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The tactics of crime scene examination in the commission of environmental crimes

In Russian criminal legislation, environmental crimes are criminal acts infringing on the natural environment and on various social relations for its protection and reproduction. In addition, environmental damage can be caused by violations of the safety rules for the operation of rail, air and water transport, violation of safety rules at nuclear facilities, illegal handling of radioactive materials, in some cases hooliganism, etc.¹

There is no the legal definition of environmental crimes in the Russian Criminal Code, as in the academic researches. Environmental crimes violate the provisions of Art. 42 of the Constitution of the Russian Federation – the human right to a healthy environment, i.e. in fact, on its normal existence, as a biological species. They destroy or qualitatively deteriorate the biological basis of the humanity's existence.

However, the definition of environmental crimes existed in Soviet legislation. Art. 85 of the Law on Environmental Protection (December 19, 1991) defined the environmental crimes as socially dangerous acts that encroach upon the environmental law and order established in the Russian Soviet Federative Socialistic Republic, the environmental safety of society and cause harm to the environment and human health.

According to the academic classification, environmental crimes of the Russian Federation can be divided on to two types:

1. General environmental crimes;
2. Special environmental crimes.

General environmental crimes impinge on environment in general. These crimes include: violation of environmental protection rules in the course of work (art. 246 of the Criminal Code of the Russian Federation), violation of the rules for handling environmentally hazardous substances and wastes (art. 247 of the Criminal Code of the Russian Federation), violation of vete-

¹ J. Ciechanowicz-McLean, *Węzłowe problemy prawa ochrony klimatu*, „Studia Prawnoustrojowe” 2017, № 37, p. 7–8.

riary rules and rules established to combat diseases and pests (Art. 249 of the Criminal Code of the Russian Federation).

Special environmental crimes infringe on the units (areas) of environment. These include: water pollution (Art. 250 of the Criminal Code of the Russian Federation), air pollution (Art. 251 of the Criminal Code of the Russian Federation), pollution of the marine environment (Art. 252 of the Criminal Code of the Russian Federation), violation of legislation on the continental shelf and the exclusive economic zone (Art. 253 of the Criminal Code RF), damage to the land (Art. 254 of the Criminal Code of the Russian Federation), violation of the rules for the protection and use of mineral resources (Art. 255 of the Criminal Code of the Russian Federation), illegal extraction of aquatic animals and plants (Art. 256 of the Criminal Code of the Russian Federation), violation of the rules for the protection of fish stocks (Art. 257 Of the Criminal Code of the Russian Federation), illegal hunting (Art. 258 of the Criminal Code of the Russian Federation), destruction of populations of organisms listed in the Red Book of the Russian Federation (Art. 259 of the Criminal Code of the Russian Federation), illegal felling and forests (art. 260 of the Criminal Code), destruction or damage of forests (Art. 261 of the Criminal Code), violation of the regime of specially protected natural territories and natural objects (Art. 262 of the Criminal Code).

It should be noted that the criminalistics characterizations of different environmental crimes developed by Russian scientists and practitioners are quite similar. This can be explained by the fact that such crimes are related to the violation of environmental regulations that should necessarily be carried out in the production of various kinds of work, as well as in technological processes that are fraught with environmental pollution or dangerous to flora and fauna. In this case, criminal behavior is most often manifested in a typical combination of actions and inaction.

The multiplicity of combinations of various types of actions and inaction most often results from the mutual influence of various factors of the situation and personality characteristics of criminals, which in turn are complicated by the specifics of the direct impact of harmful production processes and their consequences.

The specific mechanism of committing environmental crimes consists of a number of elements, among which the central place is occupied by the specifics of the technological side of the criminal behavior of persons responsible for observing environmental regulations, illegal actions of specific executors of production operations and elements of improper functioning of certain technical systems and devices, as a result of which actual environmental pollution.

Modern typical investigative situations at the initial stage of the investigation of environmental crimes are determined by such factors as:

1. Nature of the source data that became the basis for initiating a criminal case, the degree of their completeness and concreteness;
2. Object, place and period, pollution season, type of damage caused;
3. Duration of the incident, degree of preservation of the traces formed during this, initial state of the situation of the scene of the accident and the source of pollution.

