

ANNOTATION

To the dissertation for the degree of Doctor of Philosophy (PhD) in the specialty «6D030100 – Jurisprudence» Sabyr Aisulu on the topic «The problems of prevention criminal offences related to the use of native water resources»

Relevance of the research topic. A special place in the organization of measures to prevent criminal offenses, including on water resources, is occupied by the conduct of an appropriate criminal policy. During the practical application of Articles 328, 330 of the CC of the RK, difficulties often arise. They are related to the imperfection of the criminal legislation of the RK, the specification in the legislation of the concepts of «environmental criminal offenses», «criminal offenses against water resources», the absence in the disposition of the CC of the RK of specific features characterizing the composition of criminal offenses, methodological support for law enforcement officers.

According to statistics 90% of environmental criminal offenses are latent. Difficulties in the prevention of water-related crime are not limited to objective reasons, such as latency, which is largely related to subjective reasons (lack of coordination in the activities of environmental and law enforcement agencies, ignoring cases of water pollution among the mass criminal offenses considered by law - protective authorities, intervention of officials).

These circumstances confirm the relevance and significance of the criminal law problem of water pollution, as well as the research topic.

The purpose and objectives of dissertation research. The purpose of the research work is to reveal the legal foundations of public administration in the field of the use and protection of water resources, analyze and improve their criminal law regulation, and increase the rationality of crime prevention measures in this area.

To achieve this goal, the ways of solving the **following tasks** were considered:

- Determination of the current ecological state of water resources of the RK;
- consideration of the history of the development of legislation on the protection of water objects;
- disclosure of the composition of criminal offenses encroaching on water resources and their classification;
- identification of the main causes of crime encroaching on water resources;
- revealing the identity of the offender;
- study of study of measures and subjects of crime prevention that encroach on water resources.

The methodological basis of the work consists of research based on the principles of materialistic dialectics, historical validity of objective laws of development and interrelation of phenomena. Along with general dialectical research, historical, comparative legal, system-structural, formal-logical, statistical and other new scientific and partly scientific research methods were used.

The main provisions submitted for defense (proven scientific hypotheses and other conclusions that are new knowledge):

As a result of the dissertation research, the author of dissertation proposes the **following main provisions for defense:**

1. Taking into account the current socio-economic situation in the country and the reform of the law, the doctrine of environmental criminal offenses should be revised and adjusted at the theoretical, legislative and organizational level. The following author's interpretation is proposed: environmental criminal offenses are understood as acts (action or inaction) of the perpetrator that infringe on order and environmental safety in the field of environmental protection, prohibited under threat of criminal punishment, do not pose a great public danger, have caused minor harm or have created a threat of harm to an individual, organization, society or the state.

2. Criminal environmental offenses encroaching on water resources, according to the immediate object, are divided into:

- criminal offenses directly encroaching on water bodies (criminal offense encroaching on water resources);
- criminal offenses that indirectly encroach on water bodies.

The first group is environmental criminal offenses that directly encroach on water resources.

The second group is environmental criminal offenses and water criminal offenses provided for in other chapters of the Criminal Code of the Republic of Kazakhstan: Chapter 5, Chapter 8, Chapter 10, Chapter 11, Chapter 13, Chapter 14 of the Criminal Code of the Republic of Kazakhstan.

On the objective side, criminal offenses encroaching on water resources are classified as follows:

1) in connection with violation of environmental requirements, principles, rules: Article 283; article 285; article 324, article 325; article 326; article 304; paragraph 1 of Article 331; Article 354 of the CC of the RK.

2) associated with pollution: art. 328; Art. 330 of the CC of the RK.

3) implementation of economic activities, for the provision of services for construction, operation, research; Art. 214; Art. 215; Art. 216; Art. 218; Art. 219; Art. 221; Art. 238; Art. 240; Art. 244; Art. 245 of the CC of the RK; Article 248; paragraph 2 of Article 331; Article 354.

This classification makes it possible to correctly qualify criminal offenses in water resources according to the object and the objective side.

3. The following author's definition of water criminal offenses is proposed: water criminal offenses are understood as acts (action or inaction) of the perpetrator, encroaching on the environmental safety of the water resource, prohibited under the threat of criminal punishment, not representing a great public danger, causing minor harm or entailing the threat of harm to the person, organization, society or government.

4. In accordance with paragraph 18) of the Regulatory Resolution of the Supreme Court of the RK dated June 18, 2004 No. 1, «mass morbidity of people» is provided for as «significant environmental damage», and in accordance with the provisions of paragraph 3 of Article 328 of the CC of the RK, «mass morbidity of people» is provided for as particularly large environmental damage. Therefore, to eliminate this gap, it is necessary to remove the phrase «mass human disease» in paragraph 1 in paragraph 18) of the Regulatory Decree, and add it to paragraph 3.

Under mass morbidity, as a socially dangerous consequence of certain types of environmental criminal offenses (articles 324, 325, 326, 328, 329, 330, 332, 333, the

second part of Article 343 of the CC) should be understood as temporary disability by two or more persons»

5. It is advisable to amend and supplement paragraph 20 of the Regulatory Resolution of the Supreme Court of the RK dated June 18, 2004 No. 1 with the following content: «20. Under causing harm to human health as a socially dangerous consequence of certain types of environmental criminal offenses (Articles 324, 325, 326, 328, 329, 330, 332, 333, the second part of Article 343 of the CC of the RK) should be understood as causing harm to health as causing serious or moderate harm to health.

