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Features and significance of the qualification of criminal offenses of illegal cutting of trees and shrubs, as well as destruction and damage to forests

The purpose of the research is to analyze the theory of prosecution for illegal cutting of trees and bushes, destruction, damage to forests in accordance with Articles 340, 341 of the Criminal Code of the Republic of Kazakhstan and focus on its practice, consider the main issues of prosecution for these criminal offenses, identify the main barriers to prosecution and give the necessary legislative proposals for its implementation improvement. The Article discusses the importance of preventing illegal cutting of trees and shrubs, destruction, and damage to forests, as well as considering criminal liability for these acts. At the same time, having dwelled on the current state of qualification of these criminal offenses, points were identified that should be considered during the investigation and judicial review of these criminal offenses, and relevant legislative proposals were considered. The relevant norms of the Forest Code of the Republic of Kazakhstan, containing requirements related to the protection of trees and shrubs, as well as the features of bringing to criminal liability for illegal cutting of trees and bushes, destruction, damage to forests, provided for in Articles 340, 341 of the Criminal Code of the Republic of Kazakhstan, are analyzed. A comparative legal analysis of the legislation of the countries of Germany and Hungary was also carried out to determine the European practice of recognizing "forests" as a unique natural resource. In addition, an analysis of judicial practice on criminal offenses related to illegal cutting of trees and bushes, as well as destruction and damage to forests, and the regulatory ruling of the Supreme Court related to the application of Articles 340, 341 of the Criminal Code of the Republic of Kazakhstan was carried out.

Keywords: tree, bush, illegal logging, forest, destruction of forests, damage to forests, environmental safety, favorable environment, environment, criminal liability.

Introduction

The detailed understanding of the environmental problems facing mankind and the awareness of the social danger of environmental offences have changed the concept of the common object of environmental criminal offences. Previously, social relations for the rational use and conservation of natural wealth were considered the object of environmental criminal offences. At present, however, from the point of view of the object of criminal law protection, priority is given to environmental safety rather than to the rational use of natural resources, which means the state of protection of vital environmental interests of man. First, it concerns the constitutional right of the individual to a clean natural environment that enables him to live in dignity. At the same time, mankind must be concerned about the problem of nature conservation.

By their nature and degree of danger to society, environmental criminal offences should be considered one of the most common and dangerous crimes, despite the fact that they constitute a small proportion of officially registered criminal cases. In particular, one should not underestimate the social danger and socio-dangerous consequences of criminality that violate the rules for the protection and effective use of flora.

In the process of illegal cutting of trees and shrubs, as well as destruction or damage to forests, an invaluable good that humanity must use wisely and with special care harms the natural environment. At this point, the human being must remember that the environment is the natural basis for normal human existence. In addition, the natural environment is a source of further strengthening and development of the well-being of the population, the socio-economic basis of society and the state. Natural resources are for the benefit of the people of Kazakhstan, and therefore need protection from criminal encroachments in the interests of this people. Accordingly, it is logical to recognize environmental security as an integral part of our national security.

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The facts of illegal felling of trees, destruction and damage to them and forests, reflected in our society, are evidence of a low level of ecological culture and education in society. The social danger and socio-dangerous consequences of such criminal offenses can be traced in a significant deterioration in the natural environment, as a result of which a decrease in the standard of living of people, an increase in ecologically unfavorable zones, etc. All these circumstances determine the special importance of the problems of combating criminal offenses against the rules for the protection and effective use of flora, both for the theory of criminal law and for the practice of conducting state criminal policy in the field of organizing the fight against environmental offenses.

One of the most important tasks at the present stage of development of the Republic of Kazakhstan is to ensure the right of citizens to a favorable environment, that is, to preserve the natural environment. This task is based on the goal of Article 31 of the Constitution of the Republic of Kazakhstan "The state sets the goal of protecting the environment favorable for human life and health".

The rules of criminal legal protection of the protection and effective use of flora are partially considered in Articles 340, 341 of Chapter 13 of the Criminal Code of the Republic of Kazakhstan, adopted on July 3, 2014, as well as Articles 335, 339, 342. Research of Kazakhstani and foreign scientists related to issues of criminal-legal protection of protection and effective use of the plant world, provided in a special chapter of the Criminal Code "Environmental criminal offenses" cover various aspects of these criminal offences, but are still not sufficiently substantiated in scientific as well as methodological terms, and few studies on this particular topic have been identified.

In recent years, the absence of a unified, coherent theory, constituting a system of generalized reliable knowledge about environmental criminal offences, the lack of study of the component that characterizes, explains and predicts the functioning of a set of constituent objects, prevents the formation of practices defining criminal offences based on relevant science.

