

COMPARATIVE ANALYSIS OF LEGISLATION OF FOREIGN COUNTRIES IN THE FIELD OF RECREATIONAL ENVIRONMENTAL MANAGEMENT

Assel Sopykhanova, Karaganda Economic University of Kazpotreboyz

ABSTRACT

Providing favorable surrounding environment is an important task at of our state at the present stage of development. This statement is fixed at the constitutional level. The orientation of modern state policy on development of human resources determinates a problem of environmental protection of more topical. During the past few years experts in the field of environmental protection and experts in the field of environmental legislation of the Central Asia countries declare the need of harmonization of the legislation of the countries of the region in the field of especially protected natural territories (EPNT) for the purpose of improvement of the mechanism of preservation of a biological and landscape diversity of the region and creation of transboundary EPNT. The first two stages will be blossoming of the legislation on recreational environmental management. The 3rd, 4th and 5th stages define the need of development of one more draft law, such as the Law RK "About Natural Medical Resources, Medical and Health Areas and Resorts". At the same time, we want to note that the right of recreational environmental management can be paid as compensation and acquired gratuitously, at the same time the right of recreational environmental management can be referred to the right of complex environmental management.

Keywords: Environmental Management, Natural Territories, Environmental Regulation, Ecological Legislation.

INTRODUCTION

In 1991, after the proclamation of the Republic of Kazakhstan as an independent country and the its transition to a market economy there was a need of transformation of the relations of environmental management, their adaptation to conditions of the market, creation of legal, economic and organizational conditions for equal development of all forms of ownership and the derivative rights of environmental management from them, protection of the rights for natural resources of citizens and legal entities. As a result of it, the structure of subjects of the relations of environmental management on natural resources were essentially changed in the republic, there were appeared the new types of the real rights for natural resources.

However, the problem of rational use of natural resources and environmental protection was remained still now, "... for many decades in Kazakhstan there was mainly created raw system of environmental management with extremely high techno genic loads of the environment. Therefore cardinal improvement of an ecological situation was not happened and it is still characterized by degradation of the natural systems that leads to destabilization of the biosphere, its deprivation to maintain the quality of the environment, which is necessary for activity of society" (Ecological, 2003).

Preservation of the favorable surrounding environment is an important task at this stage of development of our state. This statement is fixed at the constitutional level. Therefore, in the Art. 31 of the Constitution of the Republic of Kazakhstan it is noted: "The government aims to protect the environment, which is favorable for life and health of the person" (Republic, 2004).

The orientation of modern state policy on development of human resources determinates a problem of environmental protection of more topical. So, the President of Kazakhstan Nazarbayev notes in his Address "To competitive Kazakhstan, competitive economy and the competitive nation! (Astana, 2004): "Physical and mental abilities of Kazakhstan citizens in the conditions of globalization and toughening of the world competition are key factors of success of our plans, competitiveness of national economy and its survival in modern conditions" (President, 2004). When the main rate is done on a human factor, maintaining health of the population is one of priority problems of the state. So, Nazarbayev specifies in the Address to the people of Kazakhstan "Kazakhstan-2030. Prosperity, safety and improvement of prosperity of all Kazakhstan citizens": "Economic growth won't be able in itself to guarantee wellbeing of our citizens. It is simple to imagine the prospering economy, in which people become more and more sick as a result of the wrong approach to the health and the polluted environment from year to year. As we build the society, it is necessary to apply the increasing efforts for our citizens who would be healthier throughout all the life and they were surrounded by the healthy environment. Our strategy in realization of this purpose consists of the following components. Legislative and other regulations in the sphere of recreational environmental management and practice of their application are served as a research object. A methodological basis of a research is the modern doctrine about interaction of economy and the environment, the constitutional provisions on environmental management and environmental protection.

DISCUSSION

Problem statement of the comparative analysis of the legislation of the foreign countries and acquaintance with positive experience of application of this legislation is connected with the need of rapprochement of the foreign states on environmental issues. "The coordinated legal development of the states, both with similar and with various legal systems, is caused by requirement of survival of mankind during global ecological crisis. Such development has already been found as character of a tendency.

Rapprochement of the legislation of the different countries assumes mitigation or overcoming of the distinctions, existing between them by application of "legal standards", "the coordinated procedures", "recommendatory norms" and also elaboration of the general approaches to the solution of legal problems (Novikova, 1999b).

