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ccPROBLEMATIC ISSUES OF DETERMINING THE OBJECT OF CRIMINAL OFFENCES AGAINST AGRO-INDUSTRY

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ABSTRACT

Active support for agro-industry development is reflected in the harmonization of the interests of government and business. The organization of interaction between government and agro-industrial structures for the purpose of consistent socio-economic development creates the foundation of Ukraine's stability in general and its food security in particular, but against this background, not everyone is a bona fide entrepreneur and sometimes tries to profit by obtaining loans for non-existent firms. The article is aimed at understanding and studying the object of protection of public relations in the field of agro-industry, as well as the subject of encroachment. Criminal offenses against the environment were considered and conclusions were drawn regarding the object of protection, location, and subject matter. The place of the agro-industrial complex in the country's economy is analyzed. The statistical indicators on criminal offenses in the field of environment related to agro-industry for the last three years are studied, addition the regional indicators of criminality on the specified criminal offenses are focused, and also attention is paid to convictions on general and special signs of committing criminal offenses against the environment and related agro-industrial criminal offenses. The world experience in support of agro-industrial complex in different countries is investigated. Some conclusions have been drawn on the differences between Ukrainian legislation and the legislation of other countries, for example on the sectoral affiliation of criminal offenses in the field of agro-industrial complex to criminology, which according to statistics can identify risks and thus prevent subsidies to certain enterprises.

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INTRODUCTION

The formation and development of market relations in Ukraine have a number of negative features associated with the destruction of existing economic ties and the weakening of state control over agro-industrial activities. Not all of these problems have received legislative and practical solutions yet. The current trend

of humanization of criminal legislation in the field of establishing responsibility for committing criminal offenses in the field of agro-industrial activities has led to a significant reduction in registered criminal illegality of agro-industrial orientation but did not allow to fully normalize agro-economic relations and "cleanse" them. The activity of the agro-industrial complex (AIC) is

especially vulnerable in this part.

On the one hand, agriculture and agricultural production form the basis of the national economy and contribute to the formation of food security, employment and maintaining the independent economic situation of the country (Kostiukevych *et al.*, 2020). On the other hand, in the conditions of instability and tendency to import substitution, agro-industrial activity needs serious state support. One of such measures is the provision of subsidies to farms, individual entrepreneurs and legal entities engaged in the production and sale of agricultural products (Shvets *et al.*, 2013).

In these conditions, research aimed at finding solutions that can reduce the risk of further aggravation of the situation in the agro-industrial sector is especially relevant. Among them, of course, should include those that contribute to the development and improvement of criminal law, which plays an important role in the legal regulation of environmental and agro-industrial life of modern society. The change in the system of criminal law of Ukraine in this area is due to new political and economic realities (Nitsenko *et al.*, 2020). Elimination of existing contradictions on a number of important theoretical issues, which should include the problem of the object in the field of environmental criminal offenses, is relevant and necessary. Without this, many problems of modern criminal law in the field of environment (definition, classification and systematization of criminal offenses in the field of environment, etc.) will remain unresolved. The solution of theoretical problems largely depends on the coordination of positions on a number of fundamental issues (it is impossible, for example, to eliminate the shortcomings of defining the concept of criminal offense in relation to the environment without solving the problem of the object). Uncertainty mainly creates difficulties with other aspects of legal regulation in the field of environmental criminal offenses (Hutsaliuk *et al.*, 2020). The need for further in-depth theoretical analysis in this area is also due to the ineffective practice of applying criminal law in the field of combating criminal offenses against the environment. All this together determines the importance and relevance of methodological developments in these issues of criminal law in the field of environment.

Emphasizing the relevance of the chosen topic, just try to first focus on the problem of object selection. Thus, Chapter Eight of the Criminal Code of Ukraine (Verkhovna Rada of Ukraine, 2001a) states that the

object of these criminal offenses is the environment. Which, in our opinion, is a fairly broad name, and a rather vague concept. Because of the listed problems on more mundane rights, namely problems connected with insufficient regulation of agro-industrial relations. Calling the generic object, the environment, the legislator nevertheless identifies the first three components of criminal offenses related to the environment, namely: Article 236. Violation of environmental safety rules, Article 237. Failure to take measures to eliminate the effects of environmental pollution, Article 238. Concealment or distortion of information about the ecological condition or morbidity of the population. In such components, the land is allocated as a subject of criminal offenses (on what the encroachment is directed): Article 239. Contamination or damage of the earth, Article 239¹. Illegal possession of ground coating (surface ball) of lands, Article 239². Illegal possession of water fund lands in especially large amounts, Article 254. Uneconomic use of lands (Verkhovna Rada of Ukraine, 2001a).

Having done the semantic¹ and systematic² it can be concluded that the legislator uses the word "environment" for 13 times in most cases as a consequence of committing a criminal offense by a separate composition, but the word "land" for 16 times. At the same time, the term "agro-industry" is never used, as this may indicate, namely, because this concept is not reflected in the law of Ukraine on criminal liability. So, we can say that the legislator in some articles means agro-industry, but so far it is not specified directly in the law it is the application of the law of the Criminal Code by analogy, and it is prohibited under Part 4 of the Art. 3

¹ Semantics of language (formerly - *semasiology*) is a branch of linguistics related to lexicology; studies the meaning (also in diachronic, historical reshaping) of words and their constituent parts, phrases and phraseologies. The term comes from the Greek Σημαντικός (*semantikos*), "significant", formed from σημαίνω (*semaino*) - "to mean, to indicate" and also from σήμα (*sema*) - "sign", "mark", "symbol"

² Systems approach (Eng. *Systems thinking*) is the direction of the methodology of research, which is to study the object as a whole set of elements cumulatively with relationships and connections between them, that is, considering the object as a model system. The concept of holism is close in English literature.

of the Criminal Code of Ukraine "Application of the law on criminal liability by analogy is prohibited" (Verkhovna Rada of Ukraine, 2001a).

