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Liability of a trustee for environmental offences: Problematic issues and specific features of legal nature

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Abstract

The relevance of this subject lies in the fact that an effective enforcement mechanism in the context of compliance with environmental legislation is a lever for preventing environmental offences in general. Considering the lack of a wide range of studies on the environmental liability of a trustee, the scientific and practical need to analyse the relevant issues was identified. The study employed a system of research methods, namely: comparative legal method, method of critical analysis, method of interpretation of legal provisions, method of abstraction, logical and legal method, method of legal modelling, and dogmatic method. The purpose of this study was to provide a comprehensive general theoretical analysis and study of the legal nature and specific features of liability for environmental offences of a trustee and to formulate scientific, theoretical, and practical provisions for the regulation of the relevant legal relations. The study analysed the specifics of the trustee's environmental liability in the context of security trust as a fiduciary institution, as well as in the case of concluding a property management agreement known as a trust in the countries of the Anglo-Saxon legal system. The study offered a vision of the concept of environmental liability of a trustee through the lens of two models of this institution prescribed by

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current legislation. The study examined the category of complicity in the context of guilt in committing an environmental offence by both the trustee and the property management company. The study presented a critical analysis of the legislative technique of presenting the regulatory provisions of the Land Code of Ukraine on regulation of the institute of trust ownership of a land plot. As a result of this study, proposals were formulated for improving the current legislation in the context of the trustee's liability for environmental offences, as well as for the development of a separate chapter of the Land Code of Ukraine dedicated to the legal regulation of the institution of trust ownership of a land plot. The study focused on the theory of trust ownership on a global scale and based on the analysis of the initial provisions, determined its fundamental doctrinal significance for building a mechanism of environmental responsibility of trustees in each individual state. The practical value of this study lies in the fact that its findings can be applied in improving the legal regulation of this area of legal relations

Keywords: environmental liability; land plot; institution of trust property; environment; environmental safety; public trust doctrine

Introduction

The issue of the legal nature and content of liability for environmental offences stays relevant in the context of globalisation processes related to environmental protection and conservation, as well as the development of environmental and natural resource law. The overall safety and well-being of an individual's life depends on the level of efficiency of the environmental protection mechanism, which is one of the main needs of modern time, not only at the national but also at the international level. Various aspects of environmental liability as a type of legal liability are an important subject of scientific research aimed at developing a clear enforcement mechanism in this area and preventing environmental offences in general. As of 2024, the research of environmental liability of trustees in the context of the formation and development of this institution and its increasing use in the regulation of property relations is of great scientific and practical significance. It lies in developing doctrinal approaches to the development of the concept of liability of such an entity with a view to using them for further law enforcement.

An environmental offence as a basis for environmental liability is characterised by a concrete composition, which includes the following elements: subject, object, subjective and objective parties. The nature and extent of liability are specific to the individual perpetrator of the offence. The scientific and practical need for a thorough investigation of the specific features of bringing individual actors to liability for environmental offences is that this type of offence encroaches on the constitutional right of citizens to a safe environment. In this regard, the analysis of the content of the trustee's environmental liability is important for developing the concept of liability for environmental offences by trustees and will also facilitate compliance with environmental requirements in their use of environmental objects, which may, in turn, be objects of trust.

Overall, the problematic issues of environmental liability as a type of legal liability, including the specific features of its subject matter, have been the subject of investigation by many researchers. L. Khizhnya (2020) investigated the

