

## International Environmental Safety as Object of Crimes, Leading to Possibility of Legal Entities' Criminal Liability

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### ABSTRACT

The urgency of the problem under investigation is conditioned by the fact that currently remains unresolved question of criminal liability of legal persons. The laws of some countries provide for criminal liability of legal persons for committing environmental crimes. Russian Federation Criminal Code does not establish that responsibility, but there are some circumstances, including the international obligations of the Russian Federation, enabling to speak about the need to intensify the process of thinking about the possibility to provide it for some environmental crimes. The purpose of the paper is to determine the theoretical premises of possibility to establish the criminal liability of legal persons for the commission of crimes that infringe on the international environmental safety. As a leading approach to the study of this problem is selected a comparison of theoretical approaches to issues of criminal liability of legal persons, the system analysis of materials of international treaties and conferences, focusing on efforts to institutionalize the possibility of involvement of persons accused of assault on the natural environment in the criminal liability. In the result of the study of the legal nature of responsibility questions for acts that infringe on the international ecological safety, the necessity to establish mechanisms of these decisions is justified, conclusions on the need for a decision on the institutionalization of the criminal liability of legal persons for certain environmental offenses is formulated. Paper submissions may be useful to support and normatively consolidate the features of the legal entity's responsible for the commission of environmental offenses.

### KEYWORDS

International ecological safety, environmental crime, the liability of legal persons

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### Introduction

For many decades in the criminal law doctrine by scholars such as B.V. Volzhenkin (1998), A.S. Nikiforov (2000) et al the proposal has been substantiated on the need to introduce criminal liability of legal persons, including offenses for detrimental to the environment. This idea was announced in 1973, when the European Committee on

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Crime Problems of the Council of Europe recommended for the parliaments of member states of the European Community to recognize the legal persons as entities of criminal liability for crimes that harm the nature. This was due primarily to the realization of the social danger of these acts by many states.

Some countries positively accepted the recommendation and recognized legal persons as entities of crimes which, as it is pointed out by J. Wolf (2002) in the foreign scientific literature is called as a crime against nature, in the Russian criminal law they are called environmental crimes.

As it is noted by Professor L. Knopp (1994), with the introduction of Germany's new penal regulation of environmental rights a dense system of regulations was reached that makes it difficult for companies the possibility of harm doing to the natural environment.

In Austria, as it is indicated by S. Matejko (2006), the legislator changed environmental crime's composition through amendments (legal clarification) as a result of a tough fight in the parliament for certain formulations.

The results of these steps have led to certain results, for example, the proportion of crimes against the environment in the total mass of crimes (aufgeklärten Fälle) in Germany has a negative upward trend. U. Meyerholt (2010) notes that the number of reported crimes against the environment has been steadily declining since 1998. But in the Russian criminal law the offender is still recognized only a natural person.

The question of the recognition as crime's entity only of a natural person in the Russian criminal law is traditionally based on the provisions laid down in Article 19 of the Penal Code which states that "entity of criminal liability is considered only sane person over the age established by this Code."

During the preparation of the Criminal Code of 1996 the issue about the recognition of the legal person as the entity of crime was the subject of extensive discussion when the A.V. Naumov (1992), S.G. Kelina (1994) and others have expressed their views on the possibility of introducing criminal liability for legal persons.

Despite the fact that this position has not been taken into account by the legislator that question is analyzed by many researchers.

Currently, the view about the possibility of recognition of the legal person as entity of criminal liability, especially for crimes that infringe on the international ecological safety, has been widely discussed.

## Methods

To bring the base to determine the legal nature of the liability of legal persons for crimes that infringe on international environmental security it is necessary to analyze the theoretical foundations of this type of liability. Taking into account that supporters of the idea of the criminal responsibility of legal persons, in particular, A.S. Nikiforov (2000), I.V. Sitkovskiy (2002), E.J. Antonova (2009), and others assume legal entities' responsibility only for the commission of certain types of criminal acts to which some researchers as it is noted by E.V. Vinogradova (2001), include environmental ones to the comparative analysis according to the purposes of this study were subjected both Russian and foreign concepts of legal persons' criminal liability, in part of justifying the possibility to bring them to criminal responsibility for the crimes encroaching on international environmental safety.

