

## ARTICLE

# POLLUTION OF THE ATMOSPHERE IN THE CRIMINAL CODE OF THE RUSSIAN FEDERATION: THE PROBLEMS OF LEGISLATIVE REGULATION

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## ABSTRACT

The uniqueness of the Earth's atmosphere, as the most vulnerable object of the environment, is shown in the article. The atmosphere maintains the natural properties of the Earth, the marine environment and inland waters of states, since it is the most important resource of moisture and the main link in the global circulation of water. The specificity of atmosphere and its main difference from other major components of the natural environment is that the atmospheric air is its extremely dynamic element. The article analyzes all the main legislative acts in the sphere of protection of the atmosphere and other components of the natural environment. Based on the comparative analysis of the provisions of Article 251 of the Criminal Code of the Russian Federation and Article 8.21 of the Code of Administrative Offenses of the Russian Federation, the authors distinguish between criminal and administratively punishable pollution of the atmosphere; they consider atmospheric air as the object of this crime (not the atmosphere); offer to concretize in Part 1 of Article 251 of the Criminal Code of the Russian Federation, the consequences of pollution, using the following formula: "if these acts have resulted in significant pollution or any other change of the natural properties of the air, posing a threat to human health, plant and animal life"; and propose to use quantitative and monetary criteria for its delimitation from administratively punishable pollution.

## INTRODUCTION

### KEY WORDS

the atmosphere;  
atmospheric air; the  
Criminal Code of the  
Russian Federation; the  
Code of Administrative

The atmosphere, as the envelope of air around the Earth, consisting mainly of nitrogen and oxygen, is a unique natural object. The specificity of the atmosphere and its main difference from other components of natural environment is that atmospheric air is extremely dynamic and flexible element. Air masses often cover immense transboundary distances within a few hours.

At present, air protection law has been formed in the Russian Federation, the main sources of which are the Constitution of the Russian Federation; Federal Law of May 4, 1999 "On the protection of atmospheric air"; Federal Law of January 10, 2002 "On Environmental Protection", etc.

## MATERIALS AND METHODS

The work was performed on the ground of the following materials: the provisions of Article 251 of the Criminal Code of the Russian Federation, Article 8.21 of the Code of Administrative Offenses of the Russian Federation, the provisions of the Federal Law of January 10, 2002 "On Environmental Protection", the Federal Law of May 4, 1999 "On the protection of atmospheric air", regulating liability for air pollution, the provisions of the decision of the Plenum of the Supreme Court of the Russian Federation of October 18, 2012 "On the application of legislation by courts on liability for violations in the field of environmental protection and nature management", as well as statistical data on the assignment of punishment by the courts of the Russian Federation for atmosphere pollution.

The reliability of the obtained results is ensured on the basis of the analysis of significant and necessary scope of legislative norms, statistical data, practice materials, and the use of modern methods for investigation of legal regulations: historical and legal, logical formal and legal, comparative law, system-structural, etc.

## RESULTS AND DISCUSSION

In the doctrine of environmental law, atmospheric air is considered as a special kind of natural resources, which is not subject to either sovereignty or state ownership [1]; as one of the types of international natural resources [2]; as an object of common property and common use [3].

The atmosphere – is the most important and most vulnerable natural object, in terms of preserving of its properties from pollution. The pollution of any other environmental object (water, marine environment, land, forests) always inflicts harm to the atmosphere. Unlike other natural components, it is constantly under the influence of negative processes, connected with the use of destructive means of warfare, increased volcanic activity, mass motorization of the population, development of animal husbandry and poultry farming, the use of chemicals in agriculture and forestry, etc. Millions of tons of dust, gases, vapors annually enter the atmosphere, as a result of industrial enterprises operation, production of electric and thermal energy, utilization and burning of industrial and domestic waste. More than half of Russia's urban population lives in conditions, where the degree of air pollution is estimated as high and very high. [4]

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Administrative and criminal law measures are of great importance in protection of the atmosphere, as well as other components of the environment, along with environmental, organizational, scientific, technical and educational activities.

It is noteworthy that the Federal Law of January 10, 2002 "On Environmental Protection" uses the term "atmospheric air", and Article 251 of the Criminal Code of the Russian Federation - the term "atmosphere". It seems, that these notions have the same meaning, since air forms the atmosphere as a respiratory environment for all living organisms. The atmosphere is around the Earth and rotates with it. The concept of "atmosphere" is introduced by science in order to distinguish it from the troposphere and stratosphere, located between the atmosphere and outer space.

When depicting the constituent elements of a crime, described in Article 251 of the Criminal Code of the Russian Federation, the legislator also uses the concept of "pollution", as well as in cases of crimes, concerning pollution of water and marine environment. However, in the disposition of Article 251 of the Criminal Code of the Russian Federation, the legislator uses the concept of "pollution" for description of consequences, but not the actions. In addition, he uses it in the title of Article 251 "Pollution of the atmosphere". Moreover, in the disposition of Part 1 of this article, the pollutants are pointed out.

