

# Exemption from criminal liability for environmental crimes

*Sergey Korneev*<sup>1\*</sup>, *Petr Pavlov*<sup>1</sup>, *Andrey Antipov*<sup>1</sup> and *Anastasiya Albeeva*<sup>2</sup>

<sup>1</sup> Academy of the Federal Penitentiary Service of Russia, 1, Sennaya st., Ryazan, 390000, Russia

<sup>2</sup> Amur State University, 21, Ignatievsky highway, Blagoveshchensk, 675027, Russia

**Abstract.** Environmental protection is one of the tasks of the criminal legislation of Russian Federation (Article 2 of the Criminal Code of Russian Federation). Acts that infringe on public relations for environmental protection and environmental safety are enshrined in Chapter 26 of the Criminal Code of Russian Federation and for the most part relate to crimes of small or medium gravity. This fact implies the possibility of implementing the institution of exemption from criminal liability in general (Chapter 11 of the Criminal Code of Russian Federation) and with the imposition of a judicial fine in particular (Article 76.2 of the Criminal Code of Russian Federation), if an environmental crime has been committed for the first time, and its subject has taken legal attempts to minimize the consequences. The subject of this study is the legitimacy of exemption from criminal liability for environmental crimes with the imposition of a judicial fine. The purpose of the study is seen in determining the admissibility of the declared process. To achieve the desired goal in the study, the following tasks were set and successively solved: 1. To establish legal regulation of exemption from criminal liability with the imposition of a judicial fine. 2. To analyze the investigative and judicial practice of considering criminal cases initiated on the fact of committing environmental crimes. 3. To examine doctrinal approaches for the legitimacy of exemption from criminal liability for environmental crimes.

## 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]. Environmental crimes violate or jeopardize violations of public relations that are developing in the field of the environment and environmental safety. At the same time, socially dangerous consequences resulting from violation of the rules of environmental protection (Article 246 of the Criminal Code of Russian Federation), use of subsoil (Article 255 of the Criminal Code of Russian Federation), handling of environmentally hazardous substances and waste (Article 247 of the Criminal Code of Russian Federation), microbiological or other biological agents and toxins (Article 248 of the Criminal Code of Russian Federation), water pollution (Article 250 of the Criminal

---

\* Corresponding author: [kornei\\_lam@mail.ru](mailto:kornei_lam@mail.ru)

Code of Russian Federation), the atmosphere (Article 251 of the Criminal Code of Russian Federation), the marine environment (Article 252 of the Criminal Code of Russian Federation) and other environmental crimes are unpredictable. This is 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.

Criminal liability for committing environmental crimes, along with environmental control and other means of influencing offenders who encroach on the establishment of environmental legislation, is one of the most effective levers for protecting the interests of society and state in the field of ensuring environmental safety and environmental protection in general [2, p. 29]. At the same time, the fact of committing an environmental crime does not exclude the possibility of releasing a person from criminal liability in general and imposing a judicial fine in particular. The actions of a person aimed at compensating for damage or making amends for the harm caused by the deed often do not indicate the leveling of the consequences that pose a threat to environmental safety (Figure 1).

Committing an environmental crime of small or gravity for the first time	Compensation for damage / other reparation for damage caused by a crime	Exemption from criminal liability with the imposition of a court fine
 <p data-bbox="255 1163 422 1188">(Art. 258 CC RF)</p>		

**Fig. 1.** Exemption from criminal liability for an environmental crime with the imposition of a court fine

The study of the desired issue has a high degree of relevance and requires a comprehensive in-depth study.

## 2 Methods

The criminal law provision of the environment and ecological safety has repeatedly been the subject of a number of doctrinal studies, including those of a fundamental nature. So, S.I. Golubev devoted his works to the theoretical and applied aspects of sentencing for environmental crimes [3]. Issues of theory and practice of designing criminal law norms on responsibility for environmental crimes were considered by Yu.A. Timoshenko [4]. Other scientists focused on the development of legislation on criminal liability for environmental crimes [2], the causes and conditions for committing environmental crimes [5], as well as

