

# Compensation for damages from the consequences of environmental crimes

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**Abstract.** The subject of this study is the social and legal nature of compensation for damage or other reparation for harm caused by environmental crimes. Currently, at the legislative level, there is no exhaustive list of possible ways to compensate for the rights violated as a result of a committed socially dangerous act containing all the signs of a crime. As a result, law enforcement agencies in the course of proceedings in a specific criminal case are vested with the right to independently assess specific post-criminal positive activity of a person who committed a crime and decide on its compliance with the method of making amends. At the same time, delegated powers in theory are perceived ambiguously. The purpose of the authors is to determine the essence and admissibility of a broad interpretation of the concept of "compensation for damage or other reparation for harm" in criminal law. Based on the analysis of provisions of current criminal legislation, clarifications of the Plenum of the Supreme Court of Russian Federation, investigative and judicial practice, doctrinal studies in the field of criminal, as well as environmental law, the authors come to the following conclusion. The list of ways to make amends for the harm caused by environmental crimes cannot be exhaustive (closed), and specific post-criminal socially beneficial actions must be legal and not infringe on the rights of third parties.

## 1 Introduction

In 2022, 19.1 thousand environmental crimes were registered, which is 6% less than in the same period last year [1, p. 3]. Despite the positive dynamics, it is necessary to state the fact of a significant number of committed acts causing damage to the environment. They lead to following consequences: the death of nature, the destruction of ecosystems, environmental pollution. The planetary aspect of the social danger of environmental crime lies in the fact that it endangers life on Earth. In Russia, this threat is gradually becoming a reality. As a result of those acts covered by the concept of "environmental crime", thousands of people die every year. According to ecologists, 20,000 people die every year as a result of dioxin pollution of water bodies in Russia. The same number of fatal cases of skin cancer as a result of the destruction of the ozone layer of the atmosphere. In total, for environmental reasons, several hundred thousand people die every year and the health of many millions worsens. The consequences of environmental crimes are often unpredictable

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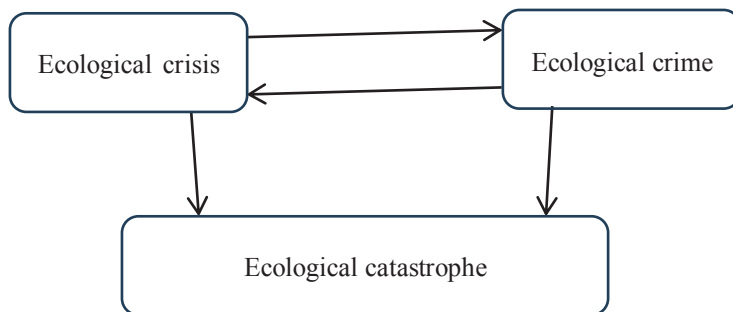
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due to the limited ability of science to fully establish cause-and-effect relationships in natural and biological systems. So, the results of the impact on living organisms of radiation of chemicals, natural disasters and other factors remain poorly predictable. In this regard, acts that can destroy the natural balance, have a devastating impact on the environment, health and life of people are prohibited by criminal law under the threat of punishment.

In accordance with the position of the highest bodies of state power, the trend in the development of criminal justice in Russia is its liberalization (humanization). In this regard, the number of persons with a criminal record is annually reduced, a significant proportion of the accused are released from criminal liability in the framework of pre-trial and trial proceedings, and the use of strict measures of state coercion is limited. As the Chairman of the Supreme Court of Russia Vyacheslav Lebedev notes, "... at present there are three conditions for the termination of criminal prosecution: the crime is not serious, it was committed for the first time, and the defendant compensated the damage" [2]. At the same time, the essence of the latter, its size, the order and specification of ways to implement post-criminal positive actions are not properly regulated by the norms of the current legislation.

## 2 Methods

The environmental problem in our country and in most countries of the world is one of the most important economic and social problems. According to scientists, the irresponsible and consumerist attitude to nature has put the world on the brink of an ecological catastrophe (Figure 1) [3, p. 16]. Nature is in such a critical state that its ill-being affects the living conditions and health of people, the number of genetic abnormalities is growing, and life expectancy is shortening.



