

## To the Problem of Improving Environmental Regulations

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**Abstract:** The research focuses on some of problems of improving environmental legislation in the Republic of Kazakhstan. In the work the legal nature and content of the environmental legislation, the study of the formation and development of environmental legislation in the Republic of Kazakhstan, revealed the influence of international law on the development of national legislation, studied the relationship between the principles of environmental law and environmental safety, the characteristic of legal support for economic instruments to environmental security, developed theoretical and practical recommendations, formulated proposals for improvement of the current legislation of the Republic of Kazakhstan in the field of environmental safety.

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### 1. Introduction

The existing now legislative and other acts regulating the relations on use and protection of natural resources, not only don't promote overcoming of ecological crisis, but in many cases are the reason of its approach and expansion. Generally they have declarative character without the corresponding mechanism of implementation of the proclaimed statements.

In the Message the President of the Republic of Kazakhstan N.A.Nazarbayev "Strategy of occurrence of Kazakhstan in number of 50 most competitive countries of the world. Kazakhstan on a threshold of new breakthrough forward in the development" in the third priority defined a task to ensure environmental protection and ecological safety according to the international standards [1].

Importance of updating of the environmental legislation is dictated as well to that in recent years the Republic of Kazakhstan joined many international conventions on conservancy. They demand submission of serious changes into the existing acts because international contracts ratified by Parliament of the country, have a priority over national laws.

### 2. Main part.

According to the approved Concept of ecological safety of the Republic of Kazakhstan for 2004-2015 the national legislation has to correspond to ecological criterion that provides improvement of existing regulatory base taking into account the ecosystem principle in legal regulation of the public relations, and also demands increase of efficiency of the mechanism of legal responsibility for ecological offenses [2].

Legal means promote action of the market laws, make them active, and help to avoid some negative results which can be connected with it. And, on the contrary, inadequate forms are capable to prevent action of the market laws, to strengthen negative consequences, related on them. You know the cases when the economic developments, conforming to requirements of the objective market relations laws, science-based and true in essence, they are not carried out in practice because the legal form of them don't provide their realization. The law doesn't result in only the direct command and ban. There is a set of the delicate and very effective ways making active impacts on behavior. There should be no exceptions for military and defensive facilities. Thus much attention should be paid to measures of economic incentives (a privilege on financing, crediting, the taxation and so on).

Value of the Kazakh law far went beyond the actually regulatory standard role in Kazakhia's ethno-cultural borders. It bore and carried out the functions: regulatory, administrative, unifying, conservative and humanistic. It was in a broad sense the law and the power, the source of social being and moral, the art and spiritual value. By these lines was probably stipulated its vitality and stability in the face of a purposeful and powerful impact of the Muslim right, the Mongolian right and other overseas systems of the right of the same nomadic, semi-nomadic communities, settled and agricultural cultures and states, including the Russian legislation. Their influence on the Kazakh law didn't develop into destructive force [3].

Very serious question which has to be solved in the environmental regulations is a problem of providing optimum ratio between ecological and economic interests of the society. Unfortunately, the science hasn't developed the corresponding criteria for its decision yet. Practice of the right regulation of relations on use and protection of natural resources has until recently gone on the way of the statement of superiority of economy over ecology. Separate attempts to counterbalance these categories didn't yield desirable result.

At this stage of development of our society it would be as it seems to us not correct to declare in a legislative order an unconditional priority of ecology over economy in all cases.

The degree of readiness of the state during transition to the market, the character of tasks solved by it on satisfaction of material requirements of the people doesn't allow to make it [4].

It is necessary to find and apply such means which on the one hand would provide developments of economic activity, and on the other hand they would promote improvement of environmental relation. It is impossible to allow under the guise of conservancy serious infringement of economic activity. As well as it is impossible to widely and intensively use of natural resources under the guise of economy developments, to oppose economic and ecological interests, to tear off from each other. To provide timely and high-quality development of the industry, rural economy on the basis of correct, comprehensive solution of tasks on protection of surrounding environment and its rational use – that is the main requirement of the present. The unconditional priority of ecology over economy is possible only concerning especially protected natural objects [5].

