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ВОЗМЕЩЕНИЕ ЭКОЛОГИЧЕСКОГО УЩЕРБА ВОДНЫМ ОБЪЕКТАМ: СРАВНИТЕЛЬНЫЙ АНАЛИЗ РОССИЙСКОЙ И ЕГИПЕТСКОЙ ПРАВОВОЙ ПРАКТИКИ

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Аннотация. Введение. В статье проводится сравнительный анализ российской и египетской правовой практики возмещения экологического ущерба водным объектам.

Методы. В исследовании использовались методы диалектического и системного анализа оценки правового регулирования и защиты отношений при выявлении экологического вреда водным ресурсам, а также урегулировании вопросов его оценки и компенсации в России и Египте.

Анализ. В анализируемом материале выявлены типичные механизмы судебной практики при рассмотрении экологических споров в Египте и России, выявлены методики обоснованности исков, случаи определения наступления вреда и расчета размера компенсации; продемонстрированы причинно-следственные связи между противоправным поведением и наступившими негативными последствиями.

Результаты. Определена недостаточная регламентация в экологическом праве России и Египта нормативного регулирования возмещения вреда, полученного вследствие нега-

тивного влияния на водные объекты. Отмечается высокая значимость органов экологического правопорядка России и Египта для осуществления надзора, вместе с тем отмечается ограниченность их деятельности вопросами материального возмещение ущерба водным объектам. В Египте в отличие от России созданы организационно-правовые структуры, страховые фонды, деятельность которых направлена на финансирование восстановления водных объектов.

Ключевые слова: компенсация экологического ущерба, водное право России и Египта, правовой практики, страховые фонды.

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COMPENSATION FOR ENVIRONMENTAL DAMAGE CAUSED TO WATER BODIES: COMPARATIVE ANALYSIS OF RUSSIAN AND EGYPTIAN LEGAL PRACTICE

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Abstract. Introduction. The article provides a comparative analysis of Russian and Egyptian legal practice of compensation for environmental damage to water bodies.

Methods. The study used methods of dialectical and systemic analysis to assess legal regulation and protection of relations in identifying environmental damage to water resources, as well as resolving issues of its assessment and compensation in Russia and Egypt.

Analysis. The analyzed material identifies typical mechanisms of judicial practice when considering environmental disputes in Egypt and Russia, identifies methods for validating claims, cases of determining the occurrence of harm and calculating the amount of compensation; demonstrated cause-and-effect relationships between unlawful behavior and the resulting negative consequences.

Results. Insufficient regulation in the environmental law of Russia and Egypt of the regulatory regulation of compensation for harm resulting from a negative impact on water bodies has been identified. The high importance of environmental law enforcement bodies of Russia and Egypt for supervision is noted, however, their activities are limited to issues of material compensation for damage to

water bodies. In Egypt, unlike Russia, organizational and legal structures and insurance funds have been created, the activities of which are aimed at financing the restoration of water bodies.

Keywords: compensation for environmental damage, water law in Russia and Egypt, legal practice, insurance funds.

Introduction

Disputes regarding compensation for environmental damage remain one of the most pressing and numerous categories of disputes in the field of environmental protection both in Russia and Egypt. According to the Egyptian Civil Code Article 163, any action that causes damage obligates the person who committed it to compensate the harm [1]. Liability does not occur unless the three elements are present: the fault which is considered crucial for the liability alongside the other two factors such as the damage itself and the causative connection. Liability for ecological cases in Egypt comes if the affected party is able to prove that the responsible party is liable for the damage cause deriving from its behavior whether intentional or due to negligence by practicing harmful to the environment behavior or by abstaining reporting the environmental damage which has occurred [10].

According to Egyptian norms of objective environmental liability, complete liability is to be founded on the damage occurred which does not bear the burden of proof. The liable party is unable to avoid responsibility if their activity caused the damage, regardless of whether it was lawful or not. This approach aims to protect the affected party and ensure their right to compensation when the fault cannot be proven. Some justify strict liability based on the theory of bearing consequences: since the party profiting from the activity must also bear any resulting damages, provided a causal link exists.

