

Criminal liability for violation of environmental protection

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Abstract. In the Russian Federation, industrial civil construction is currently one of the leading places in economic activity. It is one of the major factors of negative impact on the environment. At the construction stage, the most significant negative impacts on the environment are: air pollution by gas and dust emissions; pollution of underground and waste waters; pollution of the environment by construction waste; violation of the natural landscape of the area. One of the means of responding to violations of the rules of environmental protection and encroachment on environmental safety in the course of construction is the application of criminal law measures against subjects of socially dangerous behavior. In the process of the study, the following legislative problems of regulating environmental crimes were identified: 1) the blanket nature of legal norms providing for liability for their commission; 2) the widespread use of evaluative concepts in characterizing the elements of an environmental crime; 3) the continuing nature of the acts in question; 4) features of the subject of environmental crime. These problems, to one degree or another, reduce the effectiveness of the criminal law impact on those responsible for committing environmental crimes in the construction industry. Based on the results of the study, a proposal was made to improve the norms of criminal legislation providing for liability for environmental crimes that violate the rules of environmental protection. It is proposed to provide for liability for violation of the requirements of environmental expertise. In addition, cases of applying the institute of reasonable risk in construction activities, which is a circumstance precluding the criminality of the act, are highlighted.

1 Introduction

The universal right to a favorable environment, reliable information about its condition and compensation for damage caused to human health or property by environmental offenses is guaranteed by Article 42 of the Constitution of the Russian Federation. One of the means of responding to violations of the rules of environmental protection and encroachment on environmental safety is the application of criminal law measures to the subjects of socially dangerous behavior.

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According to the Judicial Department at the Supreme Court of the Russian Federation, over the past five years (from January 2018 to December 2022), 31,271 persons have been convicted of environmental crimes under Articles 246-262 of the Criminal Code of the Russian Federation (hereinafter referred to as the Criminal Code of the Russian Federation) (according to the main qualification; 2018 - 7345 persons, 2019 - 6189 persons, 2020 - 5299 persons, 2021 - 5943 persons, 2022 - 6495 persons). An analysis of the number of convicts for various environmental crimes in the period we are considering allows us to state that the largest number of convicts were those found guilty of illegal logging of forest plantations (Article 260 of the Criminal Code of the Russian Federation), illegal extraction (catching) of aquatic biological resources (Article 256 of the Criminal Code of the Russian Federation), illegal hunting (Article 258 of the Criminal Code of the Russian Federation), as well as illegal extraction and trafficking of especially valuable wild animals and aquatic biological resources belonging to species listed in the Red Book of the Russian Federation and (or) protected by international treaties of the Russian Federation (Article 2581 of the Criminal Code of the Russian Federation) (see: diagram 1).

One of the leaders in the economic activity of the Russian Federation today is the construction industry. In it, a special place is given to the legal regulation of not only construction activities, but also compliance with the requirements of environmental legislation in the design, construction, commissioning and operation of various industrial facilities. Construction is one of the major factors of negative impact on the environment. The anthropogenic impact of construction is manifested at all stages of production - from the extraction of building materials to the operation of constructed facilities [1, p. 20-22]. The main requirements for ensuring environmental safety in construction are regulated by federal laws that regulate both general issues of nature management and environmental protection, and the legal regime of certain types of natural resources. The main ones are: Federal Law No. 7-FL of January 10, 2002 «On Environmental Protection», Federal Law No. 174-FL of November 23, 1995 «On Environmental Expertise», Town Planning Code of the Russian Federation of December 29, 2004 No. 190-FL, etc. At all stages of construction, technologies and regulatory requirements in the field of environmental protection for the restoration of the natural environment, the rational use and reproduction of natural resources must be observed.

In carrying out their activities, construction companies often violate legal requirements related to compliance with environmental protection rules in the course of work, which entails bringing the perpetrators to liability, including criminal liability [2, p. 19-22].

In the Russian Federation, the national project «Ecology» is currently being implemented, which was developed for the period from 2018 to 2024. This project has revealed a number of shortcomings of the current Russian environmental legislation, which limit its effectiveness and negatively manifest themselves in the practice of its application, which are due to the inconsistency of regulations aimed at improving environmental safety in Russia [3 p. 18]. It should be recognized that certain standards for the implementation of construction work are outdated and do not correspond to the level of modern development of building technologies, but at the same time, in view of their actions, they are subject to mandatory application, despite the contradiction of individual legal requirements to each other. It should be assumed that in this case, persons carrying out construction activities are forced to act in a situation of reasonable risk, which is a circumstance that precludes the criminality of the act.

