

On the Question about the Jurisdiction of the Courts in Cases of Crimes against the International Environmental Safety

Valery V. Grebennikov^a, Badma V. Sangadzhiev^a, Elena V. Vinogradova^a and Stanislava A. Vinogradova^a

^aRUDN University (Peoples' Friendship University of Russia), Moscow, RUSSIA

ABSTRACT

The relevance of the research problem is conditioned by the fact that with the increasing number of crimes against the international ecological safety the unresolved issues of jurisdiction of courts on Affairs about crimes of this type give rise to the problem of determining of the proper court, which in accordance with the regulatory order may consider and render decisions on cases of crimes of this type. The purpose of this paper is to determine the mechanisms influencing the decision of the jurisdictional questions. As a leading approach to the study of the problem a comparison of the studied materials on international treaties, conferences and meetings are selected focused on efforts aimed at institutionalization of the ability to attract individuals to international criminal responsibility who are accused of encroachment on the natural environment. The study of the legal nature of liability for acts that infringe on international environmental security, the necessity of creating mechanisms of these decisions is justified, the conclusion about the necessity of a decision's making or the establishment of an international specialized court or the jurisdiction's spreading of the international criminal court on the above-mentioned acts is formulated. The paper may be useful for the validation and regulatory consolidation of the concepts and characteristics of these offences, as well as to address enforcement issues to determine the proper court.

KEYWORDS

International environmental security, environmental crime, international jurisdiction, hearing of criminal cases in the courts

ARTICLE HISTORY

Received 17 July 2016
Revised 28 September 2016
Accepted 29 October 2016

Introduction

The concept of public danger of encroachment on the natural environment as part of the principles and norms of international law, in accordance with the Constitution of the Russian Federation (2003) are a component part of its legal system.

CORRESPONDENCE Valery V. Grebennikov ✉ grebval@yandex.ru

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Problems of criminal liability for committing criminal acts that infringe on international environmental security have multiple dimensions. To prevent these offences one must have effective judicial procedures, as it is pointed out by J. Schwarze (2003), the effectiveness of judicial review is conditioned by the development of the legal system.

The jurisdiction of the acts encroaching on the natural environment, as suggested by A.A. Tranin (2014) are determined by national legislation, as the object of crimes of this type, according to M.M. Brinchuk (2008) is environmental security, which is usually considered as part of national security.

The state has a duty to establish legal mechanisms for consideration in courts of cases of this category. This obligation is followed from the constitutional guarantees which according to A. Momirov & A.N. Fourie, (2009, 84 p.) can be seen as “a set of legal mechanisms in force in the state context, which is a deterrent for public authorities”.

Here it would be noted that the impact of other countries' norms on the national legislation is not always possible to evaluate as positive. Regarding the reception of norms of foreign law one can agree with the opinion of Norman Anderson, who believes that the reflection in the law of certain principles and regulations, taken from the codes of other countries, as it is suggested by G. Bechor (2007, 51 p.) "...means that the legal unity and harmony are not possible in this spectrum of foreign legal methods."

However, when there is an attempt on natural features it should be taken into account that they are not always within the boundaries of one state. So E.V. Vinogradova (2001) believes that defining the object of environmental crime, it is necessary to establish that an infringement may occur not only to the security interests of one country. E.Y. Gaevskaya (2015) believes that when considering the question of criminal liability for environmental offences it should be taken into account that it may result to harm to the object, the protection of which is not within the competence of national criminal law.

The evolution of the understanding in the need for legal assessment of the crimes encroaching on interests of several countries has a long history. The creation of the theory of international liability was settled many years ago, B. Ferenz (1983) points out that in the mid of the XVI th century, Professor F. de Vittoria formulated provisions, which became early forerunners of doctrines that have been recognized as principles of international law. Assuming the possibility of international criminal liability for the crimes encroaching not only on security within a single state, but on the object of criminal legal protection, as international environmental security it is necessary to address issues of jurisdiction of acts of this type.

The addressing to the study of jurisdictional issues is conditioned by the fact that as S.S. Henke (2015) believes, the basis of recognition of judicial decisions is adherence to professional standards, which determines the level of their efficiency, and affects the development of the legal system and practice of its legislative regulation.