**Fig. 1.** Interrelation of factors

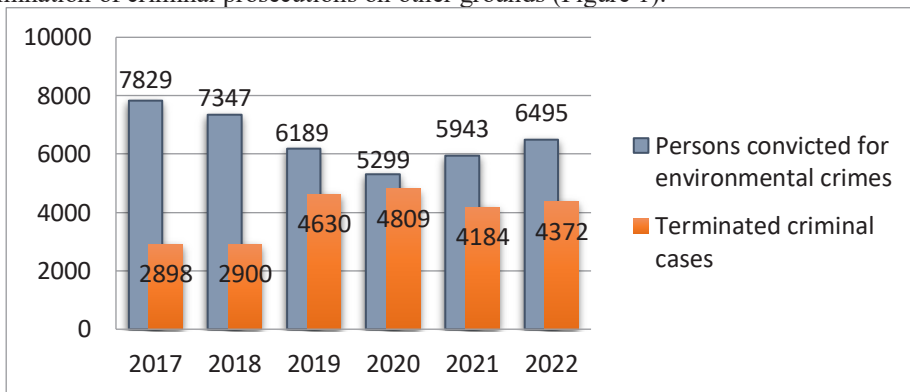
In this regard, countering environmental crime is the subject of a number of doctrinal studies, including those of a fundamental nature. So, E.G. Kletneva made an attempt to formulate a concept, identify conditions and a way to prevent environmental crime in the Russian Federation [3]. The model of criminal law counteraction to environmental crimes was described in the works by A.A. Gareev [4]. The state and trends of environmental crime in the Russian Federation, as well as its connection with transnational, corrupt and organized crime, are discussed in the works of leading scientists of criminal law science [5]. The issues of compensation for damage or other reparation for damage caused by crimes in general and environmental ones in particular were dealt with by such specialists as N.Yu. Skripchenko [6], A.M. Karimov [7], M.B. Kostrova [8] and many others.

Despite the solid volume of theoretical and applied research, many issues remain without proper attention. First of all, we are talking about ways to compensate for the damage caused by environmental crimes. The empirical material accumulated to date in the theory of criminal law, as well as environmental law, the experience of investigative and judicial practice allow a comprehensive analysis of the phenomenon under consideration and provide scientific justification for a number of topical problems.

### 3 Results

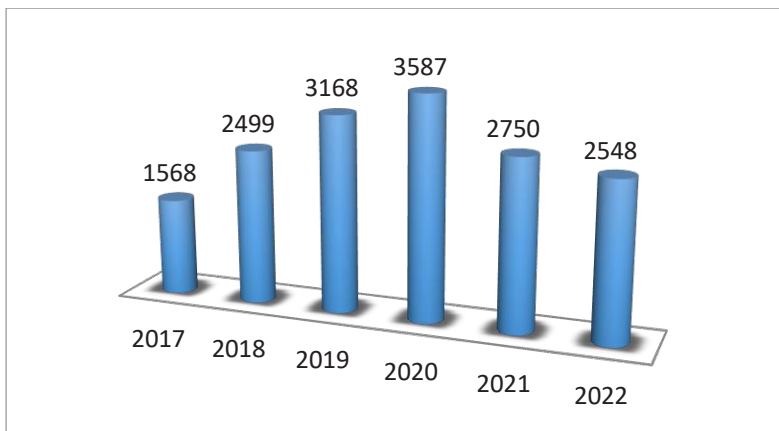
The study made it possible to come to the following conclusions:

1. The number of annually committed environmental crimes remains at a fairly high level [1].
2. Recently, in the Russian Federation, there has been a trend towards an increase in the number of convicted persons for environmental crimes and a decrease in cases of termination of criminal prosecutions on other grounds (Figure 1).



**Fig. 2.** Data on the status of convictions for environmental crimes in Russia in the period from 2017 to 2022

3. The number of cases of termination of criminal cases with the imposition of a court fine, the condition for the implementation of which is compensation for damage or other reparation for damage caused by environmental crime, has been declining in recent years (Figure 3).



**Fig. 3.** Number of exemptions from criminal liability for environmental crimes with the imposition of a court fine in Russia in the period from 2017 to 2020.

4. The list of ways to make amends for the harm caused by environmental crime, expressed in specific post-criminal positive actions, cannot be exhaustive (closed). In this legal field, the state pursues the goal of maximizing the stimulation of a person who has violated a criminal law prohibition to repentance, awareness of the committed illegal action, and socially approved behavior. Limiting the range of possible post-criminal actions to certain actions can hardly be recognized as the right direction in the development of criminal legislation. Thus, the court has the right (but is not obliged) to evaluate the configuration of a person's positive actions as socially useful and recognize it as a fact stating the reparation of harm. At the same time, emphasizing the importance of the clarifications of the Supreme Court of Russian Federation, it should be noted that the methods of compensation for damage and making amends must be legal and not infringe on the rights of third parties.

