

MTMSD 2022**I International Conference «Modern Trends in Governance and Sustainable Development of Socio-economic Systems: from Regional Development to Global Economic Growth»****DETERMINATION OF THE AMOUNT OF ENVIRONMENTAL
DAMAGE TO THE CRIMINAL CODE**

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Abstract

The scientific article analyzes the features of the criminal policy aimed at specifying the damage caused, taking into account the calculation methods and taxes, which are now provided for by a number of provisions presented in Chapter 26 of the Criminal Code of the Russian Federation. The purpose of this scientific article is to consider the specifics of the regulation by the Russian legislator of the damage caused by certain environmental crimes. The following methods were used in the work: dialectical, logical, formal-legal and many others. Based on the conducted research, it is concluded that the changes affecting these elements of crimes are sufficiently justified, since there is a differentiation of acts from related offenses reflected by the Administrative Code of the Russian Federation by determining the amount of damage. Technical and legal shortcomings are also being eliminated, because before the introduction of the above-described innovations, there was no clarity and distinctness of understanding of what exactly led to the violation of the principle of legality and the realization of human and citizen rights and interests. It is emphasized that today it is most expedient to reflect the act associated with the acquisition, storage, transportation, processing for sale or sale of deliberately illegally harvested wood not in Chapter 22 "Crimes in the field of economic activity", but in Chapter 26 "Environmental crimes" of the Criminal Code of the Russian Federation.

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1. Introduction

The relevance of the topic of the scientific article chosen by us is due to the fact that at present, firstly, environmental problems are increasingly taking place, and secondly, criminal law norms are being improved, focusing on the harm caused by man to nature, thereby delineating criminally punishable acts from other related ones.

It is worth emphasizing here that the criminal law regulates sanctions only for violations that pose a public danger. That is why the Criminal Code of the Russian Federation does not propose a legislative interpretation of this sign of a crime, which, however, is key in distinguishing crimes from other acts.

In turn, criminal liability for environmental crimes should occur taking into account the causal relationship between the act of a person and the consequences of his illegal actions, expressed in the harm caused, but as the analysis of doctrinal points of view shows, there are currently problems of criminal liability for these crimes (Kalinina, 2019).

Meanwhile, at the doctrinal level, the term "environmental harm" implies:

- i. (in a broad sense) the damage caused to the environment by virtue of the act committed by the perpetrator, as well as the existing economic damage;
- ii. (narrowly) directly caused environmental damage (Kosheeva, 2020; Nikishin, 2009; Sluchevskaya, 2020; Veliyeva, 2011; Vladimirova & Galkina, 2019).

In our opinion, it should be especially emphasized that one of the problems of criminal legislation is precisely the presence in the compositions of certain consequences that occurred as a result of a person's act.

But it should be noted that during the design and adoption of the Criminal Code of the Russian Federation, initiatives were proposed (based on foreign experience) regarding the need to design the compositions of Chapter 26 of the Criminal Code of the Russian Federation on a formal basis, and not material.

In particular, Chapter 26 of the Criminal Code of the Russian Federation presented by the Institute of State and Law of Russian Academy of Sciences fully reflected this provision. However, during the adoption of the Criminal Code of the Russian Federation from the position of the Supreme Court of the Russian Federation and a number of law enforcement agencies, this bill was rejected (Dubovik et al., 2016).

Such actions were motivated by the fact that the threat of harm does not represent the public danger that the legislator puts into the concept of a crime, therefore it is inappropriate to postpone the end of the acts of Chapter 26 of the Criminal Code of the Russian Federation to an earlier date. In addition, it is the sign (of the consequences that have occurred and not occurred) that is necessary to distinguish between crimes and administrative offenses.

But it should be noted that in the issue under study there is always, to one degree or another, the problem of proving the fact of committing an environmental act and the process itself is really time-consuming, while when the consequences occur, this stage is greatly simplified.

Therefore, offenses falling under the jurisdiction of other branches of law, according to the fair remark of Razgildiev (2013, 2019), cannot act as carriers of public danger in their essence.

Thus, the violations reflected in the Criminal Code of the Russian Federation differ from other acts precisely by a sign of danger.

2. Methods

The methodological basis of the scientific article is a set of different methods of cognition. In the course of the research, such general scientific methods as the dialectical method of scientific cognition, the logical method, the system-structural method, methods of analysis and synthesis, deduction and induction were used.

The subject matter of the study necessitates the use of special scientific research methods, among which it should be noted the formal legal method, which allows to analyze the norms of legislation and, based on a functional approach, determine the goals for which definitions of the amount of environmental damage were introduced when bringing to criminal responsibility for certain environmental crimes, and the logical legal method, which allows establish the relationship of individual norms.