The Russian Federal Law No. 7-FZ “On Environmental Protection” as of January 10, 2002 stipulates that economic activities of legal entities and individuals making impact on the environment is conducted on the basis of availability against interest payments for the natural resources use and compensation for ecological damage. According to Article 14 of the Russian Law on Environmental Protection, environmental damage compensation is referred to as a method of economic regulation in the field of environmental protection. Article 69 of the Water Code of the Russian Federation presumes that individuals responsible for water bodies’ damage are to compensate it voluntarily or are obliged to do so by the court [9]. The obligation to compensate for the environmental damage is enshrined as follows: “legal entities and individuals who have caused harm to the environment as a result of its pollution, depletion, damage, destruction, irrational use of natural resources, degradation and destruction natural ecological systems, natural complexes and natural landscapes and other violations of legislation in the field of environmental protection, are obliged to compensate it in full in accordance with the law”.

Methods

The methodological basis of the study is dialectical and systematic approaches to the analysis and assessment of legal regulation and protection of relations in identifying environmental harm, as well as regulating issues of its assessment and compensation in Russia and Egypt. The results and conclusions are obtained on the basis of general and particular methods of scientific knowledge, including formal logical, comparative legal, systemic and structural, etc. Along with this, general scientific research methods are used: observation, generalization, comparison.

The regulatory framework of the study consists of: the Constitution of the Russian Federation, Russian federal legislation, Egyptian legislation regulating relations in the field of protection of water bodies and the environment and the use of natural resources. The analyzed sources of law include acts regulating relations in the areas of water pollution and other negative impacts on the environment and its components, as well as measurement and compensation of environmental damage.

Results

As it was stated, the primary goal of applying liability is to compensate for damages resulting from water body pollution. After reviewing attempts to adapt the rules of liability in the field of disputes resulting from damage caused to water bodies, whether the basis of that liability is traditional liability based on fault, or objective liability that based on damage, we must pay an attention to the issue of compensation for these damages.

In Egypt, the compensation parties include the plaintiff is the party harmed by the water pollution, while the defendant can be a private individual, company, or the state or its agencies. If the damage caused to water bodies and this damage affected the health of an individual by any way, only the affected person has the right to claim compensation. But if the damage is caused to the water environment itself, the state is the party concerned with claiming compensation.

According to the Egyptian practice, there are two compensation types which include in-kind compensation and cash compensation. In-kind compensation, restoring the situation to its pre-damage state, is the general principle for environmental damages, as monetary compensation is often inadequate and challenging to estimate accurately. Cash compensation is a precautionary measure when in-kind compensation is impossible. Article (171/2) of the Egyptian Civil Code stipulates: "Compensation shall be estimated in cash, but the judge may, depending on the circumstances and upon the request of the injured party, order that the situation be restored to what it was".

It is clear from this article that cash compensation is the general rule. The court may not resort to compensation in kind and refuse cash compensation except at the request of the injured party. Even if the injured party requests compensation in kind, the judge may order compensation in cash not in kind. Therefore, Compensation in kind is optional for the judge, according to his assessment of the circumstances of the case.

But the matter differs in the area of liability for environmental damages, including those caused to the water bodies, where the basis for compensation for such damage is compensation in kind and not cash compensation, meaning that the general principle is the judge's ruling to restore the situation to what it was before the environmental damage occurred. This is due to the difficulty of estimating environmental damage in monetary terms, as determining that damage accurately requires complex and different environmental policies and tools, and the interest of the affected person and the environment itself require repairing and treating the harmful effects on the environment [6].

Article 22 of the Egyptian Environmental Law No. 4 of 1994, amended by Law No. 9 of 2009, and explicitly stated that among the tasks assigned to the Egyptian Environmental Affairs Agency is to notify the owner of the establishment who has committed a violation to rectify it promptly. If he fails to comply within 60 days from the date of his tasking, the agency, after notifying the competent administrative authority, may suspend the violating activity until the effects of the violation are removed.

Compensation in kind is intended to restore the situation to what it was before the damage occurred, and not merely grant cash sums to the affected person, which may not be directed toward rehabilitating the environment. It should be noted that restoring the situation to what it was remains a difficult matter, especially in the field of the environment, as it requires complete knowledge of everything related to the polluted environment before pollution occurs, and this requires long and complex environmental studies [7, p. 327].

As for cash compensation, it is considered precautionary compensation, meaning that the judge resorts to it only when compensation in kind is not possible. And cash compensation aims to try to place the affected person in a position equivalent to what he was in before the damage occurred. In fact, the theory of cash compensation is not widely accepted in the field of compensation for environmental damages.

