

Responsibility for the Violation of Ecological Safety Requirements

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Abstract. The article deals with the problems of responsibility for the violation of ecological safety requirements from the point of view of sustainable development of the state. Such types of responsibility as property, disciplinary, financial, administrative and criminal responsibility in the area are analysed. Suggestions on the improvement of legislation are put forward. Among other things it is suggested to introduce criminal sanctions against legal bodies (enterprises) for ecological crimes with punishments in the form of fines, suspension or discontinuation of activities.

1. Introduction

Environmental protection is one of the global problems of the present time. According to the Constitution of the Russian Federation every person has a right to live in favourable environment, to receive reliable information on its condition and to be compensated for the damage to his/her health or property caused by an environmental crime (art. 42) [1]. The Russian Federation is a party to a number of international cooperation agreements in the area (for example, the Convention on Biological Diversity, the Stockholm Convention on Persistent Organic Pollutants).

2. Methods

The framework of the investigation is formed by the Constitution of the Russian Federation, Civil Code of the Russian Federation, Labour Code of the Russian Federation, Administrative Violations Code of the Russian Federation, Criminal Code of the Russian Federation, Federal Law of January 10, 2002 No 7-FZ On Environmental Protection, and Administrative Violations Code of the Republic of Tatarstan. In the course of the study the following methods of investigation have been used: historical and legal method, formal and logical method, systematic and structural method, specific sociological method, statistical method and the method of comparative law.

3. Results

At the present time the matters of ecological safety become more and more important. According to Art. 1 of the Federal Law of January 10, 2002 No 7-FZ On Environmental Protection, ecological safety is the protection of natural environment and vital interests of a human being from possible negative influence of business or other types of activity, emergency situations of technogenic and natural origin and their consequences [2]. The content of the concept 'ecological safety' is wider than that of the concept 'environmental protection', as it includes not only a favourable environmental



conditions, but also meets ecological interests and needs of a human being, society and the state [3]. Federal Law General Technical Regulations On Ecological Safety was drafted in Russia [4]. Technical Regulations should be adopted for the purpose of environmental protection, which is why they define general provisions of technical regulation in the sphere of ecological safety and specify general requirements to ecological safety of manufacturing, storage, transportation and disposal of products. As the Law has not been adopted yet, the matters of violation of ecological safety requirements are regulated by Federal Law On Environmental Protection.

Sustainable development of any region is only possible in favourable environmental conditions, which depend on the compliance with environmental legislation. Federal Law On Environmental Protection establishes property, disciplinary, financial, administrative and criminal responsibility for the violation of environmental legislation in Russia [2]. However, there is also financial responsibility. As financial responsibility supposes the relationship between an employee and an employer, it is regulated by labour legislation, but in the cases when financial responsibility results from an environmental crime, it can also be regarded as environmental responsibility. It is necessary to point out that only criminal and administrative responsibility for the violation of environmental legislation is mutually exclusive, which means that in one and the same case of violation one and the same person can only be brought to either administrative or criminal responsibility. All other forms of environmental responsibility can be simultaneous.

Civil (or property) responsibility for the violation of ecological safety requirements consists in the liability to recover environmental damage. In accordance with the legislation legal and physical bodies that have harmed the environment as a result of contamination, depletion, damage, destruction, irrational use of natural resources, degradation and destruction of natural ecological systems, natural complexes and natural landscape, as well as other violation of environmental legislation, shall compensate in full for such damage. Environmental damage caused by an entity involved in economic or other activities is compensated according to rates and methods for calculating the extent of damage caused to the environment approved in the established procedure, taking into account the losses including the missed profit. Thus, both actual damage and missed profit should be compensated. According to Federal Law On Environmental Protection there are two types of damages: environmental damage (Art. 77, 78) and damage to human health and property as a result of violation of environmental legislation (Art. 79) [2]. Therewith other classifications of damages, the compensation for which takes the form of property responsibility are described in literature. For example, economic harm is described as impairment of property interests as a result of destruction, damage, contamination and depletion of natural objects; and ecological damage is defined as impairment of the natural condition of natural objects, weakening of their ecological connections and functions, impairment of the ability of natural objects to clean themselves and to recover, weakening of protective properties of the nature, and a human being [5].

Disciplinary responsibility for the violation of ecological safety requirements is established in cases of unlawful, culpable non-performance or inadequate performance by an employee of his/her labour functions connected with the realization of plans and activities in the area of environmental protection and rational exploitation of natural resources, as well as for the violation of environmental legislation requirements within the scope of his/her official duty. According to Art. 192 of the Labour Code of the Russian Federation, a disciplinary offence is non-performance or inadequate performance by an employee of his/her employment duties [6]. It is necessary to point out that it is only possible to bring someone to disciplinary responsibility in case of carrying out professional activities connected with the use of natural resources or influencing environment. In this regard such professional (operational, scientific, etc.) activity is subject to special requirements concerning the standards of environmental legislation, environmental quality regulations, and supposes carrying out plans and activities in the area of environmental protection and rational utilization of natural resources. Besides, there is an important condition, that according to the regulations, or individual administration of law, or under contract the person has labour functions in operational activity of the enterprise/organization or the

functions of an executive officer.

Law-enforcement offices have certain difficulties, connected with the fact that environmental legislation does not contain specific definitions of disciplinary cases. In every particular case it is the employer who has to assess the fact of violation of environmental legislation and to make a decision of disciplinary punishment. Thereby the definition of the disciplinary offence is formal and the guilty person is brought to responsibility for the violation of ecological rules, independent of consequences.