3. Study Results

Currently, after a period of prolonged passive attitude of the state to the environment, regulatory legal acts aimed at ensuring and implementing Article 42 of the Constitution are being actively adopted in Russia.

In Chapter 26 of the Criminal Code of the Russian Federation, environmental elements of crimes are constructed in different ways. Applicable to individual acts, it is required, for example, to establish the amount of environmental damage measured in monetary terms (Article 255 "Violation of the rules for the protection and use of subsoil", 256 "Illegal extraction (catch) of aquatic biological resources", 258 "Illegal hunting", 260 "Illegal logging of forest plantations", 261 "Destruction or damage to forest plantations"). Moreover, Federal Law No. 7-FZ of January 10, 2002 "On Environmental Protection" emphasizes that the damage caused to the environment is calculated taking into account taxes and methods for calculating the amount of damage to the environment individually applicable to the crime committed. Here it is necessary to take into account the amount of environmental damage related to actual damage, lost profits and costs of restoring the disturbed state of nature. It is for this reason that the provisions on "pre-estimated losses" are reflected in the norms of legislative acts.

Thus, in our opinion, environmental harm includes damage caused to those social relations that are protected by the norms of the criminal legislation of Russia, but it is measured using economic indicators.

In addition, we can agree with some researchers that in Russia, taking into account inflationary processes, the cost criteria of the criminalizing signs of the analyzed acts should be periodically reviewed, and it is also not always possible to objectively assess the damage caused to the environment (for example, in a man-made accident) (Kuznetsova & Shkele, 2019). As our research will show, this does not happen often today.

So, starting to analyze these compositions, I would like to note that the amount of damage caused to the environment by violators has been gradually changing, as may be evidenced by the amendments introduced by Federal Law No. 145-FZ of July 22, 2008 "On Amendments to Article 260 of the Criminal

Code of the Russian Federation and Article 8.28 of the Code of the Russian Federation on Administrative Offenses".

With this in mind, the amount of payments was significantly reduced: before the adoption of Federal Law No. 145-FZ of July 22, 2008, the minimum amount of damage caused was ten thousand rubles, one hundred thousand was considered a large amount, and two hundred and fifty thousand were considered especially large, at the same time it is enough to cause damage in the amount of five thousand rubles, a large amount - fifty thousand rubles, and one hundred and fifty thousand rubles is recognized as especially large.

Thus, the criminalization of an act involving illegal logging of forest plantations took place, which is largely due to the explanatory note to Federal Law No. 145-FZ of July 22, 2008. The note emphasized: "This crime, in addition to causing damage to the environment, poses a threat to environmental safety, since, according to the research of a number of experts, it is impossible to completely restore the forest fund in the shortest period of time. For coniferous or hardwood species, it is necessary at least 41 years. The cultivation of forests requires quite significant costs on the part of the state".

However, from the point of view of the criminals themselves, the above lawlessness is beneficial, because today there is sufficient demand for wood, and state measures aimed at preventing violations in this area do not lead to the realization of the goals of punishment, in particular, regarding the prevention of the commission of the acts under study.

In addition, the reduction of the damage limit, as emphasized in the explanatory note, is caused by the emerging judicial practice. Often, the courts, when qualifying a crime involving illegal logging of forest plantations, apply the tax value of wood without taking into account correction factors, which is why most of the violators are liable in accordance with the Administrative Code of the Russian Federation (Explanatory Note to the Draft Federal Law, 2008).

It should be mentioned that thanks to Federal Law No. 145-FZ of July 22, 2008, penalization also took place, that is, there was an increase in the measure of state coercion, in particular, in the form of an increase in the size of the fine (applicable to all parts of Article 260 of the Criminal Code of the Russian Federation), other types of punishments were introduced that affected certain parts of Article 260 of the Criminal Code of the Russian Federation.

Thus, the domestic legislator has tightened criminal liability for illegal logging of forest plantations both by lowering taxes and methods, and by regulating the types and sizes of punishments.

This is largely due to the reformation of measures to prevent illegal logging of forests, because as a result of the above-described offenses, serious damage is caused to the soil, wildlife, etc.

Meanwhile, monitoring judicial practice, we can say that quite often the above-described act is qualified under Articles 260 and 262 of the Criminal Code of the Russian Federation. As an example, I would like to cite the verdict of the Bakhchisarai District Court of the Republic of Crimea dated April 25, 2018 in case No. 1-93/2018, which emphasizes that T., being in the landscape and recreational park "Bakhchisarai", recognized as a specially protected natural territory of regional significance of the Republic of Crimea, without having a logging ticket or other permits and the bases, acting out of selfish motives, committed logging for the purpose of harvesting firewood for personal needs (The verdict of the Bakhchisarai District Court of the Republic of Crimea dated April 25, 2018).

