Legal safeguards for nature conservation and environmental preservation

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Abstract The current situation with the surrounding natural environment has reached a critical point, making nature conservation questions highly relevant today. The research aims to examine the key legislative provisions regarding the protection of nature and the environment. The study utilizes methods of analysis, synthesis, scientific generalization, and formal-structural methods. The publication addresses the correlation between ecological and nature-resource law. It is stated that legal protection of nature and the environment in Ukraine operates on three levels: constitutional, legislative, and at the level of sublegal normative legal acts. The content of the Law of Ukraine, "On the Protection of the Environment," has been analyzed. This approach allowed for the classification of the provisions of the law into two major groups: functionally competent and those intended to ensure the general mechanism of environmental protection implementation. The appropriateness of using the term "environment" rather than "natural environment" at the level of Chapter VIII of the Criminal Code of Ukraine is considered. After reviewing the content of Chapter VIII of the Criminal Code of Ukraine, the authors conclude that most criminal offenses in this Chapter are characterized by the material composition of a crime. Article 245 of the Criminal Code of Ukraine was chosen as an example of analysis. The article discusses the elements of the criminal offense prescribed by Article 245 of the Criminal Code of Ukraine and the sanctions provided by the legislator for this type of criminal offense. Recommendations were developed to allow courts to impose penalties for violations more substantively under Article 245 of the Criminal Code of Ukraine. The authors described the qualified composition of the criminal offense prescribed by Part 2 of Article 245 of the Criminal Code of Ukraine. The paper investigates the place of ecocide in the system of criminal offenses against peace, the security of humanity, and international law.

Keywords: conservation, preservation, fundamental rights and freedoms, authorities, local self-government, public relations

1. Introduction

Currently, the situation of environmental safety cannot be ignored. There is a direct interdependence between the level of environmental pollution and the deterioration of citizens' health. A person's right to a living and healthy natural environment is one of the fundamental human rights. Overall, ensuring environmentally and technogenically safe living conditions for citizens and society is one of the main tasks of the modern Ukrainian state.

The priority direction of Ukraine's environmental policy is recognized as the development of mechanisms and instruments of state measures to achieve a proper level of environmental safety. Appropriate normative provisions enshrined in legal acts will allow the preservation of the natural environment for current and future generations.

Special attention should be given to criminal-legal protection of nature and the surrounding natural environment. Criminal norms are intended to protect society from the most dangerous encroachments. In the context of the full-scale invasion of the Russian Federation into the territory of Ukraine and the situation at the Kakhovska Hydroelectric Power Station in early June 2023, understanding the composition of the criminal offense called "ecocide" is extremely important.

In general, defining a system of legal norms aimed at protecting nature and the surrounding natural environment will contribute to the clarity of legal regulation in the field of ecology. There are still many controversial issues regarding this topic. They include the relationship between environmental and natural resource laws, which this paper aims to clarify.
2. Literature review


The legal protection of natural oil and gas resources is the focus of the research by Friasmita A. D. and Nisa F. H. (2023). An interesting article by Sheber K. (2020) discusses legal rights to nature, precisely the idea of recognizing nature as a legal entity. Stelmasiak J. (2020) described reserves as a legal form of nature conservation. According to Polish legislation, a natural reserve is established by issuing a local legal act by the regional director of environmental protection. The legal consequence of creating a natural reserve is the introduction of a corresponding legal regime. This includes permitted prohibitions and alienation of property for social purposes, ensuring the protection of unique natural values within a territory.

Another study by Stelmasiak J., in collaboration with Iwanek-Chachaj E. (2010), addressed the issue of comprehensive permits as a legal measure for environmental protection. A comprehensive permit, according to Stelmasiak J. and Iwanek-Chachaj E. (2010), is a legal instrument that ensures the implementation of European principles of environmental protection while adhering to the principles of economic and social development. This administrative decision must comply with general and specific requirements defined by environmental protection laws.

In addition, the procedure for issuing a comprehensive permit is linked to the environmental impact assessment procedure. Klein C. A., Birdsong B. C., Klass A. B., Biber E., and Owen D. (2022) published fundamental work on natural resources law. Guntoro E., Rinaldi Y., and Tripa S. (2022) discussed the role of the Agency for the Protection of Natural Resources in the Legal Protection of Elephants. Sahara A. R. R. (2023) is the author of a scientific publication on the legal protection of sustainable management of nature conservation resources. The studies by Madiong B., Yulia Y., Almusawir A., and Fahri A. (2023) are dedicated to the legal protection of natural resources in Indonesia. As a result, the subject matter of this article is new. From a legal perspective, only a few studies have been devoted to the comprehensive protection of nature and the environment.

