

# ENVIRONMENTAL, ECONOMIC AND AGRICULTURAL LAW

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## Legal liability in environmental law: problems of formation and development

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Legal protection of the environment, ensuring rational environmental management and environmental security requires not only the proper implementation by the subject of environmental relations of his rights and duties, but also their protection from violations by other subjects, restoration of rights and legitimate interests of participants of these relationships, bringing the guilty persons to justice. It is the legal liability, which constitutes the institution of environmental legislation, which provides a mechanism for localization and blocking of illegal behavior and encourages socially useful human actions in the legal field, which is a measure of the protection of society and its members against offences, protects interests of individuals, society and the state, is a form of state response to violation of the established order of social relations<sup>1</sup>.

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<sup>1</sup> Nersesyants V. S. *Obshchaya teoriya prava i literatury*. Moscow, 1999. – p. 523 (in Russian);

Scientists, who research relevant theoretical and practical problems of implementation and the development of democratic grounds of public administration in Ukraine, believe that the progress of society and democracy is related with liability as a legal institution and responsible behavior of each participant of social relations. In strictly legal sense, it implies an increase in regulatory control for strengthening democratic principles of public administration<sup>2</sup>.

In contrast to the Ukrainian environmental legal doctrine, problem of legal

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*Obshchaya teoriya prava i gosudarstva* / Edited by V. V. Lazarev. – Moscow, 1994. – p. 204 (in Russian); *Teoriya gosudarstva i prava* / Edited by O. V. Martyshin. – Moscow, 2007. – p. 398 (in Russian); Komarov S. A. *Obshchaya teoriya gosudarstva i prava*. – Moscow, St. Petersburg. – 2004. – p. 388 (in Russian)

<sup>2</sup> *Demokratychni zasady derzhavnogo upravlinnya ta administratyvne pravo* / Edited by V. B. Averyanov. – Kyiv: Yurydychna dumka. – 2010. – p. 300. (in Ukrainian)

liability for environmental offenses in the Russian legal science is under the constant attention of scientists. As M. M. Brynchuk thinks with reference to the relevant bibliographic sources, issues of legal liability in environmental protection receive at least more attention than others institutions in the science of environmental law (meaning the science of environmental law of the Russian Federation) – a young, new, independent and alternative branch<sup>1</sup>. This is confirmed by a number of dissertation researches, which have been carried out in recent years on various aspects of legal liability for environmental offences. These are, specifically: «Legal liability for violation of rules for handling environmentally hazardous substances and wastes»<sup>2</sup>, «Legal liability for pollution of the atmosphere»<sup>3</sup>, «Legal liability for violation of legislation on environmental information»<sup>4</sup>, «Legal liability for violations of the legislation on the protection and use of

flora»<sup>5</sup>, and also: «Compensation for environmental damage in the Russian law» and «Compensation for environmental damage: comparative legal analysis of European, German and Russian law»<sup>6</sup>. Additionally, several monographs and scientific and methodological researches were published, including: «The theory of legal liability for environmental offences and its practical application»<sup>7</sup>, «The application of liability for environmental offenses»<sup>8</sup>, «Legal liability for environmental offenses»<sup>9</sup>, «Legal liability for environmental offenses. Commentary to legislation of the Russian Federation»<sup>10</sup>.

<sup>1</sup> Brynchuk M. M. *Ecologo-pravovaya otvetstvennost – samostayatelnyi vid yuridicheskoy otvetstvennosti // Gosudarstvo i pravo. – 2009. No 4. – p. 39. (in Russian)*

<sup>2</sup> Radchik O. L. *Yuridicheskaya otvetstvennost za narusheniye pravil obrashcheniya s ekologicheskimi opasnymi veshchestvami i othodami. Extended abstract of candidate of legal sciences dissertation. – Moscow, 2001. (in Russian)*

<sup>3</sup> Kuznetsova O. N. *Yuridicheskaya otvetstvennost za zagryazneniye atmosfery. Extended abstract of candidate of legal sciences dissertation. – Moscow, 2003. (in Russian)*

<sup>4</sup> Karkhu O. S. *Yuridicheskaya otvetstvennost za narusheniye zakonodatelstva ob ekologicheskoy informatsii. Extended abstract of candidate of legal sciences dissertation. – Moscow, 2004. (in Russian)*

