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Book Review:

A.A. Aryamov, E.A. Sharafutdinov. Criminal and legal protection of subsoil use relations: theory, regulatory regulation and enforcement practice.

Moscow: Yurlitinform, 2015. - 248 p.

Very topical and still insufficiently researched issues of subsoil protection and subsoil use rights from unlawful encroachments are considered in the monograph under review. Taking into account the reserves of our country's mineral resources, its dependence on budget revenues through their extraction and export, it is necessary to use all existing legal instruments to ensure law and order in this sphere of environmental protection and nature management. The means provided by the criminal law play an increasingly important role along with civil-legal means, measures of administrative-legal impact. The Criminal Code of the Russian Federation (Chapter 26 "Ecological crimes") contains article 255 "Violation of the rules for the protection and use of mineral resources", but it is rarely used. At the same time, such violations are of a massive nature, they cause significant damage not only to the state and the environment, but also to the environmental rights of citizens, protection of the interests of future generations, are latent, do not attract attention of law enforcement and regulatory agencies for various reasons, thus creating an atmosphere permissiveness and lawlessness and reducing the level of law and order. It would be possible to focus the authors' attention on the black negativity and call their book "Criminally-legal struggle against encroachments on the subsoil as a natural resource", and this would be justified, but they set a broader task - to study the protection of subsoil use in all their complexity and multidimensionality.

A.A. Aryamov and E.A. Sharafutdinov emphasize from the very beginning that crimes in the sphere of subsoil use "are characterized by pronounced selfish motivation, high level of criminal professionalism, organization, developed secrecy, stability of ties, use of official or official authority, corruption" (p. 3). Unfortunately, we have to admit that this is not a scientific hypothesis, but facts, which is related not only to encroachments on subsoil, but also to many other crimes against the environment and the rational use of natural resources.

The monograph under review consists of three chapters, including paragraphs, which deal with the most important issues, conclusions and annexes that are relevant to the research topic, including a model questionnaire No. 1 defining the profile of professional knowledge and identifying the opinion of investigators from the Investigative Committee of the Russian Federation and prosecutors of environmental prosecutors on the application art. 255 of the Criminal Code of the Russian Federation with the results of the questionnaire (pp. 230 - 234), model questionnaire No. 2 determining the cut of professional knowledge and identifying the opinion of judges of the courts of general jurisdiction of the First Instance on



the application of art. 255 of the Criminal Code with the results of the questionnaire (pp. 234 - 235); a table with data on the dynamics of recorded crimes related to violation of the rules for the protection and use of subsoil resources under art. 255 of the Criminal Code of the Russian Federation (pp. 236-237), as well as a bibliographic list, including monographs, articles, publications in foreign editions, abstracts of dissertations and dissertations (altogether 119 titles) devoted to the protection of mineral resources in general and their protection by means of criminal law (p. 238- 245).

From the very beginning, the authors emphasize their commitment to the approaches developed in Russian (Russian) science. No wonder chapter 1st is entitled as follows: "Characteristics of the mechanism of public law protection of mineral resources in the doctrine of criminal law". I must say that this denomination is completely justified. The authors analyze the views of Russian (Soviet) scientists on the concept of "the object of criminal legal protection" really carefully, as well as the legal content of legal relations as a set of counter-rights and obligations of participants in the legal relationship and the legal status of the border for the legal permission of possible behavior (§ 1, p. 9 - 21).

Then A.A. Aryamov and E.V. Sharafutdinov pass to the analysis of a very controversial issue of the system of criminal and legal protection, focusing on identifying the role and place of subsoil use relations in this system (pp. 21-29). They come to the indisputable conclusion that "the ratio of the ecological component in the general legal relationship with subsoil use with other components, civil (subsoil ownership), administrative (subsoil use licensing), financial and legal (payment for subsoil use) does not correspond to the ratio of the main, additional and facultative object "(page 24), and therefore the ecological component plays far from the major role.