Volobuiev and Stepaniuk (2003), Barham *et al.* (2004), Chalfin *et al.* (2007), Weigel and Barlass (2003) and others dealt with the issue of defining the term "agro-industry", its place in the development of the economy and criminal offenses committed in the public sector, which are aimed at agro-industry. Hence, the purpose of the article is to identify and investigate the object of protection of public relations in the field of agro-industry, as well as the subject of encroachment.

The problem of interpretation of a crime in the field of agro-industry in domestic case law

Agro-industrial activity is one of the leading sectors of Ukraine's economy. According to well-known factors, agro-industry is a stable provision of the population with quality, safe, affordable food, agriculture of Ukraine is able to make a significant contribution to solving the world problem of hunger. Its production potential far exceeds the needs of the domestic market (Cabinet of Ministers of Ukraine, 2013). Agricultural land occupies 42 million hectares, or 70 % of the total fund of the country. 78.9 % of agricultural lands are arable lands and perennial plantations, 13.0 % are pastures, and 8.4 % are hayfields. The highest share of arable land is in the heath areas (70-80 %) and forest-heath zone. Pastures are concentrated mainly in the Carpathians, Polissya and in the south-eastern heath regions, hayfields are in the river valleys of the forest and forest-steppe zones. As of 2015, Ukrainian agricultural producers supply their products to 190 countries (Ukraine supplies agricultural products..., 2015).

Here we can draw an intermediate conclusion that the listed articles of section 8 "Criminal offenses against the environment" of the Criminal Code only indirectly protect the agro-industry, as when committing criminal offenses in the agro-industrial complex encroachment is not on the environment and not on the ecology, and encroachment is on the economic solvency of the state. While the consequences for the environment exist accordingly, but the offenders themselves suffer from the consequences only as a side effect of receiving improper benefits from the use of land for other purposes or it may be that as a result of their activities there was pollution or damage to land – the Art. 239 of the Criminal Code "Pollution or damage to land" or as a

consequence of Art. 254 "Uneconomic use of land". Let us analyze this in more detail, as an example, due to the fact that the use of land was not intended or if the introduction of false information about what happened on the land and the lack of land reclamation could have serious consequences (Verkhovna Rada of Ukraine, 2001a).

Thus, according to the register of court decisions from 2019 to 2021 under Art. 254 of the Criminal Code of Ukraine "Commercial Use of Land" were handed down 54 convictions: 2019 - 3 sentences, 2020 - 30 sentences and for 11 months of 2021 - 21 convictions. If we pay attention to regional crime, in Rivne region 28 convictions were passed for the specified period, in Chernihiv region - 5, Volyn region - 9, Ternopil region - 7, Lviv region - 1. Most of the convictions are in the west of the country (The Unified State Register of Court Decisions, 2021).

For example, on April 2, 2021, the Sokyriany District Court of Chernivtsi Oblast (2021) handed down a guilty verdict. In early spring 2019, the exact date and time of the pre-trial investigation body is not established, PERSON_1 on land under cadastral number 7324088000:01:001:0957, area 0.0231 ha, with a purpose for personal farming, which belongs to him on the right of private property, located at the address: ADDRESS_2, as well as on unauthorized land of communal ownership with an area of 0.0201 ha and a private land plot under cadastral number 7324088000:01:001:0956, with an area of 0.0118 ha, which border on his land plot, in violation of the requirements of paragraphs "a" and "d" Part 1 of the Article 91 of the Land Code of Ukraine [Verkhovna Rada of Ukraine, 2001b], according to which landowners are obliged to ensure their intended use, to increase soil fertility and preserve other useful properties of the land, knowing the type of land, without the appropriate permits for work and without changing the target identification of the land, with the help of agricultural machinery "excavator", removed the fertile layer of soil and created an artificial reservoir, with a total size of 0.0550 hectares (Sokyriany District Court of Chernivtsi Oblast, 2021). The amount of damage determined by the inspector in the field of state control over the use and protection of land and compliance with the legislation of Ukraine on land protection in Sokyriany district PERSON_3 on the basis of the Methodology for determining the amount of damage caused by

unauthorized occupation of land, use of land for other purposes cover (fertile soil layer) without a special permit approved by the Cabinet of Ministers of Ukraine No. 963 of July 25, 2007 [Cabinet of Ministers of Ukraine, 2007], amounts to UAH 4,712.01. Punishment was determined for PERSON_1 who is found guilty of committing a criminal offense under Part.1 of the Article 254 of the Criminal Code of Ukraine, and for his commission to sentence him to a fine of 200 non-taxable minimum incomes, amounting to 3400 (three thousand four hundred) UAH.