specific features of administrative liability for environmental offences in environmental protection and emphasised that in the context of implementing the idea of sustainable development, it is important to optimise national and international mechanisms of legal liability for environmental damage. O. Kalian *et al*. (2023) express an analogous opinion, pointing out that to effectively protect the environment in Ukraine in the context of globalisation and military operations, there is a substantiated need to improve the institutions of legal liability for violations of environmental law through the implementation of international standards. In terms of the functional aspect of environmental liability, M. Sirant (2021) noted that legal liability helps motivate people who do not commit environmental offences to follow environmental requirements and discourages those held liable from repeatedly committing environmental offences. B. Sheehy (2023) noted that the principal idea of environmental responsibility as a type of legal liability is that business entities that benefit from the use of natural resources should minimise the negative impact on the environment and, moreover, take actions of a compensatory nature for society for such negative impact. In terms of conducting business activities and the need for business entities to follow environmental requirements, J. Lee *et al*. (2022) focused on the significance of accounting for environmental impact in business activities and the importance of environmental responsibility in the legal context, both from a legal and moral standpoint. Al Halim and M. Ali (2020) note that the introduction of a strict legal regime of environmental liability for environmental offences is conditioned by the long-term nature of the danger that may be caused by such offences, as well as the difficulties in eliminating their ramifications. L. Dam e*t al.* (2019) emphasised the global nature of the institution of environmental liability, pointing out that environmental liability is increasingly determined by human actions that affect global environmental change. Thus, the institution of environmental liability is not merely a coercive measure within a particular country but is a global instrument for ensuring a safe environment. The environmental liability of a trustee is no exception due to the increasing use of this title in rem, as well as the way in which it is used to secure the performance of an obligation.

In the context of the trustee's environmental liability, the following studies are worth paying attention to. L. Brown (2024) provided a thorough analysis of the personal liability of trustees for land contamination and the existence of a duty to remediate it. The study raises the issue of environmental management in the context of trustees' fulfilment of their fiduciary duties aimed at both protecting the trust property and the environment. The issue of fiduciary responsibility has also been discussed by D. Postlethwaite (2022), who pointed out that trustees are increasingly expected to consider environmental, social, and governance (ESG) factors when making investment decisions. The researcher emphasised that fiduciaries must balance these trends with their fiduciary duties, ensuring that ESG integration is in the best interests of beneficiaries and follows legal requirements. S. Roy (2020) investigated the specific features of the fiduciary legal institution in the context of environmental protection, noting that the trust doctrine prescribes a model of management that would enable the state to apply a sustainable and holistic approach to environmental management to consider the interests of future generations. R. Marusenko (2020) studied the specific features of the institute of trust ownership of land plots. The researcher noted that the improvement of legislative regulation of the trust

ownership structure can avoid disputes over its nature, and transform it from an ambiguous, partially declarative innovation into an effective tool according to the legislator's intention. Based on the above, streamlining the regulatory provisions on the legal regulation of the trust property institute will also improve the mechanism of environmental liability of trustees.

The purpose of this study was to provide a comprehensive general theoretical analysis and study of the legal nature and specific features of liability for environmental offences of a trustee, as well as to formulate scientific, theoretical, and practical provisions for the regulation of the relevant legal relations. This study was focused on the specific features of the environmental liability of a trustee. To fulfil the purpose set, the tasks of the study were defined as follows:

1) to analyse the regulatory provisions of the Civil Code of Ukraine (2003), the Land Code of Ukraine (2001), the Code of Administrative Offences of Ukraine (1984) for the current state of legal regulation of the mechanism of environmental liability of the trustee;

2) to conduct a comparative analysis of the specific features of the environmental liability of a trustee under a property management agreement and in the case of establishing trust ownership as a way to secure performance of an obligation;

3) to formulate scientific and theoretical conclusions and practical recommendations for improving the legal regulation of trustee liability for environmental offences.

Materials and Methods

This study was based on the concept of sustainable development, according to which there is an urgent and substantiated need to strike a balance between the current needs of humanity and their satisfaction, as well as the protection and defence of future generations by guaranteeing their right to a safe environment. In the context of this problematic, the concept of sustainable development is important for the development of environmental legal awareness of trustees and prevention of environmental offences committed by them to ensure environmental safety.