<sup>5</sup> Zhuravskiy I. M. *Yuridicheskaya otvetstvennost za narusheniye zakonodatelstva ob okhrane i ispolzovanii rastitelnogo mira. Extended abstract of candidate of legal sciences dissertation. – Moscow, 2007. (in Russian)*

<sup>6</sup> Misnik G. A. *Vozmeshcheniye ekologicheskogo vreda v rossiyskom prave. Extended abstract of candidate of legal sciences dissertation. – Moscow, 2006 (in Russian); Ivanova A. L. Vozmeshcheniye ekologicheskogo vreda: sravnitelno-pravovoy analiz yevpoyskogo, nemetskogo i rossiyskogo prava. Extended abstract of candidate of legal sciences dissertation. – Moscow, 2006. (in Russian)*

<sup>7</sup> Ivakin V. I. *Teoriya yuridicheskoy otvetstvennosti za ekologicheskkiye pravonarusheniya i praktika yeyo osushchestvleniya. – Moscow, Pravo i gosudarstvo. – 2004. – 257 p. (in Russian)*

<sup>8</sup> *Primeneniye otvetstvennosti za ekologicheskkiye pravonarusheniya / Edited by O. L. Dubovik. – Moscow, Gorodets. – 2007. 544 p. (in Russian)*

<sup>9</sup> *Yuridicheskaya otvetstvennost za ekologicheskkiye pravonarusheniya / Edited by A. I. Boblyov, N. A. Dukhno. – Moscow, Law institute of MIIT. – 2001. – 158 p. (in Russian)*

<sup>10</sup> Lapina M. A. *Yuridicheskaya otvetstvennost za ekologicheskkiye pravonarusheniya. – Moscow, Ekzamen. – 2003. – 288 p. (in Russian)*

Instead, the following dissertations in Ukraine were devoted to issues of liability: in the field of land law – «Liability for pollution and contamination of soils in Ukraine»<sup>1</sup>, «Land offense as the grounds for legal liability in Ukraine»<sup>2</sup>, in the field of water law – «Problems of liability for violations of water legislation»<sup>3</sup>, in the field of forestry legislation – «Liability for violation of forestry legislation»<sup>4</sup>. This is the end of the list of comprehensive scientific researches of the institute of legal liability in the field of environmental protection and natural resources management in the national legal school. Unfortunately, no attention is paid to the issues of legal liability for violation of legislation on natural reserve resources, environmental network, use and protection of flora and fauna, mineral resources, atmospheric air, natural resources of exclusive (maritime) environmental zone and continental shelf, environmental safety and many others. The mentioned issues are dealt with by the researchers in the plane of

the relevant research topics only superficially, on the level of individual chapters, and even sections of dissertations and monographs, textbooks and manuals. In particular, it is «Legal liability for violation of the right to use natural resources of exclusive (maritime) economic zone»<sup>5</sup>, «Legal liability in the field of mineral resources protection»<sup>6</sup>, «Peculiarities of criminal-legal and administrative responsibility for violation of forestry legislation»<sup>7</sup>, «Legal liability for violations of legislation on flora»<sup>8</sup>, «Legal liability for violation of the legal regime of national natural parks»<sup>9</sup>, «Legal liability for violations of water legislation on small rivers of Ukraine»<sup>10</sup>, «Li-

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<sup>1</sup> Gavrysh N. S. Vidpovidalnist za zabrudnennya ta zasmichennya gruntiv v Ukraini. Extended abstract of candidate of legal sciences dissertation. – Kyiv, 2001. (in Ukrainian)

<sup>2</sup> Sarkisova T. B. Zemelne pravoporushennya yak pidstava yurydychnoyi vidpovidalnosti v Ukraini. Extended abstract of candidate of legal sciences dissertation. – Kyiv, 2012. (in Ukrainian)

<sup>3</sup> Shumilo O. M. Problemy vidpovidalnosti za porushennya vodnogo zakonodavstva. Extended abstract of candidate of legal sciences dissertation. – Kharkiv, 1993. (in Ukrainian)

<sup>4</sup> Mendyk L. V. Vidpovidalnist za porushennya lisovogo zakonodavstva. Extended abstract of candidate of legal sciences dissertation. – Kyiv, 2009. (in Ukrainian)