The authors are quite right in that the subsoil use relations badly need a doctrinal description as an object of criminal legal protection (p.25), that many officials are not inclined to perceive the subsoil as an object of criminal legal protection, therefore socially dangerous actions often remain with impunity, that the implementation of criminal responsibility affects the interests of influential environmental groups and meets resistance from lobbyists (p. 27). They mentioned: "Criminal liability for violation of the subsoil law is a specific means of influencing the behavior of various actors, designed to protect the mineral resources and the mineral resources in them from any adverse effects of interaction with the environment, to promote the strengthening of law and order. The specificity of this responsibility is manifested in the universality and law enforcement function "(p. 27). This is true, but then A.A. Aryamov and E.A. Sharafutdinov still overestimate the importance of this institution, believing that it is the most effective, and the severity of the potential criminal repression provides a general prevention. Positive legal regulation, undoubtedly, plays a more important role in subsoil use: criminal penalties only reinforce it and, as historical experience shows, do not solve the task of protecting subsoil and subsoil users' rights.

The question about the need to reform the criminal-law protection of the subsoil use relations is raised in the third paragraph of this Chapter, that is, amendments to article 255 of the Criminal Code. Its formulation has been criticized in Criminal Law and Environmental law literature for a long time, primarily because of the lack of formal composition of placing in danger; skilled formal components are not allocated in it; there is no differentiation of the



effects of the crime. The authors support the position of I.V. Popov, who proposed to exclude the article 255 of Chapter 26 "Environmental crimes" and translate it into the Chapter on crimes in the economic sphere. It is difficult to accept, but the ban itself must change, expanding the environmental component.

The three groups of problems are considered in Chapter 2 "Regulatory Legal Regulation of the Mechanism of Criminal Legal Protection of the Subsoil" (pp. 48 - 171): subsoil use as an object of criminal assault; The content of derivatives from subsoil use of relations that need criminal law protection; Conflicts and competition of criminal law norms and norms of other branches of law in the qualification of criminal encroachments.). The authors of the monograph proceed to the analysis of Article 255 of the Criminal Code of the Russian Federation after a short historical and comparative legal excursion, which is a kind of introduction to the problematics, which allows the reader to orient and realize the scale of the tasks facing the Law (pp. 48-64). They characterize the blanket of the disposition, explain the content of the concepts of the rules of the protection of the subsoil as a whole and the nuances of such rules in the processing of mineral raw materials, in drawing up technological schemes for the development of mineral water deposits, as well as the concepts of "underground structures", "unauthorized buildings", "significant damage" etc., then give a description of the crime subject, referring to the legislation on the depths and positions of the doctrine of environmental law in relation to the content of the concept of "natural resources", criticizing them (as, in the eat, and legislative definitions). They carefully analyze the generic and specific features of subsoil resources, dividing them into four groups: 1) mineral resources; 2) geothermal energy; 3) cavities of natural and technogenic origin; 4) living organisms in the bowels (bacteria, fungi, etc.). Perhaps, there were no works in which the signs of the subject of criminal encroachments - subsoil and their components - were examined in such detail prior to the appearance of the book under review.

The content of subsoil use, its subjects, terms and legal grounds for subsoil use, legal content (rights and duties of subsoil users) are analyzed in the same paragraph. Of particular interest is a fragment on the specifics of granting the right to subsoil use, containing criminogenic factors, in particular arising from the wording of Part 6 of art. 13.1, art. 14 of the Law on Subsoil, regulating the procedure for holding auctions and competitions, because of which a foundation for abuse is formed (pp. 108 - 109).

Very important questions raised in the second paragraph of this chapter, "Derivatives from Subsoil Use Relations Needing Criminal Justice Protection" (pp. 115 - 144). The paragraph is well structured: it covers relations in the field of product sharing, licensing, taxation, accounting and reporting, and investment. Thus, the whole range of relations characterizing the complexity of the legal regulation of subsoil use in Russia, which should be protected by means of Criminal Law, is presented here.