Methods and materials

In conducting research on the topic, methods of analysis and comparative legal analysis were used. For example, in revealing the importance of illegal logging of trees and shrubs, as well as destruction and damage to forests for the environment, the requirements stipulated by the norms of the Forest Code of the Republic of Kazakhstan, the composition of Articles 340, 341 of the Criminal Code of the Republic of Kazakhstan, which consider illegal logging of trees and shrubs, destruction and damage to forests as a criminal offense, the features of liability for it in accordance with criminal law were analyzed. A review of the experience of European countries, such as Germany, Hungary, and a comparative legal analysis of legislative best practices were carried out to consider the basics of recognizing a set of trees and woody shrubs as "forests". In order to consider the current situation of bringing to justice for criminal offenses of illegal cutting of trees and shrubs and destruction and damage to forests, the judicial practice of recent years, regulatory decisions of the Supreme Court, reports of fundamental and applied research conducted on the issues of improving the legislation of the Republic of Kazakhstan providing for liability for environmental criminal offenses, as well as scientific research of domestic and foreign scientists were analyzed.

Results

The direct object of the criminal offense considered in Article 340 of the Criminal Code of the Republic of Kazakhstan is public relations arising in connection with ensuring the protection of acorns and shrubs included/not included in the forest fund as part of the benefit of the general public and natural environment [1; 205]. For example, in accordance with Article 340 of the Criminal Code of the Republic of Kazakhstan, a person who has committed a crime does not comply with the requirements of forest relations provided for in Chapter 6 of the Forest Code of the Republic of Kazakhstan No. 477, adopted on July 8, 2003, by cutting down trees prohibited for felling from a site included in the forest fund. Based on this, significant damage to the environment is caused.

We have already mentioned that the subject of a criminal offense is trees and shrubs that are not included or included in the Forest Fund, which are prohibited for cutting (for example, saxaul), forest crops, seedlings planted or planted in forest nurseries and plantations, self-grown rods, shoots or hand-grafted plantings on special sites. The concept of a tree and a bush is not given either in the Forest Code of the Republic of Kazakhstan or in the Environmental Code of the Republic of Kazakhstan. Therefore, when we say tree or shrub, we should take as a basis the concept given to them by biological science. Based on it, the tree it is a tree with stems and roots ending in woody, with a very mature trunk, not less than two meters

high [2; 24], perennial plants (pine, spruce, oak, linden, etc.) [3]. The height of the trees in the country does not exceed 50 meters. A shrub is a perennial woody plant with several woody lateral shoots, among which there is no clearly defined branch (mint, rosehip, honeysuckle, lilac, ground beetle, saxaul, marten, etc.) [4]. The height of the bush can be from 0.8 to 6 meters.

Objectively, Article 340 of the Criminal Code of the Republic of Kazakhstan provides for liability not for all types of violations of the rules for the use of trees and forests, but for their illegal felling or damage or destruction, which caused them to stop the growth of trees and shrubs. The question that should be taken into account here is that these trees and shrubs should grow in natural conditions, in a natural environment, it does not matter whether they are included in the forest fund or not. This is because both were considered in parts 1 and 2 of Article 340. That is, the absence in the area of the house, in the country or on the garden plot clearly reflects the norm itself. Possession of trees and shrubs cut down, collected by other persons, prepared for sale, export, qualifies as theft of other people's property under Articles 188 or 190 of the Criminal Code of the Republic of Kazakhstan [5]. It is also necessary to differentiate artificially grown fruit trees, ornamental trees and shrubs in order to appropriate them from forest nurseries, fruit tree nurseries and similar places. This is due to the fact that trees and shrubs grown in such places are the product of commercial production of enterprises and are produced for sale. Therefore, they carry out economic, not environmental activities.

The objective side of the crime is characterized by the following mandatory features:

a) illegal logging, damage or destruction of trees and shrubs that are not included or prohibited from logging in the forest fund, as indicated in the disposition of Article 340, as well as the destruction of forest crops, grafted or planted seedlings in forest nurseries and plantations, self-supporting rods, shoots or artificial plantings in plantations intended for forest reproduction and afforestation, or an action (action or inaction) in which damage manifests itself. Cutting, damaging or destroying trees and shrubs is a criminal act if such actions cause significant damage to the environment (by reducing the Forest Fund), which makes it possible to recognize that the composition of Article 340 has an objective side.

Illegal logging refers to any way to separate a tree and shrub from its roots without permission (pruning, sawing, pruning). It is the logging tickets that give the right to cut a bush with a tree. Paragraph 4 of Article 4 of the Forest Code of the Republic of Kazakhstan mentions as illegal felling of trees their felling without a felling ticket, felling with violation of the rules of felling, felling without compliance with the deadlines specified in the felling ticket, as well as felling with exceeding the reporting Logging Area [6]. Therefore, it follows from this that, first of all, a ticket is issued by a specially authorized body for mandatory pruning of trees or shrubs, otherwise this action is illegal pruning. Secondly, the felling of trees and shrubs is recognized as illegal in case of non-felling in accordance with the specially established principles of felling. For example, according to the rules for the use of saxaul, it is allowed to take saxaul, which has come to rot for more than a few years. Thirdly, logging tickets are issued with an indication of a special period for felling trees and shrubs. We believe that it is illegal to cut down trees and shrubs if this period has not yet been or has passed. And fourth, if there is a permit for logging, however, the cutting of trees and shrubs from the site specified in the permit is not cut, more than the volume specified in the permit, the cutting of seeds of trees and shrubs not specified in the permit must be recognized as illegal. Most of the actions were performed in the form of actions;

b) a socially dangerous consequence, expressed in causing significant damage to the environment (cost over 100 MCI) or major damage (cost over 1000 MCI).

