

## PROBLEMS OF IMPROVING THE NORMS OF THE CRIMINAL CODE OF THE REPUBLIC OF KAZAKHSTAN REGULATING THE SUBJECTIVE CHARACTERISTICS OF THE COMPOSITION OF ENVIRONMENTAL CRIMINAL OFFENSES

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*The article considers certain aspects related to the prospects for improving the norms of the criminal legislation of the Republic of Kazakhstan regulating the issues of characterization of subjective signs of environmental criminal offenses. Considering the fact that the development of the problem of the subjective side of environmental criminal offenses is of increased relevance from a practical and theoretical point of view. Since within the framework of the science of criminal law, the problems associated with determining guilt in the composition of environmental criminal law violations are acutely debatable and insufficiently developed. In the organization of law enforcement practice aimed at countering environmentally punishable acts, there are difficulties and difficulties, the essence of which boils down to solving issues of qualification of the acts of perpetrators on the grounds of the subjective side of the composition of environmental criminal offenses at the stage of criminal prosecution for what they have done.*

**Keywords:** guilt; responsibility; environmental offenses; qualification; justice; punishment; intent; negligence.

The issues related to the improvement of the norms of criminal legislation regulating the subjective characteristics of the composition of environmental criminal offenses are of increased relevance, taking into account a certain scientific and practical interest in these issues. It is appropriate to note that in the science of criminal law, the problem of determining guilt in the composition of environmental criminal offenses is one of the most acutely debated and insufficiently developed. In the law enforcement practice of combating environmental criminal offenses, difficulties and difficulties are observed, characterized by solving qualification issues based on the subjective side of the composition of a criminal offense when bringing a person to justice. These circumstances put forward the objective need for a more detailed study of the problem of subjective signs of the composition of environmental criminal offenses. In the interests of developing, respectively, provisions and recommendations aimed at further improving and developing the current criminal legislation regulating liability measures for environmental criminal offenses.

As is known, according to the doctrine of criminal law, the subjective side of a criminal offense should be understood as the mental activity

of a person directly related to the commission of a criminal offense. If the objective side of a criminal offense «constitutes its actual content, then the subjective side forms its psychological content, i. e. characterizes the processes taking place in the psyche of the perpetrator. The content of the subjective side is revealed using such legal features as guilt, motive and purpose. These signs are organically interconnected and interdependent, however, they represent psychological phenomena with independent content, and none of them includes the other as an integral part» [1].

Guilt occupies a central place in the characterization of the subjective side of the composition of a criminal offense.

«Guilt, writes Professor I.I. Rogov, is a sign that is mandatory for any composition of a criminal offense. In its absence, the composition of the criminal offense as a whole is missing, and therefore there are no grounds for bringing a person to criminal responsibility.

The theory of Kazakh criminal law defines guilt as the mental attitude of a person towards a socially dangerous act committed by him and its socially dangerous consequences in the form of intent or negligence» [2, p. 49].

If we focus on the concretization of the form

of guilt in the composition of environmental criminal offenses by referring to theoretical developments, then a very contradictory picture unfolds before the eyes of the researcher.

So, M.A. Artamonov writes: «The question of the form of guilt in environmental crimes is the most debatable in the literature devoted to the legal and technical analysis of the signs of these torts. This circumstance is due to the lack of a well-established approach to determining the form of guilt for almost every component of an environmental crime. In view of this, it seems very difficult to provide a systematic analysis or even a summary table on the forms of guilt inherent in environmental crimes» [3, p. 45].

A.S. Frolov, pointing out the significant difficulties in determining guilt in the composition of environmental criminal offenses, concludes that «in the legal literature there is no disagreement in assessing the subjective side of such crimes only under 7 articles out of 17 (Chapter 26 of the Criminal Code of the Russian Federation). Crimes provided for in Article 253 of the Criminal Code of the Russian Federation (Violation of the legislation of the Russian Federation on the continental shelf and on the exclusive economic zone), Article 256 of the Criminal Code of the Russian Federation (Illegal extraction of aquatic animals and plants), Article 258 of the Criminal Code of the Russian Federation (Illegal hunting), Article 260 (Illegal felling of trees and shrubs) are unanimously recognized as intentional.

