
Prevention of Environmental Crimes as Overcoming the Disbalance of Natural and Positive Human Rights

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Abstract

The article is devoted to the anthropogenic environmental criminal impact leads to the destruction of the ecosystem. The number of crimes committed in the sphere of ecology last time has tendency of steadily increasing. It is urgently needed to create a system of crime prevention in the sphere of ecology including the achievement of the necessary balance between natural and positive law and ecological education and upbringing, changing the minds and approach of people to Nature. Humanity for long years of existence has developed the understanding of conditions for stable functioning of the state only in the presence of legal regulation. In the process of state development such factors are legal norms that are binding on all citizens: understanding the law as a system of norms it is in use to divide it into a natural law and a positive one. Long-lasting, dynamic and fruitful evolution of the philosophy of a natural law, (prominent representatives of which were Aristotle, the Greek Stoics, Cicero, the Roman Stoics and the medieval scholastics), led to the understanding of the need for consideration of socio-cultural norms and rules of conduct prevailing in a natural way, coming from the needs and interests of the individual. In this way the natural law was formed as a list of freedoms and duties of man, provided he was born by nature.

Keywords: environmental crime prevention, philosophy of law, ecological education and upbringing, balance between natural and positive law, sustainable development and stability of the state

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INTRODUCTION

One of the main conditions for the stability of the state is the individual who follow or does not follow the norms of natural and positive law. Thus, the concept of correcting criminals can and should rely on knowledge and acceptance of the norms of natural and positive law. This way, that is confirmed theoretically by researches and practitioners will give possibility to reduce recidivism and overall crime.

Thinkers-philosophers in all times have tried to formulate the idea of an optimally functioning state, realizing the complexity and diversity of that task. Today, the search for new approaches to the concept of criminal reform in the name of stability of the state forces us to revisit the ideas of philosophy in general and philosophy of law in particular (Bagreeva 2018, Begun 2011, Shamsunov 2016).

Natural rights - the right to life, dignity, fair treatment, freedom of thought, etc., are not directly linked to the state, and therefore they cannot be controlled by it. They are prevalent in the socio-cultural environment and are supported by different forms of

public opinion. "...Even in societies where "kings", "chiefs" or any formal state institutions are absent, regulators of social behavior that make social life predictable and, moreover, guarantee a more or less stable reproduction of its forms are visible... the famous American jurist Roscoe Pound suggested that "the force of politically organized society".

At the same time the natural norms become a benchmark for the state that creates their positive analogues. Thus, the rules of positive law are mandatory requirements to conditions and organization of society, responding to the goals and objectives of the state, established at the state level and regulated by law.

LITERATURE REVIEW

Questions of preservation of the environment in foreign countries are considered in article. The authors took for a basis of work of the leading western scientists-criminologists specializing on studying of problems of struggle against ecological criminality. Various strategy, skills and organizational decisions of the prevention of criminality for minimization of ecological harm are considered.

Criminological research of ecological crimes is byways of learning and rather new field. The most popular definitions of well-known foreign scientists and problems of building the global universal definition are under discussions.

For example, the INTERPOL Environmental Crime Programme has three key areas: biodiversity, natural resources, and environmental quality (White, 2016). Crimes that impact biodiversity include illegal activities that remove flora and fauna from the natural environment; cruelty to animals; and illegal possession of wildlife, illegal trade, and exploitation (Wellsmith 2011). Natural resource exploitation refers to illegal logging, mining, and fishing (Gibbs and Boratto 2017, Moreto and Lemieux 2015). Crimes related to environmental quality, such as air pollution, soil contamination, and the illegal disposal of hazardous waste or banned substances are considered pollution crimes.

One more point of view was suggested in Newman (1972) and George Rand's empirical study of the crime-environment connection conducted in the early 1970s. However, Newman being an architect, considered not the natural, but "handmade" environment and its possible influence on the human criminal behavior. Newman's "Defensible Space - Crime Prevention through Urban Design" (1972) includes extensive discussion of crime related to the physical form of housing based on crime data analysis from New York City public housing. "Defensible Space" changed the nature of the crime prevention and environmental design field and within two years of its publication substantial federal funding was made available to demonstrate and study defensible space concepts.

As established by Newman (1972), defensible space must contain two components. First, defensible space should allow people to see and be seen continuously. Ultimately, this diminishes residents' fear because they know that a potential offender can easily be observed, identified, and consequently, apprehended. Second, people must be willing to intervene or report crime when it occurs. By increasing the sense of security in settings where people live and work, it encourages people to take control of the areas and assume a role of ownership (Moffat 1983). When people feel safe in their neighborhood they are more likely to interact with one another and intervene or report crime when it occurs (Newman 1996). Newman's (1972) ideas are still very actual (White 2007) and wide used in building

defensible space and actualizing the human natural rights (Stark 1987).