Administrative responsibility is provided for ecological offences defined in the administrative legislation. Administrative legislation comes under the joint competence of the Russian Federation and its Subjects. The matters of joint competence of the Russian Federation and its Subjects are regulated by federal laws and laws and other regulatory legal acts adopted by the Subjects of the Russian Federation according to such federal laws (Part 2, Art. 76 of the Constitution of the Russian Federation) [1]. At the federal level administrative responsibility in the sphere of environmental protection is regulated by Chapter 8 of the Administrative Violations Code of the Russian Federation – Administrative Offences in the Area of Environmental Protection and Natural Resource Management – containing both general and specific definitions of ecological offences. General cases include, for example, failure to meet ecological requirements in the process of planning, project feasibility description, engineering, siting, construction, reconstruction, commissioning, and operation of enterprises, constructions or other objects (Art. 8.1 of Administrative Violations Code of the Russian Federation), failure to meet ecological and sanitary and epidemiological requirements for the management of production and consumption wastes and other dangerous substances (Art. 8.2 of Administrative Violations Code of the Russian Federation), etc. [7]. Specific definitions of ecological offences include, for example, administrative violations in the spheres of land protection and use, mineral resources protection and use, aquatic resources aquatic resources, atmospheric air protection, etc. In case of an ecological offence within the scope of specific standards, such specific standards prevail, according to the rules of conflicts of general and specific norms. However, if an ecological offence committed is not included into specific standards of the Administrative Violations Code of the Russian Federation, general standard is used. The positive aspect of the situation is the fact that virtually no ecological offence will remain unpunished, even if environmental protection legislation changes, and administrative responsibility legislation fails to introduce corresponding changes in due time. On the contrary, there is a negative influence of general norms, present in the legislation: very often the executor of law prefers to use general standards and doesn't try to prove that certain ecological offences are specific, which lowers the efficiency of administrative responsibility in the area of environmental protection.

In the Republic of Tatarstan administrative responsibility in the sphere environmental protection is regulated by the Administrative Violations Code of the Republic of Tatarstan, that in fact contains only one definition of offence in this area – destruction of rare and endangered animals or plants (Art. 3.1 of Administrative Violations Code of the Republic of Tatarstan) [9].

Criminal responsibility is provided for environmental crimes. Environmental crimes are the most serious violations of ecological safety requirements, which, as a rule, lead to mass mortality of animals or plants, spread of epidemics and epizootics, harm to human health or other serious consequences [9].

Criminal Code of the Russian Federation includes Chapter 26 Ecological Crimes, which, as well as the Administrative Violations Code of the Russian Federation contains general and specific definitions of environmental crimes. In 2014 in Russia 9,479 people were convicted for ecological crimes defined in Chapter 26 of the Criminal Code of the Russian Federation, in 2015 the number of them was 8,960 people, and in 2016 – 8642 people. However, other chapters of the Criminal Code of the Russian Federation contain the definitions of crimes connected with ecological safety requirements. For example, a new definition of ecological crime of 'ecocide' was included into Section Crimes Against Peace and Human Safety (Art. 358) [10]. Ecosystem here is regarded as an additional object of crime. This crime contains mass destruction of plants or animals, poisoning the atmosphere or aquatic resources, as well as other actions leading to environmental catastrophes.

In the Russian Federation only physical bodies are subject to criminal responsibility, that is, if a legal body (an enterprise) harms environment and thus commits an ecological crime defined in the Criminal Code of the Russian Federation, it is not the enterprise itself, but the guilty person. This doesn't always correspond to the principle of justice, as the punishment of such a person will not correspond to the level of environmental damages caused by the enterprise [11]. Both Russian and foreign authors make suggestions to introduce criminal responsibility for enterprises, first of all for ecological crimes [12, 13]. Thus, B. V. Volzhenkin points out that criminal responsibility of a legal body can follow if the punishable offence was approved or took place with the knowledge, to the advantage, or in the interests of such a legal body (or its unit) [14]. In this case sanctions against legal bodies shall include fines, suspension or discontinuation of activities, and the criminal legislation should be changed correspondingly.

Establishment of different types of responsibility for the violation of environmental legislation is one of the methods of fighting environmental crimes, as it realizes the warning function of responsibility. Therewith, a necessary condition of fighting such crimes is constant improvement of the legislation by means of elimination of conflicts and gaps in the legal regulation of ecological responsibility matters.

4. Conclusions

1. Compliance with the requirements of ecological safety is the guarantee of sustainable development of the Russian Federation, and is achieved as well by the establishment of responsibility for violation.

2. The content of the concept 'ecological safety' is wider than that of the concept 'environmental protection', as it includes not only a favourable environmental conditions, but also meets ecological interests and needs of a human being, society and the state.

3. As at the present time Russia hasn't adopted yet a special purpose legislative act regulating relations in the area of ecological safety, the matters of violation of ecological safety requirements are regulated by Federal Law of January 10, 2002 No 7-FZ On Environmental Protection.

4. In Russia the violation of environmental legislation supposes property, disciplinary, financial, administrative and criminal responsibility.

5. Administrative Violations Code of the Russian Federation and Criminal Code of the Russian Federation, regulating the matters of administrative and criminal responsibility contain both general and specific definitions of ecological offences. In this situation virtually no ecological offence will remain unpunished, even if environmental protection legislation changes, and administrative responsibility legislation fails to introduce corresponding changes in due time. However, very often the executor of law prefers to use general standards and doesn't try to prove that certain ecological offences are specific, which lowers the efficiency of administrative and criminal responsibility in the area of environmental protection.

6. It is necessary to establish criminal responsibility for legal bodies (enterprises) for the violation of ecological safety requirements, because if only executive officers of such enterprises are brought to responsibility, the punishment of such a person will not correspond to the level of environmental damages caused by the enterprise, which is against the principle of justice. Criminal sanctions against legal bodies shall include fines, suspension or discontinuation of activities.

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