

ACTIVITIES OF LAW ENFORCEMENT AGENCIES TO COMPENSATE DAMAGES CAUSED BY ENVIRONMENTAL OFFENSES

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ABSTRACT

The study aims at determining the functions and role of law enforcement agencies in compensating environmental damages. The authors of the article consider the existing legal framework, materials of law enforcement practice, and scientific opinions on compensation for environmental damages. The damage caused by environmental offenses can be compensated either voluntarily or compulsorily. The activities of law enforcement agencies aimed at identifying and suppressing environmental offenses, conducting administrative proceedings against offenders, and criminal prosecution have a serious impact on the subsequent compensation for environmental damages. The authors have determined several stages of such activity. One of the most effective mechanisms for compensating the damages caused by environmental offenses is a civil suit within a separate civil or criminal case. However, the effective protection of environmental rights is undermined by organizational and legal problems. This includes the environmental incompetence of persons investigating environmental crimes and the ineffectiveness of the established judicial practice to determine the extent of environmental damages. The authors have analyzed the global activities of law enforcement agencies aimed at compensating environmental damages. Scientifically grounded proposals are put forward to improve the current legislation and eliminate shortcomings in law enforcement practice.

Keywords: Compensation for Environmental Damage, Law Enforcement Agencies, Environmental Damage Assessment, Civil Suit.

INTRODUCTION

The vital function of society is inextricably linked with the extraction and consumption of natural objects useful for human beings and, therefore, with constant environmental changes.

While contributing to the formation of new technological systems, scientific and technological progress ultimately leads to the fact that the damage caused by humans to nature acquires dangerous proportions that threaten the very biological existence of humankind (Anufrieva et al., 2020; Alekseev et al., 2020). If environmental conditions worsen, it infringes on social needs, contradicts interests of the population, and causes socio-economic tension at the regional and national levels (Nurutdinova et al., 2020; Dung et al., 2020). Neglecting social processes, society can make the environment unsuitable for human existence. Without ensuring a healthy environment, it will cause destructive social processes that can hinder the progressive development of civilization (Teziev & Rozhko, 2020).

The enforcement actions provided by the current legislation for persons whose activities because damages to the environment should protect the disturbed state of natural objects. Along with a wide range of measures and types of liability for the violation of environmental standards, there are measures of civil liability, including compensation for environmental damages.

Environmental damage compensation is one of the most important intersectoral institutes that comprise the norms of civil and environmental law. This institute performs such functions as ensuring the protection of the subjective environmental rights of citizens and the restoration of ecological systems affected by anthropogenic activities. It also prevents new environmental offenses. However, the effectiveness of this institute in the Republic of Kazakhstan leaves much to be desired. According to the independent legal organization Deloitte Legal concerned with environmental protection, the Republic of Kazakhstan issued 480 environmental compensation orders in the total amount of 33,375,799,970 tenge (1 USD = 440 KZT) in the first half of 2019. As a result, 344 claims were satisfied, amounting to a total of 603,760,110 tenge (2%) (Deloitte Legal, 2020). The ineffective mechanism of compensation for environmental damages in Kazakhstan raises the question of the role of state bodies, including law enforcement officers, in providing compensation for environmental damages.

For many years, the issues of environmental damages and the order and specifics of their compensation have been considered by a significant number of scholars. This is expressed in numerous studies and publications on this issue. In Kazakhstan, the legal regulation of compensation for environmental damages was addressed by Kukeev (2019), Zhumaksanov (2019), Usenbaeva (2012), etc. Environmental damages, means, and threats of their infliction, as well as environmental problems that arise due to the negative impact on the environment and nature management, play an important role in the modern world. They draw the attention of not only Kazakh but also foreign experts (Martin-Ortega et al., 2011). Today, the mechanism of compensation for environmental damages, in particular the role of law enforcement agencies in the implementation of this institute, is not fully studied. Their activities aimed at ensuring this implementation are almost uncovered even though they seem to be significant. These circumstances stipulate the above-mentioned research topic.

RESEARCH METHODOLOGY

To increase the role of compensation for environmental damages in Kazakhstan, it is necessary to specialize law enforcement in the field of ecology.

RESULT

Civil liability in the field of environmental protection and rational use of natural resources are expressed in the proper behavior imposed on the offender to compensate the victim for property and/or moral damages caused by their unlawful act. Civil liability is usually imposed onto the offender together with the use of administrative and criminal measures. The organizational support of these measures relating to private and public law is provided within a single procedural framework and is part of law enforcement.