3. Aims

This study aims to review the main legislative provisions on nature and environmental protection. In this regard, the authors set the following goals:
- To develop an approach to the correlation of environmental and natural resource laws.
- The levels of legal protection of nature and the natural environment should be clarified.
- Analyze the Law of Ukraine "On the Protection of the Natural Environment."
- Examine the system of criminal offenses against the environment.
- Criteria were established to distinguish between the concepts of "environment" and "natural environment."
- Examine the content of Chapter VIII of the Criminal Code of Ukraine.
- Characterize the composition of criminal offenses provided for in Articles 245 and 441 of the Criminal Code of Ukraine.
- The appropriateness of using the legal construction "in the field of natural resource use" is described in the title of Chapter 7 of the Code of Ukraine on Administrative Offenses.

4. Methods

The following methods were employed during the research:
- Analysis method. This method was used to consider the content of the Law of Ukraine "On Environmental Protection," the Criminal Code of Ukraine, and the Code of Ukraine on Administrative Offenses;
- Synthesis method. The method of synthesis was applied to form a system of natural and environmental protection levels;
- Scientific generalization. The method of scientific generalization was used to present the main provisions of the authors' achievements on the subject of the study;
- Formal and structural methods. These methods were employed to describe the sanctions for criminal offenses under Articles 245 and 441 of the Criminal Code of Ukraine.

5. Results

The issue of the correlation between environmental and natural resource law is controversial in legal science. In this regard, there are several viewpoints in legal doctrine. Adherence to economic and ecological interests may serve as a basis for distinguishing these areas. The first case (economic interests) pertains to natural resource law, while the second case
(ecological interests) pertains to environmental law. Overall, the discussion regarding the relationship between ecological and natural resource law can be outlined as follows: Is the protection of the natural environment connected to the rules governing the use of natural resources? After all, the regulations governing the use of natural resources are not separate from the norms regulating the protection of the natural environment and are constructed in a way that maximizes the preservation of the natural environment. In our opinion, while interconnected, natural resource law and environmental law are distinct branches of law based on the direction of legal regulation norms.

Legal protection of nature and preservation of the environment are carried out in Ukraine at several levels. The first and highest level is the constitutional level in Ukraine. This is discussed in articles 13, 41, 66, 92, 116, 138, and 142 of the Constitution of Ukraine. The constitutional norms related to the protection of nature and the preservation of the environment, in the authors’ opinion, can be divided into two broad groups:

- General constitutional principles that establish basic principles in this field (the norms provided in articles 13, 41, and 66 of the Constitution of Ukraine).
- Specific-functional principles (they are related to the implementation of powers by certain state bodies in the field of environmental protection, for example, the cabinet of ministers of Ukraine, etc. These are the norms of articles 92, 116, 138, and 142 of the Constitution of Ukraine).


The third level of legal protection for nature and conservation of the environment is associated with sublegal normative-legal regulation. This level includes resolutions of the Cabinet of Ministers of Ukraine, such as "On Approval of the List of the Most Common and Hazardous Pollutants, Emissions of Which into the Atmosphere Are Subject to Regulation" or "On Approval of the Procedure for Coordination and Issuance of Permits for Special Water Use."

Now, let us analyze the Law of Ukraine’s "On Environmental Protection." This law consists of legal, economic, and social foundations for the protection of nature and the environment. In general, the provisions of this law can be divided into two major groups regarding the protection of nature and the environment:

- Functionally competent (those that determine the competence of relevant state authorities in the protection of nature and the environment).
- Norms aimed to ensure the general mechanism of environmental protection implementation (including the economic mechanism) (Law of Ukraine "On Environmental Protection," 1991).

In this context, criminal-legal protection of nature and the environment is essential. The Criminal Code of Ukraine has a separate section—Section VIII, titled "Criminal Offenses against the Environment," dedicated to the protection of nature and the environment. Thus, we see that for criminal offenses in Section VIII of the Criminal Code of Ukraine, the same generic object of criminal offenses will be inherent—the environment. Moreover, the following questions arise:

- Is the title of Section VIII of the Criminal Code of Ukraine correct?
- Why does it not use the term "natural environment"?

The core of the "environment" concept comprises elements that collectively form the basis of the surrounding natural environment. However, it is not limited to these elements and may include objects not related to nature. Thus, the concept of the environment is broader, and the legislature correctly chose the title for Section VIII of the Criminal Code of Ukraine (Dvigun ty et al., 2022).

Interestingly, most norms specifying the elements of criminal offenses in Chapter VIII of the Criminal Code of Ukraine are formulated as the material elements of a criminal offense. This means that they involve not only the commission of a corresponding unlawful act but also the presence of consequences (loss of life, harm to health, serious consequences, significant damage, etc.) and the existence of a cause-and-effect relationship between the action and the result.

