

ABSTRACT

Ruslan Kubrak, Vasyl Seheda. Use of coercive measures by correctional institutions personnel: necessary component of professional activity or obsolete rudiment. The analysis of problematic issues of firearms, special means, measures of physical influence, and service dog application by the penitentiary institutions personnel is carried out.

It has been determined that among the coercive measures most often used by the staff against convicts are handcuffs and physical force. Most of these measures were used in cases of physical resistance termination to the staff of institutions and obstruction of the procedural security measures implementation, as well as attempts of convicts to self-harm. The largest number of judgments of the European Court of Human Rights has ruled on violations of the Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms in the use of these coercive measures which showed the signs of torture and inhuman treatment. The issue of non-compliance of the preventive purpose of execution with the type of firearm used in the performance of tasks for the protection of institutions, movement of convicts and prisoners as a means of preventing them and other people from committing criminal offenses is considered. The expediency of restricting the use of military long-barreled weapons by the personnel, to exclude the possibility of using firearms to stop the convicts and prisoners escape, and legally provide for the possibility of its use for destruction solely for self-defense and protection of others from apparent attack during life- and health-threatening situation is justified. The ways to solve the problems of the use of firearms by the staff of penitentiary institutions covered by the publication are suggested.

The necessity for the existence of the right for management and rank-and-file personnel to apply coercive measures against offenders is substantiated, which is due to a number of factors, in particular: criminogenic composition of people detained in institutions, the number of crimes committed in their territory, attacks on staff, malicious disobedience to lawful personnel requirements, threats and escapes from institutions, the presence of a significant number of prohibited items in restricted areas, including piercing-cutting ones.

Keywords: penitentiary institution, convicts, imprisonment, criminal offense, armed attack, firearms, special means, coercive measures.

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**HISTORICAL AND LEGAL OUTLINE OF THE PROBLEM
OF ENVIRONMENTAL PROTECTION**

Людмила Кузнецова, Анастасія Литвиненко. Історико-правовий наріс проблеми охорони навколошнього природного середовища. Наразі суспільство з кожним роком виявляє все більшу зацікавленість в охороні довкілля, забезпеченії сталого розвитку країн і регіонів, захисті інтересів майбутніх поколінь. Проблема збереження навколошнього природного середовища для нинішнього і прийдешніх поколінь постає як спільний обов'язок громади. Взаємовідносини суспільства і природи полягають у тому, що фактори економічного зростання – трудові ресурси, засоби виробництва і природні ресурси – у комплексі використовуються

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суспільством для розвитку виробництва. Питання взаємовідносин суспільства і природи та використання природних ресурсів стають дедалі актуальнішими.

Авторами розкрито проблему взаємодії людини і природи на всіх етапах розвитку людської цивілізації. Доведено, що раціонального використання людиною природних ресурсів, дотримання еко-балансу, формування свідомого ставлення суспільства до природних ресурсів і природних багатств, тим самим виховування екологічної культури на різних етапах розвитку громадянського суспільства. Авторами висунута теза, про те, що виділення і закріплення права на безпечне навколошнє середовище як одного з глобальних, фундаментальних прав людини базується на об'єктивних передумовах, пов'язаних з необхідністю спеціально піклуватися про збереження, відновлення і поліпшення природних умов Землі, стану біосфери для здоров'я сучасного і майбутнього покоління людей.

Виокремлено роль громадських організацій з проблеми охорони природного навколошнього середовища, окреслено питання громадського контролю за станом навколошнього природного середовища. Досліджено етапи формування молодіжних та студентських громадських організацій, що пропагували ідеї захисту навколошнього природного середовища, збереження флори та фауни. За сучасних умов економічного розвитку значно ускладнились взаємовідносини суспільства з природою, адже людина має змогу впливати на хід природних процесів та опановувати природні ресурси.

Ключові слова: екологія, охорона природи, природоохоронне законодавство, громадські організації з охорони природи.