## 4 Discussion

In accordance with the current criminal legislation, the essence of the post-criminal positive behavior of a person, which consists in compensating for damage or otherwise making amends for the harm caused by a crime, is reduced to:

- a mitigating circumstance (clause “k”, part 1, article 61 of the Criminal Code of Russian Federation);
- obligations within the framework of the probationary period during conditional conviction (part 5 of article 73 of the Criminal Code of Russian Federation). Its execution or non-performance is a criterion for the abolition of probation and the removal of a criminal record (part 1, article 74 of the Criminal Code of Russian Federation), the extension of the probationary period (part 2, article 74 of the Criminal Code of Russian Federation), the abolition of probation and the execution of a sentence imposed by a court verdict (part 2.1, part 3 of article 74 of the Criminal Code of Russian Federation);
- a condition for exemption from criminal liability (in connection with active repentance (Part 1, Article 75 of the Criminal Code of Russian Federation), for specific types of crimes (Article 76.1 of the Criminal Code of Russian Federation), with the imposition of a judicial fine (Article 76.2 of the Criminal Code of Russian Federation));
- a basis of parole from serving a sentence (Article 79 of the Criminal Code of Russian Federation); replacement of the unserved part of the punishment with a milder type of punishment (Article 80 of the Criminal Code of Russian Federation);
- a condition for the removal of a criminal record before the expiration of its repayment period (part 5 of article 86 of the Criminal Code of Russian Federation);
- a compulsory measure of educational influence (Article 90 of the Criminal Code of Russian Federation);
- a basis for the application of confiscation of property (Article 104.3 of the Criminal Code of Russian Federation).

Thus, the norms of the criminal law define compensation for damage and other compensation for harm as a condition, the fulfillment of which improves the position of the person who committed the crime. Issues related to a specific list of post-criminal positive actions, the proportionality of damage and its restoration, the addressee of its receipt at the legislative level are not settled.

A certain clarity in the solution of the identified problems of a theoretical and applied nature was introduced by the highest judicial instance of Russian Federation. Thus, according to the explanations of the Supreme Court, damage must be understood as property damage that can be compensated in kind (in particular, by providing property in exchange for lost property, repairing damaged property), in monetary form (for example, compensation for the value of lost or damaged property, treatment costs), etc. [9].

Making amends for harm - property, including monetary, compensation for moral harm, providing any assistance to the victim, making an apology, as well as taking other measures aimed at restoring the rights of the victim violated as a result of the crime, the legitimate interests of the individual, society and the state [9].

From the analysis of the norms of the criminal legislation regulating compensation for damage or other reparation for harm, as well as the explanations of the Supreme Court of Russian Federation, it is necessary to conclude the following:

- "reimbursement" and "compensation for damage" are not identical concepts. It seems that not every damage from a crime can be compensated in monetary terms. Compensation can only mitigate the negative consequences for the victim;

- "improvement of harm" is a voluminous category, which includes active positive actions of the person who committed the crime, aimed at "compensation for damage". This conclusion is based on a logical interpretation of the stated formulation. The used conjunction "or" indicates that the damage caused by the crime can be compensated (smoothed) not only in kind or in cash, but also in the form of other measures aimed at restoring the rights of the victim violated as a result of the crime, the legitimate interests of the individual, society and states.

- the list of ways to make amends for the harm by the person who committed the crime, or "... at his/her request (with his/her consent) by other persons" [9] remains open at the legislative level. Thus, law enforcement agencies in the course of proceedings in a particular criminal case are given the right to independently evaluate one or another post-criminal positive action of the person who committed the crime and decide on its compliance with the method of making amends;

- under "harm making", as a more voluminous concept, it is necessary to understand the active post-criminal positive actions of a person aimed at reducing public danger, as well as at reconciliation with the victim, if any.

The latter conclusion is also confirmed by investigative and judicial practice. It should be noted that the current criminal legislation does not contain a ban on the possibility of exemption from criminal liability for crimes with a formal composition, and also does not limit the ways of compensation for damage and making amends for the harm caused by the crime.

Thus, in the activities of the judiciary, there is a tendency to expand the list of post-criminal positive actions, which are evaluated as a way to make amends for the harm caused by the crime. With a certain degree of conventionality, they can be stated as follows. Compensation for damages comes down to:

- charitable activities (transfer of funds to the accounts of organizations, and in the absence of such an opportunity - labor participation). Thus, the Oktyabrsky District Court of Rostov-on-Don decided a criminal case on charges against K. and M. of committing a crime under Part 3 of Art. 256 of the Criminal Code of Russian Federation (illegal extraction (catch) of aquatic biological resources) to stop in connection with the appointment of a measure of a criminal law nature in the form of a judicial fine. As a way to make amends for the harm caused by the crime, the court recognized charitable assistance to orphans [10];

- publication in periodicals of information promoting a healthy and law-abiding lifestyle;

- apologizing to the Russian Federation or to the employer, as well as a promise not to commit new criminal acts in the future;

- passing a medical examination (on cases of crimes related to the use of forged official documents);

- other active post-criminal actions in cases of crimes in the field of economic activity;

- actively contribute to the investigation of the crime.

