

RRI 2016
International Conference «Responsible Research and Innovation»

**Criminal legislation improvement of environment protection as
eco-protective means of Russian Federation**

Stanislav Vasilyevich Rozenko (a), Anastasiya Zharkova (b)*

* Corresponding author

(a) Yugra State University, Khanty-Mansiysk, Tyumen region, Russian Federation, rozenko_sv@mail.ru,
+79044844999

(b) Yugra State University, Khanty-Mansiysk, Tyumen region, Russian Federation, zharkova_aa@bk.ru,
+79195772409

Abstract

The paper is dedicated to Article 246 of the Criminal Code of the Russian Federation which provides for the criminal responsibility of infringement of environment protection rules during work performance. The paper presents both general scientific (empirical data processing technique and system-based structural technique) and private-law (benchmarking analysis and history-based law) research approaches. Based upon comprehensive environmental legislation research as well as current criminal regulation measures in industrial production and other manufacturing activities, the author comes to a conclusion that infringement of environment protection rules during work performance is a failure to comply with requirements, approved techniques, technical regulations in the environment protection field for a specific kind of production along with the failure to comply with different standards in the environment protection field. To recognize a person as a legal entity under Article 246 of the Criminal Code of the Russian Federation, one should pay attention not only to legal confirmation of obligation to enforce environment protection rules during work performance or to monitor compliance, but also an actual execution without being enshrined in law. The author brings a new wording for Article 246 of the Criminal Code of the Russian Federation as well as its supplementary Part 2 and Part 3.

© 2017 Published by Future Academy www.FutureAcademy.org.uk

Keywords: Ecological well-being, criminal responsibility, environmental crimes, infringement of environment protection rules, work performance.

1. Introduction

The relevance of the Russian criminal law improvement, which provides for the prosecution of infringement of environment protection rules during work performance, shall be explained by the fact that environmental compliance is a must both for every particular person and society in general despite the



call for progressive economic and industrial development of the state. Environment protection is one of the global challenges for humanity (Spash, 1998).

Under Article 42 of the Constitution of the Russian Federation everyone is guaranteed a right to favourable environment, reliable information on its current state and damage recovery caused by any environment crime to his/her health or property which is an existence condition not merely for private individuals but also for society and the state. Article 58 enshrines the duty for everyone to protect environment and treat natural resources with due care. According to Part 2, Article 41 of the Constitution of the Russian Federation, the Government promotes efforts to facilitate the ecological well-being. Therefore, these objects have constitutional status, what in its turn, requires reasonable bans in the Russian criminal law inasmuch as the Government shall give appropriate respond to ever-emerging criminal threats.

Ecological well-being in Russia is based on government and non-government institutions which undertake science-backed consistent activities associated with development and maintenance of statutory regulation to keep ecological well-being at an adequate level.

According to Article 18 of the Federal constitutional law «On the Government of the Russian Federation» as of 12 December, 1997, №2-FKZ (as amended on 03 July, 2016) the Government of the Russian Federation pursues a uniform environment protection and safety state policy; exercises civil rights to favourable environment; maintains ecological well-being.

In 2012, the President of the Russian Federation adopted a Framework environment development policy for the period until 2030, with the overarching aim to address social and economic challenges and to ensure sustainable economic development, to conserve environment, biological diversity and natural resources with a view to supply needs of current and next generations, to exercise civil rights to favourable environment and to reinforce legal order in the field of environment protection and safety.

The Federal Law «On Environment Protection» as of 10 January, 2002, №7-FZ (as amended on 29 December, 2015) provides for property, disciplinary, administrative and criminal liability of Environment Protection Law infringement under, Article 75 «Liabilities for infringement of the Environment Protection Law».

Environment security mechanisms in the Russian Federation are among the following: political, legal, social, economic, ideological, religious, educational, moral. All of them are aimed at protection and cultivation of favourable environment as well as ecological well-being protection granted for individuals and legal entities. Prosecution individuals and legal entities of environmental crimes is one of the more efficient tools to implement these mechanisms (Fitzpatrick, 2011; Marquez-Grant, 2012).

Criminal prosecution serves as a direct and grave sentence being enshrined only in one legal source i.e. in the Criminal Code of the Russian Federation for guilty, unlawful, socially dangerous acts (acts or omissions) which encroach on environment, its components, qualities, properties, state, management and protection having facilitated human life and activities along with environmental security of population and territories which causes damage to environment, health or any other legally protected benefits posing a threat of damage.