The crime is considered completed in the event of the occurrence of even one of the socially dangerous consequences provided for by the disposition of Article 340 of the Criminal Code of the Republic of Kazakhstan. That is, in order for this Article to be considered as containing, it is not only important that there is an act of cutting, destroying or damaging a tree or shrub, but must necessarily arise at least as significant as socially dangerous consequences.

c) The causal relationship between actions manifested by cutting down, destroying or damaging trees and shrubs provided for in the disposition of Article 340, and socially dangerous damage considered to cause significant (major) damage. In accordance with the law, the establishment of the necessary links between socially dangerous acts committed and the damage caused is carried out during the pre-trial investigation and judicial investigation.

In accordance with paragraph 1 of Article 15 of the Criminal Code of the Republic of Kazakhstan dated July 3, 2014 No. 226-V, this is a sane individual who has reached the age of 16 as the subject of the crime provided for in Article 340. That is, according to the general characteristics, the subject of the crime must

reach the age of 16 and be able to respond to his actions. In accordance with the content of the disposition of parts 1, 2 of Article 340 of the Criminal Code of the Republic of Kazakhstan, the subject of the crime is any guilty person [7; 126–139].

And paragraphs 3 and 4 of Article 340 of the Criminal Code of the Republic of Kazakhstan provide for a special entity. This is a person who has committed either repeatedly using his official position, or who has committed a criminal offense as part of a criminal group. Service users are officials of state-owned enterprises, institutions, organizations (forestry, forestry management bodies, forest protection bodies, etc.) that operate the forest fund or perform any work with trees. For example, rangers, officials of the Forestry and Wildlife Committee.

A crime is considered committed by a criminal group if it is committed by two or more persons with prior agreement. Responsibility here is assigned depending on the type of corruption participation of each subject of crime in the criminal group.

The legal structure of Parts 3 and 4 of Article 340 of the Criminal Code of the Republic of Kazakhstan allows bringing to justice the guilty persons who have committed crimes using the official position of the criminal group or repeatedly, as well as as part of a criminal group, regardless of the amount of consequences for criminal offenses that have caused illegal felling, destruction or damage to trees and shrubs. However, there are other opinions on this issue in scientific works and practice. According to these comments, the Criminal Code of the Republic of Kazakhstan considers it necessary to be found guilty of committing a crime under paragraphs 3,4 of Article 340 of the Criminal Code of the Republic of Kazakhstan to have at least one of the socially dangerous consequences (significant damage, major damage) in Part 1, 2 or 3 of Article 340 of the Criminal Code of the Republic of Kazakhstan. From this point of view, if an illegal act of cutting down trees and shrubs as part of a criminal group is committed, but this Act does not lead to at least significant damage, the composition of the crime will not be. The opinion that illegal felling, destruction or damage to trees and shrubs is not recognized as a criminal act without significant damage is caused by an assessment of the socially dangerous nature of the act.

The subjective side of the crime is expressed in the commission of actions in the direct intentional form of guilt. That is, a sane 16-year-old person who can fully respond to his actions knows that his actions are illegal without permission, in an unauthorized territory, or in cutting down a tree or bush that is forbidden to cut down, predicts the consequences for the environment and wishes it [8; 87]. In the qualification of a criminal offense, intent is considered unnecessary.

In addition to the main types of punishments, such as fines, correctional labor, community service, restriction of liberty or imprisonment for committing acts provided for in Article 340 of the Criminal Code of the Republic of Kazakhstan, causing socially dangerous consequences, additionally, the type of deprivation of the right to hold a certain position or engage in certain activities, confiscation of property is considered. In case of compensation for damage caused as a result of a crime in accordance with subparagraph 6 of Part 1 of Article 53 of the Criminal Code of the Republic of Kazakhstan, as well as sincere repentance in accordance with subparagraph 11 of Paragraph 1 of this Article, confession may be taken into account as mitigating circumstances when imposing a penalty.

At the same time, the circumstance in which the appearance with true repentance and admission of guilt for the first time committed a criminal offense provided for in parts 1–3 of Article 340, or a crime provided for in paragraph 4, may lead to the release of a person from criminal liability in accordance with paragraph 1 of Article 65 of the Criminal Code of the Republic of Kazakhstan. This is due to the fact that a person who has committed a crime for the first time under Article 340 of the Criminal Code of the Republic of Kazakhstan, having confessed to the crime, is considered genuinely repented, taking into account the restoration of damage caused by the crime, and may be released from criminal liability. At the same time, it is possible to be released from criminal liability if the terms of the procedural agreement are met, as provided for in Article 67 of the Criminal Code of the Republic of Kazakhstan.

