

ABSTRACT

of the dissertation work of Nurutdinova Ainur
Zharylgasynkyzy for the degree of Doctor of Philosophy (PhD) in the specialty
«6D030100-Jurisprudence» on the topic:
«Legal problems of formation and development of the institute of ecologically
unfavorable territories»

The relevance of the topic of the dissertation work. The right to a favorable environment is a legal phenomenon that has become the object of research by legal scholars relatively recently - in the last decades of the last century. The Constitution of the Republic of Kazakhstan, giving priority to human and civil rights, has declared its goal to protect the environment favorable for life and health.

The intensification of anthropogenic impact on nature in the conditions of modern scientific and technological progress is manifested in an increase in the rate of environmental pollution, depletion of natural resources, deterioration of the human habitat. This leads to a reduction in ecologically favorable areas for human life and the formation of zones of increased environmental danger, characterized by a high and constant level of pollution, depletion of the natural environment and, as a result, increased morbidity of the population.

The formation of a democratic and legal Kazakhstan, its integration into the number of developed countries as an equal and civilized partner, led to a number of reforms aimed at improving the state of the environment. Thus, in his Address dated September 1, 2021, «Unity of the people and systemic reforms are a solid foundation for the prosperity of the country», the Head of State drew attention to environmental problems common to the entire world community, and especially air quality.

One of the reasons for the existing environmental problems in Kazakhstan is the «heavy» legacy of the Soviet economy, which does not take into account the environmental interests of the population. In Soviet times, most of the various projects, for example, the placement of industrial enterprises was carried out without an environmental impact assessment, an appropriate environmental assessment, so many enterprises have a negative impact on the health of the population.

At the same time, intensive development of domestic production, transport, construction, in particular, «safe and environmentally friendly nuclear energy», the production of «green» hydrogen is envisaged, which cannot but affect the purity of the environment.

Despite the seriousness of environmental threats, this problem has practically not been considered in scientific research by scientists of Kazakhstan. The environmental legislation of the Republic of Kazakhstan does not yet meet the requirements, shortcomings and gaps exist both in environmental legislation and in sectoral environmental legislation.

It should be noted that in Kazakhstan, ecologically unfavorable territories are subject to urgent rehabilitation, requiring measures to restore and preserve a

favorable state of the environment. Of course, a special legal regime should be applied in these special zones after the environmental assessment of the territory by the authorized bodies in the field of environmental protection.

The study of the legal problems of the formation and development of the institute of environmentally unfavourable territories of the Republic of Kazakhstan is very relevant from a practical point of view.

Such a study makes it possible to optimize the process of making state decisions concerning the environment, to prevent the formation of ecologically unfavorable territories and other «ecological conflicts» - controversial situations that arise in the course of economic and other activities that negatively affect changes in the environment that threaten the health of the population, the state of natural ecological systems.

Combining the theory and practice of legal regulation of the environment contributes to the ecological improvement of all regions of the Republic of Kazakhstan, which is timely and socially useful.

The dissertation research made it possible to identify and bring to the general discussion the problem of insufficient legal support for environmental protection of ecologically unfavorable territories of the Republic of Kazakhstan.

The degree of scientific elaboration of the problem. The omission of the national ecological and legal science is the lack of elaboration of the problem of formation and development of the institute of ecologically disadvantaged territories of the Republic of Kazakhstan.

General theoretical approaches have been developed by such prominent scientists as B.Zh. Abdraimov, M.A. Alenov, S.B. Baisalov, D.L. Baideldinov, A.E. Bekturganov, Zh.H. Kosanov, S.T. Kulteleev, A.S. Stamkulov A.E. Erenov, L.K. Erkinbayeva, A.H. Hadzhiev, N.B. Mukhitdinov, S.Zh. Suleimenova, K.A. Shaibekov. Young scientists also contributed to the science of environmental law: M.Zh. Abdraimova, G.T. Aigarinova, N.S. Baimbetov, S.D. Bekisheva, A.Z. Kaskeeva, A.K. Kurmanova, A.A. Mukasheva, Zh.K. Rysbekova, G.M. Tlebaeva.

More attention was paid to the problem under consideration by foreign researchers. Dissertations of A.N. Gorbachev, J.A. Kasprova, N.A. Petrov, M.V. Popugaeva, K.A. Ralitny, J.S. Cherepantseva were defended on the issues of the Institute of ecologically unfavorable territories and other scientific studies were conducted (A.P. Anisimov, T.S. Bakunin, S.A. Bogolyubov, B.V. Vinogradov, V.N. Kuzmich, V.N. Nazarevsky, I.N. Zhochkina, O.S. Kolbasov, I.O. Krasnova, V.F. Kuksanov, M.Yu. Glukhovskaya, A.A. Tranin)

Since in our study attention will be paid to the issue of attribution to ecologically unfavorable territories of environmental areas used by the Republic of Kazakhstan for the needs of defense and space activities, it is necessary to characterize the scientific works devoted to this issue.

In Kazakhstan, the issues of protection of individual components of the environment in the field of military and defense activities were considered in the works of K.T. Adranov (features of legal regulation of land relations in border territories, problems of lease of lands of military ranges of Kazakhstan by the Russian Federation), E.Sh. Zhumaksanov (legal regime of defense lands), G.K.

Kopbasarova (issues of ecology and nature management related to the functioning of the Baikonur complex).

Despite these scientific studies, Kazakhstan's environmental law science has not conducted a comprehensive study for the study of ecologically unfavorable territories over the past almost twenty years, taking into account the latest innovations in legislation and changes in the environmental situation in the studied regions.

