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Legal Analysis of Ecocide in the Russian Criminal Law

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The view that the essence of the crime as a socially dangerous act is infringing on legally protected public relations was dominant although it was not the only in the theory of Soviet criminal law. Assault is considered to be the act either causing damage to this relationship or implying the possibility of causing damage. The composition of ecocide in the criminal code of the Russian Federation (hereinafter-CC) (Art. 358) in its legislative design is formulated as a formal material. On the basis of a comparative analysis of international law and Russian criminal legislation in the proposed wording consequences in the form of "mass destruction of flora or fauna, poisoning the atmosphere or water resources" as an alternative to the criminal consequences, but also formulated the concept of "other action" as an alternative acts constituting the act of ecocide (Constitution of the Russian Federation).

Key words: Ecocide, criminal law, crime, assault, public danger, ecological disaster.

The Criminal Code of Russia following the provisions of part 4 of article 15 of the Constitution of the Russian Federation and defining crime of ecocide at the national level consistently reproduces the relevant provisions of international criminal law on the mandatory inclusion of provisions on crimes against the peace and security of mankind in national criminal law. Any collision in understanding the signs of ecocide in national and international law must be resolved with reference to the constitutional rules of the priorities of the principles of international law for our country. Security interests of humanity as a whole absorb an environmental security interests and maintain the ecological law and order. Therefore if the act was done by committing ecological crime within the provisions of chapter 26 of the Criminal Code the act should generally be qualified only as ecocide. (Criminal Code of the Russian Federation)

Method

The objective element of offenses includes those signs of crime which are external and can be expressed in a certain influence of a person on objects and phenomena. Criminal human behavior should be considered as a unity of objective (external) and subjective (mental) elements.

1. Describing a particular crime the legislator characterizes mainly its objective element which serves as an important indicator of the presence of the social danger of the crime committed. (ITAR-TASS, 2002).
2) The objective element of the offense is socially dangerous act causing harm to objects protected by the criminal law as well as in conditions of causing harm.

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In addition signs of criminal act include socially dangerous consequences the causal relationships between the act and consequences as well as time, place, situation, ways and means of committing the crime.

Piontkovsky A.A. believed that under the criminal result we should understand "changes in the world, which are made under the influence of an act or omission of the person prescribed by the criminal law." These criminal consequences directly or indirectly cause damage to that or other legally protected objects or, at least, would create a risk of causing that." Other researchers give the similar concept of an infringement (United Nations, 1992).

However some authors more or less consistently defend the view that there is no crime that does not cause harm to public relations.

A.N. Trainin was the first who formulated such a position considered that "object of each crime ... are social relations that criminal law protects under threat of punishment and a criminal encroaches on these relations ignoring the threat. To encroach always means causing damage to the object in one form or another: an encroachment not causing the damage ceases to be itself; it does not "infringe." The criminal law can protect and protects the object only from damage ... damage caused to an object by assault is a consequence of forming a necessary element of every crime despite of the form and scope of the damage (Vinogradov, 2001)."

In connection with the above the question arises about the classification of crimes into formal and material.

Traditionally material crimes are considered to be those offenses which consequences are expressly indicated in the disposition of certain articles of the Criminal Code. If in the disposition of the criminal law specific consequence is not identified this element of crime should be considered as formal.

In crimes with the material element is mandatory to find a causal relationship between the acts committed and its consequences(Grechenkova, 2004).

The objectivity of presence of a causal relationship means that the investigating authorities and the court are required to prove with certainty its presence or absence between the act committed by a person and consequences. The Plenum of the Supreme Court in its resolutions emphasizes the need for reliable but not the alleged establishment of this relationship.

Determining a causal relationship it is necessary that it contains a number of features to which criminal law science attributes: effectiveness (cause produces a consequence which must necessarily occur), universality (which determines the lack of unreasonable phenomena), the need (i.e. the causal relationship does not have casual nature) and objectivity (it must be real.)