Along with the shortcomings of environmental legislation, the norms of criminal law regulating criminal liability for environmental crimes also contain certain contradictions and inaccuracies that do not allow to fully resolve the issues of bringing to justice those involved in violations of environmental protection rules during construction work. All this

determines the relevance of the topic of criminal liability for violation of the rules of environmental protection during construction.

The purpose of the study is to develop criteria for the criminal law assessment of environmental damage caused as a result of construction activities from the point of view of its admissibility, in order to reasonably resolve the issue of criminal liability of persons who have committed violations of environmental protection rules during construction work or exemption from liability in view of circumstances precluding the criminality of the act.

To achieve this goal, it is necessary to achieve the following goals:

- analyze Russian legislation providing for liability for environmental crimes committed in the course of construction activities;
- evaluate the statistics of prosecution for environmental crimes related to violation of environmental protection rules;
- study published judicial practice in criminal cases on violations of environmental protection rules;
- highlight the problems of legislative regulation of the norms providing for criminal liability for environmental crimes and make proposals to improve the legislation;
- indicate the grounds for exemption from criminal liability for justified violations of environmental legislation.

2 Methods

The problems of criminal liability for committing environmental crimes, including those related to the violation of environmental protection rules, have been the subject of numerous scientific studies. So, N.A. Lopashenko studied the features of the construction of the norms of criminal law providing for liability for environmental crimes (Moscow, 2017) [4]. A number of monographic studies, including dissertations, are focused on the issues of criminal law qualification of crimes in the field of environmental safety and the problems of responsibility for them, such as: M.I. Verevicheva Environmental crimes in the criminal law of Russia (Ulyanovsk, 2018) [5], I.V. Lavygina Ecological crimes: criminal-legal characteristics and problems of responsibility (Omsk, 2002) [6]. In the modern criminal law doctrine, other scientific studies are also carried out on the stated issues, despite this, the problems of criminal liability for violating the rules of environmental protection remain unresolved to date.

In the process of conducting this study, various general scientific and particular scientific methods of cognition were consistently applied. When assessing the development of the Russian criminal legislation that regulates liability for environmental crimes, the system-structural method of scientific knowledge was used.

The study of environmental crimes from the standpoint of the requirements of environmental law was carried out using the comparative legal method of cognition. This made it possible to compare the provisions of criminal and environmental law, identify existing contradictions and suggest a way to eliminate them.

When analyzing data on convictions for various environmental crimes in the period from 2018 to 2022, a statistical method was used.

At the final stage of the study of the problems of liability for environmental damage caused during construction work, as well as exemption from liability in cases of reasonable risk, the dialectical method of cognition was used. The use of this method, along with the methods of formal logic, made it possible to formulate conclusions on the study and make proposals for improving the provisions of criminal law in the field of environmental safety.

3 Results

In the process of the study, the following legislative problems of regulating environmental crimes were identified: 1) the blanket nature of legal norms providing for liability for their commission; 2) the widespread use of evaluative concepts in characterizing the elements of an environmental crime; 3) the continuing nature of the acts in question; 4) special features of the subject of environmental crime.