Considering the purpose of this study and the tasks formulated to achieve it, a multifaceted range of both general scientific and special legal research methods was employed, namely: comparative legal method, method of critical analysis, method of interpretation of legal provisions, method of abstraction, logical and legal method, method of legal modelling, and dogmatic method. The use of these methods was substantiated by the fact that it is this system of scientific methods that ensured an in-depth investigation of the outlined issues, organisation of information, and contributed to the formulation of relevant conclusions. The use of research methods that are different in their content created an opportunity for a multidimensional and versatile study and ensured the comprehensiveness and completeness of this scientific study. The algorithm of the study was to distinguish certain aspects of liability for environmental offences by trustees from the general problematic of environmental liability. In analysing the specific features of environmental responsibility of such an entity, the study compared the specifics of such responsibility through comparing the models of trust ownership.

The comparative legal method helped to investigate the trustee's environmental liability by comparing two institutions: security trust and trust as a separate legal title. In applying the critical analysis method, the study formed a critical vision of the current state of legal regulation of environmental liability of a trustee and suggested practical solutions to improve the identified

gaps. The application of the method of interpretation of legal provisions helped to analyse legal provisions and reveal their content to identify problematic issues and form conclusions regarding the specific features of law enforcement. The scientific and practical conclusions and findings of this study were formulated based on a thorough analysis of the regulatory provisions of Ukrainian legislation. The regulatory framework of this study was based on the following regulations: Civil Code of Ukraine (2003), Land Code of Ukraine (2001), Code of Administrative Offences of Ukraine (1984).

The method of abstraction helped to highlight the essential and substantive aspects of the environmental liability issues and to focus on the issues of liability for environmental offences by trustees. The logical-legal method employed logical tools and techniques for researching and explaining the content of legal provisions based on the laws of formal logic. Using the method of legal modelling, the study applied the model of owner's liability and used it as the basis for developing the concept of trustee's liability for environmental offences. The dogmatic method helped to establish the content of the statutory provisions relating to the trust property institute and, using logical techniques, to identify the regularities of legal regulation of legal relations which are the subject of this study.

Results

The institution of trust ownership is a common legal phenomenon in the countries of the Anglo-Saxon legal system. Thus, in the UK, trusts form an integral element of the legal regulation of property relations. I. Gvelesiani (2023) points out that a trust is considered as a "by-product" of property rights, which reflects its dualistic legal nature. According to E. Zaccaria (2019), in UK law, the system of beneficiary rights is analogous in nature to the rights of the owner but has specific limitations. In this regard, the specific feature of the legal nature of a trust determines the specifics of the system of rights and obligations of its parties, which further affects the formulation of the institution of environmental liability. The fundamental legal act in this context is the Trustee Act (1925). This regulatory document prescribes the fundamental basis for the legal regulation of trusts, including provisions on the rights and obligations of trustees, regulates the specifics of their appointment, and the principles of trust management. UK legislation, as well as Ukrainian legislation, does not contain clear provisions on the environmental liability of trustees. However, certain provisions of a series of regulations can be applied by analogy to the legal regulation of the above issues. Such regulations include the Trustee Act (2000). Notably, this act does not contain special regulatory provisions on environmental safety and protection but prescribes general provisions on the system of trustee obligations relating to the consideration of beneficiaries' interests and caution in the management of property. These provisions can be interpreted in the context of the trustee's compliance with environmental legislation. Another regulation important within the framework of this study is the Environmental Protection Act (1990). The relevant regulatory document does not contain any special provisions relating to the trust but defines the fundamental principles and principles in the context of environmental protection. Therefore, trustees who manage land plots or other environmental objects are obliged to strictly and in good faith follow the requirements set out in the act. In this regard, it is necessary to note the imperfection of UK legislation in the context of legal regulation of environmental liability of trustees. This incompleteness of legislation leads

to the absence of an established concept of trustee liability for environmental offences at the international level, as UK law is primary in terms of defining the standards for regulating trusts. In this regard, T. Kuntz (2023) was correct to point out that a view of the development of fiduciary law from the perspective of transnational legal theory forms an understanding of the patterns of emergence of legal orders and processes of legal regulation that fall outside the legal system of a particular state.