6. In order to ensure compensation for damages in water resources in court proceedings, it is proposed to supplement paragraph 22 of the regulatory resolution of the Supreme Court of the RK dated June 18, 2004 No. 1 «On the application by courts of legislation on liability for certain environmental criminal offenses» with the following text:

«22. Claims for compensation for material losses caused as a result of criminal offenses related to the violation of environmental legislation shall be resolved by the court in the event of filling a corresponding claim. The court is obliged to ensure the possibility of considering this claim in the proceedings in all criminal cases. When considering a claim in legal proceedings, the decision of the court regarding compensation for damages must take place in the judgment of the court».

7. We propose to make amendments and additions to Article 328 of the CC of the RK in the following text: «Article 328. Pollution, clogging or depletion of waters

1. Pollution, clogging, depletion of surface or underground waters, glaciers, sources of drinking water supply or other changes in their natural properties, if this caused or could cause significant damage to water or the environment -....

2. The same acts that caused or created a threat of causing major damage to the environment, or caused harm to human health, as well as committed in specially protected natural territories or territories of an environmental emergency... 3.....».

7. Criminological characteristics of criminal offenses related to the use of water resources are given, and measures for their prevention are proposed.

Description of the main results of the study. The main results obtained in the dissertation work include:

1. Taking into account the problems arising in the qualification of criminal acts, due to the lack of clarification in the criminal legislation of the concept of environmental criminal offense, the author's interpretation of it is proposed.

2. In order to eliminate contradictions arising in the qualification of criminal offenses encroaching on water resources, the signs characterizing the composition of these offenses have been clarified.

3. The specified main features in the author's definition of criminal offenses in the water resource will contribute to the prevention of gaps in law enforcement practice.

4. Taking into account the public danger of consequences caused by environmental criminal acts, as well as contradictions in the provisions of paragraph 18) of the Regulatory Decree of the Supreme Court of the RK dated June 18, 2004 No. 1 and paragraph 3 of Article 328 of the CC of the RK, mass morbidity of people should

be considered in the category as «particularly large environmental damage». The resolution also clarifies the concept of «mass morbidity».

5. In paragraph 18) of the above-mentioned Regulatory Decree, the concepts of «damage» and «harm» are not differentiated, and «causing harm to human health» is considered as causing significant harm to the environment. Taking into account the changes in legislation related to the transfer of causing minor harm to human health to an administrative offense, in paragraph 1 of paragraph 20) of the Regulatory Decree, it is necessary to remove the phrase «causing minor harm to human health». Due to the discrepancy between the texts of paragraph 1 of paragraph 20) of the Regulatory Resolution in Russian and Kazakh, it is proposed to amend the Regulatory Resolution in Kazakh.

6. The provision of reimbursement of costs for water resources in court proceedings is permitted only on the basis of a relevant claim. By the Regulatory Resolution of the Supreme Court of the RK dated June 18, 2004 No. 1 «On the application by courts of legislation on liability for certain environmental crimes» to oblige the court to ensure that the proceedings in these criminal cases of the claim on the agenda would be more effective in reimbursing material costs caused as a result of these offenses.

7. In order to ensure the correct qualification of criminal activity in law enforcement practice, in paragraph 1 of Article 328 of the CC of the RK, the clarifications of the criminal consequences should be applied «to waters or the environment», and also, since articles 328 and 330 of the CC «harm to human health» is assessed differently, it is recommended to amend to identify the two norms, excluding the phrase «harm to human health» from Part 1 of Article 328 of the CC of the RK and supplementing them with Part 2 of Article 328 of the CC of the RK.

8. For the effective and rational application of measures to combat crime related to the use of water resources, the criminological characteristics of this crime are given and measures to prevent them are proposed.

Substantiation of novelty and significance of the obtained results. This dissertation work is one of the first monographic complex works devoted to the problem of preventive activities of law enforcement and environmental authorities in the field of criminal law protection of waters and environmental safety.

The practical significance of the study lies in the fact that the results of research work, theoretical developments and proposals aimed at improving legislation have law-making, law enforcement, as well as scientific and pedagogical significance.

Certain provisions of the research can contribute to the improvement of the criminal law on liability for pollution of water resources and, in particular, the normative resolution of the Supreme Court of the RK dated June 18, 2004 №1. It may be required for the effective organization of crime prevention activities in the field of water resources use.

Compliance with the directions of development of science or government programs. To ensure water security, the state has developed the State Program for Water Resources Management in Kazakhstan. This happened in the national plan for the implementation of the Address of the Head of State to the people of Kazakhstan «Kazakhstan - 2050: a new political course of an established state». The focus of

Kazakhstan on the formation of an environmentally oriented economy was enshrined in the concept for the transition of the Republic of Kazakhstan to a «green economy», approved in 2013.

Contribution of the applicant in the preparation of each publication.

The main conclusions of the study were made at the Department of Law of the International Kazakh-Turkish University named Khoja Ahmed Yasawi. 11 articles of the author were published, 5 of them were tested at international scientific and practical conferences, 5 articles were published in scientific magazines from the list approved by the committee for certification and supervision in the field of education and science of the RK, 1 article in a magazine included in the Scopus database.