The general tendencies in development of the states of the CIS are shown visually. Adoption of approximately identical list of normative acts in the field of ecology, processes of codification and ecologization of the legislation are characteristic both of Kazakhstan and of Russia, Ukraine, Uzbekistan, Kyrgyzstan and other states. Other countries were determined by the Republic of Kazakhstan in some parameters. So we were the first, who were adopted the main legislative act in the field of environmental protection in the form of the Ecological code. The Russian Federation is only developed its projects.

According to Novikova, conclusions about rapprochement of the legislation of various states are confirmed as a result of the analysis of the corresponding processes by the Republic of Kazakhstan and other CIS countries. Process of harmonization of the legislation is traced in practice of application of such legal institutes as ecological insurance, a legal regime of

especially protected natural territories and objects, ecological licensing. Unification can be observed in the field of environmental regulation and standardization. The increasing support and distribution is gained by development of the national ecological legislation on the basis of model (Novikova, 1999a).

At the same time, gaps in the ecological legislation both in the Republic of Kazakhstan and in the similar legislation of other states of the near abroad countries, are repeated as well. The comparative analysis of the legislation of the near abroad countries in the field of recreational environmental management was shown that the institute of recreational environmental management is not developed practically. A number of norms are contained only in Laws on especially protected natural territories and are concerned the recreational zones as a part of national natural parks. The institute of medical and health areas is more provided in legal sense. Therefore, for example, it is adopted by the Russian Federation the Federal law on January 27, 1995 "About Natural Medical Resources, Medical and Health Areas and Resorts" (Law, 1995).

Today it is possible to mark out two stages of the national legislation development in the field of the especially protected natural territories (EPNT.)

The first stage EPNT was come on the first years of independence: in 1991-1996 in all countries of Central Asia there were adopted the laws about EPNT. In further changes and additions were done amendments of the given laws or there were adopted laws in the new edition. Now the second stage of development of the legislation of the countries of the region in the field of EPNT is observed: the Law on EPNT was adopted in the new edition in Uzbekistan (2004), in Kyrgyzstan and Kazakhstan there were adopted the new editions in laws on EPNT.

In the Russian Federation there is no division into two stages. There still works the Federal law of March 14, 1995 N 33-FL "About especially protected natural territories", however, the changes were added repeatedly by laws of December 30, 2001, on August 22, on December 29, 2004, on May 9, 2005, on December 4, 2006, on March 23, on May 10, 2007 (Law, 1995).

In a number of the states (Ukraine, the Republic of Moldova) it is possible to mark out one more stage as well. It was begun with adoption of laws on ecological network.

The problem of creation of EPNT, which are functionally interlinked between them, was arisen in the seventies. Original approaches to formation of the EPNT multilevel systems were developed. These developments were found the reflection in territorial complex schemes of nature conservation and nature protection sections of schemes of regional planning for various administrative units. They are a basis for further formation of ecological networks in these areas. On the other hand, now the mentioned schemes are used less than earlier that is connected with decentralization of public administration at all levels.

In 1997-1999 at the initiative of group of the Russian experts-members of the Committee of experts in formation of Pan-European ecological network of the Europe Council there was created the Working group on Ecological network of Northern Eurasia. The Working group was prepared the report "Prerequisites and the prospects of the development of ecological networks in Northern Eurasia", containing offers to the Program and the Action plan for formation of Ecological network of Northern Eurasia. Activity of the Working group was supported by Committee of experts in formation of Pan-European ecological network and the Working group of WCPA on EPNT of Northern Eurasia. Experts in the field of territorial conservation, the staff of the state environmental services, representatives of non-governmental organizations from the

majority of the countries of the region of Northern Eurasia took part in activity of the Working group.

The first among the near abroad countries there was adopted the Law of Ukraine No. 1864-IV “About ecological network of Ukraine” of June 24, 2004 (law, 2004). It works along with the Law of Ukraine “About nature reserve fund of Ukraine” of June 16, 1992 (law, 1992). There were created by this Law the legal bases for regulation of the public relations in the sphere of formation, protection and balanced use of eco-network of Ukraine as the uniform territorial system, which is created for the purpose of environmental protection, increase in natural and resource capacity of the territory, preservation of a biological and landscape diversity, habitats and growth of valuable types of fauna and flora, a gene pool, ways of animal migrations.

