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Environmental crimes: Law enforcement issues

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ABSTRACT

An analysis of the statistics of registered environmental crimes indicates a clear disproportion between the real state of affairs in ecology and counteraction to such crimes. One of the reasons for this imbalance may be the difficulty in qualifying and proving the crimes in question. When applying the norms on environmental crimes, it should be borne in mind that the overwhelming majority of them are blanket. Along with the massiveness of environmental legislation, there are also actually criminal law issues that give rise to practical problems. These include determination of the form of guilt, the use of evaluative concepts, the need for qualifications in combination with other crimes, the establishment of a causal relationship. The most important are the following steps in the field of combating environmental crime: 1) when determining the form of guilt, along with the content of the act, the methods of its commission and other signs of the objective side, consider the sanction for their commission; 2) the spread of the practice of establishing specific rates for calculating the amount of damage instead of evaluative concepts to unify judicial practice and bring it to uniformity; 3) improvement of calculation methods and practice of compensation for damage resulting from environmental offenses; and 4) minimization of the practice of constructing truncated corpus delicti or concretizing the concept of "threat" in such structures.

Keywords: Environmental crime, Threats, Criminal liability, Qualification; Arbitrage practice, Moment of completion; Guilt, Statistics, Prevention.

INTRODUCTION

Environmental crimes are traditionally difficult to enforce in Russia (Orellana 2004; Borrillo 2011; White 2013; Paraschiv 2015; Görgényi, 2018) and abroad. Theorists of domestic criminal law traditionally consider this group of crimes as a single one, which is due to the object of criminal law protection - the natural environment and its components, and accordingly the existing structure of the Criminal Code of the Russian Federation (Pleshakov 1993; Stoliarov 2001; Kopylov 2004; Bratashova 2011; Kudriavtsev 2012).

The attention of criminology on violations and damages submitted by and against people has widened after some time. Just since the 1990s, nonetheless, has the control perceived the hugeness of violations and damages concerning the climate and nonhuman creatures? (Brisman & South 2019) It is discovered that disciplines for natural wrongdoings are more tolerant than sanctions relegated to equivalent non-ecological offenses when the ecological wrongdoing is biological, yet that disciplines are now and then harsher when the ecological wrongdoing includes creatures (Cochran *et al.* 2018). Organizations frequently guarantee fines for law infringement will compel them to lay off representatives and conceivably fail. Utilizing the treadmill of wrongdoing hypothetical focal point, a multivariate examination on an interesting informational collection of 169 organizations was utilized to decide whether their government arraignments are related with negative insurance results (Greife & Maume 2020). A bibliographical survey on bio piracy, water contamination and the fumble of strong waste, three significant wellsprings of ecological debasement, whose training is inescapable in the State of Amazonas was introduced (de Abreu *et al.* 2019).

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At the same time, the most widespread in the domestic criminal law is the understanding of environmental crimes as an integral part of encroachments on public safety, which pushes scientists to determine the object of such socially dangerous acts as environmental safety (Brinchuk 2001; Petrova 2005; Zhavoronkova & Shpakovskii 2012; Krasnova 2014). A review of Russian legislation allows us to conclude that the term "environmental safety" is used haphazardly (http://www.mnr.gov.ru) despite the presence of a special Federal Law No. 7-FZ of January 10, 2002 "On Environmental Protection", which introduced the concept of environmental safety as a state of protection of natural environment and vital interests of a person from the possible negative impact of economic and other activities, emergency situations of natural and man-made nature, their consequences (Federal Law No. 7-FZ of January 10, 2002 "On Environmental Protection"). All crimes combined in Chapter 26 of the Criminal Code of the Russian Federation, given their characteristics, violate some side (aspect, element) of environmental safety, harm the safety of the environment as a whole or its individual components (surface or underground waters, sources of drinking water supply; atmospheric air; marine environment; land; subsoil; aquatic biological resources; wild animals and birds; forest plantations). The primary aim of the study is to investigate and identify prevalent environmental crimes and threats, and therefore figure out practical measures to prevent and combat them in sustainable ways.