The analysis of collisions and competition of Criminal Law Norms and norms of other industries in the qualification of criminal encroachments on subsoil use is of particular importance for the application of Article 255 of the Criminal Code of the Russian Federation (pp. 145 - 171). These topics - qualification of crimes, conflicts, competition are classical in the science of criminal law and many works have been devoted to them. I must say that A.A. Aryamov and E.A. Sharafutdinov made a worthy contribution to this section of Rus-



sian Criminal Law. They analyzed the delineation of the object of the crime provided by Art. 255 of the Criminal Code of the Russian Federation from the object of correspondent administrative violations by Art. 8.9, 8.11 of the Administrative Code of the Russian Federation, competition art. 255 and 250 "Water Pollution" of the Criminal Code of the Russian Federation, art. 255 and art. 216, "Infringement of safety rules in mining, construction and other works", and, as a result, they return to the idea of reforming the Criminal Legislation, proposing to supplement Chapter 22 of the Criminal Code "Crimes in the sphere of economic activity" with Article 191.1 "Infringements on the Subsoil" consisting of four parts. The basic formal composition in part 1 replaces the blanket disposition of art. 255 of the Criminal Code of the Russian Federation with a closed list of unlawful acts (unlawful acquisition of subsoil in any form, violation of the established procedure for subsoil use, unauthorized use of subsoil without legal basis, unlawful disposal of mineral resources (unlawful conclusion of any transactions with subsoil and (or) turnover) that caused major damage or associated with the extraction of profit (income) on a large scale, or created a threat of causing such damage or aimed at extracting (income), that is, the material and formal composition of the posing in danger. The second part contains the composition of causing large-scale damage to the subsoil without the intention to seize and use them (formal composition). The third part provides liability for violation of the rules for the protection and use of mineral resources, except for the acts listed in part 1, causing major damage or associated with the extraction of profit (income) on a large scale, or creating a threat of causing such damage or aimed at extracting such profit (income), that is, the composition of the material and posing in danger. Finally, the fourth part specifies the qualifying signs of increased public danger on the grounds of particularly large damage or the extraction of profits on an especially large scale (material and composition of placing in danger) (pp. 170-171). Of course, this proposal must be discussed. Undoubtedly, it is positive to include the formulations of posing in danger (creating a threat), negative - a closed list of acts under Part 1. We cannot agree with the reorientation to a purely economic approach and the rejection of the ecological significance of the criminal-legal protection of subsoil. However, A.A. Aryamov and E.A. Sharafutdinov somewhat changed his position in favor of ecology after the publication of the monograph.

The authors advocated the following positions in their subsequent publications:

1. Socially dangerous encroachment on the subsoil use relations are understood not only as environmental but also as economic crimes. The differentiated approach appropriate to understanding the relations in the sphere of protection and use of mineral resources as an object of criminal legal protection. These relations are divided into two relatively independent segments: 1) subsoil use relations, in which the ecological component is practically not expressed, but the economic one is obvious (the responsibility for encroachment on this object should be fixed in Chapter 22 of the Criminal Code of the Russian Federation "Crimes in the Sphere of Economic Activity"); 2) relations in the field of subsoil protection, in which the ecological component acquires the main importance (responsibility for encroachments on this object should be fixed in Chapter 26 of the Criminal Code of the Russian Federation "Ecological crimes").
2. The disposition of art. 255 of the Criminal Code of the Russian Federation, as focused on the criminal and legal provision of environmental interests of the state and society



in the field of subsoil use, should be stated in the following edition: "Pollution of the bowels, which caused significant damage." Accordingly, the title of this norm also should be amended: "Pollution of the bowels".

3. Chapter 22 of the Criminal Code of the Russian Federation "Crimes in the sphere of economic activity" must be supplemented with art. 192.1:

"Article 192.1. Encroachment on the subsoil.

1. The illegal acquisition of subsoil in any form, violation of the established procedure for subsoil use, unauthorized use of subsoil, unlawful disposal of mineral resources (unlawful conclusion of any transactions with subsoil and (or) other introduction of subsoil in civil circulation), causing major damage or associated with the extraction of profit (income) on a large scale, or creating a threat of causing such damage or aimed at extracting such profit (income) - is punished ...
2. Damage to the subsoil, which entailed the infliction of major damage without the intention to own and to use them, is punished ...
3. Violation of the rules of the using subsoil, except the acts listed in part 1 of this article, which caused major damage or associated with the extraction of profit (income) on a large scale, or which created the threat of causing such damage or aimed at extracting such profit (income) - is punished ...
4. The actions listed in parts 1, 2 and 3 of this article, which caused particularly large damage or associated with the extraction of profit (income) on an especially large scale, or which created the threat of causing such damage or aimed at extracting such profit (income) - are punished ...

