


COMPENSATION FOR ENVIRONMENTAL DAMAGE UNDER INTERNATIONAL LAW AND NATIONAL LEGISLATION

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mechanisms of responsibility for the damage caused can negatively affect the quality of the environment and ecological safety.

The increased attention to the problems of environmental responsibility, including the issues of compensation for harm due to environmental offenses, leads to the appearance of numerous publications. These issues are discussed both from the point of view of the development of international law (RUDALL, 2020; REIS, 2020; KHALATBARI, POORHASHEMI, 2019) and national legislation (FAURE, JING, 2014). In addition, issues of environmental pollution in certain sectors of the economy are discussed.

Currently, there is no clear model in international law by which compensation for environmental damage could be determined. At the center of the problem of compensation for environmental damage are acute legal conflicts between the concepts of property, natural resources, ecosystems and public goods. The foregoing makes it necessary to study the issues of compensation for environmental damage both at the national level and on a global scale.

METHODS

Various general scientific methods and the methods of logical cognition are used in the work: analysis and synthesis, systemic, functional and formal-logical approaches. The development of conclusions was facilitated by the application of formal-legal and comparative-legal methods.

RESULTS AND DISCUSSION

An environmental offense as an unlawful act that entailed a deterioration of the environmental situation may ultimately have negative consequences of two kinds. First, as a result, harm can be caused to the life or health of both individual citizens and the population as a whole. In this case, we can talk about the occurrence of physical harm, which was the result of an

INTRODUCTION

The last decades have been characterized by increased attention to the problems of liability for environmental pollution. These issues are of an international nature. Environmental problems affect the state of the environment, regardless of the territorial boundaries of national states. Therefore, taking care of the environment and reducing pollution has, in recent decades, become a high-priority global topic.

All countries of the world agree that environmental damage is one of the most dangerous for human existence, as well as for the sustainability of the ecosystem. This damage is subject to mandatory compensation.

However, at present, the restoration of the quality of the environment is carried out, as a rule, at the expense of public funds. Moreover, such costs make up a significant part of the state budget expenditures. In this regard, effective mechanisms are needed, with the help of which compensation for harm caused to the environment, first of all, will be assigned to the economic entities themselves carrying out harmful activities. The lack of effective

environmental offense. Such damage must be compensated according to general rules. Secondly, the consequence can be harm to the surrounding nature as a human environment. It seems that it is in this case that we can talk about the presence of environmental harm.

Environmental harm is any deterioration in the quality of the environment as a result of human activities, lawful and illegal, as well as natural disasters and natural disasters. "It manifests itself in the form of environmental pollution, damage, destruction, damage, depletion of natural resources, destruction of ecological systems. Compensation for environmental damage is the restoration of the quality of the environment, its specific objects (components), so that their useful properties and characteristics comply with the mandatory environmental requirements established by the authorized state bodies" (BROSLAVSKIJ, 2020).

When one or more polluters are identified and a causal link can be established between damage and identified polluters, anthropic activities causing environmental damage may undergo a civil liability mechanism, aiming at compensating for adverse effects induced to natural resources and their ecological and public anthropic services.

Committing an environmental offense entails the application of measures of legal responsibility. For offenses of a high degree of public danger and in the presence of the offender's guilt, it is possible to apply criminal liability measures. At the same time, bringing to public responsibility does not exempt from the need for property compensation for the harm caused. Compensation can consist in collecting funds necessary to restore the environment, or in taking measures to eliminate negative consequences by the offender himself.

Legal regulation of relations on compensation for environmental damage has two levels. The first level is international. It includes acts adopted or approved by a group of states that adhere to uniform standards for compensation for environmental harm. The second level is national, which includes the regulations of individual states. These states create their own regulatory framework for environmental responsibility or develop international legal acts.

