



SOME PROBLEM ISSUES OF LEGAL LIABILITY FOR OFFENCES IN THE SPHERE OF AGRICULTURAL WASTE TREATMENT IN UKRAINE

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SUMMARY

In the article the issues of legal liability for offences in the sphere of agricultural waste treatment are studied, in particular, this subject's researching applicability is determined, corresponding legislation is briefly analyzed, basic problems of legal regulation of liability for offences in the sphere of agricultural waste treatment are defined and ways of their solving are worked out.

Separate attention is paid to peculiarities' considering of legal groundwork for dispute resolving concerning liability for offences in mentioned sphere, occurring in transborder cooperation, and also, corresponding addenda to current legislation, with intent of its harmonization with actual international-legal provisions and practice, are proposed.

Key words: legal liability, offences, agricultural waste, transborder cooperation, agricultural waste treatment program.

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В статье исследуются вопросы юридической ответственности за нарушения законодательства в сфере обращения с сельскохозяйственными отходами, в частности определена актуальность исследования этой темы, кратко проанализировано соответствующее законодательство, определены основные проблемы правового регулирования ответственности за правонарушения в сфере обращения с сельскохозяйственными отходами и выработаны пути их решения.

Отдельное внимание уделено рассмотрению особенностей правового обеспечения разрешения споров об ответственности за правонарушения в указанной сфере, которые возникают при трансграничном сотрудничестве, а также предложены соответствующие дополнения в действующее законодательство с целью его гармонизации с существующими международно-правовыми нормами и практикой.

Ключевые слова: юридическая ответственность, правонарушения, сельскохозяйственные отходы, трансграничное сотрудничество, программа обращения с сельскохозяйственными отходами.

Introduction. Today in Ukraine sustained tendency towards amounts' increasing of agricultural waste, that spontaneously are being removed and buried at dumps, grounds and unfitted for these purposes places, is being observed. Infrastructure of dealing with agricultural waste is actually absent in Ukraine, what subsequently creates heightened danger for environment and people in the process of their removal and storage. The issue of improvement of agricultural waste treatment system, reduction of its creation and maximal recycling usage, became a vital environmental problem in Ukraine. Also, the problem issues of legal liability for offences in the sphere of agricultural waste treatment are left open for today. So, L.O. Bondar asks in logic manner: «why, despite stormy development of domestic legislation about waste, situation in this branch of knowledge is not getting better? To our mind, significant defect of valid waste legislation lays in imperfection of mechanism of legal liability for its violation» [1].

Issues of dispute resolving concerning liability for offences in the sphere of agricultural waste treatment in transborder cooperation remains insufficiently studied, as to unification of the legal regime for all types of waste, despite the obviousness of appropriateness to establish different ones, in particular for agricultural waste etc. So, the necessity to implement special legal directions, concerning liability for offences in the sphere of agricultural waste treatment in Ukraine becomes evident.

The aim of the article – to clear up problematic issues of legal liability for offences in the sphere of agricultural waste

treatment and ways of their solving, in particular concerning implementation of changes and addenda to Ukrainian active legislation.

Exposition of the main material.

According to part 1 article 42 of the Law of Ukraine «About waste» of March 5, 1998 № 187/98-BP [11] persons, guilty of breaches of legislation in the sphere of agricultural waste treatment, are subject to disciplinarian, administrative, civil or criminal liability for: 1) breaches of waste treatment established order, that resulted in natural environment contamination, direct or indirect harmful influence to people's health and economic

losses; 2) obstinate allocation or removal of waste; 3) breaches of order of import to Ukraine, export and transit through its territory of waste, as secondary materials; 4) non-fulfillment of directions and instructions, that provide state control and supervision over operations of waste treatment and places of its removal; 5) concealment, distortion or refusal from granting of full and authentic information on requests of officials, citizens and their associations, regarding the safety of waste formation and their treatment, including those about accidental emissions and corresponding consequences; 6) hiding of exceeding of established limits for volumes of waste formation and allocation; 7) mixing or burial of waste, for which appropriate utilization technology exists in Ukraine, without special license of authorized body; 8) breaches of rules of keeping primary records and control over waste treatment operations; 9) breaches of forwarding terms and accounting order concerning waste formation, usage, neutralization and removal; 10) untimely payment, made for waste allocation.

