates that the sanctions–i.e., the duration and amount of punishment–stipulated in national criminal law are often disproportionate to the degree of social danger posed by the offense and the extent of the consequences resulting from its commission. For example, in 2022 alone, 27 criminal cases were initiated concerning environmental offenses, but in all of these cases, only relatively mild financial penalties were imposed [16].

In particular, Article 195 of the Criminal Code provides for a punishment of up to three years of correctional labor for failure to take measures to eliminate the consequences of environmental pollution.

In addition, Articles 193–204 of the Criminal Code stipulate a maximum sanction of up to five years of imprisonment. However, for similar offenses, the punishment in other jurisdictions is significantly more severe: up to 20 years in Singapore, up to 12 years in Armenia and Latvia, up to 10 years in Germany, Finland, Ukraine, China, and Japan, up to 8 years in Russia, Azerbaijan, and Lithuania, and up to 7 years in Belarus and Kazakhstan. Furthermore, in some foreign countries —

including Finland, Ukraine, Russia, Spain, Armenia, Kyrgyzstan, Azerbaijan, Kazakhstan, and Belarus – criminal legislation provides not only for imprisonment but also for the imposition of additional penalties in the form of deprivation of certain rights.

For instance, as noted by Z. Achmiz, who has conducted research on this subject, the provisions establishing criminal liability for land pollution in the Russian Federation and the Republic of Kazakhstan are highly similar.[17] The researcher explains this by asserting that the nature of relations in this area poses nearly identical social danger in both countries. In addition, we believe this similarity may also be attributed to the fact that Kazakhstan's criminal legislation – from the era of Tsarist Russia to the period of the former Soviet Union (including during that time) – incorporated elements of criminal legislation from other post-Soviet states.

"Studies indicate that in Australia, specific criminal law provisions for environmental crimes are not codified at the federal level. These matters are primarily regulated within the legislation of individual states, and the Australian Criminal Code provides general principles regarding the application of state laws.[18] Regarding liability for land pollution, it is established in the United Kingdom under the Environmental Protection Act 1990, and in Belgium under the compilation of agricultural laws adopted in 1991.[19] In this context, O. Dubovik explains that qualifying the resulting death of a person as an aggravating circumstance of the act under consideration represents an artificial aggravation of criminal liability. In the criminal legislation of the Kyrgyz Republic (Article 306) and Estonia (Articles 154/2, 154/3, 158/2), the occurrence of death as a result of the act is not codified as an aggravating circumstance. The scholar justifies this by noting the absence of a direct causal link between land pollution and a person's death. In other words, the victim's death does not result directly from the contamination of the land (or water), but rather from poisoning caused by consuming plants grown on the polluted land or meat from animals that consumed such plants. In this regard, we support the opinion that the victim's death should not be directly reflected as an aggravating circumstance in the disposition of the norm. Similar views are also found among other scholars [20].

Experts often cite the People's Republic of China as the state that imposes the most severe criminal penalties for environmental offenses, particularly those related to land [21]. For example, under Chinese criminal legislation, the unlawful appropriation of large areas of irrigated land– especially cultivated land–in violation of land management laws, which results in significant damage to the land plot, may lead to a sentence of up to five years of imprisonment, short-term detention, or, as an additional penalty, a monetary fine. [22]

In this regard, subparagraph (a) of paragraph 2 of the Presidential Decree of the Republic of Uzbekistan No. PF–81 dated May 31, 2023, titled 'On Measures for the Transformation of the Environmental Protection Sector and the Organization of Activities of the Authorized State Body', stipulates that crimes related to causing harm to the environment, the destruction or damage of flora and fauna objects, shall be classified as serious crimes. [23] Accordingly, it would be appropriate to aggravate the criminal penalties for the offense of violating the conditions for the use or protection of land and subsoil resources (Article 197 of the Criminal Code), and to reclassify such acts as serious crimes.

During the course of the study, an anonymous survey was conducted among law enforcement officers and academic staff (professors and lecturers), in which respondents were asked the following question: 'In your opinion, is it appropriate to aggravate the criminal penalties prescribed under Article 197 of the Criminal Code (violation of conditions for the use or protection of land and subsoil resources)?' In response, 43.2% answered 'yes', stating that the provision contains material elements and that criminal liability arises only when the violation of land protection requirements

leads to serious consequences; 29.5% responded ‘no’, arguing that aggravating the penalties for violating land protection requirements does not align with the broader policy of liberalizing the Criminal Code; while 27.3% answered ‘absolutely yes’, reasoning that, in the context of global warming and the threat of drought, the protection of land resources must be taken seriously, and thus aggravation of criminal sanctions is justified.

