SOME QUESTIONS ON CRIMINAL LIABILITY FOR ENVIRONMENTAL CRIMES

Abstract. The article is devoted to the consideration of some issues of criminal liability for environmental crimes on the basis of the analysis of Russian legislation and criminal law, scientific and theoretical provisions, judicial act and example of judicial practice.

Key words: criminal liability, environmental crimes, analysis, Russian legislation, criminal law norm, provisions, approaches.

As is known, the reforms in the political and socio-economic spheres that took place in Russia since the 90s of the XX century led to the development of new market relations, ... freedom of entrepreneurship and other economic activities [1, p. 664]. This process was not only difficult and economically unstable, which led to negative consequences in socio-economic terms, but also a significant increase in mercenary, violent, organized, corruption and other crimes, including crimes in the field of environmental protection, including environmental crimes.

In the scientific literature and Internet resources, many scientific publications are devoted to the analysis of environmental crime in the Russian Federation (hereinafter – Russia, RF), including criminological and other criminal-legal characteristics [2-9]. Such interest is not accidental [10, p. 179], since environmental protection, prevention and counteraction to environmental offenses and crimes are important tasks of state bodies of Russia.

The author agrees with the scientific approach that "one of the urgent and comprehensive problems facing the entire international community is the protection of the natural environment. The impact of man and his activities in various spheres
on the natural environment has increased so much that the world community sees environmental security as the most important component of international (universal) and national security of each state" [11, p. 248].

The subject of this review will be some issues characterizing [12, p. 6] criminal liability for environmental crimes in Russia.

Based on the subject of the study in the center of the author's interest will be [13, p. 346] the following questions: what normative legal acts define environmental protection; what is meant by environmental crimes; what socially dangerous acts form environmental crimes; what criminal law provides for environmental crimes; what is the criminal legal characteristic of environmental crimes; what are the features of judicial practice on environmental crimes?

Article 42 of the Constitution of the Russian Federation stipulates that "Everyone has the right to a favorable environment, reliable information about its condition and to compensation for damage caused to his health or property by an environmental offense" [14].

Normative fixing of environmental protection is defined in the Federal law of 10.01.2002 N 7-FZ "About environmental protection" [15] (further – Federal law "On environmental protection"), laws of constituent entities of the Russian Federation (for example, Environmental code of the Republic of Tatarstan), decrees of the President of the Russian Federation (for example, the presidential Decree "On state strategy of the Russian Federation on environmental protection and sustainable development"), the resolutions of the Government of the Russian Federation (for example, the decree of the RF Government "On approval of the state program of the Russian Federation "Environmental Protection" for 2012-2020") and other legal acts on these issues.

It should also be noted that article 75 of the Federal law" on environmental protection " establishes such types of liability for violation of legislation in the field of environmental protection as property, disciplinary, administrative and criminal.

Thus, according to the Code of administrative offences (hereinafter-the administrative Code of the Russian Federation) [16] there are more than 20 articles
defining administrative offences in the field of environmental protection (for example, article 8.6. Administrative code of the Russian Federation "Damage of the earth", etc.).

Let us turn to the consideration of criminal liability for environmental crimes.

In the legal literature, many scientific concepts of environmental crimes are given.

As for the legal concept of environmental crimes, it was given in Art. 85 of the Law of the Russian Federation of 19.12.1991 N 2060-1 "On environmental protection" [17], but lost its force on the basis of the Federal law "on environmental protection". Thus in Art. 85 it was specified that "the ecological crime is understood as socially dangerous act encroaching on the ecological law and order established in the Russian Federation, ecological safety of society and causing harm to environment and human health".

A. A. Rozhdestvina defines environmental crimes as socially dangerous acts (actions or inaction) stipulated by the criminal law, encroaching on public relations on preservation of the natural environment, rational use of natural resources, ecological order and ecological safety of both the population and the natural environment [18, p. 392].

There are other scientific concepts of environmental crimes in the legal literature.

In the legal literature characterizing the Russian legal system it is accepted to define that "... the public relations arising in connection with Commission of crime, are one of the most settled, owing to the increased importance [19, p. 229]. Therefore, the system of Russian legislation in the Criminal code of the Russian Federation [20] (hereinafter – the criminal code RF) notes that it is based on the Constitution of the Russian Federation and generally recognized principles and norms of international law (part 1 of article 1 of the criminal code), and criminal law reflects socially dangerous manifestations of man.

In the criminal code there is a section VIII "Crimes against public safety and public order", which includes Chapter 26 "Environmental crimes", dedicated to the
protection of the environment and defines environmental crimes, first identified in the domestic criminal law. This Chapter provides for art. 246-262 of the criminal code of the Russian Federation, which define intentional or reckless socially dangerous acts encroaching on the established in Russia environmental relations, environmental safety of society and the state, causing harm or creating a threat of causing the environment, man and other law enforcement interests [11, p. 250].

In terms of the classification of environmental crimes in the legal literature, many scientific approaches are also proposed, which causes heated discussions and disputes.