The range of objects under criminal-legal protection for criminal offenses stipulated in Chapter VIII of the Criminal Code of Ukraine is broad. It includes environmental safety, an ecologically safe state of lands, water resources, subsoil, atmospheric air, Ukraine’s continental shelf, objects of plant life, forests, plants, and wildlife.

For example, let us analyze Article 245 of the Criminal Code of Ukraine, which stipulates the elements of the criminal offense: “destruction or damage to objects of plant life” (Criminal Code of Ukraine, 2001).

The subject of this criminal offense includes forested areas, greenery around settlements and along railways, as well as stubble, dry wild grass, vegetation, or its remains.

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The action specified in Article 245 of the Criminal Code of Ukraine consists of destruction or damage. For the criminal offense outlined in Article 245 of the Criminal Code of Ukraine, the method of committing this criminal offense is characteristic, involving fire or another generally dangerous method of committing a criminal offense.

The sanction of Article 245 of the Criminal Code of Ukraine provides punishment in the form of a fine, imprisonment, or deprivation of liberty.

According to the authors of this article, when determining the punishment for an offense under Article 245 of the Criminal Code of Ukraine, which assesses the degree of social danger of the committed criminal offense, the court should consider the following factors:

- The nature of the affected object of the criminal offense (e.g., a forest massif or remnants of vegetation).
- The action that was committed (destruction or damage).
- How was the criminal offense committed (fire or another generally dangerous method, and specifically, how was this generally dangerous method employed)?

Therefore, if remnants of vegetation were damaged, the court should impose a punishment closer to the lower limit, for example, the minimum fine. If a forest massif is destroyed, the court should apply for imprisonment as a punishment for more than five years.

Article 245 of the Criminal Code of Ukraine also includes Part 2, establishing a qualified composition of the criminal offense: “destruction or damage to objects of plant life.” Qualified features include causing the death of people, mass death of animals, or other serious consequences.

The penalty for committing a criminal offense under Part 2 of Article 245 of the Criminal Code of Ukraine is more severe and involves mandatory imprisonment. The term “detention” refers to five to ten years. According to the general approach developed by criminal law practice, the deaths of people fall under Part 2 of Article 245 of the Criminal Code of Ukraine, and separate qualifications under Article 115 of the Criminal Code of Ukraine are not needed.

The authors also note that the feature of the mass death of animals is evaluative and is established in each case separately. Another section of the Criminal Code of Ukraine, specifically in Chapter XX, outlines another criminal offense. Its purpose is to protect nature and the environment, namely, through ecocide. The main object of this offense is no longer the environment but peace, human security, and international legal order. The actions in the criminal offense of “ecocide” are characterized by destruction, poisoning, or other acts that can cause an ecological catastrophe. Interestingly, Ukrainian legislation lacks a normative definition of the concept of an “ecological catastrophe.”

The subject of the criminal offense of ecocide includes plant and animal life, the atmosphere, and water resources. In our opinion, pollution with harmful substances is possible in the soil, so the subject of “ecocide” should be considered. The sanction in the criminal offense provided for in Article 441 of the Criminal Code of Ukraine is nonalternative and stipulates imprisonment.

Concerning the full-scale invasion of the Russian Federation into the territory of Ukraine, it is worth mentioning the situation that arose at the Kakhovska Hydroelectric Power Station in early June 2023. The actions of the guilty parties clearly show signs of ecocide.

The title of Chapter 7 of the Code of Ukraine on Administrative Offenses is interestingly formulated. Regarding administrative offenses in the field of nature conservation and environmental protection, legal construction "in the sphere of natural resource use" is used (Code of Ukraine on administrative offenses, 1984). Thus, the issue of the correlation between the concepts of "natural resource use," "environment," and "protection of the environment" remains relevant.

6. Discussions

Fisher D. E. (2014) rightly notes that the issues of ethical approaches are at the heart of the current discourse on the legal foundations of environmental law. An eccentric approach to environmental law is grounded in the necessity of respecting and protecting the values of nature for their own sake. Specific arguments should support such an approach to environmental law.

Schäfer T. (2021) has prepared a review of European legal protection schemes for free-flowing rivers. According to Schäfer T. (2021), most rivers in Europe exhibit significant fragmentation by barriers. This study examines legal protection schemes specifically aimed at preserving the free-flowing character of rivers. Based on national legislation, such schemes exist in seven European countries: Iceland, France, Sweden, Finland, Slovenia, Spain, and Norway.

