
CRIMINAL ENFORCEMENT ROLE IN ENVIRONMENT

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SUMMARY

Ecological crimes are the most dangerous part of behavioural acts that damage the environment. Control over environmental crimes is regarded as one of the most important spheres in the protection of ecology in Russia. It embraces, first of all, perfection of criminal law and legislation on the responsibility for ecological crimes in the framework of general Criminal Law and Judicial reforms, creation of an effective mechanism of the optimum realization of criminal law norms.

1 INTRODUCTION

Public attention to ecological problems in our country is now largely being made acute by many objective and subjective processes. Among them is the general deterioration of the ecological situation, the continuing pressure on the environment, the realisation of new dangers which occur under the conditions of extension of information, including a greater amount of information about encroachments on nature, its destruction, in the situation of democratisation, when public ecological movements are really capable of affecting the adoption and realisation of ecological decisions. The important factor of attention to ecological problems, which is a decisive factor for lawyers, is the reconsideration of ideas of property of natural resources, of the competence of departments, as well as the currently taking place reform of criminal legislation.

On the basis of the scientific research a conclusion can be made that in the field of legal protection of nature (as well as in the sphere of prevention of different disasters) there has arisen a problem situation. The society and state in the person of bodies of power need scientifically grounded information about the possibilities of law to regulate economic relations, about the structures and methods capable of realising the potential possibilities. In the view of this one circumstance should be underlined: these questions practically are especially relevant to criminal law.

2 DEMANDS TO STRENGTHEN THE ROLE OF CRIMINAL LAW

At present the most widely-spread demands in the public opinion are the demands to strengthen the role of criminal law, and consequently of criminal responsibility in the protection of the environment. In the social-psychological aspect the demands of the kind are rather symptomatic and together with other factors testify to a certain state of the public opinion, to the growth of rigoristic attitudes, which is confirmed by the results of sociological research. In general one may assume that in its majority the society is prepared for the extension of limits of criminal responsibility and to its strengthening in case of ecological offences. At the same time there exists a hostile attitude to this approach. Against it, obviously or not so obviously, come out the persons adopting ecologically relevant decisions due to their posts, as well as persons having antisocial ecological interests. Experts that in general speak for the restriction of limits and intensity of the criminal legal regulation, also have a guarded attitude to the strengthening of criminal responsibility. It is here views are largely formulated about the necessity of a differentiated and careful approach to the problem.

2.1 Difficulty of establishing criminal responsibility

As it is well known, it is more difficult to analyse the possibilities of criminal responsibility. Generally preventative and specially preventative functions of the criminal punishment are justly doubted in the special literature. There is no serious proof of the mechanism and degree of their effect. In our opinion, what we need now is the factorial approach to the study of the potential effectiveness of the criminal responsibility. With this aim in view it is reasonable to find out: a) how clearly useful and harmful behaviour are differentiated, how clearly defined is the zone of the ecologically harmful behaviour; b) whether there exist conditions to choose between the ecologically useful and ecologically harmful behaviour; c) whether the individual is capable of making this choice and thus determine the existence of the object which must and can be regulated by legal means. Further on, it should be decided which legal means can affect the decision about choosing the variant of behaviour and in what way; here the problem is raised of correlation of different kinds of responsibility (moral, economic, administrative, disciplinary, criminal). At last, problems are made concrete of correlation of social values and the right of the society to punishment: here a problem arises of the assessment of social danger, social harmfulness of various kinds of antisocial ecological behaviour, mercenary-minded, vandalist, negligent, professionally incompetent, etc.

2.2 Consequences of defining criminal behaviour

The mechanism of the effect of responsibility on the behaviour becomes apparent in the given social system, in the concrete historical conditions and is to a great extent determined by them. Criminal responsibility is seemingly inevitable. But there exist serious restrictions of its possibilities. Once such necessity is abstractly recognised the resistance of the wide employment of such a responsibility is great. It leads to the falsification of the course of proceedings, the distortion of its results, the consequences, the striving for deliberate deception of the society. Criminal responsibility objectively leads to a greater number of those accused and in many cases prevents from using their experience and capabilities, since it excludes the right to further fulfillment of complex and responsible professional duties. The society, the groups formulating the legislative decisions, determining the will of the lawmaker, must work out a certain approach to these problems, consciously understand the mechanism of activity of different kinds of responsibility and be prepared for the consequences of its realisation. The sondages of the public opinion being carried out now show that the ideas of such kind are not sufficient. The obvious orientation towards the criminal responsibility is not accompanied by the understanding of information about its consequences. Placing responsibility is regarded as a final moment of its realisation. The real effectiveness of the punishment, the necessary expenses, the inevitable growth of conflicts, social tension are often ignored. Much the same arguments may be developed with respect to the assessment of social danger, social harm of certain ecological acts and behaviour. History shows that such assessments are changeable. One shouldn't consider every last one the most correct, however, lawyers must in one way or another take such assessments into consideration if they don't want to create inoperative rules.

