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ОБСТАНОВКА ВЧИНЕННЯ ЗЛОЧИНУ ЯК ЕЛЕМЕНТ КРИМІНАЛІСТИЧНОЇ ХАРАКТЕРИСТИКИ НЕЗАКОННОГО ВИДОБУВАННЯ БУРШТИНУ

Анотація. *Стаття присвячена дослідженню обстановки вчинення злочину як елемента криміналістичної характеристики незаконного видобування бурштину. Проаналізовано наукові дефініції та зміст обстановки вчинення злочину як елемента криміналістичної характеристики. За результатами узагальнення та аналізу емпіричних даних виокремлено елементи обстановки вчинення злочину незаконного видобування бурштину, у якій діють злочинці, до їх числа належать: соціально-економічні чинники, що визначають особливості організації та функціонування незаконного видобування бурштину, природно-кліматичні, охоронно-функціональні, виробничі чинники та особливості поведінки непрямих учасників протиправної дії незаконного видобування бурштину. Наведено криміналістично значущі ознаки сприятливої обстановки вчинення злочину, розкрито кореляційні зв'язки останньої з іншими елементами криміналістичної характеристики цього злочину. Автором запропонована власна дефініція обстановки вчинення злочину як елемента криміналістичної характеристики незаконного видобування бурштину.*

Ключові слова: криміналістична характеристика, обстановка вчинення незаконного видобування бурштину, екологічні злочини, бурштин.

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ОБСТАНОВКА СОВЕРШЕНИЯ ПРЕСТУПЛЕНИЯ КАК ЭЛЕМЕНТ КРИМИНАЛИСТИЧЕСКОЙ ХАРАКТЕРИСТИКИ НЕЗАКОННОЙ ДОБЫЧИ ЯНТАРЯ

Аннотация. *Статья посвящена исследованию обстановки совершения преступления как элемента криминалистической характеристики незаконной добычи янтаря. Проанализировано научные дефиниции и содержание обстановки совершения преступления как элемента криминалистической характеристики. По результатам обобщения и анализа*

эмпирических данных выделено элементы обстановки совершения преступления незаконной добычи янтаря, в которой действуют преступники, к их числу относятся: социально-экономические факторы, определяющие особенности организации и функционирования незаконной добычи янтаря, природно-климатические, охранно-функциональные, производственные факторы и особенности поведения непрямых участников противоправного события незаконной добычи янтаря. Приведены криминалистически значимые признаки благоприятной обстановки совершения преступления, раскрыты корреляционные связи последней с другими элементами криминалистической характеристики незаконной добычи янтаря. Автором предложена собственная дефиниция обстановки совершения преступления как элемента криминалистической характеристики незаконной добычи янтаря.

Ключевые слова: криминалистическая характеристика, обстановка совершения незаконной добычи янтаря, экологические преступления, янтарь.

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THE SITUATION OF CRIME COMMITTING AS AN ELEMENT OF THE CRIMINALISTIC CHARACTERISTICS OF THE ILLEGAL MINING OF AMBER

Abstract. *The article is devoted to the investigation of the situation of the crime as an element of the criminalistic character of the illegal amber mining. The scientific definitions and the content of the criminalistic description of the circumstances of the crime are analyzed. According to the results of generalization and analysis of empirical data the allocated elements of the situation of crime committed of the illegal mining of amber, in which the criminals operate, include: socio-economic factors that determine the peculiarities of the organization and functioning of illegal amber mining, natural and climatic, protective and functional, production factors and peculiarities of the influence of the behavior of indirect participants in the unlawful event of illegal amber extraction. Criminalistically significant signs of the favorable situation of crime are given, the correlation links of the latter with other elements of criminalistic description of the crime are revealed. The author proposes an own definition of the situation of crime committing as an element of the criminalistic characteristics of the illegal mining of amber.*

Keywords: criminalistic characterization, situation of illegal amber mining, environmental crimes, amber.