One of the principles of this declaration is directly devoted to the issue that is the subject of the analysis of this article. Principle 16 advises that nations should internalize environmental costs and the "polluter should pay" while taking into account the public interest without distorting international trade and investment. With increasing population and industry, it became a major problem for the environment. The first mention of the Pollution Pays Principle, also known as the PPP, at the international level can be found in the 1972 Recommendation by the Organization for Economic Co-operation and Development (OECD) Council on Guiding Principles concerning International Economic Aspects of Environmental Policies. Beginning with governments focusing on direct regulation of pollution, in time, the trend developed toward integrated pollution control. Moreover, with the inception of Principle 16 in 1992, industry became heavily involved in pollution control.

The main normative act of the European Union in this area is Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (<https://eur-lex.europa.eu>).

In the preamble and in art. 1 of the Directive states that the prevention of environmental harm and its compensation should be based on the "polluter pays" principle. Its essence is that an economic entity bears responsibility:

- for environmental damage caused as a result of an offense committed by him, that is, he pays for what he has already done (legal responsibility);
- maintaining the proper quality of the environment in the course of his economic and other activities, and he is obliged to take all measures to prevent, prevent violations of environmental requirements, minimize negative impact on the environment; in cases where a negative impact is unavoidable, he is obliged to carry out all the necessary measures to restore its quality.

Thus, an economic entity - a user of natural resources is responsible for the environmental damage caused as a result of its activities, both illegal and lawful.

Directive 2004/35/CE provides that environmental damage is compensable when the adverse effects on the conservation status of protected habitats and species, on the ecological, chemical and/or quantitative status and/or ecological potential of the water and on the risks to human health associated with land contamination are significant and measurable and caused by dangerous activities, without the need of proving the responsible party to be at fault or negligent (strict liability). For adverse effects on the conservation status of protected habitats and species, environmental damage is compensable for any activity, when the responsible party has been at fault or negligent (fault-based liability).

In the United States of America, have been adopted and are currently in force Comprehensive Environmental Response, Compensation, and Liability Act, 1980 (CERCLA). This document created a tax on the chemical and petroleum industries and provided broad Federal authority to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment. Also this Act: 1) established prohibitions and requirements concerning closed and abandoned hazardous waste sites; 2) provided for liability of persons responsible for releases of hazardous waste at these sites; and 3) established a trust fund to provide for cleanup when no responsible party could be identified (RUMYANTSEV et al., 2020).

Based on Directive 2004/35/CE, laws on compensation for environmental damage have been adopted in a number of EU countries: for example, Italy, Spain, France, Austria, Czech Republic. France also has an Environmental Code (<https://www.legifrance.gouv.fr>). One of the national regulations is the Danish Environmental Compensation Act (<https://www.informea.org>). This regulation, like others adopted by the EU countries, contains provisions that develop Directives 2004/35/CE. Thus, the concept of damage from the point of view of Danish law includes: 1) bodily injury and loss of a breadwinner; 2) property damage; 3) other property losses; 4) reasonable costs to prevent or prevent damage or to restore the environment. Article 2 as a basic rule introduces the following rule: anyone who causes pollution in the course of commercial or public activities must make up for the damage caused by the pollution. However, liability does not arise if the damage is caused by activities carried out in accordance with the mandatory provisions established by the public authority.

The Russian Federation also contains rules on compensation for environmental damage in its legislation. The main normative act in this area is the Federal Act of 10.01.2002 No. 7-FZ On environmental protection (RUMYANTSEV et al., 2020). In accordance with Article 77 "Legal entities and individuals who have caused harm to the environment as a result of its pollution, depletion, damage, destruction, irrational use of natural resources, degradation and destruction of natural ecological systems, natural complexes and natural landscapes and other violations of legislation in the field of protection environment, are obliged to compensate it in full in accordance with the law". In addition, this law partly provides for the procedure for compensation for environmental damage.

For example, compensation for environmental damage caused by violation of environmental legislation is carried out voluntarily or by a court or arbitration court decision. Determination of the amount of damage to the environment caused by violation of legislation in the field of environmental protection is carried out on the basis of the actual costs of restoring the disturbed state of the environment, taking into account the losses incurred, including lost profits (RUMYANTSEV et al., 2020).

On the basis of a decision of a court or an arbitration court, environmental damage caused by a violation of legislation in the field of environmental protection can be compensated by imposing on the defendant the obligation to restore the disturbed state of the environment at his expense in accordance with the restoration project.