Methodological Framework

To give foundation to determine the legal nature of responsibility for the crimes encroaching on international ecological safety it is necessary to analyze the practice of these cases from the point of view of the efficiency of judicial

procedures. Comparative analysis was done with the purposes to study acts of national and international law, in part, to justify the application of judicial procedures that determine the possibility of bringing to criminal liability for crimes that infringe on international environmental security.

At the same time we proceeded from the fact that the legal nature of legal relations in the sphere of nature is determined, as notes V.V. Nikishin (2015) by the public interest, based on the essential characteristics of natural objects.

The main part

In the 70-ies of XX century the interest of many States in the state of nature led to recognition of the need for joint efforts aimed at solving of environmental problems. In 1972 in Stockholm the first international conference on the protection of the environment was held. In the framework of the conference a concern about the state of nature was sounded, in the final documents principles were developed, suggesting a strategy for future attitude of the States - participants to environmental issues. Further, the development of the provisions of the Stockholm Declaration was reflected in numerous decisions. Among the most important ones UN Conference may be mentioned, which was held in Rio de Janeiro, 3-14 June 1992 and the World Summit on sustainable development held from 26 August to 4 September 2002 in Johannesburg (South Africa). At the 37th session of the UN General Assembly on 28 October 1982 the world Charter for nature was adopted. In Rio de Janeiro (Brazil) June 20-22, 2012 there was the Conference of United Nations on sustainable development.

Such productive inter-state cooperation aimed at creation of mechanisms to address environmental problems predetermines heightened interest in the creation of universal models of legal regulation, which to some extent is connected according to I.O. Krasnova (2014) with the need to investigate issues of criminal liability for environmental offences. Because it is the norms of law that contain the mandatory prohibition of criminal conduct backed by the threat of punishment, are an effective tool to ensure environmental law enforcement. It is connected, according to A.E. Zhalinsky (2009) with the vital interests and constitutes an exercise of power in the form of prohibition and violence.

It should be noted here that despite the fact that international cooperation in matters of criminal liability for the Commission of crimes, is developing in two directions – national and supranational, the application of international law in the domestic criminal jurisdiction in some common law countries, suggests the possibility to determine whether the international norm is part of the law. H. Waldock (1962) indicates that in England, for example, this right belongs to the English court.

However, for crimes against the natural environment or its individual components in accordance with the provisions of article 4 of the Convention 18 may 1977 on the prohibition of military or any other hostile use of modification techniques on the environment, each state – participant is obliged to undertake any actions in accordance with its constitutional processes, to prohibit or prevent any activities that violate its provisions.

The Russian Federation in article 42 of the Constitution establishes that everyone has the right to favorable environment, reliable information about its condition and on compensation of the damage caused to his health or property

by ecological violations. These constitutional provisions are implemented in the legislation of the Russian Federation, including in the criminal.

The concept of public danger of crimes against the environment – environmental crimes is developed in the works of several researchers, I.V. Popov (2014) believes that it is justified by the violation of ecological balance, which resulted in the lost capacity of the natural environment to heal itself. As A.G. Kibalnik & I.G. Solomonenko (2014) think, thus the issue of preservation of the natural environment from pollution is actually a question about the health of present and future generations and life on earth.

Global character of the problems arising from the infringement of the environmental components is recognized by the world community. While there are cases when these acts remain outside of the control of the international community, for example, Ecological Bulletin (1977) indicates that the information about the volume of use of herbicides in 1970-1972 in Vietnam, Laos and Cambodia still stays secret.

In the framework of the UN Conference held in Rio de Janeiro in 1992 the Declaration on environment and development was adopted. It proclaims the concept of sustainable development, which meets the needs of the present, but the ability of future generations to meet their own needs is not put at risk.

In this context, it is important to consider the provisions under which natural resources – base of livelihoods of the peoples living on the corresponding territory, which implies an objective necessity to consider the interests of future owners of natural objects. Thus one needs to recognize that public interest, which can be defined according to Yu.A. Tikhomirov (1995, 55 p.) as "...the right secured by the interest of the social community, the satisfaction of which is a condition and guarantee of existence and development" in this context is specific. This specificity lies in the fact that the public interest in the use of natural resources should be implemented by reinforcing the legal regime of ownership taking into account the interests of future generations.