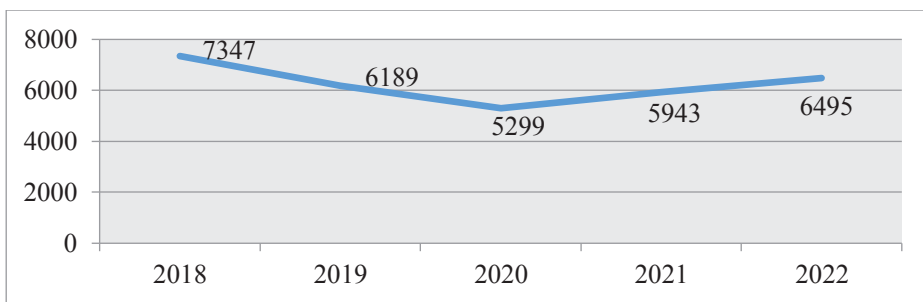
the prevention of specific crimes that pose a threat to the environment [6]. Actual issues of exemption from criminal liability with the appointment of a judicial fine were developed by such scientists as N.S. Lutsenko [7], N.Yu. Skripchenko [8], D.V. Golenko [9] and others.

Despite the solid volume of theoretical and applied research, many issues remain without proper attention. First of all, we are talking about the legitimacy of exemption from criminal liability with the appointment of a court fine for 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 us to make a comprehensive analysis of the phenomenon under consideration and provide scientific justification for a number of topical issues.

The methodological basis of this study is represented by both general scientific and particular methods of scientific knowledge: system-structural, inductive, deductive and content analysis.

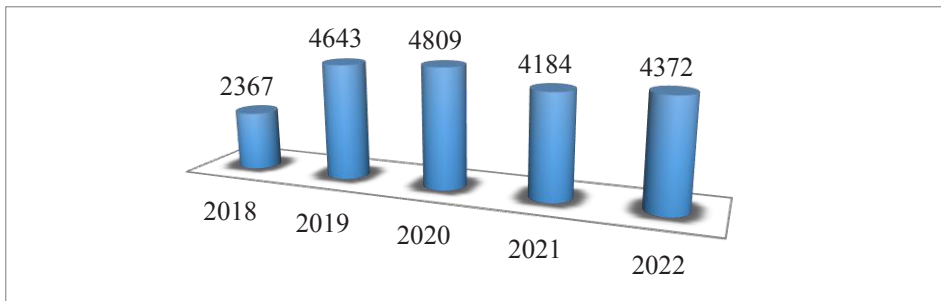
### 3 Results

1. The number of environmental crimes registered in Russia and, accordingly, the number of persons convicted for them is increasing every year (Figure 2).

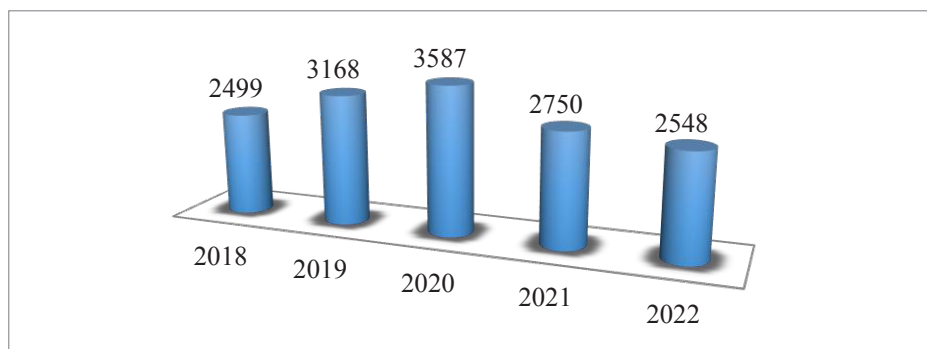


**Fig. 2.** Number of people convicted of environmental crimes in the period from 2018 to 2022

2. An analysis of the statistical data provided by authorized state authorities indicates an increase in the number of dismissed cases initiated on the fact of committing environmental crimes (Figure 3). At the same time, the number of cases of exemption from criminal liability with the imposition of a court fine for the sought socially dangerous acts tends to decrease (Figure 4), however, is still at a high level.



**Fig. 3.** Number of dismissed criminal cases for environmental crimes in the period from 2018 to 2022.



**Fig. 4.** Number of exemptions from criminal liability for environmental crimes with the imposition of a court fine in the period from 2018 to 2022

3. A scientifically substantiated change in the status of another measure of a criminal law nature in the form of a judicial fine. The current situation has several solutions, the implementation of which depends on social and legal guidelines, the needs of society and the state.

1) changing the provisions of art. 76.2 of the Criminal Code of Russian Federation. In addition to establishing the fact of committing a crime of small or medium gravity for the first time, we consider it necessary to determine an exhaustive list of acts for which a person may be exempted from criminal liability with the imposition of a judicial fine.