A broad interpretation of ways of making amends for the harm caused by a crime is perceived ambiguously in the theory of criminal law. Some scientists are on the position of the need to consolidate an exhaustive list of post-criminal positive actions at the legislative level and the inadmissibility of granting power in this area to law enforcement agencies [11, p. 6].

Others believe that delineating the boundaries of the proper model of behavior of a person who has committed a crime does not meet the needs of society and the state [12, p. 32]. Criminal harm can be remedied in any form that allows compensating for the negative changes caused by the crime to public relations protected by criminal law [13, p. 56].

The third group of researchers is convinced that each single case of identification of the behavior approved by society of a person who has committed an act prohibited by criminal law with a method of compensation for damage should be assessed individually [7, p. 497].

Another point of view comes down to the approval of the trend of enlarging the considered list of post-criminal positive actions in general, pointing to particular shortcomings. So, for example, F. N. Bagautdinov believes that the apology of a person accused of committing a crime of small or medium gravity to the team in which he works is permissible and can be regarded by the court as an option to make amends. According to the author's just conviction, cases are unacceptable when the courts take into account the apologies of the accused to state and even law enforcement agencies as a way of making amends for the harm caused by the crime. "Such an apology, of course, is possible, but the materials of criminal cases do not contain data on whether the relevant state body accepted these apologies, and whether it is generally authorized to accept them in cases where the crime affects state interests" [14, p. 11]. It seems that in this case the fact of an apology to the specified addressee and the assessment of these actions as reparation for harm is vulnerable from the point of view of the provisions of the criminal law.

The declared legislative dynamics, according to N.Yu. Skripchenko, as a whole, indicates a change in the repressive criminal law meaning of the concept of "making amends for the harm caused by a crime" to a stimulating one. This fact, she believes, is not only an effective way to restore rights and freedoms violated by a crime, but also creates conditions for a deeper differentiation and individualization of criminal liability and punishment. At the same time, the author is critical of the possibility of compensation for damage caused by a crime by third parties. It is also doubtful that the courts assess the defendant's post-criminal positive actions as a way to make amends for crimes that harm the public interest [6, p. 382].

More paradoxical in this regard is the redressing of the harm caused by the crime under Art. 260 of the Criminal Code of Russian Federation (illegal logging of forest plantations). Often, defendants who do not have a permanent place of residence, a stable source of income, compensate for significant damage in material terms. According to the just conviction of M.B. Kostrova, the harm done is made up for by the organizers and leaders of the criminal activities of the perpetrators, while avoiding criminal liability [8, p. 38]. As a result, questions arise about the implementation of the tasks of criminal law, educational, preventive functions of exemption from criminal liability, etc.

Thus, the Chusky District Court of the Irkutsk Region decided to terminate the criminal prosecution against O., who was accused of committing a crime under paragraph "d" of Part 2 of Art. 260 of the Criminal Code of Russian Federation, with the appointment of a criminal law measure in the form of a judicial fine in the amount of four hundred thousand rubles. As an atonement for the harm caused by the crime, the court stated the fact of charitable assistance to the social rehabilitation center. During the trial, the court ignored the arguments of the prosecutor about the insufficiency of the measures taken by the defendant to compensate for the damage, the lack of a permanent place of work, and, consequently, a stable income [15].

The presented, as well as other examples from judicial practice, make it possible to doubt the correctness of identifying such post-criminal positive actions (at least their size and sufficiency) with making amends for the harm caused by the crime. The configuration under consideration hardly indicates the leveling of the consequences of the crime in a way accessible to the guilty person, reducing the public danger of the committed, as well as the personality of the guilty person

## 5 Conclusion

Summing up this study, it should be noted that the list of ways to make amends for the harm caused by a crime, expressed in specific post-criminal positive actions, cannot be exhaustive (closed). In this legal field, the state pursues the goal of maximizing the stimulation of a person who has violated a criminal law prohibition to repentance, awareness of the committed illegal action, and socially approved behavior. Limiting the range of possible post-criminal actions to certain actions can hardly be recognized as the right direction in the development of criminal legislation. Thus, the court has the right (but is not obliged) to evaluate the configuration of a person's positive actions as socially useful and recognize it as a fact stating the reparation of harm. At the same time, emphasizing the importance of the clarifications of the Supreme Court of Russian Federation, it should be noted that the methods of compensation for damage and making amends must be legal and not infringe on the rights of third parties.

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