The purpose of the norm enshrined in Article 341 of the Criminal Code of the Republic of Kazakhstan is to prevent the destruction of plants included and not included in the forest fund, preserve forests as a national property of Kazakhstan and a natural resource in the field of economy and ecology. We have already mentioned that the disposition of Article 341 of the Criminal Code of the Republic of Kazakhstan is also one of the forms of disposition. That is why it refers to regulatory legal acts on nature protection and Natural Resources (Forest Code, Land Code).

On the issue of classifying objects of environmental crimes, several opinions have been formed in the science of criminal law. Most often, according to the prevailing opinion, we distinguish the object of

environmental criminal offenses vertically — general, group, direct; horizontally — main, additional, optional.

The main direct object of the crime described in Article 341 of the Criminal Code of the Republic of Kazakhstan is the formation of public relations in the field of rational use and reproduction of forests and other wood crops, preservation of a favorable environment for humans and other living beings and ensuring environmental safety of people [1; 475]. For example, in accordance with Article 340 of the Criminal Code of the Republic of Kazakhstan, a person who has committed a crime does not comply with the requirements of forest relations stipulated by Chapter 6 of the Forest Code of the Republic of Kazakhstan No. 477, adopted on July 8, 2003, with the aim of cooking on a site included in the forest fund, resulting in a forest fire, resulting in significant damage. As a result, it encroaches on public relations related to the provision of forest use.

Special importance is attached to the criminal law protection of the reproduction (restoration) of forest fields. Because the constant growth of forests is one of the guarantees that forest crops will not disappear. Having studied the relationship of the components of the environment, it is easy to understand that the forest is a combination of land, wood, shrubs and other crops, animals, birds, microorganisms, atmospheric air and other components of nature, which are biologically interconnected and have a mutual influence in their development. Damage or destruction of forest crops cannot but affect all these listed components in any way. In case of fire, not only forest crops are destroyed, but also damage to the land, animals and birds that live in these forests, microorganisms, atmospheric air [9; 612].

Woody plants interact with shrubs, grasses, mosses and other plant species, affecting each other. The components of a forest depend not only on the environment in which it is located, but the forest itself influences this environment, determining the process of formation of its crust. In the forest, a special microclimate is formed in the thickets of trees, the processes of the formation of the Earth's crust and water balance take place in a special way. An important feature of the forest is that it not only regenerates itself, but is also able to ensure the continuation of generations.

One of the most important features of the forest lies in the continuous connection of its fields with the Earth. If we separate the forest from the ground, it will not become a forest. The forest, as an ecosystem, forms a geographical landscape with its own peculiarities. It grows in a place that serves as a spatial basis for woody shrubs and other fields.

Moreover, the land on which the forest is located cannot have any useful properties other than to cover the needs of Forestry. Its value is closely related to the value of forest fields.

It should be emphasized that forest fields have an important ecological, economic and social content. Among them, no one can deny the beneficial importance of the forest as a climate-forming, protective of the Earth's crust, sanitary and hygienic, general cultural, health-improving and other. The forest maintains an effective composition of the atmosphere, protects the fertile earth's crust from erosion, and contributes to the accumulation of groundwater.

Thus, determining the place of the forest in the life of humans, animals and birds, other plants, in normal conditions of water and atmosphere, we can consider that the Article 341 of the Kazakhstan Republic under consideration has an additional direct object. Public relations aimed at ensuring the protection of such components of the environment as land, water bodies, wildlife, wildlife, atmospheric air directly related to forest or other forest land.

Further analysis of the object of the composition of the crime under consideration in Article 341 of the Criminal Code of the Republic of Kazakhstan is impossible without determining the subject of the crime here. Because the concepts of the object of the crime and its subject are inextricably linked. The subject of the crime is the material side of the object, but not the object itself. In accordance with this, it is necessary to attribute to the subject of crimes objects, products, goods recognized as material values that allow them to be perceived externally.

As we widely understand, the substance of environmental crimes is entirely the environment, as its individual components are in interaction, interrelation, mutual influence. In a narrow sense, by the thing of specific crimes, we mean natural resources such as land, subsoil, atmosphere, animals, plants, forest.

Interesting is the foreign experience of identifying “forest” as the subject of a crime, considered in Article 341 of the Criminal Code of the Republic of Kazakhstan [9; 612]. Many states base their definition of the concept of a forest on its biological features, that is, it is a set of trees in a particular ecological system. Artificially planted trees are also recognized as forests, because with ecological contact with other natural resources, “artificially planted tree fields” are also considered in a single system with forests.