<sup>5</sup> Vitovska I. V. Pravove reguluvannya vykorystannya pryrodnykh resursiv vuklyuchnoyi (morskoyi) ekonomichnoyi zony Ukrainy. Extended abstract of candidate of legal sciences dissertation. – Kharkiv, 2004. – pp. 14-15. (in Ukrainian)

<sup>6</sup> Oliynyk O. M. Pravove reguluvannya okhorony nadr za zakonodavstvom Ukrainy. Extended abstract of candidate of legal sciences dissertation. – Kyiv, 2010. – pp. 10-11. (in Ukrainian)

<sup>7</sup> Melnyk P. V. Pravova okhorona lisiv Karpatskogo regionu. Extended abstract of candidate of legal sciences dissertation. – Kharkiv, 2002. – pp. 15-16. (in Ukrainian)

<sup>8</sup> Basay O. V. Pravovyy rezhym roslynnoho svitu Ukrainy. Extended abstract of candidate of legal sciences dissertation. – Kharkiv, 2009. – p. 11. (in Ukrainian)

<sup>9</sup> Marych Kh. M. Pravovyy rezhym natsionalnykh pryrodnykh parkiv Ukrainy (na materialakh Karpatskogo regionu Ukrainy). Extended abstract of candidate of legal sciences dissertation. – Kharkiv, 2007. – p. 13. (in Ukrainian)

<sup>10</sup> Trufan I. V. Pravovyy rezhym malykh richok v Ukraini. – Ivano-Frankivsk. – CIT publishing department. – 2006. – pp. 111-148

bility for violation of legislation in the field of protection, use and reproduction of water living resources»<sup>1</sup>, «Problems of realization of legal responsibility for the violation of the private ownership right on fauna objects»<sup>2</sup>, «Liability for violation of environmental legislation»<sup>3</sup>.

The dissertation research by N. I. Tytova «Liability for violation of legislation on the protection of nature»<sup>4</sup> was dedicated to the issues of legal liability for the first time on the territory of Ukraine. According to the opinion of the author «...current system of different types of liability (administrative, pecuniary, criminal) for violations of the law protecting soils, mineral resources, waters, fish resources, forests, fauna and other natural objects is a reliable instrument of environmental protection. But nature protection legislation requires further improvement as well»<sup>5</sup>.

Legal liability for violation of legislation on nature protection (nature protection legislation) is regarded in the mentioned scientific research taking into account scientific doctrines and practice

<sup>1</sup> Grygoryeva T. V. Pravovi zasady vykozystannya, okhorony ta vidtvorennya vodnykh zhyvykh resursiv. – Kharkiv, Pravo. – 2011. – pp. 137-149. (in Ukrainian)

<sup>2</sup> Shekhovtsev V. V. Pravove reguluvannya prava pryvatnoyi vlasnosti na obyekty tvarynnoho svitu v Ukrayini. – Kharkiv, FINN. – 2010. – pp. 139-160. (in Ukrainian)

<sup>3</sup> Ekologichne pravo / Edited by A. P. Getman. – Kharkiv, Pravo. – 2013. – pp. 153-163. (in Ukrainian)

<sup>4</sup> Tytova N. I. Vidpovidalnist za porushennya zakonodavstva pro okhoronu pryrody. – Lviv, Lviv university publishing. 1973. – 218 p. (in Ukrainian)

<sup>5</sup> Tytova N. I. See above. – p. 6

of application of the law established at that time – the division of liability according to types, such as: administrative, pecuniary, criminal. These types of legal liability were regarded in the light of violations of the legislation on the protection of soil, mineral resources protection, protection of water resources, protection of fish stocks, for forestry violations, protection of fauna, parks and nature reserves and preserves, protection of other objects of nature (natural sanctuaries, green areas of the cities and villages, resorts, atmospheric air). This approach was traditional for scientific analysis of the issues of legal liability for breaches of environmental legislation and other types of legislation, because it reflected the scientific paradigm of its differentiation by types of offenses and the nature of sanctions applied (sanctions of administrative, pecuniary or property and criminal nature).