In Russia according to clause 1 of part 6 of article 60 of the Water Code of the Russian Federation, during the operation of the water management system, it is prohibited to discharge wastewater into water bodies that has not undergone sanitary treatment or neutralization (based on the inadmissibility of exceeding the standards for permissible impact on water bodies and standards for maximum permissible concentrations of harmful substances in water bodies or technological standards established in accordance with the Law on Environmental Protection. According to 4.1 of Article 68 of the Water Code of the Russian Federation, persons guilty of violating water legislation bear administrative and criminal liability in accordance with the legislation of the Russian Federation. Violation of requirements for water protection. objects, which may lead to their contamination, clogging and depletion, is punishable under Part 4 of Article 8.13 of the Code of Administrative Offenses of the Russian Federation.

For example, in April 2021, the North Caucasus Interregional Directorate of Rospirodnadzor conducted a scheduled on-site inspection of compliance with legislative requirements in the field of environmental protection and natural resource management in relation to OAO "Makhachkalavodokanal" During the inspection, it was established that the defendant allowed the discharge of untreated wastewater into the Caspian Sea through the local sewerage system in the area of the village of Turali. The discharge of untreated wastewater is carried out constantly, has a cloudy color and a specific odor characteristic of household wastewater, the discharge of untreated wastewater is permanent. According to the expert opinion of the branch of the Federal State Budgetary Institution «TsLATI for the Southern Federal District» – TsLATI for the Republic of Dagestan» dated 04/06/2021 No. 26, based on the results of a quantitative chemical analysis of wastewater samples discharged into the Caspian Sea, an excess of the maximum permissible concentrations of pollutants for sea water bodies was revealed. According to the calculation made by the plaintiff, the amount of damage caused to the water body is 3,980,070 rubles. As a pre-trial settlement, the plaintiff sent a claim to the defendant, but it was not executed [3]. The court recovered the specified amount of damage caused to the water body (Caspian Sea).

Discussion

In Egyptian legal practice, there is possibility to compensate for the environmental damage caused to water bodies through insurance and private funds. With regard to Egyptian law, it is necessary to obtain a license from the competent administrative authorities in order to be able to practice the relevant activities with the Egyptian environmental law. It should be noted that the legislator in this law specified the conditions that must be followed to grant a license, but the necessity of

concluding an insurance contract against liability for damages that may occur as a result of these activities is not one of these conditions [7, p. 103-104].

However, it is appropriate to require the conclusion of a compulsory insurance contract as a condition for obtaining an administrative license, and to ensure the efficiency and effectiveness of insurance, premiums can be scheduled in accordance with the standards followed by each facility, aiming to achieve the maximum rate of environmental protection in Egypt. While Egyptian law requires administrative licenses for activities relevant to the environment, it does not mandate liability insurance for potential damages. Compulsory insurance could enhance compensation efficiency.

Compensation is also possible through private funds which can complement liability and insurance, intervening when responsible parties cannot be identified or lack the financial capacity for compensation. Egypt has established an Environmental Protection Fund to finance environmental protection projects, including confronting disasters and pollution of unknown sources.

The rules of liability to compensate for environmental damages, including those caused to water bodies, are insufficient and ineffective, due to the inability to know who is responsible, as it is often difficult to attribute the damage to the activities of a specific responsible party, or the inability to pay exorbitant amounts of compensation that exceed financial capacity, in addition to the necessity of treating these damages urgently. All of these reasons led to the necessity of establishing a special fund from which appropriate compensation for environmental damage can be obtained.

It is noted that compensation funds often intervene only in a complementary way to both liability and insurance. These funds also work to distribute risks among all those who participate in activities that could cause these risks [1].

In Egypt, the Environmental Protection Fund was established in accordance with Article 14 of the Egyptian Environmental Law No. 4 of 1994, amended by Law No. 105 of 2015, which stipulates that: “The Environmental Protection Fund established in the Environmental Affairs Agency with the aim of financing environmental activities, studies, and projects to support the state’s efforts in the field of protecting the environment and natural resources and achieving sustainable development ..., Participating in financing environmental protection projects, in accordance with the environmental priorities approved by the Fund’s Board of Directors” [2].

Article 1 of the Executive Regulation of the Environmental Law issued by Prime Minister’s Decision No. 964 of 2015 stipulates that: “The Fund’s resources shall be allocated to be spent for achieving its purposes, in particular:

1- Confronting environmental disasters. 5- Establishing and operating environmental monitoring networks. 6- Establishing and managing natural reserves with the aim of preserving natural wealth and resources. 7- Confronting pollution of unknown source. 10- Pollution control projects. 13- Other purposes aimed at protecting or developing the environment and approved by the Fund’s Board of Directors” [8].