The formation of situations where investigations began is influenced by such circumstances as the type of production or its site where environmentally dangerous violations were committed, the availability of the necessary documentation, reference books, witnesses, specialists, etc. for the initial stage:

1. Background information on pollution, deterioration, damage to the land, water or air basin came from the state environmental control authorities. The materials of the inspection they carried out contain information about the circumstances of the incident, entailing dangerous consequences. This situation is typical for pollution of rivers, lakes, soil, less air. From the moment of pollution until its discovery, verification and initiation of business, the time period is small;

2. The initial information is similar to the above, but from the moment of pollution to the initiation of a criminal case, a considerable period of time has passed, as a result of which the pollution has been partially preserved, there are documents and witnesses, and there are no sources of pollution as it was before;

3. Baseline data are communications from members of the public, individuals, institutions, the media, public environmental organizations. The criminal case was initiated on the results of the inspection of the scene. Traces of contamination identified and recorded. The source and mechanism of pollution is unclear; environmental pollutants are supposedly known.

4. Therefore, the main and most important investigative action at the initial stage of the investigation of environmental crimes or during the course of the pre-investigation check is the inspection of the scene of the incident – the place where the traces of the violation or damage to the environment were found and the actual environmental damage or harm. In the specific methods of investigating environmental crimes, the examination of the place of their commission is given great and primary attention².

Inspection of the scene in the current Code of Criminal Procedure is an investigative action, which consists of the cognitive and certifying operations of the investigator, performed at the place of detection of signs of a committed or suspected crime with a slit of finding and fixing traces, objects and

² See: V. Yu. Tkach, *Inspection of the scene as an object of forensic research*, „Bulletin of Moscow University of the Ministry of Internal Affairs of Russia” 2012, № 4, p. 130–135.

other objects, allowing to understand the mechanism of the incident and establish the circumstances relevant to the proper resolution of the case.

According to the provisions of the science of forensic science, any localized part of the space where traces, objects and other objects are found should be considered the scene of an incident with respect to which there was a reasonable assumption that they appeared as a result of the crime.

In many literary sources devoted to this topic, an inspection of a scene for environmental crimes is considered as a tactical forensic operation, during which it is possible to use operational-search measures. Therefore, this tactical operation can also be called complex operational tactical³.

As an operational-tactical operation, an inspection of the scene of an environmental crime may include the following sets of measures:

1. Preliminary collection of information on the commission of an environmental crime, the conduct of operational-search measures to clarify this information, the conduct of initial verification or investigative actions prior to the initiation of a criminal case;

2. Preparations for the inspection of the scene of the incident – the scene of the commission of an environmental crime. This stage includes both organizational measures and measures aimed at forensic support of the inspection, detection, fixation and seizure of the evidence found, and fixation of the situation of the scene of the incident.

3. Direct departure to the scene of the incident, ensuring the safety of participants in investigative actions and operational search activities, guarding the scene of the incident, identifying witnesses, suspects, and places of storage of documents, ensuring the safety of physical evidence, documents and other traces.

4. Directly conducting an inspection of the scene of an environmental crime using modern forensic technology, drawing up charts, maps, inspection protocol, photographing and videotaping the inspection process, conducting operational-search support of the scene inspection by police officers⁴.

5. The use of the consultative capabilities of various specialists during survey of the environmental crime site: surveyors, geologists, geodesists, mining foremen, zoologists, botanists, chemists, physicists, etc. specialists⁵.

6. Drawing up the results of the inspection of procedural protocols, as well as expert opinions.

7. Departure from the scene and transportation of the seized documents, objects, as well as convoy of detainees to the place of investigation.

³ See: M.A. Chernyshev, *Inspection of the scene as a basic tactical operation: thesis for the degree of Candidate of Law.*, M.: MSU, 2009, 124 p.

⁴ See: S. Kolotushkin, S. Kandaurov, *Video recording as a source of evidence in the detection and investigation of crimes*, „Forensic expert” 2009, № 2, p. 26–31.

⁵ See: N. Mamoshin, *On the issue of the participation of a specialist in individual investigative actions*, „Expert forensic expert” 2010, № 1, p. 8–12.

Inspection of the scene of environmental crime should be carried out immediately, immediately after receipt of information about the discovery of evidence of this crime, if there is reason to believe that evidence can be found in a certain area of a location or indoors or elsewhere that is relevant to making timely, legal and a reasoned decision to initiate a criminal case, to bring a person as an accused, etc. For environmental crimes, an inspection of the scene should be provided once, immediately after the fact of environmental pollution was identified and documented.