Practically all entities that protect the rights of individuals and legal entities are engaged in law enforcement, while law enforcement agencies are legally defined (Seitzhanov, 2017). In 2011, the Law of the Republic of Kazakhstan "*On law enforcement service*" was adopted. Its Article 3 defined the list of law enforcement agencies, including 1) bodies of prosecution; 2) bodies of internal affairs; 3) anti-corruption services; 4) economic investigation services. Internal affairs bodies and bodies of prosecution might be involved in the activities on compensation for environmental damages. Therefore, we will not consider the activities of other environmental authorities that the above-mentioned law does not refer to as law enforcement agencies.

Law enforcement activities in the environmental sphere carried out by internal affairs bodies and bodies of prosecution are multifaceted. They include both direct actions that have a positive impact on natural objects and indirect measures or measures that ultimately contribute to the proper protection of natural objects and the improvement of the environment (Kravtsova, 2015). The environmental function of internal affairs bodies is implemented mainly within the framework of law enforcement activities. Law enforcement should be understood as the activities of various divisions and services of internal affairs bodies, i.e. the practical daily execution and implementation of the requirements of environmental legislation, attributed to the exclusive competence of internal affairs bodies, as well as the interaction of internal affairs bodies with environmental authorities and organizations in conformity with the legislation of Kazakhstan.

The environment-oriented functions of internal affairs bodies are enshrined in Article 685, Subparagraph 1 of Clause 1 of Article 804 of the Code of the Republic of Kazakhstan on Administrative Offenses, Subparagraph 12 of Clause 10 of Resolution of the Government of the Republic of Kazakhstan of December 30, 2015 No. 1142 "*About approval of the Regulations on local police service of law-enforcement bodies*" (Government of the Republic of Kazakhstan, 2015), as well as in Order of the Minister of Internal Affairs of the Republic of Kazakhstan of December 29, 2015 "*On approval of Rules of the organization of work of law enforcement bodies on participation in nature protection actions*" (Minister of Internal Affairs of the Republic of Kazakhstan, 2015).

Civil liability for environmental damages is preceded by several stages in which law enforcement agencies are directly involved. The initial stage is the most time-consuming and responsible and to a large extent predetermines the result of the subsequent consideration of a judicial case for compensating environmental damages. At the initial stage, the persons initiating and investigating environmental offenses shall identify such an offense. They collect the relevant evidence in a short time, consolidate it, take the necessary measures to process the case in question, and reveal all the circumstances that are important for the case. For instance, they allow

concluding the commission of an ethological offense and the guilt of the person in respect of whom the proceedings are being conducted. They draw up a protocol on the environmental offense, prepare the case materials, and submit them for consideration to an authorized person who determines the body of the offense and decides on the initiation of administrative or criminal proceedings. Consequently, the stages preceding the consideration of the case on environmental damage compensation (the initiation of a case, investigation, drawing up a protocol on an administrative offense) are extremely important since they precondition the accuracy of a judicial decision.

At the next stage, the perpetrators are subject to criminal and administrative liability, which is punitive and does not pursue the goal of compensating the environmental damage arising from the above-mentioned offenses. Therefore, the question arises of how damage should be compensated. V.A. Shestak (2017) claimed, "*one of the main ways to protect the property interests of state violated as a result of crimes is compensation for damage together with the resolution of the corresponding criminal case, which ensures the constitutional rights of the injured party to rapid access to justice, as well as compensation for the property damage caused as a result of criminal encroachments*".

Criminal liability for environmental crimes is established by Article 13 of the Criminal Code of the Republic of Kazakhstan. According to its provisions, the possibility of criminal prosecution depends on the presence and/or an amount of the damage caused (major, grave, and especially grave). Thus, most provisions of Article 13 of the Criminal Code of the Republic of Kazakhstan oblige a law enforcement officer (inquiry or preliminary investigation) to prove the caused environmental damage and calculate its amount.