The purpose of the dissertation research. The purpose of the study is to analyze, on the basis of an integrated approach, the state of legal support for environmental protection in ecologically disadvantaged territories of the Republic of Kazakhstan and to develop proposals for improving environmental legislation and the practice of its application.

To achieve the intended goal, the following tasks are set:

1. To investigate the genesis and current state of legal regulation of ecologically unfavorable territories.
2. To determine the place of norms on ecologically unfavorable territories in the system of environmental law.
3. To interpret and optimize the conceptual apparatus of the Institute of ecologically unfavorable territories, to consider the concepts of «ecological emergency», «ecological disaster» and related concepts of «natural emergency», «technogenic emergency» and their relationship.
4. To clarify the criteria and procedures for the creation of ecologically unfavorable territories, to consider the codification of norms on zones of ecological emergency (or zones of unstable ecological situation), zones of ecological disaster.
5. To identify the features of the legal regime of ecologically unfavorable territories.
6. To study the military and defense facilities of the Republic of Kazakhstan as potential ecologically unfavorable territories and environmental requirements for them.

The object of the study. The object of the dissertation research is public relations on environmental protection in ecologically unfavorable territories of the Republic of Kazakhstan.

The subject of the research is the norms on ecologically unfavorable territories, scientific approaches to their essence and content, the organizational and legal mechanism of environmental protection of ecologically unfavorable territories, law enforcement practice.

Methodological basis of the study. When writing the dissertation, general and special methods of cognition were used: systematic and theoretical analysis and synthesis, comparative legal, historical-analytical, structural-logical, complex, etc.

Scientific novelty of the research. The author's definitions of the legal categories «ecologically unfavorable territories», «ecological disaster zone», «ecological emergency zone», «biological safety» are proposed in the dissertation work. The conclusion about the independence of the legal institute «Natural-

anthropogenic complex with a special regime», the legal subinstitute «Legal regime of ecologically unfavorable territories of the Republic of Kazakhstan» in the system of environmental law is substantiated. The necessity of greening the legislation regulating military and defense activities, supplementing a number of articles of the Environmental Code of the Republic of Kazakhstan with new content, introducing positive experience of environmental protection measures implemented in foreign countries into the practice of the Republic of Kazakhstan is substantiated.

The main provisions submitted for protection:

1. The conclusion is substantiated that it is necessary to implement in practice the norms on the so-called environmental emergency (in our opinion, they should be designated as norms on an unstable environmental situation), for which all the prerequisites have developed: 1) the presence of a number of regions with unfavorable environmental conditions that meet the criteria for their recognition as zones of environmental emergency (Balkhashye, Ridder, Temirtau, Ust-Kamenogorsk, Shymkent, Ekibastuz, Glubokoe settlement, Sholakkorgan, etc.), 2) regulatory framework (EC RK, CC RK).

For the implementation of this project, it is proposed to develop a Roadmap for the identification and formation of zones of environmental emergency (or zones of unstable environmental situation), where it should be envisaged to give such a status to objects with limited access – the territories of Azgir, Baikonur, Sary-Shagan, etc.

2. The periodization of legislation in the field of environmental protection in ecologically unfavorable territories of the Republic of Kazakhstan is proposed: 1) The first stage (June 18, 1991 – July 14, 1997) – the beginning of the formation of the legal institution of environmentally disadvantaged territories. It is characterized by the very first appearance of the terms «ecological disaster zon», «environmental emergency zone» and the legislative formalization of the institution in question. 2) The second stage (July 15, 1997 – January 8, 2007). The Law of the Republic of Kazakhstan «On Environmental Protection in the Republic of Kazakhstan» was adopted on July 15, 1997, in which the norms on environmentally disadvantaged territories were further developed. 3) The third stage (January 9, 2007 – January 1, 2021). Consolidation of norms on ecologically unfavorable territories at the level of a codified regulatory legal act – the Environmental Code of the Republic of Kazakhstan dated January 9, 2007. 4) The fourth stage (January 2, 2021 – present). Stabilization of the consolidation of norms on ecologically unfavorable territories at the level of the Code and increase of environmental requirements for an environmental emergency (inclusion of threats to people's lives in socially dangerous consequences).

3. In order to improve legal terminology, distinguish related concepts of «environmental emergency», «natural emergency», as well as «technogenic emergency» and prevent «discrepancies» in practice, it is proposed to change the concept of «environmental emergency» to «unstable environmental situation». The definition of this legal category is also subject to adjustment.

4. In order to clarify and supplement the conceptual apparatus of the Institute of ecologically unfavorable territories, the author's definitions of the legal categories «biological safety», «ecological disaster zone», «environmental emergency zone», «natural-anthropogenic complex», «ecologically unfavorable territories» have been developed, which are not reflected in the Kazakh legislation.

5. The expediency of developing and adopting an independent Law of the Republic of Kazakhstan «On natural and anthropogenic complexes with a special ecological and legal regime» has been identified, which will contain norms on the peculiarities of the legal regime of zones of environmental emergency (or zones of unstable ecological situation), zones of ecological disaster.

Theoretical and practical significance of the dissertation research. For the theory, the significance of the dissertation is that the main results indicated in the work contribute to the development of the institute of legal environmental protection in ecologically disadvantaged territories, which was not previously the subject of monographic scientific research. The ideas proposed in the work can be further developed in new scientific research on environmental protection in ecologically disadvantaged areas.