According to the Law, the eco-network components are:

1. Territories and objects of natural and reserved fund.
2. Grounds of inventory of water resources, wetlands, the water protection zones.
3. Grounds of forest fund.
4. Windbreak forest fields and other protective plantings which aren't referred to grounds of inventory of water resources.
5. The grounds of recreational purposes and their natural resources.
6. The grounds of recreational purpose, which are used for the organization of mass recreation and tourism, as well as sporting events.
7. Other natural territories and objects (territories of steppe vegetation, a pasture, haymaking's, stone scatterings, sands, saline soils, the land plots within which there are natural objects, having special nature protection value).
8. The land plots where there are grown the natural plant groups, entered in the green book of Ukraine.
9. Territories, which are habitats or growths of types of flora and fauna, which are included in the red list of Ukraine.
10. Partially-the territories of agricultural purpose: pastures, haymaking's, meadows, etc.
11. Radioactively contaminated land, which aren't used and are subject to separate protection as natural regions with the special status.
12. There were provided the concrete measures for ensuring of formation of eco-network of Ukraine by the law, among which there are:
13. Creation of coordination councils at the cabinet of ministers of Ukraine, the council of ministers of the autonomous republic of Crimea, the regional, Kiev and Sevastopol city public administrations.
14. Projecting of eco-network by development of the summary scheme of formation of Ukraine eco-network as a part of the general scheme of its territory planning, regional schemes of formation of eco-network of the autonomous republic of Crimea and areas, local schemes of formation of region eco-network, settlements and other territories.
15. Formation of lists of territories and objects of eco-network.
16. The development and implementation of special scientific programs, state monitoring of eco-network, etc.

In general, it is one of the most important normative legal acts of the nature protection character, adopted in Ukraine lately, which is included and aimed at providing of safety and improvement of a condition of steppe ecosystems.

In the Republic of Moldova there was begun the new stage in development of the legislation on EPNT as well. On April 5, 2007 the It was adopted the Law “About Ecological Network”, which purpose is formation of a legal basis of creation and development of national ecological network as a component of Pan-European ecological network and local ecological networks, establishment of control regime and protection of the national and local ecological networks and also authorities and obligations of bodies of public management in the given field.

According to Art. 3 of this Law, the national ecological network is created for the purpose of preservation of a natural genetic variety of all types of the live organisms, included in

ecosystems and natural complexes and also for providing of favorable vital conditions and long-term development of adjacent territories.

Functions of the national ecological network:

1. Restoration and preservation of landscapes and ecosystems.
2. Preservation of a biological and genetic diversity.
3. Reduction of erosive processes of the soil.
4. Preservation, protection, restoration and expansion of a vegetable cover.
5. Improvement of fodder base of animals.
6. Increase in recreational value of the territory.
7. Preservation and restoration of water bodies, improvement of their quality.
8. Stabilization of natural processes on the territories, adjacent to the ecological network (Moldova, 2007).

The need of adoption of the similar law is also ripened in the Republic of Kazakhstan.

The detailed analysis of the legislation in the field of especially protected natural territories was carried out by Rysbekova in the dissertation research “Legal Regulation of Activity of the State National Natural Parks of the Republic of Kazakhstan”. She notes that within the last several years experts in the field of conservation and experts in the field of the nature protection legislation of the countries of Central Asia declare about the need of harmonization of the legislation of the countries of the region in the field of EPNT for the purpose of improvement of the mechanism of preservation of a biological and landscape diversity of the region and creation of cross-border EPNT. The work on harmonization of the legislation in the field of EPNT of the countries of the region was begun within the Interstate project “Tasis” on preservation of a biodiversity of the Western Tien Shan and the Central Asian cross-border project of the Global Environment Facility (GEF)/the World Bank (WB) on preservation of a biodiversity of the Western Tien Shan (Kazakhstan, Kyrgyzstan, Uzbekistan). Further four countries of the region: Kazakhstan, Kyrgyzstan, Uzbekistan and Tajikistan participated in implementation of the project of the UN Organization for questions of food and agriculture (FAO) of TCP/INT/2903 “Improvement and Harmonization of the Legislation on Especially Protected Natural Territories” (Rysbekova, 2007).

In the most states of the near abroad countries the concept “especially protected natural territory” is uniformly. So, in Kazakhstan, Kyrgyzstan, Tajikistan, Uzbekistan and Turkmenistan, it is understood as the plots of land and water, having special value with a specific regime of protection and use. The name differs only at Uzbekistan: it is used the term “the protected natural territory”.