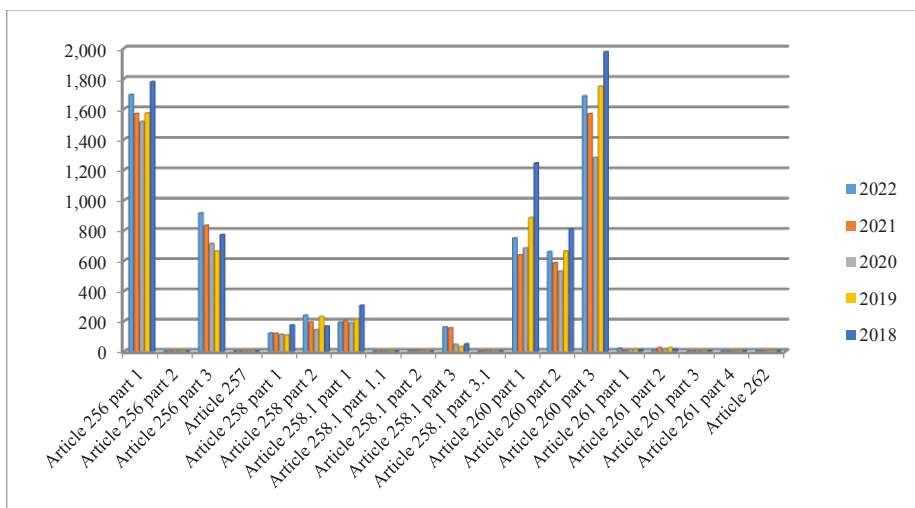


Fig. 1. Dynamics of convictions for committing environmental crimes related to the illegal extraction of aquatic biological resources, illegal hunting and the destruction or damage of forest plantations in the period from 2018 to 2022

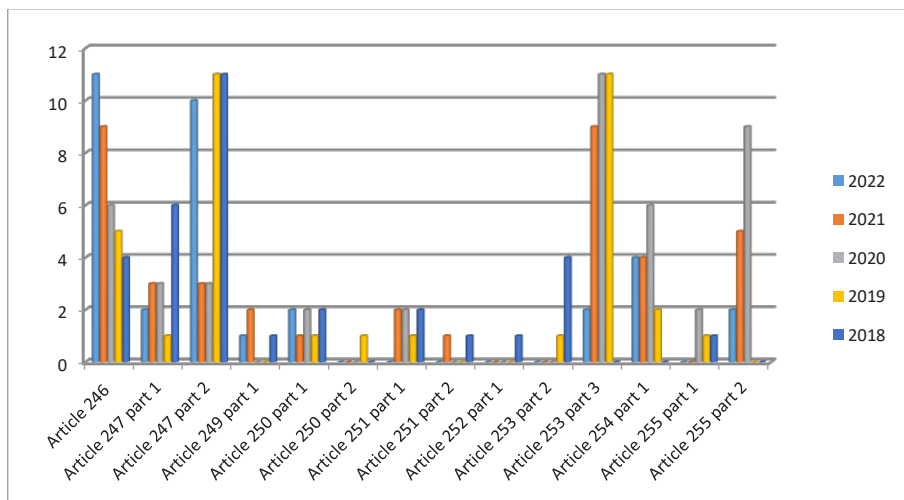


Fig. 2. Dynamics of convictions for committing environmental crimes related to violation of environmental protection rules in the period from 2018 to 2022

These problems, to one degree or another, reduce the effectiveness of the criminal law impact on the perpetrators of environmental crimes.

Based on the results of the study, a proposal was made to improve the norms of criminal legislation providing for responsibility for committing environmental crimes that violate the

rules of environmental protection. It is proposed to provide for liability for violation of the requirements of environmental expertise. In addition, cases of applying the institute of reasonable risk in construction activities, which is a circumstance precluding the criminality of the act, are highlighted.

4 Discussion

The study of the issues of criminal liability for environmental crimes committed by the subjects of construction activities allowed us to come to the conclusion that in the process of its implementation, crimes may be committed under Articles 246 of the Criminal Code of the Russian Federation (Violation of the rules of environmental protection in the course of work), Article 247 of the Criminal Code of the Russian Federation (Violation of the rules for handling environmentally hazardous substances and wastes), Article 250 of the Criminal Code of the Russian Federation (Water pollution), 251 of the Criminal Code of the Russian Federation (Air pollution), 252 of the Criminal Code of the Russian Federation (Pollution of the marine environment) and 255 of the Criminal Code of the Russian Federation (Violation of the rules for the protection and use of subsoil). This is due to the fact that at the construction stage the most significant negative impacts on the environment are: air pollution by gas and dust emissions; pollution of underground and waste waters; pollution of the environment by construction waste; violation of the natural landscape of the area.

The proportion of convictions for these elements of environmental crimes, provided for in Chapter 26 of the Criminal Code of the Russian Federation, is insignificant, since there are problems in qualifying acts that encroach on environmental safety (see: Fig 2).