Relevance of the study. Human interaction with nature can be both positive and negative. In particular, man in the process of economic development has mastered new and new natural landscapes, adapting them to their needs, thereby increasing the natural productive forces for society.

Recent publications review. The following representatives of legal science were engaged in research of historical and legal questions of environmental protection of their time: V. Andreytsev, P. Bilenchuk, A. Hetman, V. Kostytsky, K. Ryabets, Yu. Shemshuchenko.

The research paper's objective is to study in the historical and legal perspective of the issues of normative protection of the natural environment and public involvement in this problem.

Discussion. Today's conditions, nature protection is becoming one of the most acute urgent social problems and is one of the most important functions of the state, which it delegates to its bodies. The ratio of the environmental function of the state and public authorities – is the ratio of general and special in public activities, where the environmental function of the state – is common in its activities to protect the environment, inherent in certain authorities, and the functions of public authorities – there is the special thing that distinguishes them from each other.

The relationship between human society and nature, which manifested first in the use of natural resources, then in the use and protection, and later in the use, protection and appropriate transformation, depends on the socio – economic structure of society and the development of technology.

The historical – evolutionary process of rethinking man's attitude to nature is currently underway. After all, economic achievements are possible only if the natural potential of the Earth preserved the rational use of all natural resources and constant care for their reproduction, quantitative enrichment and improvement.

Thus, the economic prosperity of the peoples who inhabited the Bronze Age basin of the Euphrates and Tigris in Mesopotamia, the Nile in Egypt, the Syr Darya in Central Asia, the Ganges in India, largely achieved through the rational use and protection of water and land resources. In some countries, in particular in India, before our era there was a certain regulation of environmental nature [8, p. 18].

History, the current state and especially the future development of the relationship between man and nature are currently attracting the most attention of people around the world. The general interest in these complex problems is quite understandable, because the state of our planet is deeply disturbing and leaves its inhabitants indifferent.

We all know that every living organism in the process of its vital activity constantly interacts with the natural environment. Not an exception is a person who takes in nature various products and raw materials, processes them into substances necessary for it. In this way, man in one way or another interferes with nature and affects it. Under the conditions of globalization and integration processes, human influence on nature has changed.

At the dawn of human society, the principle of attitude to nature was simple and

primitive – to take everything useful for themselves and for society, without thinking about the consequences. However, primitive tools made it possible to meet the needs of each member of the community only at a minimal level, the metabolism between man and nature was then close to equilibrium. Yet hunting at that time led to a reduction in the number of such large species of animals that reproduce slowly as mammoths and woolly rhinos.

On the border of the Paleolithic and Neolithic, in the era of the primitive communal system, there was a transition to the extraction of smaller but massive hunting objects, which caused by a decrease in the number of large objects and associated with improvements in hunting and fishing tackle.

In the epoch of the primitive communal system, man began to pay attention to the state of natural resources that he used, tried to find out to some extent the causes of natural phenomena, sought connections between them. Even then, some measures taken to protect vital natural resources at the time. Periodic bans on hunting various species of animals practiced, useful vegetation protected, and unjustified predatory destructive attitude to nature was punishable by death in most primitive peoples [12, p. 19].

In some places, environmental measures had a religious color. Many of the holy places of that time were areas of especially valuable natural lands, a kind of reserves. At this time, man gets the opportunity better meet their needs through livestock and primitive agriculture. The slash – and – burn system then and later had a significant impact on forest vegetation, changing it in the desired direction: in the «turnover» of this system was 10-15 times more land than it used for crops.

In general, in the era of communal and tribal system, a system of use of natural resources developed, designed to ensure the restoration of consumed resources. There was a certain balance in the system of using the riches of nature.

The long process of formation of labor and social organization of primitive people, the development of their mental and collective activities created a basis for understanding not only the fact of their existence, but also for understanding the dependence of this existence on conditions within their organization and external natural conditions.

In the era of slave – owning society, there was some degradation in the principles of use of natural resources, as labor fell to the slaves, who were not interested in its consequences and in maintaining the conditions that would ensure its productivity. Slave owners did not care so much about the organization of the economy, as engaged in the seizure of new slaves and wealth from neighbors [13, p. 190].