In some countries, quantitative indicators are taken into account for the recognition of woody and shrubby fields as forests. That is, wood fields above the minimum size established by law are considered forest. The calculation of forests under such a sign is typical for the countries of Eastern Europe. For example, in Bulgaria, forest is considered to be wood fields with an area of at least 0.10 hectares. In Hungary, a different approach was taken to defining the concept of forest. According to him, "forest" is a combination of not only trees, but also wild animals, plants and cyroorganisms in the territory of natural freedom or naturally grown forest. Such a concept of forest is provided for in the Hungarian Forest Code. According to the German federal law "forest conservation and forestry support", forest refers to all lands with arable land [10; 65–68]. In accordance with this, the concept of "forest" includes rural young forests (groves), the area of felling trees, forest roads, forest protection areas, open forests, forest pastures, tree trunk conservation areas, as well as other areas associated with the forest. Thus, we see that the legislation of many countries calls the territory where woody and shrubby vegetation grows a forest.

The Forest Code of the Republic of Kazakhstan does not directly disclose the concept of "forest". However, paragraph 1 of Article 6 of the Forest Code of the Republic of Kazakhstan states that "all forests on the territory of the Republic of Kazakhstan, as well as forest vegetation, have not grown, but the lands of the forest fund intended for the needs of forestry constitute the forest fund of the Republic of Kazakhstan" [11].

An integral part of forests are forest shoots. Forest undergrowth is a collection of woody trees, shrubs, shoots, living coverings on the surface of the Earth. According to this, the subject of the crime considered in Article 341 of the Criminal Code of the Republic of Kazakhstan is woody trees, shrubs, shoots and surface coverings growing on the territory of the forest.

The objective side of deforestation or damage has its own characteristics. A crime is committed in both forms of action by action (arson, contamination with harmful waste, substances, emissions), as well as inaction (failure to apply fire safety measures when using fire or other sources of high danger).

A socially dangerous activity is characterized by an act of environmental impact of human behavior. More precisely, it is expressed in the act of unintentional destruction or damage of trees and shrubs included or not included in the forest fund by careless use of fire or other dangerous sources, as well as intentional destruction or damage as a result of arson, contamination by other generally dangerous means, harmful waste, substances, garbage.

In this crime, socially dangerous acts are manifested in the form of arson or other dangerous means, as well as contamination with harmful emissions, waste, substances, garbage. Arson should be understood as deliberate actions aimed at destroying and damaging the forest with the help of setting an open fire (for this purpose, setting fire to dry grass, throwing torches, embers, using lubricants, etc.).

Criminal violations of arson and fire safety rules are dangerous crimes that are accompanied by causing material consequences, causing harm to the life and health of citizens, society and the state.

Arson is the ignition of a fire as a result of intentional or careless actions, further ignition can spread by itself. Failure to comply with the rules for handling flammable substances leads to reckless ignition. The sources of fire safety are different: electrical wiring lines, vehicles, flammable substances, etc. failure to comply with fire safety rules when using these flammable means leads to a fire. Thus, fire safety regulations prohibit the use of vehicles and agricultural tractors in a gas outlet pipe without a spark extinguisher.

Criminal law has always considered arson as a special crime and imposed the most severe punishment on it. Such criminal law norms are still found in the legislation of some countries. In the Criminal Code of the Republic of Kazakhstan, arson is considered not as a crime of personnel, but as a generally dangerous way of committing a crime (sabotage, intentional destruction or damage to other people's property, destruction of objects of special value, an act of terrorism, destruction or damage to forests).

As for other methods of arson, it is the breeding of bonfires on young coniferous shoots, in places of ignition, in damaged forests, peat bogs, in places of logging (in areas of logging), in places not cleared of felled waste and harvested trees, in places with dried grass, as well as on treetops; wiring bonfires made of chimneys, glass (glass bottles, cans, etc.), throw away burning matches, tobacco jugs and hot ashes; use pallets made of combustible or melting materials when hunting; leave greased or with materials containing gasoline, kerosene or other combustible substances (paper, fabrics, rags, cotton, etc.) in places not specifically provided for this purpose; burn garbage exported from settlements, near forests only outside designated areas, etc.

The presence of a socially dangerous consequence in the form of destruction or damage to forests is a mandatory sign of the objective side of the corpus delicti provided for in Article 341 of the Criminal Code of the Republic of Kazakhstan, since the legislator characterized this crime as a material composition [12; 121].

In determining the composition of a crime, as the basis for the occurrence of criminal liability, it is necessary to assess the socially dangerous consequences caused by the action, such consequences are characterized by the infliction of major damage. In Paragraph 1 of Article 341 of the Criminal Code of the Republic of Kazakhstan, the largest damage caused by an act committed by negligence is the cost of expenses necessary to restore the consumer properties of the environment and natural resources in the amount of more than 1000 MCI.

For destruction or damage to forests, it is necessary to calculate large damage not only by the cost of damaged or destroyed tree shoots, but also taking into account other circumstances, for example, remembering the ecological value and importance of the forest for this territory. In addition, when determining the consequences caused by arson, it is also necessary to calculate the cost of growing new forest trees, the cost of cleaning the territory, and the cost of fire suppression. At the same time, it is necessary to take into account the specifics of damaged or destroyed forest trees and their location.