3 DEVELOPING CONSENSUS ON ENVIRONMENTAL CRIMES

Ecological crimes are the most dangerous part of behavioural acts that damage the environment. In the conditions of an essentially new, radically different approach to ecological problems, the struggle against ecological crimes comes to attract the most serious attention of the society, of different social groups, experts. This can be explained by a number of reasons. First of all, ecological crimes are conscious opposing of an individual to public interests, the behaviour which consist in violating the proved, important, sanctioned by the society rules of behaviour. It is in the ecological crimes that you can see reflected in the most concentrated form those negative phenomena which lead to the damage of nature, adopting wrong decisions and thoughtless exploitation of natural

resources Further on, the concept of the criminal and legal means of environmental protection is such that the ecological crimes present lots of various types of behaviour, differing in the method of acting, their aims, motives, spheres of accomplishment They are brought to life by the steady, deep negative processes in the social development And at last, practice has show that the ecological crimes (especially those connected with major catastrophes and industrial disasters) are doing colossal harm The consequences of such damage do have and may have global nature, they are hard to remove and are long lasting.

In recent years the attention of lawyers in our country has been concentrated on the following issues: the concept of ecological crime; revealing the level of latency of ecological crimes and applicability of certain criminal and legal norms; the structure of ecological crimes; defining the real harm done by ecological crimes in the general negative effect on the environment; the causes of ecological crimes; the effectiveness of juridical responsibility and the perfection of criminal legislation and prevention of ecological crimes Let me briefly consider some of them.

The ecological crime is stipulated by the criminal law socially dangerous deed action or absence of action, encroaching on the environment and its components, whose rational exploitation and protection ensure the optimal activity of man This crime consists in the illegal use of natural objects as a social value which leads to their negative changes The ecological crime is a variation of the ecologically relevant behaviour which in its turn, presents a combination of socially conditioned, volitional actions of individuals or groups that use the environment and cause (or may cause) changes, affecting the interests protected by law.

In our criminological literature great attention is given to the problem of studying the state and structure of different groups of crimes, including ecological crimes But it should be noted that the available statistical data about the ecological crimes may evidently be looked upon as a certain extract They are not so much information about the state of ecological crimes, but rather some indices of the struggle against such crimes by the investigation and court bodies, by the system of criminal justice Or course, such data also have significance as they reflect the state, the intensity and possibilities of this line of criminal policy.

Many experts point to a considerable gap between the quantity of the revealed criminally punishable deeds, such as the pollution of water and air, the contamination of the sea by substances harmful for people's health and the wildlife of the sea, and on the other hand - the real application of the criminal law Thus, in 1970 the Russia heard only three trials of those guilty of the pollution of water and air; in the course of the 70s such cases were also few; the generalization of the legal practice for the years of 1977-1983 showed that this tendency remains; for period 1984-1992 the courts have considered only several dozens of cases In many regions of the country, in spite of the registered facts of the pollution of water and air, the number of people convicted is either insignificant or equals zero There is practically no conviction for the execution or timber-rafting or explosive operations accompanied by the violation of rules of fish protection Court are not applying norms on criminal responsibility for unqualified poaching (p. 1 art. 163 and p. 1 art. 166 RF CC) for the violation of rules of prospecting for mineral resources (art. 167 RF CC) At the same time it is obvious that the application of other norms is growing: the number of convicted for qualified poaching (catching fish and water animals), for illegal hunting, for illegal cutting of timber, has increased The analysis of the statistics shows that the practice of instituting criminal proceedings reflects the intensity of criminal activity of certain types This can be seen rather consistently in poaching and cutting of timber Such crimes as the pollution of water and air either slightly or just not correlated with the real state of environmental protection, with the total number of illegal cases of pollutions.