However, it should be noted that as it is noted by M.I. Vasiljeva (2012) from the substantial view point disputes in which there is a public environmental interest arise from the fact of its violation, however, the existing enforcement of conflicts from the point of view of regulatory law, are qualified as a violation of the regulatory requirements for environmental management norms, the violation of the right to favorable natural environment and is considered as a separate offense very rare.

Criminal code of the Russian Federation consolidates the rules on liability for environmental crimes in one Chapter, thus creating, as it is pointed out by V.F. Schepel'kov & V.V. Lukjanov (2014) and others the preconditions for allocation as the specific object of the crimes' data encroaching on ecological safety and environmental law. However, it should be recalled that in Chapter 34, which establishes liability for crimes against peace and security of mankind of the criminal code of the Russian Federation, in article 358 it is established the liability for ecocide. It is obvious that the object of encroachment for the criminal offence should not be considered environmental safety, as part of the national security of the Russian Federation, but international environmental security.

Efficiency of the established in the Russian Federation the mechanism, suggesting the possibility of criminal prosecution of persons accused of

encroachment on the natural environment or its individual components has been analyzed in theoretical studies devoted to this problem. Speaking about the defects of legal regulation of questions on protection of the environment, in this context we are not talking about incompetence and self-serving interest of persons engaged in law-making and enforcement functions that determine the defects significantly limiting the regulatory capacity of environmental regulations on which indicates N.I. Khludneva (2014). We also do not address the studied of V.V. Petrov (2009) about the necessity to find a compromise between the economic interests of a person to meet his financial and other needs, and environmental, marked by Y.G. Zharikov (2015) as an environmental priority.

Nevertheless, we believe that in Russian Federation the criminal legal mechanism is established to ensure environmental safety, the question of its implementation, according to A.M. Maksimov (2015) – a question of further improvement of legislation and law enforcement practice.

Speaking about the efforts to institutionalize the possibility of involvement to international criminal liability of those who is accused for encroachment on the natural environment an attention should be paid to the fact that in the Resolution of 1991 of the UN General Assembly it is noted that environmental crime threatens the stability and security of the environment. At the ninth United Nations Congress on the prevention of crime and the treatment with offenders, a proposal was made to establish an international Tribunal for the prosecution and trial, using court procedures in cases concerning international environmental crime, coordination of all activities authorized by the United Nations body, which can also be used for the collection, analysis and dissemination of relevant information. However, there was an opinion that there was no unity in understanding of the notion of international environmental crime, without which the establishment of such a Tribunal was impossible.

The specificity of new forms of international interaction between States depend not only on purpose, cooperation, and the bodies' system for the solution of the formulated tasks created by the integration Union. One of such bodies, along with the Advisory or Executive one, is believed by T.N. Neshataeva, E.B. Djachenko & P.P. Myslinskiy (2015) is a judicial body. Depending on the type of integration cooperation there are inter-unions of coordination and supranational type. Based on the fact that judicial decisions should be enforceable, we can assume that despite the fact that most modern international organizations constitute the inter-unions coordination, for international judicial bodies as the main forms that determine their activities should be the bodies with supranational powers. These bodies considers E.A. Shibaeva (1986) should have rights to require its members apart from or against their consent, by making a majority decision, to incorporate their solutions without changes in national law, as well as to have the authority to intervene in matters pertaining to domestic jurisdiction of States. International judicial bodies with powers of review and decision-making in cases of crimes against international environmental security should possess such rights, therefore, they must be created according to the type of supranational bodies. The international criminal Court, established as a permanent body in 1998 at the diplomatic conference of Plenipotentiaries under the auspices of the UN, having jurisdiction in respect of persons responsible for crimes of concern of the international community, do not consider issues of



international criminal responsibility for crimes related to environmental pollution, as they are not included in the jurisdiction of this Court.

