

Comparative Analysis of Environmental Crimes Elements Provided for by the Criminal Code of the Russian Federation

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Abstract—The Russian legislation gives priority to environmental issues, which is also required by international documents: the International Pact on Civil and Political Rights, in particular, paragraph 1 of Art. 14, and the Convention for the Protection of Human Rights and Fundamental Freedoms, paragraph 1 of Art. 6. Among the international documents of the United Nations in this field, the Rio de Janeiro Declaration on Environment and Development of 1992 should be mentioned first. The contents of these documents provide for safeguards to protect the environment on the planet. In order to develop and improve national legislation, the UN holds international congresses in different countries. For example, in 1994, the International Academy of Informatization hosted the international congress "Development of monitoring and environmental improvement" in Kazan. The materials of this international congress were used when the new Criminal Code of the Russian Federation was adopted in 1996.

Keywords—*environmental crimes; corpus delicti; qualifying crimes; violation of the environmental protection rules; pollution of water and atmosphere.*

I. INTRODUCTION

In Russia the legislator has given priority to environmental protection issues at all times. The importance of environmental protection has greatly increased after the international conference held on June 3-14, 1992 in Rio de Janeiro, Brazil. At the conference, the Rio de Janeiro Declaration on Environment and Development containing 28 principles was adopted. Moreover, this document replaced the previous document of 1972, adopted in Stockholm under the title Action Plan, containing 109 points. Having realized that the task set by this bulky document has not been fulfilled for 20 years, the International legislation decided to adopt a declaration including 28 principles. If the task was set for each

state to implement the previous plan at the national level, the latter one was only advisory. Thus, the legislator considered that the facing task at that time was successfully completed. However, the environment on the planet requires a comprehensive binding document in the form of a convention, which every country will have to implement. However, it is not beneficial to industrial tycoons, so the leaders of countries with highly developed industry are not interested in such restrictions on the use of natural resources. Therefore, when discussing such documents, representatives of such states form a coalition that uses ignoring or lobbying. This was especially evident when discussing the issue of establishing industrial enterprises to limit emissions of hydrocarbons into the atmosphere.

President of the Russian Federation V.V. Putin and the representatives of states with underdeveloped industry actively supported this decision, but leaders of some countries with highly developed industry categorically refused to sign it. The world became convinced that the economy dictates and controls the natural environment again. But environmental scientists had already determined the direction of the planet's catastrophe by 1992, unless serious preventive measures were taken to save the ecology and the future of the Earth.

II. LITERATURE REVIEW

The empirical material of this comparative analysis is the articles content of the current Criminal Code of the Russian Federation, the Code of Criminal Procedure of the Russian Federation, previous similar codes for different periods, as well as the German Criminal Code, adopted on the basis of the requirements of the United Nations international documents. The analysis is based on the content of 41 elements of environmental crimes provided for in Articles 246-262 of the Criminal Code of the Russian Federation and included in

Chapter 26 [1, pp. 217-229], 35 of the same chapter of the Criminal Code of 1996 [2, p. 103 -110], 15 compositions of 5, 6 and 10 chapters of the Criminal Code of the RSFSR [3, pp. 62-70, 86-94], articles 35-36 of Chapter 2 of the Code of Criminal Procedure of the Russian Federation “Jurisdiction”, article 467 “Proceedings of Justice of the Peace” [4, p. 21, 205], as well as articles 31 of the Code of Criminal Procedure [5, p. 28-29]. Specific historical and comparative legal research methods in relation to regulatory legal acts of the Russian Federation were used in this article. It was set out a brief analysis taking into account all previously adopted procedural laws. For a complete comparison, the authors presented the subsequent analysis of the main developments on this issue. It is noteworthy that the authors chronologically described the legislative changes introduced by legislators in the content of the environmental crimes in Chapter 26 of the Criminal Code, 1996. This combination is successful, as it helps to meaningfully approach the solution of the fundamental problems facing the Russian courts of first instance. The results of this study make it possible to evaluate the situation objectively and make the right decision on forming a corpus delicti list related to the jurisdiction of magistrates and federal courts of the Russian Federation provided for in Chapter 26 of the Russian Federation Criminal Code. The Commentary on the Criminal Code of the Russian Federation, published in 2001, indicated that article 15 of the Criminal Code was amended to reduce the upper “threshold” (limit) of minor crimes from 3 to 2 years in prison, which entered into force on November 5, 2002