Thus, even as applied to the ecological crimes the latency may be greater or less considerable In some situations the state of applicability of criminal and legal norms at least reflects the state of criminality, in some others the link between the two is practically not traced.

4 TYPES OF ENVIRONMENTAL CRIMES

The ecological criminality is divided into three parts: malfeasance, mercenary and vandalist crimes. In order to get the criminological characteristics of criminal malfeasance the most significant are such of its signs as: the link between the deeds and the competence of the subject; the purpose of action; the nature of causal relationship between deeds and consequences; the duration in time of the violation of the acting rules. The analysis of these signs made it possible to single out several subgroups of criminal malfeasance.

The first one is the crimes which actually having been committed for a long period of time one day cause grave consequences, and as a result - the response of the legal bodies. In these cases instituting criminal proceedings is usually preceded by numerous measures, warnings made by the nature protecting bodies. The varieties of the crimes of this kind are the following: the pollution of water or air resulting from the exploitation of worn out equipment; the exploitation of the equipment above capacity; switching off the equipment; the violation of technological rules of executive the production or nature protecting activity. In general we can say that these are the crimes consisting in exceeding the permissible degree of the production risk which suddenly leads to ecological damage. The second subgroup of crimes is connected with direct neglecting of technological rules. They may be committed for a long period of time when the possibility exists to observe the rules, but this demands either greater investments or modifications of the main production. In these case we face the neglecting of using the available nature protecting possibilities. The third subgroup unites one-time or situational neglecting of the acting rules, the switching off of the equipment, discharges of wastes in a volley, violations of technology. The fourth subgroup is made by the crimes connected with making unpardonable, though undeliberate mistakes in using the worn out equipment in designing, elaboration of technologies which later on result in ecological damage.

The group of mercenary crimes is singled out on the basis of deriving material profit when committing them. Their criminological characteristics is analysed on the basis of the data about the duration in time of the criminal behaviour, about the use of different technical means, about the scope of criminal activity and the nature of consequences and other signs. A number of research works has shown that poaching turned into a means of gain giving considerable profit and may sometimes be estimated as professional criminality. Among those against whom criminal proceedings were instituted for illegal hunting, illegal fuchung there are only 21% of people who committed the crime for the first time of situationally, i.e. "accidental" criminals. The equipment of the criminals is the following: e.g. in illegal fishing: motor boats with a powerful motor - 43,7%, special means of lighting - 9,8%, illegal means of catching - 62,4% including expensive, additionally modified - 49,1%. The incomes of some criminals are very high, e.g. of those engaged in illegal catching of salmon, getting caviar, etc.

The damage caused by vandalist activity is also high. This, in the first place refers to forest fires, shooting of animals registered in the Red Book, etc.

5 ENFORCEMENT AGAINST ENVIRONMENTAL CRIMES

Control over environmental crimes is regarding as one of the most important spheres in the protection of ecology and criminal law. It embraces, first of all, well-timed revealing of the crimes, then studying the processes and phenomena causing the said crimes, the legal (including criminal law) estimate of certain behaviour acts, the working out and realisation of preventive measures. The state of control over ecological crimes in the country is practically unanimously considered unsatisfactory. State power and government bodies, ministries and law protection agencies admit the insufficiency of the measures being taken. The system of nature protection bodies is still being formed (in recent years in more towns and districts appear special nature protection Offices of public prosecutors, ecological militis, etc., but up to this moment we are facing duplicating in the work, delimiting the functions and people lose credit to the official structures, etc., also has some seamy sides connected with the diminishing of the role of law.

In these conditions of special importance in the sphere of control over ecological criminality become the following factors: a) perfection of criminal law and legislation on the responsibility for ecological crimes in the framework of the general Criminal Law and Judicial reforms in Russia; b) creation of an effective mechanism of the optimum realization of criminal law norms; c) deepening of scientific knowledge about various causes of ecological crimes, about real social conditions leading to environmental crimes, the growth of ecological criminality, the increase of damage; d) expansion of social and scientific cooperation, including elaboration of the confidence conception in the sphere of criminal legislation and practice of its application.

6 IMPROVING CRIMINAL LEGISLATION

Let us now consider the question about the perfection of the criminal legislation. It should meet the following demands: a) it should present a well-coordinated system of prohibitions; b) it should contain a concretized description of the prohibited types of ecological behaviour, consisting in the harmful effect on the environment; c) it should provide a full list of consequences regarded as ecologically harmful; d) it should define the signs determining the borderline of social danger and grading the said danger.