In most cases, persons without permission removed the surface layer to create an artificial reservoir. So we can draw an intermediate conclusion that when committing Art. 254 of the Criminal Code damage to land, ecology and the environment, but does not cause agro-industry. As for the next article, which may indirectly harm agro-industrial activities is Art. 239 of the Criminal Code of Ukraine "Pollution or spoilage of land" (Verkhovna Rada of Ukraine, 2001a), but analyzing the sentences passed over the past 3 years, it can be argued that pollution and spoilage of land occurs by persons engaged in animal husbandry and meat processing. After these actions there is a waste which these persons bury in the earth, then spoil it according to the legislation, for example, "the Art. 33 of the Law of Ukraine "On Waste" (Verkhovna Rada of Ukraine, 1998), the Law of Ukraine "On Protection of the Population from Infectious Diseases" (Verkhovna Rada of Ukraine, 2000).

Hence, for example, on December 7, 2020 Zhovkivskyi District Court of Lviv Oblast (2020) passed a guilty verdict in which PERSON_1 03.04.2020, being on the territory of his farm in the village. Boyanets, street Ivana Franka, 102, Zhovkva district of Lviv region, placed in the trailer registration number NUMBER_1, which was attached to the car brand "Ford Transit", registration number NUMBER_2, the remains of animal origin (hooves, head, skin), which were formed as a result of his disassembly beef carcasses, after which, 04.04.2020, about 14 hours, acting intentionally, ie aware of the illegality and public danger of their actions, anticipating their socially dangerous consequences, in violation of Art. 33 of the Law of Ukraine "On Waste" (Verkhovna Rada of Ukraine, 1998), which prohibits unauthorized dumping and disposal of waste, Article 46 of the Law of Ukraine "On Land Protection" (Verkhovna Rada of Ukraine, 2003), which obliges citizens to ensure timely removal of waste to special facilities used for their

collection, storage, treatment, disposal, removal, disposal and disposal, Article 16 of the Law of Ukraine "On protection of the population from infectious diseases" (Verkhovna Rada of Ukraine, 2000), which imposes duty to comply with the requirements of veterinary, sanitary and hygienic and sanitary and anti-epidemic rules and regulations during the production, processing and sale of livestock products, Art. 22 of the Law of Ukraine "On Ensuring Sanitary and Epidemiological Welfare of the Population" (Verkhovna Rada of Ukraine, 1994), which obliges citizens to take measures to prevent disease, poisoning, environmental pollution, using the above vehicle, removal of the remains of animals origin in the tract Stanislivka, near the village. Boyanets, Zhovkva district of Lviv region, which were dumped into the 20 m long ditch and thus contaminated the land with waste harmful to life, human health and the environment, creating a danger to life, human health and the environment, which manifested itself in the accumulation of soils of toxic chemical compounds, pathogenic bacteria and parasites that can cause diseases common to humans and animals.

As for the statistical indicators of convictions, since 2019 there are only 10 of the c. Dnipropetrovsk regions - 3 convictions, Lviv - 4, Volyn - 2, Cherkasy - 1 conviction (The Unified State Register of Court Decisions, 2021). Having paid enough attention to the composition of criminal offenses, we can conclude that criminal offenses are either not related to the protection of agro-industry, or indirectly only as additional optional consequences. From this analysis we can say that Section 8 "Criminal offenses against the environment" do not protect the agro-industry. The following question arises, what are the components and sections of criminal law that protect the agro-industry? To answer this question, it is necessary to understand what is meant by agro-industry.

The role and place of agro-industry in the state economy: national and world experience

Having determined that agro-industry occupies one of the most important places of our economy, but is not properly protected by the law of Ukraine on criminal liability, we came to the conclusion that it is necessary to develop proposals to determine the place of criminal offenses related to agro-industry. the concept of agro-industry and determine the historical variability and its significance. The agro-industrial complex (AIC) is a set of branches of the national economy, which operates in the

production of agricultural products in conjunction with the implementation of industrial processing and sale of products to the consumer. AIC as one of the forms of social division of labor in general is divided into three main areas of production: means of production to provide agriculture and industry for processing agricultural orphanhood; direct agriculture; procurement, industrial processing, transportation and sale of products. The main link of the agro-industrial complex is agriculture, the products of which are the basis for the formation of the country's food resources, as well as the production of a number of important raw materials for light industry and some others. industries. An important place in the AIC is occupied by food and processing enterprises, which play a significant role in the formation and development of domestic and foreign food markets. This requires constant economic regulation. The system of procurement, storage, transportation of agricultural raw materials for its industrial processing, as well as the organization of delivery and sale of finished products to consumers in the AIC is of particular importance (Bohdan *et al.*, 2019). The AIC also includes branches of the agricultural industry, in particular enterprises of tractor and agricultural machinery, chemical and petrochemical enterprises for the production of mineral fertilizers, fuels and lubricants, chemical plant and animal protection products, and microbiological. industry, machine-building enterprises for the manufacture of technical equipment for industrial enterprises engaged in the processing of agricultural raw materials. Thus, analyzing the concept of agro-industrial complex, it is necessary to conclude that the object of encroachment on enrichment, respectively, the object of protection is public relations, which protect economic activity.

The agricultural sector of Ukraine is systemic in the national economy, forms the basis for preserving the sovereignty of the state which is the food and within certain limits economic, environmental and energy security, ensures the development of technologically related sectors of the national economy, and forms the socio-economic basis of rural development. In order to increase agricultural production, increase productivity in agriculture, promote the development of the agricultural market of Ukraine and ensure food security, the state finances measures, in particular, by directing funds to support the agricultural sector. The issue of efficient use of such funds is relevant and socially

significant, as the development of the agricultural sector of the economy is one of the ways to increase the economic potential of the state. The solution of this issue is impossible without a sound and balanced agricultural policy and appropriate legal support, regulation in the field of public relations, which is a necessary and important factor in establishing economic order in society.