## Results and Discussion

The Criminal Code of the Russian Federation (hereinafter CCRF) first identified in a separate group the assaults on the natural environment. It enabled to realize the ecological function of the criminal law - to ensure environmental enforcement and environmental safety. The concept of environmental crime is not formulated in CCRF. In the doctrine of criminal law the concept of environmental crime was investigated by M.M. Brinchuk (1998a, 1998b), A.A. Tranin (2014), and other scientists and the dominant definition of it is a socially dangerous act encroaching on the established in the Russian Federation environmental law and order and (or) the ecological security of the society and causing harm to the environment and human health. CCRF unified rules on liability for environmental crimes in one chapter, creating thus, according to V.F. Shchepelkov & E.V. Vinogradova (2014), the prerequisites to allocate as species' object of these crimes encroaching on ecological safety and environmental order. However, it should be recalled that in chapter 34, which establishes responsibility for crimes against the peace and human security of the Russian Federation Criminal Code in Article 358 liability for ecocide is established. It is obvious that the object of abuse for this criminal act should not be considered environmental safety, as part of the Russian Federation's national security, but international environmental safety. Classification of objects of environmental crimes is the subject of many scientific studies.

We believe that, depending on the object of attacks all environmental crimes can be divided into three groups of crimes encroaching on: environmental law and order, environmental safety and international environmental safety.

As for the crimes encroaching on ecological law and order, it should be recalled that to date this concept has no legal definition, despite the fact that it is widely used in normative legal acts of different legal force. The violation of the rule of law is the violation of the acted rules, regulations. Crimes of this kind are acts that infringe on the established order of the works and services the subject of which are components of the environment, as well as all the so-called "Poaching" crimes - crimes aimed at unlawful removal from the natural environment of any of its components. It should be noted that the doing harm to the environment has serious consequences in the form of long-term deterioration of the natural component. The question of terms, which should be considered as long, is debatable in the science. D. Kienapfel (2009) believe that their determination should be based on the period of at least one year or more. However, S. Bertel (2010) express a different point of view that only the natural process of regeneration (recovery) should be taken into account. The crimes encroaching on ecological safety may include acts, responsibility for which is provided in Articles 250-252, 254, 258.1, 259 of the Criminal Code of Russian Federation. The damage from these crimes is multi-faceted. The consequences are often irreversible, not appropriate, according to O.L. Dubovik (1997), for restoration neither by natural forces of nature nor by deliberate human activity.

International environmental safety, as the object of some environmental crimes has not yet received a serious theoretical justification, at the same time it can be assumed that part of the environmental crimes, the direct object of assault for which, in accordance with the proposed classification should be considered the environmental safety, taking into account the cross-border nature of these crimes, impinge on international environmental safety. Thus we believe that the concept of high-risk and cross-border nature of the crimes, the responsibility for the performance of which is provided by Articles 250 (water pollution), 251 (air pollution), 252 (marine pollution) and 358 (ecocide) of CCRF, suggests that the direct object of the crime should be recognized the international environmental safety.

It is obvious that by identifying as the object of individual environmental crimes the international environmental security, one should clarify the features of the person to be criminally responsible for their commission.

The entity of environmental crime is defined taking into account the positions described in Resolution of the Plenum of the Supreme Court dated 18 October 2012 № 21 "On application by the courts of legislation on liability for violations in the field of environmental protection and nature", which states that in a number of crimes that infringe on the natural environment, the perpetrator is a special- official person.

However, the criminalization of the officials, taking into account the size of the fines set by the criminal law for individuals, does not enable to make amends for damage to natural object.

Probably, in this context, we can assume that if the compensation for damages would be entrusted to a legal entity, then the significance of the application of the fines in this case, if not make amends for the damage, as in the case of environmental crimes, it is impossible to return to the natural object its original state, could compensate for it.

In countries where such liability is provided, as S.T. Ebenroth (1997) notes the effects of the sentence for legal entities are considerable, even if the crimes against the environment are the result of careless behavior.

However, the question of criminal liability of legal persons in Russia remains debatable. This is largely due to the concept of personal fault liability formulated in pre-revolutionary Russian criminal law.

