

Genesis of Legislation on Liability for Environmental Crimes

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Abstract. The scientific article emphasizes that the world's biological diversity is constantly declining. As a result, both the international and national levels adopt regulatory legal acts aimed at preserving such diversity. Moreover, special attention is paid to the protection of biological diversity with the help of criminal law. Thus, the regulation of the above social relations implies a special specificity, because their protection cannot be carried out with the help of other branches of law, and an encroachment on them poses a public danger. It is emphasized that the domestic legislator is searching for optimal mechanisms for protecting the environment from criminal encroachments, as evidenced by the changes made to Ch. 26 of the Criminal Code of the Russian Federation. At the same time, attention is drawn to the fact that the criminal law protection of ecology developed gradually in domestic law.

1 Introduction

The purpose of this scientific article is to consider the specifics of the development of criminal law protection of ecological diversity.

The following methods were used in the work: dialectical, logical, formal-legal and many others [1].

On the basis of the study, it is concluded that the criminal legal protection of biological diversity began to be reflected in domestic law, in fact, only from the adoption of the Code on Penalties of Criminal and Correctional Punishments of 1845, but the most progressive on the issue of regulating such protection gradually (taking into account the changes) became Criminal Code of the RSFSR.

Today, in Russia and in the world, special attention is paid to the conservation of biological diversity. At the same time, we emphasize that the term “biological diversity” was first used by Henry Walter Bates in 1892 in the context of insect diversity in the Amazon. It is worth emphasizing that not long before this, at the turn of the 18th–19th centuries, an active study of botany and zoogeography of the earth began. However, the most widely studied concept began to be used after the Stockholm UN Conference on the Environment [2].

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Thus, now, even at the international level, some legal acts have been adopted aimed at preserving such diversity. Such an active formation of the legislative framework regarding the topic under study is due to the fact that a significant part of animals and birds began to die out all over the world over several hundred years [3].

So, according to UNESCO, over 400 years, 130 species of mammals and birds have died out (mostly because of human activity). Moreover, in recent years, many species of birds and mammals remain on the verge of extinction. Thus, if the situation is not corrected urgently, the number of completely extinct species of mammals (by 120 species) and birds (by 187 species) will be replenished on Earth.

I would like to note that at the beginning of the XXI century. in the Russian Federation, biological diversity was represented by more than 11 thousand species of vascular plants, 1 thousand algae, 3 thousand lichens, over 350 species of fish of inland waters, 27 amphibians, 75 reptiles, 732 species of birds, 320 mammals living in natural and anthropogenically disturbed ecosystems .

At the same time, it should be said that the anthropogenic impact on the environment can be both positive (for example, the conservation of animals, etc., which are on the verge of extinction, optimization of regulatory legal acts aimed at protecting flora and fauna), and negative (hunting for animals and birds, air and water pollution, etc.).

Meanwhile, we note that the Russian Federation has ratified the implementation of the Convention on Biodiversity [4]. Thus, our country is pursuing a policy that promotes the preservation of such diversity with the help of various regulatory legal acts (including with the help of the Criminal Code of the Russian Federation). As emphasized in Decree of the President of the Russian Federation of July 02, 2021 No. 400 "On the National Security Strategy of the Russian Federation", such a political course is due to the vast territory of Russia, which has a wide biological diversity, but at the same time there is a predatory use of nature. Such a process leads to a reduction in biological diversity as well.

At the same time, it is the criminal law of Russia that reflects those protected social relations that are subject to special supervision, and there is also no way to counteract these violations with the help of norms of other branches of law. After all, it is assumed that it is in the norms of the Special Part of the Criminal Code of the Russian Federation that crimes that pose a serious public danger are prescribed.

2 Research Methodology

It has developed the criminal law protection of the forest, which may be evidenced by the differentiation of the elements of crimes aimed at protecting the state forest, in terms of which trees were stolen. So, if oak trees were planted and seeded, then liability came under Art. 942. And when committing such an act in relation to other trees - according to Art. 941.

At the same time, the commission of unlawful acts in relation to trees located in ship groves was separately singled out. Namely, in Art. 976 prescribed the abduction or felling of deciduous, pine, etc. trees made in ship groves. The punishment for such perpetrators was differentiated taking into account the relapse (repetition) of the commission of acts. However, already in Art. 977 regulated the abduction or felling of spruces, birches and aspens in ship groves, i.e. other trees not prescribed in Art. 976. In turn, liability, in contrast to Art. 977, was not differentiated depending on the number of cases of bringing a person to responsibility. In Art. 943 contained responsibility for felling the forest (without the removal of trees).

Moreover, the Code singled out the commission of deforestation by entire villages or by the number of persons exceeding 10 people. It also contained responsibility for concealing the state forest (if the person does it consciously (Article 946)). The Regulations reflected

the responsibility for cutting trees (from 10 to 100 of the number declared for legal felling of trees). Moreover, if the felling was up to 10 trees, then the person was liable under Part 2 of Art. 948. Art. 949 of the Code prescribed responsibility for felling trees near rivers (which violates the legal right to cut wood, reflected in the ticket), and in Art. 950 also reflected the commission of a similar act, but is no longer applicable to the river.