INTRODUCTION

The crime situation as an element of forensic characteristics is one of the key issues in scientifically substantiated recommendations developed for illegal amber mining investigation. The last three year events happened in Rivne, Zhytomyr, and

Volyn regions forced to place a particular emphasis on a significant level of criminal groups organization and mobility, and how they take an occasion to commit the crime. “Zones of influence” distribution, so-called “honeypots” for illegal amber mining, leads to clashes between the criminal groups and law enforcement agencies with weapons and explosives [1;2]. Measures taken to overcome “criminal arbitrariness” by involving special forces units and protecting public order by the National Guard of Ukraine counteracting illegal amber mining did not give an expected result and predetermined criminals to counteract more impudently (opposition [3], mass disturbances [4], UAS crashed, and use of armoured vehicles [5]). Repeated attempts to regulate the issue on a legislative basis by submitting the draft Laws of Ukraine “On the features of raw amber mining on deposits and manifestations that are not of industrial significance” No. 1351 dd. 10.12.2014, “On mining and sale of amber” No. 1351-1 dd. 26.12.2014 and “On the features of the precious stones of organogenic formation production and circulation” No. 6123 dd. 23.02.2017 to the eighth Parliament appeared to be the first step to legalize amber mining, but later turned out to be criminal manifestations, so-called “amber schemes” of two Deputies of the Verkhovna Rada of Ukraine, detected due to special operation conducted by the National Anti-Corruption Bureau of Ukraine, jointly with the Federal Bureau of Investigation of the United States of America [6]. In this regard, it is appropriate to note that successful investigation into illegal mining of amber by investigative and operational subdivisions should take place at all levels of the law enforcement agencies. Instead, the generalization of investigation results by investigative and operational subdivisions of district and regional-level departments of the law enforcement agencies evidences a large number of issues, in particular, in establishing: a full range of accomplices and witnesses of crime, time period during which criminal group and organization exist, other crimes committed to ensure illegal mining of amber at the stage of preparation and post-criminal actions, etc. This does not justify the low level of investigation of the category of crimes specified, but only requires a thorough investigation of the situation with illegal amber mining and development of forensic recommendations for successful counteraction to these criminal manifestations.

1. LITERATURE REVIEW

The theoretical basis for investigation of the situation involving crime commitment as an element of forensic characteristics refer to the works of such criminologists: V. A. Zhuravlia, V. V. Tishenko, V. Y. Shepitko, B. V. Schchur, M. P. Yablokov Counteraction to illegal amber mining is a priority for our state as compared to counteraction to corruption. Instead, investigations into the illegal amber mining by domestic scientists-criminologists were not given enough attention. So, O. Y. Tatarov, S. I. Marko in their article “Criminalistic characteristic of violation of the rules of protection or use of subsoil on the example of illegal amber extraction” [7] fluently

review the issue concerning the signs of the situation with illegal amber mining: "... determined by the weather conditions, specific features of activities undertaken by the regulatory bodies, organization of individual services activities, in particular, their disadvantages, as well as the time and place when and where the crime analysed was committed". The same S. S. Cherniavskyi, D. O. Alieksieieva-Protsiuk, V. I. Vasylynchuk, A. A. Vozniuk and others in the methodological recommendations "Features of pre-trial investigation into the facts of illegal mining of raw amber" [8] practically do not pay attention to the forensic characteristics of the criminal situation limiting their investigation to a list of typical geographical points for illegal mining of amber. Insufficient scientific research of the crime situation as an element of forensic characteristics of illegal mining of amber stipulated our research. The purpose of the article is to interpret the definitions of crime situation as an element of forensic characteristics, analysis of its structural elements, definition of forensically meaningful signs of favourable and unfavourable crime situation of illegal mining of amber and disclosure of correlation links of the latter with other elements of the forensic characteristics of crime.

2. MATERIALS AND METHODS

Empirical data constitute analysis and generalization of ninety seven archival materials of criminal proceedings on illegal amber mining in the district courts of Rivne, Zhytomyr and Kyiv regions and five hundred and seventy sentences and thirty judgements issued in the State Register of Judgements of Ukraine; interviews and surveys of investigators, law enforcement officials, judges, specialists and local population on a specially developed list of issues.