The purpose of this particular liability is to protect by means of public enforcement (criminal sentence), environment, its separate objects and components public health and lives, human right to favourable environment and ecological well-being, its existence and activity including rights of future

generations, procedures established under law and other regulations and is related to environmental management or an impact on environmental state and quality as well as environmental security of population and areas of the Russian Federation, nature destruction prevention, lower living standards.

Environmental Law infringement currently provides for criminal liability in various spheres of human activity – illegal siting and construction of industrial facilities, agricultural works, utilization of genetically modified organisms and nuclear power plants, waste transportation and burial, harvesting biological resources (forest vegetation, fishing, wildlife, vegetable life), performing a wide range of works associated with rising threats and hazards, etc. Upon appealing to the Criminal Code of the Russian Federation (hereafter CCRF), Article 2 reads the environment protection to be one of its aims (Criminal Code of the Russian Federation, 2017). Generally, Russian criminal law serves as efficient security arrangements for ecological well-being in the Russian Federation since it is based on a broad list of penal treatments. In this context, there are quite a few theories, suggestions, ideas, views of crimes committed with regard to environment.

Having assessed the current state of environmental crimes in the Russian Federation, one may conclude that despite growing human impact on the environment, there is a trending decline in crimes against ecology reported by Russian law enforcement agencies. The scope of environmental crimes accounts for crimes under the following articles of the CCRF: Article 260 «Illegal forest harvest »; Article 256 «Illegal aquatic biological resources harvesting»; Article 261 «Forest clearance and damage»; Article 258 «Illegal hunting». However, the share of crimes associated with environmental pollution in total crimes reported does not exceed 1% (Baeva, 2016).

There is a decline in reported environmental crimes with their actual rise over the last years. In 2013, there were 24728 environmental crime records which is 10,4% less compared with a year earlier. With as many as 11300 unsolved cases, it is 15,5% less than in 2012. January and February of 2014 marked 3012 environmental crimes with just 1562 unsolved ones. For example, no lawsuits under Article 246 of the CCRF were brought in the Khanty-Mansiysk district over 2012-2015.

The reason for that, to our mind, lies in the following circumstances: lacunas and faults in environmental and criminal legislation, defective judicial practice; weak environment protection law enforcement; natural resources users' economic priority over environmental ones; weak legal consciousness across the population in the Russian Federation who regard natural objects as inexhaustible supply. Within this framework, it is worth assenting to the opinion of Lavygina (2015) having stated that elaboration of environmental crimes prevention precautions cannot be possible without environmental consciousness in Russia.

In this case, development of such forensic studies as ecological forensic expertise is assuming greater relevance which finds endorsement in diverse national and foreign research papers (Cutting, 2006).

2. Legal framework and techniques.

Blanket disposition under Article 246 of the CCFR dictates compliance with considerable number of standards, specifications and guidelines. Incurrence of criminal liability for environment law infringement during work performance is in the closest relation with industry-specific legislation and other legal acts including resolutions of Plenum of Supreme Court of the Russian Federation which regulate environment

protection; design, siting, construction, putting into operations and running industrial, agricultural, scientific and other facilities; and so on.

Need for criminal legislation improvement, which provides for liability of the environment law infringement during work performance, requires to utilize such research methods as systematic and logical analysis, a dialectical method of scientific cognition, a comparative legislation method, a systematic-comparative method, etc. (Murphy, 2007).

It is beyond argument that this field of social relations requires strict and coherent criminal regulation. In this context, the CCFR recognizes environmental relations as an object of legal protection; it means national legislation attributes a group of environmental crimes under particular Chapter 26 «Environmental crimes» and due to adoption of the Federal Law «On Environment Protection». A similar approach is shown in criminal legislation of some Western European states. We believe this is explained by the importance of environmental relations protection this time when consequences of a manmade disaster have been affecting adversely on a substantial number of people over the few decades.

3. Methods

Segregation of Chapter 26 of the CCFR, which recognizes environmental relations as an independent object of the legal protection, is an apparent advantage. Criminal liability for environmental crimes committed have been an independent research subject in works by Vinogradova, Dubovik, Lopashenko, Popova and others (Dubovik, 2011; Lopashenko, 2001). Legal regulation of certain sections of Chapter 26 of the CCFR «Environmental crimes» needs further improvement owing to a number of challenges. Specifically, dispositions of the articles included in the particular chapter need to be kept current and brought into line with consistent statement of the criminal legislation along with differentiation and individualization of punishment under criminal law.