In article 358 of the Criminal Code ecocide is "mass destruction of flora and fauna, poisoning the atmosphere or water resources as well as other actions that could cause an ecological disaster (Naumov, 2005)."

In the doctrine there are different points of view on the objective element of ecocide from the element of the threat to the material element with alternative features.

Textual analysis of the provisions of article 358 of the Criminal Code suggests that the element of ecocide in the Criminal Code is worded as a formal material: its objective element effects as alternative form (mass destruction of flora and fauna, poisoning the atmosphere or water), and committing "other acts" that can cause ecological disaster. Let us consider each of these elements.

A consequence of mass destruction of flora and fauna is physical extermination of plants and populations of living organisms either permanently or temporarily inhabiting a territory.

In domestic law enforcement cases on ecocide connected with the massive destruction of flora and fauna are extremely rare. As an exception we can give the following example.

In January 2002 one of the most notorious crimes of Kamchatka in recent years was revealed – a poison of salmon fry at the fishing factory "Ozerky". The crime was committed on 6 February 2001 at a salmon hatchery: unknown persons exterminated several million salmon fry by chlorine poured out it in water intake well. Damage amounted to 12 billion rubles, and the fact of extermination was the nation's first law enforcement criminal case under article "ecocide" (Naumov, 2005).

Subject of crime as an element of a crime in the Russian criminal law has received considerable attention. Proper and full

consideration of this problem is closely related to the imposition of criminal liability in particular the implementation of the criminal law qualifications of socially dangerous act.

Signs describing the subject of a crime are elements of a crime. Their presence proves the possibility of bringing a person to criminal liability. Therefore they act as necessary conditions of criminal responsibility. In the group of a criminal law nature stands subgroup which includes a relatively small list. These include only those features of the perpetrator that are important to decide on the imposition of criminal liability. In criminal law point of view the subject of a crime is a person who has committed a crime and has attributes (properties) provided by criminal law.

The subject of a crime in domestic criminal law can only be an individual. A crime committed by a legal entity does not make it a subject of a crime. Legal entity can not hold criminal responsibility for the act committed.

RESULTS

Criminal law mentions only two features of a common perpetrator as an individual his age and sanity. As a rule the signs of a common subject in the norm of the Special Part of the Criminal Code is not specified and formulated in the General Part of criminal law.

Under "individual" as the subject of crime in international criminal law should be understood any person who:

a) Has committed a crime by itself;
b) Used another person for the criminal act (such as execution of an illegal order).

The second integral characteristic of the subject is his sanity i.e. the ability to understand the actual nature of his act (action or inaction) and guide them freely.

In the definition of insanity as a legal category the international law is in a "winning" position compared, for example, with the Russian criminal law (where this concept simply does not exist and its understanding derived from the definition of insanity) (Kabolov, 2002).

International standard of the UN for the protection of Human Rights recognizes every person to be sane until otherwise is proven (this follows, for example, from art. of Universal Declaration of Human Rights and Freedoms of December 10, 1948 and Art. 16 of the International Covenant on Civil and Political Rights 1966).

Therefore we can talk about the presumption of sanity of a person over liability: any person who has attained the age of criminal responsibility is considered sane understanding the nature of his actions (or inaction) and guiding them until otherwise is proven

Based on the letter of the Russian Criminal law (articles 20, 358 of the Criminal Code) a common subject can hold criminal responsibility for ecocide i.e. any sane person who has reached 16 years of age at the time of commission of the offense (Konev, 2006).

The subjective element of ecocide. Complexity of determining the subjective element of a crime is that it characterizes processes taking place in the psyche of the perpetrator and it is not possible the direct perception of them by human senses.

A content of the subjective element of a crime is disclosed by legal characteristics such as guilt, motive, purpose and emotion. According to the principle of guilt determined by article 5 of the Criminal Code "objective imputation that is criminal liability for innocent harm is not allowed" (part 2 of art. 5 of the Criminal Code). This means that criminal liability can not be imposed in the absence of guilt of a person who committed a crime, (in any of the forms prescribed in criminal law).

