

CHARACTERISATION OF ENVIRONMENTAL DAMAGE IN WATER CRIME

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Abstract: This research examines criminal violations against water through the prism of Bulgarian environmental legislation, synchronized with EU law.

Keywords: *water protection, water protection, water pollution, environmental verdict*

Introduction

Increasing climate change is presenting humanity with a number of challenges – floods in some areas, droughts in others, earthquakes and natural disasters in others. All of these are the result of the disruption of the linkages between the components of the environment through which ecological balance is ensured.

The planet's waters are a leading component. Their quantitative and qualitative change has the most significant impact on the other components. Water is important for climate regulation, biodiversity, human food security, etc. The global water cycle, linking together all of the Earth's waters, transforms problems arising in one part of the world into those for countries in other parts. This effect is also due to the connectivity of surface water and groundwater in a single hydrodynamic system¹.

Water degradation (water scarcity and water pollution) has been the subject of numerous studies and reports by a number of world organisations². All are adamant that in order to continue to exist as a biological species, we must immediately take drastic measures to limit anthropogenic pressure on water and restore its good ecological status. According to reports by the United Nations (UN), the World Health Organisation (WHO), UNESCO and others, over 2 billion people in the world now live in areas affected by a shortage of clean drinking water.

¹ Levovich, M. Geographical bases of water legislation. - In: Proceedings of the All-Union Geographic Society. Moscow, 1967, Vol. 99, № 3, p. 182; Penchev, P., *Common Hydrology*. 5th ed. pp. Science and Art, 1986, pp.25-33.

² EEA, the European Community INSPIRE37, the Shared Environmental Information System SEIS38 and the Global Monitoring for Environment and Security GMO, COPERNIC, etc.

Every year, 3.5 million people die from water-borne diseases, which exceeds the impact of all forms of violence combined³.

Many global organisations are seeking urgent new measures to protect the planet's freshwater. These must address the sources of anthropogenic pressures in modern society and effectively counteract their effects. Criminal attacks on water should be focused along two lines - on the protection of the most significant groups of water from pollution and waste, and on their lawful management as a natural resource.

1. Social danger of crimes against water

Crimes against water in the Bulgarian criminal law (and in other European countries) are considered as part of the constituent elements ensuring environmental protection. They have a high degree of social danger⁴. It is inferred based on its nature and degree.⁵

The nature of the social danger is determined by the type of the object of the criminal violation (the type of affected public relations). Water (surface and groundwater) is subject to two main groups of public relations, which include a complex of other such relations. The first of these arises in connection with their management and protection from pollution, enabling the maintenance of the diversity of living nature and the provision of healthy and favorable conditions for the existence of the human species. It is related to their quality as one of the main components of the environment. The second group is the social relations arising in connection with the management and rational use of water, as a nationwide indivisible natural resource of importance for individual economic sectors and food security.

The degree of social danger shall be determined by the amount of the damage caused, the manner of commission of the act and others, the personal qualities of the subject and other subjective elements of his behavior. It reflects the extent to which the act has had an impact on existing social relations. The Bulgarian literature⁶ indicates certain circumstances relevant for its establishment, namely: the type of the affected social relation and its significance, including

³https://unesdoc.unesco.org/in/documentViewer.xhtml?v=2.1.196&id=p::usmarcdef_0000375724&file=/in/rest/annotationSVC/DownloadWatermarkedAttachment/attach_import_db06f7c4-b33f-4833-be56-bbf54afdee3f%3F_%3D375724eng.pdf&locale=ru&multi=true&ark=/ark:/48223/pf0000375724/PDF/375724eng.pdf#page=1&zoom=auto,-15,848

<https://worldwaterreserve.com/water-scarcity-facts/>

<https://www.who.int/news/item/12-07-2017-2-1-billion-people-lack-safe-drinking-water-at-home-more-than-twice-as-many-lack-safe-sanitation>

⁴ Resolution of the Plenum of the Supreme Court No. 2 of 15.12.1978 in case № 2/1978;

⁵ Filchev, N. Lectures on Criminal Law. "East-West", Sofia, 2014, pp.27, 28;

⁶ Guneva, M., Novikov, L., et al. Crimes against the Environment. Book Factory, imprint of BGkniga EAD, C 2015, p.25.

moral values; the peculiarities of the consequences – damage (the specific degree) or danger of damage; the presence of additional socially dangerous consequences (e.g. on other objects outside the main one); the peculiarities of the act; etc.