Place of mandatory optional indication of the objective side of the crime provided for in Article 341 of the Criminal Code of the Republic of Kazakhstan, that is, the land plot on which the forest is located. The weapons used to commit the crime were clearly not considered in the provisions of Article 341 of the Criminal Code. However, despite the fact that the means and instrument for the commission of a crime are not part of the elements of the crime, they are closely related to the crime and significantly facilitate the execution of the criminal act, significantly increasing its consequences. The specific feature of the offence is the use of means and weapons. Without the use of such tools and weapons, it is also impossible to take action to destroy or damage forests. The concepts of “weapon” or “means” of crime are considered as a single concept. Every weapon is used as a tool, but we cannot say that every tool is a weapon. In criminal cases of destruction or damage to forests, lighters, matches (lighters), various motor vehicles (such as tractors), flammable weapons used in hunting, etc., are used as weapons of crime.

We noted above that the destruction or damage of forests is carried out by means of arson, non-compliance with fire safety when using substances of increased fire danger, etc.

Therefore, as a means of committing crimes of destruction or damage to forests, we mean Fire, other substances with a high risk of ignition, harmful substances, emissions, waste, garbage that can lead to damage or destruction of forests. Such harmful substances, waste, emissions and garbage include smoke pipes, dried grass, wood waste left at logging sites, paper, rags, cotton wool, and other materials lubricated with fuel or other combustible substances, garbage removed from production facilities, energy centers, ash piles, etc.

In addition, another problem that has not been solved either in the theory of criminal law or in practice is the answer to the question of what it means to destroy or damage forests. Is it necessary for the forest trees to be completely burned down to consider the forest destroyed or damaged, or is it enough for a certain part of it to be burned? There is also a need to distinguish between the concepts of “deforestation” and “forest damage”.

Destruction is the complete burning of forest trees or shoots that are not included in the forest fund, or the complete wilting of forest trees and shoots that are not included in the forest fund due to pollutants or poisons, waste, emissions and debris. In other words, we mean the destruction of forests and undergrowth, which leads to the complete loss of their ecological, as well as economic value.

By damage, we mean the ignition of a part of one tree and shrub arable land, its degradation in certain areas to the level of lack of growth, the incidence of forests as a result of pollution, a significant loss of its quality as a result of pest reproduction, etc [13; 60–63].

In the event of destruction or damage, forest crops are subjected to such conditions that they lose their capacity to grow or begin to die in succession. In this case, it loses its full or significant ecological value as a component of the environment as well as its economic value.

The destruction or damage of trees and shrubs belonging to or outside the forest stock, due to the careless use of fire or other sources of increased danger, may be done in the form of negligence, Article 341 paragraph 1 of the Criminal Code of the Republic of Kazakhstan approves.

Careless handling of fire is the most common cause of fire in the forest. The results of the fire analysis show that many of them were caused by people who did not observe fire safety. Most often negligence was

caused by negligence: ignoring fire safety when smoking, using in forests lighting sources consisting of open torches. Fire also occurs from a fire lit near the forest fields, the wind is spread by sparks that are released.

Negligence in smoking has a special place in a fire. The highest percentage of forest fires is due to the elimination of indelible cigarettes, cigarettes and matches on dry grass.

According to experience, most fires occur near populated areas, on roads, in recreation areas or in other regions associated with human activity. The most common causes of such fires are indelible bonfires, discarded smokehouses or matches, and in spring and autumn residents burn dry grass in order to clean pastures, fields and squares. As a result of violations of fire safety rules, fires in pastures and fields get out of control of people and move into forests.

Thus, paragraph 1 of Article 341 of the Criminal Code of the Russian Federation, the subjective side is committed only in the careless form of guilt. Here, a person does not foresee that by his socially dangerous actions he will destroy or damage trees and shrubs that are or are not included in the forest fund, but also has the opportunity to foresee this by taking precautions and caution (indifference), or to foresee that consequences will occur, but believes that without sufficient reason to avoid it (arrogance).

The destruction or damage of trees and shrubs, whether or not included in the forest fund, by arson or in another dangerous way or as a result of pollution by harmful emissions, garbage, waste, substances is carried out in the form of direct or indirect intent. It is considered to be committed with direct intent if the person who committed the crime under paragraph 2 of Article 341 of the Criminal Code of the Republic of Kazakhstan realized the public danger of actions to destroy or damage trees and shrubs included or not included in the forest fund, foresaw and desired the inevitability of consequences and desires their presence.

Indirectly, the person does not determine exactly what consequences it will lead to by destroying or damaging trees and shrubs that are included or not included in the forest fund. In this case, the person is held liable in the amount of the damage caused to them.