On the other hand, in the legislation of France, the institution of trust ownership is unformed and lacks clear legal regulation. However, French legislation contains a legal category "*fiducie*", which is a kind of analogue of the trustee. Article 2011 of the Civil Code of France (2024) states that "*fiducie*" is an agreement under which one party or several parties, called the founders, transfer property, or property rights to one or more trustees who hold the property provided separately from their personal property to ensure the interests of the beneficiaries. It can be concluded that the legislation governing trusts in Europe is not homogeneous and is determined by the specifics of the historical development of each individual country.

As of 2024, the Civil Code of Ukraine (2003) also makes provision for the possibility of using such a legal instrument in property relations. However, the concept of trust ownership is relatively new to Ukrainian legal doctrine. Thus, the Law of Ukraine No. 980-IV (2003) amended the Civil Code of Ukraine (2003), which legalised the institution of trust ownership. In this regard, a series of fundamental issues arise that have not been legislatively consolidated, including issues related to the environmental responsibility of the trustee. Such a study will allow formulating the concept of liability for environmental offences of a trustee based on determining its place and role in the implementation of the triad of ownership of the trust property. In modern Ukrainian law, the right of trust ownership has a dualistic nature and can be considered as a right in rem, which is derived from the right of ownership, and as a way of ensuring the performance of obligations, which is an innovation of the Civil Code of Ukraine (2003).

According to L. Foksha and O. Zuieva (2020), the right of trust security property is a real way of securing the fulfilment of an obligation, since the trustee's property interest is secured at the expense of the trust property to which they acquire title. In other words, in this case, this refers to the concept of fiduciary duty, which is inherent in Roman law, and relations can be defined within the relevant type of trust as fiduciary. L. Broadway *et al*. (2021) recognises the fiduciary duties of trustees as traditionally focused on maximising financial returns for beneficiaries. However, trustees as individuals may be aware of and concerned about environmental issues such as climate change. The main position lies in exploring ways in which trustees can balance these ethical considerations with their duty to the beneficiaries without running into legal risks. Thus, in the context of environmental protection, property relations and institutions derived from them are on the verge of ensuring environmental safety and maintaining economic efficiency of economic activity. That is why a well-established and clear mechanism of prosecution for environmental offences is the lever that will ensure the prevention of such offences in general.

Pursuant to Part 2 of Article 597-1 of the Civil Code of Ukraine (2003), the right of trust ownership as a way of securing the performance of obligations (trust ownership) is a type of property ownership under which a creditor who has received property in trust (trustee) is not entitled to

independently alienate such property, except for foreclosure on it, as well as to redeem it for public needs pursuant to the procedure established by law. Pursuant to Article 597-4 of the Civil Code of Ukraine (2003), the trustee (the user) is entitled to use the trust property. The user may also be another person specified in the trust agreement.

The trustee is directly the debtor under the principal obligation, who transfers the relevant object into trust ownership to ensure the performance of the primary obligation. In other words, in the construction of trust ownership as a way of ensuring the performance of an obligation, the trustee does not act as a user of a particular object. In this regard, this type of trust ownership is non-sedentary. However, in case of a default on the primary principal obligation, the trustee is entitled to foreclose on the trust property, which results in the trustee becoming the full owner of the relevant facility and, therefore, the subject of environmental liability. The above fact is important for identifying the specific features of environmental liability, considering the subjective composition of the security trust relationship. Thus, considering that in the concept of a security trust as a fiduciary institution, the trustee is not authorised to exercise such an element of the property triad as use, the requirements for compliance with environmental legislation are imposed on the trustee, who is the debtor under the primary obligation. Accordingly, the trustee will also be subject to environmental liability for environmental offences committed in the operation of the trust property.