Collective monographic study of problematic issues of legal liability in the field of environmental protection was conducted in the framework of the national research school in the late 70's of the last century<sup>6</sup>. According to the authors of this study different types of legal liability are applied in the field of environmental protection. Each of them is characterized by specific features, but they are all part of the general concept of legal liability. Therefore, the study of problems of specific types of liability in

<sup>6</sup> Shemshuchenko Yu. S., Muntyan V. L., Rozovska B. G. Yuridicheskaya otvetstvennost v oblasti okhrany okruzhayushchey sredy. – Kyiv, Naukova dumka. – 1978. – 280 p. (in Russian)

the relevant field of public relations is closely related to the explanation of the content and role of legal liability as a whole<sup>1</sup>.

Doubts were expressed in the paper concerning possibility to distinguish nature protection responsibility as a separate type of legal responsibility, which included dangerous consequences, stipulated by law, which occur after violation of the requirements of legal norms on protection of natural objects and its complexes. The authors supposed that this type of liability cannot claim to be the independent and is nothing but a complex of measures that are largely used in the field of environmental protection among types of legal liability – administrative, pecuniary, disciplinary, and criminal. Suggestions of those scientists, who proposed to define «water-legal» and «land-legal» liability as independent types of liability were also criticized<sup>2</sup>.

The issues of administrative liability for violations of nature protection legislation were analyzed in monographic study (grounds for application, administrative and legal responses, ways of improvement of effectiveness of application of administrative responsibility measures), liability of the enterprises that pollute the environment (the concept of payment for nature management and environmental pollution, regulation of emissions of harmful substances as a scientific basis for improvement of enterprises liability for environmental pollution, legal liability of the enterprises as

an incentive for the rational nature management) and criminal liability for violations of legal norms on environmental protection (criminal and legal measures of liability for violations of nature protection legislation, some questions of the practice of application of criminal and legal measures of liability for violations of nature protection legislation).

Research of issues of legal liability in the system of environmental protection was extended by other Ukrainian scholars and lawyers. In particular, the book by S. M. Kravchenko «Pecuniary liability in the system of nature protection»<sup>3</sup> was published in 1981. Despite the fact that the title of the work was limited to only one type of legal liability – pecuniary, its content was broader and dealt with the issues of not only pecuniary, but also administrative, criminal and disciplinary liability in the field of environmental protection. According to the opinion of the author, legal liability is one of the most important legal instruments of solving environmental problems; it helps to strengthen the legality in this field of public relations.

The analysis of the concept and types of liability in the system of environmental protection allowed S. M. Kravchenko to reach the conclusion about inexpediency of unification of legal norms, which establish legal liability in this area, into a comprehensive, interdisciplinary institute of nature protection liability. According to the author's opinion, during classification of the types of legal liability

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<sup>1</sup> See above. – p. 16.

<sup>2</sup> See above. – pp. 28-30.

<sup>3</sup> Kravchenko S. N. *Materialnaya otvetstvennost v sisteme okhrany prirody*. – Kyiv, Vyshcha shkola. – 1981. – 54 p. (in Russian)

ity according to criteria of belonging to a branch, one should define administrative, criminal, disciplinary, property (pecuniary) liability<sup>1</sup>.

Research of conceptual foundations of certain types of legal liability for violations of nature protection legislation was conducted by B. G. Rozovskyy in his monograph «Legal stimulation of rational nature management»<sup>2</sup>. The author emphasized in the introduction to this work that he had made proposals concerning improvement of the regulation of nature protection legal relations, proved inadequacy of the proposed calls for strengthening of liability for environmental pollution, the full recovery of the damages by perpetrators without taking into account real technical and economic capacity of society to provide the desired level of anthropogenic impact on the biosphere<sup>3</sup>.

The author studied the issues of civil and legal liability for causing environmental damage, promotion of rational nature management with the help of labor law norms, and also improvement of the efficiency of criminal liability for violations of nature protection legislation. According to his opinion, solving of the problems, which arise in the field of legal regulation of nature management relations, creates a strong base for further improvement of labor, administrative and other branches of law. At the present stage, B. G. Rozovskyy thought,

the main obstacle for creation of flawless mechanism of legal liability for violations of nature protection legislation and legal stimulation of rational nature management is the backlog of means of technical control over the condition of the environment. The available control and test equipment do not always allow systematical and reliable identifying of sources of harmful emissions, entering the atmospheric air and water resources, carrying out their qualitative and quantitative assessment efficiently in order to apply appropriate sanctions to guilty persons<sup>4</sup>.