In part 2, article 42 of the Law of Ukraine «About waste» it is mentioned that liability for other offences of legislation about waste



also could be established by Ukrainian laws. Thus, in the Code of Ukraine about administrative offences of December 7, 1984 [7] (further – CUaAO) administrative liability for agricultural and other land spoiling and contamination (art. 52), in particular for their polluting by chemical and radioactive substances, oil and oil products, unpurified effluents, industrial and other waste, as well as non-act on weeds control, is determined. Liability for offences in the sphere of agricultural waste treatment is also provided by other CUaAO articles (art. 72, 73, 82 etc.).

Also, mainly in the presence of socially dangerous consequences, first of all as to creation, by corresponding actions, danger for people's life, health or environment, causing deaths of people, objects of animal and vegetative kingdom, their mass diseases etc., mentioned category of offences could be qualified as crimes, for committing which criminal liability is provided, in particular according to art. 239, 241, 242, 243 of the Criminal code of Ukraine of April 5, 2001 [8].

At the same time, regardless that in part 2, art. 42 of the Law of Ukraine «About waste» it is word-for-word mentioned, that liability for offences of legislation about waste could be established by «laws of Ukraine», in practice it is also actually provided by sublegislative acts. So, according to point 20 of the Procedure of development, approval and revision of limits for waste formation and allocation, approved by the Resolution of the Cabinet of Ministers of Ukraine of August 3, 1998 № 1218 [14] (further – Procedure) liability for accuracy of determining of waste formation standards, waste formation and allocation limits, untimely approval or non-approval of them is incurred by owner of waste.

But, according to point 22, part 1, art. 92 of the Constitution of Ukraine fundamental tenets of civil, criminal, administrative and disciplinary liability have to be determined exceptionally by the laws of Ukraine. Therefore, it could be proposed to state point 20 of the Procedure in the following edition:

«20. Persons, guilty of violation of determining of waste formation standards, determining of waste formation and allocation limits, untimely approval or non-approval of waste formation and allocation limits, incur disciplinary, administrative, civil or criminal liability according to the law».

According to art. 43 of the Law of Ukraine «About waste» enterprises, institutions,

organizations and citizens of Ukraine, foreigners and stateless person, foreign legal entities are obliged to compensate harm, caused by them as a result of violation of legislation about waste, in procedure and amounts, determined by Ukrainian legislation.

Actually, the procedure of compensation of harm, caused as a result of violation of legislation about waste, is first of all determined by the Civilian code of Ukraine of January 16, 2003 [9] (further – CCU). However, in CCU itself it is not mentioned about this type of liability, what, in our opinion, is a weak point. So, it could be proposed to add CCU by art. 1188-1 of following content:

«Article 1188-1. Compensation of harm, caused as a result of violation of legislation about waste.

1. Specific features of compensation of harm, caused as a result of violation of legislation about waste are determined by law».

In this regard, correspondingly, the Law of Ukraine «About waste» is worth to be added by art. 43-1 of the following content:

«Article 43-1. Specific features of compensation of harm, caused as a result of violation of legislation about waste

Harm, caused as a result of violation of legislation about waste is subject to compensation regardless of payment for contamination of environment and worsening of natural resources' quality. Persons, to whom harm was caused as a result of violation of legislation about waste, have right for compensation of value of unrecieved income for the period, required for reproduction of environment's condition and natural resources up to state, applicable for their utilization according to their end use».

According to art. 44 of the Law of Ukraine «About waste», disputes, emerging in the sphere of waste treatment, are being settled in legislatively determined procedure. That is to disputes, emerging on the territory of Ukraine only, provisions of Ukrainian legislation about liability for offences in the sphere of agricultural waste treatment, in particular Economic code of Ukraine of January 16, 2003 [3], Land code of Ukraine of October 25, 2001 [4], Water code of Ukraine of June 6, 1995 [2], Criminal code of Ukraine of April 5, 2001 [8], Economic-procedural code of Ukraine of November 6, 1991 [4], Civil-procedural code of Ukraine of March 18,

2004 [10], Administrative legal proceedings code of Ukraine of July 6, 2005 [6] etc. It should be mentioned, that on October 2, 2012 new separate Law of Ukraine «About amending some legislative acts of Ukraine concerning improvement of legal regulation mechanism and aggravation of liability in the sphere of waste treatment» № 5402-VI [12] was adopted, which made changes to the legislation, establishing liability for breaching the requirements concerning waste treatment, for evasion of making agreements for waste removal and burial of non-manufactured (non-recycled) waste.