Under feudalism, a clear division of society into subordinate producers and dominant consumers precluded the rational use of the wealth of the land. The expansion of agriculture took place at this time due to the destruction of forests; in addition, large areas of forest cut down for the needs of the sailing fleet, which was necessary to capture overseas territories and ensure trade relations between Europe and new lands [12, p. 21].

The large – scale change of landscapes – forest and forestless, steppes and meadows to fields – has dramatically affected the living conditions of the animal world. The habitat of animals and birds has shrunk, and some species have disappeared altogether. In the era of feudalism, many laws issued aimed at preserving game animals. They had a certain environmental significance, but their main purpose was to consolidate the right of feudal lords to indivisibly use the hunting riches of forests and deprive these rights of the rest of the population. Yet, under this protection were taken and disappearing, already lost hunting value, animals – roe, roebuck, tarpant. At the same time, there was such a phenomenon as poaching [4, p. 15].

Under capitalism, man's action on nature reached its apogee. This interaction, on the one hand, contributed to the movement of society forward, on the other – led to the undermining of natural and historical conditions of this society. The capitalist mode of production, which based on the principle of profit maximization, has entered into sharp contradiction with the requirement of rational use of natural resources and preservation of a healthy human living environment.

In capitalist society, there is an idea of the need to protect nature as the basis of life and productive human activity. The high level of technological development, characteristic of this society, makes it possible to fulfill this need. However, there are no socio – economic preconditions – public ownership of the means of production and all natural resources.

Thus, if in the early stages of development man was an integral part of nature, so to speak, a «passive element», then over time, learning the laws of nature, it has largely ceased to depend on the conditions created by nature.

Rational use and protection of resources and the biosphere is an integral part of nature protection. This is especially true of hunting, fishing and forestry, as well as those industries that use raw materials of natural origin, including mineral and organic resources.

Every year, along with the aggravation of the demographic situation around the world, the issue of environmental protection is becoming more acute. As recently, there is a hyper – depleting use of natural resources.

Observing the relationship between human society and nature, first there is a trend in the basic use of natural resources, then in the use and protection, and later in the use, protection and appropriate transformation caused by the development of socio – economic infrastructure of society.

The first restrictions on fishing for natural resources introduced by the Russian Pravda Code. In the thirteenth century. In the Vladimir – Volyn principality, hunting of all animals forbidden in certain territories. The decree of Tsar Alexei Mikhailovich regulated hunting and the preservation of hunting resources. During the reign of Peter I, a number of decrees issued. He provided for the protection and planting of forests, ordered to strengthen riverbanks, protect rivers from pollution, regulated fishing and fishing in the rivers of the pearl stand. Special decrees also issued on the protection of soil from erosion and on the protection of terrestrial fauna [7, p. 91].

To protect and supervise the operation of protected forests, a staff of forest wardens created on the periphery, and in the capital – an office headed by the Chief of Staff, who reports to the Admiralty Board.

The very first law on nature protection issued in ancient Babylon by King Hammurabi, which was about the protection of forests (forests divided into separate areas, which managed by special foresters). In India around 240 BC. Emperor Ashoka issued an edict forbidding the killing of animals under six months of age, as well as pregnant females. In addition, a list of animals (animals, birds and fish) protected was added to the edict.

The laws of the Polish prince Boleslaw and the Lithuanian king Jagiello on the protection of forests, tur, bison and tarpan in their possessions known since later times. In particular, Prince Sigismund II of Lithuania published in the «Charter for Dragging» (1555) the first known ban on fishing during the spawning season. In France in the XIV century. A special department «Waters and Forests» created, which was to take care of the preservation of forests. In the middle of the thirteenth century, since the reign of Charlemagne, a large number of royal decrees and parliamentary decrees adopted regarding the preservation of forests. Under William the Conqueror, the death penalty introduced for killing a deer, a wild boar and even a hare [5, p. 27].

