

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.

It 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-

ters will go for utilities, the bulk of it for industrial and agricultural needs.

Today, many experts believe that groundwater is the cleanest water available. Despite large groundwater reserves (about 10 million cubic meters), they can be depleted relatively quickly due to the low rate of recovery.

In addition to the problem of the depletion of water resources, the issue of water pollution or its qualitative depletion is relevant today. Since human needs for water are not limited to the biological sphere, this factor is at the heart of water pollution. At present, all water sources are subject to pollution, despite belonging to different categories: oceanic, continental, and underground.

Water pollution is divided into pretreatment and after treatment. Preliminary pollution is associated with the ingress of various pollutants into these water sources. The consequences of subsequent chain reactions under the influence of previous pollutants. The main pollutants are products of soil erosion, mineral fertilizers, toxic chemicals, etc. D. from watersheds. will be found. A significant amount of pollutants comes with precipitation. The proportion of water pollution by sewage, garbage, industrial waste, and waterborne transport is also high.

Chemical pollution of water bodies is the main cause of such phenomena as water eutrophication, which means that water is enriched with nutrients such as nitrogen and phosphorus, or substances containing them. As a result, oxygen is depleted in the deeper layers of the water, leading to the exchange of aerobic processes with anaerobic processes and, ultimately, the contamination of water with toxic substances. Today, almost all inland water bodies and some seas are subject to anthropogenic eutrophication. Its main factors are mineral fertilizers, in some cases detergents that contain highly active phosphorus-based substances. Pollution of the world's oceans has become a global problem. Oil waste contributing to ocean pollution. Coastal industrial facilities, as well as offshore drilling, are the first contributors to oil pollution in the marine environment. Industrial wastes and waste make up about 60% of the total pollution. According to experts, about 10 million tons of oil and oil products, about 50 thousand tons of toxic pesticides, about 5 thousand tons of mercury, 6 million tons of phosphorus, 2

million tons of lead and other harmful substances enter the World Ocean annually. Concern for the fate of the world's oceans has led to the conclusion of many international agreements in this area. It should be noted that the MARPOL 73/78 Convention, adopted in 1973, introduced a number of strict requirements for the volume of transport by sea, the discharge of harmful substances by ships, technical devices and equipment of ships, as well as transport control.

By establishing criminal liability for violation of water use and water rotation rules, the legislator has set a goal to ensure and protect requirements of reliable protection of water bodies of the republic from various encroachments. There are many reasons for this. As it was mentioned above, water is one of the main sources of human, animal and plant life. It is quite obvious that water pollution, contamination and depletion have dangerous consequences for humans and the environment. Accordingly, the criminal protection of the interests of misuse of water is one of the most pressing problems today. The normative base for the proper application of the provisions of Article 328 of the Criminal Code of the Republic of Kazakhstan, which we interpret, is the Water Code of the Republic of Kazakhstan adopted on July 9, 2003, as well as other legislative acts.

If we analyze Article 328 of the current Criminal Code in accordance with the provisions of Article 10 of the Criminal Code of the Republic of Kazakhstan, then according to the degree of danger to society, part 1 of this article is a criminal offence. The reason for this is that criminal offenses only cause significant damage to the environment, that is, damage to the environment and the consumption of natural resources, which covers only 100 to 200 MCIs. In addition, under Article 328, paragraph 1, in the case of pollution, contamination, depletion or alteration of surface or groundwater, glaciers and drinking water sources, their natural properties are most likely to cause significant damage or harm or injury to human health, arrest as a punishment. According to paragraph 1 of Article 40 of the Criminal Code of the Republic of Kazakhstan, arrest is one of the types of punishment for a criminal offence.