2) the second outcome of events is seen in the recognition of a judicial fine as a measure of a criminal-legal nature, assigned to a person who has committed a crime of small or medium gravity as part of an exemption from punishment, followed by consolidation in Ch. 12 of the Criminal Code of Russian Federation.

## 4 Discussion

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. At the same time, it is impossible not to state the emerging theoretical and applied difficulties in the implementation of the norms-novels of the Criminal Code of Russian Federation. In particular, we are talking about exemption from criminal liability with the appointment of another measure of a criminal law nature in the form of a judicial fine.

From the text of the explanatory note to the federal law concerning potential changes in the provisions of the Criminal Code, it follows that the desired measure of a criminal law nature is:

- a preventive measure of criminal law impact applied by authorized state authorities in relation to a person who has committed a crime of small or medium gravity for the first time;
- a measure of state coercion, the implementation of which must be considered outside the framework of criminal liability;
- an additional opportunity to compensate for the rights of victims violated by the crime;

- a subsidiary type of exemption from criminal liability, which helps a person who has violated a criminal law prohibition to avoid the negative consequences associated with a criminal record;

- a way to expand the range of opportunities for judicial and investigative bodies to exempt from criminal liability for crimes of small and medium gravity [7, p. 104].

In the specialized literature, supporters of the norms-novels under consideration (Art. 76.2; Ch. 15.2 of the Criminal Code of Russian Federation) stated the possibility of implementing several social and legal tasks at once. In particular, we are talking about counteraction to crime; a total reduction in the number of persons with a criminal record; [8, p. 114]; a subsidiary source of financing the country's budget and reducing the cost of maintaining law enforcement and judicial bodies [9, p. 80]. In this regard, another measure of a criminal law nature, introduced in the Criminal Code of Russian Federation in 2016, harmoniously fit into the ongoing policy of humanization of criminal legislation and became in demand in law enforcement practice (figure 3).

The widespread demand for the desired measure of state coercion in law enforcement has become the subject of a critical assessment by representatives of the highest bodies of state power. Thus, in the opinion of the Prosecutor General of Russian Federation, a judicial fine "became a kind of loophole for those to whom it should not be imposed." I. V. Krasnov stated the facts of exemption from criminal liability with the imposition of a judicial fine on persons accused of crimes against the sexual integrity of minors, of committing malfeasance, including corruption, and of negligent crimes resulting in the death of a person. All this, according to the head of the supervisory agency, requires urgent measures, as well as legislative changes to reduce the possibility of imposing a judicial fine [10; 11, p. 124].

Indeed, at present, the implementation of a judicial fine depends on two criteria, which were emphasized by the Chairman of the Supreme Court of Russia Vyacheslav Lebedev: "... the crime is not serious, it was committed for the first time and the defendant compensated for the damage" [10].

Contrary to what has been said, it is worth noting that not every damage caused by a crime can be compensated, including in monetary terms. Compensation can only mitigate the negative consequences for the victim. Moreover, the non-exhaustive list of ways to compensate for the rights violated by the crime, presented by the guiding explanations of the Supreme Court of Russian Federation, granted a certain freedom of choice to the authorized state authorities. So, the court in the course of proceedings in a specific criminal case is empowered 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 [12].

In order to analyze the post-criminal socially approved actions of a person who has committed a crime of small or medium gravity, ways of compensating for damages or otherwise making amends, as well as assessing the proportionality of the harm caused and compensated, we think it is appropriate to consider the implementation of the rules governing exemption from criminal liability with the imposition of a judicial fine, for environmental crimes.

The annual commission of these acts contributes to the death of nature, the destruction of ecosystems, environmental pollution, which has detrimental consequences for the country as a whole and human health in particular [13, p. 84]. In this regard, ensuring environmental safety and eliminating the accumulated harm to the environment is a separate block of environmental issues that are in the department of the Ministry of Natural Resources of Russia [14].

The previously given statistical data (figure 1) indicates an increase in the number of convicted persons for environmental crimes and a decrease in cases of termination of

criminal prosecution in accordance with Art. 76.2 of the Criminal Code of Russian Federation. However, their number is still at a high level. In order to impose a judicial fine, in addition to committing a category of crimes defined by law (small or medium gravity), it is necessary to compensate for the legitimate interests of society and the state violated as a result of a criminal law violation. As a result, a logical question arises regarding the method of compensating for damage or otherwise making amends for the harm caused by a specific crime of the chapter of the criminal law in question.