Measures were taken to protect the area from loose sands, so in the XVI century. Danish King Christian III issued a law banning the destruction of plants on dunes. Similar laws later issued in Prussia, the Netherlands and France. In the XIX century. Moreover, the first half of the twentieth century. A large number of laws on nature protection and its individual components issued, as well as nature protection institutions and associations established in many foreign countries.

At the turn of the XIX-XX centuries on the territory of the Ukrainian lands began the formation of a public movement for nature protection by forming a network of scientific societies and nature groups interested in nature protection and conservation.

Thus, in 1809 the Ukrainian historian, agronomist, ethnographer V. Lomykovsky for the first time in the fields of his own farm in the village of Trudolyubi, in the Myrhorod region, created a system of field protective forest belts, which later willingly used not only in Ukraine but also in other countries of the former USSR. Moreover, in 1891 on the initiative of Professor VV Dokuchaev established the first in Ukraine society for nature protection, which operated at the Natural History Museum of Poltava and became a center of environmental protection. At the initiative of Academician VI Vernadsky in 1918 in Poltava region established a society of nature lovers.

In 1869, an association of natural scientists founded at Kharkiv University, which included from 40 to 212 people. Among the members of the society were well – known biologists, zoologists, physiologists, geologists and historians [2, p. 25].

The initiator of the creation in 1869 of the Kiev Society of Naturalists was the zoologist KF Kessler and biologist – evolutionist OO Kovalevsky. The members of this society compiled and published the first geological maps of Kyiv and Kyiv province, and conducted research on various components of nature in the Black and Azov Seas.

Soon, in 1871, the Novorossiysk (Odessa) Society of Naturalists established which studied the Black Sea and biological and physical – geographical studies of the Kuyalnitsky and Khadzhibeysky estuaries.

The beginning of the twentieth century was a kind of impetus for the creation of public organizations for nature protection, so, in 1910 in the village of Khortytsya, Ekaterinoslav province (now Zaporozhye region), and a local teacher PF Bazuk created the Society for the Protection of Nature, which had more than 200 members.

In 1911, on the initiative of Professor V. Taliev organized the Kharkiv Society of Nature Lovers. The members of the society in 1913-1914 organized the first exhibition in the Russian Empire, which included modern Ukraine, an exhibition on nature protection, which exhibited materials on human impact on nature and environmental measures in Ukraine and Russia. In 1915, this society organized courses for guides «in nature», which trained more than 400 students, mostly teachers [3, p. 28].

During 1912-1918, similar societies of naturalists and nature lovers founded in Zhytomyr, Kamyanets-Podilsky, Lutsk, Chernihiv, and Simferopol.

At that time, the Russian professor G. Kozhevnikov, who in 1924 headed the Society for Nature Protection. This society called for the need to organize reserves as a standard of nature.

In 1925, the State Committee for Nature Protection was established, which in 1930 was transformed into the Interdepartmental Committee for the Promotion and Protection of Natural Resources. In 1939, the Main Directorate for Reserves began to function.

Nature protection is one of the most important state tasks and a matter for the whole nation. In view of this, in all the former Soviet republics there were nature protection societies, which endowed with great rights and powers. The highest body of the Society for the Protection of Nature was the congress, which convened once every four years. In Ukraine, the Society for Nature Protection established in 1946, with branches in oblasts, rayons, towns and villages, at industrial enterprises, on collective farms and in educational institutions.

Among the direct practical cases of the society should be mentioned the organization of public inspections for nature protection, which worked in close connection with the state inspections. According to the broad program, competitions were held annually among the organizations of the societies under the slogans «Small rivers are full of water and purity.»

The main tasks of the society were to promote the ideas of nature protection, the achievements of science in nature management, education of the general population to care for natural resources and care for their preservation and multiplication, practical work, public control over the implementation of the ruling party and government on nature protection and rational use of its resources.

In the early 60's of XX century. The term «environmental legislation» first introduced into scientific circulation. For many years, this concept has become dominant in scientific discussions about the existence of a new comprehensive topical and important branch of law and legislation with the appropriate name.