To find a person guilty means to establish that he has committed an offense intentionally or negligently. The principle of individual responsibility for crimes against the peace and security of mankind assumes guilty attitude of the causer to the committed act. The main characteristic of the subjective aspect of any crime is a guilt that has a certain mental attitude of a person to his committed act and possible outcome i.e. consequences (Kostenko,2002).

We believe that the commission of crimes against the peace and security of mankind is allowed: only intentionally – in formal compositions; with direct or indirect intent – in material compositions. Many elements of a crime contain a direct reference to such features of the subjective aspect as motives and goals of the offense. In these cases these signs are required to be found (Makarevich, 1973).

It is generally recognized that the

subjective element of ecocide in Russian criminal law is expressed in the form of intentional fault. This conclusion follows directly from the provisions of part 2 article 24 of the Criminal Code. Since this provision states that "an act committed only by accident considered as a crime only when it is specifically provided by appropriate article of the Special Part of this Code is due to the absence of a form of guilt in article 358 of the Criminal Code we can only talk about the intentional form of guilt in the commission of any act of ecocide (Makarov, 1992).

According to article 25 of the Criminal Code an intentional crime can be committed with direct or indirect intent: the crime is considered committed with direct intent "if a person is aware of the social danger of his actions (inaction), foresaw the possibility or inevitability of socially dangerous consequences and wished their occurrence." Further indirect intent is defined when a person is aware of the social danger of his actions (inaction), foresees the possibility of socially dangerous consequences, not willing, but knowingly allows these consequences or refers them indifferently(Bassiouni, 1999).

However the definition of these types of intent is given in relation to elements having material structure. Some difficulty lies in the fact that the analyzed structure has the formal and material structure as it was already mentioned. There is a possibility of criminal liability for the occurrence of both effects (mass destruction of flora and fauna, poisoning the atmosphere or water) in the disposition of article 358 of the Criminal Code and for committing "other actions" by a guilty person that can lead to environmental disaster. Therefore it is necessary to find the subjective aspect in relation to either consequences or act when using norms on ecocide (Douglas 1972).

Consequences specified in article 358 of the Criminal Code can be caused by acting both with a direct and indirect intent.

Finding the form of intent in relation to "other actions" of the objective element of ecocide is not particularly difficult. It is indisputable that these forms of the objective element of ecocide are formal acts because legislator does not demand a socially dangerous consequences as a result of their commission (they should only pose a threat to the onset of ecological disaster).

DISCUSSION

Russian criminal law as it was mentioned contains a definition of intent only in relation to the material components. To resolve this situation it is necessary to take advantage of advances in science of criminal law which produced a definition of the intent related to the elements with a formal structure.

Desire in crimes with the material element as it is known is associated with socially dangerous consequences which are outside of the formal composition. Therefore, when committing a crime with a formal element subject of desire are actions (inactions) which in their objective properties have public danger sign regardless of the fact of occurrence socially harmful consequences (Henkin L. 1980).

Accordingly the direct intent when committing acts is characterized by formal public awareness of the dangers of committed actions (or inaction) and the desire to act in a similar manner.

Based on the above, definition of indirect intent in crimes with the formal element sounds so absurd that it borders with the definition of insanity. That is a person must be aware of the social danger of his actions (inaction) and consciously avoid them or treat them indifferently. Therefore we share the position of scientists who believe that the presence of indirect intent is impossible in crimes with the formal composition. Thus, the "other actions" constituting the objective element of ecocide can only be committed with direct intent (Kittichaisaree, 2001).

For the reason that part of the security interests of mankind are the interests of environmental safety, it is necessary to determine the relationship of ecocide and environmental crimes under the criminal code of the Russian Federation. On the basis of uniformity and importance of the object of legal protection, for the first time in the history of Russian criminal law in the system of the Special part of the criminal code of the Russian Federation allocated a separate Chapter in which are grouped the provisions establishing the structures of environmental crimes. Unfortunately, the criminal code does not provide a regulatory definition of "environmental crime".