Thus, the Chunsky District Court of the Irkutsk Region decided to terminate the criminal case and, accordingly, the criminal prosecution against O., accused of committing a crime under paragraph "d", part 2 of Art. 260 of the Criminal Code of Russian Federation, with the appointment of a court fine in the amount of four hundred thousand rubles [15].

It seems that the harm caused by illegal logging, as well as damage to the extent of stopping the growth of forest plantations on a large scale, can be compensated (smoothed out), for example, by acquiring and planting new forest plantations. However, the judicial body in question stated a different way of compensation for damage, namely, the fact of providing charitable assistance to the social rehabilitation center [15].

The Kyrinsky District Court of the Trans-Baikal Territory decided to terminate the criminal prosecution against B. and L., suspected of committing a crime under Part 2 of Art. 258 of the Criminal Code of Russian Federation and appoint a measure of a criminal law nature in the form of a judicial fine in the amount of fifty thousand rubles each. As a way to make amends for the harm caused by the crime, the court also considered charitable assistance to a children's institution [16].

The fact of providing voluntary gratuitous assistance to a socially-oriented institution characterizes the suspects from the positive side. However, such judicial practice is vulnerable from the point of view of the provisions of the criminal law. It seems very controversial to compare the fact of providing charity to the institution and the especially large damage caused by illegal hunting to public relations in the field of protection and rational use of wildlife.

The Khankaysky District Court of Primorsky Territory decided to terminate the criminal case against K., who was accused of committing a crime under Part 2 of Art. 258 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 one hundred and fifty thousand rubles. In its decision, the court stated the provision of "... periodic charitable assistance to orphanages", as well as the defendant's awards "155 years of the city of Vladivostok" and "70 years of the Victory of the Soviet people in the Great Patriotic War of 1941-1945" as a fact of reducing the public danger of the individual and the act he committed [17].

Such judicial practice suggests the admissibility of committing environmental crimes by a person who has commemorative awards, since the fact of their presence can be regarded as "immunity" from criminal prosecution. It is difficult to recognize the circumstance described in the court decision as a way to make amends for the harm caused by the crime. It seems that the neutralization of the harmful consequences resulting from the violation of the criminal law prohibition should be expressed in post-criminal, active, positive, as well as socially approved, actions of the person.

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 to stop in connection with the appointment of a criminal law measure in the form of a judicial fine. According to the court, "... the damage caused by the crime was smoothed out by providing charitable assistance to orphans" [18].

The examples given, as well as other measures from the judicial practice of considering criminal cases initiated on the fact of committing environmental crimes, testify to the

existing contentious issues regarding the implementation of provisions of the criminal law. The following facts are doubtful:

- variability of ways to compensate for damage or otherwise make amends for harm caused by environmental crime;
- subjective judicial assessment of a specific post-criminal positive action of a person who has committed an environmental crime, as a way to compensate for the violated legitimate interests of society and the state;
- proportionality of the damage caused and its compensation (making amends);
- comparison of public relations, which suffered damage as a result of an environmental crime, with the party in respect of which the damage is compensated.

## 5 Conclusion

It seems that the solution of the problems stated in this study is in a change in the status of another measure of a criminal law nature in the form of a judicial fine. Currently, the type of exemption from criminal liability under consideration has undergone a certain "transformation". Contrary to expectations, the court fine has become a kind of "legal ransom" from the criminal liability of privileged citizens who have committed a crime of small or medium gravity for the first time. In order to terminate the criminal prosecution, it is necessary to compensate for the damage caused. In most cases, as practice shows, in monetary terms. In this case, the consent (disagreement) of the victim is not decisive.

The current situation has several solutions, the implementation of which depends on social and legal guidelines, the needs of society and the state.

1. Amending the provisions of art. 76.2 of the Criminal Code of Russian Federation. In addition to establishing the fact of committing a crime of small or medium gravity for the first time, the authors consider it necessary to determine an exhaustive list of acts for which a person may be exempted from criminal liability with the imposition of a judicial fine.

The concept of "damage or other reparation" is very abstract. Indeed, we believe 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. But it must be emphasized that the methods of compensation for damage and making amends must be legal and not infringe on the rights of third parties.

2. The second outcome of events is seen in the recognition of a judicial fine as a measure of a criminal-legal nature, assigned to a person who has committed a crime of small or medium gravity as part of an exemption from punishment, followed by consolidation in Ch. 12 of the Criminal Code of Russian Federation. The obligation of a person to be subjected to deprivations and restrictions of a material nature is more consistent with this institution than with Chapter 11 of the Criminal Code of Russian Federation. It seems that the release of a person from criminal liability implies a complete refusal of the state from censure, as well as the termination of social relations that have developed as a result of a violation of a criminal law prohibition.

