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Administrative Liability for Environmental Offences: A Comparative Study

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Abstract

The article addresses the basic concepts of administrative liability for environmental crimes based on international experience and practice through the investigative method of sociological analysis. Administrative sanctions that have a positive effect on the existing legislation of countries and those that have a positive effect only in certain regions were identified. It is argued that there are administrative and legal norms that do not have much influence and effectiveness in addressing environmental problems based on the structural and comparative research methods of the system. The issue of the consciousness of man and society in violation of environmental law is emphasized as a kind of administrative responsibility due to logical-semantic and formal-logical research methods. The key elements of the effectiveness of administrative responsibility in the field of environmental crimes are highlighted. It is concluded that the analysis of the implementation of environmental policy and its relationship with the practice of administrative responsibility for environmental crimes through the use of a dialectical research method ensures maximum efficiency in the identification of the topics of this study.

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Responsabilidad administrativa por delitos ambientales: un estudio comparative

Resumen

El artículo aborda los conceptos básicos de responsabilidad administrativa por delitos ambientales basados en la experiencia y práctica internacional a través del método de investigación del análisis sociológico. Se identificaron las sanciones administrativas que tienen un efecto positivo en la legislación vigente de los países y las que tienen un efecto positivo solo en determinadas regiones. Se sostiene que existen normas administrativas y legales que no tienen mucha influencia y efectividad en el abordaje de los problemas ambientales basándose en los métodos de investigación estructural y comparativa del sistema. Se enfatiza el tema de la conciencia del hombre y la sociedad en su conjunto en violación de la ley ambiental como una especie de responsabilidad administrativa debido a los métodos de investigación lógico-semántica y formal-lógica. Se destacan los elementos clave de la eficacia de la responsabilidad administrativa en el ámbito de los delitos ambientales. Se concluye que el análisis de la implementación de la política ambiental y su relación con la práctica de la responsabilidad administrativa por delitos ambientales mediante el uso de un método de investigación dialéctica asegura la máxima eficiencia en la identificación de los temas del presente estudio.

Palabras clave: Responsabilidad administrative; infracción administrative; ecología; delitos ambientales; protección del medio ambiente.

Introduction

Relevance of the research topic

Among the current issues worldwide there is a problem of rational use of natural resources and their reproduction, environmental protection, and environmental safety. Since future generations rely heavily on the solution of issues regarding the environmentally and anthropogenic living conditions of human beings and society, the conservation of the natural environment is important and multifarious.

The urgent need to address the problems of environmental protection, rational use of natural resources and environmental security calls for the effective measures, including legal ones. One of them can be the introduction of administrative liability for environmental offences. In fact, one of the underlying causes of environmental problems in Ukraine is the unsatisfactory control over compliance with environmental legislation and failure to ensure the inevitable liability for its violation. Therefore, the administrative leverage for violations of environmental legislation should be considered one of the legal factors aimed at ensuring the environmentally sustainable nature management and compliance with environmental law enforcement.

Environmental damage has been a major problem for decades. Legal systems have implemented a variety of legal instruments to prevent environmental damage, one of which is environmental liability. The accountability mechanism was likely to be first developed in the United States (Revesz and Stewart, 1995) but was increasingly used in EU member states in the 1980s, especially after contamination locations were identified in quite a few member states, predominantly soil contamination with orphaned sites, which often entails to huge expenditures for governments (and therefore puts a strain on taxpayers).

Currently, Ukraine is at the stage of developing the relevant regulations that would clearly impose liability, including administrative, for environmental safety violations. The driving mechanism of such changes is the European integration processes, the implementation of which requires revising and updating of Ukraine's environmental legislation, considering EU environmental standards for sustainable development, and preserving the environment for future generations.

Having ratified the Association Agreement with the European Union, at the present stage of development Ukraine worked out the strategic ways of economic, political, and legal development all the way through to a full membership in the EU. The radical reforms to follow and the positive results of their implementation are of particular importance for the successful solution of the of environmental protection issue, in the framework of which the state, national, regional, and global aspects are closely intertwined.

The object of the study is the public relations that developed in the process of enforcing the administrative liability for environmental offences.

The subject of the study is the environment and human health, for the violation of which liability may be imposed, administrative liability included.

The purpose of this study is a comprehensive analysis of the administrative leverage for environmental offences as exemplified by the best international practices. Having identified the main legal provisions

regulating the offences committed in the environmental sphere and for which administrative liability is applied, it will be possible to determine whether the dynamics of the environmental situation in these countries is improving with specific regulation of administrative liability for environmental offences.