Meanwhile, the formulation of its significant to achieve many important goals. The

General concept of environmental crime is his species concept that includes a number of features. In the literature there are data definition encroachments in accordance with the General characteristics of the crimes specified in the criminal law. As a rule they are or derive from object definitions criminal impact. Usually environmental crime is defined as the act of violating the provisions of environmental legislation and caused significant damage to the natural environment (Neier, 1998)).

Anchored in the theory of criminal law and in the practice of law-making position, according to which the basis of allocation of regulatory array homogeneous communities must be put to a generic object encroachment, is the basis of the systematization of norms on a generic object. This systematization is based on the characteristic that defines social nature of the crime, and is the basis of separating ecocide from environmental crime.

Species the object of environmental crime are protected by criminal law, environmental security and environmental law. All environmental crimes stipulated by Chapter 26 of the criminal code, can be divided into:

crimes against environmental security - stem 250 (Pollution water), 251 (air Pollution), 252 (marine Pollution), 254 (waste land);

crimes against environmental law - stem 246 (Violation of rules of environmental protection at work), 247 (Violation of rules for handling hazardous substances and waste), 248 (Violation of safety rules when dealing with microbiological or other biological agents or toxins), 249 (Violation of veterinary rules and regulations established to combat diseases and pests of plants), 253 (Violation of the legislation of the Russian Federation on the continental the shelf and the exclusive economic zone of the Russian Federation), 255 (Violation of rules of protection and use of subsoil), 256 (Illegal harvesting of aquatic animals and plants), 257 (Violation of rules for the protection of fish stocks), 258 (Illegal hunting), 259 (Destruction of critical habitats for organisms listed in the Red data book of the Russian Federation), 260 (Illegal cutting of trees and shrubs), 261 (Destruction or damage of forests), 262 (violation of the regime of specially protected natural territories and objects) (Smith, 2002).

Environmental security is traditionally considered to be part of the social (General security): "Ensuring environmental safety is a combination of environmental, engineering-technical and organizational measures aimed at prevention and mitigation of negative impacts on the life and health of people, the environment ... as well as their liquidation."

Division of environmental crimes into two groups suggests the need for a definition of "environmental law". For example, the VV DOE proposes to consider the ecological order of the system of ecological relationships aimed at achieving the objectives of conservation of natural environment, the prevention and elimination of the harmful consequences of economic development, the improvement of the human environment(Tsepelev, 2001).

When the delimitation of environmental crimes from crimes of ecocide should proceed from the understanding of a generic object of criminal-law protection. A generic object as part of the total, represents a group of homogeneous goods or interests that encroaches homogeneous group of crimes. A generic object used as a basis for division of the Special part of criminal code sections. A generic object of all environmental crime should be considered as public safety and public order. All crimes are United by the legislator in one section have a common generic object. The distinction between crimes under one section for specific groups should be based on stable grounds. The existence of a specific object as part of the generic will be on this basis.

In the theory of criminal law it has been suggested that the object of environmental crime is the mode of use of natural resources, which can be regarded as environmental law. Environmental law is duly organized mode of operation and protection of natural resources, i.e. the natural resources, legally enshrined in the rules, directives, orders.

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Elements of ecocide in the Criminal Code (Article 358) in its legal structure are formulated as a formal material. Based on the comparative analysis of international law and Russian criminal legislation the article proposes a formulation of

the consequences in the form of "mass destruction of flora and fauna", "poisoning the atmosphere or water resources" as alternative criminal consequences, and formulates the concept of "other actions" as an alternative acts forming an act of ecocide (Schwartz, 1975). Consequences specified in art. 358 of the Criminal Code can be caused by acting with a direct and indirect intent, while "other actions" that form the objective element of ecocide can only be committed with a direct intent. Mental attitude of the perpetrator to the possible ecological disaster is more difficult. Laws do not envisage the presence of mandatory target in the way of desire to cause ecological disaster. Consequently not only the desire but also the assumption of real possibility of such effects also gives grounds to impute ecocide.

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