III. RESULTS

One of the impulses for introducing a separate chapter 26 “Environmental crimes” into the new Criminal Code of the Russian Federation in 1996 was the material prepared by the international congress “Development of monitoring and improving the environment”, which was held June 24-26, 1994 in the capital of Tatarstan, Kazan. This congress was organized by the International Academy of Informatization and the Academy of Informatization of the Republic of Tatarstan. According to the congress agenda, the report of I. Gilmanov. “Environmental crimes and the Criminal Code of the Russian Federation” was provided for in the eighth section, “Legal and socio-economic aspects of the environment ecology,” the sixth in turn. However, the organizing committee decided to open the section proceedings with the report of I. Gilmanov, who noted that in the current Criminal Code environmental crimes were scattered in different chapters and there was no single special chapter. This led to the obscurity of the dominant importance of the fight against environmental crimes; they, as it were, remained unnoticed by the legislator and not related to serious crimes. For comparison, the report provided the analysis of the German Criminal Code, where chapter 28 was called Crimes against the Environment. Humanity was to be introduced as the object of environmental crime. Such a change has been introduced into most criminal codes of countries to comply with the requirements of the 13th recommendation principle of the Rio Declaration on Environment and Development, which states: “States should elaborate national laws regarding liability and compensation for victims of pollution and other

environmental damage.” Environmental crimes in this chapter had to be systematized. This report was unanimously supported by members of Congress. So, subsequently, chapter 26 of the Criminal Code of the Russian Federation was adopted under the same name. With regard to the city of Naberezhnye Chelny there were some questions raised: the trams launch speed-up, which would reduce the volume of harmful exhaust gases emissions from Hungarian diesel buses Ikarus, etc. In 2004-2005 the appointed mayor I. Khalikov launched the part of the tram lines, and the rest of the lines - the following mayors: V. Shaikhraziev and N. Magdeev at the personal request of I. Gilmanov. At the same congress in 1994, the question of saving the gene pool (the younger generation) from ecocide was raised. To solve this global problem scientists from many fields of science have united and adopted a unified program of phased environmental improvement.

The congress members decided to choose Moscow and Kazan as environmental centers. The territory of Tatarstan was chosen by the Academy of Informatization of Russia as the object of an ecological experiment to improve the environment. Scientists expressed the hope that the public will actively support the implementation of this environmental program. It was recognized by everyone that it depends on our actions: whether future generations will breathe clean air and whether we will save our planet.

23 years later after that congress, Putin supported the Paris climate agreement. He announced about it on October 15, 2017 at the World Festival of Youth and Students in Sochi. “Relevant decisions have recently been taken and adopted in Paris aimed at preventing climate change on the planet. Russia supports all these decisions and has taken quite stringent commitments to reduce emissions”[6].

Developing the corpus delicti of environmental crimes, the legislator chose a completely different approach. If before the corpus delicti of environmental crimes were oriented towards the struggle against the theft of natural resources, considered as a “pantry” of raw materials due to the vast territory of the country. Priority was then given to economic interests, while the protection of the interests of human health was ignored. A very accurate diagnosis of the past period was given by a prominent scientist V. Kashepov [7, p.29-30]. Based on the position of V. Kashepov environmental legislation was considered sanitary rather than environmental. By the end of the 1980s, pollution of atmospheric air, as well as water resources began to be regarded as environmental legislation. As mentioned before, the contents of the Russian Federation Criminal Code of 1960 did not have a separate chapter related to environmental crimes. Therefore, the proposal of Gilmanov I. at the above mentioned congress was effective.

During the improvement of the Criminal Code of 1926, 4 new four elements of crime against the environment were included in the content of the Criminal Code of the RSFSR of 1960: 1) production of timber rafting or blasting in violation of the rules established for the protection of fish stocks (Article 165 of the Criminal Code of the RSFSR 1960); 2) violation of subsoil development rules (Article 167 of the Criminal Code); 3) pollution of water bodies and air (Article

223 of the Criminal Code); 4) intentional destruction, demolition or damage ... of natural objects taken under state protection (Article 230 of the Criminal Code) [3, pp. 67-68, 91, 95].