The research used provisions of the theory of knowledge and general theory of criminology, as well as general scientific methods of scientific knowledge. Thus, with dialectical method, the definitions of the crime situation, regularities of the latter investigated, its causes and conditions clarified were the basis to establish correlations with other elements of the forensic characteristics of illegal mining of amber. The definitions of the "crime situation" and their genesis were investigated using comparative and historical method, definitions of the latter in the forensic science and its structural elements, which are optimal for use in the author's research, have been outlined. The formal-logical and system-structural method was used in formulating definitions of crime situation as an element of the forensic characteristics of illegal mining of amber and separation of its main elements. The functional method of substantiation has a practical significance in the law enforcement agencies' activities when investigating this crime category. Statistical and sociological methods were used during the survey and interview of investigators, law enforcement officials, judges, specialists and local population with a specially developed list of issues, analysis and generalization of criminal proceedings in order to identify the typical crime situation of illegal amber mining, its causes and conditions.

3. RESULTS AND DISCUSSION

3.1. Scientific views on the crime situation and its structural elements

By reviewing places of event, investigator has a large number of evidence, knowledge of which requires a significant amount of time and involvement of experts and specialists. In open areas where criminal groups operate, traces of illegal amber mining are damaged and lost due to atmospheric precipitations, thermal actions, mechanical destruction, etc. Acting in a time gap, investigator is forced to put forward investigative versions, investigative leads and other investigative (search) actions on site, which can often become a “discrimine error” for investigation without knowledge of the crime situation in which perpetrators acted. As correctly argued in the middle of 20s of the twentieth century prominent scientist-criminalist I. M. Yakimov, “the penetration into the crime situation and circumstances leads to a clear understanding of the committed, to the comprehension of the internal link between the actions committed by the criminal will and their reflection from the outside... As soon as the correlation between the criminal will and changes made thereby in the nature of physical things will be clear, the key to solving the crime will be found” [9, p. 192]. Such approach to understanding the crime situation in criminology became the basis for scientific research, but only in 60s of the twentieth century it was used in research made by L. O. Sergeev [10, p. 4], according to which the situation became one of the structural elements of the forensic characteristics.

A retrospective analysis of the scientific views formation and development on the crime situation as a separate forensic definition has changed in its understanding and elements. To date, in forensic science, two approaches have been formed to understand the crime situation as an element of forensic characteristics in a narrow and broad sense. Typical for the early period of criminology development is an understanding of the crime situation in the narrow sense and identification with the material environment of the crime scene. The wide approach to understanding the circumstances of crime committed, as a fragment of certain conditions and circumstances environment, became widespread among such criminologists as: M. P. Yablokov, V. O. Obratsova, V. I. Kulykova, V. Y. Shepitka, K. V. Gavlo and others

So far, there are still controversial issues concerning the definition of the crime circumstances and its elements. So, R. S. Belkin defines the crime situation as a particular life situation, which includes, besides the material circumstances of the scene of event, also other elements: behaviour of the participants in event, various circumstances that contribute or hinder the actions of these participants, chronological characteristics of the event, psychological relationships arising out between the participants of the event [11, p. 139–140]. On his part, V. I. Kulikov gives some abstract definition of the crime situation, leaving unnoticed the stages of crime commitment, and understands under it “the system of material, social-psychological elements of the environment limited by spatio-temporal framework of specific crime, and

sometimes some of its participants” [12, p. 4]. M. P. Yablokov defines in more details the content of crime situation by distinguishing it into the system of “various types of interacting with each other before and during the crime objects, phenomena and processes that characterize place, time, material, natural and climatic, industrial, domestic and other environmental conditions, peculiarities of behaviour of indirect participants of illegal event, psychological links between them and other factors of objective reality that outline the possibility, conditions and other circumstances for crime commitment” [13, p. 38–39]. Restricted to conditions affecting only at the time of crime commitment, V. O. Obraztsov understands the crime situation as a criminal situation, which includes the territorial, climatic, demographic and other features of the region, in which the crime was committed, as well as circumstances that characterize the immediate place, time, conditions and other specifics of this life situation [14, p. 94]. In his time M. P. Yablokov negatively spoke to include the specifics of the region as an element of the crime situation “since specific features of the region go beyond the crime situation limited by local conditions of time, space, and other factors” [13, p. 34]. But in the course of research of the organized criminal activity investigation, he agreed with the position of V. O. Obraztsov and separated the specific features of the region into an important element in the crime situation and supplemented in the structure of the latter, the following two elements: the focus and the centre of organized crime [15, p. 61]. Instead, we shall note proposed by V. K. Gavlo approach to split the crime situation into integral and differentiated notion. The integral notion of the crime situation is used to denote the system of conditions and circumstances as a whole localized in space and time, material situation of the scene of event, object of attack, subjects of crime and other components related to the preparation, commitment and concealment of crime. In terms the stages of the criminal activities of the subject development in certain environment, a differentiated notion of the circumstances of crime should be applied and treated as three structurally interrelated links: “situation preceding commitment of crime”, “crime situation” and “situation following commitment of crime” [16, p. 179].