Here are more detailed examples of support for agro-industry today, when the situation in the domestic agricultural sector remains quite difficult, it is important to assess foreign experience in the development of agricultural production. Especially since the agriculture of Europe, America and Asia over the past three decades has made a big step in its development. Government support for the agricultural sector is one of the priorities of economic policy in many countries around the world, which is seen as a necessary tool for agricultural policy in market conditions. World experience shows that state support for agriculture exists in many industrialized countries, which spend significant funds on its implementation. It should be noted that each country has its own characteristics in the implementation of agricultural policy, in the forms and methods of interaction between the state and farmers. Even in the countries of the European Union (EU), which in the 60s agreed to pursue a common agricultural policy, there are differences. Taking into account foreign experience in reforming the agro-industrial complex of Ukraine does not mean blindly copying it. It is necessary to synthesize the best and most effective in world agricultural production with the already existing achievements of the domestic agro-industrial complex.

Different countries support the agro-industry in different ways and through different mechanisms: the total equivalent of foreign subsidies is 87% in Japan, about 50% in the US and Canada, and 75% in the EU (U.S. General Accounting Office, 2003). In the budget of expenditures to support the agro-industrial complex, the largest share of direct payments is indicated in countries with unfavorable production conditions, such as Iceland, Norway, Finland, mountainous areas of France and Switzerland. The purpose of these payments: to compensate for a kind of negative land rent, which increases production costs, especially in disadvantaged areas. In Austria, Finland, Switzerland and in the mountainous regions of France, a system of subsidies has long been used depending on the number of hectares

(per hectare subsidy) or on the number of livestock (per head) (International Finance Corporation, 2021).

Excellent subsidies to Japan, where the government regulates about 20% of consumer prices: rice, wheat, meat and dairy products, rail transport, heating, water, electricity, gas, education and health care. However, the state is not legally entitled to set both monopolistically high and monopolistically low prices, which may restrict market competition. In France, the state also regulates 20% of prices, there is a network of state controllers for them, there is a direct regulation of prices for agricultural products. The United States uses mostly indirect regulation (expansion of federal procurement, rationalization of tax, monetary policy, etc.) (Borlaug, 2007).

It should be emphasized that the international experience, in particular the research of the Center for Economic Strategy (2021), many countries around the world have long abandoned the policy of providing direct subsidies to farmers. For example, New Zealand does not support the agricultural sector at all (it took almost 20 years to train New Zealand farmers without government support), the United States and Australia provide state support in the form of insurance payments (Barclay and Donnermeyer, 2002), and Canada. by reducing the cost of credit, in the Netherlands - by supporting research. However, despite the active application of the model of direct subsidies to the agricultural sector by EU countries, experts consider it inefficient and outdated, and keep it only because the abolition of such a model may adversely affect the activities of EU farms (Department of Agriculture, 2021). The United States is reluctant to investigate criminal offenses related to agro-industry, as the police believe that these topics go beyond their powers related to agriculture, so in the United States criminal offenses in the agro-industrial complex are criminologists who law enforcement officers are best suited for such investigations (Berga and DeLisi, 2005). There are challenges in investigating agriculture in South Africa and finding a sensible approach to combating it. One way is to create a National Forum on Agricultural Crimes (NFAC), which will include various stakeholders (farmers, workers, financiers, processors, scientists, police, etc.) whose mandate is to investigate these crimes in various chains of added value (Bunei *et al.*, 2016). Agricultural crime is increasingly becoming a fact of life for British farmers. Although there is no official

data on this type of criminal offense, key rural stakeholders, such as insurers, publish regular indicators of the level of the problem. However, these figures and most existing research focus almost exclusively on the financial impact of agricultural crime (Smith, 2020).

Anti-crime measures emphasize the importance of linking the evaluation process and outcome, taking a broad view of program effectiveness and taking a creative approach to defining and developing appropriate performance indicators (Samilyk *et al.*, 2019). Just as clearly, they emphasize this serious limitation on cross-evaluations of programs at the environmental level, such as community policing initiatives - not least because of the difficulty of randomly assigning some intervention communities and the questionable usefulness of relying on statistical control to approximate a pilot plan (Abaidoo and Dickinson, 2002). Analysis of models of state support for agriculture in other countries found that in general they have both advantages and disadvantages and depend on the level of development of the economy, which in conditions of limited financial resources, imperfect legislation, uncertainty of priority of sectoral development does not allow their separate application in the agro-industrial complex of Ukraine and sustainable economic growth of the agricultural sector as a whole. In this regard, it is advisable to use the best practices of supporting the agricultural sector of the economy of other countries in a comprehensive model of state support of the agricultural sector of Ukraine, using, in particular, insurance instruments, soft loans, research support and more.