Note to the art. 169 of the Criminal Code of the Russian Federation shall be supplemented after the numbers 191.1 with the words part 2 of article 76.1 of the Criminal Code of the Russian Federation shall be supplemented with the words "parts one, two and three of Article 192.1" after the words "part one of article 185.4".

The third chapter of the monograph under review, which is devoted to the analysis of the practice of law enforcement, consider meaningful interest (pp. 172 - 213). It consists of four paragraphs. Two of them deal with the peculiarities of law enforcement practice in accordance with the classification of mining crimes selected by the authors (in cases of violations of the rules for the use of mineral resources associated with violations of safety rules in mining, construction or other works, as well as safety rules in explosive objects and in cases of violation of the rules of protection and use of mineral resources). The authors analyze socially dangerous cases of violations of the rules for the use of mineral resources separately, which have not realized the potential of criminal repression (§ 3). They correctly point out that close to zero statistical indicators of judicial practice of Art. 255 of the Criminal Code "does not mean that such behavior does not exist in reality. A huge number of gross violations of the requirements in question, involving significant damage, do not entail the initiation of public prosecution." (P. 197). It is true: the latency of criminal encroachment on the subsoil can only be compared with the latency of crimes punishable under art. 259 of the Criminal Code of the Russian Federation "Destruction of critical habitats for organisms listed in the Red Book of the Russian Federation". One or two crimes



have been registered on both articles, since it entry into force of the Criminal Code of the Russian Federation, that is, over the 20-year period of its operation, and even none at all, even though in reality (at least according to Article 255) they are accomplished a lot. A.A. Aryamov and E.A. Sharafutdinov cites many examples of criminal cases that have never been submitted to court, indicate the lack of information on compensation for harm caused to the owner of the subsoil - the state, analyze the practice of so-called denial cases. This is a very valuable material, which allows us to judge the discrepancy between the goals formulated by the law and their implementation in practice.

In my opinion, the fourth paragraph of the final chapter of the monograph under review is consider scientific and methodological significance itself. It presents the results of a survey of employees of the judicial system, the investigation and the prosecutor's office on the specifics of the application of art. 255 of the Criminal Code of the Russian Federation and the criminal-legal provision of subsoil use relations (pp. 202 - 213). The authors note that the research they cited revealed an *absolute dissatisfaction* (singled out by me – O.D.) by practical workers with the formulation of the disposition of Art. 255 of the Criminal Code, but at the same time they complain about the lack of practice when they themselves must form it (p. 203). That is not news - the practitioners always complain about the shortcomings of legislative regulation, keeping silent about their own miscalculations. But this looks really impressive, and here special - criminological - research merits corruption and other aspects with reference to Article 255 of the Criminal Code of the Russian Federation.

In addition to the overall high appraisal of the content of the book under review, it should be noted that the organization of the information submission is completed: each chapter concludes with intermediate conclusions (pp. 45-47, 162-117, 210-211) and a general conclusion (pp. 214-229) summarizing the views and suggestions of the authors not only concerning the essence of the problem of criminal and legal protection of mineral resources, but also their proposals on a set of necessary measures in the sphere of criminal legal doctrine (pp. 225-227), in the sphere of reform of criminal and other (tax and mining) legislation (pp. 227 - 229).

Finally, it is gratifying that the authors give not only the questionnaire, but also the survey results obtained (Appendix 1 - pp. 230 - 235) in the appendices, and in Appendix No. 2 - data on the dynamics registered under Art. 255 of the Criminal Code of the Russian Federation for crimes for the period 2003-2012. (pp. 236 - 237) and even for an earlier period, referring to the data of S. Maksimov and other researchers. From a methodological point of view, this should serve as an example of a proper attitude to working with information.

In general, assessing the monograph under review should be congratulated by the scientific community of environmental lawyers and forensic scientists on the publication of a book that drew attention to the burning problems of criminal and environmental law, whose solution should contribute to improving the efficiency of criminal law protection of subsoil and protecting the interests of subsoil users.