It is clear from these articles that the Environmental Protection Fund was established with the aim of financing projects aimed at protecting the environment from pollution, and it is not explicitly mentioned a compensation for those affected. However, this is implicitly understood through some provisions, the most important of which is confronting environmental disasters and confronting pollution of unknown sources.

In Russia, the calculation of the amount of compensation for damage to a water body is made in accordance with the Methodology for calculating the amount of damage caused to water

bodies due to violation of water legislation, approved by Order of the Ministry of Natural Resources of Russia dated April 13, 2009 No. 87 (registered with the Ministry of Justice of the Russian Federation on May 25, 2009, registration number 13989). N. G. Zhavoronkova and G. V. Vypkhanova note that “existing rates and methods of compensation for harm require updating” [11].

When calculating the amount of damage caused to a water body, it is necessary to take into account the consequences expressed in the form of degradation of natural ecological systems, depletion of natural resources and other consequences. In this regard, and in order to correctly resolve issues that require special knowledge in the field of ecology, including when determining the amount of harm caused by an environmental offense, appropriate examinations should be carried out in the case with the involvement of specialists: ecologists, sanitary doctors, zoologists, ichthyologists, game experts, soil scientists, foresters and others. There are also many problems with environmental assessments. Firstly, they are very expensive; secondly, in our country there are very few organizations that conduct them. We agree with V. V. Erofeeva that the complexity of most assessment objects makes it difficult to finance the examination at the expense of public organizations [5].

It is necessary to resolve these problems by increasing the number of these organizations, provide the necessary funding from regional budgets, improve the qualifications of specialists and experts, popularize the protection of environmental rights of citizens and bring offenders to justice.

An important Russian government body that carries out environmental protection and, on whose initiative, compensation for damage to water bodies is also carried out, is the environmental prosecutor's office. For example, in 2020, the Blagoveshchensk City Court resolved a dispute regarding the claim of the Blagoveshchensk Interdistrict Environmental Prosecutor, acting in the interests of the Russian Federation and an indefinite number of persons, against Rosszoloto LLC for compensation for damage caused to a water body. As a result of the inspection, it was established that Rossoloto LLC discharged wastewater into the river. Otradny, which is in its use, during the development of a placer gold deposit under a license, exceeding the standards for permissible impact on a water body for suspended substances. The content of suspended substances in a water body exceeding permissible limits had a negative impact on the water body and led to harm. The damage calculated by the plaintiff is 19,546,720 rubles. The court decided to recover from Rosszoloto LLC in favor of the Russian Federation this damage caused to the water body by the Otradny stream, as well as a state duty in the amount of 60,000 rubles to the local budget [4].

Conclusion

Improving the quality of water bodies is possible by implementing measures to reduce the anthropogenic load on water bodies and their catchments, restoring water bodies and eliminating accumulated environmental damage, as well as measures to protect against groundwater pollution. The authors believe that the role of the environmental law enforcement agencies in Russia and Egypt as supervisory authorities is invaluable, but their work is mainly aimed at monetary compensation for damage caused to water bodies. There is a long overdue need to create an organizational and legal structure aimed at financing measures for the restoration of water bodies affected by pollution.

Claims for compensation for damage caused by pollution of water bodies owned the Russian Federation and Egypt, municipalities, and private property may be brought by authorized state authorities, local government bodies within the limits of their powers established by regulatory legal acts, individuals or legal entities, respectively.

In conclusion we would like to state that the resolution of environmental disputes related to damage to water bodies has some specific features in Russia and Egypt. Firstly, the main plaintiffs are government bodies e.g. Rosprirodnadzor as a representative of the interests of a public legal entity, as well as the environmental prosecutor's office in the interests of the countries and an indefinite number of their residents. Secondly, when considering an environmental dispute, the court first determines the validity of the claim, and if the representative of environmental law enforcement agencies substantiated the existence of such conditions as the occurrence of harm and its size, the illegality of the behavior of the harm-doer, the guilt of the harm-doer, and the cause-and-effect relationship between the unlawful behavior and the harmful consequences that have occurred, the court, as a rule, satisfies the claim. In Egypt, unlike Russia, organizational and legal structures and insurance funds have been created, the activities of which are aimed at financing the restoration of water bodies.

In order to calculate the amount of damage caused to a water body, a special methodology is applied which consists of calculating the amount of damage caused to water bodies as a result of violation of water legislation, including violation of the rules for operating water management systems, structures and devices, as well as accidents at enterprises, transport and other facilities associated with the discharge of harmful substances into a water body, including emergency spills of oil and other pollutant substances.

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