Herewith, more complex is the issue of defining the legal liability for offences in the sphere of agricultural waste treatment during transborder cooperation. So, the basic law in this field, in particular the Law of Ukraine «About transborder cooperation» of June 24, 2004 № 1861-IV [13], doesn't set any types of liability at all, what, in our opinion, is the defect. In its turn, in the Law of Ukraine «About waste» it is also pointed out that international agreements of Ukraine could provide another order of dispute consideration concerning transborder waste transporting.

International law doctrine and international relations practice contain prevailing idea, that nature and amount of measures, concerning liability for offences in the sphere of agricultural waste treatment, have to be proportional to committed offences, herewith not only direct amount of caused losses, but also nature and matter of right infringement have to be considered. The usage of such counter-measures always has limited nature and is being realized with the aim to encourage offender's fulfillment of his duties, including those, emerging from relations of international-legal liability.

In modern law there is the whole raw of obligations, pausing or stopping of which are not being permitted, in manner of applying counter-measures to offender. Among them there are obligations to stay away from force usage or force threat, obligations protect main human rights, obligations of humanitarian nature and other ones, that arise from imperative regulations of common international law.

So, A.L. Chernyavskiy, after analysis of international agreements, concerning the liability for water contamination by waste and practice of states, international courts in this sphere, makes conclusion about subsidiary nature of international-legal liability of state



for such contamination. Subsidiary nature of liability means that state has to compensate that part of losses, caused by contamination, which left not refunded after realization of civil-legal liability of legal entities and natural persons, that are under jurisdiction of state and whose actions directly led to contamination. In case if such subjects, owing to regulations of international law and national legislation are relieved of legal liability, losses have to be fully compensated by state [18, c. 10-11].

Thus, in our opinion, the Law of Ukraine «About transborder cooperation» should be added by Section IV-I with article 14-1 of such content:

«Article 14-1. Liability in the sphere of transborder cooperation.

For breaches in the sphere of transborder cooperation the parties have to bear liability proportionally to committed offence, herewith, not only direct amount of losses, but also the nature and matter of affected right should be considered.

The state has to compensate that part of losses, which left not refunded after realization of civil-legal liability of legal entities and natural persons, that are under jurisdiction of state and whose actions directly led to contamination. In case if such subjects, owing to regulations of international law and national legislation are relieved of legal liability, losses have to be fully compensated by state».

In connection to this, part 2 of article 44 of the Law of Ukraine «About waste», accordingly, should be stated in following edition: «Disputes, originated because of transborder waste transportation, are resolved adjusted for regulations of the Law of Ukraine «About transborder cooperation». Another order of considering disputes related to transborder waste transportation could be provided by international agreements of Ukraine».

Also, according to researchers' opinion, the unification of legal mode of all waste types, that in fact creates unified grounds for emerging of legal liability for corresponding offences, despite different nature of formation and existing particularity of treatment with different waste categories, could be considered as the demerit of legislation. So, the need for establishing of different legal modes for different types of waste: domestic, industrial, dangerous, agricultural, etc. [16].

What concerns agricultural waste, it could be reasonable to adopt special legal

regulations, first of all the law about special program of dealing with agricultural waste.

Prevention of agricultural waste accumulation, limitation of their harmful effect on environment and human health and also establishing of liability for non-compliance with corresponding directions have to be the main aim of this Program.

The Program has to envisage solution of the following tasks: defining of priority directions in the sphere of agricultural waste treatment as component of state policy in the field of environmental protection; development and fulfillment of program measures about successive reduction of amounts of agricultural waste accumulation by utilization, neutralization and removal, limitation of agricultural waste formation by industrial restructuring (where it's possible); regeneration, application of low-waste technologies and complete cycle processes; purification of land contaminated by agricultural waste etc.

The following structure of the Program could be proposed:

Section I. Generalities.

Section II. Aim and main tasks of the program.

Section III. Legislative, organizational and information coverage of program implementation.

Section IV. Program implementation stages.

Section V. Estimated indicators of program fulfillment.

Section VI. Sources of finance and expectant cost of it's implementation.

Section VII. Personnel training, education and certification.