When determining the amount of harm to the environment caused by violation of legislation in the field of environmental protection, the costs incurred by the person who caused the corresponding harm, the costs of eliminating such harm, are taken into account (BELYAEVA et al., 2019). Claims for compensation for damage to the environment caused by violation of legislation in the field of environmental protection can be brought within twenty years.

Along with the harm caused to the environment (environmental damage), the damage caused to the person or property of a citizen is also subject to compensation. Thus, in accordance with Article 79 "The harm caused to the health and property of citizens by the negative impact of the environment as a result of economic and other activities of legal entities and individuals is subject to compensation in full. Determination of the volume and amount of compensation for harm caused to health and property of citizens as a result of violation of legislation in the field of environmental protection is carried out in accordance with the legislation".

Analyzing this normative act, L.I. Broslavsky considers it necessary to adopt an independent Environmental Code. This code should systematize legislation on environmental protection. One of the proposals for improving the legislation is the establishment of subsidiary (additional) responsibility of the state for causing environmental harm. L.I. Broslavsky believes that the state is obliged to restore the proper quality of the environment from the state budget in the event that the direct tortfeasor is not able to compensate him due to the lack of the necessary funds or the impossibility of identifying the actual tortfeasor.

In addition, the actual tortfeasor should not compensate for the caused environmental damage in the event that the damage was the result of force majeure, accidental circumstances or hostilities. In such situations, the state is obliged to compensate for the harm caused. The state has the same responsibility in cases of environmental disasters and catastrophes. Only under these conditions can we say that the state does not just declare, but actually guarantees the right of citizens to a favorable environment (BROSLAVSKIJ, 2020).

In addition, the scientific literature criticizes the legal definition of harm caused by an environmental offense due to its narrowness. This definition is contained in Article 1 of the Russian Act "On Environmental Protection". According to N.G. Zhavoronkova, this concept covers only "negative changes in the environment as a result of its pollution, which entailed the degradation of natural ecological systems and the depletion of natural resources". Based on the analysis of this definition, the only consequence of a negative change in the environment is pollution, which is understood as "the entry into the environment of a substance and (or) energy, properties, location or amount of which have a negative impact on the environment".

At the same time, the concept of environmental harm should not be reduced only to pollution or to any other negative impact on the environment as a whole, since harm can be caused not only as a result of pollution, but also as a result of other actions (destruction of animal or plant objects). peace, deforestation, destruction of rock mass, etc.) (ZHAVORONKOVA, AGAFONOV, 2016).

The mechanisms proposed above for improving Russian legislation on environmental compensation are logical and fair. However, these changes are not the only ones that should be implemented in legislation (MITYAKINA et al., 2019). Improvement of the Russian law is also possible taking into account the international experience, which is presented in this article.

CONCLUSION

An environmental offense entails negative consequences both in the field of the environment and in relation to individual individuals and legal entities. The consequences of the first type are environmental harm, which is subject to compensation along with compensation for harm to individual entities. Environmental harm is any deterioration in the quality of the environment as a result of human activities, lawful and illegal, as well as natural disasters and natural disasters.

At present, in international practice, the basis for the legal regulation of liability for environmental offenses has been formed. We can say that the legal regulation of relations on compensation for environmental damage has two levels. The first level is international. It includes acts adopted or approved by a group of states that adhere to uniform standards for compensation for environmental harm. The second level is national, which includes the regulations of individual states. These states create their own regulatory framework for environmental responsibility or develop international legal acts.

Russian legislation on environmental protection needs to be improved. Such improvement is also possible taking into account the international experience that has been formed to date. In

addition, you can use the results of the analysis of foreign legislation of individual national states.

CONFLICT OF INTEREST

The authors confirm that the information provided in the article does not contain a conflict of interest.

REFERENCES

BELYAEVA, G. S.; KUTKO, V. V.; KUTINA, V. P.; TURANIN, V. Y.; TURANINA, N. A. *Legal restrictions: the nature and features of legal confirmation at the international level*, 2019.