The distribution of competence of the European Union on the criminal-legal sphere led to the adoption by the European Parliament and the Council of the European Union of Directive 2008/99/EC of 19 November 2008 "On criminal-law protection of the environment". However, it should be noted that provided powers by this solution in the field of criminal law are arguable. For example, Professor R. Hefendehl (2006) indicates that European criminal law due to the lack of competence of the European Union for the publication of the criminal law is neither supranational in the Special part of substantive law, nor relevant to the Common part.

The problem which does not allow extending of the jurisdiction of existing international courts of criminal justice on crimes against the international ecological safety is the absence of a universal conceptual framework for crimes of this type. It may be recalled, that Created by the disbanded Committee on crime prevention the first option Code of 1991 contained 12 international crimes, including "willful and severe damage to the nature environment", and that the lack of uniform understanding of the legal nature of evidence of a crime did not allowed to include in the Code of crimes against the peace and security of mankind the environmental crimes. Thus the theoretical problem - the unity of the conceptual apparatus does not allow the use of existing international criminal law mechanisms in addressing issues of criminal responsibility for committing international environmental crimes.

The need to address the issues of bringing to responsibility of persons accused in committing environmental crimes, encroaching not only on the environmental security of one country, but also creating a threat to international environmental security, is obvious. This is due to the permissibility of intervention in a national jurisdiction when considering the question of responsibility for crimes encroaching on international ecological safety. Therefore, the international community may need to revisit this issue and make a decision about the establishment of the international specialized court, which establishes liability for criminal assaults on the natural environment, encroaching on international environmental security, or to extend the jurisdiction of the International criminal court on the above-mentioned acts. In any case, it is necessary to define the concept of international crimes against the natural environment. In General terms this definition may be the following - an intentional impact on the natural environment or its individual component, which entailed the destruction or irreversible damage to natural features or ecosystems of two and more entities of international law.

Conclusion

It is obvious that the need for standards for international criminal liability for crimes against the natural environment is justified by many factors.

These acts create a danger to humanity. Any negative impact on the natural object affects not only the interests of individual States, as it leads to changes in the environmental system for which there are no administrative boundaries.

It is important to consider that natural resources is base of livelihoods of the peoples living on the corresponding territory, which implies an objective

need to take into account the interests of future owner of natural objects. Thus one need to recognize that public interest in this context is specific. This specificity lies in the fact that the public interest in the use of natural resources should be implemented by reinforcing of the legal regime of ownership taking into account the interests of future generations.

To sum up, we believe that it is necessary to note that the international community pays great attention to the protection of nature from criminal attacks, but international criminal law does not establish criminal liability for a crime against the natural environment, encroaching on international environmental security. A mechanism to bring to justice the perpetrators in attacks against international environmental security has not been established so far. The obstacle in this mechanism's creating many researchers see in the absence in acts of public international law of concepts of such offence, defining of the characteristics of its composition, first of all, the object of encroachment as an inconsistency in the definition of the basic terms and concepts predetermines the complexity of the application of criminal laws. Therefore, there is a need for theoretical substantiation, examination and regulatory consolidation of the concept and characteristics of crimes that infringe on international environmental security. This will allow not only to create a model of responsibility for crimes of this type, in national legislation, but also to create mechanisms to address issues of international criminal responsibility, including jurisdictional questions of crimes against the international environmental safety.

Disclosure statement

No potential conflict of interest was reported by the authors.

Notes on contributors

Valery V. Grebennikov, Doctor of Law, Professor, Head of the Department of Judicial Authority, Law-Enforcement and Human Rights Activity, RUDN University (Peoples' Friendship University of Russia), Moscow, Russia.

Badma V. Sangadzhiev, Doctor of Law, Professor, Assistant Manager of the Department of Judicial Authority, Law-Enforcement and Human Rights Activity, RUDN University (Peoples' Friendship University of Russia), Moscow, Russia.

Elena V. Vinogradova, Doctor of Law, Professor of the Department of Judicial Authority, Law Enforcement and Human Rights Activity, RUDN University (Peoples' Friendship University of Russia), Moscow, Russia.

Stanislava A. Vinogradova, Post graduate student of the Department of Judicial Authority, Law Enforcement and Human Rights Activity, RUDN University (Peoples' Friendship University of Russia), Moscow, Russia.

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