Ukraine provides support at the expense of budget funds, but due to the fact that the degree of corruption in Ukraine is quite high, in this regard, a sufficient number of criminal offenses are committed, which encroach on the misuse of budget funds (Kostyuchenko *et al.*, 2019). After analyzing the agro-industry, we came to the conclusion that the most common criminal offenses in this area were actions aimed at illegally receiving assistance from the state under the Law of Ukraine of 24.06.2004 No. 1877 "On State Support of Agriculture of Ukraine" (as amended) (hereinafter - Law No. 1877) (Verkhovna Rada of Ukraine, 2004). This law, among other things, establishes the procedure and conditions for providing state support to the subjects of its receipt (producers of agricultural products (legal entities and

individuals), defines the types of state support, its subjects and objects, volumes). It should be noted that all areas of state support, defined by the Law No. 1877, are united by the general term "state support". However, not all norms and mechanisms laid down in this law are clear and unambiguous. For example, Articles 15 and 161 of the Law of 1877 define the term "budget subsidy", which are identical in content and different in definition. At the same time, the provisions of Article 161 of Law No. 1877 from January 1, 2018 set a limit on the amount of "budget subsidy" in the amount of not more than UAH 150 million per agricultural producer per year, taking into account persons related to such producer within the meaning of subparagraph 14.1.159 paragraph 14.1 of Article 14 of the Tax Code of Ukraine. In this case, despite the fact that Articles 15 and 161 of the Law No. 1877 use the same term "budget subsidy", the provisions of Part 2 of Article 161 .6 of the Law No. 1877 do not specify for which "budget subsidy" is limited. Paragraph 15.1 of Article 15 of the Law No. 1877 states that when planning state budget expenditures for the next year, the Cabinet of Ministers of Ukraine envisages expenditures for providing subsidies to producers of livestock products (Verkhovna Rada of Ukraine, 2004). The budget subsidy is provided in order to maintain the level of effective demand of Ukrainian consumers of livestock products and to prevent the emergence of unprofitable Ukrainian producers of such products. Everything is based on the Constitution of Ukraine, which states that the budget system of the state is based on the principles of fair and impartial distribution of public wealth (meaning citizens and territorial communities) (Verkhovna Rada of Ukraine, 2021).

In addition, the Law on the State Budget of Ukraine defines state expenditures on public needs (respectively their size and direction) (Center of Economic Strategy, 2021a). According to these expenditures are budget funds in the agricultural sector of the economy of Ukraine. However, in the course of the implementation of these budget programs in the agro-industry there are more and more deviations from the legislative consolidation, namely the misuse of budget funds (with deviations from these programs). Existing agro-industrial programs to support business in Ukraine: agricultural financing is a wide range of financial proposals, programs, tools and a favorable business environment of the agricultural market. How to orient the agrarian and what support do they need? Land

market lending? What are the trends in the financing of agro-industry financing? What new awaits us?

- Banking instruments for financing working capital and investment projects for the Ukrainian agro-industrial complex: dynamics, market demands, digital solutions, trends in the development of banking instruments.
- State support of the agricultural sector: programs to stimulate agro-industrial production, agricultural insurance, joint projects with international financial institutions.
- Land market: what financial opportunities can a farmer use today to buy land.
- Development of agricultural capital markets: experience and prospects of the agricultural receipts market.
- Financing of "climate" projects of farmers: what are the opportunities today and what tools will appear on the market soon.

At the same time, lending to the agro-industrial complex at 0% under program #5-7-9 provokes discussions on the part of the banking sector and proposals to divide market segments - banks are engaged in business and do not subsidize, and the state provides state support and subsidies to businesses.

- Farmers are interested in traditional lending instruments, with the purchase of land is virtually absent due to lack of mass demand.
- IFC after the successful introduction of agricultural receipts, which currently market more than \$2 billion, will grow after adoption of amendments to the Law on Agricultural Receipts. And plans to announce new climate tools for the agricultural sector in a few weeks.
- State support programs are balanced and economically sound proposals by industry associations. Cheaper loans, machinery, horticulture, viticulture, construction and reconstruction, farm support are the most popular programs by farmers.
- There is a need to improve the legislative field of access to finance, including the land market in 2024 (Center of Economic Strategy, 2021b).

It is deduced that the object of protection in the case of committing criminal offenses in the field of agro-industrial complex is economic activity. Since the subject of encroachment are budget funds that are not used for

their intended purpose.

Statistical analysis of criminal offenses in the budget sphere, aimed at agro-industry

We turned to statistical indicators and analyzed under which articles individuals are prosecuted in case of committing criminal offenses related to the agro-industrial complex. Unfortunately, the statistical indicators did not make us very happy, and in our opinion, there is a very large number of latent wrongdoing in this socially dangerous act. We came to this conclusion because the Art. 210 of the Criminal Code of Ukraine "Misuse of budget funds, budget expenditures or loans from the budget without established budget allocations or with their excess" (Verkhovna Rada of Ukraine, 2001a), which in our opinion should be applied in cases of criminal offenses related to agro-industry in support of this position can be referred to Note 1 of Art. 210 Criminal Code of Ukraine "On the budget funds are included in the state budget and local budgets wherever formation" (Verkhovna Rada of Ukraine, 2001a), and in another source definition of "budget" and "budget" under Art. 2 is the current Budget Code of Ukraine (Verkhovna Rada of Ukraine, 2010) which stipulates that these are due in accordance with the law budget revenues and budget expenditures, but for the last 3 years no conviction under Art. 210 of the Criminal Code of Ukraine, which indicates a high level of corruption in our government.

Volobuiev and Stepaniuk (2003), who defines budget funds as endowed with such features as: a) their inclusion in the budget of any level; b) anticipation of the intended use of such funds by the relevant document; c) achieving the amount of illegally used funds established by law. From this we can conclude that the budget funds can be distributed only by an official who is endowed with certain powers, and here there is a problem to bring and the court's desire to prosecute such persons, because in addition to Art. 210 of the Criminal Code of Ukraine, they must be immediately involved in the articles that provide for the liability of officials, and this is directly to Art. 364 of the Criminal Code of Ukraine "Abuse of power or official position" (Verkhovna Rada of Ukraine, 2001a).

