The Problems of Legal Regulation of the Land Reclamation after the Illegal Coal Mining by the “Black Diggers” (the Kemerovo region example)

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Abstract: The article deals with the issues of the legal "irregularity" of criminal and material responsibility of the "black diggers" for the illegal production of natural resources in the territory of the Kuzbass. The schemes of production and selling the coal are very different. That is why it is rather difficult to consider them in terms of criminal, arbitration, and administrative processes, especially by considering the issues of reclaiming the lands broken by such illegal activity. This is evidenced by the limited judicial practice of arbitration courts and courts of law of the Kuzbass. There is also no similar practice in other territorial subjects of the Russian Federation. Thus, there is a necessity in urgent developing of the methodical recommendations for the law enforcement officials on the calculation and compensation for the damage, considering the escalating statistical data on the illegal activity of the "black diggers". Since the production and land reclamation caused by the coal mining are technologically interconnected, there must be an assigned surveillance of the use of a fund and the order of land reclamation to the prosecutor's office on the surveillance of respecting the lawfulness in the coal-mining industry. These actions are provided for the coal-mining enterprises. For a long time, the "black diggers" have been producing the natural minerals which are the property of the state and they have also been able to escape the attention of the Russian legislation.

1 Introduction

Following our previous research [1], there was a definite purpose: the struggle against the "black diggers" via the coordinated work with the reliable and socially-responsible companies fulfilling the commitments made to the regional residents. The actual paper is considering the issues of reclaiming the broken land areas due to the criminal activity of the "black diggers". The study of judicial practice of arbitration court of the Kemerovo region demonstrates that the judgments do not define the obligation for reclamation of the land areas.

Ideally, the reclamation of lands has to be carried out on the basis of the reclaiming project which is approved as a part of technical documentation on mining (license, mining allotment).

Also, the order and terms of reclamation have to be specified in the lease agreement of lands in case of granting the respective land area to a user of resources or land.

In both cases, a land user has to get the approved reclaiming project of lands by the time of the beginning of use of the respective land area but it is not always observed practically. The reclaiming project is often lacking not only by the time of the beginning of the development of the land area but also till the expiry of use of such area.

It is rather easier for an owner or the authorized body representing the interests of the owner to recover compensation for harm done to the land resources or for an unjust enrichment as a result of unauthorized use of the land areas from the violator, than to ask for the development of the reclaiming project and to carry out such reclamation by a court decision. Such situation takes place in case of unauthorized use of the land areas including the resources users if the approved reclaiming project is lacking.

Thus, the "black diggers" without the documentation determined by the law leave behind the unsuitable "for-further-use" land areas. The region annually loses tens of millions and collects less taxes. To struggle against the illegal business, there was created the "coal special troops". Although, the situation remains the same. The experts consider that the "black diggers" will have traded by the time when the tougher punishment for this crime is credited in the Criminal code. In July, 2019, the governor of Kuzbass submitted the issues of increase in penalties for the illegal coal mining for the consideration of deputy corps: the officials – from 800 thousand to one million rubles with the confiscation of instruments of production, the legal entities – from 15 to 80 million with the confiscation of the equipment. The governor believes the relevant amendments made to the Criminal Code of the Russian Federation will help not only Kuzbass but also other regions which face the same problems. The deputies supported the governor's initiative. The amendments were prepared and sent to the Board of Legislators at the Federation Council of the Russian Federation and also to the Government of the Russian Federation and the Supreme Court for their expert assessment.

2 Materials and methods

The empirical material for making up the analytical and statistical reviews were taken from the legal portals.

One studied the materials of judicial practice of arbitration courts and courts of law concerning the reclamation of lands after the illegal coal mining and the illegal activity of the "black diggers" in the Kemerovo region 2015 – 2019. These used materials are of the following official Internet portals: the official Internet portal of the state automated system "Pravosudie" (En. Justice) (<http://sudrf.ru>), the portal of legal statistics of the State Office of Public Prosecutor of the Russian Federation (<http://crimestat.ru>) and the official Internet portal "Federal Arbitration Courts of the Russian Federation" (<http://arbitr.ru>).