At the beginning of the XX century, Professor N.S. Tagantsev (1910) wondered: "... whether legal entities can be the perpetrators of criminal acts, whether they are responsible for the perpetrated criminal procedure? This question in science still recently considered solved forever and, moreover, adversely, but not long ago the opinions were heard in defense of the against opinion, though, in my opinion, communis opinio doctorum (lat - . General opinion of scientists) remains unshakeable on grounds of a criminal policy and law. The principle of criminal irresponsibility for legal persons equally is applied to all criminal acts as heavy and unimportant as deliberate and through carelessness". However, the issue continued to be debated. Professor S.V. Poznyshev (1912) believed that for the sake of clarity it is more convenient to put the matter somewhat differently. It is advisable not to talk about whether the legal entities are capable by their nature to commit a crime. It is about whether the criminal liability is permissible in terms of the basic principles of the punitive activities of the state. In this formulation, the center of gravity of the matter is transferred to the basic principles of criminal justice from disputes about the nature of legal persons, in which is so rich law literature.

Civil liability becomes possible only because the legal consequences of acts committed by individuals, authorized persons, as it is noted by Professor A.N. Trainin (1969), are transferred on a legal entity. The very legal entity cannot perform any action because their authorized persons, on behalf of a legal entity usually do it. This logic suggests that when commission on behalf of the legal person of acts containing elements of a crime, under appropriate conditions criminal liability's arising is possible.

It may be recalled that at the stage of discussion of CCRF project B.V. Volzhenkin (2008) and S.G. Kelina (1994) presented proposals for inclusion in the Russian criminal law of the institute of criminal liability of legal persons. This proposal was not supported. Opponents to establish criminal liability of legal persons, as the main argument express the position of the impossibility to create a model of guilt of the legal

person. Indeed, it is difficult to simulate the awareness by the legal entity of public danger of the act, and the attitude to its effects.

However, according to V.G. Pavlov (2001), "the problem of criminal liability of legal persons in agenda cannot be removed, since it has its supporters".

This question has once again become a subject of discussion after making by the Investigative Committee of Russian Federation of the draft law on amendments to some legislative acts of the Russian Federation in connection with the introduction of the institute of criminal law in relation to legal persons. The bill was not approved, however, the actualization of this problem is conditioned by a number of factors.

At the same time as a justification for such a possibility during the discussion of the above-mentioned bill a number of arguments was cited. First of all, it should be recalled that the Russian legislation provides for administrative liability of legal persons, so the participation of an individual in a socially dangerous act is considered as a crime, and of the legal entity - as an administrative offense. In addition, the legislation on administrative offenses does not provide for international cooperation, without which combating transnational crime of legal entities becomes ineffective. These reasons, along with the fact that Russian law does not have sufficiently effective sanctions, adequate to social danger of this type of crime allow legal entities to implement corporate interests by criminal means.

Taking into account the international experience as the sanctions for offenses by legal entities it was intended to provide such new types of punishment as deprivation of licenses, quotas, preferences or privileges, a ban on the activity on the territory of the Russian Federation, compulsory liquidation, that along with the already existing forms of punishment, in case of their correction (in particular they talked about the possibility of increasing the fine to very significant size), could well serve as crime prevention.

Thus the recognition of legal entities as the perpetrators, according to A.P. Kozlov (2004) may be useful for some of the tasks of criminal law. It should be recalled, about the great prevalence in recent years, violations of the criminal law through the use of legal entities and in their interests. The presence in the Criminal Code of the Institute of criminal liability of corporates believes E.S. Smolninov (2009) will create the legal preconditions for bringing them to justice.

Not the least role in the revitalization of discussions about the possibility of the introduction in the Russian criminal law institute of responsibility of legal persons is played by the fact that by signing a number of international treaties the Russian Federation takes the responsibility to comply with international standards.

At the same time one cannot ignore the fact that Russia is obliged to take into account international standards and recommendations. This also concerns criminal and legal methods of combating socially dangerous acts committed by legal entities. Russia, ratifying international conventions, as N.V. Vitruk (2008) notes imposes an obligation to make appropriate changes in national legislation.

## Conclusion

The concerns of Russia and other States with the state of the natural environment due to uncontrolled growth of harmful industrial and domestic wastes, radiation and chemical contaminated areas, discharge into water bodies and emitted into the airspace of toxic substances and other negative impacts are obvious.

Problems of criminal liability for committing criminal acts that infringe on international environmental security, are multidimensional, in the science of criminal law there is an opinion that the subject structure of these acts should be expanded to

establish the criminal liability of legal entities. Unlike countries where for committing crimes against the natural environment, the criminal liability of legal entities is established, in Russia such a mechanism is not created.