In the Criminal Code of the RSFSR of 1960, economic values of natural resources were of priority importance. It should be noted that most of the elements of environmental crimes were provided for in the chapter "Economic crimes". Among the crimes aimed at the environment, we indicate: Part 2 of Art. 98, 99, 149, 150, 160, 161, 163-169, 223 and 230 of the Criminal Code [3, pp. 53-68, 91, 95], which were in the chapters: 5. "Crimes against property", 6. "Economic crimes", 10. "Crimes against public safety, public order, public health".

The elements of environmental crimes provided for in Chapter 26 can be divided into three categories: special, related and additional. At the beginning, we present special elements of environmental crimes: 246-262 of the Criminal Code, as well as from other chapters of the Criminal Code: violation of safety rules at nuclear facilities (Article 215), concealment of information about circumstances that endanger human life or health (Article 237), cruelty to animals (Art. 245), ecocide (v. 358) [1, pp. 179, 208, 217-229, 289]. In total, there are 49 special elements of environmental crimes.

Related elements of environmental crimes include: refusal to provide a citizen with information (Article 140), registration of illegal transactions with land (Article 170), terrorist act (Article 205), violation of safety rules during mining or other works (Art. 216), violation of safety rules at explosive facilities (Article 217), violation of the rules for accounting, storage, transportation and use of explosive, flammable substances and pyrotechnic products (Article 218), violation of fire safety requirements (Article 219), illegal handling of poison materials or radioactive substances (Article 220), theft or extortion of nuclear materials or radioactive substances (Article 221), illicit trafficking of potent or toxic substances for marketing purposes (Article 234), violation of sanitary and epidemiological rules (Article 236), violation of safety rules during the construction, operation or repair of trunk pipelines (Art. 269), planning, preparation, unleashing or waging an aggressive war (Art. 353), the development, production, stockpiling, acquisition or sale of weapons of mass destruction (Article 355), the use of prohibited means and methods and warfare (Article 356) [1, pp. 90, 119, 166-167, 181-186, 205-208, 234-235, 288-289]. In total, there are 35 related elements of environmental crimes in the Criminal Code.

Additional elements of environmental crimes in the Criminal Code are: Art. 285 - 3 elements of crime, Art. 286 - 3, 292 - 2, 293 - 4 elements of crime [1, p. 247-248, 250-251, 258-260].

Analyzing Chapter 26, «Environmental Crimes», it should be noted that it is included in Section IX, «Crimes against Public Safety and Public Order». Based on the generic object, it is possible to subdivide articles reflecting the criminal focus on the natural environment - this is Art. 246-248, 262, as well as on its individual components - Art. 249-261 of the Criminal Code.

Comparing the contents of the Criminal Code of 1960 with the current Criminal Code of 1996, it should be noted that we see 7 new elements of environmental crimes: 1) concealment of information on circumstances that endanger human life or health (Article 237), 2) violation of environmental protection rules performance of work (Article 246), 3) violation of the rules for the treatment of environmentally hazardous substances and waste (Article 247), damage to land (Article 254), destruction of critical habitats for organisms listed in the Red Book of the Russian Federation (Article 259), violation of the regime of specially protected natural territories, etc. of natural objects (art. 262), ecocide (art. 358).

For comparison, we take the German Criminal Code. An analysis of two sections (28 and 29) related to environmental crimes showed that they consist of 105 elements of environmental crimes, while chapter 28 of the German Criminal Code has 74 environmental crimes, and section 29 - 31 (30%). [8 p. 185-195; 9]. A similar approach was adopted by the legislation of France [10]. Let us pay attention to 74 elements of environmental crimes; the maximum sanctions were: up to 1 year of imprisonment - 8 environmental crimes (11%), up to 2 years of imprisonment - 9 (12%), up to 3 years of imprisonment - 8 (11%), over 3 years of imprisonment - 2 (3%), up to 5 years of imprisonment - 23 (31%), over 5 years of imprisonment - 4 (6%), up to 10 years of imprisonment - 14 (19%), over 10 years of imprisonment - 4 (6%). The largest number of maximum sentences is up to 5 and 10 years of imprisonment forming a total of 37 sanctions or 50%. Chapter 29 consists of 31 elements of environmental crimes, the maximum sanctions of which were: up to 2 years of imprisonment - 1 corpus delicti, up to 3 years of imprisonment - 13 (42%), over 3 years of imprisonment - 2 (3%), up to 5 years of imprisonment - 11 (36%), up to 10 years of imprisonment - 4 elements of environmental crimes (13%). In this chapter, the largest number of maximum sanctions were up to 3 and 5 years of imprisonment, the amount of which is 24 elements of environmental crimes or 77% [8, S. 195-202].