The author provides an overview of individual schemes and their respective scopes, compares their protection mechanisms, and evaluates their effectiveness. As free-flowing rivers in Europe, which remain unrestricted, are threatened by hydropower and other flow-altering mechanisms, the need for adequate legal protection is urgent compared to the situation with wild rivers in the United States. Thus, any modern strategy for the restoration of free-flowing rivers must be complemented by a mechanism for their ongoing protection after the removal of dams and other barriers that may be installed on free-flowing rivers (Tymoshenko et al., 2022).
Orchard S. (2020) presents an interesting study on the legal protection of obstacles to surfing in New Zealand in the context of natural resource issues. As Orchard S. (2020) writes, obstacles to surfing are natural resources that have degraded in many countries worldwide. In response to this situation, protection initiatives have been created, typically led by nongovernmental groups. In 2010, New Zealand became the first country to introduce legal protection for surfing obstacles on a national scale as a result of reviewing its own state policy. Orchard S. (2020) identified the contributions to such new developments. Helmi H. (2020) wrote about the legal protection of forest resources. Legal protection of forest resources is essential not only for communities around the forest, as noted by Helmi H. (2020) but also for the wider public, who is experiencing the benefits of sustainable forest development, such as air, land, water, and climate quality.

Managing forest resources based on the principles outlined by Helmi H. (2020) is one way to ensure the preservation of the advantages and functions of forests. Nevertheless, in Thailand, various community-initiated forest management approaches still face issues, especially in terms of legal protection. Territories where forest resources are located are currently becoming a business sphere for forestry companies, plantations, and even extraction.

Liu G., Yang Z., Zhang F., and Zhang N. (2022) are the authors of a scientific publication on the reform of environmental taxation and environmental investments based on a quasinatural experiment under China's Law on Environmental Protection Tax. The research results of Liu G., Yang Z., Zhang F., and Zhang N. (2022) demonstrate a significant increase in ecological investments by firms after the implementation of the tax.


Bekezhanov D., Kopbassarova G., Rzabay A., Kozhantayeva Z., Nessipbayeva I., and Aktymbayev K. (2021) dedicated their publication to the eco-legal regulation of the digitization of environmental protection. The main idea of digital ecology includes the following:

- the implementation of the National Strategy for Sustainable Development and Prevention of Environmental Disasters;
- control of public opinion on environmental issues;
- improving health and increasing life expectancy;
- adaptation of the state system of digitalization management in the fields of ecological culture, environmental education, and environmental safety to the digital environment;
- the use of modern "breakthrough" digital technologies.

In the study by Sahara A. R. R. (2023), the normative acts of Indonesia regarding the legal protection of sustainable conservation of natural resources and the implementation of sustainable development principles are discussed. The author employed a statutory approach by examining norms and laws related to legal issues in the field of nature conservation resources. Despite the laws regulating the protection and management of sustainable conservation of natural resources, the community still needs to manage natural resources properly and in an orderly manner. The preservation of natural resources needs to be managed in a strict and balanced way to protect the conservation of natural resources. They should also be included in laws and regulatory acts.

Pino S. R. (2021) wrote about the historical Roman precedent of legal protection for natural water resources. Pino S. R. (2021) discusses specific situations related to the protection of natural resources by Roman law, some of which serve as distant precursors to the complex set of legal norms protecting the environment, constituting today's field of administrative law known as environmental law.

Riyadi A. and Setiono J. (2022) also dedicated their work to the legal protection of biological diversity and ecosystems in Indonesia. The authors aimed to analyze the implementation of programs for the conservation of natural biological resources and their ecosystems in Indonesia. They studied the mechanisms inhibiting and supporting factors in the implementation of natural biological resources. Biological natural resources are among the most important elements of the ecosystem. The elements of living natural resources and their ecosystems are interdependent. As a result, their use affects each other, and the disappearance of one of them will disrupt the ecosystem.

This study comprehensively describes the system of criminal law provisions aimed at protecting the environment, which significantly differs from previous papers. Additionally, certain controversial issues (e.g., the correlation between environmental and natural resource law and the concepts of "environment" and "natural environment") were not raised in previous studies.

7. Conclusions

This article examines the system of legal provisions aimed at protecting nature and the environment. According to the authors, natural resource law and environmental law are separate branches of legislation due to their focus on legal regulation, even though they are interrelated.

The following levels of nature protection and environmental preservation can be distinguished:

- constitutional;
- legislative;
- at the level of bylaws and normative legal acts.

It is appropriate to use the term "environment" in the title of Chapter VIII of the Criminal Code of Ukraine. After all, the term "environment" is broader than the term "natural environment". This paper comprehensively characterizes the corpus of delicts of criminal offenses provided for in Article 245 of the Criminal Code of Ukraine. The authors have developed proposals to improve Article 441 of the Criminal Code of Ukraine. The title of Section 7 of the Code of Ukraine on Administrative Offenses has interesting wording, which uses the legal construction "in the field of natural resources use." Further scientific research is needed to differentiate between administrative and criminal offenses in the field of nature protection and environmental preservation.

**Ethical considerations**

Not applicable.

**Conflict of interest**

The authors declare no conflicts of interest.

**Funding**

This research did not receive any financial support.

**References**