This decision corresponds to the truth of the essence, the social and legal nature of the considered measure of criminal law impact. In addition, it excludes a number of theoretical

and practical issues, such as the competition of norms governing exemption from criminal liability; the possibility of "payback" from criminal liability, etc.

## References

1. The state of crime in Russia in January-December 2022 // Ministry of Internal Affairs of Russian Federation: official website. URL: <https://mvd.rf/reports/item/35396677/> (access date: 06/15/2023).
2. Kashepov V.P. *Development of legislation on criminal liability for environmental crimes*, Journal of Russian Law **6**, 29-39 (2012)
3. Golubev S.I. Punishment for environmental crimes: theoretical and applied research: author. dis. ... cand. legal Sciences. Kazan, 2015. - 26 p.
4. Tymoshenko. Yu.A. Designing criminal law norms on responsibility for environmental crimes: problems of theory and practice: author. dis. ... cand. legal Sciences. (M., 2019)
5. Dubovik O.L., Zhalinsky A.E. Causes of environmental crimes: monograph. (M., Science, 1988)
6. Ditsevich Ya.B., Belykh O.A., Rusetskaya G.D. *Fighting crime in the field of forest management: problems and prospects*, All-Russian criminological journal **2**, 308-317 (2017)
7. Lutsenko N.S. Judicial fine: problems of theory and law enforcement: dis. ... cand. legal. Sciences. (Khabarovsk, 2019)
8. Skripchenko N. Yu. *Judicial fine: problems of implementation of legislative novels*, Journal of Russian Law **7**, 106–114 (2017)
9. Golenko D. V. *Judicial fine as another measure of a criminal law nature*, Legal Bulletin of Samara University **1**, 78–82 (2018)
10. “They won’t pay off”, Rossiyskaya Gazeta. Dec 20, 2020.
11. Korneev S.A. Criminal liability and other measures of a criminal law nature in the structure of criminal law impact: dis. ... cand. legal Sciences. (Ryazan, 2021)
12. On the application by the courts of legislation regulating the grounds and procedure for exemption from criminal liability: Resolution of the Plenum of the Supreme Court of Russian Federation No. 19 dated June 27, 2013 // Official website of the Supreme Court of Russian Federation. URL: <https://www.vsrp.ru/documents/own/8350/> (access date: 06/15/2023).
13. Stefan A. V. *About the features of the development of environmental crime*, Victimology **1**, 84-92 (2020)
14. Results of 2021: environmental safety // Official website of the Ministry of Natural Resources and Ecology of Russian Federation. URL: <https://www.mnr.gov.ru/> (access date: 06/21/2023).
15. Decree No. 1-185/2021 on criminal case No. 1-185/2021 dated June 29, 2021 // Archive of the Chunksky District Court of the Irkutsk Region. URL: <https://sudact.ru/regular/doc/TU1SyXlmZ2mP/> (access date: 06/21/2023).
16. Decree No. 1-17/2020 on criminal case No. 1-17/2020 dated February 28, 2020 // Archive of the Kyrinsky District Court of the Trans-Baikal Territory. URL: <https://sudact.ru/regular/doc/PJF23YAPnCQq/> (access date: 06/21/2023).



17. Decree No. 1-15/2019 on criminal case No. 1-15/2019 dated February 14, 2019 // Archive of the Khankai District Court of Primorsky Krai. URL: <https://sudact.ru/regular/doc/tt5NDmYe2XWj/> (access date: 06/21/2023).
18. Decree No. 1-388/2020 on criminal case No. 1-388/2020 dated July 9, 2020 // Archive of the Oktyabrsky District Court of Rostov-on-Don. URL: [//sudact.ru/regular/doc/H2qnIbsUn6bK/](https://sudact.ru/regular/doc/H2qnIbsUn6bK/) (access date: 06/21/2023).
19. Brovkina, A., Rudenko, A., Korneev, S., Temirkhanov, M., Tarakanov, I. *Social adaptation of convicts in the urban planning and greening industry*, E3S Web of Conferences **244**, 12014 (2021). DOI: 10.1051/e3sconf/202124412014.
20. Geranin V.V., Zharko N.V., Zakharova S.S., Korneev S.A., *Environmental factors in the proceedings organization on the compulsory medical measures application*, E3S Web of Conferences **258**, 05016 (2021). DOI: 10.1051/e3sconf/202125805016.