At the same time, in Art. 951 established a penalty for felling trees with an expired ticket, and Art. 952 - for abuse or deviation from the rules when cutting down state forests (only a peasant could be a subject).

It should be mentioned that the Code regulated the punishment for the destruction of forests for plowing fields without the appropriate permission from state bodies (Article 953). In addition, responsibility was contained for setting fire to state forests (Article 974).

In Art. 980 described an act associated with the commission of damage or damage to the forest growing in ship forests. It should also be added that the Code in Art. 982 also regulated liability for the unintentional destruction or damage of ship groves with the help of fire (fire).

3 Results and Discussions

Meanwhile, it is worth noting that, up to the present time, there is a search for mechanisms for optimal legal regulation of the criminal law protection of the environment and the delimitation of crimes from offenses, reflected, in particular, in the Code of Administrative Offenses of the Russian Federation. Moreover, as a rule, the delimitation occurs according to the degree of environmental damage caused [5].

So, at present, as we can note, firstly, some elements of environmental crimes are being improved, and secondly, new, previously unknown environmental offenses are being criminalized. The above process is largely due to the ongoing criminal policy of the state, aimed at protecting the environment [6]. As a result, we consider it appropriate to consider the specifics of the development of criminal law protection of the environment. This will allow the authors to draw a conclusion about the features of the ongoing criminal policy at different stages of the evolution of legislation for the protection of the social relations under study.

Turning to historical facts, we emphasize that criminal legislation aimed at preserving biological diversity has developed gradually. The direct reflection of the protection of biological diversity begins with the Code of Criminal and Correctional Punishments of 1845, which is actually the first domestic codified criminal law, since it was divided into a General and a Special part. Before the Code, all laws that included criminal liability for certain acts were intersectoral [7].

The previously issued Council Code of 1649, of course, also contained punishment for illegal logging, destruction of forests as a result of a fire, and regulated the protection of side trees. But to a large extent, these were not so much criminal law norms as civil law ones. Since the offender had to pay a fine (for example, for the destruction of side trees) or compensate for the damage caused (in the event that a person deliberately set fire to the forest or burned, pruned side trees that do not belong to the owner) to forest plantations.

It should be emphasized that the Code of Criminal and Correctional Punishments is known in several editions. However, in this scientific article we will analyze its original version [8].

The Code on Criminal and Correctional Punishments in its original version reflected responsibility not only for persons committing unlawful acts in relation to the forest, but also sanctions for people responsible for protecting the forest [9].

Meanwhile, the original version of the Code of 1845 reflected responsibility for air and water pollution by factories and factories, as well as for spoiling drinking water due to

washing flax and hemp. In addition, the Code regulated illegal hunting, expressed in the use of prohibited methods by the guilty person. For example, using a trap, as well as hunting during the non-hunting season (which was from March 1 to June 29)

Meanwhile, the Code contained responsibility for illegal fishing, in particular, the use of gear by the criminal [10]. As a result, it is problematic for fish to go upstream. Moreover, there was also responsibility for the use by the criminal of objects that facilitate catching fish and at the same time lead to the death or suffering of the fish left in the reservoir.

Thus, we can say that the Code of Criminal and Correctional Punishments of 1845 in its original version was quite progressive for its time in the field of environmental protection. At the same time, some crimes, in particular those related to illegal hunting or catching of aquatic biological resources, are also reflected in the current Criminal Code of the Russian Federation.

I would like to emphasize that to one degree or another, both at that historical period and at the present time, there is a criminal-legal protection of the forest. True, now the protection of forests is represented by three types of crimes. In older laws, we could talk about several dozen acts [11]. Thus, for almost 150 years, taking into account the ongoing criminal policy, the domestic legislator has left the most common acts that meet the criteria for criminalizing a crime. Moreover, the improvement of forest protection with the help of the norms of the Criminal Code of the Russian Federation continues to the present, as evidenced by relatively recent changes.

At the same time, it should be noted that the Code of 1845 for the first time in history provided for liability for pollution of the atmosphere and water.

Subsequently, in 1903, the Criminal Code was adopted, it (as well as in the original version of the Code of 1845) regulated liability for the use of prohibited methods of catching fish and animals. Applicable to the latter, hunting was also prescribed during the prohibited period of the year. In addition, the protection of water and air from pollution from factories and industries was contained [12].

However, the Code of 1903, unlike the previous Code, significantly changed the approach to the protection of ecological diversity - this was expressed in the following:

- criminal liability in the field of forest protection was established for uprooting or felling of growing trees. At the same time, a separate article highlighted the punishment for logging in the stanitsa forests belonging to the Don and Astrakhan hosts (Article 259);
- bird nests were protected from ruin;
- in a separate norm, a sanction was established for the slaughter of bison, female elk, deer, wild goat or calf;
- contained responsibility for hunting fur seals, walruses, seals and other marine animals (Articles 253-254).