Thus, on June 30, 1960, a law passed regarding nature protection. This was the first law in the history of the USSR, which regulated the whole complex of public relations in the field of nature protection and rational use of natural resources. It consisted of 11 sections. Sections 1 and 2 defined: the concept of nature protection, objects of such protection, state bodies and public organizations responsible for nature protection in the Soviet republic. Nature protection understood as a set of state and public measures aimed at conservation, rational use, expanded reproduction and development of natural resources. Land, subsoil, water resources, forests, field protection and forest protection belts, green plantations, typical landscapes, resort areas, rare outstanding natural objects, nature reserves and reserves, fauna, atmospheric air and other natural resources were subject to state protection. In economic circulation, and those, which are not operated. The law enshrined the right of exclusive state ownership of natural resources.

In 1964, the youth organization «Green Patrol» established which involved pioneers and schoolchildren in environmental activities, primarily in landscaping. Such organizations worked under the leadership of Komsomol committees, councils of pioneer organizations and local individual societies of nature protection [5, p. 94]. Their message was to instill in schoolchildren and young people a sense of love for native nature, responsibility for its fate, care for its wealth, involvement of the latter in landscaping activities (planting shrubs, trees, flowers and other plants), to preserve monuments nature. The «Green Patrol» worked as a chief, deputy and commander of the patrol.

By the Decree of the Presidium of the Verkhovna Rada of the Ukrainian SSR of March 25, 1967 [5, p. 27], the State Committee for Nature Protection was established in the Ukrainian SSR. The purpose of this committee was to comply with the Law of the USSR of June 30, 1960. Together with the existing inspections of ministries and departments, the State Committee for Nature Protection of the USSR exercised control and supervision over: protection of atmospheric air, protection and rational use of lands, waters, forests and other plant resources, proper management of hunting and fishing, etc.

In the early 1970s, at the initiative of students from the University of Tartu and Moscow University, student teams for nature protection established in all union republics. Members of these wives provided assistance in combating violations of nature protection legislation; especially significant assistance to state inspections to combat poachers. They to study and detect soil erosion have done much work.

At this time, detachments of «green» and «blue patrols» began to formed in schools, which monitored the order in the forests, green areas of cities, and rescued young fish in reservoirs. Students took part in a mass All – Union movement – the relay race «For the attitude to nature.» Every spring there were festivals of birds, forest and garden days, and other events aimed at involving young people in environmental work and educating them in the spirit of love for nature. On their account there are thousands of hectares of planted parks; cleared springs, made feeders for animals and birds.

Issues of nature protection reflected in the Constitution of the USSR of October 7, 1977 and the Constitution of the USSR of April 20, 1978 [118]. Art. 11 of the Constitution of the USSR and Art. 11 of the Constitution of the USSR regulated the exclusive ownership of land, its subsoil, water and forests. An important basis of environmental legislation of the USSR was the content of Art. 18 of the Constitution of the USSR: «in the interests of present and future generations in the USSR, the necessary measures are taken to protect and scientifically sound, rational use of land and its subsoil, water resources, flora and fauna, to preserve clean air and water, to ensure the reproduction of natural wealth and improving the environment that surrounds man. Art guaranteed the right of citizens of the USSR to health care, which was realized through measures to improve the environment. 42 of the Constitution of the USSR. The Basic Law of the USSR imposed on all Soviet citizens the duty to protect nature, to protect its riches (Article 67 of the Constitution of the USSR) [4, p. 78].

In the Chernivtsi region in 1977, workers of the collective farm. Dzerzhinsky Zastavnovsky district took the initiative to launch a socialist competition under the motto «Settlement, enterprise, collective farm, school, yard – exemplary in nature management and environmental protection» [3, p. 44].

At the Republican Council of Ministers of the USSR, a section on the protection and rational use of land, water, resources, protection of fauna and flora, subsoil, air basin, and youth being created. They included leading specialists in the national economy, scientists.