Depending on the constitutive result, the criteria for assessing the degree of social danger differ. In the case of acts resulting in environmental damage, the signs of environmental damage are the guiding factors in determining the degree of environmental damage. In the case of those causing a risk of environmental harm, the indicia of probable harm and the degree of probability are the guiding factors.⁷

2. Specific features of environmental damage

One of the most important criteria for determining social danger is the amount of environmental damage. In order to establish it, it is always necessary to take into account the interrelationship between the environment and its components and the fact that negative effects on one of them have consequences for the others⁸, including man and his vital need for water, air, etc. and his dependence on natural resources⁹.

In environmental law, damage to the environment is of two main types - environmental and pecuniary¹⁰ (“quantifiable”).¹¹ The Bulgarian literature¹² highlights three characteristic features of ecological damage, namely that: a) “it is a long-term negative consequence of the pollution of environmental components or the irrational use of natural resources”; as a result, it can lead to the “destruction (rupture) of the links between ecosystems”, b) “destruction or damage to rare and/or endangered plant and animal species”, c) “damage to human health as a result of environmental pollution or irrational use of natural resources”, etc. In many cases, these damages occur at a much later point in time than the commission of the executive act¹³.

Some authors in the Russian literature¹⁴, defining the concept of “ecological damage” as a variety of environmental damage, consider “echogenic damage” and “moral damage” occurring as a result of damage or pollution of the environment. The former are related to

⁷ Pushkarova-Gocheva, I. Some Issues of Criminal Law Protection of Nature, S. 2016 Association of Prosecutors in Bulgaria, p. 4.

⁸ Stainov, P. Protection of nature. BAS. Sofia, 1970, p.30-31.

⁹ Dermendzhiev, I. Society and Environment. Sofia, 1982, p. 6.

¹⁰ Penchev, G. Some problems related to environmental damage under Bulgarian law. Proceedings „The Law - Traditions and Perspectives”, Sofia : Ciela, 2018, pp.366-375.

¹¹ Naumova, St., Basic Issues of Environmental Law, Trakia-M, Sofia, 2007, p. 168.

¹² Penchev, G. Some problems related to environmental damage under Bulgarian law. Proceedings "The Law - Traditions and Perspectives", Sofia, p. 366-375.

¹³ Vojanov S. Ecological crimes under the Bulgarian legislation. Legal Thought, S.1995 № 4, p.168.

¹⁴ Бринчук, М. Экологическое право, Москва, 2009 г., p.275.

damage to human health, while the latter group includes “moral harms from the impossibility of continuing an active social life”, for example in the case of the destruction of green spaces in cities. In the Bulgarian literature¹⁵, some authors define as “moral harm” those that harm personal, moral, etc. interests.

It is necessary to distinguish between “environmental harm” and “environmental damage”.

Directive 2004/35/EC¹⁶ uses the term “environmental damage” to outline the harmful effects on the environment and its components that national authorities and operators of installations and facilities are obliged to prevent and remedy. According to authors in the English literature¹⁷, the Directive has a narrow scope as it is aimed at environmental remediation after an industrial accident, excluding “oil shipments and nuclear accidents” and regulating too many exemptions. Environmental damage refers to the measurable negative change in the ecological, chemical or quantitative status or ecological potential of surface water and groundwater resulting from direct or indirect impacts or inaction.