Last time social ecology of crime (Wikström 2009) is broadly discussed – it investigates how exposure to different environments (area- and place-based differential social organization and activities) influences human development and action. The social ecology of crime is the study of one particular behavioral outcome of these processes, the violation of rules of conduct defined in law. It focuses on the role of the environment in the development of people's differential propensity to engage in crime and their differential exposure to settings conducive to engagement in acts of crime.

Today there is the united opinion that the natural rights are natural because they are rights that do not require a service or product to be given by another person. They are any right that we can reasonably claim through our natural existence. These rights that we can claim by our very nature are thus not contingent on an action, or even the existence, of any other person, group, or entity to grant the right. Natural rights therefore boil down to three rights, the right to your life, freedom of body and mind (Finnis 1980). The question is – if the human being will be able to use these natural rights without violating the harmony of the Nature?

In the following article, we focus on prevention of environmental crimes as overcoming the disbalance of natural and positive human rights.

RESULTS

The results of the study reported in this article show that the problem, including a crime as "a disease of society," consists in finding a balance in the use of norms of natural law and positive one for optimization of the functioning of the state. However, the norms of positive law can interact with the natural ones, but at the same time and contradict them. And it concerns not a solitary idea, but a whole philosophical-religious theory and dogma. The historic confrontations between these two types of law have developed under the burden of social changes in society.

The natural norms that are treated differently may be the causes of deviant behavior of some individuals. The tyranny and violence, various kinds of abuse of citizens perpetrated by them can be explained by misunderstood religious attitudes. The norms of positive law preserve society from such attitudes.

Most of modern scholars agree with the idea that “as internally balanced social system, the legal state has few leading, necessary and sufficient signs.

1. The priority of law over the power

It requires a balanced system of legal restrictions on the activities of state authorities. The norms of law inhibit the likelihood of the arbitrariness of the authorities; prevent any attempts of the state to exercise their authority to the detriment of civil society. They forbid the state to interfere in the private lives of law-abiding citizens, forced it to reckon with the principle of the inviolability of the rights and freedoms of the individual.

2. The priority of natural law over positive one

State legislation is based on the principles of inalienability and inviolability of the natural rights and freedoms of the individual. The natural right of everyone to life, liberty, property, dignity, well-being and happiness is a fundamental social value protected by the current legislation. Laws only prove that the natural rights are not bestowed by state, but are owned by the person initially.”

Thus being relatively mutually independent the norms of natural and positive law determine, penetrate, interact with each other, and without them it is not possible to regulate relations in the society.

It must be acknowledged that the problems of human survival in accordance with Nature, the active counteraction to the criminal use of bioresources are becoming more and more obvious and urgent, requiring scientific understanding by the best minds. In 1972, at the First World Conference on the Environment in Stockholm, the term “sustainable development” was used first time. In 1992, at the United Nations Conference on Environment and Development in Rio de Janeiro, the term was used “as the title of a new concept of the existence of all mankind. The concept of sustainable development was formulated as a way to overcome the environmental threat that existed in the modern civilization, which existed as a kind of theoretically justified danger, perceived by a relatively narrow circle of scientists and politicians and associated with overpopulation, with irreplaceable consumption of natural resources and pollution of the environment” (Begun 2011).

Last time a new model has been developing - education for sustainable development. Its presentation took place at the World Summit on Sustainable

Development (Johannesburg 2002), where the Decade of Education for Sustainable Development, launched in 2005, was announced. The model unites environmental education and education for development and peace (environmental education, development education and peace studies).

It is based on the concept of sustainability, including three principles:

- 1) economic sustainability - achievement of a secure and comfortable life;
- 2) social sustainability - achieving social justice, effective (democratic) governance, peaceful coexistence and cooperation, eradicating poverty and other social problems;
- 3) ecological sustainability - preservation and restoration of wildlife, careful use of resources of Nature, improvement of the environment and lifestyle of a person. Environmental education for sustainable development is a process that continues throughout life, from early childhood to higher education and adult education, solving the problem of disbalance between natural and positive laws. This process cannot be limited by formal education in the formal education system, because we interact with Nature until the end of our days on this planet.

In our opinion, the efforts of mankind are to be directed:- first, on the understanding of the reasons of criminal attitudes towards the ecosystem, nature use in all its manifestations;- second, theoretically justify and methodically build the continuity and complexity of environmental education and upbringing, as part of the crime prevention system in the sphere of ecology.