In the future, this will allow collecting important evidence on the criminal case under investigation: data on the situation, mechanism, features and scale of harm to nature. In addition, it is possible to detect and fully capture the trace picture of the committed crime.

In cases of environmental crimes investigative examination, as a rule, subject to:

- areas of the environment that have been deteriorated or polluted;
- degraded natural objects;
- sewage treatment plants, septic tanks, storage ponds, other places of utilization, neutralization and purification of hazardous waste produced by various industrial enterprises of petrochemical, metallurgical, mining and other industries, process drains, pipelines;
 - production facilities and premises of the shop, sites, tanks;
 - landfills, waste storage sites, storage of hazardous substances used in the production process for the production of raw materials and finished products, mercury used in the refining extraction of gold from rock, ammonia and phenol used in the production of synthetic materials;
 - vehicles used for removal and disposal of waste, automobiles, rolling stock, excavators, bulldozers, etc.).

Therefore, when examining the scene of an environmental crime, an appropriate specialist should take part, for example, an employee of the Federal Service for Supervision in the sphere of ecology and environmental management, sanitary and epidemiological supervision, and Federal Services for Technological and Atomic Supervision.

Inspection of the scene is recommended for individual areas, which most often include places of direct pollution of the environment, drains and pipelines leading to them, sewage treatment plants and their individual nodes: septic tanks, sewage wells, etc.

It is better to start the inspection from the point of detection of the most abundant contamination with the subsequent expansion of the boundaries of the territory, paying attention to the interrelationship of the selected sites of the scene. A specific action in the case of the category in question is the sampling of: water, soil, air, pollutant, corpses of birds, fish, animals. An appropriate specialist will be involved in the sampling at the scene.

The high quality and effectiveness of the inspection of the scene of environmental crime are determined by:

- timely and full implementation of organizational and preparatory activities that provide optimal conditions for the inspection;
- the implementation of the instructions of the criminal procedure law and recommendations developed in forensic science regarding the procedure for the conduct of the investigative action, addressed to the investigator;
- accurate performance of duties by the participants in the inspection of the scene of the incident and the consistency of their actions;
- compliance with the requirements of the Code of Criminal Procedure of the Russian Federation for the rules for drawing up a protocol for inspecting the scene of an incident;
- the use of special new technical means, drawing up diagrams, plans, the use of photo and video recording of the situation of the crime committed;
- participation in the examination of various specialists.

When arriving at the scene of an environmental crime, the investigator:

1) receives information from the witnesses and persons who were the first to discover the incident from the scene of the incident and information about the persons involved. From the police officers receives information about the activities planned and carried out with the aim of identifying the perpetrators, their search and detention;

2) instructs police officers to identify eyewitnesses and witnesses who were at the scene of the incident and retired from the scene

3) instructs the police to interview eyewitnesses and potential witnesses to obtain primary information about the incident, and also uses forensic and other counts for this purpose;

4) confirms that all urgent measures have been taken to eliminate the consequences of an environmental incident, assistance has been rendered to the victims, and, if necessary, takes the measures indicated

5) obtains information on changes made to the situation of the scene in the provision of assistance to victims and in connection with the elimination of the consequences of an environmental incident;

6) obtains information about detected tracks and objects of evidentiary value;

7) determines the circle of participants in the inspection of the scene of the incident, explains their rights and obligations.

Directly inspection of the scene for environmental crimes is carried out in the following order – first, a general and then a detailed inspection of the scene is carried out.

During the general inspection, the investigator makes a detour around the scene, identifies objects related to the incident, and, on the basis of the information received, gives a general idea of the nature of the incident; de-

termines the boundaries of the space to be inspected and clarifies its relationship with the adjacent territory; establishes the presence of traces that must be urgently protected from the effects of precipitation, accidental or intentional damage, destruction.

If traces left by the criminals are found, taking into account the opinions of the experts present, the decision is made to use the help of forensic scientists to search for various traces of crime and other items of relevance to the case, and if there are grounds for this, instructs the operative police officer to organize the search and detention of the criminals. Then, the investigator selects the starting point and method of inspection, as well as the position for the production of orienting and viewing photos and video.

In the future, the investigator, together with other participants in the inspection, investigates the whole range of issues related to the situation of the scene, that is, determines the mutual arrangement and interrelation of objects and buildings located on the scene, examines their appearance, condition and with the maximum possible in these conditions details captures everything found through photo and video, by drawing up plans, diagrams, drawings, and makes the necessary rough notes for further drawing up a protocol inspection⁶.