In accordance with Article 341 of the Criminal Code of the Republic of Kazakhstan, liability for committing a crime arises for a sane individual who has reached the age of 16 at the time of committing a crime. In the scientific literature, the opinion has been expressed lately about reducing the age at which responsibility for the crime in question arises to 14 years [14]. According to this opinion, a sane person who has reached the age of 14 can understand the consequences caused to the natural environment by damaging or destroying trees and shrubs that are or are not part of the forest fund. In addition, this opinion is confirmed by legal statistics, most of the fires that occurred as a result of non-compliance with fire safety or arson were committed by teenagers aged 14 to 16 years. So, in 2012, a fire occurred in the forest area of East Kazakhstan, as a result of which forest trees burned down on an area of 500 hectares. It is known that as a result of the pre-trial investigation, no criminal case was initiated, since it turned out that the guilty person had not reached the age at which criminal responsibility begins. Therefore, we consider it is necessary to reduce the age of criminal responsibility under Article 341 of the Criminal Code of the Republic of Kazakhstan.

Conclusion

In conclusion, it should be noted that by the nature and degree of public danger, criminal offenses against the rules of protection and effective use of flora are considered as the most dangerous among criminal offenses, despite the fact that they are the least of the officially registered crimes. Because such criminal offenses not only harm the country's economy, environmental safety, but also negatively affect the biological foundations of human existence. Based on the above, we can state the following legislative practical recommendations:

1) The number of registered criminal cases on the criminal offense "Illegal felling, destruction or damage of trees and shrubs" occupies a leading position among general environmental criminal offenses. And also, as we have seen in the course of work, the demolition, destruction or damage of trees and shrubs that are not included in the forest fund and are prohibited from felling (especially saxaul, gingila, hare, etc.), more than once, using their official position, and in cases of causing major damage, referring to the importance of such an action in order to preserve the ecosystem as a whole, it is necessary to provide for punishment in the form of imprisonment for up to a year and recognize these actions as criminal.

2) Almost all Articles of Chapter 13 of the Criminal Code of the Republic of Kazakhstan (environmental criminal offenses) relate to the blank disposition. To recognize the committed act as a criminal act in relation to the protection and effective use of flora, the norms of the ecological, land, water, Forest Codes of the Republic of Kazakhstan, the Law "On Specially Protected Natural Territories", the Law

“On the Protection, Reproduction and use of wildlife”, the Law “On Compulsory Environmental Insurance” are used, and there is also a need to take by laws are used as a basis, such as the order of the Minister of National Economy of the Republic of Kazakhstan on the provision of public services “Issuance of permits for cutting down trees” and other regulatory legal acts.

This circumstance is necessary for an officer of the body of inquiry and investigation, conducting a case of a criminal offence against the protection and effective use of the plant world, to determine the object of these criminal offences, the extent and harmfulness of the consequences caused, the acts committed, the perpetrator, a special or general subject of environmental law, land law, forest law, primary skills and skills of crop production will be needed.

3) It is a matter of time to establish a new system of accounting (database) for trees and shrubs in and out of the forest, except for trees and shrubs in home gardens, cottages and gardens. This is not the reason, one of the most important differentiated features in Articles 340, 341 is that the absence (place) of these trees and shrubs in home gardens, cottages and horticulture, as well as their inclusion and absence in the forest stock also affects under which part of Article 340 they are differentiated.

4) An analysis of the subjective side of criminal offenses has shown that they are all committed by two forms of guilt (negligence or intentionally). However, in our opinion, a person who illegally fells, destroys or damages trees is aware that his actions are illegal (and it does for a specific purpose), anticipates the consequences that will be caused as a result of these actions (understands that the process of tree growth is long, which in the case of forest destruction can negatively affect other plants and animals, which will lead to a change in the ecosystem, the emergence of an ecological disaster and deliberately gives way to it). Therefore, it is important to reduce the amount of socially dangerous damage caused, otherwise such actions causing damage up to 1000 monthly calculation indices are limited to paying a fine in the amount of (25–60 MCI), which is considered an administrative offense and does not allow restoring the environment.

5) For committing criminal offenses of illegal cutting of trees and shrubs, destruction or damage to forests, the Criminal Code of the Republic of Kazakhstan provides for the following types of penalties: fines, correctional labor, involvement in public works, arrest, deprivation of the right to hold a certain position or engage in one activity, restriction of freedom or imprisonment.

An alternative sanction is provided for almost all criminal offenses in this composition. This means that a person who has caused enormous damage to the environment, fauna and flora of our earth by illegally cutting down, destroying or damaging trees and shrubs is limited to paying fines, engaging in correctional labor, community service or arrest in such a way as to prevent its restoration. We don't think these are punishments worth imposing when it comes to a resource like a forest that takes at least 10 years to reach the same volume. To do this, we consider it is necessary to introduce new types of punishment for crimes such as reforestation, planting of plantations, and the construction of nurseries.