In this regard, law enforcement officers investigating criminal offenses in this sphere should know how to calculate the damage caused by environmental crimes. To calculate the damage caused to certain natural objects, they use the rates and methods approved by authorized state bodies. For example, Resolution of the Government of the Republic of Kazakhstan "*On approval of Rules of the economic evaluation of damage from environmental pollution*" of June 27, 2007 No. 535 (Government of the Republic of Kazakhstan, 2007) contains the following calculations: an economic evaluation of damage from the pollution of water resources, placement of industrial and consumption wastes above the established standards; an economic evaluation of damage from placement in the environment of radioactive wastes, sources of ionizing radiation above the established standards, as well as from placement in the environment of building materials, railings and slime of mining production, waste and mine water; an economic evaluation of damage from spilled petroleum (petroleum products) on the water (sea) surface.

Although such risk rates and techniques are advisory, courts considering criminal cases require that law enforcement officers shall use them when calculating the damage caused by an environmental crime (Kravtsova, 2018).

The use of risk rates and techniques for calculating the amount of the damage caused does not always ensure the principle of full compensation, especially in case of large-scale damages. The cost of restoring the disturbed state of the environment can significantly exceed the amount of the penalty calculated according to risk rates and techniques (Mukhtarova, 2009). It can be also difficult to calculate an amount of environmental damage due to non-obvious negative changes in ecological systems (they can manifest themselves in the form of perceivable

changes after a long period) and the insufficient knowledge of law enforcement agencies in the field of ecology and forensic science. The involvement of different specialists in the calculation of environmental damages might become a necessary condition. Environmental officials are empowered to detect violations and carry out administrative proceedings at the early stages. Exercising general control in the relevant areas, these bodies have the necessary qualifications to make the required calculations.

The next stage in the work of law enforcement agencies aimed at compensating environmental damages is the prosecutor's support of such a claim in the court. This refers to the activities of a specialized prosecutor's office in Kazakhstan, i.e. the specialized environmental Prosecutor's Office. The main activity of this institution is to supervise the application of the environmental legislation of Kazakhstan and environmental management (Sarpekov, 2017). When the prosecutor files and maintains a claim for environmental damage compensation in the court, it is a logical continuation of their supervisory activity over the implementation of laws during the preliminary investigation of environmental crimes. After filing the claim and examining all the evidence in the case, the prosecutor shall make sure that it is sufficient to substantiate an amount of environmental damage in relation to the civil claim. When supporting such a claim for compensating the environmental damage caused to the state, the prosecutor has the right to file petitions for additional evidence and documents confirming the fact of causing damage to the environment, the health of citizens, and the property of economic entities, and ensure that the court examines them completely and objectively. If the court makes an unjustified or unlawful decision in relation to this civil claim, the prosecutor also has the right to send a cassation or private appeal to a higher court. One more task of the prosecutor is to ensure systematic supervision over the implementation of laws during the execution of a judicial decision to satisfy the civil claim and restore environmental damages. To solve this problem, the prosecutor shall proceed from the legal requirements on full compensation for damage and exercise of supervisory functions throughout the execution of a judicial decision on the claim, avoiding a decrease in the judgment amount, unjustified suspension, or termination of enforcement proceedings.

Taking all the aforesaid into consideration, we need to conclude that internal affairs bodies and other law enforcement agencies (except for the prosecutor's office) participate in relations for environmental damage compensation indirectly, i.e. through other persons authorized to file civil claims for compensation, in particular, employees of the prosecutor's office who also refer to law enforcement officials. However, when considering a civil claim in criminal proceedings both the court and the prosecutor's office rely on the damage calculated and provided by internal affairs bodies. This predetermines the importance of the activities conducted by internal affairs bodies in accurately determining the amount of the environmental damage caused.

DISCUSSION

Let us consider examples of environmental damage compensation in the world practice. In the United States, compensation for environmental damages is included in a comprehensive mechanism for suppressing, eliminating, and preventing a negative impact on the environment as