MATERIALS AND METHODS

The general methodological basis of the study was formed by the basic provisions of the dialectical method of cognizing phenomena. In addition, a set of methods for cognition of social and legal reality was used, which make it possible to comprehensively study the main directions and features of theory and practice, qualitative changes occurring in the development of the studied phenomena: general scientific (comparison, analysis, synthesis, induction, deduction), as well as particular scientific (formal-logical, system-structural) methods. The empirical basis of the study was the published judicial practice in the form of clarifications of the Plenum of the Supreme Court of the Russian Federation; statistical data of Rosstat for 2016-2018, the Supreme Court of the Russian Federation for 2007-2018; analytical and informational materials of the RF Ministry of Internal Affairs; published data of sociological and criminological studies concerning the problems of environmental crimes.

RESULTS AND DISCUSSION

The state of the environment and its components as a source of threats to environmental safety (Statistical data of the Ministry of Internal Affairs of Russia. Reporting form No. 491). This brief overview of the determinants of environmental crime needs to be compared with the available statistics. An analysis of such information allows us to conclude that until 2013, 99% of environmental criminal cases are initiated under 4 articles: Art. 256 "Illegal extraction (fishing) of aquatic biological resources", Art. 258 "Illegal hunting", Art. 260 "Illegal felling of forest plantations", and Art. 261 "Destruction or damage of forest plantations". The rest of the crimes account for less than 1% of the initiated criminal cases (Table 1).

Law enforcement problems

The presented picture of registered environmental crimes indicates a clear disproportion between the real state of affairs in ecology and counteraction to such crimes. One of the reasons for this imbalance, along with the previously indicated determinants of crime, may be the difficulty in qualifying and proving the crimes in question. When applying the norms on environmental crimes, it should be borne in mind that the overwhelming majority of them are blanket. In describing specific elements of crimes, the expression "violation of environmental protection rules" is often used, which predetermines the need to refer to environmental legislation, which is quite extensive, complex in structure, uncodified, recently intensively developing and using special terminology. This is indicated by the resolution of the Plenum of the Supreme Court of the Russian Federation of October 18, 2012 No. 21 "On the application by courts of legislation on liability for violations in the field of environmental protection and natural resource use": the courts should find out which regulatory legal acts govern the relevant environmental legal relations, and indicate in a court decision, how their violations were directly expressed with reference to specific norms (paragraph, part, article) (p.1) (Resolution of the Plenum of the Supreme Court of the Russian Federation No. 21 of October 18, 2012). Along with the massiveness of environmental legislation, there are also actually criminal law issues that give rise to practical problems. These include determination of the form of guilt, the use of evaluative concepts, the need for qualifications in combination with other crimes, the establishment of a causal relationship.

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Table 1. Number of the registered environmental crimes in the Russian Federation in 2007-2018.

	2007	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**
Art. 246	29	11	6	5	4	7	5	24	14	19	32	23
Art. 247	84	42	40	21	25	51	23	31	36	44	124	70
Art. 248	0	0	0	0	0	0	0	0	0	0	0	0
Art. 249	3	6	11	2	2	20	1	4	0	5	9	9
Art. 250	32	28	19	19	17	15	13	17	29	28	40	39
Art. 251	20	7	9	4	2	4	5	2	6	7	13	13
Art. 252	13	11	10	12	5	5	2	7	3	3	5	4
Art. 253	26	17	24	19	17	12	9	10	2	13	8	8
Art. 254	27	27	24	24	33	63	74	73	85	64	202	182
Art. 255	8	2	2	0	0	3	0	6	4	8	2	4
Art. 256	18,025	15,841	17,407	13,644	8963	8172	7343	6566	6276	5469	5713	5976
Art. 257	6	9	6	3	4	3	6	6	9	3	5	9
Art. 258	1292	1186	1560	1540	1517	1613	1640	1615	1928	1906	1936	1931
Art. 258[1]	0	0	0	0	0	0	74	924	1152	1210	1104	1120
Art. 259	0	0	0	1	0	2	0	1	0	0	0	0
Art. 260	19,128	23,802	24,932	20,826	16,077	15,795	14,640	14,834	14,192	14,233	14,422	13,763
Art. 261	2487	3824	2461	2925	2393	1753	861	1381	1063	598	690	642
Art. 262	62	70	96	110	92	65	47	65	58	78	74	106
Total	41,242	44,883	46,607	39,155	29,151	27,583	24,743	25,566	24,857	23,688	24,379	23,899