However, in this context, it is also worth paying attention to the regulatory provision prescribed in Part 4 of Article 597-4 of the Civil Code of Ukraine (2003), which states that the trustee is entitled to check the presence, condition, storage, and use of the trust property at any time during the term of the trust and subject to prior notice to the user. Moreover, the legislator clearly stipulates that the agreement may specify issues related to the frequency of such inspections, their duration, the obligation to notify the user of the trustee's decision to conduct an inspection, as well as other conditions for inspecting the trust property.

Thus, in analysing the said regulatory provision, the question arises as to what actions the trustee should take if the latter discovers signs of violation of environmental legislation in the actions or inaction of the user of the trust property. It is clear that if the trustee fails to act upon the results of the detection of an environmental offence, such behaviour threatens the environmental safety and should be defined as an environmental offence. Thus, according to Item 3 of Article 83-1 of the Code of Administrative Offences of Ukraine (1984), it is a violation of plant protection legislation to fail to notify (concealment) or provision of false information about the threat to crops, tree plantations, other vegetation of open and closed ground, as well as plant products from pests.

Considering the right granted to the trustee to inspect the operating conditions of the trust property, the trustee may be a subject of the relevant administrative offence and, accordingly, be held liable for environmental damage. Thus, considering that the trustee in the context of security trust ownership does not directly use and operate the trust property, its environmental responsibility has a specific manifestation within the scope of the powers granted to it to control the user's activities in relation to the trust property.

Furthermore, in respect of a particular type of trust property, such as a land plot, due to its social significance, there is a need to define the said right of the trustee as an obligation. Thus, during the operation of a land plot, actions may be taken that contain signs of environmental offences,

which creates an unfavourable environment for environmental safety. In this regard, such an obligation will be an effective lever for shaping environmental legal awareness, preventing the commission of environmental offences, and forming a direct basis for holding the trustee environmentally liable for failure to perform such an obligation.

Notably, the security trust differs in its legal nature from the trust arising under a property management agreement and is a so-called trust. In the first case, this refers to fiduciary relations and ensuring the performance of the primary obligation. However, in case of analysing the concept of trust ownership as a separate legal title, the situation regarding the subject of environmental liability is considerably different due to the following. Thus, pursuant to Part 1 of Article 1029 of the Civil Code of Ukraine (2003), under a property management agreement, one party (the trustor) transfers property to the other party (the manager) for management for a certain period of time, while the other party undertakes to manage the property on its own behalf for a fee in the interests of the trustor or a person specified by the trustor (the beneficiary).

This agreement is the direct basis for the emergence of trust ownership as a separate type of property right. And with this concept of trust ownership, it is the manager who is the entity that will directly bear environmental liability in case of a violation of the relevant legislation. Thus, according to Part 5 of Article 1033 of the Civil Code of Ukraine (2003), a manager, if it is stipulated in the property management agreement, is a trustee of the property, which they own, use, and dispose of following the law and the property management agreement.

In other words, in this case, the trust property is directly operated by the property manager, who, by the legal nature of their status, is equated to the trustee, and therefore may act as a subject of environmental liability. In this context, A. Holovko (2021) fairly noted in her thesis research that the fundamental principle of environmental law "polluter and user pay the full price" is aimed at introducing legal mechanisms and incentives for such persons to reduce the level of adverse impact on the environment and guarantee the user's full legal responsibility for the state of the natural resources provided for use. In other words, in this case, this principle is directly related to the formation of the concept of the trustee's liability, who in the model of trust ownership as a separate legal title acts as a direct user and, therefore, should be liable for damage to the environment.

However, it should be emphasised that the manager manages the property on its own behalf and manages this property in the interests of the manager or the person (beneficiary) specified by the manager. In other words, in a concrete agreement, the trustor authorises the manager to exercise a range of powers in relation to the trust property. Therefore, if the property management agreement prescribes a certain type of operation of the relevant facility that contradicts the principles of environmental safety and violates the requirements of environmental legislation, a case can be made regarding complicity in the commission of such an offence. This leads to the need to hold both the trustee and the manager liable for environmental damage.