The empirical material was processed by retrospective, comparative, and statistical techniques of the analysis using the software of Excel 2010 and Statistica 6.5.

3 The factors causing the illegal activity of the "black diggers"

According to the Russian Federation Government decree of 10.07.2018 No. 800 "On Carrying Out Reclamation and Preservation of Lands" [2], the land reclamation is the actions for prevention of degradation of lands and (or) recovery of their fertility by means of bringing the lands to the state which is suitable for their use according to the determined and allowed usage and also by the elimination of the effects of soil pollution, the restoration of a fertile soil layer, and the creation of protective forest plantings.

This causes the plurality of factors of the illegal activity of the "black diggers". Our research shows the existence of at least seven of them:

1. The obtainability (superficial bedding) of coal;
 2. The existence of a large number of experts on the open cast mining. For example, the former technical staff of the coal enterprises and open-casts;
 3. The rates of unemployment;
- The illegal enrichment (receiving illegal profit), including criminal structures;
4. The various number of consumers of the coal extracted by illegal way. A large number of intermediate contractors is involved in the illegal schemes of the coal production and sale. Let us give an example of the materials of one particular criminal case. According to the official data, the revenues of LLC "ASR-Uglesbyt" (*Rus. ООО "АСР-Углесбыт"*) were 11.2 billion rubles in 2016 and 20 billion rubles in 2017. The revenue building happened due to the growth of sales and amounts of coal extracted by criminal means. Thus, the revenue from sale of coal was 10.5 billion rubles in two years only, it is about 1.8 million tons of "black gold" of the state. LLC "ASR-Uglesbyt" adjusted the scheme of purchasing and legalization of the doubtful origin coal from the "black diggers". It involved several intermediate contractors registered to the persons controlled by the head of LLC "ASR-Uglesbyt" who are affiliated with him at the same time and facilitated to withdraw funds from the sale of illegal coal;
 5. The lack of proper control from Rospotrebnadzor (*Rus. – The Federal Service for Surveillance on Consumer Rights Protection and Human Wellbeing*) and the law enforcement agencies;
 6. The ignorance of judgments on the reclamation of the broken land areas, the increasing legal nihilism of the future "causers of harm". The similar judicial practice is developed in a number of territorial subjects of the Russian Federation that creates the need of intervention of the federal authorities to the formation of a regulatory and legal framework corresponding to the present-day realities.

Despite an insufficient legal regularity at the federal level which concerns the reclamation of the land areas broken by the criminal activity of the "black diggers", the authorities of the Kemerovo region accepted a number of standard sources eliminating this gap somehow. The followings are some of the most important of them:

- The resolution of the Governor of the Kemerovo region (Kuzbass) of 12.08.2019 No. 55-pg "On the organization of the standing committee on the issues of land reclamation" [3];
- The resolution of board of the Administration of the Kemerovo region "On the introduction of amendments to the resolution of Board of Administration of the Kemerovo region of 08.11.2016 No. 430 "On the approval of the state program of the Kemerovo region "Guard, protection, reproduction, management of the woods and the objects of fauna of Kuzbass" for 2017 - 2021" [4];
- The strategy of social and economic development of the Kemerovo region until 2035, etc.

There is a number of documents of federal level which do not define the responsibility of executive authorities of the state subject and local governments in relation to activity of the "black diggers". It is possible to mention such documents as:

- The decree of the Russian President of 30.04.2012 "A basis of state policy on the ecological development of the Russian Federation until 2030";
- The Russian Federation Government decree of 10.07.2018 No. 800 "On Carrying Out Reclamation and Preservation of Lands" [2].