In view of the above, the main tasks include:

- the scope of a person's and society's awareness of an environmental law violation as a kind of administrative liability.
- the analysis of the implementation scope of environmental policy and its interaction with the practice of administrative liability for environmental offences.
- determination of effectiveness level of laws and regulations on the implementation of administrative liability for environmental offences in foreign countries.
- the effectiveness of regulations on the application of administrative liability in the field of environmental offences.

1. Literature review

In the national legislation of the EU member states, the legal mechanisms of environmental liability were scattered. As such, those were concerned with certain categories of damage, however not properly specified. Consequently, the categories were not effective enough in protecting the environment and preventing damage to the environment.

As stipulated in the national legislation, preservation, protection and sustainable use of the environment are seen as a defining vector of European environmental policy. One of the instruments aimed at ensuring the above is environmental liability, the legal framework of which is defined by Directive 2004/35/EC of the European Parliament and of the Council "On environmental liability for the prevention and remedying of environmental damage" dated April 24, 2004 (hereinafter – Directive 2004/35/EC on environmental liability or Directive 2004/35/EC) (Verkhovna Rada of Ukraine, 2004).

The Association Agreement outlines Ukraine's commitment in the environmental field, in particular on enhancing cooperation between Ukraine and the EU on environmental issues with a view to its preservation, protection, improvement and reproduction. Ukraine has committed itself to gradual approximation of the national legislation to the requirements of directives and regulations (Verkhovna Rada of Ukraine, 2014).

At the international level, the issue of administrative liability is much spoken about. For example, the sources of French environmental law are quite diverse: international law (bilateral and multilateral agreements); European Union law (directives and regulations); Constitution (the Constitution of 1958) (Constitute., 2021), Environmental Charter) (Conseil Constitutionnel, n.d.); laws (mostly codified in the Environmental Code); regulations; decrees; and decisions (Martinet and Savin, 2021).

It is noteworthy that in the United States there is no general regime of environmental damage. Statutes, regulations, and common law can impose different types of liability, including administrative, civil and criminal. In their turn, courts set a precedent for liability in cases arising under various environmental laws. Presumed violators may be involved in administrative lawsuits, civil lawsuits or civil lawsuits. Moreover, only the government can initiate and prosecute a case in the court of law (Beveridge & Diamond PC, 2018).

Despite these starting points, it is not uncommon in many countries that the environmental responsibility has difficulty in achieving its goals. This is, on the one hand, partly due to the general difficulties for victims in using the accountability mechanism. In fact, the barriers to justice access can be high; damage to the environment can sometimes be widespread (as a result of which there cannot be a single victim who can sue); uncertainties over causation and delays may also contribute to difficulties in applying the accountability mechanism in addition to general difficulties in accessing justice (such as the high cost of the legal system). On the other hand, to crown it all turns out that especially when companies do harm to the environment, the liability mechanism often remains ineffective for the sole reason that companies do not de facto have to pay for the damage they have caused by their activity (European Parliament, 2020).

2. Methods and Materials

For a comprehensive analysis of examining the administrative liability for environmental offences, the activities of several countries in this area were analysed, namely: Britain, Australia, USA, Germany, and Ireland. These countries regulate administrative liability for environmental offences in quite different ways, which makes it possible to take a more specific approach to this issue.

However, despite the specific considerations of this study from the standpoint of these five countries, the experience of other countries was also scrutinized.

From this perspective, the legal framework of Canada on this issue was analysed, namely the Environmental Violations Administrative Monetary Penalties Act (EVAMPA) (Government of Canada, 2017), which defines the concept of a fair and efficient regime of administrative monetary penalties. AMP is a penalty intended to create a financial deterrent for non-compliance of certain legal requirements and to supplement existing enforcement measures that may be ineffective or available in any situation. The Regulations on Administrative Penalties for Environmental Violations (AMP Regulations) complement the AMP regime by establishing key details of this regime (Justice Law Website, 2017).

Further, particular attention should be paid to administrative liability for environmental offences in Latvia. A number of environmental issues and conformity to the current legislation were investigated (European Commission, 2019).

The present analysis was performed on the basis of official analytical data, so they fully correspond to the state of administrative enforcement in the field of environmental offences.

The study used the methods of sociological analysis, which contributed to the generalization of international practice of administrative sanctions for environmental offences, as well as the analysis of empirical information.

System-structural and comparative methods allowed to examine the administrative and legal principles of supervising the compliance with environmental legislation, issues of administrative and jurisdictional activity in the field of environmental protection, information, and analytical support as well as planning.