The problems of prosecution for the considered elements of environmental crimes are due to, firstly, the blanket nature of the criminal law norms regulating them. According to N.A. Lopashenko, environmental crimes have «... almost one hundred percent blanket nature of the dispositions of articles ...» [4, p. 91]. At the same time, the blanket basis is made up of more than 50 federal laws and over 800 other regulatory legal acts. Given this circumstance, N.I. Pikurov characterizes the current situation as “a boundless expansion of the infrastructure of the criminal law at the expense of thousands ... of normative acts of a different industry” [7, p. 48]. For a correct criminal-legal assessment of the committed act, it is necessary, in addition to the norms of the Criminal Code of the Russian Federation, to be guided by the provisions of federal laws and other regulatory legal acts regulating various aspects of environmental protection. The Supreme Court of the Russian Federation also points to this circumstance. Thus, in a review of the practice of application by courts of the provisions of Chapter 26 of the Criminal Code of the Russian Federation on environmental crimes, approved by the Presidium of the Supreme Court of the Russian Federation on June 24, 2022, it is emphasized that when considering criminal cases of this category, it is necessary to establish which violation of requirements in the field of environmental protection and nature management, contained in the relevant regulatory legal acts, is imputed to the defendant, with their citation in the verdict with reference to specific rules (paragraph, part of the article, article).

A.I. Zvereva notes that «the phenomenon of blanketness is inherent both in the logical criminal law norm and in the prescription formally expressed in the text of the criminal law – the disposition of the article of the Special Part.» In her opinion, this allows us to distinguish between the concepts of a blanket disposition, a blanket article and a blanket norm and to include in the concept of blanketness «the presence of some legally significant connection between two branches of law», and to include those in which «terms and phrases of other branches of law, the disclosure of the content of which is important for the qualification of a crime» [8]. A.V. Naumov, considering the issues of the blanketness of

criminal law norms, divided it into the explicit one, which refers to a specific normative act of another branch of law, and the implicit one - without such a reference [9, p. 92-93].

Taking into account the diversity of normative regulation of environmental safety issues, we note that it is impossible to form an exhaustive list of legislation constituting the blanket basis of crimes that infringe on environmental safety during construction work due to the intensive dynamics of legislative activity, manifested both in the adoption of new legislative acts and introduction of amendments and additions to the existing regulations. The solution to this issue is to focus the attention of the law enforcer on such normative legal acts that are able to fill the specific content of the wording of the articles of the Criminal Code of the Russian Federation we are considering, thereby facilitating the process of legal assessment of the committed act.

Secondly, the presence of numerous evaluation categories used by the legislator in describing the objective signs of encroachments on environmental safety. According to A.I. Raroga evaluative signs are of two types: moral and ethical nature and quantitative. The former cannot be recognized as formally defined and, therefore, must be minimized in the law. The latter «are necessary and useful if they are filled with specific content and are interpreted by the legislator unambiguously» [10, p. 100].

The components of environmental crimes related to violation of the rules of environmental protection during construction are characterized by quantitative evaluative signs: a significant change in the radioactive background, mass death of animals, significant harm, pollution, clogging, other changes in the natural properties of water, other serious consequences, etc. . It should be noted that they characterize the signs of the objective side of the crimes in question - the act and consequences.

The evaluative signs of encroachments on the safety of the environment, despite their «quantitative» nature, are uncertain, which means that the law enforcer does not have even approximate guidelines not only for quantitative, but also for their reasonable qualitative characteristics [8]. In our opinion, the legislator should reduce the number of evaluation categories in the regulation of environmental crimes. The content of evaluative features should be disclosed in the relevant notes to the articles of the Criminal Code of the Russian Federation.

Third, the continuing nature of the crimes in question. As a rule, the violation of environmental protection rules in the course of construction works is separated in time from the negative consequences on the environmental safety of nature management, which greatly complicates the establishment of a causal relationship between the committed act and the consequences that have occurred.

Fourthly, it is not always possible to identify the persons involved in the commission of acts that led to the deterioration of the environmental situation, which is also determined by the time between the committed violations and the consequences. With regard to the content of the disposition of Article 246 of the Criminal Code of the Russian Federation, the subject of violation of the rules of environmental protection in the stage of design, placement, construction, commissioning and operation of industrial, agricultural, scientific and other facilities is the person responsible for compliance with these rules. It should be recognized that at various stages of construction, responsibility for compliance with the rules of environmental protection rests with different people, and, therefore, it is necessary to investigate in detail the issue of the time of violation of the established rules, to determine at what stage of construction violations were committed, which subsequently caused harm to the environment .