Pollution of the atmosphere can be defined as a violation of the established rules for the emissions of hazardous substances into the atmosphere, in concentrations, exceeding the standards of its quality, i.e. the natural composition of atmospheric air.

The issues of delimitation of criminally punishable actions and administrative offenses, connected with air pollution, are the most challenging in judicial practice. Attention is drawn to the fact, that the body of administrative offense is described much broader, than the body of atmospheric pollution in the Criminal Code of the Russian Federation. In Article 8.21 of the Code of Administrative Offenses, the concept of violation of the rules for protection of atmospheric air is used. This violation may not entail pollution of the atmosphere. In addition, in the Code of Administrative Offenses of the Russian Federation, administrative responsibility is also envisaged for the atmospheric pollution treat.

Part 3 of Article 8.21 says: "Violation of the rules of operating, or failure to use structures, equipment or facilities for gas purification, and for controlling the exhausting of harmful substances into atmospheric air, which may cause pollution there of While in Article 251 of the Criminal Code of the Russian Federation, the body of atmospheric pollution is described as material, that is, its obligatory element should be the real consequences in the form of pollution, or other changes in the natural properties of air, causing harm to human health or death of a person. The attention should be paid to the different names of substances, emitted into the atmosphere; in part 1 of Article 8.21 of the Code of Administrative Offenses of the Russian Federation they are designated as "harmful substances", and in Part 1 of Article 251 of the Criminal Code they are designated as "pollutants". We think, this difference appears from the fact that the violation of the rules for the protection of atmospheric air is broader than the concept of air pollution. There is also a difference in the name of the object of encroachment. In Article 8.21 of the Code of Administrative Offenses of the Russian Federation, it is designated as atmospheric air, and in Article 251 of the Criminal Code of the Russian Federation - as the atmosphere. It seems, both variants mean the natural mixture of gases, which forms the sphere of the Earth.

V.A. Yakushin defines the subject in other way. In his opinion, the subjects of this crime are: "a) pollutants; b) atmospheric air, as the element of natural environment; c) installations, structures and other objects". [5] However, if we proceed from the established understanding of the crime subject as a material expression of the crime object, it should be recognized that pollutants, as well as installations, structures should be attributed to the objective side of the crime, but not to its object.

According to O.L. Dubovik, the subject of crimes, described in Article 251 of the Criminal Code of the Russian Federation, is the atmospheric air, that is, the natural mixture of gases from the surface layer of the atmosphere, developed during the evolution of the Earth, outside residential, public, industrial premises and production areas. [6] In turn, as the subject of violation of the rules for the emission of pollutants into the atmosphere, and the violation of operation of installations, structures and other facilities, N.A. Lopashenko considers the rules, regulating this emission and operation of these facilities. [7]

The problem, which at first glance is simple, concerning the nature of the object of air pollution, causes difficulties in literature. If strictly proceed from the description by the legislator of the disposition of Article 251 of the Criminal Code of the Russian Federation, atmospheric air should be recognized as the object of atmospheric pollution. The atmosphere, as a subject of pollution crime (Article 251 of the Criminal Code) is too general and abstract concept. As a result of this crime, carried out in Russia, the atmosphere is not polluted in Germany or in Canada, but in Russia, and over a certain territory (in particular locality, some other place). In other words, atmospheric air is polluted in a certain area, just as in the case of water pollution, harm is not caused to the entire river, lake area and groundwater, but to the waters of a particular river, a particular lake, etc. Therefore, the notion "atmospheric air" is preferable for the object of encroachment in Article 8.21 of the Code of Administrative Offenses of the Russian Federation.

The object of atmospheric pollution is interpreted in literature also ambiguously. According to E.N. Zhevlakov, the object is the relationship in the sphere of protection and rational use of the atmosphere and environmental safety as a whole [8]. B.V. Yatselenko describes this object as a relationship, the realization of which is aimed at ensuring the preservation of atmospheric air from pollution [9]. A.I. Chuchaev treats the object of this crime as the relationships in the protection of atmospheric air from pollution [10]. As the object of an offense in considered sphere, O.N. Kuznetsova recognizes public relations in protection of atmospheric air, the management of its rational use, which are infringed by the unlawful actions of the subject [11]. A.V. Namchuk considers environmental safety as the main object of the crime, described in Article 251 of the Criminal Code of the Russian Federation [12].

From our point of view, describing the object of atmospheric pollution, some authors over interpret it, i.e. they are headed by cause-effect links and thereby expand it, by including, for example, environmental safety or management of atmospheric air rational use. In our opinion, the definitions proposed by B.V. Yatselenko and A.I. Chuchaev are more acceptable, with only clarification. Public relations provide protection of atmospheric air not from any pollution, but only from technogenic pollution, that is, proceeding from illegal human activity.