Also paragraphs 2 and 3 of article 328 of the Criminal Code of the Republic of Kazakhstan are

recognized as a crime depending on the degree of danger to society indicated in paragraph 2 of article 10 of the Criminal Code. Clauses 2 and 3 of Article 328 of the Criminal Code of the Republic of Kazakhstan are characterized by the degree of danger to society, causing significant (extremely large) damage to the environment, causing such damage, death or mass disease [2]. From this we can see that pollution, contamination, depletion or alteration of groundwater, glaciers and drinking water sources should not be considered as a crime, but must cause at least significant damage. Only in this case, it will be recognized as a crime and will constitute an act dangerous to society, provided for in paragraphs 2-3 of Article 328 of the Criminal Code of the Republic of Kazakhstan. In addition, depending on the type of punishment, paragraphs 2-3 of Article 328 shall be considered a crime. The amount of fines and correctional works, and imposition of community service for causing significant damage to groundwater, glaciers and sources of drinking water through pollution, littering, depletion or alteration of their natural properties, or causing death or mass disease 41 of the Criminal Code of the Republic of Kazakhstan, provided for in Article 42, 43. Also for this crime there are penalties for restriction of liberty and deprivation of liberty. These kinds of punishments are imposed only for crimes envisaged by paragraph 2 of Article 40 of the Criminal Code of the Republic of Kazakhstan.

The disposition of Article 328 of the Criminal Code does not provide for the commission of this crime with corruption. However, we cannot say that the subject commits a criminal offense by polluting, polluting, depleting groundwater, glaciers and drinking water sources or changing their natural properties. This is because such crimes can be committed by any person or group. Thus, only the investigation of a criminal offense determines whether it was committed individually or with corruption.

Article 328 of the Criminal Code of the Republic of Kazakhstan consists of basic and aggravating elements of the criminal offence, depending on the degree of danger to society. The basic corpus delicti defines the main features of the criminal offence «Pollution, contamination or depletion of water». It describes the types of water sources that can change the natural properties of

pollution, pollution or depletion, as well as the initial value of the consequences of water pollution, pollution or depletion. Paragraphs 2-3 of Article 328 of the Criminal Code are recognized as aggravating circumstances. Here, the amount of damage increases or leads to death and mass illness.

Depending on the way of description, the crime is recognized as a complex corpus delicti. Because here the objective side of the crime becomes more complicated. That is, several damages caused by the subject in the case of water pollution, fouling or depletion are taken into account. It can be significant (large, very large) damage to the environment, damage to human health, death or mass illness. We also consider this to be an alternative constitution, depending on the way it is described. Under section 328, there are several acts that can be committed, such as «pollution, depletion, and littering.» The turnover of water sources in the course of one or more of these acts is an objective aspect of the criminal offense.

Depending on the structure, the crime is a material component. That is, it is not enough to waste, pollute, or waste water. The corpus delicti here requires at least significant damage to the environment (major damage, significant harm), damage to human health, death or mass illness.

The main direct object of the criminal offence under article 328 of the Criminal Code is public relations related to the protection of life, health and the environment in the use and protection of water [1]. In particular, under article 328 of the Criminal Code of the Republic of Kazakhstan, the criminal offence includes environmental relations protected by compliance with environmental requirements on the use of water bodies, groundwater and wastewater specified in Chapter 33 of the Law on Environmental Protection. The Code of the Republic of Kazakhstan is attacked. An additional direct object of this criminal offence is the normal state of the environment, human health and life.

The objective side of the crime is characterized by the following obligatory signs:

a) action (action or inaction) manifested by pollution, contamination or at least one of the discharges of water under Article 328. Water pollution may be manifested by the discharge of

harmful substances into various bodies of water that degrade water quality, or in other ways. The discharge of water is accomplished by dumping items in the form of garbage into water bodies or by other means. These wastes, in turn, replenish the water with harmful substances, which leads to a decrease in its purity, deterioration of the natural physical, chemical and biological condition. The depletion of water resources is characterized by actions that result in a permanent reduction in the volume of natural water or sources of drinking water. Exceeding the limit of water withdrawal for production or other purposes as such activity; failure to carry out obligations on hydro technical measures on water conservation and other violations related to the observance of water protection regime. This is done in a mixed form of actions. Actions not reflected in the discharge of various wastes into water bodies and inaction in non-compliance with the protection and storage of water and its resources. For example, in Atyrau region, «Uzen Oil» dumped oily waste on the bank of the Ural River. As a result, the waste was discharged into the river, and as a result of changes in the composition of water, fish in the river died. The damage from the offense is estimated at 3 million 200 thousand. A criminal case was initiated against a citizen of the Republic of Kazakhstan, the director of the economic partnership Uzen Neft, under part 2 of Article 328 of the Criminal Code of the Republic of Kazakhstan. According to the given example, the director of Uzen-Neft A. is responsible for utilization and processing of oil waste in the Ural River, if he takes measures (preplans actions, pre-determines the place of the spill, orders to dump into the river), not considered measures for safe burial (planning construction of special landfills, their placement, not fulfilling obligations on its construction and safe disposal of waste);

b) causing at least significant damage to the environment (major damage in paragraph 2, very major damage in paragraph 3) or damage to human health (from light to severe damage), as well as causing death; or dangerous to society, which is reflected in the mass morbidity of people. The amount of damage in the above example exceeds 3 million 200 thousand tenge 1000 MCI, so the actions of the director of JSC