Summarizing both chapters, the maximum sanctions out of 105 elements of environmental crimes were as follows: up to 1 year of imprisonment - 8 elements of crimes (8%), up to 2 years of imprisonment - 10 (10%), up to 3 years of imprisonment - 21 (20%), over 3 years of imprisonment - 4 (4%), up to 5 years of imprisonment - 34 (32%), over 5 years of imprisonment - 4 (4%), up to 10 years of imprisonment - 18 (17%), over 10 years of deprivation of liberty - 6 (6%) elements of crime. The most common sanctions are up to 3, 5 and 10 years of deprivation of liberty, the amount of which amounts 71 elements of crimes or 68% of 105. If you try to calculate the average punishment of 105 offenses, then this is an average of 5 years in prison [8, pp. 195-202].

Chapter 26 of the Criminal Code includes 41 elements of environmental crimes. Here are their maximum sanctions: up to 1 year of correctional work- 3 elements of environmental crimes (7%), up to 2 years of correctional labor - 8 (20%), up to 2 years of imprisonment - 11 (29%), up to 3 years of imprisonment - 3 (7%), up to 4 years of imprisonment - 2 (5%), up to 5 years of imprisonment - 9 (22%), up to 7 years of imprisonment - 2 (5%), up to 8 years of imprisonment - 2, up to 10 years of imprisonment - 1 corpus delicti. Under the

Criminal Code of the Russian Federation, the maximum sanctions are 3, 5 years in prison on average, i.e. almost two times softer than the sanctions of the German Criminal Code. From the above we can conclude that the legislator will be forced to gradually tighten maximum sanctions to the sanctions of modern Western states.

For the first time, Article 167 "Violation by the citizens of the rules for the mining of mineral resources..." was introduced into the Criminal Code of the RSFSR, but it was not included in the Criminal Code of the Russian Federation in 1996, as it was decriminalized, i.e. private individuals could not be held criminally liable for violating the rules for extraction subsurface resources.

For the first time such corpus delicti as violation of the regime of territories specially protected by the state and natural resources was introduced into the Criminal Code, which is regulated in article 262. The maximum sanction according to this article was up to 2 years of correctional labor, which has remained unchanged until now, i.e. for 22 years. Among the objects of legislative protection are listed reserves, nature reserves, national parks, natural monuments and other natural territories specially protected by the state, i.e. withdrawn from economic and other public use [11].

Over the 18 years since 2000, only the elements of crimes related to the jurisdiction of magistrates have undergone a change. The legislator has changed the sanctions of 7 elements of crimes (58%) out of 12. One sanction in part 2., Art. 249 "Violation of veterinary rules ..." in the Criminal Code was reduced from 2 years of imprisonment up to 1 year of correctional labor. The maximum sanctions of the remaining six elements of environmental crimes have been increased. So, 1-3 Art. 256 "Illegal prey of aquatic animals and extraction of plants" part 1 and 2 - from 2 years of correctional work increased up to 2 years of imprisonment, part. 3 - from 2 years of imprisonment, up to - from 2 to 5 years of imprisonment; 4-5 Art. 260 "Illegal felling of trees", part 1 - from 1 year of correctional labor up to 2 years of imprisonment, part 2 - from 2 p. correctional labor up to 4 years of imprisonment (corpus delicti exceeding 3 years of imprisonment is automatically subject to withdrawal from part 1 of article 31 of the Code of Criminal Procedure); 6) part 1 of article 261 "Destruction or damage of forests ... from 2 years of imprisonment up to 3 years of imprisonment. Article 258.1 (with a maximum sanction of up to 3 years of deprivation of liberty, introduced on July 2, 2013 No. 150-Ф3), which introduced into the Criminal Code, was automatically assigned to the jurisdiction of the federal court.