Logical-semantic and formal-logical methods were used in the study of the conceptual apparatus. Drawing on these methods, definitions are formulated within the research topic. The dialectical method was used in considering the studied problems and determining the main directions of developing the mechanism of environmental protection.

The study draws heavily on the scientific works of domestic and foreign scientists as a theoretical basis, relying on analytical data, statistics on administrative liability in general and in the field of ecology in particular.

3. Results

Administrative enforcement for environmental offences has become increasingly relevant. To understand the reasons, it is expedient to consider in more detail the international experience.

To compare the effectiveness of administrative liability for environmental offences and a detailed analysis of the application of certain sanctions in different countries, we present Table 1 for consideration of the sanctions.

Table 1: Comparative analysis of some types of administrative enforcement for environmental offences

Sanction	Description	Britain	Australia	USA	Germany	Ireland
Mandatory environmental audit	The regulator forces the company to audit its activities	+	+	+	+	+
Fixed administrative monetary penalties	Payment of the specified amount of money for the offender or compensation for the violation	+	+	+	+	–
Variable & discretionary administrative penalties	Payment of a variable amount should be determined at the discretion of the regulator for the discharge or compensate the offence.	–	–	–	–	–

Source: designed by the author, according to current legislation

The first sanction, namely mandatory environmental audit, applies in all the countries, but operates differently.

In particular, in the UK there is no general status for this condition, but it is a frequent condition for the issuance of various permits. Thus, this sanction is applied, although not a direct legal requirement (Coxall and Hardacre, 2020). The United States exercises this sanction instead of other fines or fines in general (GovInfo, 2018).

To that end, this sanction is most coordinated in Australia, Ireland, and Germany. However, it is in Germany, which is not only applied to the most extent, but also the most effective.

To get an insight which countries apply the first sanction to a greater extent, it is expedient to study Figure 1.

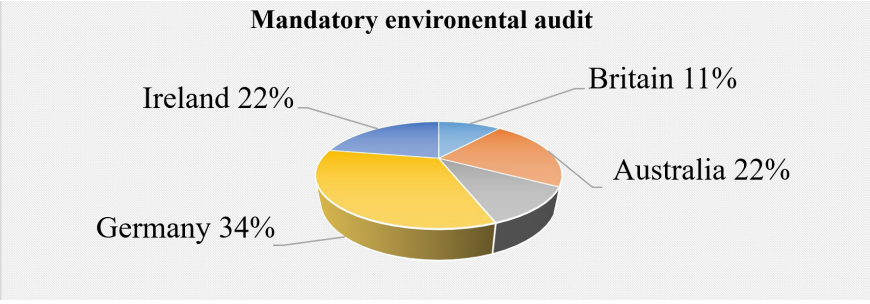

Figure 1.: Leverage of mandatory environmental audit

The second sanction, namely a fixed administrative monetary penalty is not enforced in all countries, which will further allow us to determine both the benefits and downsides of this sanction.

Drawing on the example of the UK, this sanction is used but normally only for an agreement with minor offences, i.e., it is not widely enforced. An unlimited fine may be imposed in the UK for an administrative offence of environmental legislation.

It is also worth noting that Australia, which also does not widely use this sanction, but rather enforces it in relation to exceeding the permissible limits set by law (Australian Federal Police, n.d.).

In the United States, this sanction is used only in permits that may provide for surcharges for exceeding the permissible. That said, only in occasional cases an administrative sanction in the form of a fine can be imposed.

This sanction works best in Germany, where it is successfully used in accordance with current legislation. An administrative fine for an environmental offence can amount EUR 50,000 (Elspaß and Feldmann, 2020).

When it comes to Ireland, there is no similar sanction in this country.

Thus, if we create a diagram for the application of the second sanction exemplified above, it is expedient to consider Figure 2.