CONCLUSIONS

The legislation on recreational environmental management had been passed the several stages in its development:

The first stage (1917 to the 60th year) during which the legal norms about use of natural resources reflected hopelessly outdated concepts of a priority of economic interests over ecological, which were put in the state plans of social and economic development during formation of the Soviet state and then in the subsequent. Norms on recreational environmental management practically did not develop. The second stage (the 60-90th years) is symbolized by blossoming of the legislation about recreational environmental management and it was begun in connection with adopted by the Supreme Councils of federal republics-laws on conservation in 1957-1963. During this period it is observed an active law-making in the field of the legislation

on health care, town-planning activity, on tourism. Significant impact on these standards provides all-Union legislation. The third stage of development of the legislation on recreational environmental management, in our opinion, was begun with finding of independence by the Republic of Kazakhstan. It is characterized by essential renewal of norms on recreational activity. The fourth can be predicted only: it will be begun with adoption of the independent statutory act, which is in a complex, regulating all questions of recreational environmental management.

Having analyzed the ecological legislation of the Republic of Kazakhstan it is possible to draw a conclusion that it is necessary to adopt the statutory act, which would provide all characteristic features of the right of recreational environmental management, general laws and duties of users of nature, which would govern the relations on use of natural resources in these purposes. It was possible to call it as the Law RK "About Recreational Environmental Management". At the same time, there is a need of development of one more law in draft, such as the Law RK "About Natural Medical Resources, Medical and Health Areas and Resorts".

The content of the right of recreational environmental management was significantly changed in the conditions of transition to market economy and sustainable development of the Republic of Kazakhstan. The right of recreational environmental management in objective sense is a complex of the receipts of law, regulating an order of granting and withdrawal, the conditions of use of natural resources for rest and tourism. In subjective sense, the right of recreational environmental management is a complex, established by the ecological legislation of the competences of the specific user of nature on possession and use of natural resources for the rest and tourism. Object of the right of recreational environmental management is, as a rule, the natural complex, a recreational zone, which is understood as the part of the surrounding environment, used for rest and tourism. Legal entities of recreational environmental management can be subdivided on primary and secondary.

Legal entities are primary: tourist bases, rest houses, etc.

Secondary users of nature-are the citizens of the Republic of Kazakhstan and other natural persons, who have used the right of recreational environmental management and received a complex of services from primary users of nature-camp sites, rest houses, etc.

The right of recreational environmental management can be belonged to the right of special and general environmental management.

It belongs to the right of environmental management on a way of environmental management, which is carried out without withdrawal of a natural resource from the surrounding environment.

The right of recreational environmental management on terms is divided on the permanent (without indication of the term) and temporary (with the indication of the specified term).

The approval process consisted of two phases of primary provided by the state or other primary user of nature as alienation of this right and secondary by primary user of nature, reserving this status.

On availability at a price-the right of recreational environmental management can be paid as compensation and acquired gratuitously.

In addition, the right of recreational environmental management can be referred to the right of complex environmental management.

REFERENCES

- Novikova, E.V. (1999a). *Theoretical problems of development of the ecological legislation in the Republic of Kazakhstan*. Doctor of Jurisprudence thesis.
- Novikova, E.V. (1999b). *Theoretical problems of the ecological legislation development in the Republic of Kazakhstan*. Doctor of Jurisprudence thesis.
- Ecological, T.C.O. (2003). *The concept of ecological safety of the Republic of Kazakhstan for 2004-2015*. Decree of the President of Kazakhstan.
- Law, F. (1995). *Federal law "about natural medical resources, medical and health areas and resorts"*.
- Law, T.F. (1995). *The federal law of the Russian Federation*.
- Law, U. (1992). *About Ukraine natural and reserved fund*.
- Law, U. (2004). *About Ukraine ecological network*.
- M.E.K. (1999). Ecological frameworks. *Wildlife management*, 3, 25-30.
- Moldova, T.I.O.T.R.O. (2007). *About ecological network*.
- President, T.A.O.T. (2004). *The address of the president of Kazakhstan "To competitive Kazakhstan, competitive economy, the competitive nation*. Astana.
- Republic, T.C.O.T. (2004). *The constitution of the Republic of Kazakhstan*. Almaty: Lawyer.
- V.G. (2006). *Analytical review of the legislation of the Central Asia countries in the field of especially protected natural territories*. United Nations Development Program Archive, Almaty.
- Rysbekova, Z.K. (2007). *Legal regulation of activity of the state national natural parks of the Republic of Kazakhstan*. Doctor of Jurisprudence thesis.