Now ecology has turned into global sharply social, economic, legal, moral problem of the present, demanding for the decision consolidation of efforts of all states and peoples. Global value of the problem is in the first turn connected with need of conservation as research shows that for the last 100 years temperature on the earth rose to 0,5°, level of the ocean rose by 10 cm and this process can be accelerated on ten times. You also can observe global upcoming of the desert with an average speed of 6 million hectares a year. Everywhere the level of atmospheric air's pollution has increased reaching in a number of world's regions and in the industrial cities of many countries the level being hazardous to health and lives of the population. Acid rains became frequent. Issues of burial of industrial and household wastes, and radiation pollution became serious problem. Thus, anthropogenous influence of society on environment turned into global geological force

and threatens for mankind disasters of planetary character. Understanding by the states of global character of environmental problems generates new approaches to conservation questions traditionally being considered as purely national tasks [6].

In accordance with Art. 6 of the Constitution of RK the earth, its bowels, water, plant and animal world, other natural resources are in the State ownership. The earth can also be in private property on the bases, conditions, and bounds set by the law. The conclusion following from the Constitution provisions says that the main, leading form of ownership and the right on the earth it recognizes State ownership. Such approach is presented as justified in the light of land use practice in the states with the developed market infrastructure. In the western countries long ago consigned to the past supremacy of a private property.

The effective economic-legal form of the problems' solution is land rent. In the late eighties the portion of all lands involved into agricultural production, farmed on the rent basis is in Italy-20%, France-60%, Belgium-70%, Israel-90%. In the USA 55% are in the private property of farmers, 45 % of which are farmed under lease. Thus 32% of lands are at the disposal of the federal government i.e., they belong to state. In Holland, in the country of the highest crops, all agricultural lands are of state.

The private property on the earth prevails only in a number of the countries of Asia (Pakistan, Malaysia, and Bangladesh), South America (Colombia, Mexico).

Certainly, keeping state ownership in the Constitution at all doesn't mean following the administrative-command system of management.

The modern course of the country on creation of market economy puts in the forefront a problem about the bases and limits of intervention of the state to the land use sphere. Broad and large-scale intervention of the state to the process of lands use is a new reality in the countries with the developed market infrastructure. In the middle of the past century, for example, any attempts from the party of the state to establish any rules of private property use met hostility in society.

Effective "the administrative resource" is important not only for "great powers", but also for the countries which challenge regional leadership in different corners of the planet [7]. Differently, as Kazakhstan adheres continental, instead of Anglo-Saxon system of the right, the effective administrative resource is simply necessary for the country for successful economic development.

As show the empirical data, the countries with continental system of the right and an effective administrative resource have a strong economy [8].

Today in the conditions of difficult social-and-ecological life of society the state intervention is openly welcomed. The essence of the problem consists in the conflict between the state, as the representative of civil society and the land owner who carries private interests.

Really, in the society in which throughout two centuries it was cultivated freedom of possession, usage, and dispose of the property and in which all legal efforts were directed on its every possible protection, regulation of lands use is restriction of freedom of private property despite the social purposes it would be based, and legislative bases it would be based on.

At reservation of the right of private property as fundamental institute of the American legal system the central place is taken by a question of borders of the sphere admissible from the point of view of legality of the state intervention in the property relations.

In the conditions of transition to the market, recognitions of equality of all forms of ownership, freedom and equal protection of all forms of economic-organizing function and title of the owner without any restriction, the Republic course on creation of multistructure economy, questions of limits, bases, conditions of intervention of the State and at us has a special relevance.

In our country invasion of the state into the land use sphere on the basis of economic-organizing function and title of the owner without any restriction has become a tradition.

You shouldn't forget that administrative state intervention in process of land use received new impulses, a moral-legal justification in the light of accruing in the western countries the state intervention in land using being in private property of citizens. Objective in essence process of the state intervention in the land relations was called in the Soviet literature by native to us the term "process of nationalization of the earth using". It was thus held back that in the western countries the legal base, legal doctrines of the basis and limits of the state intervention in process of lands use were scrupulously developed.