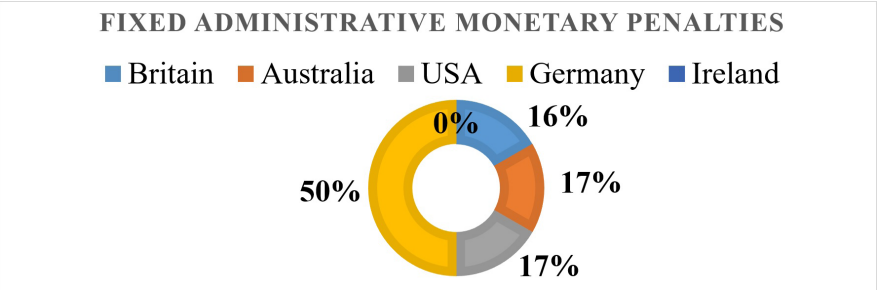

Figure 2: Leverage of a fixed administrative monetary penalties

However, there are sanctions that are applied very rarely, as exemplified by our third sanction, namely the variable administrative sanctions. It is not applied in the studied countries and there are no similar ones, but it is quite interesting because it provides for a variable payment, the amount of which must be determined at the discretion of the regulator for the category or to fully compensate for violations.

It is noteworthy that there are many administrative offences in the field of ecology, but the first two sanctions exemplify how countries can regulate their current legislation and how seriously they address administrative liability. To do this, we move to consider Figure 3.

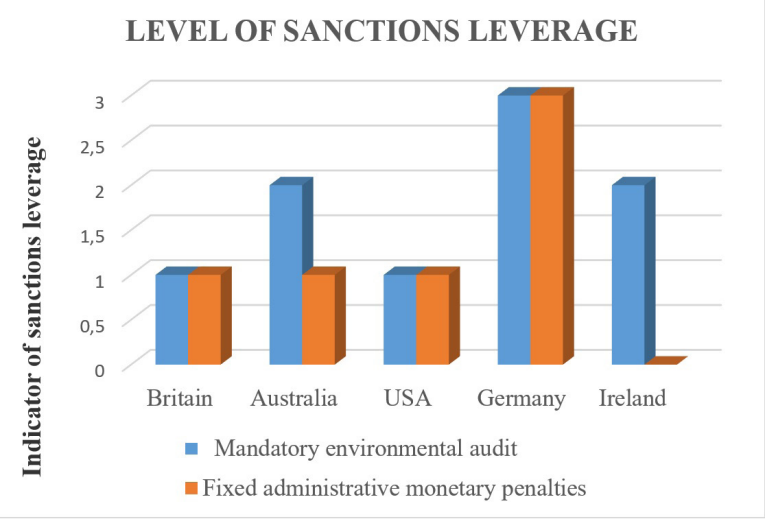

Figure 3: Comparative analysis of sanctions leverage

It is clear from the comparative analysis in the above diagram that Germany has the most regulation regarding administrative liability for environmental offences, while in Ireland and Australia it is not addressed to the fullest degree. Nevertheless, there are countries that are consistently straining after the development of administrative liability for environmental offences. Those include the United Kingdom and the United States.

Given the above, some particular studies on administrative liability for environmental offences should be summarized. With this in mind, some potential administrative sanctions are currently in place in Ireland for environmental violations, which include mandatory inspections, enforcement notices and environmental safety orders.

Apparently, Ireland's position on administrative sanctions is similar to that of the United Kingdom, i.e., non-compliance with the regulatory sector has led to significant reliance on strict liability offences. Moreover, Ireland (similar to the United Kingdom) has not yet developed and implemented a comprehensive administrative regime. However, the introduction of any new regime of administrative sanctions must take into account and address certain potential problems of the state in the field of ecology.

Environmental regulators in England rely heavily on administrative sanctions, especially those that are more informal. However, a key issue in the UK is the lack of a diversified administrative regime to achieve optimal regulation of administrative liability in accordance with the scope of delimitation of environmental aspects.

In Germany, administrative sanctions are widely used, which is why prosecutions and criminal proceedings play only a minor role in environmental protection. It should be noted that administrative sanctions were introduced to ensure consistency between large organizations and companies, as other types of liability rested only with the individual and not with the company. Administrative sanctions have been very effective in complying with environmental standards, mainly due to their flexibility and large-scale approach.

There is a common law system in Australia, and the Stevenson Harwood Report identified New South Wales (Stephenson Harwood, 2020) as the main study, as there is a well-established enforcement regime in that state. The report confirms that there is a very wide range of administrative sanctions in New South Wales. These sanctions were introduced in 1999, as it became clear that criminal law failed to adequately address the diverse nature of environmental violations and that flexibility required a wide range of sentencing options. In Australia, administrative sanctions have been proved to be highly effective.

In the United States there is a system of federal and state law. Various types of liability, including administrative, are established for violations of

environmental legislation. It should be noted that administrative sanctions are widely applied in the United States, but their effectiveness is ambivalent (Environmental Protection Agency, 2009).