It must be admitted that the present institution has a blanket feature as legal framework of Chapter 26 «Environmental crimes» of the CCFR includes standards of other branches of law which enable realization of legal prohibition, i.e. environmental, land, aquatic and other prohibitions. In particular, T.E. Neduraev (Neduraev, 2005) notes that the body of environmental protection laws in the field of performance of industrial and other works for environmental safety nowadays totals for over 50 ecology-oriented federal acts together with 800 subordinate regulations and laws of constituent entities of the Russian Federation. Thus, it seems necessary to enshrine comments to the section of Chapter 26 of the CCFR for terms which are of a criminal definition in order to avoid value judgment. Actus reus of elements of environmental crimes during works performance requires mandatory scrutiny. This actus reus, having included specific properties i.e. purview of «environmental protection regulations during works performance», socially dangerous consequences and a crime committer, is blanket; that is to say, it is necessary to appeal to numerous legal regulations, and the conceptual structure of criminal legislation shall correspond with a conceptual framework of industry-specific legislation.

Specific nature of actus reus of a crime which provides liability under Article 246 of the CCFR is stated by the fact that it is committed contrary to specific regulations but dispositions of the article is blanket.

The legislations is missing the definition of a term «environment protection regulations». Legislative bodies do not use the term with reference to the Federal Law «On environment protection», but turn to definitions like demands, confirmed technology, technical standards and guidelines.

One should agree on the conclusion that when determining the nature of an act provided for under Article 246 of the CCRF, it is necessary to analyze not only the purview of the criminal law, but also other regulatory and practical sources, which contain information on the terms and concepts embodied in the wording of the article. In addition, many of the necessary provisions are contained in the technical standard document and acts of the State Committee for Construction, Architectural and Housing Policy of the USSR, other ministries and agencies, which prior to elaboration of Russian construction standards may apply in the part that does not contradict the current legislation of the Russian Federation.

Infringement of environment protection rules during work performance means failure to comply with requirements, confirmed technology, technical standards in the field of environment protection for certain types of works and failure to comply with environmental requirements (Varghese, 2012).

Corpus delicti of environmental crimes during works performance is a material crime, for to prosecute a crime committer socially dangerous consequences shall appear which include considerable change of background radiation, health injury, massive animal kill or any other grave consequences, which means deterioration of environment and its components, the elimination of which takes long time and considerable financial costs.

Explanations are of a special importance when considering issues of criminal liability for the infringement of environment protection rules during work performance. These explanations are enshrined in the resolution of the Plenum of the Supreme Court of the Russian Federation «On liability applied by courts for infringements of legislation of environment protection and management», as it provides many socially dangerous consequences which affect significantly the ecological well-being. In particular, one may consider a significant change in the background radiation that poses a threat to human health or life, etc.

Radiation is all types of ionizing emission generated by the radioactive decay, nuclear transformations, etc.

Radiation safety standards are passed basing on the publications of the International Commission on Radiological Protection № 43, 60, 67, 74, 82 and are approved by the authorized government bodies of the Russian Federation in for environment protection and disease control and prevention.

The rise of background radiation may lead to mutations, radiation sickness, cancer and other serious diseases, the development of which may be lethal for living organisms. A significant radioactive change is an increase in the natural radiation level that does not induce such lethal processes, but poses a real threat of their occurrence.

Mass animals kill is a complete wildlife demolition due to changes in their habitats and migration routes interference; sticking into the water intake facilities, production equipment units, getting hit by moving motor vehicles and agricultural machinery; construction of industrial and other facilities to produce, process and transport raw materials; contact wires and electric shocks, exposure to electromagnetic fields, noise, vibration; technological processes of livestock and crop production. Thus, mass mortality (disease) is considered to be an increase in average animal lethal level (diseases) three times or more.

3. Results

In accordance with the provisions of the Resolution of the Plenum of the Supreme Court of the Russian Federation «On liability applied by courts for in fringements of legislation of environment protection and management», other severe consequences are understood to mean the environment deterioration and its components, the elimination of which takes long time and considerable financial costs (for example, mass diseases or wildlife kill, including fish and other aquatic biological resources, demolition of flora objects, resulting in a significant reduction in their number, land degradation).