a result of human activities. It includes the norms of civil, administrative, and criminal law. The US is a country of case law. In the field of environmental protection and other socio-economic spheres of society, there are not only legislative acts but also provisions and norms of case-law (common law) based on the doctrines developed by judicial practice. Civil liability is mainly governed by case-law, as well as CERCLA and OPA. Administrative and criminal liability is controlled by the norms of written law, including federal laws on environmental objects and types of economic activity (Broslavskii, 2017). The damage caused to the health and property of citizens, as well as the property of legal entities (the so-called environmental damage), is not considered by the US law as environmental damage. In these cases, compensation for damages is regulated by the norms of civil law within the framework of torts, i.e. liabilities due to harm. Two types of payments are collected from the offender in favor of the victim in compensation for the damage caused, including environmental damage: compensatory or actual damages and punitive or exemplary damages. Such compensations include three types of payments: 1) The reimbursement of actual losses; 2) The recovery of the lost income or lost future profits that victims could have received while maintaining the level of environmental quality as it was before some environmental offense: the loss of earnings, entrepreneurial and other commercial profits, interests on the amounts withdrawn from bank accounts; 3) Compensation for the pain, suffering, grief, humiliation, fear, anxiety, mental disorder, mental illness, and other negative consequences caused by such an offense, a decrease in the aesthetic value of a natural object, etc. All these payments can be conditionally called compensation for "*moral damage*" (Broslavskii, 2017). In contrast to the Russian law, penalties might also be collected from the inflictor of damage, including environmental damage, in addition to compensation under the civil law of the US. The court has the right but is not obliged to collect them from offenders, only in cases where their action or inaction is intentional or malicious or they acted with criminal negligence or using various forms of coercion and deception, as well as in the presence of other aggravating circumstances. The collection of fines from offenders has a twofold purpose: to punish the perpetrators and to have a preventive and educational effect on other potential offenders. Being a fine paid by the offender, these payments can be regarded as compensation for all the negative consequences (material, economic, moral) that have occurred or might occur for victims and cannot be evaluated in cash consideration (Redgwell, 1992). Compensation for environmental damages in kind is provided by environmental offenders at their expense and with their funds or by means of performers (contractors) hired to eliminate the consequences of their offenses and restore the environment. Otherwise, the environmental violator shall reimburse such damages in the form of compensation and fines paid on claims of the relevant government bodies, citizens, and public environmental organizations created based on a settlement or a judicial decision. Government bodies acting as plaintiffs in claims for compensating environmental damages (in defense of public interests) are state executive bodies: federal, state, regional, and local (regions, counties, municipalities, etc.). On behalf of the federal government, such claims are usually brought by the Environmental Protection Agency and/or the US Department of Justice (the Attorney General's Office). On behalf of each state, such claims are initiated by the states environmental and/or attorney general's office. A similar structure of bodies is enshrined in states in accordance with their constitutions. International experience, in particular that of the US, emphasizes the need to strengthen the influence of law enforcement agencies in the

environmental sphere. There are three divisions with over 300 employees working in the Attorney General's Office (Serikov, 2010).

For descriptive reasons, the mechanisms for environmental damage compensation used in Kazakhstan and the US should be compared in Table 1.

Country	Grounds for compensating environmental damages	Types of compensation for environmental damages	Types of compensation
Kazakhstan	<ol style="list-style-type: none"> 1. The pollution, degradation, and depletion of natural resources. 2. The extraction of natural resources over the established limits. 3. The death of living organisms (Clause 25 of Article 1 of the Environmental Code of the Republic of Kazakhstan). 	<ol style="list-style-type: none"> 1. Compensation for environmental damages in kind. 2. Compensation for claims of injured persons. 	In the amount of actual damages.
The US	There are no regulatory acts, offenses are governed by precedent law	<ol style="list-style-type: none"> 1. Compensation for environmental damages in kind. 2. Compensation for claims of injured persons. 	<ol style="list-style-type: none"> 1. In the amount of actual damages. 2. In the amount of lost income or lost future profits. 3. 3. Moral damages.

The Table 1 demonstrates that the US environmental compensation mechanism is characterized by various types of compensation despite the lack of clear regulations.

CONCLUSION

Modern activities of internal affairs bodies and environmental prosecutors aimed at compensating environmental damages are to identify the relevant offenses, calculate the amount of environmental damages, ensure voluntary compensation by the guilty, properly execute claims, and submit them to court in time. Thus, the achievement of compensatory goals of the mechanism for reimbursing environmental damages largely depends on the security activities of law enforcement officers. The ineffectiveness of this mechanism indicates serious shortcomings of law enforcement in this sphere. It is necessary to increase the effectiveness of the police and environmental prosecutors' activities aimed at ensuring the most complete and timely compensation for the damages caused by environmental offenses. To use in-depth knowledge in the field of ecology, including the specifics of calculating the amount and identifying features of environmental damage compensation, one need to expand the network of special environmental prosecutors to the district level and create specially trained units of the regional environmental police. This requires the adoption of appropriate regulatory acts. Thus, the research hypothesis seems to be proven. The further study of organizational and legal issues of compensation for

environmental damages should focus on the global methods and approaches used to determine the amount of such compensation.

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