«Uzen-Neft» A. differentiated by paragraph 2 of Article 328 of the Criminal Code.

A criminal offence is considered to be committed when at least one of the socially dangerous consequences provided for by Article 328 has occurred. In other words, in order for this article to be considered, it is important not only to have pollution, contamination or depletion of water, but also to cause dangerous harm to society or harm or injury to human health. This article requires that such a society, as a dangerous victim, must be at least significantly harmed. Significant damage is the cost of restoring the environment or the use properties of natural resources in an amount greater than 100 MCI. Accordingly, the largest amount is considered to be more than 1,000 MCI, the largest amount is more than 20,000 MCI. Circumstances that cause significant damage or pose a threat of significant damage are those that violate relevant environmental requirements for the protection of water bodies and water use, but have not yet caused environmental damage at the time of disclosure of the criminal offense.

In the disposition of Article 328 of the Criminal Code of the Republic of Kazakhstan, damage to human health is indicated as dangerous to society. However, the amount of damage is not specified. Such damage to a person's health can range from mild to severe. For example, water poisoning as a result of water pollution is considered a minor injury if the treatment is less than 21 days, but if the poisoning leads to the termination of a woman's pregnancy, it should be considered a serious injury.

It is also considered an aggravating circumstance if water pollution or contamination changes the composition of the water and results in the death of one person who uses it or a mass illness of people.

According to paragraph 1 of Article 15 of the Criminal Code No. 226-V of July 3, 2014, the subject of a criminal offense under Article 328 is a sane person over 16 years of age. That is, according to the general characteristics the subject of the crime must be 16 years old and be able to take responsibility for his actions. According to the content of the disposition of Article 328 of the Criminal Code of the RK, the subject of the crime is any guilty person. As can

be seen from the above example, the subject of the crime was the director of the economic society «Uzen-neft» A. will be found. That is a special subject depending on his position.

In addition to the main types of punishment, such as fines, correctional work, community service, restriction of liberty or deprivation of liberty, for committing acts under Article 328 of the Criminal Code of the Republic of Kazakhstan, and causing dangerous consequences for society. An additional type, such as deprivation of the right to work, is also considered. At assignment of punishment to the person who has committed the given criminal offence according to subparagraph 6 of paragraph 1 of article 53 of the Criminal Code of the Republic of Kazakhstan, and also sincere repentance according to subparagraph 11 of para-

graph 1 of this article can be considered as mitigating circumstances.

In addition, a case of sincere repentance and confession is a case of criminal misdemeanor or a first offense under paragraphs 2-3 of Article 328, which may entail exemption from criminal liability under paragraph 1 of Article 65 of the Criminal Code. . This is due to the fact that a person who has committed a crime under Article 328 of the Criminal Code for the first time is considered truly repentant and may be exempted from criminal liability, taking into account his guilt and reparation for the damage caused. the crime. In addition, there is a possibility of exemption from criminal liability subject to the requirements of the procedural agreement under Article 67 of the Criminal Code of the Republic of Kazakhstan.

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ЗАГРЯЗНЕНИЕ, ЗАСОРЕНИЕ ИЛИ ИСТОЩЕНИЕ ВОД

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В статье рассматриваются спорные вопросы квалификации самовольной, то есть без получения лицензии на право пользования земли, недрами, добычи полезных ископаемых. Изучение научной литературы и правоприменительная практика показывают, что безлицензионная добыча полезных ископаемых квалифицируется в одних случаях как незаконное предпринимательство, в других – как нарушение правил охраны и использования недр, в третьих – как кража.

Ключевые слова: право, экология, вода, загрязнение, сбросы, правонарушение, ответственность, наказание, эффективность, ущерб.