Discussion

According to O. Yakymets (2022), the basis for bringing a person to legal liability is the commission of an offence, and since this refers to liability in the field of environmental legal relations, the basis will be the commission of an environmental offence, which should be understood as an unlawful act (action or inaction) that violates the

established environmental legal order and for which the law prescribes legal liability. In such a case, the concept of environmental responsibility of the trustee will differ in relation to the trust ownership model. In this regard, in each particular case of prosecution for environmental offences, there will be a need for a thorough investigation of the nature and legal nature of the legal relationship between the owner and the trustee. Thus, in the system of fiduciary relations arising from security trust ownership, the trustee is not a direct user, but is entitled to control the operation of the trust property by the trust founder or a third party, which suggests that the trustee may be held liable for environmental offences, but only in respect of certain offences. In turn, subject to the existence of a property management agreement, the content and functional focus of the trustee's activities is to directly operate the relevant facility on behalf of the trustor and factually implement all elements of the property triad, which introduces adjustments to the specifics of environmental liability.

In practice, a common object of trust ownership is a land plot. Pursuant to Part 1 of Article 89-1 of the Land Code of Ukraine (2001), if, pursuant to the law, the ownership of a person who has transferred their property into trust is terminated, the trustee has the rights and performs the duties of the owner of the land plot, subject to the specific features prescribed in the Land Code of Ukraine (2001) and the Civil Code of Ukraine (2003). However, within the limits prescribed in the property management agreement, the trustee may exercise the powers of the owner of the actual land plot prescribed in such agreement even prior to the termination of such right. In this context, the scientific position of R. Marusenko (2020) is quite sound, who notes that it is inappropriate to mediate different legal constructions and achieve different goals with their help using the same term – trust title. Mixing the legal title of ownership, use, and disposal of a land plot, and at the same time the type of security for the performance of an obligation, as well as the type of property management agreement, in a single legal structure introduces confusion into the system of legal institutions of both civil and land law. Clearly, to achieve several goals, it would be more suitable for the legislator to employ separate terms rather than to rely on judicial practice to resolve the problem of interpreting the same term in different meanings.

It is worth agreeing with the above opinion, because the analysis of the Land Code of Ukraine (2001) makes it difficult to identify which model of trust ownership the legislator implies, which leads to a lack of systematic understanding of the status of the trustee and, as a result, to problems in practice in bringing perpetrators to environmental liability for environmental offences committed during the operation of the land plot. Thus, the regulatory provisions on trust ownership of land plots are formulated in Chapter 14 of the Land Code of Ukraine (2001), which handles the legal regulation of land ownership. Considering that under civil law, trust property is positioned as a separate legal title, it can be concluded that the legislator limited itself to this model of trust property when formulating the regulatory provisions of the Land Code of Ukraine (2001).

The absence of a systematic cross-sectoral approach in the context of legal regulation of trust property in its dualistic manifestation leads to inconsistencies upon law enforcement in this area. Considering that land is an extremely common object of trust ownership, the problematic legislative technique of formulating regulatory provisions in this context leads to an imperfect mechanism for governing such relations overall,

including the mechanism for holding the trustee liable for environmental offences.

Thus, considering that the provisions on trust ownership are located in the chapter on property rights, this logic of building the regulatory provisions leads to difficulties in practice in understanding the functional aspect of this institution. In this regard, it is necessary to create a new chapter of the Land Code of Ukraine dedicated to the specifics of legal regulation of the institution of trust ownership of a land plot as a separate legal title and as a way to secure the performance of an obligation. Such a centralised approach to the placement of regulatory provisions within the code will ensure the effectiveness of regulation of the relevant institution and the development of a clear legislative mechanism for holding trustees liable for violations of the requirements for the operation of the land plot, as well as provide convenience in the law enforcement process.