In our opinion, the above position of V. K. Gavlo is noteworthy, proceeding that the criminals at different stages of crime operate in different places, times and, accordingly, in different circumstances of crime. V. Y. Shepitko correctly stresses that “it is necessary to separate the place, time and circumstances of crime. The place allows to answer the question where it is committed. As to the time, it allows to: a) determine the time of crime; b) establish the time relations between the facts; c) identify the order of events, actions or facts; d) calculate the duration of different events and other” [17, p. 426].

The last position, in the opinion of the author, is the most acceptable, since it allows to cover all or most of the factors affecting the crime and to establish in details the correlation links between the place and time of crime with other elements of forensic characteristics. The expediency of considering certain elements in the context

of crime situation research depends on the conditions and circumstances that determine the actions of offender in achieving criminal aim and have criminal significance for crime investigation.

3.2. Elements of the situation with illegal amber mining

In our opinion, the following elements are expedient to be included in the circumstances of illegal amber mining: 1) social-economic factors that determine the specific features of illegal amber mining organization and operation; 2) natural and climatic factors; 3) protective and functional factors; 4) production factors; 5) peculiarities of indirect participants behaviour in unlawful actions.

1. Social-economic factors determining the specific features of illegal amber mining organization and operation. Despite of the fact that this type of crime refers to the group of environmental crimes, the ultimate goal of offenders is to generate profits from the sale of amber. Like other types of “trade”, the illegal mining of amber is subject to the laws of the economy, dictated by the market, first of all by supply and demand, search for “labour forces”, production costs and revenue from sales. If illegal amber mining does not generate profits, then criminals will be forced to eliminate illegal mining.

The general factors that determine illegal amber mining are: 1) the cost of amber and the demand by the countries of the West (Poland, Estonia, USA) and the East (China, Turkey) on the black and world markets, offers from the supplier countries (mining) of amber; 2) high level of “labour forces” offer in the regions with lower income and high unemployment level.

As it was correctly noted by M. P. Yablokov, one of the signs of the organized and criminal groups, is “an orientation of their actions to obtain significant monetary and other material values and benefits in the form of possible permanent business”, while “elimination of an organized group may contribute to undermining its financial base by blocking the channels of its criminal incomes” [15, p. 47, 81].

To undermine financial base in the context of social-economic factors, the author means the market demand decline in the amber importing countries (for example, by concluding agreement for 680 tons of amber supply between Kaliningrad Amber Factory and Chinese jewellery company [18]), prosecution of the subjects of illegal amber trafficking (for example, Operation “Burshtyn” [19]), which leads to monopolization and price fall on the black market of amber in Ukraine.

So, at a time when the prices for amber are high, the actions of the criminal groups are characterized by a transformation from the groups of a “companies” type to the organized criminal organizations, establishment of corruptive ties, stable hierarchy, distribution of roles and criminal confrontation (terrorist acts [20], firing [21], murder [22]) between criminals for the “zones of influence” distribution. High income generated from amber sales increases the accomplices to the crime, tools and means, places of illegal amber mining and payment for job to the “organizers on site”, which

allows the top organizers to be “shadowed” in the investigation of illegal amber mining by the law enforcement agencies. It should be also considered that, if circumstances so require, the criminal activities of the organized criminal communities may be terminated or faded for some time, move to other regions, spheres of the economy, resumed again and even changed in their direction [15, p. 132].

Price fall for amber results in financial base of the criminal groups and organizations undermining, their reshaping from illegal mining to buying and transnational illegal trade in amber. The control weakening over the criminal groups and organizations per “zones of influence” determines intensification of mass production by criminal groups of “companies” type, taking into account the specific features of their functioning in times of low amber prices.