As we have already noted, at all stages of construction, environmental protection rules must be observed. When designing a construction site, the allowable anthropogenic load on the environment and measures to reduce it should be taken into account. At this stage, the

responsibility for violating the rules of environmental protection should be borne by the person responsible for the development of project documentation.

In order to prevent possible negative consequences of the ongoing construction on the environment, as well as to avoid bringing to responsibility of persons engaged in construction activities, it becomes necessary to conduct an environmental review, the implementation of which is regulated by the Law of the Russian Federation «On Environmental Assessment» dated 19.07.1995. During its implementation, the compliance of the planned construction activity with environmental requirements is established and the admissibility of the implementation of the object of environmental expertise is determined in order to prevent possible adverse effects of this activity on the environment and related possible adverse consequences of the implementation of the object of environmental expertise [11].

The objects of the state ecological expertise include materials for substantiating licenses for carrying out activities that can have an impact on the natural environment; draft technical documentation substantiating construction activities that can have a direct or indirect impact on the environment.

Public ecological expertise is organized and carried out at the initiative of citizens and public organizations prior to the state environmental expertise or simultaneously with it, regardless of whether the state expertise of the object has already been carried out.

Based on the results of the environmental assessment, the commission prepares a conclusion containing substantiated results on the admissibility of the impact on the environment of economic and other activities that are subject to the state environmental review.

A positive conclusion of the state environmental review is one of the mandatory conditions for financing and implementation of the object of the state environmental review and has legal force for a period determined by the specially authorized state body in the field of environmental review, conducting a specific state environmental review. Upon the expiration of the period specified in the conclusion, it is planned to re-conduct the environmental review.

A positive conclusion of the state ecological expertise loses its legal force in the following cases: completion of the object of the state ecological expertise according to the comments of the earlier state ecological expertise; changes in the conditions of nature management by a specially authorized state body in the field of environmental protection; implementation of the object of the state environmental review with deviations from the documentation that received a positive conclusion from the state environmental review, and (or) in the event of changes to the specified documentation; expiration of the positive conclusion of the state ecological expertise; making changes to the design and other documentation after receiving a positive conclusion from the state environmental review.

All these provisions are applicable to the implementation of construction activities. Any changes to the project documentation entail the loss of legal force of the previously received positive conclusion of the environmental assessment.

The legal consequence of a negative conclusion of the state environmental review is a ban on the implementation of the object of the state environmental review.

Persons guilty of violating the rules of environmental safety in the course of construction work, which entailed serious direct or indirect environmental and other consequences, are liable in accordance with the Criminal Code of the Russian Federation. However, there is no article in the Criminal Code providing for liability for violation of the legislation on environmental expertise, which does not allow direct prosecution of persons who committed these violations that entailed serious environmental consequences.

As we noted earlier, in view of the blanket nature of the norms providing for liability for environmental crimes, and the need to take into account a significant number of regulations

that ensure compliance with the rules of environmental protection in the implementation of construction activities, in practice there are cases when the subject of construction activity is forced to carry out risky activities to achieve a public benefit. It is the risky activity that caused harm to environmental safety that is subject to assessment in terms of its legitimacy.

We emphasize that a justified risk is an objectively necessary, prepared, permissible act of a person aimed at achieving a socially useful goal, implemented in a situation of uncertainty with an alternative choice of behavior, which, despite the countermeasures taken, caused harm to interests protected by criminal law [11].

In accordance with Article 41 of the Criminal Code of the Russian Federation, the following conditions for the legitimacy of risk are distinguished:

The act commissioned to achieve a socially useful goal.

The impossibility of achieving the specified goal by non-risk actions (inaction).

The obligation of the person who has admitted the risk to take sufficient measures to prevent harm to interests protected by criminal law.

Carrying out risky activities within acceptable limits.

In addition, in the theory of criminal law, one more condition is singled out - the compliance of actions with modern scientific and technical knowledge and experience.

As we noted, one of the conditions for the legitimacy of a justified risk is the implementation of risky activities within the permissible limits. In our opinion, it is regulated in Part 3 of Art. 41 of the Criminal Code of the Russian Federation and fixes the limits, the excess of which entails criminal liability, albeit with extenuating circumstances.