Some authors in the Bulgarian literature¹⁸ equate the formulation of “ecological damage” with that of “ecological harm”, indicating them with a slash “ecological harm/damage”, but this is debatable. Regarding the content of the two concepts, it is submitted¹⁹ that the translation from English into Bulgarian of the word “damage” used in the Directive has adopted its meaning of “damage” rather than “harm” in order to emphasize their proprietary nature. According to this view, the directive does not take into account the specific nature of “environmental damage”, as explained above, but only its material nature.

Ecological damage to water can occur in two ways – by polluting it or by affecting its quantity. They can be adversely affected as a component, taking into account their relationship to other components, such as the natural resource and its importance to the economy, or by affecting the environment as a whole. In this respect, the degree of public hazard varies and its identification is determined by different factors. In order for environmental damage to occur, the change in water must be capable of leading to a deterioration in the quality of life of people, an impoverishment of biodiversity or difficulty in restoring natural ecosystems. The harm to

¹⁵ Kozhuharov, A. Bond Law. General doctrine of the bond relation. Vol. 1, Sofia, Sofi-R, 1992, pp. 267-270; This opinion is shared by prof. G. Penchev, G. Some problems..., pp. 366-375.

¹⁶ Directive 2004/35/EC 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.

¹⁷ Kremer, L. European Environmental Law. S., Ciela, 2008, pp. 306-307.

¹⁸ Pushkarova-Gocheva, I. Cited in..., p. 29.

¹⁹ Penchev, G. Legal Regime of Prevention...; Penchev, G. Prevention and remediation of environmental damage under European law. Legal World. S., 2007, № 2, pp. 79-82; Goleva, P. On the concepts of „ecological responsibility“ and „ecological damage“. Legal Thought. S., 2008, №. 3, pp. 42-59.

people can be expressed in changes in their health, death or reduced quality of life – as a result of using contaminated water for drinking, bathing or other purposes, and in the case of water shortages for the satisfaction of vital and domestic needs. For biodiversity, it is the destruction of a significant proportion of the diversity of living organisms, their communities and the habitats of ecosystems and the processes that occur within them. Damage can occur to both terrestrial and aquatic biodiversity. Biodiversity in water can be harmed by pollution or drainage. Damage to natural ecosystems will occur when the recovery of the complex of plant, animal and microorganism communities and their non-living environment is impeded.

In criminalizing criminal water offences, it is necessary to use clear criteria to distinguish ordinary environmental damage from non-material damage. Minor harm should be considered harm where the negative changes are within the natural biological processes in nature. They should be capable of being restored under their influence without human intervention. This can occur within a timeframe and in a manner that prevents the harm from adversely affecting those features of the environment that have a lasting or significant impact on human existence.

Transboundary environmental damage is also possible. This will occur when the waters of a surface or groundwater body extending into the territory of a neighboring country are affected. In these cases, the public danger of criminal pollution will be higher.

Qualifying environmental harm may consist of more severe contamination of a subject matter under the basic composition, involve contamination of another component not described in the basic composition, or involve harm to the environment, generally. It is important to identify the more significant groups of waters – mineral, fresh, water protection zones, etc., and to provide for differentiated liability in respect of them.

In view of the particularities of “environmental damage”, environmental crimes are characterized by the occurrence of additional damage that increases the degree of social danger of the act. They may have arisen as independent side effects of the act, but may also constitute a legitimate complication of the harm under the main composition.

The Bulgarian literature has expressed the opinion²⁰ that the damage occurring at a later stage cannot be taken into account when assessing the degree of social danger of a specific act, because the completion of the crime is linked to the occurrence of the constitutive result. With regard to the consideration of those consequences as additional harm, it has been submitted that it is necessary to await their occurrence before doing so, which may lead to a lack of

²⁰ Pushkarova-Gocheva, I., op. cit., p. 24.

reaction to the act. Considering them before their occurrence leads to the crime being accepted as incomplete.

Conclusion

In the sense of conclusion of this legal research, it can be stated that the implementation of water protection from criminal encroachments is directly related to the knowledge of law enforcement authorities with the specifics of “environmental harm”. Only a comprehensive and complete investigation could fully elucidate the environmental consequences that have occurred, are occurring, and assist in restoration.

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