As for the objective side, its attributes are more successfully reflected in the body of criminal offence, since in Part 1 of Article 8.21 of the Code of Administrative Offenses of the Russian Federation it is formulated as "exhausting harmful substances into atmospheric air", and such an emission can be done without violation of any rules. While in part 1 of Article 251 of the Criminal Code, the violation of the rules for release of pollutants into the atmosphere is considered as criminal offence.

On the objective side, the pollution of the atmosphere, stipulated in Part 1 of Article 251 of the Criminal Code of the Russian Federation, involves: 1) violation of the rules for release of pollutants into the atmosphere and 2) violation of the operation of installations, structures, and other facilities, if these acts have resulted in pollution or any other change of the natural properties of the air.

Violation of the rules for release of pollutants into the atmosphere or violation of the rules for the operation of installations, structures and other facilities can consist in: 1) exceeding the MAC norms or temporarily agreed release of pollutants into the atmosphere; 2) exceeding the norms of acceptable physical impacts; 3) release of pollutants into the atmosphere without the permission of specially authorized state bodies; 4) harmful physical impact on the atmosphere without permission of the competent authority, when it is obligatory in accordance with the legislation of the Russian Federation.

Atmospheric contamination is the bringing of pollutants into the composition of atmospheric natural air or the formation of air pollutants in concentrations, unallowable in terms of legislation.

In part 1 of Article 251 of the Criminal Code of the Russian Federation the disposition is imperfect: the release of pollutants into the atmosphere (in fact, pollution) has resulted in pollution. Already the beginning of emission of these substances is contamination. In this regard, I.V. Popov notes that it is not possible to differentiate between administratively punishable pollution and consequences, since any unjustified release of substances into the atmosphere results in air pollution [13].

E.N. Zhevlakov says that real danger to the health of population and the environment can be caused by extremely high air pollution. In accordance with a number of regulatory legal acts, its criteria are the content of one or several substances, exceeding the maximum allowable concentration (MAC): by 20-29 times in case of maintaining this level for more than two days; by 30-40 times in case of maintaining this level during eight hours or more; by 50 or more times. [14]

At the same time, the literature introduces a monetary criterion for distinguishing between criminally punishable and administratively punishable pollution of the atmosphere, and some other components of natural environment. Thus, I.V. Popov proposes to estimate the extent of criminally punishable damage to the natural environment on the basis of methodology and also (tariffs), approved by the Government of the Russian Federation; and in case of their absence, all incurred expenditures for the restoration of the natural environment to the level, which has existed until the moment of crime, should be taking into account in the process of determining the extent of this damage [15].

## SUMMARY

While determining the criminally punishable damage to the natural environment, both the quantitative and monetary criteria should be used. If extremely high pollution of the atmosphere is observed, then the existence of the elements of crime is obvious (part 1 of Article 251 of the Criminal Code of the Russian Federation), and in other cases (pollution during a long time with a low exceedance of MPC (for example, by 1-2 times) monetary criterion should be applied. Of course, both these criteria have to be defined in the Decree of the Government of the Russian Federation.

In order to determine the line of delimitation of criminally punishable and administratively punishable pollution of the atmosphere (or atmospheric air) more precisely (as far as possible) in Part 1 of Article 251 of the Criminal Code of the Russian Federation, in our opinion, it is necessary, after the words "other

facilities", to add: "if these acts have resulted in significant pollution or any other change of the natural properties of the air, posing a threat to human health, plant and animal life".

## CONCLUSION

To summarize, we want to note a fairly low level of penalization of air pollution, as well as some other environmental crimes in the Criminal Code of the Russian Federation. On the one hand, the legislator tries to strengthen the differentiation of criminal responsibility, depending on the nature and degree of danger to society of the crime committed and its consequences, to expand the list of alternative sanctions, due to the penalties, not involving the imprisonment, etc. This trend is also typical for European states. In recent decades, there has been a tendency to depenalization of minor offences. New sanctions, alternative to imprisonment, have been developed, and measures for re-adaptation of convicts have been strengthened [16]. House arrest, probation, and other conditional measures are widely used [17]. However, on the other hand, we should note the obvious discrepancy between the nature of responsibility, the degree of danger of air pollution and some other environmental crimes, and the enormous harm, which is caused to the natural environment. And at the same time, criminal law provisions on responsibility for air pollution are rarely used in practice. The very few criminal cases are instituted annually in Russia, in the matter of which courts impose either a fine, or conditional sentence, and numerous facts of atmospheric pollution are qualified as administrative offenses.

## CONFLICT OF INTEREST

There is no conflict of interest.

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## FINANCIAL DISCLOSURE

None

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