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14 Соттардың кейбір экологиялық қылмыстық құқық бұзушылықтар үшін жауаптылық жөніндегі заңнаманы қолдануы туралы Қазақстан Республикасы Жоғарғы Сотының 2004 жылғы 18 маусымдағы №1 нормативтік қаулысы. — [Электрондық ресурс]. — Қолжетімділік тәртібі: <https://office.sud.kz/forumTaldau/forum.xhtml?view=article&category=22&content=norms&article=1340>

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Ағаштар мен бұталарды заңсыз кесу, сондай-ақ ормандарды жою мен зақымдау қылмыстық құқық бұзушылықтарын саралаудың ерекшеліктері мен маңызы

Зерттеудің мақсаты — Қазақстан Республикасы Қылмыстық кодексінің 340, 341-баптарына сәйкес ағаштар мен бұталарды заңсыз кесу, ормандарды жою және зақымдау үшін жауапкершілікке тарту теорияларын талдау және оның тәжірибесіне тоқталу, осы қылмыстық құқық бұзушылықтар бойынша жауапкершілікке тартудың негізгі мәселелерін қарау, жауапкершілікке тартудағы негізгі кедергілерді анықтау және оны жетілдіру бойынша ұсыныстар мен қажетті заңнамалық ұсыныстарды беру. Мақалада ағаштар мен бұталарды заңсыз кесудің, ормандарды жою мен зақымдаудың алдын алудың және осы әрекеттер үшін қылмыстық жауапкершілікті қарастырудың маңыздылығы қарастырылған. Бұл ретте аталған қылмыстық құқық бұзушылықтарды саралаудың ағымдағы жай-күйіне тоқтала келе, аталған қылмыстық құқық бұзушылықтарды тергеу және сотта қарау кезінде ескерілуі тиіс тұстар анықталып, тиісті заңнамалық ұсыныстар қаралды. ҚР Қылмыстық кодексінің 340, 341-баптарында көзделген ағаштар мен бұталарды қорғауға байланысты талаптарды, сондай-ақ ағаштар мен бұталарды заңсыз кескені, ормандарды жойғаны немесе бүлдіргені үшін қылмыстық жауаптылыққа тартудың ерекшеліктерін қамтитын ҚР Орман кодексінің нормаларына талдау жасалды. Орманды бірегей табиғи ресурс ретінде танудың еуропалық тәжірибесін анықтау үшін Германия мен Венгрия елдерінің заңнамаларына салыстырмалы-құқықтық талдау жүргізілді. Сонымен бірге ҚР Қылмыстық кодексінің 340, 341-баптарын қолдануға байланысты Жоғарғы Соттың нормативтік қаулысы шеңберінде ағаштар мен бұталарды заңсыз кесу, сондай-ақ ормандарды жою және зақымдау жөніндегі қылмыстық құқық бұзушылықтар бойынша сот практикасына талдау жүргізілді.

Кілт сөздер: ағаш, бұта, заңсыз кесу, орман, ормандарды жою, ормандарды зақымдау, экологиялық қауіпсіздік, қолайлы орта, қоршаған орта, қылмыстық жауапкершілік.

Б.Ж. Айтимов, Қ.А. Ернішев

Особенности и значение квалификации уголовных правонарушений незаконной вырубке деревьев и кустарников, а также уничтожения и повреждения лесов

Цель исследования — проанализировать теории привлечения к ответственности за незаконную вырубку деревьев и кустарников, уничтожение и повреждение лесов, в соответствии со ст. 340, 341 Уголовного кодекса Республики Казахстан, и остановиться на ее практике, рассмотреть основные вопросы привлечения к ответственности по данным уголовным правонарушениям, определить основные барьеры в привлечении к ответственности и дать необходимые законодательные предложения по ее совершенствованию. В статье рассмотрена важность предупреждения незаконной рубки деревьев и кустарников, уничтожения и повреждения лесов, а также рассмотрения уголовной ответственности за эти деяния. Вместе с тем, остановившись на текущем состоянии квалификации данных уголовных правонарушений, были выявлены моменты, которые должны быть учтены при расследовании и судебном рассмотрении данных уголовных правонарушений, рассмотрены соответствующие законодательные предложения. Проанализированы нормы Лесного кодекса РК, содержащие требования, связанные с охраной деревьев и кустарников, а также особенности

привлечения к уголовной ответственности за незаконную вырубку деревьев и кустарников, уничтожение или повреждение лесов, предусмотренные ст. 340, 341 Уголовного кодекса РК. Проведен сравнительно-правовой анализ законодательств стран Германии и Венгрии для определения европейской практики признания леса уникальным природным ресурсом. Кроме того, проведен анализ судебной практики по уголовным правонарушениям по незаконной вырубке деревьев и кустарников, а также уничтожению и повреждению лесов в рамках нормативного Постановления Верховного Суда, связанного с применением ст. 340, 341 Уголовного кодекса РК.

Ключевые слова: дерево, кустарник, незаконная вырубка, лес, уничтожение лесов, повреждение лесов, экологическая безопасность, благоприятная среда, окружающая среда, уголовная ответственность.

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