Latvia should get into the limelight, where the public, in particular individuals and non-governmental organizations, are provided with very wide access to justice in environmental matters, ie the right to protect common interests. Everyone has the right to apply to the responsible administrative institution or to appeal to the administrative court for the environment without any other specific conditions. In other words, a complaint can be filed if a person believes that an administrative decision, actual action, or omission violates the law protecting the environment and nature or threatens to harm the environment. The right to file complaints and appeals solely for environmental reasons is the only exception allowed in administrative institutions or before the courts. In any other legal dispute, applicants must prove that their personal rights have been violated to be entitled to appeal or appeal to a court (Valsts valodas centrs, 2004).

In Canada, the policy framework for implementing the Environmental Monetary Sanctions Act, namely Chapter 4, clearly defines who may be subject to the AMP, what are the types of violations and what are the aggravating factors. It should be noted at once that the law not only defines the main criteria of the violated right, but also additional ones. For example, the type of violation, the basic level of violation and aggravating factors are considered to determine the punishment, and only then the amount of environmental damage is determined (Government of Canada, 2018).

In the Republic of Tatarstan, administrative liability in the field of environmental protection is regulated by the Code of administrative divisions of the Republic of Tatarstan, which in fact contains only one definition of an offence in this domain – destruction of rare and endangered animals or plants (Article 3.1 of the Administrative Violations Code of the Republic of Tatarstan) (Pravo Tech, 2006).

Thus, the conservation, protection and sustainable use of natural resources is a defining vector of European environmental policy. One of the tools aimed at ensuring it is environmental responsibility, and the legal framework thereof is defined by law. The purpose of regulations is to establish a framework of environmental liability to prevent and eliminate the consequences of environmental damage.

The principles on which the EU's environmental policy is based are enshrined in Article 191 of the Treaty on the Functioning of the European Union (EUR-Lex, 2012). In particular, part 2 states that the policy is based on the precautionary principle and the principles of the need to take precautionary measures, eliminate the consequences of environmental damage and the principle "the polluter pays". The legal mechanisms of

environmental liability were fragmented in the national legislation of the EU member states, also were related to certain categories of damage, were not properly specified, as a result they were not effective enough in protecting the environment and preventing environmental damage.

Thus, summarizing the international practice of applying administrative sanctions for environmental offences, we can identify the main directions of development of this type of liability in Ukraine.

The system of administrative enforcement for environmental offences in Ukraine comprises penalties determined by the Code of Ukraine on Administrative Offences, as well as those enshrined in other legislative documents. It should be noted that the most common type of administrative penalties for violating environmental legislation in Ukraine is a fine. The amount of the fine is determined within the sanctions of a specific article of the Code of Ukraine on Administrative Offences, taking into consideration the gravity of the offence, the identity of the offender, the degree of their guilt, property status, as well as the mitigating or aggravating circumstances.

According to Art. 24 of the Code of Administrative Offences of Ukraine, the following administrative penalties may be applied for committing administrative offences: 1) warnings, 2) fines, 2) penalty points; 4) paid sequestration of an object that has become an instrument of commission or a direct object of an administrative offence; 5) confiscation: an object that has become an instrument of commission or a direct object of an administrative offence; money received as a result of committing an administrative offence; 6) deprivation of a special right granted to a given citizen (right to drive vehicles, right to hunt); 7) community works; 8) corrective works; 9) administrative arrest; 10) arrest with detention on guard duty (Verkhovna Rada of Ukraine, 1984).

It is worth noting that administrative liability is an effective means of protecting the environment, its facilities and resources, as well as the citizens' lives and well-being. The advantages of this type of legal liability are primarily the focus on preventing and non-admissiom of significant damage to the environment and human life and health, as well as the prompt response to violations, which is especially important in the field of environmental protection.

That is why, in the case of an administrative offence in the field of environmental law, fines should be imposed, as they are the most effective way to sensibly address the problem. However, it should be emphasized that this issue should be clearly monitored by the authorized bodies and officials, who should, in accordance with their official duties, promptly respond to environmental offences. This will make it possible in the future to reduce the overall number of environmental violations.

4. Discussion

Having conducted research in the field of administrative liability for environmental offences, it should be noted that it is far from being unambiguous. Some countries prefer to apply administrative sanctions for this type of violation to a greater extent, and some countries consider them ineffective and, as a result, do not leverage comprehensive regulation of administrative offences, including in the field of environmental offences.

Examining the standpoints of foreign scholars, we can agree with the statement that the development of administrative liability for environmental offences constantly calls for changes in legislation, as the environmental situation worldwide is constantly changing.