After the VII Congress of the Society in 1981, significant work done to strengthen the leadership of regional, city and district organizations with experienced staff. The deputy chairpersons of the executive committees of the Soviets of People's Deputies elected their chairpersons on a voluntary basis.

In 1984, the Lviv region approved measures to increase soil fertility, combat erosion, accelerate the introduction of low – waste production technologies, and create water protection zones and protective coastal strips along small rivers and reservoirs.

In September, 1988, the Decree of the Presidium of the Verkhovna Rada of the Ukrainian SSR established the State Committee of the Ukrainian SSR for Nature Protection. The organization of new state committees on the Union – Republican principle was to provide a unified approach to the construction of public administration bodies for nature protection at the national level, which was not the case before. The State Committee of the Ukrainian SSR for Nature Protection formed based on the reorganized State Committee of the Ukrainian SSR for Nature Protection and relevant subdivisions of the State Agrarian Industry of the Ukrainian SSR, the Ministry of Water Management of the Ukrainian SSR, the Ukrainian Republican Department of Hydrometeorology.

An important form of public work on environmental advocacy was the creation of Houses of Nature, which served as methodological centers, where held: lectures, talks, performances, thematic evenings, meetings with students. They trained for leaders of agricultural and industrial enterprises, leaders of student construction teams.

The general nature of environmental activities has led to the concern of citizens for

nature protection, their interest in the optimal solution of environmental issues. Labor collectives in accordance with the Law of the USSR «On labor collectives and increasing their role in the management of enterprises, institutions, organizations» [9] carried out measures for the rational use of land, subsoil, water, forests and other natural resources.

Beginning in the late 80's and early 90's of the twentieth century in Ukraine were laid the political foundations of the environmental movement, as a set of activities of citizens and NGOs aimed at protecting and resuscitating nature and carried out locally and globally for harmony between man and the environment [5, p. 64].

In October 1989, the Ukrainian Ecological Association «Green World» established based on which the Green Party of Ukraine later formed.

On June 25, 1991, was adopted the Law of Ukraine «On Environmental Protection» [10], which, taking into account the positive foreign experience, previous domestic legislative practice in addressing environmental issues, formulated the basic provisions for environmental protection, in particular, provided for the introduction of economic mechanisms to ensure its protection, management of nature. The law paid special attention to environmental safety, established basic provisions for the use of natural resources, control and supervision, environmental expertise, environmental insurance, environmental standardization and environmental regulation, liability for environmental damage and more.

By virtue of Art. 1 of the Law of Ukraine «On Environmental Protection» the task of legislation on environmental protection is to regulate relations in the field of protection, use and reproduction of natural resources, environmental safety, prevention and elimination of negative impact of economic and other activities on the environment. Resources, genetic fund of wildlife, landscapes and other natural complexes, unique territories and natural objects related to historical and cultural heritage.

Since 1991, in the conditions of independent Ukraine, the ecological public initiative movement has acquired a nationwide scale. In addition, since 1996, the Public Council of Non – Governmental Environmental Organizations has been working under the Ministry of Energy Resources of Ukraine.

Since 2010, our country has been a Party to the Aarhus Convention on Access to Information, Public Participation in Decision – Making and Access to Justice in Environmental Matters.

Conclusions. In the formation of human consciousness in all historical epochs, and especially in modern times, the need to protect nature has played an important role, and hence the awareness of their direct and immediate dependence on it. Ecological ideas of people have historically originated and developed a long time ago. Specific knowledge about the environment and the nature of the relationship with it acquired practical significance at the beginning of the development of the human species.

The key to success in solving environmental and socio – economic problems of any region is the active participation of the public, academia and youth in solving them. To exercise public influence on the development of society at the local, regional and state levels, community members unite in independent public organizations, which in recent years in Ukraine have become the most active part of the population. Environmental public organizations are popular. The most numerous and most authoritative are: Ukrainian Association «Green World», Ukrainian Society for Nature Conservation; All – Ukrainian Ecological League; National Ecological Center of Ukraine; public environmental organization «Renaissance»; network of environmental organizations «Eco – law», network of non – governmental organizations «MOM – 86»; All – Ukrainian Charitable Foundation «Sprout», Ukrainian Geographical Society and Eco-Activist Movement.