To recognize consequences as «grave» ones, it is necessary to take into account all the circumstances of the case. These include, for example, negligent homicide of at least one person, epidemic, epizootic and epiphytotic spreading, major material loss associated with termination of business activity of enterprises, institutions and organizations, involuntary resettlement of people, other negative changes in the environment that obstruct its preservation and lawful use. Grave consequences may refer to any ecological disbalance, which caused substantial or difficult-to-replenish damage to the environment, including living organisms.

Epidemic appears to be a mass, progressive in time and space within a certain region spreading of infectious diseases of people, much greater than the average records in the area.

Epizootic is a simultaneous progressive in time and space within a certain region spreading of infectious disease among a large number of one or many species of livestock, much greater than average records in the area.

Epiphytotic is a mass, progressive in time and space infectious disease of crops and/or a sharp increase in the number of plants pests, followed by mass loss of crops and productivity reduction.

To establish liability under Article 246 of the CCRF, it is necessary to prove the existence of these consequences.

For instance, an «Azhero - Sudzhensk – Krasnoyarsk» pipeline blowout has led to oil pollution of land and forest vegetation. Prosecution was denied due to the fact that the pipeline blowout had not caused consequences under Article 246 of the CCRF. Also, for example, an «Ukhta - Yaroslavl» pipeline blowout caused oil spill and aboveground pollution. Preliminary investigation bodies estimated the act as a matter of Article 246 of the CCRF and denied to institute criminal proceedings due to the lack of consequences mentioned in this article.

Criminal liability requires differentiation within the framework of Article 246 of the Criminal Code. We agree on the opinion of Dvoretzkiy, having stated that endangering shall be enshrined in Article 246 of the Criminal Code (Section 1, Article 247 of the Criminal Code, based on explanations by the Supreme Court, as criminal consequences carry the threat of background radiation change, Article 246 of the Criminal Code, which provides for criminal consequence a significant background radiation change, made in the type of material component).

Health injury in other formulations of Chapter 26 «Environmental crimes», for example, Section 2, Article 250 of the Criminal Code, Section 2, Article 251 of the Criminal Code, Section 2, Article 252 of the Criminal Code, appears to be a determinative element.

A number of elements under Chapter 26 of the Criminal Code, namely, Section 3, Article 247 of the Criminal Code, Section 3, Article 250 of the Criminal Code, Section 3, Article 251 of the Criminal Code,

Section 3, Article 252 of the Criminal Code, negligent homicide is established as a determinant element. This socially dangerous consequence may also act as a specifically determinant element of corpus delicti of the environmental protection during works performance.

Disposition under Article 246 of the Criminal Code includes legal reference to a special crime committer. The committer may be a person who by regulations or enabling legislation, by contract or other authorizing documents must implement certain actions to organize operation, control, security measures in connection with the use of the environment or a special procedure in general due to into official position of the person or his\her official errands.

Special crime committer is characterized by optional components. Under Article 246 of the Criminal Code such component establishes liability for compliance with environmental regulations during design, siting, construction, putting into operation and running industrial, agricultural, scientific and other facilities. We agree on the opinion of Sentsova and Volkolupova saying that «the notion of a special crime committer is most important as not the mere existence of the enshrined special, additional components associated with the committer, but the legal nexus of these components with the commission of the crime by the person». Thus, only with these components the perpetrator commits a crime, and it is impossible, in the legal sense, to commit a crime without these additional components.

The committer may be both an official and a non-official. For example, they may be a wide range of persons: heads of construction of industrial, agricultural, scientific, or other facility, experts and heads of the expert committee of ecological examination, officials of executive power bodies and federal supervision agencies, an official government agency, organization, or person exercising managerial functions in a commercial or other organizations. Kudryavtsev and Naumov believe that a person may be held liable either for general (perform works) or special - for the implementation of certain types of work, procedures, functions (perform computations, control water treatment facilities, collect measurements, implement test runs of the facility, etc.).

Thus, a committer of infringement of environmental regulations during works performance may be a person who, by regulations or enabling legislation, contract or other authorizing documents, holds duties to implement certain actions to organize operation, control, safety measures in connection with use of the environment, or the provision of human impact on it or a special procedure as a whole by virtue of an official or his\her official errands.

Unfortunately, judicial practice often ignores law reference to the special status of a committer of the particular criminal offence.