Since 2015, on the basis of the annual report of the Department of natural resources and ecology of the Kemerovo region "On status and environmental protection of the Kemerovo region" [5] we made up the comparative table (see Table 1). The Table 1 clearly shows the

observation of an unstable wave-like percentage of the lands which were underwent the reclamation after their violation as a result of the development of mineral deposits. The percentage increase of reclaimed lands is noted in 2015 and in 2017, the falling is in 2016 and 2018 correspondingly. Also, the attention is paid to the fivefold decrease in the areas of the broken lands when developing the mineral deposits in 2018. This information demands further in-depth study. One may assume the existence of subjective factors such as the terminating dates of the license for development of deposits and beginning of the revisions from the authorized bodies (Rospotrebnadzor (Rus. – see above), Rosselkhoznadzor (Rus. – The Federal Service for Veterinary and Phytosanitary Surveillance), etc.).

Table 1. Breakdown of the broken and reclaimed lands during the studied period [5].

	Years				
	2015	2016	2017	2018	2019
Broken lands during the developing of mineral deposits, thousand hectares	2.976	4.35	5.01	0.933	No official data
Reclaimed land areas, %	24.5	1.10	19.4	2.6	-

After studying the judicial practice of arbitration court of the Kemerovo region (Table 2), we can come to the following conclusions: (a) the small number of the considered cases on issues of obliging the "causers of harm" to reclaim land resources; (b) a few cases connected with the compensation of damage made to the land resources. Generally, the "causers of harm" are imposed a penalty and the arbitration court obliges such persons to reclaim the land area only in certain cases. One may assume that such situation is connected with the peculiarities of gathering and setting the evidential base of criminal violations of the rules of safety measures at coal mining work including the illegal activity of the "black diggers". Some scientific publications [6-8] generally pointed out one peculiarity, viz. the insufficient readiness of criminalistic and operational investigation means and methods of searching and collecting the information which has the procedural value concerning the persons who can be owners of the broken land areas, the persons who have to repair a damage, the persons who are authorized to reclaim land resources.

Table 2. The number of cases considered by arbitration court of the Kemerovo region whose decision is to oblige to make reclamation of the land areas

	Years				
	2015	2016	2017	2018	2019
Reclamation of land resources	6	4	6	12	12
Damage to land resources*	30	40	59	73	64

* is the recovery of damages from the persons who are not licensees, being recognized as "causers of harm" to land resources by court, e.g. due to the illegal coal mining.

According to the decision of arbitration court of the Kemerovo region of September 25th, 2019 on case No. A27-10607/2019 [9], the court did not manage to establish the owners of the disputed land area and it did not fully succeeded to oblige the party to repair a damage and to perform the land-reclaiming works. The Resolution the Supreme Court of the Russian Federation [10] merely points to the fact that the courts apply criminalistic means on the establishment of relationships of cause and effect between the done harm and persons who did this harm. However, we do not find any researches on this subject in criminalistic literature.

4 Conclusion

The above-mentioned define the following conclusions:

1. Strengthening the requirements to the lease agreement of lands which provides for the indispensable conditions of such contract: (a) the existence of the project of reclamation of the land area; (b) the rigid terms of reclamation, and (c) the responsibility for non-fulfillment of the specified conditions.
2. One must provide a method of calculation of the harm done to the land areas for the unauthorized land users. For these purposes, it is possible to state such method in a separate document in the form of the additional agreement to the lease agreement of the land area.
3. Criminal sentencing to the "black diggers" in the form of correctional (Article 50 of the Criminal Code of the Russian Federation) or compulsory (Article 53.1 of the Criminal Code of the Russian Federation) works for the reclamation of the land areas broken by their illegal (criminal) actions at the special land-reclaiming enterprises or at the correction centers (Article 60.1 of the Penal Enforcement Code of the Russian Federation) of the territorial authorities of the Federal Penal Service of the Russian Federation.
4. The sums of penalties paid by the convicted "black diggers" in the form of criminal or administrative penalty and other amounts of compensation must be transferred to the funds which are specially organized by the executive authorities of the territorial subject of the Russian Federation for the payment of technical documentation and for the realization of reclamation of the lands broken by the "black diggers". The surveillance of land reclamation when mining (coal in particular) is to be assigned to the Kemerovo inter-district prosecutor's office on the surveillance of respecting the lawfulness in the coal-mining industry (formed 01.09.2010 by the order of the Prosecutor General of the Russian Federation of 31.05.2010 No. 24-sh) [11].

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