BROSLAVSKIJ, L.I. Russia needs a law on compensation for environmental harm [Rossii nuzhen zakon o vozmeshchenii ekologicheskogo vreda]. *Ekologicheskoe pravo*, 2020, 3, p. 37- 43. (in Russian).

DIRECTIVE 2004/35/CE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004L0035&qid=1614068411708>. Access: May 23, 2021.

FAURE, M. G.; JING, L. *Compensation for environmental damage in China: theory and practice*. *Pace Envtl. L. Rev.*, 31, i. 2014.

KHALATBARI, Y.; POORHASHEMI, A. Environmental Damage: Challenges and opportunities in International Environmental Law. *CIFILE Journal of International Law (CJIL)*, 2019, 1 (1), p. 21-28.

MITYAKINA, N. M.; SOROKOLETOVA, M. A.; FEDORYASCHENKO, A. S.; GUSAKOVA, YU. S.; BELETSKAIA, A. A. International legal regulation of environmental management. *Amazonia Investiga*, 2019, 8 (19), p. 474-478.

REIS, T. H. *Compensation for environmental damages under international law: the role of the international judge* (Vol. 17). Kluwer Law International BV, 2011.

RUDALL, J. *Compensation for Environmental Damage Under International Law*. London: Routledge, 2020.

RUMYANTSEV, M. B.; TURANIN, V. Y.; ROMASHOV, R. A.; SUMENKOVA, M. V.; BATOVA, O. V. Forming and Development of Law-Making Principles System and Its Meaning for Legal Enforcement of Suitable Legal Regulation Model. *Revista TURISMO: Estudos e Práticas*, 2020, (2).

ZHAVORONKOVA, N.G.; AGAFONOV, V.B. Compensation for environmental harm: legislative innovations [Vozmeshchenie ekologicheskogo vreda: zakonodatel'nye novelly]. *Lex Russica*, 2016, 8, p. 130-140. (in Russian).

Compensation for environmental damage under international law and national legislation

Compensação por danos ambientais sob o direito internacional e legislação nacional

Indemnización por daños ambientales con arreglo al derecho internacional y al derecho nacional

Resumo

Este artigo analisa o desenvolvimento da legislação internacional, bem como a legislação de cada Estado no que diz respeito à regulamentação legal de compensação por danos ambientais. Os autores identificaram e analisaram dois níveis de regulamentação. O primeiro nível é internacional; inclui atos adotados ou aprovados por um grupo de Estados. O segundo nível é nacional; inclui os regulamentos de cada estado. É formulada a conclusão sobre a existência de regras gerais de regulação jurídica na legislação de vários estados. Com base na análise da legislação russa, são propostos mecanismos para o seu aprimoramento, inclusive utilizando a experiência internacional.

Palavras-chave: Legislação ambiental. Responsabilidade. Obrigação. Princípio do poluidor-pagador. Compensação de danos.

Abstract

This article analyzes the development of international legislation, as well as the legislation of individual states regarding the legal regulation of compensation for environmental damage. The authors identified and analyzed two levels of regulation. The first level is international; it includes acts adopted or approved by a group of states. The second level is national; it includes the regulations of individual states. The conclusion about the existence of general rules of legal regulation in the legislation of various states is formulated. Based on the analysis of Russian legislation, mechanisms for its improvement are proposed, including using international experience.

Keywords: Environmental laws. Responsibility. Liability. Polluter pays principle. Environmental damage compensation.

Resumen

Este artículo analiza el desarrollo de la legislación internacional, así como la legislación de los estados individuales con respecto a la regulación legal de la indemnización por daños ambientales. Los autores identificaron y analizaron dos niveles de regulación. El primer nivel es internacional, incluye actos adoptados o aprobados por un grupo de estados. El segundo nivel es nacional, incluye las regulaciones de los estados individuales. Se formula la conclusión sobre la existencia de reglas generales de regulación legal en la legislación de varios estados. Sobre la base del análisis de la legislación rusa, se proponen mecanismos para su mejora, incluido el uso de la experiencia internacional.

Palabras-clave: Leyes ambientales. Responsabilidad. Obligación. Principio de quien contamina paga. Compensación por daños.