In this context, in November 2003 a person named N. illegally performed excavation works to dismantle the pipes of the irrigation system that were under the ground in the territory irrigated arable of the «Politotdelskiy» agricultural production cooperative in Nicolaevskiy district of the Volgograd region. The result has been a damage to the owner of the pipeline and the environment. In this incident was a criminal case under Article 246 of the Criminal Code and Section 1 of Article 330 of the Criminal Code. In September, 2004, the decision of the Nikolaevskiy District Court found N. guilty. In October, 2004, N. lodged an appeal, stating that there was not criminal liability under Article 246 of the Criminal Code, as it does not have the component of a special status of a crime committer under Article 246 of the Criminal Code. Volgograd Regional Court upheld the judgment, pointing out that the citizen N. can be held criminally liable under Article 246 of the Criminal Code, as he acquired the ownership of the pipeline

and, therefore, should be responsible for the actions associated with the operation (which include the dismantling).

In order to recognize a person as a committer under Article 246 of the Criminal Code, it seems necessary to pay attention not only to the legal binding obligations to ensure compliance with environmental protection rules during works performance and enforcement, but the actual performance of the duties without being formally enshrined. To increase efficiency of the practical application of Article 246 of the Criminal Code, it is necessary to amend the legal wording defining the committer to «person, who is obliged to ensure compliance with these rules and monitor their compliance».

The penal system under Article 246 and Chapter 26 of the Criminal Code also raises a number of critical remarks. In particular, Dubovik says that it is not sufficient to ensure full compliance of environmental regulations. In our opinion, Russian legislators need to develop a system of penalties as a form of punishment, which will establish a differentiated approach in sentencing, and in relation to specific crime committers more broadly applied deprivation of the right to occupy certain positions or to be engaged in certain activities.

4. Conclusion

In general, in order to improve the wording of Article 246 of the Criminal Code, one should suggest the following: this article employs such evaluative terms «substantial change», «mass mortality», which in our opinion, requires them to determine the resolution of the Plenum of the Supreme Court as the other serious consequences.

Based on the conducted study, we propose a new wording of the disposition of Article 246 of the Criminal Code in order to develop criminal and legal tools to protect the environment and ecological well-being, as well as its addition to Sections 2 and 3:

Article 246 «Infringement of environment protection rules during work performance »:

1. Infringement of environmental regulations during design, siting, construction, putting into operation and running industrial, agricultural, scientific and other facilities which are held liable for compliance and enforcement in case any of it posed threat of damage to the environment.
2. The same actions that caused damage to the environment, or other grave consequences, as well as entailed negligent health injury.
3. Actions envisaged by Section 1 of this article, caused negligent homicide.

References

- Baeva, Yu. (2016). Judicial ecology as means of environmental crimes control. *Criminological Journal of Baikal State University of Economics and Law*, 10(2), 331-338.
- Dubovik, O.L. (2011). *Environmental Law*. Moscow, Prospekt Publ.
- Criminal Code of the Russian Federation (2017) *New redaction of Criminal Code of the Russian Federation*. Retrieved from <http://ukodeksrf.ru>
- Cutting, R. (2006). Forensic Environmental Science: Where Laws and Ecological Principles Meet. *Bulletin of the Ecological Society of America*, 87(2), 159–167.
- Fitzpatrick, R.W. (2011). *Guidelines for Conducting Criminal and Environmental Soil Forensic Investigations: Version 2*. Centre for Australian Forensic Soil Science.
- Lavygina, I.V. (2015). Theory of ecological mind for the purposes of environmental crimes prevention.

- Lopashenko, N.A. (2001). Criminal liability for violation of the surrounding environment protection rules. *Legality*, 8, 6-10.
- Marquez-Grant, N. (2012). *Forensic Ecology Handbook: From Crime Scene to Court*. Chichester :A John Wiley & Sons.
- Murphy, B.L. (2007). *Introduction to Environmental Forensics*. 2nd ed. Elsevier.
- Neduraev, T.E. (2005). *Violation of the environmental protection rules at industrial production*. Retrieved from <http://www.dissercat.com/content/narushenie-pravil-okhrany-okruzhayushchei-sredy-pri-proizvodstve-promyshlennykh-i-inykh-rabo>
- Spash, C.L. (1998). *Wildlife Conservation*. *Encyclopedia of Applied Ethics*. Retrieved from <http://mpira.ub.uni-muenchen.de/id/eprint/21132>.
- Varghese, G.K. (2012). National Green Tribunal act: a harbinger for the development of environmental forensics in India? *Environmental Forensics*, 13(3), 209–215.