The form of guilt

Domestic criminal legislation distinguishes intentional and reckless crimes, while indicating that an act committed only through negligence is recognized as a crime only if it is specifically provided for by the relevant article of the Criminal Code of the Russian Federation (Part 2, Article 24). The absence of an indication of the form of guilt in the disposition of the norm allows some authors to conclude about the possibility of committing a crime both through negligence and deliberately. For example, the decree of the Plenum of the Supreme Court of the Russian Federation of October 18, 2012 No. 21 refers to the crime under Art. 246 of the Criminal Code of the Russian Federation, to the number of acts committed both intentionally and negligently (p. 4). It is also indicated that it is necessary to consider the content of the act, the methods of its commission and other signs of the objective side of the composition of an environmental crime. In this regard, M.A. Kaufman, admitting the possibility of committing a crime under Art. 246 of the Criminal Code of the Russian Federation, both intentionally and negligently, notes that this raises serious doubts. Firstly, it is inexplicable why deliberate and reckless crimes are punished equally (they have a common sanction). Secondly, it is not clear what the legislator was guided by when he chose an impermissibly mild punishment for causing deliberate harm (up to 5 years of imprisonment) (Kaufman 2000; Mirzadeh Koohshahi & Goodarzi 2021). Lopashenko justifies his position with reference to Part 2 of Art. 24 of the Criminal Code of the Russian Federation (Lopashenko 2009). In this case, as it seems to us, the author attaches exaggerated importance to this circumstance. The provisions of Part 2 of Art. 24 of the Criminal Code of the Russian Federation do not imply an imperative in relation to the form of guilt. We believe that Rarog pointing out that in many norms of the Special Part of the Criminal Code of the Russian Federation, there is no indication of a careless form of guilt, which means that the recognition of the possibility of deliberately committing the relevant crimes clearly does not correspond to the sanctions established for these crimes. This is especially evident in cases where the crimes are associated with harm to human health. This primarily applies to environmental crimes (Rarog 2003; Mdehheb *et al*. 2020). In this regard, it seems necessary, when determining the form of guilt, along with the content of the act, the methods of its commission and other signs of the objective side, consider the sanction for their commission.

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Another close problem is the recognition of some environmental crimes committed with two forms of guilt (in a situation where, as a result of the commission of an intentional crime, grave consequences are inflicted, which, according to the law, entail a more severe punishment and which were not covered by the intent of the person - Article 27 of the Criminal Code of the Russian Federation). Some researchers refer to such acts as a crime under Part 1 and 2 of Art. 249 of the Criminal Code of the Russian Federation (Lopashenko 2009). This approach is contrary to the law, since in accordance with Art. 27 of the Criminal Code of the Russian Federation, two forms of guilt can only be in the qualified corpus delict.

Use of evaluative concepts

The most difficult problem is the use of evaluative concepts by the legislator: "substantial" (Articles 246, 247, 250, part 2 of Article 252 of the Criminal Code of the Russian Federation), "significant" (Articles 255, 257, 262 of the Criminal Code of the Russian Federation) damage, "other grave consequences "(Articles 246, 248, 249, 257 of the Criminal Code of the Russian Federation), "mass character" (Articles 246, 247, 250, 256, 257, 258, 258^1 of the Criminal Code of the Russian Federation). A change in the radioactive background will be recognized as significant (Article 246 of the Criminal Code of the Russian Federation) if, in accordance with modern regulatory requirements, it is assessed as causing harm to human health or creating a real threat of such infliction, has led or could lead to radioactive contamination of the environment. In this case, it is necessary to refer to certain regulatory requirements (Decree of the Government of the Russian Federation No. 93 of January 28, 1997). The situation looks more complicated, for example, with the mass death of animals (Art. 246), which means the simultaneous death of a large number of animals of one or more species in a certain territory or water area, in which the mortality rate exceeds the average statistical value by three or more times. Some authors propose to associate these consequences with the significance of the territory (Kruglikov 1999) or with the size of the population (Borzenkov & Komisarov 2002). These recommendations suffer from uncertainty, are impracticable in practice, primarily due to the fact that it remains unclear what, in this case, should be the proportion of dead animals in this population. In our opinion, the mass death of animals can occur in a relatively small area of the terrain (water area). The value concept is reflected in the law and such consequences as "other grave". Its content is disclosed in clause 5 of the resolution of the Plenum of the Supreme Court of the Russian Federation of October 18, 2012 No. 21: "Other grave consequences... should be understood to mean, in particular, such a deterioration in the quality of the environment and its components, the elimination of which takes a long time and large financial costs (for example, mass diseases or death of objects of the animal world, including fish and other aquatic biological resources; destruction of conditions for their habitation and reproduction (loss of feeding grounds, spawning and wintering pits, violation of migration routes, destruction of the food base); destruction of flora objects, which led to a significant reduction in the number (biomass) of these objects; land degradation). It turns out that some evaluative concepts are revealed through others, which makes it extremely difficult to solve practical issues (Kniazev *et al*. 2009).