In addition, analyzing Chapter 26 of the Criminal Code of the Russian Federation, we can reveal that Article 260 of the Criminal Code "Illegal logging of forest plantations" specifies such a sign as "significant damage", which, according to a note to this article of the criminal law, means "caused to forest plantations or trees, shrubs and lianas, calculated according to the taxes and methods approved by the Government of the Russian Federation, damage exceeding five thousand rubles" (Kapinus, 2022).

Article 262 of the Criminal Code of the Russian Federation "Violation of the regime of specially protected natural territories and natural objects", in turn, also contains an indication of this feature. However, in the Appeal Ruling of the Judicial Board for Criminal Cases of the Sverdlovsk Regional Court on September 25, 2019 in case No. 22-6570/2019, it is emphasized how the actions of the guilty person E. were originally qualified under Article 262 of the Criminal Code of the Russian Federation. However, the prosecution stated that the defendant does not have the composition of the incriminated act, since it was not possible to establish the infliction of significant damage. Also, the requirements of the regime of these territories, allegedly violated by E., were not specified. By virtue of which, the court's verdict against E. under Article 262 of the Criminal Code of the Russian Federation is subject to cancellation and return of the case to the prosecutor to remove obstacles to its consideration.

At the same time, the court finds justified the qualification of the above-described act under Part 1 of Article 260 of the Criminal Code of the Russian Federation (Appeal ruling of the Judicial Board for Criminal Cases of the Sverdlovsk Regional Court on September 25, 2019 in case No. 22-6570, 2019).

A similar problem of differentiation of Articles 260 and 262 of the Criminal Code of the Russian Federation arose, as explained by Timoshenko (2019), as a result of abuse by the legislator of the abstract way of formulation in the construction of these norms.

In addition, it should be noted that Federal Law No. 277-FZ of July 21, 2014 "On Amendments to Certain Legislative Acts of the Russian Federation" criminalized an act involving the acquisition, storage, transportation, processing for sale or sale of knowingly illegally harvested wood (Article 191.1 of the Criminal Code of the Russian Federation). Moreover, the qualification takes into account the harm caused by the guilty person and differentiation for the major damage caused (from fifty thousand rubles, especially large damage - from one hundred and fifty thousand rubles).

Moreover, this crime is reflected not in Chapter 26 of the Criminal Code of the Russian Federation, but in Chapter 22 of the Criminal Code of the Russian Federation, i.e. as a crime encroaching on public relations related to economic legal relations (Zaidova, 2021).

At the same time, as judicial practice shows, there is often a qualification according to the totality of crimes of Articles 191.1 and 260 (Verdict of the Tselinny District Court of the Kurgan region on December 16, 2015).

It should be noted that illegal logging of wood provides for further transportation. And this, in fact, presupposes a priori that from now on the criminal person will be liable for two component elements of a crime (Kiryushin, 2022).

In our opinion, it is necessary to transfer Article 191.1 to Chapter 26 of the Criminal Code of the Russian Federation, since it largely refers to environmental crimes, because a person contributes to illegal logging of forest plantations and the commission of other acts reflected in the Criminal Code of the

Russian Federation to one degree or another (Resolution of the Constitutional Court of the Russian Federation No. 8-P dated May 27, 2008, 2008).

Another act in which there is an assessment of the damage caused is a violation provided for in Article 256 "Illegal extraction (catch) of aquatic biological resources".

Federal Law No. 330-FZ of July 03, 2016 "On Amendments to Article 256 of the Criminal Code of the Russian Federation" introduced innovations into it (before the adoption of this Federal Law, there was no indication in the note on the assessment of the damage caused).

The Explanatory Note to Federal Law No. 330-FZ of July 03, 2016 emphasized that aquatic biological resources form the basis of national wealth, but currently there are a significant number of cases of illegal extraction (catch) of these biological resources. Moreover, quite often, according to the information provided by the customs of some foreign countries in which (unloading is carried out) the illegal catch exceeds the official one.

As a result, the illegal export of the described biological resources leads to damage to nature (in some cases estimated at tens of tons), and it takes a long time to restore the seafood population. There is also a significant impact on the economy, since the state does not receive taxes and fees from customs duties, and these deductions often reach significant amounts.

Therefore, it is necessary to legally reflect the criteria for the amount of damage specified in Article 256 of the Criminal Code of the Russian Federation. After all, the reference to the Resolution of the Plenum of the Supreme Court of the Russian Federation dated November 23, 2010 No. 26 "On certain issues of the application by courts of legislation on criminal liability in the field of fisheries and conservation of aquatic biological resources (Articles 253, 256 of the Criminal Code of the Russian Federation)" is applied quite arbitrarily in judicial practice. This seriously violates the principle of legality, and also contradicts the decisions of the Constitutional Court of the Russian Federation, because the legislation must have clearly spelled out signs: the content of the indication of crimes other than related offenses reflected in the Administrative Code of the Russian Federation.