The American legal doctrine believes that the state possesses the right of alienation of private property, regulatory powers, the right to spend money, the right to collect taxes. All of them are the bases of legal regulation of lands use [9].

Introduction in the Republic of a limited private property on the land aiming at creation of the full-fledged market of real estate demands development of the unfurled system of regulation of borders of the state intervention to the land use sphere. The problem gains a special relevance due to the lack before any practice in this sphere.

In the conditions of a course on creation of multistructural economy, a special value is gained by the dynamics of the right of state ownership connected with competence of the land use which can be sold and bought. Thus the state and the land user have to act as equal subjects in arising between them land offenses. It has to be provided by administrative and economic independence of the land user on the state-owner of land that hasn't been before.

State intervention to the sphere of land use can and has to be carried out on the basis of its ecological function.

It is generally recognized that the solution of environmental problems is inseparable from that concrete branch of the state, administrative, economic or other activity where the relations on use of natural resources, environmental protection take place.

That is, implementation of environmental rules of law is stipulated by existence of a complex of conditions, not only legal, but also organizational, economic and ideological. From these positions it is logical to distinguish not only legal, but also organizational, economic, ideological mechanisms of implementation of the ecological legislation [10].

The legal mechanism includes four elements: rules of law, legal relationship, acts of application of the right and real behavior of subjects of the ecological relations of the legal regulation purposes.

The rules of law making the first element of the considered mechanism can be subdivided on:

- a) the special ecological-legal;
- b) ecological norms of other branches of the legislation (norms regulating administrative, economic activity, labor and other relations developing in the course of its performance, and simultaneously ecological relations);
- c) the norms-guarantees providing realization of the first two groups of norms (norms on responsibility, legal procedure, etc.).

The second element of the considered mechanism – the legal relations developing in the sphere of protection of surrounding environment. They represent communication among people, being characterized by existence of their mutual rights and duties on protection of surrounding environment.

The third element is the acts of applying the rights necessary when the subjects of ecological relations:

- a) don't want to assume the duties provided by the rule of law, but equally interfere realization of the corresponding to these duties rights on protection of surrounding environment;
- b) or, having entered the legal relationship, don't carry out the duties assigned to them.

The fourth element - real behavior of subjects in accordance with the requirements of rules of law.

Such understanding of the legal mechanism of implementation of ecological rules of law as it is represented, allows to grope necessary "painful points", influencing on its efficiency, to formulate the principles of its development.

But, before creating the mechanism of implementation of the new ecological legislation, it is necessary to define its purpose accurately.

**3. Conclusion.** The mechanism of realization of norms of the environmental law can't separately exist from these norms. It has to be put in the law in the process of its creation. And as the norms are the first and main element of the mechanism of realization, the efficiency of each new law will first of all depend on quality of the norms put in it. In that case the regulation of the ecological relations has to be carried out by means of all rules of law above-mentioned types, and not just special, as nowadays. Therefore, at creation of each new environmental law it is necessary to think over its place in the system of already existing laws, to coordinate its norms to standards of the other, "not environmental" laws. Speaking about guarantees of implementation of the ecological legislation it must be kept in mind not only legal guarantees (responsibility, compensation of harm, procedure), but also organizational, economic, ideological and corresponding mechanisms of implementation of the ecological legislation.

On the first place it is possible to put development and improvement of the economic mechanism of environmental protection. The economic direction solves the main problem, namely: to make environmental protection a component of the production – commercial activity in order the businessman, handyman to be interested in environmental protection not less than he is interested in turning out competitive products.

The analysis of some environmental problems of modern Kazakhstan from the point of view of ecological safety shows that problems existing for a long time start being solved, but not so fast as that is demanded by the process ensuring of the full nature restoration. Many environmental problems aren't solved, moreover, ahead there can be new environmental challenges.

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