Investigation of Environmental Crime in the Russian Federation

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SUBSTANTIVE LAW

18 ecological criminal offences (art. 246-262, 358 of the Criminal Code of the RF) that can be roughly divided into pollution-, dumping-, logging- or poaching related crimes

- Art. 246. Violation of the rules for environmental protection during the design, placement, building, commission or operation of industrial, agricultural, scientific or other facilities
- Art. 247. Violation of the rules for handling environmentally hazardous substances and waste
- Art. 248. Violation of safety rules in handling microbiological or other biological agents or toxins
- Art. 249. Violation of veterinary or phytosanitary rules
- Art. 250. Pollution of waters
- Art. 251. Pollution of the atmosphere
- Art. 252. Pollution of the marine environment
- Art. 253. Violation of Russian Federation legislation on the continental shelf and on the exclusive economic zone of the Russian Federation
• Art. 254. Pollution and deterioration of land
• Art. 255. Violation of the rules for the protection and use of subsoil
• Art. 256. Illegal extraction of aquatic animals and plants
• Art. 257. Violation of the rules for protecting aquatic animals and plants
• Art. 258. Illegal hunting
• Art. 259. Destruction of critical habitats for the organisms entered in the Red Book of the Russian Federation
• Art. 260. Illegal logging
• Art. 261. Destruction or damage of forests and plantations by means of arson or other dangerous methods
• Art. 262. Violation of the regime regarding specially protected natural territories and facilities
• Art. 358. Ecocide
• Pollution-related offences, with aggravating elements, are mostly punishable by the maximum imprisonment term of 5 years and **fall into the less serious crimes category**. Exception: violation of the rules for handling environmentally hazardous substances and waste (up to 8 years in prison, serious crime).

• **Destruction of forests and plantations by means of arson or other dangerous methods:** up to 10 years in prison.

• **Illegal fishing and hunting:** max. 2-years term of imprisonment, **minor gravity**.

• **All are extraditable offenses.**
• Wildlife trafficking related offence: knowing acquisition or sale of property obtained criminally (art. 175), punishable by up to 7 years in prison.
• Statute of limitation for poaching offences is 2 years.
• Statute of limitation for most pollution or dumping crimes is 6 years.
• Regular and/or aggravating elements of the pollution-related crimes: consequences in the form of serious injury or other substantial damage to human health or the environment, or causing a real danger thereof, or death of a person from negligence, or other grave consequences from negligence. The consequences represent also a watershed between criminal and administrative offences.
• Aggravating elements for poaching and illegal logging: commission by an organized group or a person using his official position.
• Confiscation in criminal cases is only imposed pursuant to a court verdict of conviction. With regard to environmental crimes, only instrumentalities used in the commission of the crime and belonging to an accused, or property used or designed for financing of an organized criminal group, or pecuniary or property equivalents thereof may be forfeited. Confiscation of proceeds from environmental crime is not possible.
During 2010-2013 there have been only one instance of an actual 2-years prison sentence for each of 2 co-conspirators for an environmental crime (illegal logging in a large scale), while there have been no cases involving serious injury to any person.

On the average, 0.6-2.5 years of suspended imprisonment and/or fines imposed, depending on the scale of damage inflicted on the environment.

Significant number of dismissals of prosecution in court on the ground of the perpetrator’s “active repentance” (minor and less serious crimes, at the pre-trial stage also possible).
Law enforcement agencies charged with pre-trial investigation of ecological offenses

• 1. Investigative Committee of the Russian Federation: crimes entailing especially grave consequences for the environment or life or health of individuals, or a real danger thereof, or committed by special subjects, such as police and other law enforcement officials, or even by municipal elected deputies and officials.
• Investigative Committee instituted:
  • in 2010: 92 criminal cases, in 2011: 90, and in 2012 – 198 criminal cases on environmental crimes.

• Specialized unit of the Investigative Committee handling the bulk of ecological crimes falling under the Committee’s jurisdiction: Interregional Environmental Investigative Department for the Volga River Region.
• **2. Investigators and Inquiry Officers of the Ministry of Internal Affairs**: environmental crimes not involving said particularly grave consequences.

• Besides, the Ministry’s police units carry out controlled deliveries, surveillance, undercover and other **tactical operations** aimed at crime detection or pursuant to binding assignments of an investigator or inquiry officer who do not conduct this type of activities themselves.

• **3. Border Guard Service**

• **4. State Fire Service**
- Administrative offenses: an array of supervisory and controlling administrative bodies, e.g., the Federal Service for Supervision of Use of Natural Resources, and the Public Prosecutor’s Office
43 Administrative Offences in the Field of Environmental Protection and Use of Natural Resources (plus related veterinary, agricultural, melioration and other offences)

• Art. 8.1-8.43 of the RF Code of Administrative Offences. As a rule, punishable by fines.
• Illegal trafficking in endangered and protected species of fauna and flora, including smuggling thereof, constitutes an administrative offense.
• Administrative confiscation of the instrumentalities as well as of the items illegally trafficked may be imposed.
Challenges to Investigation and Prosecution

• There is currently no corporate criminal liability in the Russian Federation, which does not contribute to the due level of accountability (in particular, pecuniary and reinstatement of the environment), of industrial enterprises and other major polluters. Legal entities themselves are liable for administrative offences only.

• One criminal case on discharging harmful substances from a known plant into several rivers and thereby causing massive killing of fish in 2010, suspended in 2011 because the perpetrators could not get identified, dismissed in 2012 due to the statute of limitation.
Challenges of Criminal-Administrative Interplay

- Occasional difficulties in distinguishing between criminal *corpora delicti* and related similar administrative ones, e.g. air pollution.
- Terms like “substantial damage” used in criminal law with regard to some pollution and waste related offenses, are overbroad and provide too large discretionary space for their construction, especially when quantitative rules of damage calculation are not in place.
- Of great disadvantage is temporal remoteness, sometimes considerable one, of actual harmful consequences of the act, preventing it from timely qualifying as a criminal offence.
“First Responders” Challenge

Administrative bodies engaged in supervision and control of the environment and natural resources, naturally not being criminal law enforcement agencies and not designed for evidence collection, quite often do not record primary evidence properly, and sometimes remove it, for instance, while reacting to reports of African pig plague in some Russian regions and destroying carriers and sources of infection, without appropriate samples being taken prior to that. Creation of specialized environmental police units is expedient.
Other Challenges

• “Incessant mobility” of fishing vessels and their crew members which hampers the quality recording of evidence, including reconstruction of the crime scene and obtaining witness testimonies.

• Overwhelming amount of environmental crime goes unreported, *inter alia*, because of its “victimless” character.
• Illegal fishing and hunting are minor gravity criminal offenses, which means wire tapping and other procedural actions and special investigative techniques that limit confidentiality of communications or sanctity of the home, may not be conducted.

• While investigating the knowing acquisition or sale of property obtained criminally, it is usually problematic to prove a buyer’s knowledge of the criminal provenance of respective objects.
• Differences in the protection regime of particular wildlife species in a requesting and a requested country may hinder execution of incoming international legal assistance requests because of double criminality requirement.

• While developing the treaty basis on international cooperation in combating environmental crime, it could make sense to consider incorporating a provision on species, similar to that contained in art. 2 of the Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 1959 with regard to fiscal offenses ("The request may not be refused on the ground that the law of the requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the requesting Party").
Thank you for your attention