Features of organization and functioning in times of low amber prices are characterized by: 1) low payment to accomplices to the crime; minors and youth involvement; arrangement of direct sales routes to other countries; abandonment of accomplices at the scene of event to “protect” the tools and means of crime [23] – it is typical for organized groups and criminal organizations; 2) equal distribution of profit between the accomplices of crime, expenses for tools manufacture and purchase; searching for the best proposals from the subjects of illegal amber circulation in other regions and areas – it is typical for the criminal groups of “companies” type.

The low level of material well-being and job opportunities contribute to the constant co-optation of the perpetrators of crime. According to the interviews, the new members are abandoned to “protect” the tools and means at the scene of illegal amber mining in the event of sufficient information on the criminal group disclosure. Firstly, it ensures further return of tools and means by submitting lease agreements or other documents on title, which makes it impossible to use special confiscation procedure. Secondly, the new members do not have enough information to disclose organizers and other members of the criminal group. Thirdly, as it was correctly pointed out by Y. P. Garmaev, “there are cases when criminal groups “hand over” their secondary member “to be quits with” with the operational law enforcement services to create visible activity of disclosure” [24, p. 79]. For example, in the criminal proceedings, investigated by the Main Investigation Department of the Ministry of Internal Affairs of Ukraine, one of the organizers “at the scene” started illegal mining due to his difficult financial standing and proposal from the top organizers, whom acquainted with through the telecommunication networks, to be paid five hundred dollars monthly. Subsequently, he met with the top organizers only during amber transfer (he preliminary placed stones in the backpacks and sealed) at the end of the “shift”, and he did not have full identity details of the latter [25].

2. Concerning natural and climatic factors taken into account by the criminals for a successful crime commitment, moderate temperature conditions (ranging from +10 °C to + 37 °C, total absence or slight precipitations) are favourable for mining. Unfavourable conditions include heavy rainfall, snow, frost and heavy heat. So heavy

rainfall causes soil to blur, blocking the walls of the earth in the pits in a manual method of mining; complications in the tools and means transportation to the scene of crime and withdrawal. At low ambient temperatures, amber mining is characterized by: a) soil covered with a layer of ice, which does not allow to carry out works manually; b) freezing of fire hoses and their state change from elastic to brittle resulting in damage through the breakage; c) freezing of the motor pump motors, which makes it impossible to intake further water and, as a consequence, to continue the crime; d) cold-related injuries and fatigue of the criminals, etc.

3. The security and functional factors should also include free access to the data on the law enforcement agencies and regulatory (supervisory) authorities activities, as well as public groups identifying and counteracting the illegal amber mining, which are considered by the perpetrators for the successful crime commitment: regimes, schedules, routes and placement of checkpoints, patrols, inspection of the area, and response of the employees to unlawful encroachments.

The favourable situation for crime commitment is stipulated by the lack of constant control and rapid response to the reports of crime by the regulatory authorities and law enforcement agencies. The most indicative example is the illegal mining in Chornobyl NPP area [26]. Instead, criminals are not restricted by choosing favourable situation, but also make active changes to it, in particular by providing unlawful benefits to the servicemen of the National Guard of Ukraine [27] and forestry staff to conceal information on illegal amber mining commitment and recording.

Essential are the data on material evidence storage provided by the law enforcement agencies. So, material evidence in the form of precious metals, precious stones of organogenic origin, semi-precious stones, or in the form of objects containing them, except for those having signs indicating their historical, museum, scientific, artistic or other cultural value, are transferred for storage at the State Repository of Precious Metals and Precious Stones or an authorized bank [28]. In the absolute majority of cases, amber is stored in the cells for material evidence in district police departments. Given the investigators' mistakes in storing evidence and recording amber data (its individual features, photographing, at best it is weighed and sealed using photo and video capture) it allows criminals to use "corruption scenarios" to substitute amber of a large fraction for the less ones based on the weight fixed.

4. The production factors of illegal amber mining are stipulated by the technical defects in the designs of certain mechanisms and various production units [29, p. 171], and availability of accessories for tools and means manufacture. These include: a) sound volume during motor pump operation (as a rule, the criminals during crime preparation rework the exhaust system of motors to reduce the sound in order to hide their activities; and b) lack of handicraft motor pump cooling results in motor overheating and mining stoppage; c) adjustment of motor pump motor operation at maximum revolutions to increase the pressure power of the water jet results in engine pistons taking off and mining termination until fixing; d) lack of constructions for

soil support: collapse of the walls due to the water-pressure quicksands with a manual method causes criminals to move to a new place; landslide of the soil with the hydromechanical method leads to the pit destruction and, as a consequence, shortage of the sucker lengths for amber removal causing falls and injuries to individuals; (e) over-saturated transport and spare parts market from the European Union provides low prices for handicraft motor pump purchase and production.