S. Roy (2019) investigated the issue of streamlining the provisions on fiduciary property as a fiduciary institution and fiduciary property as a trust, and the researcher reasonably noted that a broader investigation of judicial practice that would offer a comprehensive definition of the application, content, and scope of fiduciary duties has not yet been conducted. Nevertheless, it is still unclear whether property rights will have to be revised to adapt them to the concept of trust ownership. Such a revision could mean that owners would act as trustees to protect the resources on their land, while natural resources would be considered common to all. The answer to this question will certainly be a necessary component of any solution to the greatest challenges of the 21st century, the challenges of the Anthropocene.

This position relates to the global concept of trust ownership of natural resources, which has gained great popularity in the international arena and is one of the crucial tools for shaping environmental awareness and an effective mechanism for bringing to environmental responsibility. According to K. Bosselmann (2020), the concept of trust ownership of the planet Earth emerged in the environmental law movement, according to which states must accept the responsibilities of trustees for the Earth's ecological systems. This will provide stronger environmental protection than the current trade-off points that balance environmental care with economic growth and efficiency.

According to D. Grinlinton (2023), expanding the scope of the Public Trust Doctrine is an essential step in protecting natural resources. Under this doctrine, trustees are obliged to ensure sustainable management of and access to natural resources. This fiduciary responsibility ensures environmental protection and sustainable management of natural resources. Thus, based on the above, the Public Trust Doctrine is an important legal principle according to which natural resources management should be carried out in the public interest. In this case, the authorised state bodies act as trustees and must ensure environmental protection and sustainable use of natural resources. According to R. Costanza *et al*. (2021), the modern context, effective management of the natural fund requires a transition from conventional legal titles of private property to the regime of trusts in the context of the Public Trust Doctrine.

The concept of environmental liability of a trustee as a subject of contractual relations is individual and relates to concrete legal relations. However, it should not be forgotten that in the context of ensuring environmental safety, the fundamental issue is the existence of environmental legal awareness of each individual, especially when it comes to the exploitation of environmental objects. That is why such a fundamental concept should underlie the development of an

environmental liability mechanism for each individual case. In this regard, J.C. Dernbach (2020) fairly notes that the legislation governing trusts has a solid potential to enhance the level of protection and defence of public trusts by imposing various fiduciary duties on trustees. Considering the above, the concept of trust ownership of the Earth defines the state as the trustee, not an individual, but the state as a whole, which indicates its global nature.

Conclusions

The study of the composition of environmental offences and the specifics of bringing various actors to environmental liability is a crucial guarantee of a safe environment for humans and citizens. Environmental safety is a priority area of state activity that can be effectively implemented through the development of a high-quality enforcement mechanism in this area. However, based on the above, not all aspects of environmental responsibility are widely reflected in the studies of scholars, and as a result, are not regulated at the legislative level. One of the gaps in environmental legislation is the absence of regulatory provisions on bringing the trustee to environmental liability, both in the concept of security trust and in the context of implementing trust ownership by entering into a property management agreement.

As of 2024, the trusteeship institution is gaining in popularity as Ukraine actively adopts positive European practices. In the absence of a mechanism to enforce trustees in the context of compliance with environmental requirements, there is a threat to environmental safety in the implementation of trust ownership relations. The scientific originality of this study was that it was the first to comprehensively investigate the liability for environmental offences of such an offender as a trustee in the context of Ukrainian legislation.

This study formed scientific and theoretical conclusions. It was found that the specifics of a trustee's environmental liability depend on whether the trustee is a subject of security trust as a fiduciary institution or acts as a manager under a property management agreement, which is called a trust in the countries of Anglo-Saxon law. The study determined that a trustee, as a subject of security trust ownership, may be liable for environmental damage in respect of a limited range of offences relating to its powers to inspect the operation of the trust property by the user. It was found that within the limits prescribed in the property management agreement, the trustee is directly liable for environmental offences, since it exercises almost in full the entire triad of ownership, with the exception of certain restrictions on disposal which do not limit its liability in the context of operation of the trust property. The study formulated the concept of complicity of a property manager as a trustee and a manager under a property management agreement. It was found that the concept of trust ownership in the context of planet Earth should be a fundamental principle for the development of the mechanism of environmental property of a trustee as a subject of security trust ownership or as a party to a property management agreement.