Legal responsibility for offences in the field of nature management and the environmental protection is seen in scientific doctrine of modern environmental law of Ukraine through the prism of traditional types – disciplinary, administrative, civil and criminal, reflecting the Law of Ukraine «On Protection of the Environment», Land, Water, Forest Codes, Mineral Recourses Code, laws «On Flora», «On Fauna», «On Atmospheric Air Protection», «On Environmental Network», «On Environmental Expertise», «On Hunting Grounds and Hunt» and other environmental legal acts.

In particular, according to the Law of Ukraine «On Protection of the Environment» violation of the legislation of Ukraine on protection of the environment entails disciplinary, administrative, civil and criminal liability, established by this Law and other laws of Ukraine.

Together with the mentioned above, legal responsibility in the environmental

<sup>1</sup> See above. – pp. 35, 36.

<sup>2</sup> Rozovskyy B. G. Pravovoye stimulirovaniye ratsionalnogo prirodopolzovaniya. – Kyiv, Pravova dumka. – 1981. – 236 p. (in Russian)

<sup>3</sup> See above. – p. 6.

<sup>4</sup> See above. – pp. 232, 236.

field has its own specificity, caused by peculiarities of an environmental offense as a mandatory ground for application of a sanction against violators of environmental legislation. This is reflected in the sanctions, applied to violators of the rules of nature management and protection of the environment and provision of environmental safety. Sanctions, such as fines for violation of environmental legislation, which are provided not only by the Administrative Offences Code, but also by other legal acts on environmental issues, are traditional.

But specificity of legal liability in the environmental field is reflected not only in the traditional sanctions such as fines. Restriction or suspension of environmentally hazardous activity characterizes such liability.

Sanctions in the form of suspension of environmentally hazardous activity natural or legal persons, applied administratively or by court decision are also the specificity of legal liability for violation of environmental legislation.

Revocation of environmental permits, licenses, disqualification from special use of natural resources administratively or judicially should be also considered as a kind of penalty for violation of legislation in the environmental field.

Charges as a form of sanctions in the field of compensation for damage to the environment become widely used in the field of legal liability for violation of environmental legislation. Charges are a kind of design value, a tariff that is conditional and contains a predefined amount of damage assessment, and state expenditures, which arise in connection

with the destruction of certain natural components. Charges take into account in terms of value, as it is noted in the literature, all of the negative property consequences, as well as cultural, scientific, historical value of natural objects, their prevalence in the region and other indicators. They contain an assessment of the environmental damage caused, calculated and recorded in advance, in form of multiplicity of a minimum wage or tax-free minimum incomes of citizens.

According to the conducted analysis, a complex interdisciplinary institute of legal liability for environmental offences has been formed in environmental legislation. But the mentioned institution is not perfect and cannot be considered complete, which causes the need for comprehensive scientific analysis and development of theoretically substantiated recommendations in the relevant field of public relations for law enforcement activity. In particular, it is necessary to continue research of scientific and theoretical substantiation of the concept of legal liability for environmental offences, as one of the most important institutions of environmental law, clarification is required for the concept of «legal liability in the environmental field» and its peculiarities, development of system of principles of legal liability for environmental offenses, determination of place of such liability in the system of general legal liability, doctrinal formulation of the concept, clarification of the essence, analysis of the composition and features of an environmental offense, which entail legal liability. De-

velopment of classification of environmental offenses, for which legal liability is applied, is relevant to the scientific aspect, survey of a system of bodies, which apply measures of legal liability in the environmental field, analysis of major sanctions of legal liability for environmental offences, determination of procedural peculiarities of application of legal liability sanctions to offenders, and finally, evaluation of condition of legislation in the field of protection of the environment, which affects the legal liability, finding out weaknesses and gaps in the legal regulation.

In conclusion, it should be noted that the legal responsibility in the environmental field is one of the varieties of the general legal liability. Its distinctive feature is the fact that it is applied for committing an environmental offense, i.e. an act, violating legal norms of environmental legislation. Legal liability for

environmental offenses must be regarded as obligations of guilty persons to be punished in the form of deprivation of personal, organizational or material nature. The negative consequences, which are applied to offenders, should be provided by sanctions of the relevant legal norms. Legal liability in the environmental field is one of the forms of state coercion and therefore is used by state institutions (judicial bodies, central or local bodies of state executive power, bodies of local self-government) in the appropriate procedural form – criminal procedural, administrative procedural, civil procedural, environmental procedural.

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