There is no objection to the statement that crimes provided for in Article 251 of the Criminal Code of the Russian Federation (Atmospheric pollution), Article 254 of the Criminal Code of the Russian Federation (Land damage) can be committed both intentionally and negligently. Uniformity is observed in scientists' assessment of the subjective side of the crime under Article 261 of the Criminal Code of the Russian Federation (Deforestation). It is considered that the actions provided for in the first part of this article are committed carelessly, and the actions specified in its second part are intentional. As for the rest of the environmental crimes, their subjective side is assessed in different ways.

The current situation seems to be perceived by the authorities and persons using the right of

legislative initiative, and therefore the right to seek its improvement, as quite ordinary. Meanwhile, the problem of clearly legislating the signs of guilt in environmental (as, indeed, all other) crimes is of fundamental importance. For environmental crimes that threaten the life of mankind on earth, this problem is one of the most important» [4, p. 143].

Based on the above conclusions A.S. Frolov, it can be suggested that criminal offenses provided for in Article 331 of the Criminal Code of our Republic (Violation of legislation on the continental shelf of the Republic of Kazakhstan and the exclusive economic zone of the Republic of Kazakhstan) should be recognized as intentional; Article 335 of the Criminal Code of the Republic of Kazakhstan (Illegal extraction of fish resources, other aquatic animals or 337. of the Criminal Code of the Republic of Kazakhstan (Illegal hunting); Article 340. of the Criminal Code of the Republic of Kazakhstan (Illegal felling, destruction or damage of trees and shrubs).

In addition to the above types of criminal offenses, it seems legitimate to include the acts provided for in Article 334 of the Criminal Code of the Republic of Kazakhstan (Unauthorized use of subsoil) to the group of environmental criminal offenses characterized by an intentional form of guilt. Considering the fact that unauthorized use of mineral resources, as well as unauthorized mining, is committed by a person, as a rule, intentionally, with the pursuit of selfish goals.

Criminal offenses under Article 329 of the Criminal Code of the Republic of Kazakhstan (Atmospheric pollution) may be committed both intentionally and negligently; 332. The Criminal Code of the Republic of Kazakhstan (Land damage). Criminal offenses provided for in part one of Article 341 of the Criminal Code of the Republic of Kazakhstan (Destruction or damage to forests) are characterized by a careless form of guilt, and those falling under part two are recognized as committed intentionally [5].

That is, the conclusion formulated by A.S. Frolov seems quite logical and fair about the urgent increased relevance of clear legislative regulation of signs of guilt in environmental criminally punishable acts, since such legal regulation is fundamentally important. The unresolved nature of these issues leads to erroneous decisions on the

responsibility and punishment of those responsible for committing environmental criminal acts.

It would be appropriate to supplement the above considerations with an emphasis on the fact that a positive solution to the issue of legal regulation of forms of guilt in environmental criminal offenses could be considered promising in terms of achieving the goal of proper qualification and observance of the principle of justice when bringing perpetrators to justice and punishment for socially dangerous acts under consideration.

The increased relevance of observing the principle of justice in solving issues of bringing to justice and punishing those responsible for environmental criminal offenses will be justified primarily due to the fact that in the constructions of dispositions and sanctions of certain norms of the current criminal legislation regulating responsibility for environmental and other criminal offenses, certain contradictions can be observed related to the silence of the legislator about the forms of guilt.