In this regard, subparagraph (e) of paragraph 2 of the Presidential Decree of the Republic of Uzbekistan No. PF-81 dated May 31, 2023, titled ‘On Measures for the Transformation of the Environmental Protection Sector and the Organization of Activities of the Authorized State Body’, provides for the establishment of administrative or criminal liability for the unlawful allocation and illegal use of land plots belonging to the forest fund. Moreover, it prescribes the introduction of a separate criminal offense for the illegal construction of buildings and structures, and aligning its sanctions with those applied to the unlawful appropriation of irrigated land plots. Therefore, based on the findings of this research, it is appropriate to introduce liability–through the inclusion of a revised Article 198^1–for constructing buildings, structures, or other facilities on forest fund lands or within their boundaries in violation of established prohibitions (restrictions). The same subparagraph also stipulates that criminal liability shall be established for the illegal allocation or use of land plots within the forest fund, and for the unlawful construction of buildings or structures on such land, and that the sanction for this offense shall be equivalent to the sanction for unauthorized seizure of irrigated land. Accordingly, it would be justified to toughen liability under Article 229^4 of the Criminal Code and to establish a separate criminal provision for violations of the procedure for allocating forest fund land plots.

It should be noted that, as examined in the preceding paragraphs, the crimes related to the use and protection of land plots, as studied within the scope of this research, may be classified according to their object as follows:

– Crimes infringing on social relations in the field of environmental protection and the use of natural resources (Articles 196, 197, and 197^1 of the Criminal Code);

– Crimes infringing on the procedure of activity of state authorities, administrative bodies, and public associations (Articles 229^1, 229^4, 229^5, and 229^6 of the Criminal Code).

Based on the subject matter of the crime (the object of criminal protection), land-related offenses may be categorized as follows: Criminal offenses that provide criminal-legal protection specifically to irrigated land plots (Article 197^1 of the Criminal Code; Article 229^1, Part Two; Article 229^4, Part Two, Subparagraph ‘b’; and Article 229^6 of the Criminal Code); Criminal offenses that ensure criminal-legal protection of all categories of land plots (Articles 196, 197, and 229^5 of the Criminal Code).

According to the degree of social danger, crimes are classified as follows:

1. Crimes not considered highly socially dangerous (Articles 196, 197, and 229^1 of the Criminal Code; Article 197^1 part one; Article 229^4 part one; and Article 229^5 parts one and two);
2. Crimes of lesser gravity (Article 197^1 part two; Article 229^4 part two; Article 229^5 part three; and Article 229^6 part one);
3. Serious crimes (Article 229^5 part four and Article 229^6 part two).

According to the condition for the emergence of criminal liability, based on the requirement of prior administrative liability:

1. Crimes in the field of land use and protection that require administrative prejudice (Articles 197^1, 229^1, 229^4, and 229^5 of the Criminal Code);
2. Crimes in the field of land use and protection that do not require administrative prejudice (Articles 196, 197, and 229^6).

According to the subject of the crime:

1. General subject;
2. Special subject – the landowner, land user, or tenant (Article 197[1]); the official of a state body making the decision on land seizure (Article 229[5]); and a public official (Article 229[6] part two, subparagraph "g").

According to the presence of positive liability, the elements of crimes are differentiated and analyzed as follows:

1. Elements of crimes that stipulate conditions for exemption from liability (Article 197[1] of the Criminal Code);
2. Elements of crimes that provide guarantees for mitigation of punishment, including the non-application of imprisonment as a form of punishment (Articles 229[1] and 229[6]);
3. Elements of crimes that do not envisage positive liability (Articles 196, 197, 229[4], and 229[5]).

In addition, it can also be stated that these elements of crimes differ from each other in terms of their objective features and structure.

Analysis shows that, in most cases, environmental crimes under national criminal legislation are materially constituted offenses. This means that criminal liability for socially dangerous acts of this nature arises only when specific consequences stipulated in the norm have occurred. Such consequences include mass human illness, the extinction of animals, birds, or fish, or other severe outcomes such as human death, or environmental changes that negatively impact the ecosystem to a significant degree.

It is evident that these are extremely serious consequences, and in most cases, they may not be detected at the time the act is committed or may not occur immediately after its commission.

It should be emphasized that the high degree of latency in environmental crimes, as well as the frequent impossibility of determining the scope and extent of damage caused to the natural environment and to the interests of the state and society at the time the act is committed, means that even when such crimes result in human death, widespread disease among the population, significant ecological degradation, or other severe consequences, the institution of exemption from criminal liability due to the expiration of the statute of limitations is often applied. This, in turn, contradicts the principle of the inevitability of liability enshrined in the Criminal Code.

For example, the acts stipulated in Article 196 (pollution of land plots) and Article 197 (violation of land use conditions or requirements for their protection) of the Criminal Code, as examined within the scope of this study, are recognized as punishable offenses only if the socially dangerous consequences specified in those provisions actually occur.