These factors predetermine the criminals to stop mining operations to repair their tools at place or send (on foot or by motorcycle or ATV), usually accomplices responsible for motor pumps, so-called “motorists”, to bring components for repair to the settlements. The authors state that offenders with criminal experience take into account technical gaps in tools and have the appropriate components to repair on-site. This indicates a high level of organization, preliminary preparation, etc.

5. The specific behavioural features of indirect participants in unlawful actions to illegal amber mining are as follows: in the opinion of M. P. Yablokov, “behaviour of some witnesses is an essential element of the crime situation..., can significantly affect the way and mechanism of its commitment” [30, p. 51]. Witness as a procedural person “is generated” by the very fact of any crime, and therefore it is irreplaceable [31, p. 194]. For witnesses and eyewitnesses, passive opportunism is a characteristic feature. The above said is expressed in support from the local population of Rivne, Volyn and Zhytomyr regions in illegal amber mining. After all, realizing that they are in an economic circle: amber mining – amber, amber – sales, sales – money, money – payment for services and goods from the local population. Therefore, often evidence is false and misleading investigative and operational subdivisions. It is necessary to take into account persons, so-called “stakeholders”, the owners of agricultural land, etc. To their opinion, it is better to receive money from criminals for the “lease of “honeypots”” and not to report a crime, rather than criminals will mine amber without taking into account their interests. Typically, witnesses from among “stakeholders” uncover criminals in connection with failure to pay for “land lease”. It should be noted that the value of land plots with amber deposits is estimated at sales from \$ 30,000 to \$ 70,000. Instead, economic entities (large agricultural or mining companies), for which illegal amber mining causes significant economic damage, contribute to crime detection and investigation.

The forensic and significant signs of favourable crime situation are high prices on the black and international market for amber, low level of material well-being and job opportunities for the population within the administrative-territorial units of amber mining; moderate climatic conditions; non-strict punishment provided for in criminal law, lack of regular control and rapid response to the reports of crime by the regulatory bodies and law enforcement agencies; low prices on the market of spare parts for handicraft motor pumps manufacture; and passive opportunism of indirect participants in the criminal acts. Crime commitment in a favourable environment is usually characterized by “purity” and “completeness” of actions undertaken by the

subject of crime when implementing its criminal idea. Unfortunately, the detection rates are low [16, p. 185].

CONCLUSIONS

An analysis of the scholar's scientific views on the crime situation in the forensic literature indicates the existence of a significant body of definitions that differ in content and do not always have a clear understanding of its essence. Typical for the early period of criminology development is an understanding of the crime situation in the narrow sense and identification with the material environment of the crime scene. Today, in forensic science, the majority of scientists-criminologists determine the crime situation as a fragment of environment, conditions and circumstances. The author's position on the situation of illegal amber mining has been formulated. The situation of illegal amber mining, as an element of forensic characteristics, is a system of conditions and circumstances that facilitate or hinder the preparation, implementation and concealment of crime and are characterized by social-economic factors that determine the specific features of illegal amber mining organization and functioning, natural and climatic, security and functional, and production factors and specific features of influence due to indirect participants behaviour in unlawful event in the environment in which criminals act at the stage of crime preparation, commitment and after crime commitment. By revealing correlation links of the situation of illegal amber mining with other elements of forensic characteristics of illegal amber mining, it should be noted that they are interdependent and interconnected by "time", "place", "subject of criminal offence", "typical traces", "criminal method" and "tools and means".

The results of the scientific research described in the article can positively affect the quality of investigation of a particular criminal act, namely by narrowing the versions and directions of investigation, determining the circumstances to be proved, choosing effective investigative (search) actions, selecting an effective interrogation technique and preventing crime. In the future, the scientific community will be presented for discussion the research outcomes of the structural elements of forensic characteristics: "places" and "time" of illegal amber mining.

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