Sharing the standpoint of the British scholars Michael Coxall and Elizabeth Gardakre, it should be noted that the legislation needs constant change, which greatly complicates the work of the legislator as a whole. However, this minimizes all negative processes and actions, including issues related to environmental safety, with regard to administrative responsibility and the environment.

Furthermore, the same position is held by German scientists Matthias Elschpas and Felix Feldman. Therefore, taking a closer look at the Ukrainian legislation, it is necessary to draw an analogy between the studied countries and develop only the most effective reforms of administrative legislation, in particular concerning environmental aspects.

To that end, Germany, the Netherlands, and a number of other countries where administrative sanctions are applied are the main enforcement tools for dealing with environmental violations.

Administrative sanctions are easier to impose than other types of liability, such as criminal (and therefore they are cheaper).

Overall, the administrative enforcement is the most effective one. According to the researchers, they need administrative sanctions for crimes that do not deserve an expensive criminal procedure, but still require some form of punishment. Without administrative options, a number of moderately serious cases may not be prosecuted.

It should be noted that the researchers did not examine the effectiveness of the different approaches in terms of whether companies improved environmental compliance or achieved better environmental protection. Besides, the researchers identify limitations effected by the lack of data. There were no reliable data on the number of violations and their consequences in many cases. Therefore, they recommend a harmonized system for collecting data on inspections, breaches, measures and sanctions across Europe (European Commission, 2016).

It is worth noting the fiscal year (FY) 2020 of the Environmental Protection Program (EPA), which achieved tremendous results for the public and the environment, increasing the environmental benefits of its cases despite the COVID-19 public health emergency. The Office of Enforcement (OECA) obtained these results by rapidly adapting and focusing resources on priority issues during a global pandemic.

"In fiscal year 2020, EPA of Enforcement and Compliance Assurance staff demonstrated extraordinary resilience, creativity, and perseverance as they continued to assure compliance with environmental laws," stated Susan Bodin, Assistant Administrator for Enforcement and Compliance Assurance. "I am very proud of the work we accomplished this year" (Environmental Protection Agency, 2020).

This indicates that the issue of environmental safety is changing every year, and this is reflected in the changes that are taking place at the legislative level in each country as a whole.

Thus, administrative liability for environmental offences will pursue its growth in some countries to a larger and in some to a lesser extent. This is what serves as an exchange of international experience and the formation of so-called "supporters" of administrative responsibility, or its "opponents".

The positive aspect of the situation lies in the fact that almost no environmental offence will go unpunished, even if the legislation on environmental protection changes and the legislation on administrative liability will not be able to make appropriate changes in due time.

However, there is a negative impact of general norms in the legislation: very often the executor of the law prefers to use general standards and does not try to prove that certain environmental offences are specific, which reduces the effectiveness of administrative responsibilities in the field of environmental protection (Selivanovskaya and Gilmutdinova, 2018).

In light of the above, it should be noted that currently the liability for environmental offences attracts a lot of attention, largely owing to influential people who are really trying to help resolve certain environmental issues.

Youth climate activist Greta Thunberg, making recently accusations of environmental negligence, has urged almost all countries to pay attention to the legal regulation of environmental offences, including administrative (Kids Rights, 2019).

Conclusion

Currently, there is little doubt that administrative liability for environmental offences is important for each country and the entire society.

For that reason, this issue has always been attracting the scientific interest and the scholars are ready to probe deeper theoretically into this topic, as well as to provide their suggestions for improving legal regulations.

Drawing on the study of international experience, including countries such as the United Kingdom, Australia, USA, Germany and Australia, the functioning and operation of the administrative and delict jurisdiction provisions to hold individuals accountable for environmental offences.

Thus, having conducted a comprehensive analysis of administrative liability for environmental offences on the example of foreign countries, it should be noted that a serious approach to administrative norms, specifically their explicit consolidation in current legislation, allows to address certain issues in a more timely and efficient manner. Since civil and criminal liability involve the solution of a problem in a court of law, which most commonly is a fairly long process, the application of administrative sanctions to the forefront is the delivery of offence settlement with ultimate convenience for each party (i.e. just as for man or society, so for the environment and the state taken as a whole).