In other cases, the legislator simply refers to "grave consequences". In relation to Art. 249 of the Criminal Code of the Russian Federation, such a technique was taken to ensure that the consequences of the crime specified in Part 2 of Art. 249 of the Criminal Code of the Russian Federation, served as a criterion for delimitation of a crime from an administrative offense. Article 10.1 of the Administrative Code of the Russian Federation establishes responsibility for violation of the rules for combating quarantine, especially dangerous and dangerous plant pests, pathogens of plant diseases, and weed plants.

The composition of an administrative-legal tort is formulated as a formal one, while the crime has a material composition, it is considered completed from the moment the specified consequences occur. With regard to individual elements, there are no clearly established criteria for establishing the presence or absence of corpus delicti, depending on the consequences that have occurred.

The crime under Art. 255 of the Criminal Code of the Russian Federation (violation of the rules for the protection and use of subsoil), is considered completed when a significant amount is caused. The recognition of the damage as significant is a matter of fact. In each specific case, the value of the used subsoil plot, the type of natural resource, the significance and cost of the destroyed or damaged element of the natural environment, the possibility of further use of the subsoil, etc. are taken into account. In other words, both environmental and economic harm are considered. The amount of harm caused as a result of an environmental offense can be established on the basis of actual instrumentally measured and documented data.

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The total amount of damage is determined as the sum of individual volumes of damage caused to various natural environments (objects, resources) and nature users. The economic assessment of damage covers the amount of compensation for damage; the cost of protective measures at facilities where a tendency to contamination of groundwater and related other components of the natural environment has been identified; the cost of measures for the rehabilitation of groundwater in contaminated areas; compensation for losses incurred by other users of natural resources, etc. In some situations, specific rates are established by law for calculating the harm caused. For example, to determine the damage to animals, vegetation and forestry, it is calculated according to the corresponding rates, which makes it easier to calculate (Resolution of the Government of the Russian Federation No. 1321 of November 3, 2018,). We believe that an approach based on specific rates would allow unifying the relevant practice and bringing it to uniformity, excluding judicial discretion in cases of environmental crimes, and delimiting them from administrative offenses.

Defining the moment of completion

Most of the elements of environmental crimes are formulated according to the type of material crimes and are considered completed at the time of the onset of the consequences specified in the law. Non-occurrence of the consequences provided for by the Criminal Code of the Russian Federation obliges to qualify the committed act as an attempt. However, there are cases when the legislator transfers the moment of completion to an earlier stage. For example, Art. 247 of the Criminal Code of the Russian Federation provides for liability for violation of the rules for the circulation of environmentally hazardous substances and wastes if these acts created a threat of causing significant harm to human health or the environment.

The resolution of the Plenum of the Supreme Court of the Russian Federation No.21 of October 18, 2012, characterizes the threat of harm as "the occurrence of such a situation that would entail harmful consequences provided for by the law, if they were not prevented by timely measures or other circumstances. not dependent on the will of a person who has violated the rules for handling environmentally hazardous substances and waste. Such a threat presupposes the presence of a specific danger of real causing significant harm to human health or the environment". Thus, the Plenum of the Supreme Court of the Russian Federation speaks about a real, and not about an abstract opportunity, for the implementation of which at this stage of the development of the act the appropriate conditions have not yet developed. A real threat (opportunity) testifies to such a stage in the development of reality, which presupposes the presence of prerequisites capable of generating a certain phenomenon in its development (p. 6). At the same time, the Plenum of the Supreme Court of the Russian Federation gave only a general description of the threat, did not give any criteria for the presence of a specific danger of causing harm. In this regard, judicial practice has to develop its own criteria for the reality of the threat: the degree of toxicity of the substance, its amount; the circumstances of the place of violation of the rules for the circulation of environmentally hazardous substances and waste are taken into account (for example, the presence of free access of people and animals to the place of storage of hazardous waste) (Golubev 2017). In this situation, it is necessary either to concretize the threat at the level of the resolution of the Plenum of the Supreme Court of the Russian Federation, or to reject such structures of compositions in the Criminal Code of the Russian Federation.