So, going back to the statistics on the commission of criminal offenses in the agro-industrial complex, we came to such disappointing figures. Still trying to determine which articles are used to prosecute persons

who commit criminal offenses in the agro-industrial complex, they came to the conclusion that in most cases in recent years prosecuted under Art. 205¹ "Forgery of documents submitted for state registration of legal entities and natural persons - entrepreneurs" (Verkhovna Rada of Ukraine, 2001a), so if all criminal offenses for which the person was found guilty and sentenced under Section 7 "Criminal offenses in sphere of economic activity" then for 100% we take 54 sentences from 2019 (in our opinion, this is generally a very low figure, but so stated in the single register of court decisions), then according to Art. 205¹ of the Criminal Code of Ukraine involved 81% of the total number of committed criminal offenses in the agricultural sector among the criminal offenses in the sphere of economic activity. 5% st. 222 of the Criminal Code of Ukraine "Fraud with financial resources", 4% 209 of the Criminal Code of Ukraine "Legalization (laundering) of property obtained by criminal means", 9% 212 of the Criminal Code of Ukraine "Evasion of taxes, fees (mandatory payments)", 2% 200 Criminal Code of Ukraine "Illegal actions with documents for transfer, payment cards and other means of access to bank accounts, electronic money, equipment for their production."

All solutions have approximately the same plot. Until 2019, almost all such cases were the subject of Art. 205 of the Criminal Code of Ukraine, however, it was decriminalized and, accordingly, all persons found guilty of such acts were restored to their rights and are considered not to have been prosecuted. Thus, on September 18, 2019, the President of Ukraine signed the Law No.1080 "On Amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine to Reduce Pressure on Business" adopted by the Verkhovna Rada (2019). This Law excludes from the Criminal Code of Ukraine Art. 205 on fictitious entrepreneurship. The reason for excluding the article was that law enforcement officers used it to put pressure on entrepreneurs. However, such an exception can be seen in another way - it allows for the activities of companies "gaskets", which act only for profit, but do not do any business at all, as well as companies "conversion centers", which pass through their own company dirt money and whiten them. But all this is happening in agro-industrial activities, so it is possible to register companies, and on the basis of the budget code to receive supplements, but not responsible for

"Fictitious Entrepreneurship" - because the article is decriminalized. And all persons are released from punishment.

Reconsidering the court decisions to decriminalization very often applied Art. 205 of the Criminal Code of Ukraine "Fictitious Entrepreneurship", namely to the criminal offenses that we are considering. Thus, he was prosecuted for committing criminal offenses under Part 5 of Article 27, Part 1 of Article 205, Part 1 of Article 205-1 of the Criminal Code of Ukraine (Verkhovna Rada of Ukraine, 2001a). In accordance with the indictment in the criminal proceedings No.32019110000000081 from 26.06.2019 year, citizen PERSON_1 at the end of October 2017 being in the city of Kiev, the exact time and place of the pre-trial investigation is not established, entered into a preliminary conspiracy with unidentified pre-trial investigation persons PERSON_2 and PERSON_3, who offered the latter to assist in fictitious entrepreneurship for a fee, namely to provide funds for re-registration in public authorities in his name of a business entity with organizational and legal form of a legal entity - Limited Liability Company "Agra Systems" (USREOU code 41659486) in order to cover up the illegal activities of other persons, to which PERSON_1 agreed and received a one-time monetary reward.

According to the materials of the registration file of "Arga Systems" LLC under No. 1-353-009603-75 PERSON_1 in the period from 27.12.2017 to 22.01.2019 was the founder and director of "Agra Systems" (USREOU code 41659486), address in the specified period: Zhytomyr, st. Sergey Paradzhanov, 77, office 27.3. Despite the fact that the specified enterprise is registered in the state authority as the subject of business activity - the legal entity, the PERSON_1 assisted in its acquisition (re-registration) without the purpose of implementation of the economic activity provided by the Charter of the enterprise, and for the purpose of covering illegal activity of other persons, meaning has committed a crime in the sphere of economic activity, in the following circumstances. Thus, PERSON_1, by prior agreement with unidentified persons named PERSON_2 and PERSON_3, having divided the roles in the joint criminal plan, had to provide their personal data, identity documents and sign statutory and other constituent documents for re-registration false enterprise - "Agra Systems" LLC, for which to receive a one-time cash reward in the amount of UAH 1,500 (Korolovskyi District Court of Zhytomyr

City, 2019).

Criminal offenses related to the agro-industrial complex: analysis of court decisions

Almost all sentences concern the artificial creation of an enterprise to obtain preferential budget funds for agro-industry. Thus, on December 17, 2020, the city of Kyiv was found guilty under Art. 205¹ of the Criminal Code of Ukraine PERSON_1, who acting with direct intent and selfish motive, wanting to receive a monetary reward, in July 2019, the exact day, time and place of the pre-trial investigation is not established, acting by prior agreement with an unidentified person named PERSON_2 and others unidentified persons, signed and handed over to the latter the registration documents of the legal entity of the limited liability company "GOOD VILL AGRO" (USREOU code 43108330) (hereinafter - LLC "GOOD VILL AGRO"), in which false information was entered, in the following circumstances (Holosiivskyi District Court of Kyiv, 2020).