As a condition of legitimacy, it means that the risk must not be known to be associated with a threat to the lives of many people, an environmental disaster or a public disaster. Otherwise, it is not recognized as justified. Awareness in this case means that the person quite realistically foresaw the onset of these socially dangerous consequences at the time of making a decision in a situation of uncertainty, but at the same time took a risk.

In situations involving the threat of an ecological catastrophe (that is, irreversible or large-scale damage to the environment), the risk is under no circumstances recognized as justified, and the actions of a person are always criminally punishable. Of course, criminal liability in this case can only occur if harmful consequences are caused.

Determination of the admissibility of certain actions should be carried out, before the start of construction work, by state and (or) public environmental assessment. In all cases of resolving the issue of the acceptability of a risk, one should proceed from the proportionality of the real benefit that it can bring with the harm that can occur.

Thus, in the event of a negative conclusion of the environmental review, the person carrying out construction activities and preparing the project documentation is not entitled to implement the project submitted for review until the indicated shortcomings, which may lead to negative environmental consequences, have been completely eliminated and a repeated environmental review has been carried out, which has given a positive conclusion on the project.

The conclusion of the ecological expertise cannot be positive if even minor shortcomings of the project are indicated. It is subject to mandatory re-ecological examination after their elimination.

Another question is if a person carries out experimental (risky) activities within the limits of what is permitted, but this entails negative consequences. In these cases, the person should be released from criminal liability, although causing harm to citizens or organizations may entail civil liability of these persons.

In addition, it seems to us reasonable to include in the Criminal Code of the Russian Federation an article providing for liability for violating the legislation on environmental expertise, if this entailed a significant change in the radioactive background, harm to human health, the spread of epidemics or epizootics, or other grave consequences.

5 Conclusion

Despite the significant environmental damage caused by crimes related to violation of environmental protection rules in the course of construction work, the percentage of those prosecuted for their commission remains very low for a long time. The study of the issues of criminal liability for environmental crimes of the group under consideration allows us to state that this is due to the problems of criminal law regulation of the norms providing for liability for violations of labor protection rules, which include: 1) the blanket nature of legal norms providing for liability for their commission; 2) the widespread use of evaluative concepts in characterizing the elements of an environmental crime; 3) the continuing nature of the acts in question; 4) features of the subject of environmental crime.

It is the complexity of the very legislative structure of the relevant offenses and the internal inconsistency of a huge layer of environmental regulations that determine the low level of criminal law impact on persons involved in committing environmental crimes.

Taking into account the diversity of normative regulation of environmental safety issues, we note that it is impossible to form an exhaustive list of legislation constituting the blanket basis of crimes that infringe on environmental safety during construction work due to the intensive dynamics of legislative activity, manifested both in the adoption of new legislative acts and introduction of amendments and additions to the existing regulations. The solution to this issue is to focus the attention of the law enforcer on such normative legal acts that are able to fill the specific content of the wording of the articles of the Criminal Code of the Russian Federation we are considering, thereby facilitating the process of legal assessment of the committed act.

The components of environmental crimes related to violation of the rules of environmental protection during construction are characterized by quantitative evaluative signs: a significant change in the radioactive background, mass death of animals, significant harm, pollution, clogging, other changes in the natural properties of water, other serious consequences, etc. The legislator should reduce the number of evaluation categories in the regulation of environmental crimes, and the content of the existing evaluative features should be disclosed in the relevant notes to the articles of the Criminal Code of the Russian Federation.

In addition, it is necessary to specify the circle of persons who may act as subjects of environmental crimes related to the violation of environmental protection rules.

In view of the blanket nature of the norms providing for liability for environmental crimes, and the need to take into account a significant number of regulations that ensure compliance with the rules of environmental protection in the implementation of construction activities, in practice there are cases when the subject of construction activity is forced to carry out risky activities in order to achieve a socially useful goal. It is the risky activity that caused harm to environmental safety that is subject to assessment in terms of its legitimacy.

If a person carries out an experimental (risky) activity within the limits of what is permitted, but this entails negative consequences, the person is subject to exemption from criminal liability, although causing harm to citizens or organizations may entail civil liability of these persons.

Additionally, it seems to us reasonable to include in the Criminal Code of the Russian Federation an article providing for liability for violating the legislation on environmental expertise, if this entailed a significant change in the radioactive background, harm to human health, the spread of epidemics or epizootics, or other grave consequences.

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