The findings obtained can be used in research, lawmaking, law enforcement and educational process. For example, research provides a basis for further theoretical research in the development of these problems, in the preparation of draft laws and other regulations aimed at enhancing administrative liability for environmental offences. Moreover, the results obtained in lawmaking are worth taking into account because as a result of the study, real insights were articulated to improve the legislation regarding the enforcement of administrative liability for environmental offences. Application in law enforcement activities is bound to provide an opportunity to enhance practices, increase the effectiveness of control and supervision measures for environmental protection. It should be noted that equally important is the use of the present study in the educational process, since the findings of the study can be used in law classes at educational institutions to master disciplines that involve the study of administrative liability for environmental offences.

Recommendations

Having conducted the study on the application of administrative liability for environmental offences, it is feasible to identify specific limits of the violated right or category of a misconduct, where the application of administrative sanctions could be relevent. One example is the assessment of certain types of offences where administrative sanctions are held appropriate (to which the ERM included: enforcement undertaking, warning letter, fixed penalties, variable and discretionary penalties, civil

penalties, monetary benefits penalty order, environmental services order, compensation order, the "name and shame" process, verbal warnings, etc.).

Limitations

The European Convention of Human Rights has several issues that can be raised by an individual or a corporation where civil administrative sanctions are imposed for violating the environmental law.

For instance, in terms of the monetary sanctions, smaller firms may not have the funds to pay a fixed penalty or fine. In his report, Professor Macrory refers to the "spill over" effect, which makes it possible for the company to pass on financial costs to third parties, such as shareholders, customers, employees and creditors, and to direct responsibility from the company's management. Shareholders who subsequently experience losses caused by monetary penalties due to the devaluation of shares and the reduction of dividends, may potentially claim that their right to earn a livelihood has been enfringed.

Fines can potentially be considered discriminatory and have an unequal impact on small businesses, which tend to be more vulnerable to monetary penalties.

The sheer possibility of relying on sanctions imposed on businesses can also be perceived as a representation of discriminatory and unfair practices against individual offenders, who apparently may have to face a far more severe punishment (e.g., imprisonment).

Finally, although a number of administrative sanctions are effective at deterrence, there are certain administrative sanctions, such as a publicity order, that may have consequences for a corporation's reputation, for instance, if it has been imposed without good reason. In such case it can be challenged on the basis of the individual's right to a good name.

Bibliographic References

AUSTRALIAN FEDERAL POLICE. N.d. Environmental crime. Available online. In: https://www.afp.gov.au/what-we-do/crime-types/environmental-crime. Consultation date: 27/06/2020.

BEVERIDGE & DIAMOND PC. 2018. Environmental liability in the USA. Available online. In: https://www.lexology.com/library/detail.aspx?g=dc8c9201-b89e-4c55-abff-ede59090517f. Consultation date: 27/06/2020.

CONSEIL CONSTITITIONNEL. N.d. Charter for the Environment. Available online. In: https://www.conseilconstitutionnel.fr/sites/default/files/as/root/bank_mm/anglais/charter_environnement.pdf. Consultation date: 27/06/2020.

CONSTITUTE. 2021. France's Constitution of 1958 with Amendments through 2008. Available online. In: https://www.constituteproject.org/constitution/France_2008.pdf?lang=en. Consultation date: 15/02/2021.

COXALL, Michael; HARDACRE, Elizabeth. 2020. Environmental law and practice in the UK (England and Wales): overview. Available online. In: https://uk.practicallaw.thomsonreuters.com/65031654?transitionType=Default&contextData=(sc.Default)&firstPage=true#co_anchor_a815295. Consultation date: 27/06/2020.

ELSPAß, Mathias; FELDMANN, Felix. 2020. Environmental law and practice in Germany: overview. Available online. In: https://uk.practicallaw.thomsonreuters.com/4-503-0486?transitionType=Default&contextData=(sc.Default). Consultation date: 27/06/2020.

ENVIRONMENTAL PROTECTION AGENCY. 2009. A Study on the use of Administrative Sanctions for Environmental Offences in other comparable countries and assessment of their possible use in Ireland. Available online. In: https://www.epa.ie/pubs/reports/enforcement/Admin_Sanctions_final.pdf. Consultation date: 27/06/2020.

ENVIRONMENTAL PROTECTION AGENCY. 2020. Enforcement Annual Results for Fiscal Year 2020. Available online. In: https://www.epa.gov/enforcement/enforcement-annual-results-fiscal-year-2020. Consultation date: 24/06/2020.

EUR-LEX. 2012. Of the Treaty on European Union and The Treaty On the Functioning of The European Union). Available online. In: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3AC2012%2F326%2F01. Consultation date: 24/06/2020.