Section VIII. Expectant results of program fulfillment.

Section IX. Liability for program demands violation.

Section X. Program fulfillment control.

Section XI. International cooperation.

As an annex to the Program the Passport of the Nation-wide agricultural waste treatment program should be applied, with determined in tables the following data concerning: legislative-methodical coverage; scientific and technical coverage; informational coverage; pilot projects, included to the Program; amounts and sources of Program financing (in actual prices); liability for Program demands violation.

Also, on the basis of this program, secondary legislative acts in the sphere of agricultural waste treatment, in particular

methods of separate gathering of agricultural waste, order of conducting the competition for providing services on removal and utilization of agricultural waste, rules of exploitation of objects, dealing with agricultural waste, exploitation rules of agricultural waste ranges, etc., should be enacted.

Abstracts. So, in our opinion, proposed changes and addenda to the Civilian code of Ukraine, the Laws of Ukraine «About waste», «About transborder cooperation», the Procedure of development, approval and revision of limits for waste formation and allocation, also, propositions concerning enactment of the Nation-wide agricultural waste treatment program and adoption of substatutory acts in corresponding sphere according to such Program will help to solve some controversial issues and remove defects in legislative regulation of legal liability for offences in the sphere of agricultural waste treatment.

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ТАКТИКА ДОПРОСА ПОДОЗРЕВАЕМОГО НА СТАДИИ ДОСУДЕБНОГО РАССЛЕДОВАНИЯ УМЫШЛЕННОГО УБИЙСТВА, СОВЕРШЕННОГО В СОСТОЯНИИ СИЛЬНОГО ДУШЕВНОГО ВОЛНЕНИЯ

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SUMMARY

In a scientific paper analyzes the legal regulation of the grounds and procedures for questioning, examined the position of forensic scientists to determine the questioning as the investigation (investigative) the actions and offered his own definition. Attention is focused on determining the order of preparation, its direct holding and fixing the results of the interrogation of a person suspected of committing a murder in the heat of passion. Considered grounds and procedures for invitations to the interrogation of the suspect of psychologists and issues that need to be put to the suspect in criminal enterprises in this category. Also invited to the tactics of this investigation (investigative) actions aimed at achieving the objectives of its implementation, taking into account psycho-age features interrogated.

Key words: murder, the heat of passion, interrogation, tactic.

В научной статье проанализированы законодательная регламентация оснований и порядка проведения допроса, рассмотрены позиции ученых-криминалистов по определению допроса как следственного (розыскного) действия и предложено его авторское определение. Акцентировано внимание на определении порядка подготовки, непосредственного его проведения и фиксации результатов допроса лица, подозреваемого в совершении умышленного убийства в состоянии сильного душевного волнения. Рассмотрены основания и порядок приглашения к проведению допроса подозреваемого специалистов-психологов и вопросы, которые необходимо ставить подозреваемому при расследовании уголовных производств данной категории. Также предложено тактические приемы указанной следственного (розыскного) действия направлены на достижение цели ее проведения с учетом психо-возрастных особенностей допрашиваемого.

Ключевые слова: умышленное убийство, состояние сильного душевного волнения, допрос, тактический прием.

Постановка проблемы. Эффективность уголовного процессуальной деятельности по обеспечению выполнения задач уголовного судопроизводства по быстрому, полному и беспристрастному расследованию уголовных преступлений, защиты личности от необоснованного процессуального принуждения, незаконного привлечения к ответственности или осуждения, в первую очередь, определяется качеством законодательной регламентации, практики проведения следственных (розыскных) действий и умелой организации всего процесса доказывания. В системе таких следственных (розыскных) действий важное и первоочередное место на соискание фактических данных и установления истины, занимает допрос. Допрос лица, подозреваемого в совершении умышленного убийства в состоянии сильного душевного волнения имеет тактику своего проведения, что является предметом нашего исследования.

Актуальность темы исследования подтверждается тем, что в настоящее время в Украине не разработаны методические рекомендации по расследованию умышленного убийства в состоянии сильного душевного волнения.

Состояние исследования. В юридической литературе такого следственного (розыскного) действия, как допрос или отдельным ее аспектам посвящено достаточно много работ. К этому вопросу обращались такие ученые, как В.П. Бахин, Р.С. Белкин, А.Н. Васильев,