In addition, the technical and legal composition of the criminal law norm should be clear, unambiguous and bring consistency into the system of current legal regulation (SZ RF, 2008). Otherwise, violations of human and civil rights and freedoms are inevitable (Explanatory Note To the draft Federal Law, 2016a).

Another environmental crime, where an indication of the harm caused is reflected, is illegal hunting.

The latest changes made to the assessment of harm occurred with the adoption and entry into force of Federal Law No. 157-FZ dated June 27, 2018 "On Amendments to the Criminal Code of the Russian Federation and the Criminal Procedure Code of the Russian Federation", taking into account which, in a note to Article 258, for the first time in the domestic Criminal Code of the Russian Federation, damage was regulated (in accordance with the taxes and methodology of the Government of the Russian Federation, it exceeds forty thousand rubles, especially large - one hundred and twenty thousand rubles).

This proposal is due to the need to unify approaches to determining the amount of damage caused by environmental crimes, which, in fact, were based on the same provisions as for the act provided for in

Article 256 of the Criminal Code of the Russian Federation (Explanatory Note To the draft Federal Law, 2016b).

In addition, Chapter 26 of the Criminal Code of the Russian Federation reflects a crime, where there is also an assessment of the damage caused to the environment. It involves a violation of the rules for the protection and use of mineral resources (Article 255). Here, attention is focused on causing large-scale damage for unauthorized extraction of amber, jade or other semiprecious stones in any form, condition. The amount exceeds one million rubles.

Meanwhile, the amendments introduced by Federal Law No. 500-FZ of December 27, 2019 "On Amendments to the Criminal Code of the Russian Federation and the Criminal Procedure Code of the Russian Federation" are due to legislative regulations that have not been thought out at the moment: there are a significant number of cases of illegal extraction and sale of amber, jade or other semiprecious stones (Explanatory Note, 2019).

Thus, the domestic legislator has tightened the responsibility for the illegal extraction of such types of subsoil.

We also mention that one of the latest laws regarding the issue we are studying is Federal Law No. 63-FZ of March 25, 2022 "On Amendments to the Criminal Code of the Russian Federation and Articles 150 and 151 of the Criminal Procedure Code of the Russian Federation", according to which Article 261 of the Criminal Code of the Russian Federation in addition to causing major damage (from fifty thousand rubles) from now on there is also a "significant damage (from ten thousand rubles)".

This, according to the explanatory note to the said Federal Law, was due to the order of the President of the Russian Federation dated May 4, 2020 No. Pr-741, which indicates the need to strengthen the responsibility of citizens for violations of fire safety requirements and damage (including forest plantations).

At the same time, before the adoption of this Federal Law, there was no clear delineation of the damage in which liability took place (in accordance with the current criminal legislation). As a result, in law enforcement practice, there was a situation when the investigator, in fact, in each case of identifying the guilty person, had to qualify his act according to the Criminal Code of the Russian Federation, without paying special attention to the harm he caused to the forest (Bukhaeva et al., 2022).

Meanwhile, we especially emphasize that the differentiation of criminal and administrative responsibility for related acts should occur only taking into account the damage caused to the environment.

That is, it is necessary to indicate the damage, the amount of which will be from ten thousand rubles. However, it is worth mentioning that in most cases in such situations (in a brush-wood fire, provided that the fire is of medium and lower combustion intensity) damage is usually caused in the amount of about eight thousand rubles (Explanatory Note, 2022).

It is precisely such steps of the legislator, in our opinion, that will help to distinguish between related acts provided for in the Criminal Code of the Russian Federation and the Administrative Code of the Russian Federation.

4. Conclusions

Summing up the above, we can emphasize that today the domestic legislator is improving criminal liability for a number of environmental crimes, specifying the harm caused in them, taking into account the fees and calculation methods.

This should largely lead to minimizing the problem of applying the norms of the criminal law aimed at protecting the environment, and delineating these crimes from related administrative offenses provided for by the Administrative Code of the Russian Federation.

The extent of the damage caused will not only be reflected in the materials of the criminal case, but will also become the subject of consideration of a civil lawsuit, which together represents methods of countering environmental crime.

It should also be said that the domestic legislator, when criminalizing an act involving the acquisition, storage, transportation, processing for sale or sale of deliberately illegally harvested wood, determined the object of protected public relations incorrectly.

In our opinion, this interpretation is closer to Chapter 26 of the Criminal Code of the Russian Federation, because the guilty person contributes to the commission of illegal logging of forest plantations and other similar acts reflected in the Criminal Code of the Russian Federation to one degree or another. However, we emphasize that this issue requires a separate more detailed study.

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