So, V. V. Sverchkov proceeding from direct object of a crime suggests to allocate the following groups of ecological crimes [21, p. 403]:

1) the crimes expressed in violation of rules of the General ecological safety (Art. 246-248 UK of the Russian Federation);
2) crimes concerning basic objects of the natural environment, i.e. waters, the atmosphere, the soil, subsoil, etc. (Art. 250-255 UK of the Russian Federation);
3) crimes concerning fish stocks, animal and flora (Art. 249, 256-262 UK of the Russian Federation).

There are other classifications of environmental crimes in the legal literature.

Thus, environmental crimes form a system that will essentially be true, provided, of course, that it will be based on a stable feature that can legally clearly Express the qualitative property and originality of the classified phenomena.

It should also be noted that in the legal literature there are scientific approaches in terms of socially dangerous acts involving damage to the environment, which indicate criminal acts contained in other chapters of the criminal code.

V. P. Kashepov refers to crimes associated with causing harm to the environment in Chapter 24 "Crimes against public safety" (article 215 of the criminal code "Violation of safety rules at nuclear energy facilities" , etc.), in Chapter 25 "Crimes against public health and public morality" (article 237 of the criminal code "Concealment of information about circumstances that create a danger
to life or health of people", etc.), in Chapter 34 "Crimes against peace and security of mankind" (article 358 of the criminal code "Ecocide") [22].

Consider the criminal liability for environmental crimes through the main elements and features.

The main object of this group of crimes are public relations on environmental protection, rational use of certain types of natural resources and their conservation, as well as to ensure environmental safety of people.

In turn, the subject of criminal encroachments related to environmental damage should be determined on the basis of different objects of the environment and the natural environment. According to article 1 FZ "About protection of the environment" under the environment means the totality of environmental components, natural and natural-anthropogenic objects, and also anthropogenic objects; in turn, the natural environment includes the totality of environmental components, natural and natural-anthropogenic objects; the components of the natural environment are: earth, subsoil, soil, surface and groundwater, atmospheric air, flora, fauna and other organisms, as well as the ozone layer of the atmosphere and near-earth outer space, which together provide favorable conditions for the existence of life on Earth.

The subject of a particular environmental crime may include two independent elements, namely:

a) the main-the material world, which is primarily encroached upon;

b) optional-the material world, which is encroached upon after the main. For example, the main subject of criminal encroachment under art. 250 CC trades abroad, is water (superficial, underground or sources drinking water supply), and facultative-animal or plant the world, fish reserves, products forestry or agriculture [21, p. 404].

The objective side of the affected elements of crimes in the vast majority is expressed in non-compliance or violation of the requirements of laws, other special rules established to ensure environmental order and environmental safety.
Violation involves the implementation of actions (for example, illegal extraction (fishing) of aquatic biological resources, hunting, logging of forest plantations) or inaction (for example, failure to comply with environmental safety rules by a person who is entrusted with this duty by virtue of a regulatory legal prescription).

The subject of criminal encroachments on environmental crimes can be physical, sane persons who have reached 16 years of age. Thus as the special subject the official or other person responsible on service owing to those or other specific regulatory legal requirements is possible. In the latter case, if the content of the article on environmental crime does not provide for a specific qualifying feature, then it is assumed that the qualification of the crime is based on the totality of the relevant article of Chapter 26 of the criminal code and article 285 (or article 201) of the criminal code. However, if the qualifying feature is included in this article (for example, Art. 256, 258, 260 of the criminal code), the qualification of the crime must be carried out without such references.

The mental element of the offences may involve guilt in the form of intent (for example, illegal extraction (catch) of aquatic biological resources, illegal hunting) and in the form of negligence (e.g., in case of violation of environmental safety is responsible for service of a person foresaw the possibility of socially dangerous consequences).

Represents a practical interest in the resolution of Plenum of the Supreme Court of the Russian Federation dated 18.10.2012 N 21 "About the application by courts of legislation on liability for violations in the field of environment protection and natural resources" [23], which defines the legal framework for the uniform interpretation and application of criminal law in part of qualification of environmental crimes during preliminary investigation, trial and sentencing by the courts for environmental offences, and to ensure the unity of judicial practice on environmental crimes.

In confirmation we will give an example from judicial practice. On March 29, 2017, the court of the Saratov region considered a criminal case against S., accused
of committing a crime under part 1 of article 251 of the criminal code, that is, for violating the operation of installations that caused pollution of natural resources in Engels. S. was found guilty of committing the specified crime and sentenced to punishment in the form of a fine in the amount of 50 000 rubles [24].

In conclusion, it should be noted that at present [25, p. 16] it is necessary to pay attention to the further improvement of legislation in the field of environmental protection and criminal legislation on environmental crimes. It is also necessary to uncompromisingly protect the environment from possible natural, technological and other phenomena, ensure environmental safety, which should be aimed at countering socially dangerous phenomena and prevent possible threats to human health and life, pollution of the earth, subsoil, soil, surface and groundwater, atmospheric air, as well as the continued existence of flora and fauna in Russia.

Thus, this study can be understood as an analysis of the existing norms [26, p. 247] of the criminal code RF and the Federal law "On environmental protection", materials of judicial practice and scientific approaches characterizing some issues of criminal liability for environmental crimes.

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