Similarly, these acts fall into the category of less serious and not particularly grave crimes based on their degree of social danger. This indicates that, according to Article 64 of the Criminal Code, if a crime expressed in the pollution of land plots or the violation of land use conditions or requirements for their protection is classified as a less serious offense, then two years after the commission of the act, the person shall be released from criminal liability. Likewise, if the act is classified as a not particularly grave crime, then four years from the time of its commission, the individual shall be exempt from liability.

However, criminal liability arises only when the pollution of land plots or the violation of land use or protection requirements causes mass human illness, death of people, extinction of animals, birds, or fish, or other grave consequences. Such socially dangerous outcomes may not occur within the 2- to 4-year limitation period, or even if they do occur as a result of the offender's act, they may

not manifest before the statute of limitations expires. This leads to a violation of the principle of the inevitability of criminal liability for the committed acts.

However, the criminal legislation of several foreign countries studied – including the United States, Canada, certain member states of the European Union, Japan, and Australia – demonstrates that environmental crimes are classified as formal offences in their legal systems.

From a purely criminal-legal perspective, acts expressed in the failure to fulfill imposed obligations are regarded as continuing crimes (delictum continuum [24]). A continuing crime is a complex form of a single offense (unum delictum [25]) and, according to Article 32, Part 4 of the Criminal Code, consists of the prolonged failure to perform duties and constitutes the continuous structure of one crime. The majority of scholars support this view [26].

The specificity of a continuing crime lies in the perpetrator's continuous influence over an object of legal protection through the maintenance of a criminal situation over a prolonged period of time [27]. N.F. Kuznetsova also explains that a continuing crime persists at the completed stage of the offense by prolonging the criminal consequence over time, since the duty not to commit a crime applies to all individuals [28]. The key point here is that if criminal acts in the field of environmental protection are considered continuing crimes, then determining the exact time of commission becomes a crucial criterion for ensuring the principle of inevitability of criminal liability.

In this context, the point is that if environmental offenses are classified as continuing crimes, then determining the time of the offense is essential for ensuring the principle of inevitability of criminal liability. This is because the time of the offense becomes a key criterion for prosecution.

According to M. Usmonaliyev, “in continuing crimes, the crime is considered completed as soon as the initial part of the criminal act is committed” [29]. M.Kh. Rustambaev emphasizes that “the time of commission of a continuing crime is the moment the first act or omission occurs” [30]. L.V. Inogamova-Hegai asserts that “continuing crimes should be qualified under the Criminal Code that was in force at the time the initial act or omission occurred” [31]. A.I. Chuchaev also argues that “liability for a continuing crime arises under the criminal-law norm in force at the time of the first act of encroachment, while for a prolonged crime, it arises based on the norm in effect when the final act was committed or terminated by the offender” [32].

Therefore, according to the opinions of the above-mentioned scholars, the time of commission of a continuing crime should be recognized as the moment the first act or omission occurred – i.e., the legal completion of the crime. However, other scholars maintain a different view, suggesting that the factual completion of the continuing crime should be regarded as the time of its commission [33].

It has been noted that continuing crimes possess two distinct points of completion: the moment when the individual, having fulfilled the elements of a completed offense, initiates the criminal conduct, and the moment when the crime is either forcibly terminated or the person voluntarily ceases their unlawful actions [34].

In this regard, a distinction is drawn between the de jure and de facto points of completion. S.Z. Feller likewise asserts that a continuing crime has two points of completion: an initial point that arises upon the expiration of a minimum period, and a final point at which the criminal behavior is effectively terminated.

The first defines the condition for the emergence of a crime, while the second reflects its degree. The former is a qualitative, and the latter is a quantitative indicator [35]. In fact, when an act is legally completed, it acquires the quality of criminality and, unless it is stopped by the person himself or contrary to his will, continues uninterruptedly to exert harmful influence on the object of

the crime. From this perspective, the act expressed in the pollution of land plots or the violation of the conditions for land use or its protection is considered completed from the moment it is committed, and the statute of limitations for bringing the perpetrator to criminal liability begins to run. However, whether or not the consequences actually occur is not of significance.

From this point of view, we firmly believe that not only these norms but also the construction of the elements of other environmental crimes should be reconsidered. This is because the current state of legislation and its application practice show that criminal liability for the pollution of land plots or the violation of their usage conditions or protection requirements arises only when the consequences specified in the law actually occur.

Therefore, in our opinion, it is advisable to revise the first parts of Articles 196 and 197 of the Criminal Code, which establish liability for pollution of land plots or violation of their usage conditions or protection requirements, and define them as formal offenses. Depending on the consequences resulting from the act, aggravated elements of the crime could then be provided for.

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