During the general inspection, a static inspection method is applied, which consists in the fact that the inspection is carried out without disturbing the initial arrangement of objects. The use of this method is a guarantee that the situation of the incident will be recorded in its original, unchanged form.

At the end of the general inspection, the investigator proceeds to a detailed examination, during which he thoroughly examines all the objects on the scene.

The concentric method of inspecting the scene of an incident is that the inspection is carried out in a spiral from the periphery to the center of the scene of the incident, which usually means the most important object located at a given place or a conditional point.

It is advisable to use a concentric method of inspecting the place where an environmental crime was committed because:

- 1) the center of the scene is sometimes difficult to determine;
- 2) when approaching the center of the scene, traces located on the periphery may be damaged;
- 3) there is a real threat that traces located on the periphery may be lost, while keeping traces in the center does not cause concern.

The eccentric way of inspecting the scene of an environmental crime is that the inspection is carried out from the center of the scene to its periphe-

⁶ F.G. Aminev, *On the use of forensic technologies in the inspection of the scene*, „Russian investigator” 2009, № 20, p. 2–5.

ry. This method is applied, as a rule, in open areas, if at the beginning of the inspection it is not possible to determine the boundaries of the scene.

The way of the frontal inspection of the scene of an incident is a linear inspection of the areas from one of their borders, taken as the source, to the other. This method of inspection is used in cases where the territory of the ecological disaster that is to be inspected is extensive and needs to be broken down into clearly distinct bands.

In the course of a detailed examination, the scene of the incident should be thoroughly examined in order to detect traces of shoes, objects left, excretions, crime instruments, criminal criminal clothing micro particles, etc. The objects, equipment, mechanisms and other objects located on the scene are examined in order to detect traces of hands and biological secretions of the offender. To this end, the investigator and the specialist participating in the inspection can use the dynamic inspection method, i.e., in order to fully investigate the situation of the incident, change the position of various objects on the scene (shift them, move them, turn them over).

To detect and fix traces, the investigator and forensic specialist, on his behalf, are obliged to use technical means that are in the investigative suitcase or in the suitcase of the forensic investigator, as well as in a mobile forensic laboratory.

The course and results of the inspection of the scene are recorded in the protocol, which must meet the requirements set forth in Art. 166 and 180 of the Code of Criminal Procedure:

1) fully, accurately and objectively reflect everything found during the inspection in the sequence in which the inspection was carried out, and in the form in which it was observed at the time of the inspection;

2) contain an enumeration and description of all traces and objects found at the scene of the incident and seized during the inspection⁷.

The implementation of these recommendations further contributes to the effective and high-quality investigation of environmental crimes, identifying all the perpetrators and bringing them to criminal responsibility, and taking appropriate measures to compensate for the damage caused.

Literature

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⁷ See: E. Kadatenko, *Principles of inspection of the scene as the fundamental requirements for its production*, „Bulletin of the Academy of Economic Security of the Ministry of Internal Affairs of Russ” 2011, № 8, p. 78–82.

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Streszczenie

Taktyka oględzin miejsca zdarzenia w razie popełnienia przestępstwa

Słowa kluczowe: informacje ekologiczne o zbrodni, środowisko, śledztwo, detektyw, pracownicy operacyjni, oględziny miejsca zdarzenia, szelf kontynentalny, nielegalne polowania, naruszenie zasad wędkowania, naruszenie zasad korzystania z transportu publicznego.

Publiczne zagrożenie przestępstwami przeciwko środowisku polega na tym, że wskazane czyny zabronione wpływają na człowieka przez naturę i powodują zniszczenie lub pogorszenie jakości biologicznej podstawy jego istnienia. Śledztwa w sprawie przestępstw przeciwko środowisku są jednymi z najtrudniejszych, a osoby je prowadzące muszą znać nie tylko normy prawa karnego, regulujące odpowiedzialność za nie, ale także przepisy innych gałęzi prawa. Przestępstwa ekologiczne zawsze powodują szkody, a pozostawione przez przestępców ślady tego typu czynów zabronionych należy odpowiednio zabezpieczyć. W związku z powyższym, należy zwrócić uwagę na fundamentalne znaczenie, zwłaszcza w początkowej fazie śledztwa, właściwie przeprowadzonych oględzin miejsca zdarzenia, w wyniku których można zabezpieczyć maksymalną ilość śladów pozostawionych przez przestępców.