IV. DISCUSSION

Summarizing this study, it should be noted that the sanctions imposed for the commission of certain crimes against the natural environment in Western Europe indicate a tendency to toughen criminal penalties, for example, the German Criminal Code. The terms of punishments for environmental crimes increased in the Norwegian Criminal Code in 1902. [12], as well as in the Pollution Control Act 1981-6 [13]. The issue of subject composition in Norway was addressed in the Law on Relations between Neighbors 1961-15 [14]. In addition, the Finnish Environmental Compensation

Act 1994/737 is notable for its high sanctions and compensations [15,16].

An analysis of the Criminal Code of the Russian Federation shows that earlier the legislator reduced the sanctions of the Criminal Code articles for environmental crimes. Recently, however, sanctions have been tightened on certain elements of environmental crimes. In our opinion, the national legislator will have to tighten the sanctions of articles of the Criminal Code, and lead them to pan-European relatively high punishments. The comparative analysis results of the environmental crimes sanctions regarding Russia and Germany show that the maximum penalties of the Criminal Code of the Russian Federation are two times milder than the German ones. According to the results of study the legislator should tighten the sanctions of the articles in chapter 26 of the Criminal Code of the Russian Federation twice. Firstly, the current situation with legislation requires it, and secondly, radical changes in ecology lead the planet to disaster. Only tougher criminal penalties, especially huge compensation, can stop deteriorating environmental situation. This task is of great importance for humanity.

V. CONCLUSION

Thus, it is important to note that the Russian legislator will be forced to take preventive measures to increase the sanctions of environmental crimes provided for in Chapter 26 of the Criminal Code of the Russian Federation in order to control the environment effectively on the vast territory of the country.

In addition, the legislator must diversify the corpus delicti, since in Chapter 26 there are 41 elements environmental crimes, and in the two chapters of the German Criminal Code there are 105, i.e. the difference is about two and a half times. To increase the efficiency of environmental protection, it is necessary to carry out considerable, but very necessary legislative work.

References

- [1] The Criminal Code of the Russian Federation. Moscow: Prospect. 2018, pp. 217-229.
- [2] The Criminal Code of the Russian Federation .- M .: Prospect. 2000, pp.103-110.
- [3] The Criminal Code of the RSFSR: With article-by-article materials. M.: Yurid. lit. 1985, pp. 62-70, 86-94.
- [4] The Code of Criminal Procedure of the RSFSR. M.: "Prospect". 2000, pp. 21, P.205.
- [5] The Code of Criminal Procedure of the Russian Federation. M .: Prospect. 2018, pp. 28-29.
- [6] URL: <https://ria.ru/world/20171015/1506880745.html> RIA News.
- [7] Kashepov V.P. The development of legislation on criminal liability for environmental crimes. Journal of Russian Law. 2012, 6, pp. 29-30.
- [8] Strafprozeßordnung (StPO) in der Fassung der Bekanntmachung vom April 7, 1987. Munchen, 2009, pp. 1-198.
- [9] Gerichtsverfassungsgesetz (GVG) in der Fassung der Bekanntmachung vom 9. Mai 1975 (Auszug). Zivilprozessordnung, Munchen. 2010.
- [10] Chazal J. Les magistrats. P., 2005, pp. 6; Ordonnance No. 58-1270 du 22 decembre 1958. Journal d'official de la Republique Francaise du 23 decembre 1958; Code de l'organisation judiciaire. Dalloz. P. 2005; La Documentation francaise. P., 2005; Bouloc A. Procedure penal. P., 2010.
- [11] Vasilina S. Solodkova, Idris M. Gilmanov, Muhamat M. Gilmanov. Problems of jurisdiction of ecological crimes, provided by the criminal

- code of the Russian Federation. *Ad alta journal of interdisciplinary research*. 2018, pp. 345-348.
- [12] LOV 1902-05-22 nr 10: Almindelig borgerlig Straffelov (Straffeloven).
- [13] LOV 1981-03-13 nr 06: Lov om forurensninger og om avfall (Forurensningsloven). Neighbor Relations Act 1961-15.
- [14] LOV 1961-06-16 nr 15: Lov om rettshove mellom grannar (grannelova). Finnish Environmental Compensation Act 1994/737.
- [15] Aleksandr S. Kuznetsov. Russian Professor's meeting. *Russian Journal of Physical Education and Sport*. 2019, 14(1), pp. 17-22. DOI: DOI 10.14526/2070-4798-2019-14-1-18-24
- [16] Laki ymparistovahinkojen korvaamisesta 8/19/1994 / 737.