Practical provisions were developed based on scientific and theoretical conclusions. The study established the need to harmonise the regulatory provisions of the Land Code of Ukraine and set out the regulatory provisions governing the specifics of land trust and the trustee's liability for violation of the procedure for its operation in a separate chapter "Land Trust". In case of application of the institution of trust ownership of a land plot as a way of performing an obligation, this study proposed to make provision for the trustee's obligation to monitor the operation of the land plot

by the user and to take relevant actions aimed at stopping the identified environmental offences.

Therefore, based on the above, a general conclusion can be drawn that in the context of rapid development of science and technology, environmental issues are becoming increasingly relevant and acute every day. This problem transcends the borders of a single country and becomes a global issue that needs to be addressed urgently. In this regard, each state should develop effective legal regulation of relations related to environmental safety and the formation of environmental legal awareness in society. The level of regulation of the environmental liability mechanism overall depends on the state of compliance with environmental legislation, which is the primary link in influencing global environmental processes.

The prospects for further development of this subject are to make provision for concrete corpus delicti of environmental offences in relation to such a special entity as a trustee. In addition, an important vector for expanding the research is the analysis of international practices in regulating this issue to accommodate the relevant regulatory provisions upon developing Ukrainian legislation. It is also important to consider globalisation processes and trends in the development of environmental protection concepts.

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Conflict of Interest

The author of this study declares no conflict of interest.

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Відповідальність довірчого власника за екологічні правопорушення: проблемні питання та особливості правової природи

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Анотація

Актуальність вказаної тематики полягає у тому, що ефективний механізм примусу в контексті дотримання вимог екологічного законодавства є важелем запобігання вчинення екологічних правопорушень. Метою наукової роботи був комплексний загальнотеоретичний аналіз і дослідження правової природи та особливостей відповідальності за екологічні правопорушення довірчого власника, а також формування науково-теоретичних та практичних положень щодо врегулювання відповідних правовідносин. В ході проведення дослідження автором булазастосована система методів дослідження, а саме: порівняльно-правовий метод, метод критичного аналізу, метод тлумачення норм права, метод абстрагування, логіко-юридичний метод, метод правового моделювання, догматичний метод. Було проведено аналіз специфіки екологічної відповідальності довірчого власника в контексті забезпечувальної довірчої власності як фідуціарного інституту, а також у випадку укладення договору управління майном, відомого як траст у країнах англо-саксонської правової системи. Запропоновано бачення концепції екологічної відповідальності довірчого власника крізь призму двох моделей вказаного інституту, передбачених чинним законодавством. Розглянуто категорію співучасті в контексті наявності вини у вчиненні екологічного правопорушення як довірчого власника, так і установника управління майном. У статті присвячено увагу критичному аналізу законодавчої техніки викладу нормативних положень Земельного кодексу України щодо регулювання інституту довірчої власності на земельну ділянку. В результаті такого дослідження було сформульовано пропозиції щодо удосконалення чинного законодавства в контексті відповідальності довірчого власника за екологічні правопорушення, а також формування окремої глави Земельного кодексу України, присвяченої правовому регулюванню інституту довірчої власності на земельну ділянку. Акцентовано увагу на теорії довірчої власності в планетарному масштабі та на основі аналізу вихідних положень визначено її основоположне доктринальне значення для побудови механізму екологічної відповідальності довірчих власників в кожній окремій державі. Практична цінність проведеного дослідження полягає у тому, що отримані результати можуть бути застосовані в ході удосконалення нормативно-правового регулювання вказаної сфери правовідносин

Ключові слова: екологічна відповідальність; земельна ділянка; інститут довірчої власності; довкілля; екологічна безпека; доктрина громадської довіри