In the summer of 2019, the exact day, time and place of the pre-trial investigation is not established, in PERSON_1 there was a criminal intent aimed at making in the documents submitted for state registration of a legal entity, knowingly false information. Implementing criminal intent, in July 2019, the exact day and time of the investigation is not established in the territory of Kyiv at a meeting with an acquaintance named PERSON_2, PERSON_1 not having the appropriate education and work experience, being in a difficult financial situation, being deprived means of conducting business, aware of the illegal nature of the proposed actions as the future owner of the enterprise, agreed to the proposal of the latter for a fee to make in the documents submitted for state registration of a legal entity, knowingly false information, thus entering into a preliminary conspiracy with unidentified persons.

Continuing the implementation of criminal intent aimed at violating the procedure established by the legislation of Ukraine for registration of a legal entity in July 2019, the day and time of the pre-trial investigation is not established, PERSON_1 met in an unspecified pre-trial investigation place in Kyiv, with a person named PERSON_2 handed over her passport of a citizen of Ukraine series NUMBER_2, issued by Ivankivsky PC UDMS of Ukraine in Kyiv region on 02.12.2015 and a card of an individual - a taxpayer No. NUMBER_1. These actions PERSON_1 allowed unidentified persons who

entered into a criminal conspiracy with her to prepare the necessary for the state registration of LLC "GOOD VILL AGRO" documents, namely:

- description of documents provided by the legal entity to the state registrar for the registration action of GOOD VILL AGRO LLC dated 11.07.2019, which contains false information on the registration action "State registration of a newly formed legal entity by establishment of a legal entity" LLC "GOOD VILL AGRO";

- application for state registration of a legal entity LLC "GOOD VILL AGRO" dated 11.07.2019, which is required for state registration of LLC "GOOD VILL AGRO" and contains false information: regarding the location of the Company at the address: 03040, Kyiv, st. Vasylykivska, bldg. 3; regarding the types of economic activity of a legal entity; regarding the size of the share (authorized) capital of UAH 10,000, although in fact the enterprise was not located at the specified address, funds PERSON_1 were not contributed to the authorized capital, certain activities were not engaged;

- decision of the founder No. 1 of the Limited Liability Company "GOOD VILL AGRO" dated July 11, 2019, which contains false information: about the location of the Company at the address: 03040, Kyiv, st. Vasylykivska, building 3; on creation of the authorized capital of the Company in the amount of 10 000 (ten thousand) hryvnias 00 kopecks and contribution by the founder of the share in the authorized capital of the Company at the expense of the movable property belonging to it, namely money; on appointment to the position of director of the Company PERSON_3; about definition of kinds of activity of the specified society; on the authorization of PERSON_1 to carry out a set of measures for state registration of the Company, although in fact the company was not located at the specified address, funds to the authorized capital of PERSON_1 were not paid, certain activities were not engaged;

- registration application of the value added taxpayer of the form No. 1-VAT of the Limited Liability Company "GOOD VILL AGRO", which contains false information that the Company is a value added tax payer and information about the location of the Company at: 03040, Kyiv, street Vasylykivska, building 3, although in fact the company was not located at the specified address, did not carry out financial and economic activities, did not intend to pay taxes in full.

PERSON_1, who acted under a preliminary conspiracy with an unidentified pre-trial investigation person

named PERSON_2 and other unidentified persons, entered in the application for state registration of a legal entity (form 1) from 11.07.2019 whose form is approved by the order of the Ministry of Justice of Ukraine from 18.11.2016 year No. 3268/5 and the registration application of the value added tax payer (forms No. 1-VAT), the form of which is approved by the Regulations on registration of value added taxpayers, information that LLC "GOOD VILL AGRO" intends to be a value added tax payer. The specified information does not correspond to reality and misleads the state registration body, as the said person had no intention to carry out economic activity and collect taxes on GOOD VILL AGRO LLC, and the specified information was entered into the registration documents solely for selfish reasons.

At the same time PERSON_1, who acted by prior agreement with a person named PERSON_2 and other unidentified persons, included in the decision of the founder No. 1 Limited Liability Company "GOOD VILL AGRO" from July 11, 2019 information about the establishment of the Company; determination of the Company's location at the address: 03040, Kyiv, street Vasylykivska, building 3, creation of the authorized capital of the Company in the amount of 10 000 (ten thousand) hryvnias 00 kopecks and contribution by the founder of his share in the authorized capital of the Company at the expense of the movable property belonging to it; implementation of activities on the basis of the model statute approved by the Cabinet of Ministers of Ukraine (2019); appointment to the position of director of the Company PERSON_1; determination of the types of activity of the specified company: with codes 46.21, 46.11, 46.18, 46.19, 52.29, 52.24, according to the Classification of types of economic activity; authorization of PERSON_1 to carry out a set of measures for state registration of the Company, which do not correspond to reality and created for the purpose of submitting to the State Registrar documents with knowingly false information, because PERSON_1 had no intention to carry out business activities, and this information was entered into motives.

Thus, PERSON_1 having performed all the above actions, offered to him by an unidentified pre-trial investigation person named PERSON_2 and other unidentified persons, being interested in receiving a monetary reward, authentically aware of the illegal nature of their actions, actually signing legal documents of state

registration GOOD VILL AGRO "in its own name, has achieved its criminal purpose in the form of entering in the documents, which in accordance with the law are submitted for the state registration of a legal entity, knowingly false information. Continuing his criminal activity, 07/11/2019 PERSON_1, using previously signed documents required for state registration of a legal entity, including an application for state registration of a legal entity (form 1), the decision of the founder No. 1 Limited Liability Company "GOOD WILL AGRO "dated July 11, 2019 and the registration application of the value added tax payer (forms No.1- VAT), as well as certified copies of the passport of a citizen of Ukraine series NUMBER_2, issued by Ivankivsky PC UDMS of Ukraine in Kyiv region. from 02.12.2015 and card individual - taxpayer No. NUMBER_1, submitted these documents to the state registrar Holosiivska district in Kyiv state administration PERSON_4. These actions became the basis for the registration action "State Registration of Legal Entities", which in the Unified State Register of Legal Entities and Individual Entrepreneurs 07/11/2019 made an entry under No. 10681020000055980, and determined the place of state registration - Goloseevskaya district in Kiev state administration, which is located at: Kyiv, pr. Holosiivskyi, bldg. 42.