Today, realizing the imminent ecocatastrophe, the adoption of such a two-pronged approach will allow the new generation of citizens of our country to grow not only “nature-friendly” (J-J Rousseau), but also “environmentally friendly”. Consider only one criminally created eco-problem: we refer to the report on the state of water resources of the planet prepared by UN experts, which emphasizes that from the end of the XIX century, from 34 to 80 species of fish disappeared, 6 of them from 1970 onwards.

The illegal mining of aquatic biological resources is a complex system of interrelated criminal activities, covering not only the sphere of environmental legal relations, but also criminal legal, financial, cultural, etc.

However, the criminological analysis of crimes committed in the sphere of turnover of aquatic bio resources shows that the norm of article 256 of the Criminal Code of Russian Federation “Illegal extraction of aquatic biological resources” does not meet modern requirements to combat these crimes and require changes.

Thus, it is possible to mark the following criminological reasons of crimes in the sphere of turnover of water biological resources:

- imperfection of economic relations in the environmental management;
- contradictions and shortcomings of planning of fishing branch of the Russian national economy;
- catching of bio resources by the so-called twin ships;
- illegal activities of scientific institutions operating in the water area of the Russian Federation;
- weak personnel and material and technical support of the state structures controlling the water industry;
- liberal attitude of the law enforcement officers to the offenders;
- the low level of legal culture, the legal nihilism.

Unfortunately, this list of reasons is typical for almost all types of environmental crimes, once more confirming disbalance between the natural and the positive law in the minds of the people.

The important step in proper direction was done by the United Nations Statistical Commission, which at its forty-sixth session from 3 to 6 March 2015, after discussing the Report of the United Nations Office on drugs and crime on the international classification of crime for statistical purposes, suggested countries:

(a) to adopt the international classification of crimes for statistical purposes as the standard international classification for the reporting of crime and criminal justice statistics;

(b) to adopt a plan to promote the implementation of the classification at the national, regional and international levels;

(c) to invite regional organizations to cooperate with UNODC as partners in the development of regional implementation programs for ICCS;

(d) to designate UNODC as the Agency responsible for the ICCS as well as to support the establishment of a technical Advisory group to provide substantive advice on all aspects related to the implementation of the ICCS;

(e) to invite member States and donors to provide the necessary resources to ensure the successful implementation of ICCS.

The current situation of the approaching environmental crisis has already been recognized by the governments of most countries of the world and implemented in the priorities of their development the solutions of problems of environmental management. In practical terms, this kind of approach is essential to the survival of humankind.

The adoption of this position requires building, including the concept of environmental education and upbringing, which, in turn, will contribute to the prevention of offenses and crimes in the field of environmental management.

It is necessary to recognize with satisfaction that environmental education acquires special relevance in Russia. The Decree of the President of the Russian Federation (No. 889 of June 4, 2008) and the “Fundamentals of State Policy in the Field of Ecological Development of the Russian Federation for the Period until 2030” (April 30, 2012) stipulate the need to include the foundations of environmental knowledge in the federal standards of general education.

Preventing crimes in the sphere of ecology requires rethinking not only the content of many school disciplines, but also the programs of university training, since the higher school prepares future managers of the industries responsible for the ecology of the environment.

CONCLUSIONS

Unfortunately, the modern theory of natural law is far from a fairly wide recognition of the specialists of the penitentiary system. At the same time, natural law is one of the most sustainable concepts of the philosophy of law, due to the interests and needs of man, forms the set of sociocultural rules and rules of conduct. A natural law should be understood as a set of socio-cultural natural regulators of human behavior. Of course it is

rather an ideal, whereas positive law is the reality that monitors and provides by the state. The search of the proper balance between the natural and the positive law is the lone optimal way of the environment crime prevention.

As a result of this approach, people will grow up, aware of their “place” in the world, able to live in harmony with Nature, and not against it, to live in reasonable subordination to Nature and use of its resources for good purposes without committing criminal acts.

In order to ensure the prevention of crimes in the field of ecology and environmental safety as an important component of Russia’s national security a different approach to Nature, a different philosophy of

people’s life are required, which can be based on the system of ecological education and upbringing for sustainable development, developed in view of international, national and regional environmental and nature resources in the modernization of the country. Today, environmental education, education and enlightenment in the Russian Federation cannot yet be called a system of continuous improvement of man: it is rather declared as such.

From what has been said, it follows that the criminological and educational aspects (Bagreeva 2018) of the struggle for biological resources not only of our country, but of the entire planet Earth should be recognized as priorities, and the solution of the problems posed is a condition for the survival of the entire Humanity.

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