Experts in the field of criminal law are at present actively discussing the question about the necessity of a new approach to the grounds for criminal responsibility for encroachments on the environment, the connecting this with the complexity of the causal relationship between the deed and its consequences, the dependence of the trail on different several causes, the unusual nature of the intellectual side of the guilt, etc. In our opinion, no matter how complex are the tasks the law-maker is facing, the principles of criminal responsibility, formed in the doctrine of criminal law, must be invariably observed and act as certain restrictions of the criminal legal decisions. It especially concerns the principles of individual responsibility and guilt. True, the very understanding of guilt may be deepened or changed with the appearance of new encroachments and with the consideration of the specific nature of different criminal legal systems.

The draft of the new Criminal Code of the Russia there is a special chapter on ecological crimes. It includes two groups of norms. The first one is the general norms, stipulating responsibility for encroachments on the environment in general. The second one is the norms protecting certain elements or objects of the environment. The concept of prohibitions, included in these groups is based on the criminological and social and legal research of the ecological behaviour, the effectiveness of the juridical responsibility for ecological offences, the causes of ecological crimes, the mechanism of acting of law in the protection of nature, which was carried out in the 80s in Institute of State and Law. This research has revealed a considerable social danger of the mercenary, vandalist, incompetent and unprofessional behaviour.

The norms of the first group must contain the rules proper of the behaviour, i.e. prohibitions addressed to people and the rules to a certain extent determining the content of the norms of the second group. The main place in this group of norms is taken by the general corpus delicti against environment as a deliberate or negligent violation of the rules of exploitation or protection of soil, water, air, flora and fauna which caused sufficient ecological damage such as degradation, exhaustion, destruction or damage of natural resources, as well as damage to life and health of the people, or other grave consequences. The qualifying signs here may be: the using of sources of heightened danger, or chemical weed-killers, explosives, the making of fires or other generally dangerous deeds. Such a composition of the corpus delicti in general makes a possible to liquidate some blanks in the criminal law without extending the scope of its action, without leading to additional criminalisation of the behaviour. At the same time conditions are created ensuring the unity of all the criminal and legal means of nature protection. This is achieved by pointing to the illegal nature of the deed, by describing the means of affecting the nature and by characterising the consequences.

Of general nature is also the norm concerning the violation of the ecological balance. It is formulated in two ways. The first one is realised by concretizing the means with which the crime was

committed. It may be the violation of the rules of introducing new technologies, technical devices, of carrying out scientific experiments, working out projects (e.g. the notorious turn of the rivers in Russia), whose consequences today are unpredictable, etc. The second one is realised by pointing to such consequences as the ecological disaster in region, the irreversible or ungovernable changes in the environment, or the deterioration of health and heredity of the people, or extinction of some species of flora and fauna, or some steady changes in the climate and radioactivity. The qualifying signs here are the using of especially dangerous and uncontrollable means of affecting the environment, as well as the consequences presenting considerable ecological damage. It may be human victims, epidemics, natural disaster. At the same time ensuring the application of this norm in case it is adopted requires the decision of number of theoretical, practical and juridical questions. This refers first of all to people understanding of the specific content of the causal relationship between the deeds of the subject and the consequences, which is naturally complicated by some intermediate links, etc.

Of general nature is also the norm instituting criminal proceedings for providing false ecological information. It does not compete with other offences, e.g. of economic character, since the nature and legal status of the information are different, or malfeasance (forgery) since here the subject and means of committing the offence are different. This deed is defined as providing deliberately false information about the state of the environment or nature protection activity, or about the possible consequences of the exploitation of the natural resources which caused considerable ecological damage. The need in this norm is great in Russia.

The norms concerning the encroachments on certain types of object should be built up in fact following the structural elements of the general norms, singling out means and ways of the criminal encroachment, the characteristics of the object of nature and the consequences. The place in between the two considered groups of norms may be occupied by the norm instituting criminal proceedings for the pollution of the environment. It should include the norms about the proceedings for the pollution of the sea, for the violation of the continental shelf legislation, for illegal hunting of beavers and seals. Their inclusion is dictated by the available international agreements. Also there should be the norms instituting proceedings for the violation of the regime of particularly guarded objects of nature, illegal hunting and fishing, cruelty to animals.