If the above provisions are transferred to the characteristic of our Kazakh criminal law reality, then it would be appropriate to note that for the commission of an intentional specially qualified environmental criminal offense, provided for:

– part 2 of Article 324. «Violation of environmental requirements for economic or other activities» of the Criminal Code, which caused the death of a person or a mass illness of people, – imprisonment for a term of three to seven years is established;

– part 3. Article 325. «Violation of environmental requirements when handling environmentally potentially dangerous chemical or biological substances» of the Criminal Code, which caused

the death of a person or a mass illness of people, – imprisonment for a term of two to seven years is established;

– part 3. Article 326. «Violation of environmental requirements when handling micro-biological or other biological agents or toxins» of the Criminal Code, which caused the death of a person or a mass illness of people, – imprisonment for a term of three to seven years is established. While for the intentional deprivation of human life or intentional harm to the health of many people, according to the norms of Chapter 1 «Criminal offenses against the person» of the Criminal Code, respectively, penalties in the form of imprisonment from eight to fifteen years; from five to ten years.

Therefore, in the interests of observing the principles of justice and the inevitability of responsibility and punishment for committing serious environmental crimes in cases provided for by the above-mentioned norms of the Special Part of the Criminal Code of the Republic of Kazakhstan, it would be legitimate to additionally qualify the acts of the perpetrators according to the norms of the Special Part providing for responsibility and punishment for crimes against the person.

According to the results of the analysis of modern scientific approaches of scientists to determine the forms of guilt both in the traditional sense and taking into account trends related to the amendments to the legislation in criminal law concerning the composition of environmental criminal offenses, it is important to focus on certain hotly debated issues in order to analyze and generalize the scientific views of scientists and Accordingly, new conclusions and assumptions are put forward.

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## ПРОБЛЕМЫ СОВЕРШЕНСТВОВАНИЯ НОРМ УГОЛОВНОГО КОДЕКСА РЕСПУБЛИКИ КАЗАХСТАН, РЕГУЛИРУЮЩИХ СУБЪЕКТИВНЫЕ ПРИЗНАКИ СОСТАВОВ ЭКОЛОГИЧЕСКИХ УГОЛОВНЫХ ПРАВОНАРУШЕНИЙ

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*В статье рассмотрены отдельные аспекты, связанные с перспективами совершенствования норм уголовного законодательства Республики Казахстан, регламентирующих вопросы характеристики субъективных признаков составов экологических уголовных правонарушений. Учитывая то обстоятельство, что разработка проблемы субъективной стороны экологических уголовных правонарушений представляет повышенную актуальность с практической и теоретической точки зрения. Поскольку в рамках науки уголовного права проблематика, связанная с определением вины в составах экологических уголовных правонарушений, является остро дискуссионной и недостаточно разработанной. В организации правоприменительной практики, направленной на противодействие экологическим уголовно наказуемым деяниям, наблюдаются затруднения и сложности, суть которых сводится к решениям вопросов квалификации деяний виновных по признакам субъективной стороны составов экологических уголовных правонарушений на этапе привлечения к уголовной ответственности за содеянное.*

**Ключевые слова:** вина, ответственность, экологические правонарушения, квалификация, справедливость, наказание, умысел, неосторожность.

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## POLLUTION, CONTAMINATION OR DEPLETION OF WATER

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*The article discusses controversial issues of unauthorized qualification, that is, without obtaining a license for the right to use land, subsoil, and mining. The study of scientific literature and law enforcement practice shows that unlicensed mining is qualified in some cases as illegal entrepreneurship, in others as a violation of the rules for the protection and use of mineral resources, and in others as theft.*

**Keywords:** law, ecology, water, pollution, discharges, offense, liability, punishment, efficiency, damage.

**I**t is known that water is an important factor in human life not only biologically, but also socially. To meet the net biological needs of man, he needs 2-5 liters of water per day, and now it is seen that he consumes even more. Water is an indispensable element and basic condition of

many production processes, so the level of its consumption is very high.

According to recent data, the world currently consumes on average about 15 million liters of water per person per day (compared to the biological needs of humans). Of these, 100-150 li-