For performing all the above actions aimed at making in the documents, which in accordance with the law submitted for state registration of legal entity LLC "GOOD VILL AGRO", knowingly false information, PERSON_1 received from unidentified by the pre-trial investigation persons pre-determined amount of remuneration in the form of cash in the amount of 5000 hryvnias. Thus, it is their intentional actions, which were expressed in the introduction of documents, which in accordance with the law submitted for state registration of a legal entity, knowingly false information committed by a group of persons PERSON_1 committed a criminal offense under Part 2 of Art. 205-1 of the Criminal Code of Ukraine (Verkhovna Rada of Ukraine, 2001a).

On September 28, 2020, between the Prosecutor of the Department of Procedural Management and Support of Public Prosecution of the Department of Organization and Procedural Management of Pre-Trial Investigation of the SFS of Ukraine, the Department of Supervision of Security, Fiscal and Border Services of the Office of the Prosecutor General Dmytrenko S.O. in the presence of defender Onyschuk VV entered into a plea agreement

with the accused PERSON_1, according to which PERSON_1 fully admitted his guilt in the above act, in addition, the parties agreed to punish PERSON_1 under Part 2 of Art. 205-1 of the Criminal Code of Ukraine in the form of a fine in the amount of 1000 (thousand) non-taxable minimum incomes, which is 17000 UAH. In the preparatory court hearing, the prosecutor asked to approve the plea agreement, as well as to appoint a measure of punishment agreed by the parties (Holosiivskyi District Court of Kyiv, 2020).

CONCLUSION

In drawing conclusions, we would like to first focus on more social conclusions, namely on changing the activities of public authorities (general measures). The article states that taking into account the most important role of the state in the policy of agro-industrial complex development, it is necessary to have a special service in the districts, one of the functions of which will be monitoring of economic and social processes, including prices in commodity agricultural and food markets. In this regard, one of the tasks of the agro-industrial complex of the region is the formation of monitoring and ensuring monitoring studies taking into account the specifics of the region and specific operating conditions. In the course of the research the algorithm of the monitoring system is proposed, all blocks of which are interconnected.

Monitoring involves addressing a number of methodological and organizational issues, but, above all - the justification of methods of obtaining information. The information support should correspond to the parameter of the framework of the model of the situation development in the agro-industrial complex, as well as the tasks to be solved with the help of monitoring. The study clarifies the substantive characteristics of the conceptual apparatus associated with the implementation of agricultural development. In this context, reveals, first of all, the essence of the concept of "economic system", which is considered from the standpoint of scientific abstraction and systems approach as a set of interconnected and interacting elements, which has a set of resources and is related to the external environment. According to this interpretation, the concept of "agro-industry" is revealed, which in the article is characterized as a system of systems (agriculture, animal husbandry, land reclamation, etc.), which has a synergistic effect, ie the

effect of self-organization. In view of this, the regional agrosystem is considered as a set of parts of agro-industrial production of the region, the close and stable relationship and interdependence of which forms an organic reproductive integrity. In methodological terms, when considering the regional agricultural complex, it is necessary to clarify the composition of its industries, which is part of the agro-industrial complex.

As for special measures, the conclusions are as follows:

- Public relations that protect the environment are not a generic object of criminal offenses against agro-industry, because in these generic object is the sphere of economic relations, and the environment can only be an optional object.

- The direct subject of committing criminal offenses in the agro-industry is budget funds, namely subsidizing the industry from the budget.

- The above offenses relating to criminal offenses with special features that distinguish the total composition of criminal offenses: fraud finan - sovyry resources (Art. 222 of the Criminal Code of Ukraine); forgery of documents, seals, stamps and forms, their sale, use of forged documents (Article 358 of the Criminal Code of Ukraine); abuse of power or official position (Article 364 of the Criminal Code of Ukraine); forgery of documents submitted for state registration of legal entities and natural persons - entrepreneurs (Article 205⁻¹ of the Criminal Code of Ukraine); misuse of budget funds, implementation of budget expenditures or provision of loans from the budget without established budget allocations or with their excess (Article 210 of the Criminal Code of Ukraine); official forgery (Article 366 of the Criminal Code of Ukraine); acceptance of an offer, promise or receipt of illegal benefit by an official (Article 368 of the Criminal Code of Ukraine); illegal enrichment (Article 368⁻² of the Criminal Code of Ukraine); offer, promise or provision of illegal benefit to an official (Article 369 of the Criminal Code of Ukraine), etc.

- These criminal offenses may be related to the use of budget funds in the agro-industrial complex, depending on the criminal law qualification of acts. In such cases, they may be classified as fraud (Article 190 of the Criminal Code of Ukraine) and misappropriation, misappropriation of property or taking it by abuse of office (Article 191 of the Criminal Code of Ukraine), committed in connection with the disposal of budget funds in agro-industrial complex.

- To propose the criminalization of a separate article, which would provide for criminal liability in the case of material gain and with the use of legal forms of economic activity.

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