To sum up, taking into account that the issue of criminal liability of legal persons has so far not received its theoretical justification, we believe that if to provide for criminal liability of legal entities, this responsibility should not apply to all offences but only in certain, strictly defined by law of the criminal acts. If we talk about environmental crimes, to these acts can be referred crimes against the international environmental security, on the basis that any adverse effects on the natural object, in this case, affects not only the interests of individual State, but leads to changes in the environmental system for which there are no administrative boundaries, these acts create a danger to humanity. However, this question can be put only after creating a theoretical model of guilt of a legal entity for committing a crime.

### Disclosure statement

No potential conflict of interest was reported by the authors.

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### References

- Antonova, E.Y. (2009). Liability of legal persons in criminal law: arguments for and against. *Criminal law*, 5, 4-9.
- Bertel, S. (2010). *Österreichisches Strafrecht Besonderer Teil*. Berlin: Vollständig überarbeitete Aufl.
- Brinchuk, M.M. (1998a). On the conceptual apparatus of environmental law. *The state and law*, 9, 20-28.
- Brinchuk, M.M. (1998b). Theoretical problems of formation of legislation on the environment. *The state and law*, 12, 73-81.
- Dubovik, O.L. (1997). Responsibility for environmental crimes. *Journal of Russian law*, 9, 50-61.
- Ebenroth, C.T. (1997). Die strafrechtliche Verantwortung des Vorstandes für Umweltstraftaten und gesellschaftsrechtliche Vermeidungsstrategien. *Betriebs-berater*, 28, 1941-1947.
- Kelina, S.G. (1994). *Liability of legal persons in the draft of the new criminal code of the Russian Federation. Criminal law: new ideas*. Moscow: Publishing house of IS and L. RAS.
- Kienapfel, D. (2009). Studienbuch Strafrecht. Besonderer Teil Band III. *Delikte gegen sonstige Individual- und Gemeinschaftswerte*. Berlin: Auflage.
- Knopp, L. (1994). Neues Umweltstrafrecht und betriebliche Praxis. *Betriebs-berater*, 32, 2219-2224.
- Kozlov, A.P. (2014). *The concept of crime. Tutorial*. St.Petersburg: Juridical center "Press".
- Matejko, S. (2006). Die allgemeine Irrtumsdogmatik vor neuen Herausforderungen – der Variantenirrtum im Rahmen der Umweltschutzatbestände. *Zeitschrift für Internationale Strafrechtsdogmatik (ZIS)*, 5, 205-212.
- Meyerholt, U. (2010). Umweltrecht. *Oldenburg*, 5, 135-136.
- Naumov, A.V. (1992). The enterprise on the chair of the accused. *The Soviet justice*, 17, 3-4.
- Nikiforov, A.S. (2000). Legal person as the entity of the crime. *The state and law*, 8, 59-70.
- Pavlov, V.G. (2001). *The entity of the crime*. St.Petersburg: Juridical center "Press".

- Poznyshev, S.V. (1912). *The basic principles of criminal law*. Moscow: AST.
- Shchepelkov, V.F. & Vinogradova, E.V. (2014). *Criminal law of Russia. Special part*. St. Petersburg: St. Petersburg State University.
- Sitkovski, I.V. (2002). The issue of liability of legal persons in criminal law. *Criminal law*, 4, 42-44.
- Smolninov, E.S. (2009). On the necessity of introducing criminal liability of legal entities in the Russian legislation. *Russian investigator*, 15, 21-29.
- Tagantsev, N.S. (1910). *The code about criminal and corrective punishments 1885*. St.Petersburg: Published By N. S. Tagantsev.
- Trainin, A.N. (1969). *The defense of peace and criminal law. Selected works*. Moscow: Nauka.
- Tranin, A.A. (2014). *Legal problems of environmental development of modern Russia*. Moscow: Nauka.
- Vinogradova, E.V. (2001). The legal person should be held responsible for environmental crimes. *The Russian justice*, 8, 62-65.
- Vitruk, N.V. (2008). *General theory of legal liability*. Moscow: Znaniye.
- Volzhenkin, B.V. (1998). *Criminal liability of legal entities*. St.Petersburg: Publishing house of Juridical Institute of General Prosecutor's office.
- Volzhenkin, B.V. (2008). *Selected works on criminal law and criminology (1963-2007)*. St.Petersburg. Juridical center "Press".
- Wolf, J. (2002). *Umweltrecht*. Munchen: Verlag C. H. Beck.