EUROPEAN COMMISSION. 2016. Environmental criminal enforcement: most effective when combined with administrative sanctions. Available online. In: https://ec.europa.eu/environment/integration/research/newsalert/pdf/environmental_criminal_enforcement_combined_with_administrative_sanctions_56si11_en.pdf. Consultation date: 27/06/2020.

EUROPEAN COMMISSION. 2019. The Environmental Implementation Review 2019 Country Report Latvia. Available online. In: https://ec.europa.eu/environment/eir/pdf/report_lv_en.pdf. Consultation date: 27/06/2020.

EUROPEAN PARLIAMENT. 2020. Environmental liability of companies. Available online. In: https://www.europarl.europa.eu/RegData/etudes/STUD/2020/651698/IPOL_STU(2020)651698_EN.pdf. Consultation date: 27/06/2020.

GOVERNMENT OF CANADA. 2017. The Environmental Violations Administrative Monetary Penalties Act. Available online. In: https://www.canada.ca/en/environment-climate-change/services/environmental-enforcement/acts-regulations/about-act/legislation-fines-offences.html. Consultation date: 27/06/2020.

GOVERNMENT OF CANADA. 2018. Policy framework to implement the Environmental Violations Administrative Monetary Penalties Act: chapter 4. Available online. In: https://www.canada.ca/en/environment-climate-change/services/environmental-enforcement/publications/policy-framework-administrative-penalties-act/chapter-4.html. Consultation date: 27/06/2020.

GOVINFO. 2018. United States Code. Available online. In: https://www.govinfo.gov/app/collection/uscode/2018/. Consultation date: 27/06/2020.

JUSTICE LAW WEBSITE. 2017. The Environmental Violations Administrative Monetary Penalties Regulations. Available online. In: https://laws-lois.justice.gc.ca/eng/regulations/SOR-2017-109/FullText.html. Consultation date: 27/06/2020.

KIDS RIGHTS. 2019. Greta Thunberg (16), Sweden. Available online. In: https://kidsrights.org/advocacy/international-childrens-peace-prize/winners/greta-thunberg/?gclid=CjwKCAjwr_uCBhAFEiwAX8YJgeKhbBFoE0g11ZxumX2E-OJXGogKAVsrUYzgHlDBcYEMgiDZMNpkyxoC94cQAvD_BwE. Consultation date: 27/06/2020.

MARTINET, Yvon; SAVIN, Patricia. 2021. France: Environment & Climate Change Laws and Regulations. Available online. In: https://iclg.com/practice-areas/environment-and-climate-change-laws-and-regulations/france. Consultation date: 15/02/2021.

PRAVO TECH. 2006. Administrative Violations Code of the Republic of Tatarstan of December 19. Available online. In: http://docs.pravo.ru/document/view/3307861. Consultation date: 24/06/2020.

REVESZ, Richard; STEWART, Richard. 1995. Analyzing Superfund. Available online. In: https://www.taylorfrancis.com/books/mono/10.4324/9781315666334/analyzing-superfund-richard-revesz-richard-stewart. Consultation date: 15/02/2020.

SELIVANOVSKAYA, Juliya; GILMUTDINOVA, Iljuza. 2018. Responsibility for the Violation of Ecological Safety Requirements. Available online. In: https://iopscience.iop.org/article/10.1088/1755-1315/107/1/012073/pdf. Consultation date: 27/06/2020.

STEPHENSON HARWOOD. 2020. Diversity statistics 2020. Available online. In: https://www.shlegal.com/docs/default-source/default-document-library/bd244-diversity-stats-2020-v2.pdf?sfvrsn=57e5ed5b_2. Consultation date: 27/06/2020.

VALSTS VALODAS CENTRS. 2004. Administrative Procedure Law. Section 29. Available online. In: https://vvc.gov.lv/image/catalog/dokumenti/Administrative_Procedure_Law.doc. Consultation date: 27/06/2020.

VERKHOVNA RADA OF UKRAINE. 1984. Code of Ukraine on Administrative Offenses. Available online. In: https://zakon.rada.gov.ua/laws/show/80731-10#n313. Consultation date: 27/06/2020.

VERKHOVNA RADA OF UKRAINE. 2004. Directive 2004/35 / EC of the European Parliament and of the Council on environmental liability for the prevention and elimination of the effects of environmental damage. Available online. In: https://zakon.rada.gov.ua/laws/show/994_965#Text. Consultation date: 27/06/2020.

VERKHOVNA RADA OF UKRAINE. 2014. Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part. Available online. In: https://zakon.rada.gov.ua/laws/show/984_011#Text. Consultation date: 27/06/2020.

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