Thus, we can say that the Criminal Code of 1903 seemed to be more progressive in terms of environmental protection than the Code of Criminal and Correctional Punishments of 1845. The only exception can be the protection of the forest, since the Code of 1903 did not fully prescribe this moment [13].

Subsequently, with the advent of the Bolsheviks after the October Revolution of 1917, new criminal legislation was adopted. So, in 1922, the Criminal Code of the RSFSR appeared, which, on the one hand, protected the forest, animals from illegal hunting in relation to them, and on the other hand, established responsibility for offenses previously unknown to domestic criminal law, associated with the illegal use of subsoil (sand sampling, stone, etc.) [14]. It also reflected the responsibility for not reporting the infection of animals with any contagious disease.

In the Criminal Code of the RSFSR of 1926, there was a differentiation of responsibility for encroachment on the forest (depending on the damage caused, estimated at thirty or more of this amount) [15]. Differentiation was prescribed for illegal hunting and fishing

committed by a criminal at an unauthorized time, place, or the use of unauthorized tools, methods, etc. The criminal-legal protection of beavers and fur seals was allocated. In addition, the Criminal Code of the RSFSR of 1926, like the previous criminal law, reflected responsibility for violating the development of subsoil.

Subsequently, the Criminal Code of the RSFSR was adopted in 1960, reflecting responsibility for violating veterinary rules that entailed serious consequences or epizootics. Punishment was prescribed for violating the rules for combating diseases and pathogens, which caused serious consequences.

It is worth emphasizing that, as in the former Criminal Code of the RSFSR of 1926, it reflected the responsibility for fishing in relation to fur seals and hogs (Article 164). However, the Criminal Code of the RSFSR of 1960 specifically regulated illegal hunting (Article 166) and pollution of water bodies and air.

At the same time, in the original version of the Criminal Code of the RSFSR of 1960, the forest was also protected [16]:

1) illegal logging of forests related to field protection, shore protection or soil protection, as well as the commission of this act in forest parks, state reserves, etc. At the same time, the domestic legislator emphasized that criminal liability for the guilty person should occur precisely after the application of public or administrative influence to the latter.

However, as a qualified corpus delicti, there was an indication of the felling of such a forest by a person engaged in fishing or causing large damage as a result of deforestation (Article 169).

2) the commission by a citizen of deliberate damage to field-protective forest plantations, fruit and berry and other plantations, which caused significant damage (Article 168).

Then, by decree of July 11, 1974 “On the introduction of amendments and additions to the criminal and criminal procedure codes of the RSFSR”, acts involving violation of the legislation on the continental shelf of the USSR (Art. 167.1) and pollution of the sea with substances harmful to health were criminalized people or for the living resources of the sea (art. 223.1).

Subsequently, the domestic legislator introduced significant innovations regarding illegal logging. Thus, there was a differentiation of the damage caused due to illegal logging, depending on belonging to a certain group and the amount of damage caused.

Later, in accordance with the Law of the Russian Federation dated March 18, 1992 No. 2540-1 “On strengthening the responsibility for unauthorized extraction of amber”, criminal liability was provided for unauthorized extraction of amber (Article 167.2). At the same time, it should be said that the domestic legislator reflected responsibility for such an act in the current criminal law relatively recently [17].

Federal Law No. 10-FZ of July 1, 1994 “On Amendments and Additions to the Criminal Code of the RSFSR and the Code of Criminal Procedure of the RSFSR” criminalized an act involving the destruction or significant damage to forest areas as a result of careless handling of fire or other sources increased danger (Article 150).

In addition, this Federal Law of July 01, 1994 No. 10-FZ introduced criminal liability for “intentional pollution of forest areas with harmful substances, waste, emissions, refuse, resulting in drying out or disease of trees and shrubs or other vegetation, or deliberate significant damage, destruction of forest areas by arson” (Article 149).

Then the Federal Law of April 13, 1996 No. 30-FZ “On Amendments and Additions to the Criminal Code of the RSFSR and the Code of Criminal Procedure of the RSFSR” reflected in the Criminal Code of the RSFSR a number of offenses aimed at protecting the ecology of the continental shelf.

Thus, we can note that the Criminal Code of the RSFSR of 1960, firstly, regulated both pre-revolutionary legislation and the provisions of the Criminal Code of the RSFSR of 1922 and 1926. on environmental protection (in terms of compliance with the specifics of the criminal law protection of biological diversity). Secondly, it reflected, among other things, crimes that were previously unknown to domestic criminal law.

4 Conclusions

Summing up this scientific article, we can note that the criminal legal protection of biological diversity began to be reflected in domestic law, in fact, only with the adoption of the Code on Penalties of Criminal and Correctional Punishments of 1845. Moreover, as we said earlier, it was quite progressive, because in that or another degree of protection of animals and aquatic biological resources are also presented in the Criminal Code of the Russian Federation. Subsequently, the development of environmental protection with the help of the norms of criminal law finds its development in the Criminal Code of the RSFSR of 1922 and 1926, but the Criminal Code of the RSFSR of 1960 gradually (taking into account the changes) became the most optimal in terms of regulation of such protection.

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