Finding cause-effect relationship

As detailed above, environmental crimes are expressed in non-compliance with the requirements and regulations established by environmental legislation. When initiating a criminal case in this category, a problem often arises in establishing a causal relationship between the act and the consequences that have occurred. The difficulty lies in the fact that a significant amount of time can pass between the act and between the consequences that have occurred, or actions are taken to hide the traces of the crime. You also need to remember that a causal relationship in a criminal case will be absent if the resulting consequences to nature or humans occur as a result of the impact of natural or other factors. Thus, it is necessary to find out whether these consequences were caused by natural factors.

SUMMARY

A necessary condition for countering environmental crime is not only an objective assessment of the crime situation, but also a consistent, logical and non-controversial criminal legislation. The most pressing problems include: determining the form of guilt, the use of evaluative concepts, the need for qualifications in combination

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with other crimes, the establishment of a causal relationship. Judicial practice in the consideration of criminal cases on environmental crimes shows that environmental crimes in Russia belong to the category of the most widespread and latent ones. The reason for this is seen in the unjustified humanization of the imposition of punishment, which reduces the preventive effect of the criminal law and pushes law enforcement agencies to a passive attitude towards environmental crimes. The negative practice is manifested in a high percentage of acquittals in cases of environmental crimes, the imposition of sentences not related to imprisonment, or conditional punishment, and the non-application of additional types of punishment. Reduces the effectiveness of criminal legislation on responsibility for environmental crimes and failure to comply with the criminal penalty imposed by the court.

CONCLUSION

The following steps in combating environmental crime, expressed in changing legal approaches, seem to be the most important: when determining the form of guilt, along with the content of the act, the methods of its commission and other signs of the objective side, consider the sanction for their commission; the spread of the practice of establishing specific rates for calculating the amount of damage instead of evaluative concepts to unify judicial practice and bring it to uniformity; improvement of calculation methods and practice of compensation for damage resulting from environmental offenses; and minimization of the practice of constructing truncated corpus delicti or concretizing the concept of "threat" in such structures. elimination of contradictions between natural resource and environmental protection standards of the legislation of the Russian Federation (including by developing a concept for the development of environmental legislation); harmonization of domestic legislation in environmental protection and international law in this area within the framework of the obligations of the Russian Federation under international treaties.

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جرائم زیست‌محیطی: مسائل مربوط به اجرای قانون

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چکیده

تجزیه و تحلیل آمار جرائم زیست‌محیطی ثبت‌شده، نشان‌دهنده‌ی وجود عدم تناسب بین وضعیت واقعی اکولوژی و مبارزه با این جرائم است. یکی از دلایل این عدم تناسب و عدم تعادل، مشکل بودن شناسایی و اثبات جرائم است. هنگام استفاده و اعمال قوانین به جرائم زیست‌محیطی، باید این موضوع را در نظر داشت که اکثر آن‌ها عمومی هستند. در کنار تعداد زیادی از قوانین زیست‌محیطی، مسائل حقوق کیفری واقعی نیز وجود دارند که منجر به بروز مسائل کاربردی می‌شوند. این امر شامل تعیین فرم جرم یا گناه، استفاده از مفاهیم ارزیابی، ضرورت تعیین ویژگی‌های مربوط به دیگر جرائم، و ایجاد یک رابطه‌ی علی یا سببی است. مهم‌ترین آن‌ها، شامل مراحل زیر در زمینه مبارزه با جرائم زیست‌محیطی است: ۱-هنگام تعیین فرم گناه به همراه موضوع فعل یا عمل، روش‌های ارتکاب و دیگر علایم به صورت بی‌طرفانه، مجازات مربوطه تعیین می‌شود؛ ۲- توسعه‌ی فرایند تعیین نرخ‌های خاص برای محاسبه‌ی میزان خسارت به جای استفاده از مفاهیم ارزشگذاری برای یکپارچه سازی شیوه‌های قضایی و افزایش یکنواختی آن؛ ۳- بهبود روش‌های محاسبه و شیوه‌ی جبران خسارت ناشی از جرائم زیست‌محیطی؛ ۴- به حداقل رساندن شیوه‌ی ساخت مدارک و شواهد جرم یا یکپارچه سازی مفهوم تهدید در ساختارهای فوق.

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