At present, the work of public organizations should not be limited to environmental protection; it aimed at restoring the eco – balance of our state. Numerous environmental organizations and associations should facilitate this.

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ABSTRACT

Nowadays, the society is reveal more and more interest in environmental protection, ensuring sustainable development of countries and regions, protection of the interests of future generations. The problem of preserving the natural environment for present and future generations appears as a common responsibility of the community. The relationship between society and nature is that the factors of economic growth – labor resources, means of production and natural resources – used in combination by society for the development of production. Issues of the relationship between society and nature and the use of natural resources are becoming increasingly important.

The authors reveal the problem of interaction between man and nature at all stages of development of human civilization. It proved that the rational use of human natural resources, compliance

with eco – balance, and the formation of a conscious attitude of society to natural resources and natural richness, thereby educating environmental culture at different stages of development of civil society.

The authors put forward the thesis that the allocation and consolidation of the right to a safe environment as one of the global, fundamental human rights. It based on objective preconditions related to the need to take special care of preserving, restoring and improving the Earth's natural conditions, state of the biosphere for the health of present and future generations of people.

The article highlights the role of public organizations on the problem of environmental protection, outlines the issues of public control over the state of the environment. Researched the stages of formation of youth and student public organizations that promoted the ideas of environmental protection, preservation of flora and fauna.

Under modern conditions of economic development, the relationship between society and nature has become much more complicated, because man has the opportunity to influence the course of natural processes and master natural resources.

Keywords: ecology, nature protection, nature protection legislation, public organizations for nature protection.

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ДОПИТ ЕКСПЕРТА В СУДІ (ТАКТИЧНІ РЕКОМЕНДАЦІЇ ДЛЯ ЕКСПЕРТА, СУДУ, ПРЕДСТАВНИКІВ СТОРИН)

У статті висвітлено проблему, з якою під час допиту стикається експерт. Огляд наявних науково-практичних джерел показав недостатню кількість інформації за цією тематикою. Складність допиту полягає в тому, що суб'єкти допиту часто не обізнані у сфері знань, які має експерт, не завжди тактично готові й самі експерти.

Наведено найбільш поширені ситуації та питання, що постають перед експертами під час допиту в суді. Надано науково обґрунтовані тактичні поради щодо лінії поведінки експерта на допиті в суді з урахуванням поширених на практиці способів, до яких може вдатися зацікавлена сторона. Розглянуто загальні предметно-наукові засади судової експертизи, наведено приклади запитань експерту та об'єктивних відповідей на них.

Ключові слова: експерт, висновок експерта, допит експерта, запитання експерту, тактичні рекомендації.

Постановка проблеми. Чинне законодавство передбачає виклик на допит до суду експерта для роз'яснення висновку експерта. Суб'єкти допиту часто не обізнані у сфері знань, які має експерт. Водночас предмет допиту в будь-якому процесі є предметом експертизи. Цим допит експерта відрізняється від допиту інших учасників процесу та, відповідно, потребує особливої тактики його проведення.

Зазвичай під час допиту найактивніше поводиться сторона та її представник, не на користь яких надано висновок. Висновки експерта не задовольняють одночасно обидві сторони через їх взаємопротилежні інтереси, тому природно, що сторона, яка не отримала бажаного результату, буде намагатись підірвати довіру до висновку та експерта, який його надав.

Аналіз публікацій, в яких започатковано вирішення цієї проблеми. Дослідження теоретичних питань, пов'язаних з характеристикою поняття, сутності, змісту допиту експерта та практичних основ його проведення під час досудового розслідування та судового розгляду кримінального провадження, надана істотна увага. Проте огляд наявних науково-практичних джерел показав замалу кількість інформації щодо тактичних аспектів проведення цієї процесуальної дії. Тому виникла нагальна потреба на основі узагальнення досвіду допитів експертів у судах розробити тактичні